

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLATINUM-BEECHWOOD LITIGATION

MARTIN TROTT and CHRISTOPER 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),

Plaintiffs,

-v-

PLATINUM MANAGEMENT (NY) LLC,
et al,

Defendants.

Master Docket No. 18-cv-06658-JSR

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

**LOCAL RULE 56.1
STATEMENT OF
JOSEPH SANFILIPPO**

**JOSEPH SANFILIPPO'S LOCAL RULE 56.1 STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Joseph SanFilippo hereby submits this Statement of Undisputed Material Facts pursuant to Local Civil Rule 56.1 to set forth the material facts in the Second Amended Complaint (“SAC”) to which it contends there is no genuine issue to be tried.

1. Mr. SanFilippo was Chief Financial Officer of Platinum Management (NY) LLC (“PMNY”); PMNY was the Investment Manager and General Partner of PPVA.
2. Mr. SanFilippo also served on the Valuation Committee of PPVA.
3. From January 2015 to October 2015, Mr. SanFilippo stepped down as CFO for medical issues affecting his family, during this period he served as Director of Finance of PMNY under a new CFO.
4. Mr. SanFilippo had no ownership interest or equity interest in any Platinum fund.

5. At PMNY, Mr. SanFilippo was a salary employee, and in most years received an annual bonus.

6. Mr. SanFilippo had no ownership or equity interest in any Beechwood entity or Beechwood-related entity. Also, Mr. SanFilippo was not employed by any such entity.

7. One of Mr. SanFilippo's principal responsibilities was to supervise the preparation of PPVA's annual audited financial statements. An unqualified opinion is the highest mark that a financial statement may receive. It means that, in an independent auditor's judgment the Company's financial statements are fairly and appropriately presented in compliance with generally accepted accounting principles.

8. Mr. SanFilippo worked directly with outside auditors, BDO or CohnReznick, who audited the statements, and in every relevant year gave an unqualified opinion of PPVA's financial statements.

9. PPVA's financial statements described the fund's major investments, including oil and gas investments such as Black Elk and Golden Gate Oil, LLC ("Golden Gate").

10. PPVA's Black Elk and Golden Gate investments were Level 3 assets, not publicly traded, and have no readily available market prices. Level 3 assets can only be valued by sophisticated methods.

11. PPVA financial statement for 2013, audited by BDO and issued in February 2015, disclosed in detail the valuation process at PPVA, it set forth (1) how Mark Nordlicht, the Chief Investment Officer ("CIO") and President of PMNY, PPVA's Investment Manager and General Partner, determined PPVA's Level 3 valuations and presented them to the Valuation Committee; (2) how those valuations were required to be supported by various data, pricing sources, pricing models, counterparty prices or other methods; (3) how PPVA "has engaged a third-party

independent valuation specialist to review and report on all material Level 2 and Level 3 investment valuations on a quarterly basis;” and (4) that the Valuation Committee’s responsibility was to review PPVA’s written valuation processes and procedures and to evaluate the fairness and consistent application of the valuation policies as set by the General Partner.

12. The 2013 Financial Statement disclosed the fair value and financial condition of Level 3 assets including Black Elk and Golden Gate, detailed the valuation method to determine the enterprise value of each of these companies, and disclosed the multipliers and discounts used to arrive at enterprise value in each one.

13. The 2013 PPVA financial statement received an unqualified opinion from the BDO auditors. Their opinion states that the Financial Statement (including its disclosures of the enterprise value and financial condition of PPVA’s Level 3 assets) “*present[s] fairly, in all material respects*, the consolidated financial position of [PPVA] and Subsidiaries as of December 31, 2013.”

14. In 2016, Mr. SanFilippo was indicted on six counts of fraud and conspiracy to defraud with respect to PPVA investors. *See United States v. Nordlicht, et al.*, 1: 1-16-cr-00640-BMC, Eastern District of New York (“*Platinum* criminal case”), Dkt. No. 1 (Indictment dated 12/14/16). The principal allegation in the Indictment was that Mr. SanFilippo and four other defendants schemed to fraudulently inflate the value of PPVA’s assets, in particular its oil and gas investments such as Black Elk. *See* Dkt No. 1 (Indictment) ¶ 42ff.

15. On July 9, 2019 Mr. SanFilippo was found not guilty of all counts by the jury in the *Platinum* criminal case. The following day, the Court ordered that he be acquitted, discharged and his bond exonerated. *See* Dkt No. 776 (Judgment of Acquittal).

16. In its Indictment, the government elected not to indict Mr. SanFilippo for any conduct related to Black Elk. *See* Dkt. No. 1 (Indictment), Counts 6 through 8.

17. The PPVA financial statements, which were audited by outside auditors at major accounting firms, make clear that the members of the Valuation Committee did *not* determine valuations of PPVA Level 3 assets; the Committee merely oversaw and reviewed a valuation process based upon multiple inputs, including reviews and reports from “a third-party independent valuation specialist.”

“Level 3 Valuation Processes

The General Partner [PMNY] establishes valuation processes and procedures to ensure that the valuation techniques for investments that are categorized within Level 3 of the fair value hierarchy are fair, consistent and verifiable. The General Partner designates a Valuation Committee (the “Committee”) to *oversee the valuation process* of the Master Fund’s [PPVA’s] Level 3 investments. The Committee is comprised of Senior Investment Manager personnel and presided over by the Chief Investment Officer (“CIO”) and President of the General Partner. The Committee is responsible for *reviewing the Master Fund’s written valuation processes and procedures, conducting periodic reviews of the valuation policies, and evaluating the fairness and consistent application of the valuation policies as established by the General Partner.*

The Committee meets on a quarterly basis or as needed to review the valuation of the Master Fund’s Level 3 investments. Valuations determined by the CIO, and presented to the Committee *are required to be supported by market data, third-party pricing sources; industry accepted pricing models, counterparty prices, or other methods the Committee deems to be appropriate, including the use of proprietary pricing models.*

Additionally, as part of the review process the Master Fund has engaged *a third-party independent valuation specialist to review and report on all material Level 2 and Level 3 investment valuations on a quarterly basis.*” (2013 FS at 36; emphases added).

18. In its jury instructions the trial court told the jury it *could not consider* valuations as a basis for convicting any defendant, including Mr. SanFilippo:

“Ladies and Gentlemen of the Jury, you have heard testimony and seen exhibits about Platinum’s valuation of its assets. Judge Cogan has found that the valuation of Platinum’s assets was proper and you must accept that as a fact. Therefore, fraudulent valuations cannot serve as a basis to convict any defendant.” (Trial Tr. at 7101 (excerpt attached)).

Dated: February 14, 2019

Respectfully Submitted,

/s/ Kevin J. O’Brien
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