

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE PLATINUM-BEECHWOOD LITIGATION	:	No. 18 Civ. 6658 (JSR)
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MARTIN TROTT and CHRISTOPHER SMITH, as Joint	:	
Official Liquidators and Foreign Representatives of	:	
PLATINUM PARTNERS VALUE ARBITRAGE FUND	:	
L.P. (in OFFICIAL LIQUIDATION) and PLATINUM	:	
PARTNERS VALUE ARBITRAGE FUND L.P. (in	:	No. 18 Civ. 10936 (JSR)
OFFICIAL LIQUIDATION),	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
PLATINUM MANAGEMENT (NY) LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	
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**DAVID BODNER’S RULE 56.1 STATEMENT
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, defendant David Bodner, by and through his undersigned counsel, respectfully submits the following statement of material facts as to which there are no genuine issues to be tried:

A. Bodner’s Platinum Interests

1. In or about 2001, Bodner helped Mark Nordlicht and Murray Huberfeld launch Platinum Partners Value Arbitrage Fund L.P. (“PPVA”) by providing a substantial seed investment. (Bodner 62:3–16; SanFilippo 53:18–24).¹

¹ Deposition transcripts are annexed in relevant part to the Declaration of Betsy Feuerstein, dated February 14, 2020, filed contemporaneously with this 56.1 Statement. References to “Ex.” refer to the exhibits to that declaration. ECF citations refer to the *Trott* docket, 18 Civ. 10936, unless otherwise noted.

2. In exchange for his investment, Bodner received an interest in the management fees generated by Platinum Management (NY) LLC (“Platinum Management”). (Bodner 69:6–11, 74:2–9).

3. This interest was held through Grosser Lane Management, LLC (“Grosser Lane”), of which Bodner and his wife are members. (Ex. 1 Sched. A).

4. Grosser Lane was not itself a member of Platinum Management; it was a 24.99% beneficiary of the Mark Nordlicht Grantor Trust (the “MNG Trust”). (Ex. 2 Recitals).

5. The MNG Trust held 65% of the membership interests of Platinum Management (which collected the management fees) and another entity, Platinum Partners Value Arbitrage, LP (“PPVALP”) (which collected the incentive fees). (Exs. 3 Recitals; 4 § 10; 5 § 2.09).

6. The management and incentive fees were charged to the feeder funds, not the Master Fund (PPVA). (Ex. 8).

7. PPVA never paid a management or incentive fee to Platinum Management. (Ex. 8).

8. Through the MNG Trust, Grosser Lane was entitled to approximately 19% of the profits generated through the management of PPVA and the other funds managed by Platinum Management. (Ex. 9; Bodner 128:17–21).

9. Grosser Lane last received a distribution from the MNG Trust in March 2014, on account of incentive fees allocated to PPVALP in 2013. (Ex. 10 No. 12; Bodner 464:5–19).

10. Grosser Lane had no rights under the Platinum Management operating agreement: as a non-member, it had no vote on internal affairs; it could not appoint officers, directors or employees; and it could not direct or restrain any business activity. (Ex. 3 § 3.2).

11. Grosser Lane's rights with respect to Platinum Management derived exclusively from the MNG Trust, where, under the trust instrument, it was entirely passive. (Ex. 2 Recitals, § 1.3).

12. Grosser Lane had no ability to control or direct the trustee, Mark Nordlicht, and Bodner was explicitly prevented from ever becoming the trustee. (Ex. 2 § 3.1).

13. Nordlicht was at all times the Chief Investment Officer of Platinum Management. Uri Landesman was the Managing Member of Platinum Management. (Ex. 3 §§ 4.1.1, 4.1.5)

14. Platinum Management was the investment manager and general partner of PPVA. (Ex. 6 at 24).

15. The partnership agreement between Platinum Management and PPVA provides that "management of the Partnership shall be vested exclusively in the General Partner," and the parties' Fourth Amended and Restated Investment Management Agreement appointed Platinum Management as PPVA's investment manager. (Exs. 4; 5).

16. Nordlicht and Landesman had complete, undisputed authority over all aspects of PPVA's business. (Ex. 7 §§ 1.10, 3.4, 6.6, 7.1, 9.1.1).

17. Bodner had no role at Platinum Management or PPVA. Bodner was never an officer or an employee of either entity. (SanFilippo 73:5–22, 129:12–15, 417:7–20, 418:18–419:9, Saks 350:6–10; Beren 80:4–6, 171:25–172:6; Ottensoser 97:25–98:13).

18. Bodner was merely an investor in PPVA. (Steinberg 371:2–6).

19. Prior to October 2014, Bodner had use of an office at Centurion Credit Management, which managed a fund called Centurion Credit Group LLC ("Centurion"), on West 57th Street. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

20. Nordlicht took over control of Centurion in January 2011 from Huberfeld, who was its Chief Investment Officer. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

21. Nordlicht rebranded it Platinum Partners Credit Opportunities Master Fund (“PPCO”). (SAC ¶ 177).

22. PPCO is in receivership under Melanie Cyganowski, plaintiff in *Cyganowski* action, No. 18 Civ. 06658.

23. In October 2014, Nordlicht consolidated the management of the two funds in a new office on West 55th Street, and Bodner was provided use of an office in that new space. (Bodner 78:2–11; Fox 37:11–13; Albanese 39:14–41:3).

24. From October 2014 to April 2016, Bodner was provided an office at Platinum Management, where he visited approximately two days a week to take personal meetings with charitable institutions and religious leaders. (Bodner 81:2–82:7; Albanese 40:18–42:5).

25. Bodner had use of a bookkeeper and a secretary. (Albanese 56:9–12; Fox 40:16–18).

26. Bodner occasionally took meetings with Nordlicht, Huberfeld and others, either in the office or in restaurants, in which he sought and received information about the performance of the funds managed by Platinum Management. (Albanese 71:16–20; Bodner 165:20–167:2).

27. At one such meeting in January 2015, where Platinum Management member Bernard Fuchs was present, Bodner and Nordlicht had a disagreement, in which Bodner expressed to Nordlicht that Platinum Management should not be marking up investment positions based on unrealized gains. (Bodner 192:5–24; Fuchs 28:5–20).

28. At that meeting, Nordlicht told Bodner that Bodner was uninformed and that his input was unwelcome. (Bodner 192:25–193:5; Fuchs 28:5–20, 446:24–447:10).

29. Several of the younger portfolio managers within Platinum Management occasionally sought advice from Bodner on a particular transaction or matter. (Steinberg 22:7–17, 85:23–86:15; Saks 349:12–24; Beren 62:5–19).

30. Bodner offered mentorship but never gave direction to those who sought his advice. (Saks 349:12–350:10, 350:18–24; Steinberg 22:18–23:4, 376:21–377:8; Beren 80:4–6).

31. Bodner had only rare interactions with PPVA investors. (Bodner 265:25–266:26).

32. Nordlicht occasionally requested that Bodner reach out to his contacts to seek new investors, but there is no evidence that Bodner did so. (Bodner 213:6–222:2).

33. Michael Katz, the grandson of the longtime PPVA investor Marcos Katz, testified that Bodner occasionally met with his grandfather and sought to dissuade the grandfather from withdrawing his investments. (Katz 43:5–10).

34. The only investors Bodner ever brought into the funds were his family members and charitable foundation. (Bodner 77:4–12, 216:3–6, 217:2–17, 266:19–24).

B. Bodner's Beechwood Interests

35. In late 2013, the Bodner family, through Monsey Equities, LLC (“Monsey Equities”), made an investment in the Beechwood reinsurance business. (Bodner Ans. to SHIP TPC ¶ 24) (ECF No. 400 in Case No. 18-cv-12018).

36. Bodner had no role in the conception, structuring or running of the Beechwood business. (Feuer 22:16–18).

37. In 2013, Mark Feuer and Scott Taylor conceived of the reinsurance company that eventually became Beechwood Bermuda International Ltd. (“BBIL”) and Beechwood Re Ltd. (“Beechwood Re” and collectively with BBIL, the “Beechwood Reinsurance Companies”). (Feuer 40:9–25).

38. To find capital for the new business, Feuer approached Huberfeld. (Feuer 41:13–19).

39. Huberfeld introduced Feuer and Taylor to Nordlicht. (Feuer 23:8–24:24).

40. Feuer and Huberfeld negotiated how Beechwood’s capital stack would function and how the ownership and economic shares would be divided with Feuer and Taylor. (Feuer 25:2–14, 26:20–25).

41. From the outset, Bodner had no involvement in the conception or development of Beechwood. (Feuer 22:16–18).

42. Bodner himself did not have any ownership interest in any Beechwood entity. (Feuer 22:16–18; Bodner 302:19–21; Thomas 106:5–16).

43. Monsey Equities made its capital contribution through Beechwood Re Investments, LLC (“BRILLC”) Series C, in return for certain minority common and preferred stock in the Beechwood capital structure, certain of which was issued to Beechwood Trusts Nos. 7 through 14 (“Trusts 7–14”), settled by Mrs. Bodner for each of her eight children as beneficiaries. (Bodner Ans. to SHIP TPC ¶ 24, ECF No. 400 in Case No. 18-cv-12018).

44. At all times, Mark Feuer and Scott Taylor controlled the voting within the Beechwood structure. (Feuer 73:24–74:5).

45. The Bodner family lost millions of dollars through their investment in Beechwood. (Bodner 382:19–383:11).

46. Bodner had no physical presence at Beechwood and no authority: he did not maintain an office there, he was not involved in decision-making and his opinion was not treated with deference or given any particular weight. (Bodner 102:18–23; Kim 232:9–233:11; Feuer 550:11–16, 804:7–805:20; Thomas 104:13–17, 200:4–11, 458:15–24; Northwood 293:15–22; Steinberg 71:25–72:14; Narain 578:9–580:2).

47. No one at Beechwood reported to or took direction from Bodner. (Narain 578:9–15; Kim 232:4–8; Feuer 804:15–805:20; Sweetin 196:6–24; Saks 350:9–22; Northwood 293:15–22).

48. In August 2016, the Bodner family, together with the Nordlicht and Huberfeld families, sold their interests in Beechwood to entities controlled by Feuer and Taylor. (Feuer 246:19–247:16).

49. In exchange, the sellers received a promissory note, which remains unpaid to this date, and which has no value. (Bodner 508:24–510:13; Ex. 11; *see also* Feuer 248:2–3; Taylor 192:14–193:11).

C. Bodner’s Separation from Platinum Management and Release by PPVA

50. On March 20, 2016, Bodner and Huberfeld entered into a Release Agreement with Platinum Management (the “Release Agreement”). (Ex. 12).

51. From Platinum Management’s perspective, the purpose of the Release Agreement was to make available Bodner’s and Huberfeld’s interests in the MNG Trust so that Platinum Management could offer those interests as an incentive to a potential new investor in the Platinum funds. At the time, Nordlicht was negotiating a substantial new investment from Marcos Katz, a prominent longtime investor in PPVA. (Exs. 13; 14).

52. The Release Agreement caused Bodner, and also Huberfeld, to forfeit their interests in the MNG Trust and to subject their families’ limited partnership interests in the

Platinum feeder funds to a two-year lockup period, as opposed to the 90-day redemption terms provided in the funds' subscription agreement. (Exs. 12 ¶ 4(c); 15).

53. At the time, the Bodner and Huberfeld families held approximately \$80 million in limited partnership interests in the funds. (Exs. 12 ¶ 4(c); 16).

54. Bodner and Huberfeld also gave general releases to the Platinum entities (Ex. 12 ¶ 3(a)).

55. Bodner and Huberfeld waived certain rights with respect to distribution of 2015 accrued management fees (Ex. 12 ¶ 4(b)).

56. In exchange, the Release Agreement granted each of Bodner and Huberfeld a general release by the Platinum affiliates and funds, including PPVA. (Ex. 12 ¶¶ 3(b), 3(c)).

57. The release states that PPVA and the other releasing parties released Bodner and Huberfeld from:

[A]ny and all manner of actions, causes of actions, suits ... whether in law or in equity, whether known, unknown, or hereafter becoming known, foreseen or unforeseen, suspected or unsuspected ... existing or hereafter arising ... that are based in whole or in part on any act or omission, transaction, or event in connection in any manner whatsoever with Platinum, from the beginning of the world to the Effective Date.

(Ex. 12 ¶ 3(b), *see also* Recital ¶ A (defining "Platinum" to include PPVA)).

58. Nordlicht executed the Release Agreement for Platinum Management, the general partner of PPVA. (Ex. 12).

D. The Albanese Email – SAC Ex. 33

59. The JOLs contended that Exhibit 33 of the SAC, an email written to Bodner in July 2015 from an email account used by his secretary, Angela Albanese, showed

Bodner as an “insider” for group pleading purposes, and at oral argument, called it a “confession” by Bodner. (Mar. 7, 2019 Hear’g Tr. 13:9) (ECF No. 293)).

60. On September 11, 2019, Albanese and Bodner entered into a written agreement in which Albanese agreed to testify truthfully about Exhibit 33, and Bodner agreed not to sue her in connection with her forged email. Albanese provided a written statement regarding Exhibit 33, which was appended as Exhibit C to the agreement. (Albanese 163:18–168:25; Ex. 17).

61. Under oath, Albanese testified that *she* (not Bodner) was the sole author of Exhibit 33; she wrote it of her own volition without any input or direction from Bodner or anyone else; and that she did it on her last day at Platinum with the intent to pressure Platinum Management to improve her severance pay. She swore to the accuracy of her written statement at her deposition. (Albanese 262:12–16, 163:18–196:9).

62. Albanese admitted that she had no information as to whether or if Bodner knew about the matters in her email, and that she fabricated its contents based on conversations she overheard in the office—conversations *not* involving Bodner—and on press releases she found on the internet regarding CNO Group’s earlier investment with Beechwood. (Albanese 259:7–260:4; Ex. 17 exhibit C).

E. The Platinum Valuation Process

63. As the general partner and investment manager of PPVA, Platinum Management had discretion over and final determination of the valuation of PPVA’s assets. (Johnston Decl. Exs. 10; 11).

64. In 2012 and 2013, BDO Cayman Ltd. (“BDO”) was PPVA’s independent auditor. (Johnston Decl. Exs. 1; 3).

65. In 2014 and 2015, CohnReznick LLP (“CohnReznick”) was PPVA’s independent auditor. (Johnston Decl. Ex. 4).

66. Platinum Management engaged independent valuers at Sterling Valuation Group (“Sterling”) to help calculate PPVA’s NAV from the first quarter of 2012 until the second quarter of 2015. (Johnston Decl. Exs. 36–46).

67. On June 30, 2015, Platinum Management engaged Alvarez & Marsal (“Alvarez”) as an independent valuator. (Johnston Decl. Ex. 48).

68. Alvarez valued certain PPVA assets beginning in the first quarter of 2015 through March 2016, at which time it was preparing PPVA’s fourth quarter 2015 valuation report. (Johnston Decl. Exs. 48; 49).

69. PPVA’s third-party administrator was SS&C Technologies, Inc. (“SS&C”). (Johnston Decl. Exs. 1; 2; 3; 4).

70. SS&C sent NAV reports and statements directly to investors in the Funds. (Johnston Decl. Ex. 50).

71. Platinum Management’s valuation policy (the “Valuation Policy”) provides explicit valuation guidelines and describes the valuation methodologies for various asset classes, asset classification levels and the party responsible for the valuation process for each asset, among other items. (Johnston Decl. Ex. 12).

72. The Valuation Policy contains the Charter of Platinum’s internal valuation committee (the “Valuation Committee”). (Johnston Decl. Ex. 12).

73. The Valuation Policy states that the Valuation Committee “is responsible for assessing and resolving any exceptions or revisions to the valuation methodology, policies and procedure, as well as assessing the preliminary portfolio Net Asset Value (NAV).” (Johnston Decl. Ex. 13).

74. The Valuation Committee approved valuation methodology, policy and procedures; approved revisions to the valuation methodology; approved the engagement of any third party to conduct valuations; and assessed the adequacy of PPVA's independent valuation. (Johnston Decl. Ex. 12).

75. The Valuation Committee met each month. The individual portfolio managers would review the assets under their oversight and update those in attendance on any major changes in "fundamentals, structure, or strategy" of that asset within the last two or three months. (Johnston Decl. Ex. 14).

76. The Valuation Committee reviewed and revised the Valuation Policy periodically. (Johnston Decl. Exs. 15–33).

77. Platinum Management personnel held quarterly calls with Sterling and Alvarez to discuss PPVA's assets in preparation for a quarterly valuation letter. (Johnston Decl. Ex. 15).

78. Bodner had no contact with or influence on the valuation process. (SanFilippo 417:25–418:13). There is no evidence to the contrary.

79. Expert witness Leon Metzger maintains that Platinum Management's valuation process was appropriate and consistent with industry best practices. He also observes that Platinum Management's valuations were always within the high-low range set independently by Sterling and Alvarez. (Metzger 163:3–12, 170:14–22).

80. [intentionally omitted]

F. The Transactional Fraud Alleged in the SAC

1. *Black Elk*

81. The SAC's 76 paragraphs describing the Black Elk-related allegations (and the 12 exhibits referenced therein) did not connect Bodner to the Black Elk Scheme. (SAC ¶¶ 453, 466, 484).

82. There is no evidence connecting Bodner to the amendment of the indenture or any other aspect of the scheme, and no evidence that Bodner raised a nickel for the BEOF Funds. Neither Bodner nor his family invested in the BEOF Funds. (Bodner 133:7–20).

83. In March 2014, Uri Landesman suggested that Bodner should contact his friends Aaron Elbogen, Bob Collins and Bob Cohen. (Ex. 18).

84. The JOLs deposed Aaron Elbogen, and he confirmed that Bodner did not ask him to invest in the BEOF Funds. (Elbogen 31:10–12). The JOLs did not depose Collins or Cohen.

85. Grosser Lane earned a distribution of fees from the management of the BEOF Funds in 2013. (Exs. 19; 20).

86. Grosser Lane received a portion of the fees because Bodner's initial agreement with Nordlicht and Huberfeld from 2001 provided that Bodner would share *pari passu* in profits in any new fund created by Platinum Management. (Bodner 259:18–262:5).

87. Grosser Lane received management fees from BEOF not because Bodner managed BEOF (he indisputably did not) but because he was entitled to his share of the profits based on this 2001 agreement. (Bodner 259:18–262:5).

2. *Agera Transaction*

88. David Steinberg negotiated the Agera transaction on the Platinum side, and he never took direction from or discussed the matter with Bodner. (Steinberg 381:14–24, *see also* 185:7–12; Narain 104:7–11)

89. Dhruv Narain negotiated the transaction on the Beechwood side, and he did not take direction from or discuss the matter with Bodner. (Narain 579:16–580:2).

90. Bodner helped his son get a job there as sales agent, and Bodner occasionally took business meetings at Agera’s offices in Westchester, close to his home in nearby Rockland County. (Bodner 355:6–11; Exs. 21; 22).

91. Later, Bodner helped his son structure an \$18 million loan to Agera through a fund, Bainbridge Partners LLP (“Bainbridge”), in which Bodner participated. (Bodner 375:19–22, 427:12–432:24; Thomas 236:5–7).

92. Bernard Fuchs recalled at his deposition that Bodner once gave him a tour of the Agera offices. (Fuchs 329:8–331:24).

93. In December 2015, with the Platinum funds under increasing liquidity constraints, Bodner floated an idea to David Levy that Agera could borrow money and lend it to the funds; the idea went nowhere. (Ex. 23).

94. The Agera transaction was a nine-figure transaction, heavily negotiated by multiple professionals on both sides, with voluminous agreements and term sheets exchanged over email over a course of weeks or months. (Exs. 24; 25; 26).

95. There is no testimony or evidence connecting Bodner to any of the other transactions alleged in the SAC to be fraudulent: Golden Gate Oil (SAC ¶¶ 413–23); Implant Sciences (SAC ¶¶ 436–39); PEDEVCO (SAC ¶¶ 424–35); Montsant (SAC ¶¶ 516–28, 556–67);

Northstar (SAC ¶¶ 529–50); Nordlicht Side Letter (SAC ¶¶ 568–83); March 2016 restructuring (SAC ¶¶ 584–606); Security Lockup (SAC ¶¶ 673–762).

Dated: February 14, 2020
New York, New York

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