SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**
Justice

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DANIEL SMALL,
Petitioner,

- v -

THE ESTATE OF URI LANDESMAN,
Respondent.

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INDEX NO. 158492/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 63

were read on this motion to/for **MONEY JUDGMENT**.

The salient allegations in the petition are as follows. In 2003, David Bodner ("Bodner"), Murray Huberfeld ("Huberfeld") and Mark Nordlicht ("Nordlicht") founded Platinum Partners Value Arbitrage Fund L.P. ("PPVA"), a hedge fund structured as a limited liability partnership (NYSCEF Doc. No. 3, *PPVA agreement*). By October 2014, PPVA had over three hundred (300) investors with $801 million of assets under management invested across ten (10) investment strategies. Platinum Management (NY) LLC ("PMNY") was the general partner of PPVA, with exclusive control and authority over PPVA, including the management of its assets and the hiring of employees to assist in the management of assets. Additionally, PMNY was the investment manager of PPVA pursuant to an investment management agreement. Petitioner maintains that PMNY had the exclusive authority to, among other things, cause PPVA to reimburse PMNY for its operating expenses including the compensation of its employees. (NYSCEF Doc. Nos. 3; 5, *investment management agreement*).

In 2010, Uri Landesman ("Landesman"), now deceased,[1] joined Bodner, Huberfeld and Nordlicht as a principal and twenty-five (25%) percent owner of PMNY. Landesman succeeded Nordlicht as the sole designated managing member of PMNY, and he was both the president of PMNY, as well as, president and general managing partner of PPVA (NYSCEF Doc. Nos. 4, *PPVA fact sheet*; 5, *PMNY investment management agreement*).

Petitioner, a professional investment manager hired by PMNY, claims, that pursuant to an investment management agreement with PMNY ("employment agreement"), he was entitled to a salary, plus a bonus payable annually by February 15, equal to a specified percentage of the net profits his investment account generated. Petitioner alleges that Landesman, the individual in control of PMNY and PPVA, failed to authorize the payment of his 2012, 2013 and 2014 bonuses. He further claims that Landesman failed to cause PMNY or PPVA to establish any reserves for his compensation but nevertheless paid himself and his partners tens of millions of dollars.

[1] Uri Landesman died on September 14, 2018. (NYSCEF Doc. No. 1 ¶ 5).

According to petitioner, PMNY was operated as a shell corporation with insufficient assets to meet its obligations and PMNY. PPVA transferred only enough money into PMNY's bank account to meet its monthly expenses and pay management fees to Landesman and his partners. Additionally, Landesman and his partners allegedly structured their incentive fees to be directed to a separately owned and controlled entity called Platinum Partners Value, L.P. ("GP") — the general partner and Class M shareholder to PPVA's feeder funds — to further insulate their liability from PMNY. From 2012 through 2014, GP received millions of dollars of cash payments from PPVA's feeder funds Platinum Value Arbitrage Fund (USA) LP ("PPVA USA") and Platinum Partners Value Arbitrage Fund (International) Limited ("PPVA Int'l") ("the feeder funds"). Landesman also withdrew a total of $10,658,662 from GP during 2012 through 2015. Petitioner also asserts that Landesman paid himself $1.7 million from PMNY; $1.6 million from PPVA and $2 million from Resource Value Group, a subsidiary of PPVA. (NYSCEF Doc. No. 22, *PMNY Bank withdrawal report*; 23, *PPVA's bank acct. withdrawal report*).

Petitioner filed an arbitration claim for breach of contract against PMNY. In July 2016, arbitrator Hon. Theodore H. Katz found in favor of petitioner, to wit: that PMNY owed petitioner bonus compensation (NYSCEF Doc. No. 30, *arbitration award*). In February 2020, this court (Cohen, J.) confirmed the arbitration award, and judgment was entered in favor of petitioner and against PMNY in the amount of $12,703,558.00, plus post judgment interest at nine (9%) percent per annum on the principal amount of $9,566,327.00. (NYSCEF Doc. No. 34, *judgment*). The judgment remains outstanding and PMNY is allegedly insolvent with no cash, securities, or income. (NYSCEF Doc. 1 ¶ 37, *petition*).

Petitioner now moves, by order to show cause, for an order pursuant to CPLR 5225(b) and 5227, for an order piercing the corporate veil and holding respondent THE ESTATE OF URI LANDESMAN jointly and severally liable for the judgment against PMNY, premised on the allegation that Landesman was an alter ego of PMNY who abused its corporate form to enrich himself to the detriment of petitioner (NYSCEF Doc. No. 48, *OSC*).

In opposition to the instant application, respondent argues that Delaware law applies as Delaware is the state of incorporation for PMNY and, thus, that petitioner's application of New York law for piercing the corporate veil is misplaced. It further maintains that petitioner cannot meet his burden to pierce the corporate veil under either New York or Delaware law. Specifically, respondent asserts that, in this special proceeding, "[p]etitioner fails to offer competent evidence supporting even a triable issue of fact that the corporate form should be disregarded and the veil pierced to reach the Estate." It also argues that petitioner relies on nothing more than conclusory allegations of domination and control over PMNY, premised on Landesman's position as president of the same. According to respondent, although petitioner maintains that Landesman was involved in and responsible for compensation decisions, this is belied by petitioner's own proof, namely, the final arbitration award dated July 12, 2016, as well as certain exhibits attached to the affidavit of Adam Brenner, another employee of PMNY who affirms to have never received his bonus compensation from PMNY (NYSCEF Doc. No. 36, *Brenner's affidavit*). This proof, claims respondent, "show[s] that Landesman was subordinate to, and answerable to, Nordlicht." (NYSCEF Doc. No. 55, *memorandum of law in opposition*).

Respondent also argues that the equitable doctrines of *in pari delcito* and unclean hands preclude petitioner from collecting the judgment against the estate because he remains under indictment in the Eastern District of New York in a case captioned *United States v Small*, No. 16-cr-00640-BMC (EDNY) for his participation in alleged frauds executed at Platinum Partners. Additionally, a Securities and Exchange Commission (SEC) case against him remains pending to wit: *SEC v Platinum Mgmt. (NY) LLC*, No. 16-cv-06848-BMC (EDNY). Since a significant portion of the judgment rests on compensation for work subject to these pending cases, respondent asserts petitioner seeks to recover ill-gotten gains and, thus, the application must be dismissed.

"It is settled that a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised." (*Karr v Black*, 55 AD3d 82, 86 [1st Dept 2008] [internal quotation marks omitted]; CPLR 409[b]; *Matter of Port of N.Y. Auth. [62 Cortlandt St. Realty Co.],* 18 NY2d 250, 255 [1966], *cert denied sub nom McInnes v Port of N.Y. Auth.*, 385 US 1006 [1967].)

Under New York law, a plaintiff who attempts to pierce the corporate veil must demonstrate that "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury." (*Morris v State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]; see *Doe v Bloomberg, L.P.*, 178 AD3d 44, 50 [1st Dept 2019].) "While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business . . ., such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required." (*Morris v State Dept. of Taxation & Fin.*, 82 NY2d at 141-142 [internal citations omitted].) "The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene." (*Morris v State Dept. of Taxation & Fin.*, 82 NY2d at 142; see *Sutton 58 Assocs. LLC v Pilevsky*, 189 AD3d 726, 729 [1st Dept 2020].)

As an initial matter, "[w]hen plaintiffs seek to pierce the corporate veil, New York courts generally apply the law of the state of the defendant's incorporation" and "New York courts will disregard the state of incorporation only when the [d]efendant's contacts and the events at issue in the case substantially implicate New York." (See *Hayden Capital USA, LLC v Northstar Agri Indus.*, 2012 WL 1449257, 2012 US Dist LEXIS 58881, *16-17 [SDNY 2012].) That said, "the standards regarding the piercing of the corporate veil under Delaware law are not so different from those under, New York law. In order to pierce the corporate veil under Delaware law, a plaintiff must demonstrate that the principal in question had such complete control over the corporation that the corporation has no legal or independent significance of its own." (*Chiomenti Studio Legale, L.L.C. v Prodos Capital Mgt. LLC*, 2015 NY Slip Op 30319[U], *6 [Sup Ct, NY County 2015], citing *Wallace ex rel. Cencom Cable Income Partners II, L.P. v Wood*, 752 A2d 1175, 1183-84 [Del Ch 1999].) Insofar as the instant application fails under both standards, the distinction here is of no consequence.

While it is not lost on this court that petitioner successfully obtained a judgment against PMNY on his breach of contract claims, it nevertheless finds that petitioner has failed to meet the very high standard required for piercing the corporate veil. Even assuming Landesman was involved in personnel matters including, among other things, compensation of employees (NYSCEF Doc. Nos. 10, *December 2012 budget emails*; 13, *email from Landesman dated December 17, 2013*), and that he was aware of unpaid compensation (NYSCEF Doc. Nos. 2 ¶ 6, *Small's affidavit*; 36 ¶ 5, *Brenner's affidavit*), petitioner fails to show that Landesman, a part owner of PMNY, exercised complete domination and control over the entity such that, as a matter of law, he is liable for its debt. To the extent plaintiff maintains Landesman failed to establish any reserve for petitioner's unpaid bonus compensation; undercapitalized PMNY; paid himself and his partners millions of dollars in distributions rather than paying petitioner's unpaid compensation; and entered into the self-dealing Fraudulent Employee Liability Transaction to enrich himself and his partners, leaving PMNY insolvent and defrauding its creditors, there is no competent proof that Landesman actually directed and controlled the alleged transfer of funds between PMNY, PPVA and any other related entities. Moreover, petitioner's own proof suggests that other partners, i.e., Nordlicht, exercised at least some degree of discretion with respect to compensation, belying petitioner's claim that Landesman exercised complete control over PMNY. Additionally, while this court acknowledges the allegation that the partners received millions of dollars in distributions despite PMNY's failure to pay petitioner's compensation, without context as to, among other things, the reason for the payments and who directed them, petitioner has failed to establish his entitlement to the relief requested. Therefore, the application is denied, and the petition dismissed. All remaining arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that the application is denied in its entirely and the petition dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon respondent.

This constitutes the decision and order of this court.

May 13, 2022

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**