

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

PLATINUM-BEECHWOOD LITIGATION

Civil Action No. 18-cv-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),

Civil Action No. 18-cv-10936 (JSR)

Plaintiffs,

- against -

PLATINUM MANAGEMENT (NY) LLC, *et al.*,

Defendants.

**PPVA PLAINTIFFS' RESPONSE AND COUNTER-STATEMENT TO
DEFENDANT BERNARD FUCHS' STATEMENT PURSUANT
TO LOCAL RULE 56.1 FOR SUMMARY JUDGMENT**

Local Rule 56.1 requires that motions for summary judgment be accompanied by a “short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried.” Local Civil Rule 56.1(a). On February 14, 2020, Defendant Bernard Fuchs (“**Fuchs**”) filed a Local Rule 56.1 statement in the consolidated litigation. *See In re Platinum-Beechwood Litigation*, No. 18-cv-6658 (JSR) (S.D.N.Y.) (ECF No. 732). Plaintiffs Martin Trott and Christopher Smith, as Joint Official Liquidators and Foreign Representatives of Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (the “**JOLs**”) and Platinum Partners Value Arbitrage Fund L.P. (in Official Liquidation) (“**PPVA**” and collectively with the JOLs, the “**PPVA Plaintiffs**”) by and through their attorneys Holland & Knight LLP, hereby respond to Fuchs’ proffered Local Rule 56.1 statement of purportedly undisputed facts, as follows:

PRELIMINARY STATEMENT

By responding to Fuchs’ proffered Local Rule 56.1 statement, PPVA Plaintiffs do not concede that any of Fuchs’ assertions of fact are either relevant or material, and PPVA Plaintiffs reserve any and all objections to each of Fuchs’ statements on those bases. PPVA Plaintiffs also expressly reserve and do not waive any and all objections to the use or admissibility of such statements, or the evidence cited in support, during trial in this manner. To the extent that any of PPVA Plaintiffs’ responses are deemed to admit any of the paragraphs of Fuchs’ proffered Local Rule 56.1 statement, in whole or in part, such response is made solely in connection with PPVA Plaintiffs’ opposition to Fuchs’ motion for summary judgment.

RESPONSE TO LOCAL RULE 56.1 STATEMENT OF FACTS

1. Bernard Fuchs became a 10% member of Platinum Management (“Platinum”) in 2014. Fuchs aff., pg. 4, para. 11.

RESPONSE: Undisputed.

2. Bernard Fuchs was never a member of Platinum’s valuation committee. Fuchs aff., pg. 1, para. 1, pg. 3, para. 8, pg. 7, para. 21.

RESPONSE: Undisputed that Bernard Fuchs was never a formal member of the valuation committee, but disputed as to the inference that Bernard Fuchs was not responsible for, involved or aware of the valuation of PPVA’s assets, for the reasons set forth in paragraphs ¶¶ 222-226 of PPVA Plaintiffs’ Statement of Material Facts.

3. Bernard Fuchs was never a member of Platinum’s risk committee. Fuchs aff., pg. 1, para. 1, pg. 3, para. 8, pg. 7, para. 21.

RESPONSE: Undisputed that Bernard Fuchs was never a formal member of the risk committee, but disputed as to the inference that Bernard Fuchs was not responsible, involved or aware of investment management and risk decisions, for the reasons set forth in paragraphs ¶¶ 227-233 of PPVA Plaintiffs’ Statement of Material Facts.

4. Bernard Fuchs was never consulted regarding the valuation of any of PPVA’s assets. Fuchs aff., pg. 1, para. 1, pg. 3, para. 8, pg. 7, para. 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 222-226, 241-242, and 617 of PPVA Plaintiffs’ Statement of Material Facts.

5. Bernard Fuchs was never consulted regarding the potential risk of any of PPVA’s assets. Fuchs aff, pg. 7, para. 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 222-242 of PPVA Plaintiffs' Statement of Material Facts.

6. On October 31, 2015, Bernard Fuchs, Bernard Fuchs 2009 Grandchildren Trust #1, Bernard Fuchs Grandchildren Trust #2, Bernard Fuchs 2009 Grandchildren Trust, Bernard Holdings LLC a/c 2 and Bernard Fuchs Holdings, LLC had invested in PPVA \$22,138,375.67 and in PPCO \$7,788,905.25. Fuchs Ex. 1.

RESPONSE: Undisputed.

7. Bernard Fuchs and the funds he controlled had invested over the years a total of approximately \$40 million dollars in PPVA and PPCO. Fuchs aff., pg. 2, para. 2.

RESPONSE: Disputed. PPVA Plaintiffs object to the extent that Fuchs provides no documents, such as investor statements provided by third-party administrators, to support this Statement.

8. Bernard Fuchs and the funds he controlled received over the years approximately \$20 million in returns on their investments. Fuchs aff., pg. 2, para. 2.

RESPONSE: Disputed. PPVA Plaintiffs object to the extent that Fuchs provides no documents, such as investor statements provided by third-party administrators, to support this Statement.

9. Bernard Fuchs came into Platinum's office only 2-3 days a week. Fuchs aff., pg. 4, para.1.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 220 of PPVA Plaintiffs' Statement of Material Facts.

10. Bernard Fuchs did not have an office in Platinum's offices. Fuchs aff., pg. 4, para 1.

RESPONSE: Undisputed.

11. In April 2016, Platinum issued a fund statement to all investors and potential investors that Platinum Partners had over \$1 billion in assets under management, with an average annualized return of 17.16% and the largest monthly loss at 3.42%. Fuchs Ex. 2, Fuchs aff., pg. 2, para. 4.

RESPONSE: Undisputed.

12. The April 2016 statement estimated that the estimated net monthly return at + 4.98 and in March 2016 it was 1.56. Fuchs Ex. 2, Fuchs aff., pg. 2, para. 5.

RESPONSE: Undisputed.

13. Bernard Fuchs did not compile or provide any of the information contained any of platinum's financial statements. Fuchs aff., pg. 3, para. 6, pg. 7, para. 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 227 of PPVA Plaintiffs' Statement of Material Facts.

14. Bernard Fuchs was not consulted about any of Platinum's financial statements before they were issued. Fuchs aff., pg. 3, para. 6, pg. 7, para, 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 222-242 of PPVA Plaintiffs' Statement of Material Facts.

15. Bernard Fuchs held no official position with Platinum. SAC para. 105, Fuchs aff., pg. 1, para. 1, 8, & 9.

RESPONSE: Disputed, for the reasons set forth in paragraph ¶ 219-242 of PPVA Plaintiffs' Statement of Material Facts.

16. Bernard Fuchs was never an officer of Platinum. SAC para. 105, Fuchs aff., pg. 1, para.1.

RESPONSE: Disputed, for the reasons set forth in paragraph ¶ 219-242 of PPVA Plaintiffs' Statement of Material Facts.

17. In or about January 2015, Bernard Fuchs was told by Platinum's principals that no partners were to be allowed to redeem their investments or take a profit from the investments. Fuchs aff., pg. 4, para. 12.

RESPONSE: Disputed, for the reasons set forth in paragraph ¶ 225 of PPVA Plaintiffs' Statement of Material Facts.

18. Bernard Fuchs received no partnership distributions as a partner of Platinum. Fuchs aff., pg., 4, para. 13.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 226 and 657 of PPVA Plaintiffs' Statement of Material Facts.

19. Bernard Fuchs was not consulted beforehand regarding the sale of PPVA's interest in Agera. Fuchs aff., pg. 7, para. 22.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 683, 685 and 787 of PPVA Plaintiffs' Statement of Material Facts.

20. Bernard Fuchs had no ownership position with BEOF Funds and was not a preferred investor. Fuchs aff., pg. 9, para. 27.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 496 and 542 of PPVA Plaintiffs' Statement of Material Facts.

21. Bernard Fuchs was not consulted about the transfer of PPVA's assets to Beechwood. Fuchs aff., pg. 7, para. 22.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 233 of PPVA Plaintiffs' Statement of Material Facts.

22. Bernard Fuchs was never a member, officer or owner of Beechwood. Fuchs aff., pg. 7, para. 22.

RESPONSE: Undisputed.

23. Bernard Fuchs just passed on to potential investors in PPVA the financial statements he received from Platinum. Fuchs aff., pg. 3, para. 7, pg. 7, para. 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 242 of PPVA Plaintiffs' Statement of Material Facts. The PPVA Plaintiffs further object on grounds that "passed on to" is ambiguous.

24. Bernard Fuchs did not know whether the financial statements he received from Platinum were true or not. Fuchs aff., pg. 7, para. 21.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 242 of PPVA Plaintiffs' Statement of Material Facts.

25. Bernard Fuchs was not consulted regarding the restructuring of the PPVA/PPCO Beechwood transaction. Fuchs aff., pg. 9, para. 27.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶ 233 of PPVA Plaintiffs' Statement of Material Facts.

26. Bernard Fuchs was told by the principals of Platinum that the transaction for Black Elk Oil was a one off transaction with interest starting at 16%. Fuchs aff., pg. 8, para. 23.

RESPONSE: Undisputed.

27. Even after the explosion at one of Black Elk's drilling platforms, the principals of platinum told Bernard Fuchs that Black Elk was still a good investment because it had an insurance claim and was still drilling for oil. Fuchs aff., pg. 8, para. 23.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 496 and 542 of PPVA Plaintiffs' Statement of Material Facts.

28. Bernard Fuchs was never told nor consulted regarding the proceeds of the sale of PPVA's interest in Agera being sent to Beechwood and not PPVA. Fuchs aff., pg. 7, para. 22.

RESPONSE: Disputed, for the reasons set forth in paragraphs ¶¶ 227 of PPVA Plaintiffs' Statement of Material Facts.

Dated: March 6, 2020
New York, New York

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