

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

Master Docket No. 1:18-cv-06658-JSR

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 Official Liquidation),

Case No. 1:18-cv-10936-JSR

Plaintiffs,

-v-

PLATINUM MANAGEMENT (NY) LLC,  
et al.,

Defendants.

**HUBERFELD FAMILY FOUNDATION, INC.’S RULE 56.1 STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN SUPPORT OF SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern District of New York, defendant Huberfeld Family Foundation, Inc. (“HFF”) submits the following statement of undisputed material facts, with citations to the supporting evidence and the February 14, 2020 Declaration of Donald H. Chase (“Chase Dec.”), in support of its motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

**I. The Release Agreement Benefiting HFF**

*A. Murray Huberfeld’s Interest In Platinum Management (NY) LLC*

1. Platinum Management (NY) LLC (“PMNY”) is a limited liability company organized under the laws of Delaware. (Chase Dec. Ex. 2 (Second Amended and Restated Operating Agreement of Platinum Management (NY) LLC).)

2. Pursuant to the Second Amended and Restated Operating Agreement of Platinum Management (NY) LLC, dated as of January 1, 2011, the members of PMNY are the Mark Nordlicht Grantor Trust (listed as a “Passive Member” and holding a 65% Voting Company Percentage), Mark Nordlicht (listed as a “Passive Member” and holding a 10% Voting Company Percentage), and Uri Landesman (listed as a “Manager; Member” with a 25% Voting Company Percentage). (*Id.*)

3. The beneficiaries of the Mark Nordlicht Grantor Trust are Nordlicht Management III LLC, Grosser Lane Management LLC, and Manor Lane Management LLC (“Manor Lane”). (Chase Dec. Ex. 3 (The Trust Agreement for the Mark Nordlicht Grantor Trust).)

4. Huberfeld, through Manor Lane, seeded Mark Nordlicht in connection with the formation of PPVA. (Chase Dec. Ex. 4 (Murray Huberfeld Deposition Transcript Excerpts) at Tr. 49:11-12, 56:19-23.)

5. The Mark Nordlicht Grantor Trust provided Manor Lane with a 24.999% Economically Equivalent Membership Interest, as that term is defined in the Mark Nordlicht Grantor Trust, in PMNY. (Chase Dec. Ex. 3 (The Trust Agreement for the Mark Nordlicht Grantor Trust).)

6. The only member of Manor Lane is Murray Huberfeld. (Chase Dec. Ex. 4 (Murray Huberfeld Deposition Transcript Excerpts) at Tr. 15:18-20.)

7. Manor Lane received payments from the Mark Nordlicht Grantor Trust on account of its Economically Equivalent Membership Interest, as that term is defined in the Mark Nordlicht Grantor Trust, in PMNY in 2012 (to account for fees earned in 2011), 2013 (to account for fees earned in 2012), and 2014 (to account for fees earned in 2013). Manor Lane did not

receive any payments from the Mark Nordlicht Grantor Trust thereafter. (Chase Dec. Ex. 5 (Murray Huberfeld’s Responses and Objections to Plaintiffs’ Requests for Admissions) at No. 12.)

*B. Management of PPVA*

8. Plaintiff Platinum Partners Value Arbitrage Fund L.P. (“PPVA”) operated pursuant to a Second Amended and Restated Limited Partnership Agreement, dated July 1, 2008 (the “PPVA Partnership Agreement”). (Chase Dec. Ex. 6 (Second Amended and Restated Limited Partnership Agreement of Platinum Partners Value Arbitrage Fund L.P.))

9. Section 2.02 of the PPVA Partnership Agreement provides that “management of the Partnership shall be vested exclusively in the General Partner”. (*Id.*)

10. The PPVA Partnership Agreement provides that PMNY is the general partner of PPVA. (*Id.*)

11. PMNY and PPVA were also parties to the Fourth Amended and Restated Investment Management Agreement, dated March 9, 2007, pursuant to which PPVA (and its feeder funds) appointed PMNY as its investment manager. (Chase Dec. Ex. 7 (Fourth Amended and Restated Investment Management Agreement).)

12. In 2016, Mark Nordlicht was the chief investment officer of PPVA and managing member of PMNY, which was in turn the General Partner of PPVA. (Chase Dec. Ex. 8 (Joseph SanFilippo Deposition Transcript Excerpts) at Tr. 29:20-30:1.)

*C. The Release Agreement*

13. In 2016, a “Release Agreement” was executed by and among the following parties:

- i. PMNY, Platinum Credit Management LP, Platinum Liquid Opportunity Management (NY) LLC, and Centurion Credit Management LLC;

- ii. Mark Nordlicht, as Trustee of The Mark Nordlicht Grantor Trust, the Mark Nordlicht Grantor Trust I, and the Mark Nordlicht Grantor Trust II (the “Trusts”);
- iii. Mark Nordlicht, individually;
- iv. Murray Huberfeld;
- v. David Bodner;
- vi. Bernard Fuchs; and
- vii. Uri Landesman.

(Chase Dec. Ex. 9 (Release Agreement).)

14. PMNY, Platinum Credit Management LP, Platinum Liquid Opportunity Management (NY) LLC, and Centurion Structured Growth LLC (collectively the “Platinum Management Entities”) were responsible for the management of the following Platinum-affiliated funds, respectively: PPVA, Platinum Partners Credit Opportunities Fund LP, Platinum Liquid Opportunity Fund LP, and Centurion Credit Management, LLC (together, the “Platinum Funds”).

(Chase Dec., Ex. 9 (Release Agreement).)

15. As stated, as of March 2016, Huberfeld, through Manor Lane, was a beneficiary of the Mark Nordlicht Grantor Trust (Huberfeld’s “Beneficiary Interest”); the Mark Nordlicht Grantor Trust, in turn, owned a membership interest in PMNY. PMNY was responsible for the management of PPVA. (*See supra.*)

16. The Beneficiary Interest was valuable. (Chase Dec. Ex. 8 (Joseph SanFilippo Deposition Transcript Excerpts) at Tr. 83:11-17.)

17. In 2016, Huberfeld and his family members or their affiliated entities (including HFF), were beneficial owners of limited partnership interests in PPVA and other Platinum Funds (a “Funds Interest”). (Chase Dec. Ex. 9 (Release Agreement).)

18. The Funds Interest belonging to Huberfeld and his family members or their affiliated entities, was valuable. (*See, e.g.*, Chase Dec. Ex. 10.)

19. The list of limited partnership accounts at PPVA affiliated with Huberfeld, directly or indirectly, is included as part of Exhibit A annexed to the Release Agreement (the “Huberfeld Entities”). (Chase Dec. Ex. 9 (Release Agreement) at Ex. A.)

20. The Huberfeld Entities included, *inter alia*, the Huberfeld Family Foundation, Inc. (“HFF”). (Chase Dec. Ex. 9 (Release Agreement) at Ex. A.)

21. HFF was a long-time investor in PPVA, having made its initial investment in PPVA in 2008 (or earlier). (Chase Dec. Ex. 10 (HFF’s Investment Records in PPVA).)

22. As of December 31, 2015, the value of HFF’s investment in PPVA was \$13,784,853.48. (*Id.*)

23. Pursuant to the Release Agreement, Huberfeld gave certain good and valuable consideration (the “Huberfeld Consideration”), including the following:

- i. Huberfeld relinquished his Beneficiary Interest in the Mark Nordlicht Grantor Trust as of March 20, 2016. (Chase Dec. Ex. 9 (Release Agreement) at Section 1.)
- ii. Huberfeld, on behalf of himself, his successors, assigns, personal representatives and his “affiliated entities,” provided a broad, unconditional general release to “Platinum,” defined to include all of the Platinum Management Entities (including PMNY), and all the Platinum Funds (including

PPVA), releasing forever all known and unknown claims and actions. (Chase Dec. Ex. 9 (Release Agreement) at Section 3(a).)

- iii. Huberfeld, on behalf of himself and certain affiliated persons and entities identified in an attachment to the Release Agreement, also agreed not to redeem any of their Funds Interest (including their substantial Funds Interest in PPVA), or to withdraw any of their funds from the Platinum Management Entities (including any and all monies from earnings in 2015, which would be paid in 2016), for a period of two (2) years from the effective date of the Release Agreement (considerably longer than otherwise required), absent certain limited exceptions (irrelevant for purposes of this motion). (Chase Dec. Ex. 9 (Release Agreement) at Section 4(c).)

24. In return for the Huberfeld Consideration, “Platinum” (defined in Recital A of the Release Agreement to include the Platinum Management Entities and the Platinum Funds, including PPVA) provided a similarly broad unconditional general release of Huberfeld and HFF. The release provided to Huberfeld (and HFF) by Platinum (including PPVA) expressly states in pertinent part as follows:

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, each of Platinum, the Nordlicht Parties, Fuchs, and Landesman, on behalf of himself or itself, and his or its respective successors, assigns, personal representatives and affiliated entities, hereby fully, finally, forever and unconditionally waives, releases, and discharges each of Bodner and Huberfeld and each of their respective predecessors, successors, assignors or assignees, heirs, executors and administrators (as applicable), and any entity controlled by any of them, and with respect to each such entity, each of their respective present and former directors, officers, employees, agents, attorneys, representatives and direct or indirect shareholders, each in their capacities as such (collectively, the “BH Released Parties”), each of whom is an intended third-party beneficiary of this Section 3, of and from any and all manner of

actions, causes of action, suits, debts, liabilities, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, executions, claims and demands whatsoever, whether in law or in equity, whether known, unknown, or hereafter becoming known, foreseen or unforeseen, suspected or unsuspected, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, matured or unmatured, whether direct or indirect, individual, class, derivative, representative or other capacity, existing or hereafter arising, in law or in equity or otherwise that have been or could have been or in the future could be or might be asserted (whether directly or derivatively) that are based in whole or in part on any act or omission, transaction, or event in connection with any manner whatsoever with Platinum, from the beginning of the world to the Effective Date.

(The “Platinum Consideration”). (Chase Dec. Ex. 9 (Release Agreement) at Section 3(b).)

25. The Release Agreement was fully executed by all relevant parties. (Chase Dec. Ex. 9 (Release Agreement).)

26. The Release Agreement was reviewed by attorneys for PMNY, who approved PMNY entering into the Release Agreement on behalf of all Platinum parties, including PPVA. (Chase Dec. Ex. 11 (Memorandum).)

27. Platinum performed under the Release Agreement. (Chase Dec. Ex. 8 (Joseph SanFilippo Deposition Transcript Excerpts) at Tr. 75:2-78:16.)

28. Huberfeld performed under the Release Agreement. (Chase Dec. Ex. 4 (Murray Huberfeld Deposition Transcript Excerpts) at Tr. 73:9-75:5.)

29. The Release Agreement is governed by the laws of the State of New York. (Chase Dec. Ex. 9 (Release Agreement) at Section 5(e).)

## **II. HFF’s Operating History**

30. HFF is a New York State not-for-profit corporation that was established in August 1998. (Chase Dec. Ex. 12 (HFF’s Certificate of Incorporation).)

31. HFF has made many millions of dollars in charitable donations to a variety of charitable, religious, and education organizations and need individuals. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016) at p. 1 line 25 (“Contributions, gifts, grants paid”).)

32. From time to time, HFF has also made interest-free loans to needy individuals or entities for charitable purposes. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016).)

33. HFF has, and continues to, regularly make investments for the purpose of maintaining and growing its corpus, which in turn is used to make charitable donations. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016).)

34. All of HFF’s investments (made to maintain and grow its corpus) and charitable donations were disclosed in its federal tax returns on Form 990, which are publicly available. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016).)

35. HFF’s investments include, among others, an investment in PPVA and interest-bearing loans to individuals and entities. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016).)

36. HFF’s investment in PPVA was valued at over \$13 million at the end of 2015. (Chase Dec. Ex. 20 (HFF’s 2015 tax return) at PDF p. 14 (reporting fair market value of HFF’s investment in PPVA to be \$13.7 million).)

37. HFF had various directors and officers throughout the years. (Chase Dec. Exs. 13-21 (HFF tax returns from 2008 until 2016).)

38. Murray Huberfeld was a director and president of HFF throughout 2013 and 2014. (Chase Dec. Ex. 18 (HFF’s 2013 tax return) at PDF p. 2); Ex. 19 (HFF’s 2014 tax return) at PDF p. 2.)



39. Murray Huberfeld shares decision-making authority for HFF with, among others, the other directors of HFF. (Chase Dec. Exs. 13-21 (HFF Tax Returns); Ex. 22 (HFF Deposition Transcript Excerpts) at Tr. 17:6-18.)

**III. HFF's Investment In Black Elk Opportunities Fund International, LLC**

40. On February 8, 2013, HFF invested approximately \$1 million in Black Elk Opportunities Fund International, Ltd (the "BEOF Fund". (Chase Dec. Ex. 23 (HFF Investor Account Statement).)

41. On or about August 21, 2014, HFF received a \$1,026,677 distribution from the BEOF Fund. (Chase Dec. Ex. 24 (HFF Investor Account Statement).)

42. HFF was a mere investor in the BEOF Fund; it had no management authority or ownership stake in the BEOF Fund. (Chase Dec. Exs. 23-24 (HFF Investor Account Statements); Chase Dec. Ex. 36 (HFF's Responses and Objections to JOLs' Requests for Admission) at Nos. 107-108.)

**IV. HFF Had Nothing To Do With The Consent Solicitation, Which Is The Sole Focus Of The Fraud And Breach Of Fiduciary Claims That Plaintiffs Allege HFF Aided-And-Abetted**

43. Black Elk had previously issued certain notes, known as the "13.75% Senior Secured Notes" (or "Notes"), which were governed by an indenture dated November 23, 2010 (the "Notes Indenture"). (Chase Dec. Ex. 28 (Indenture).)

44. The Notes Indenture permitted Black Elk to use the proceeds from an asset sale for only one or more of the following purposes, (1) to repay indebtedness, including to the holders of the Notes; (2) to acquire assets of an oil and gas business; (3) to acquire the majority of the voting stock of an oil and gas business; or (4) to make capital expenditures or acquire long term assets for purposes of its oil and gas businesses. (Chase Dec. Ex. 28 (Indenture) at 64.)

45. The Notes Indenture also included a mechanism by which this provision of the Notes Indenture could be modified. Namely, Section 9.02(a) permitted any provision of the Notes Indenture to be amended “with the consent of the Holders of a majority in aggregate principal amount of the Notes affected thereby then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) . . . .” (Chase Dec. Ex. 28 (Indenture) at 86.)

46. In July 2014, Black Elk circulated an “Offer to Purchase and Consent Solicitation” (the “Consent Solicitation”) to holders of the Notes (the “Noteholders”). (Chase Dec. Ex. 29 (Consent Solicitation).)

47. The purpose of the Consent Solicitation was to solicit the Noteholders’ votes concerning the use of the proceeds of an asset sale conducted by Black Elk (the “Renaissance Sale”). (Chase Dec. Ex. 30 (Form 8-K).)

48. Specifically, the Consent Solicitation offered to buy back the Notes at par and sought consents from the Noteholders to authorize certain proposed amendments to the Notes Indenture. (Chase Dec. Exs. 29 (Consent Solicitation) and 30 (Form 8-K).)

49. The proposed amendments included the addition of a fifth use of asset sale proceeds to the list of four uses already permitted by Section 4.10 of the Indenture. This proposed amendment, Section 4.10(b)(5), permitted Black Elk to use the proceeds of an asset sale to purchase at par any Notes that Noteholders elected to tender and then to use any remaining asset sale proceeds to “repurchase or redeem preferred equity of [Black Elk].” (Chase Dec. Ex. 29 (Consent Solicitation) at 18.)

50. Only the holders of the Notes were permitted to participate in the Consent Solicitation. (Chase Dec. Ex. 29 (Consent Solicitation).)

51. HFF was not a Noteholder. (*See, e.g.*, Chase Dec. Exs. 13-21 (HFF tax returns from 2008 to 2016).)

52. Because HFF was not a Noteholder, it could not and did not participate in the Consent Solicitation. (*See* Chase Dec. Ex. 29 (Consent Solicitation).)

53. On August 21, 2014, Black Elk issued a Form 8-K announcing that it had received the requisite consents of Noteholders to, among other things, apply the proceeds from the Renaissance Sale to, among other things, repurchase preferred equity issued by Black Elk. (Chase Dec. Ex. 30 (Form 8-K).)

**V. HFF's Settlement With Black Elk**

54. In August 2015, an involuntary bankruptcy petition was filed against Black Elk, styled as *In re Black Elk Energy Offshore Operations, LLC*, Case No. 15-34287 (the “Black Elk Bankruptcy Case”), in the United States Bankruptcy Court for the Southern District of Texas, which subsequently was converted to a voluntary chapter 11 case in September 2015. (Chase Dec. Ex. 31 (Default Judgment Order and Motion attaching Settlement Agreement) at p. 7.)

55. As part of the Black Elk Bankruptcy Case, the post-confirmation litigation trustee (the “Black Elk Trustee”) commenced litigation against PPVA seeking, among other things, to avoid and recover all transfers by Black Elk to PPVA, and to equitably subordinate PPVA’s claims in connection with its secured debt. (*Id.* at pp. 7-8.)

56. Black Elk and PPVA thereafter entered into a Settlement Agreement wherein PPVA agreed not to oppose Black Elk’s motion for default judgment based on the funds that were allegedly transferred fraudulently to PPVA and the Bankruptcy Court thereafter granted Black Elk’s motion for Default Judgment on September 20, 2018. (*Id.*, Order and Default Judgment Motion at pp. 1, 7-15.)

57. In connection with the Black Elk Bankruptcy Case, the Black Elk Trustee also commenced an adversary proceeding against HFF (the “Black Elk-HFF Lawsuit”). In the Black Elk-HFF Lawsuit, the Black Elk Trustee asserted a claim against HFF for repayment of the \$1,026,676.83 that was transmitted from Black Elk to the BEOF Fund, which was in turn transmitted in the same amount to HFF. (Chase Dec. Ex. 32 (Black Elk-HFF Lawsuit Complaint) at ¶ 158.)

58. This payment is one and the same as the Black Elk Proceeds Payment alleged as the sole basis for the remaining claims against HFF set forth in the SAC. (*Compare* Chase Dec., Ex. 5 (Black Elk-HFF Lawsuit Complaint) at ¶ 158 *with* Chase Dec., Ex. 1 (SAC) at ¶ 506.)

59. On January 31, 2019, HFF resolved its dispute with the Black Elk Trustee. As part of that resolution, the Black Elk Trustee dismissed with prejudice all of its claims against HFF, and broadly released HFF from any claims relating to the \$1,026,676.83 Black Elk Proceeds Payment. (Chase Dec. Ex. 33 (Order of Dismissal).)

60. On February 6, 2019, the Court entered a formal Order of Dismissal with Prejudice of Huberfeld Family Foundation, Inc. As a result, any outstanding or potential liability of HFF to Black Elk has been released, including any liability related to the Black Elk Proceeds Payment. (*Id.*)

## **VI. Other Matters**

61. Plaintiffs’ Fed. R. Civ. P. 30(b)(6) representative, plaintiff Martin Trott, testified that Plaintiffs’ claims against HFF are essentially limited to HFF’s investment in the BEOF Fund. (Chase Dec. Ex. 35 (Martin Trott Deposition Transcript Excerpts) at Tr. 788:11-789:8.)

Date: February 14, 2020

Respectfully submitted,

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