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BREAKING: 2 Former Platinum Execs Convicted Of Fraud, Ex-CFO Walks

By **Frank Runyeon and Stewart Bishop**

Law360, New York (July 9, 2019, 2:17 PM EDT) -- A New York federal jury on Tuesday convicted two former top executives of Platinum Partners on fraud and conspiracy charges, but acquitted the defunct hedge fund's ex-chief financial officer of charges stemming from a purported scheme to defraud investors in Platinum's flagship fund.

A jury of nine women and three men deliberated for four days before finding Platinum co-founder Mark Nordlicht and former co-chief investment officer David Levy guilty of securities fraud as well as conspiracy to commit wire fraud and conspiracy to commit securities fraud in connection with what the government called the "Black Elk Bond Scheme." Former Platinum CFO Joseph SanFilippo was found not guilty on all charges.

As the judge read the jury's verdict, Levy sobbed and SanFilippo's head fell into his hands as he shook with emotion.

"Joe is thrilled by the jury's verdict of acquittal, which affirms what we have consistently maintained, that this case never should have been brought," said Kevin O'Brien in a statement to Law360 on Tuesday. "Joe now turns to putting his life and family back together after a three-year ordeal. The world now knows this ordeal was unmerited and unjust."

Prosecutors said that Nordlicht, Levy and SanFilippo defrauded investors in Platinum Partners Value Arbitrage Fund by lying about a liquidity crisis at the failing fund that left it unable to meet a flood of redemption requests from investors. The government had also alleged the men deceived investors about Platinum's practice of making preferential payments to certain investors and high-interest interfund loans that were being used to keep PPVA afloat.

PPVA entered liquidation proceedings in 2016.

Of the three defendants, there was far less evidence presented at trial that involved SanFilippo, who prosecutors said played more of a "back office" role in the conspiracy.

The jury convicted Levy and Nordlicht of charges grounded in the government's claims that they used Platinum's secret control over a majority of \$150 million in bonds of Platinum portfolio company Black Elk Offshore Operations LLC to funnel over \$77 million in proceeds from a Black Elk asset sale back to Platinum, ahead of other bondholders.

In order to get the Black Elk funds, Nordlicht, Levy and others rigged a vote by Black Elk bondholders on a consent solicitation to change the bonds' indenture, by concealing that certain Platinum affiliates owned a majority of the bonds, the government said, and voted in favor of letting the asset sale proceeds go to holders of Black Elk's preferred equity, most of which was held by Platinum.

The trial began in late April, and featured testimony from aggrieved investors who said they're still owed millions of dollars as well as three former Platinum insiders turned cooperating witnesses who testified about misconduct inside Platinum.

Defense attorneys claimed Nordlicht and others were acting in investors' interest by keeping PPVA

above water, as opposed to letting its largely illiquid assets be sold off in a fire sale. While prosecutors say the executives deceived investors about the liquidity crisis at the fund, the defense argued that PPVA's illiquid assets and riskiness were disclosed to investors in the funds' governing documents and in audited financial statements.

Former Platinum managing director Daniel Small and ex-Black Elk CEO Jeffrey Shulse are also facing charges in the case but are due to be tried separately.

Nordlicht is represented by Jose Baez of The Baez Law Firm, Ronald Sullivan Jr. of Harvard Law School, Lisabeth Fryer of Lisabeth J. Fryer PA and Duncan Levin of Tucker Levin PLLC.

Levy is represented by Michael Sommer, Morris Fodeman and Katherine T. McCarthy of Wilson Sonsini Goodrich & Rosati PC.

SanFilippo is represented by Kevin J. O'Brien, Adam C. Ford, Anjula Prasad and Matthew A. Ford of Ford O'Brien LLP.

The government is represented by Alicyn L. Cooley, David C. Pitluck, Lauren Elbert and Patrick T. Hein of the U.S. Attorney's Office for the Eastern District of New York.

The case is U.S. v. Nordlicht et al., case number 1:16-cr-00640, in the U.S. District Court for the Eastern District of New York.n.

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