

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD
LITIGATION

Case No. 18 Civ. 6658 (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. 18 Civ. 10936 (JSR)

Plaintiffs,

v.

PLATINUM MANAGEMENT (NY) LLC,
ET AL.,

Defendants.

**DEFENDANT DANIEL SAKS' LOCAL RULE 56.1
STATEMENT OF MATERIAL FACTS**

Defendant Daniel Saks (“Saks”) respectfully submits this statement of material facts on which there is no genuine issue to be tried, pursuant to Federal Rule of Civil Procedure 56(c) and Rule 56.1 of the Local Rules for the Southern District of New York.

Unless otherwise indicated, all exhibits set forth herein are attached to the Declaration of Wendy H. Schwartz, dated February 14, 2020. Defendant reserves the right to submit additional material undisputed facts in support of his reply to Plaintiffs’ opposition.

Background

1. Saks has worked in various capacities as an investment professional since 1997. Ex. 4, Saks Dep. Tr. (“Saks Tr.”) 17:11-19:14.

Employment at Platinum

2. In late 2013, Mark Nordlicht approached Saks about joining Platinum Management. *Id.* at 29:17-30:2.

3. Saks found Nordlicht persuasive because they had known each other a long time, and from the outside it appeared to him that Platinum was a very successful fund that could be a good platform. *Id.* at 30:19-31:18; 40:20-41:23.

Employment at Platinum

4. Saks started to work at Platinum in March 2014. *Id.* 29:24-30:10.

5. During Saks’ employment at Platinum, he was paid monthly as a 1099 contractor. *Id.* at 36:14-21. Saks discussed with Nordlicht the possibility that he would eventually receive equity in Platinum, but that did not occur. *Id.* at 37:15-38:6.

6. In July 2014, four months after his start date, Saks gave notice that he was resigning from Platinum. He left Platinum two months later, at the beginning of September 2014. *Id.* at 43:18-22.

Employment at Beechwood

7. Saks interviewed with Scott Taylor and Mark Feuer and was hired by B Asset Manager LP (“BAM”), the investment arm of Beechwood, initially as a portfolio manager in September 2014. *Id.* at 97:25-98:13.

8. Saks was paid a set monthly amount at BAM during his employment there. He never received a bonus. *Id.* at 103:9-18.

9. In late 2014, Levy, who at the time was chief investment officer of BAM, left Beechwood and Saks was promoted to the position of chief investment officer for structured products. *Id.* at 97:15-17; 98:11-20; 126:11-18. Another employee, Stewart Kim, was chief investment officer for other products. *Id.* at 97:18-24.

10. Saks was given the title of President of BAM for the purpose of having him be an authorized signatory for BAM. *Id.* 126:11-18; 129:21-130:8; 133:20-134:12.

11. Saks signed many transactions as authorized signatory for BAM, whether or not they were his. In his capacity as signatory, he would sign documents that were presented to him but did not necessarily review the deals that he was not personally working on. *Id.* at 128:16-24; 129:21-130:18; 130:15-131:14; 167:3-21; 167:22-168:18.

12. This is distinct from the transactions for which Saks was specifically responsible, for which he would review the deal terms. *Id.* at 128:9-24; 130:2-131:14.

The Montsant Transaction

13. On January 30, 2015, the Senior Health Insurance Company of Pennsylvania (“SHIP”), through its administrative agent, BAM Administrative Services LLC, purchased a \$35,500,000 note from Montsant Partners LLC (“Montsant”), the terms of which were memorialized by a Note Purchase Agreement. Schedule 6.13 required, after the close of the

transaction, for Montsant to pledge collateral with fair market value of “not less than 200% of the aggregate amount of outstanding Obligations . . . at the time of such pledge.” Ex. 5, Dep. Ex. 346, Note Purchase Agreement dated January 30, 2015.

14. Saks signed the Note Purchase Agreement on behalf of BAM Administrative Services and BAM, who in turn were signing on behalf of their client, SHIP. David Steinberg signed the Note Purchase Agreement on behalf of Montsant. *Id.*

15. In addition to the requirement to post collateral, the Montsant loan was secured by a personal guarantee from Nordlicht and his wife, Dahlia Kalter, along with a confession of judgment. Ex. 4, Saks Tr. at 158:9-15; 157:17-20.

16. Saks did not negotiate, structure or design the transaction. He processed paper and signed the note agreement. *Id.* at 146:10-18.

17. Emails regarding the negotiation of the Montsant transaction on behalf of Beechwood were sent by Thomas. Saks is copied on emails starting on or about January 28, 2015, as the documents that Saks would sign were being finalized. *See, e.g.*, Ex. 6, BW-SHIP-00847278; CTRL7410837; CTRL7637448.

18. Thomas, Feuer, and Taylor described the Montsant transaction to Saks and asked Saks to sign the Montsant transaction documents on behalf of BAM. Ex. 4, Saks Tr. at 146:10-147:14.

19. Saks prepared an investment memorandum to memorialize the transaction prior to closing, as was customary for his role. *Id.* at 148:5-12.

20. Saks’ investment memorandum incorrectly stated some details of the transaction, including the amount of the loan, and needed to be corrected by Moti Edelstein. Ex. 7, BW-SHIP-00801463; BW-SHIP-00801465. As part of that memorandum, Saks described the

purpose of the transaction as allowing Montsant to “purchase stock and debt from Platinum Partners the value of which will be in excess of 2 times the facility amount.” *Id.*

21. Saks’ only other role in the Montsant transaction was to assist in valuing collateral proposed by Platinum to determine whether the collateral met the terms of the contract:

- a. On January 20, 2015 Saks sent an email to Levy at Platinum asking to speak. Levy told Saks they could speak later, and that Platinum would be meeting internally to develop a list of collateral for the Montsant transaction. Ex. 8, BW-SHIP-01049630. Saks does not recall that any discussion with Levy regarding collateral took place. Ex. 4, Saks Tr. at 156:4-6; 159:10-160:7.
- b. After execution of the Montsant transaction on January 30, 2015, Thomas continued to follow up on the collateral to be posted, with Saks in copy. *See, e.g.*, Ex. 9, BW-SHIP-00862542; CTRL6438742; BW-SHIP-01121295. These email communications show that Platinum decided which securities to place into the Montsant collateral account, with Beechwood, including Saks, determining whether the collateral met the terms of the contract. *Id.*; *see also* Ex.4, Saks Tr. at 154:5-12.
- c. Collateral for the Montsant transaction was finalized on May 13, 2015, when the Montsant Pledge Agreement was signed. Ex. 2, SAC Ex. 65, Pledge Agreement.

Beechwood’s Divestment of Black Elk

22. On January 30, 2015, Platinum sent an agreement for execution to Thomas at BAM, providing that BAM would sell to Platinum certain Black Elk 13.75% Senior Secured Notes, most of which were held by reinsurance trusts of CNO Financial Group (“CNO”). Ex. 10,

Dep. Ex. 344, CTRL7648017. BAM made investments for the CNO reinsurance trusts as clients of Beechwood. Ex. 4, Saks Tr. at 135:5-10.

23. Feuer signed the Black Elk transaction on behalf of BAM and Steinberg signed on behalf of Platinum. Ex. 10, Dep. Ex. 344, CTRL7648017.

24. Saks' name does not appear in the January 30, 2015 Black Elk transaction, nor any negotiation surrounding it. *Id.*

25. Saks did not know in advance that Platinum would use the Montsant loan to fund the January 30, 2015 purchase of the Black Elk position. Ex. 4, Saks Tr. at 161:7-21.

26. After the transactions were complete, Feuer and Taylor told Saks that Platinum had used the Montsant proceeds to purchase the Black Elk bonds from the CNO reinsurance trusts. Feuer and Taylor asked Saks to tell CNO the position had been sold. *Id.* at 145:10-21; 161:7-162:9.

27. Saks conveyed the message to CNO. Ex. 11, BW-SHIP-00726472.

28. CNO had previously expressed to Beechwood a desire to exit transactions involving Platinum, Ex. 4, Saks Tr. at 139:24-140:21; 143-5-11, including the Black Elk position, *id.* at 145:6-11.

Resignation from Beechwood

29. In December 2015, Saks tendered his resignation to Beechwood, effective December 31, 2015. *Id.* at 324:21-23; Ex. 12, DS 003065.

Dated: February 14, 2020
New York, New York

BINDER & SCHWARTZ LLP

/s/ Wendy H. Schwartz
Wendy H. Schwartz
Gregory C. Pruden
366 Madison Avenue, Sixth Floor
New York, NY 10017
Tel: (212) 510-7008
Fax: (212) 510-7229
wschwartz@binderschwartz.com
gpruden@binderschwartz.com

Attorneys for Defendant Daniel Saks