IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

COMMONWEALTH OF PENNSYLVANIA, TREASURY DEPARTMENT, Plaintiff, v. BLUE HILL MANAGEMENT, LLC, BLUE HILL MANAGEMENT 2, LP, BLUE HILL PARTNERS, LLC, and JOYCE FERRIS Defendants.	AUGUST TERM, 2020 No. 02378 COMMERCE PROGRAM OPFLD-Commonwealth Of Pennsylvania, Treasury Department [NOK] 20080237800144

OPINION

ERDOS, J. **March 2, 2026**

Plaintiff Treasury Department of the Commonwealth of Pennsylvania ("Treasury") brought this action against Defendants Blue Hill Management, LLC ("BHM"), Blue Hill Management 2, LP ("BHM2"), Blue Hill Partners, LLC ("BHP") and Joyce Ferris ("Ferris"). Treasury alleges Breach of Contract and Breach of the Pennsylvania Revised Uniform Limited Partnership Act ("PRULPA") related to Defendants' management of two investment vehicles and seeks damages in the form of disgorgement of management fees and lost opportunity costs as well as injunctive relief restraining BHM from implementing the BHIP dissolution plan and the establishment of a liquidating trust administered by an independent trustee. Plaintiff also seeks to pierce the corporate veil of all four defendants.

For the reasons discussed below, the Court finds for: 1) all Defendants and against Plaintiff for Breach of Contract regarding the CEEF LPA and SIMA, 2) Plaintiff and against

BHM for Breach of Contract regarding BHIP, 3) BHM2, BHP and Ferris and against Treasury for Breach of Contract regarding BHIP, 4) all Defendants and against Plaintiff for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding CEEF, 5) Plaintiff and against BHM for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding BHIP, and 6) BHM2, BHP and Ferris and against Treasury for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding BHIP. The Court grants the injunction restraining BHM from implementing the plan of dissolution. The demand for a liquidating trust and appointment of an independent trustee is granted. No monetary damages are imposed.

FACTUAL BACKGROUND

I. BHIP

The Treasury Department of the Commonwealth of Pennsylvania custodies funds for the Commonwealth, disburses payments on behalf of the Commonwealth and invests some funds for the benefit of the Commonwealth. Day 2 - Welks Test. at 96:13-97:9. Keith Welks ("Welks") was Deputy State Treasurer for Fiscal Operations, Senior Advisor for Policy, and Treasury's primary representative in managing BHIP and CEEF. Id. at 98:10-15. Mr. Welks lacked a formal investment background but had substantial experience with environmental initiatives. See generally Day 2 - Welks Test. BHP is an entity formed primarily by Ferris for the purpose of managing investment vehicles. Ferris is the founder and an 84% majority shareholder of BHP. Day 1 – Ferris Test. at 38:22-25. Ownership of the remaining 16% is divided between two other individuals, Walter King and Gary Weiss. Day 8 – King Test. at 5:17-23; Trial Ex. BH-16 at 38. BHM and BHM2 are entities each formed by BHP for the sole purpose of acting as the general partner of BHIP and CEEF respectively.

In 2006, Welks sought to expand Treasury's environmentally-themed investing and contacted Ferris and a few other individuals to counsel Treasury on how they might foray into that space. Day 2 - Welks Test. at 20:1-24:11. On December 15, 2006, Treasury and BHM executed an Agreement of Limited Partnership of Blue Hill Investment Partners ("BHIP LPA") establishing the Blue Hill Investment Partnership ("BHIP"), a venture capital fund, with BHM acting as the general partner and Treasury as a limited partner. Trial Ex. P-7. Treasury invested $5,000,000 in capital commitments, giving it an 84% stake in BHIP. Trial Ex. D-18. BHP formed the BHM entity to serve as the General Partner of BHIP. BHP invested $500,000 into BHM, which gave BHP an indirect 8.4% stake in BHIP. Id. The Department of Community and Economic Development ("DCED") invested $450,000 through BHM, which gave them an equity stake of approximately 7.6% of BHIP. Day 1 – Ferris Test. at 99:7-16.

According to the BHIP Subscription Agreement BHIP's stated objective was "to invest in companies and projects in the Green Technology 'Green Tech' market sector. The General Partner intends to generate current income and capital growth..." Trial Ex. D-15 At p. 20. Treasury and BHM sought to promote Pennsylvania-based companies and promote job growth within the state while furthering environmental initiatives. See generally Day 2 – Welks Test.

The Final Closing Date occurred on December 31, 2007. Trial Ex. P-7 at p. 3. The BHIP LPA defined the "Investment Period" as "the period commencing on the date of the Initial Closing and ending on the fourth anniversary of the Final Closing Date [December 31, 2011]." Id. During this period, BHM was responsible for recruiting suitable co-investors and investing capital in appropriate target companies. BHM was only able to recruit one additional source of capital during this time, the $450,000 loan from DCED obtained in December 2007. Day 6 – Ferris Test. at 100:24-101:6.

BHM placed investments in three companies. The first was Aircuity on December 26, 2006, with a total investment of about $2.5 million. Trial Ex. P-17; Day 2 – Welks Test. at 34:15-17. The second was a loan of $400,000 furnished to Field Diagnostic Services in 2007, which was repaid in the amount of $764,774.19 in 2008. Id. The third investment was with a company called Performance Systems Development ("PSD") for approximately $1.5 million, placed on June 11, 2010. Id. Prior to making the PSD investment, BHM spoke with upwards of 20 other companies. Day 1 – Ferris Test. at 111:9-12. Both Aircuity and PSD were or currently are tenants at 40 West Evergreen, an investment property Ferris owns and operates through 40 West as a co-working space independent of the Blue Hill entities. Id. at 85:12-24.

BHM was obligated to fulfill a number of obligations as the General Partner of BHIP in accordance with the LPA. Section 2.5 of the BHIP LPA requires the establishment of an advisory committee to address potential conflicts of interest. Trial Ex. P-7 at § 2.5. Blue Hill never formed the requisite advisory committee. Day 6 - Ferris Test. at 160:3-10. Sections 8.2 and 8.3 obligates BHM to provide annual financial statements comprised of clearly listed documents and quarterly reports updating Treasury on the status of the funds. Trial Ex. P-7 at §§ 8.2, 8.3. Throughout the life of the Partnership, BHM provided the fiscal documents each year until 2017, but did not provide formal written quarterly reports. Day 1 - Ferris Test. at 102:21-103:6. However, Welks testified that he was always apprised of the status of the Partnership, had no reason not to believe the requisite documents had not been supplied, though he did not specifically recollect, and never enforced either section two or eight of the LPA. Day 2 – Welks Test. at. 37:15-38:11.

Following termination of the Investment Period in December 2011, BHM was tasked with managing the BHIP investments through the "Initial Term" of the fund, which was defined as the "tenth anniversary of the date of the Final Closing," or December 31, 2017. See Trial Ex. P-7 at §

1.4. Section 7.1 of the BHIP LPA provides that "[t]he Partnership shall be dissolved upon... the expiration of the term of the Partnership as set forth in Section 1.4." Trial Ex. P-7 at § 7.1. However, there is a provision which allows the General Partner to extend the term twice for a one-year period. Id. at § 1.4.

Ferris and Welks began discussing the approaching investment horizon in March of 2017. Trial Ex. P-31. On August 31, 2017, BHM sent an email to Treasury discussing an extension or termination of the Partnership. Trial Ex. P-20. BHM attached a proposal of a new fee structure if the BHIP LPA was extended for a further two years. Id. On March 6, 2018, Treasury countered with an alternate proposal that incentivized BHM to exit the investments as quickly as possible. Trial Ex. P-34. On March 16, 2018, BHM rejected this proposal and elected to terminate the Partnership through a proposed distribution in kind. Trial Ex. P-35. BHM's declination of the offer to extend the term meant the Partnership was dissolved and BHM was to work toward distribution of Partnership assets in accordance with Section 7.2, which states that "[w]ithin one hundred eighty (180) days after the effective date of dissolution of the Partnership, whether by expiration of its term or otherwise, the Partnership's assets (except for amounts reserved) shall, subject to applicable provisions of the Pennsylvania Act, be distributed by the General Partner[.]" Trial Ex. P-7 at § 7.2.

BHM sent Treasury a formal plan of dissolution on June 5, 2018, under which Treasury would directly receive their percentage of the Partnership shares through an in-kind distribution. Trial Ex. BH-18. On June 25, 2018, Treasury informed Ferris that a distribution in kind was not desired or legally feasible and any such proposal would be rejected. Trial Ex. P-35. The LPA endowed Treasury with the unequivocal right to reject such a distribution: Section 4.6 of the BHIP LPA provided for distribution of Partnership assets in kind only with "the approval of the

majority of the Limited Partners" and "subject to any legal or contractual restrictions." Trial Ex. P-7 at § 4.6. Furthermore, a distribution in kind was effectively impossible, as the Pennsylvania Constitution forbids the Commonwealth, including the Treasury, from any direct ownership of individual companies. Pa. Const. Art. VIII § 8 ("The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.").

On February 22, 2019, BHM forwarded Treasury a second formal Plan of Dissolution and Liquidation, which provided for the distribution of Treasury's share of the Partnership assets into a liquidating trust of which Joyce Ferris would serve as the trustee. See Day 1 - Ferris Test. at 146:25-147:7. BHM rejected this plan as well. At that point, communication broke down. The final management fee was paid to BHM in August 2017. Trial Ex. P-17. BHM continued to file tax returns and complete general tasks that kept the Partnership functional, but it received no further management fees or capital contributions from Treasury. Day 1 – Ferris Test at 102:21-103:6. In April 2024, BHM provided a summary of the financial statements from 2017 – 2022. Trial Ex. P-36. Over the duration of the BHIP partnership, Treasury paid BHM $1,169,585.68 in management fees. Trial Ex. P-17; Day 3 - Leitenberger Test. at 40:2-42:13. Treasury also reimbursed BHM $232,942.80 for other expenses related to BHIP. Id.

Treasury initiated the instant action by filing a Complaint on August 27, 2020 and an Amended Complaint on October 27, 2020. To date, Treasury has received a capital return of $3,699,468.54 - approximately 73% of committed capital - through dividends and distributions, mostly disbursed in the last 3 years, and continues to own the shares of Aircuity and PSD through BHIP. Trial Ex. D-22. Day 4 – Lerner Test. at 63:9-64:1.

II. CEEF

Welks and a small team within Treasury sought to expand Treasury's environmental impact-themed investing with a project focused on higher education. Day 2 - Welks Test. at 62:21-64:24, 186:1-25. In September 2010, Treasury and BHP entered into an Investment Management Agreement ("IMA"), which stated Treasury's intent to create "an investment fund, to be known as the Educational Energy Efficiency Program, . . . which will be an investment vehicle that, . . . would permit Commonwealth funds to earn a market based rate of return by promoting Pennsylvania based college and university energy-efficiency retrofit projects through the extension of financial lending agreements to qualified higher education institutions." Trial Ex. P-8. BHP would explore potential investment structures and projects in the higher education sector that would be conducive to Treasury's goals. Id. This structure would ultimately come to be known as the Campus Energy Efficiency Fund ("CEEF"). Trial Ex. P-10.

BHM2 and Treasury entered into an Agreement of Limited Partnership with respect to CEEF ("CEEF LPA") on January 1, 2012. Id. The IMA expired in December 2011, so BHP and Treasury then executed a Second Investment Management Agreement ("SIMA") on July 3, 2012 to continue funding the project. Trial Ex. P-9. BHM was the General Partner and Treasury was the sole Limited Partner of the CEEF partnership. Trial Ex. P-10. Walter King was an employee of BHM2 and the primary project developer for CEEF's only investment project, an infrastructure retrofit renovation at Drexel University ("Drexel Project"). Day 1 – Ferris Test. at 67:4-9; Day 7 – Ferris Test. at 31:7-11.

Section 1.8 of the CEEF LPA stated that the purpose of the Partnership was to "through Project Companies, develop, invest in, own, manage, exchange, and otherwise deal in and with Projects." Trial Ex. P-10 at §1.8. This investment structure is called an energy efficiency savings

agreement and was relatively new at the time CEEF was created. Day 7 – Ferris Test. 24:2-26:1; Day 8 – King Test. at 23:24 -24:5. Each deal required a special purpose entity, the recruitment of a co-investor to match the equity contribution of CEEF on substantially similar terms, and a senior debt provider to furnish a loan. Id. at 13:19-14:21. BHM2 had to identify projects, contract with builders, and recruit multiple additional investors to make debt and equity contributions. Id. The CEEF LPA and SIMA contradicted the IMA in that total capital commitments to the Partnership were capped at $12 million. Trial Ex. P-9 at §3.2(a)(ii). This superseded the IMA, which contemplated up to $40 million of co-investor additional capital contributed directly to CEEF. Trial Ex. P-8.

The CEEF LPA defined the Investment Period as lasting from December 29, 2011 to December 29, 2014. Trial Ex. P-10. The CEEF LPA defines the "Duration" of the partnership as continuing "until the tenth (10th) anniversary of the Final Closing Date, unless earlier terminated in accordance with this Agreement." Id. at § 1.4. Accordingly, the Duration of CEEF was to continue from December 29, 2011 through December 29, 2021, unless earlier terminated in accordance with the CEEF LPA. Trial Ex. P-10. During the Investment Period, BHM2 received a management fee equivalent to 2% of committed capital, here $200,000 per year. That was reduced to $50,000 annually after the Investment Period. Id. at §2.8.

In December 2010, Treasury made a $10 million capital commitment in connection with the CEEF LPA. Day 2 - Welks Test. at 72:9-14; Day 3 - Leitenberger Test. at 43:4-13; Trial Ex. P-10. BHM2 deployed one investment of $325,000 to fund an energy savings retrofit project at Drexel University. This was the only loan they were able to place throughout the duration of the fund. The development phase of the Drexel Project took two years due to the scale of the multi-building project, the nature of higher education institutions, and negotiations regarding the

repayment structure. Day 7- Ferris Test. at 24:6-25:10, 31:20-33:11, 39:5-13. BHM2 was able to find a co-investor for this project and a debt financer. Construction did not begin until July 2014. Day 7 – Ferris Test. at 39:23-41:15. The project was not fully completed until May 2016. Id. This investment was fully repaid and Drexel did obtain 25% energy savings throughout its retrofitted buildings. Id. at 47:5-22.

Over the duration of the CEEF partnership, Treasury paid BHM2 $798,000 in management fees. Trial Ex. P-18. $600,000 of this was paid prior to 2014, during the Investment Period. Id. BHM2 received $50,000 per quarter in management fees through the end of 2014. Id. This was reduced to $12,375 in January 2015, with the final payment being made in August of 2018. Id. BHP also received $180,000 in preclosing management fees under the IMA prior to the formation of CEEF. Id. The Agreements were terminated by Treasury on August 12, 2020. Day 2 - Welks Test. at 93:16-25.

DISCUSSION

Plaintiff seeks to hold all Defendants accountable as one entity and pierce the corporate veil. The Court declines to do so, as will be explained below. Moreover, BHM2, BHP and Ferris were not parties to the BHIP LPA and therefore the Court finds in their favor as to all claims stemming from BHIP. BHM2 was the sole party to the CEEF LPA and BHP was the sole party to the SIMA. Consequently, the Court finds in favor of Ferris, BHM and BHP as to all claims stemming from CEEF and in favor of Ferris, BHM and BHM2 as to all claims stemming from the SIMA. Accordingly, the remaining claims are: (1) those arising under CEEF and the SIMA against BHM2 and BHP, (2) those arising under BHIP against BHM, and (3) those arising under PRULPA[1] against BHM and BHM2.

[1] Plaintiff's third cause of action alleges Breach of the Pennsylvania Revised Uniform Limited Partnership Act ("PRULPA") but then cites to 15 Pa.C.S.A. §§ 8611, 8649, misidentifying the Act. "The current law governing

As a preliminary matter, the statutory duties of care, loyalty and good faith and fair dealing are defined in the Pennsylvania Business Corporation Law codified at 15 Pa.C.S. §§ 8611 *et. seq.* These provisions are also referred to as PRULPA. Therefore, the PRULPA-based claims largely duplicate the contractual claims. Both sections will be addressed concurrently for efficiency. However, the CEEF LPA and the SIMA contain contractually defined standards of care which supersede the statutory duty of care. While contracting parties may vary the duty of care, 15 Pa.C.S. § 8615 states that parties may not abrogate the duty of loyalty or the duty of good faith and fair dealing. 15 Pa.C.S.A. § 8615. Therefore, while the standards of care defined in the CEEF LPA and SIMA govern the duty of care, BHM2 remains subject to the duty of loyalty and the duty of good faith and fair dealing as defined in 15 Pa.C.S. § 8649. BHM is subject to the statutory duty of care, the duty of loyalty and duty of good faith and fair dealing.

§ 8649(b) enumerates the obligations required to fulfill a general partner's duty of loyalty. These include the duties:

> (1) to account to the limited partnership and hold as trustee for it any property, profit or benefit derived by the general partner: (i) in the conduct or winding up of the partnership's activities and affairs, (ii) from a use by the general partner of the partnership's property or (iii) from the appropriation of a partnership opportunity; (2) to refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and (3) to refrain from competing with the partnership in the conduct or winding up of the partnership's activities and affairs." 15 Pa.C.S.A. § 8649(b)(1).

The duty of good faith and fair dealing is imposed under 15 Pa.C.S.A. § 8649(d), which states that a "general partner shall discharge the duties and obligations under this title or under

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Pennsylvania limited partnerships, the Pennsylvania Uniform Limited Partnership Act of 2016 ("PULPA"), 15 Pa.C.S.A. § 8611 *et. seq.*, applies to all limited partnerships on and after April 1, 2017. 15 Pa.C.S.A. § 8611(c)." Slomowitz v. Kessler, 268 A.3d 1081, 1094 (Pa. Super. 2021). "PRULPA is 15 Pa.C.S. §§ 8501–94 (repealed 2016)." Hanaway v. Parkesburg Grp., LP, 168 A.3d 146, 148 (Pa. 2017). For ease of reference and consistency with the parties' submissions, the Court will refer to the statute as PRULPA, as labeled by the Plaintiff.

the partnership agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing." 15 Pa.C.S. § 8649(d). The Comment to this section incorporates Restatement (Second) Contracts § 205, which defines good faith as "honesty in fact in the conduct or transaction concerned." Restatement (Second) of Contracts § 205(a). "Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." Id.

Treasury asserts that Defendants are subject to the prudent investor standard defined in 72 Pa. Stat. § 301.1. The Court disagrees. Defendants are not subject to the prudent investor standard in connection with either Partnership. The prudent investor statute invoked by Treasury is specifically applicable to the Treasury and the Treasury alone by the plain language of the statute. 72 Pa. Stat. § 301.1(h)(1.1) ("the *Treasury Department* shall act as a fiduciary with care, skill, prudence and diligence" (emphasis added)). Treasury failed to provide any examples of this provision applied to any actor except direct employees of Treasury. The argument that BHM or BHM2 was an agent of Treasury conflates Treasury with BHIP and CEEF. BHM and BHM2 were agents of the respective Partnerships, not of Treasury in an independent capacity. "Each general partner is an agent of the limited partnership for the purposes of its activities and affairs." 15 Pa.C.S.A. § 8642; see also Slomowitz v. Kessler, 268 A.3d 1081, 1095 (Pa. Super. Ct. 2021)(Under PRULPA, "every partner is considered an agent of *the partnership for the purpose of its business*" (emphasis added)). Finally, the SIMA explicitly states that "Blue Hill shall perform its services under this Agreement as an independent contractor and not as an employee or agent of the Commonwealth of Pennsylvania." Trial Ex. P-9 at § 5(f). BHM and BHM2 could act on behalf of their respective Partnerships and bind BHIP or CEEF in a transaction but neither had the power to bind Treasury itself in any kind of transaction, nor did they ever claim to be

able to do so. In fact, Treasury explicitly forbid such conduct under the SIMA: "Blue Hill shall not enter into any agreement by or on behalf of Treasury that (i) is binding on Treasury or allows... recourse to Treasury." Trial Ex. P-9 at § 5(c). This language indicates that Treasury did not consider BHP or its entities to be their agents.

I. CEEF & SIMA – Breach of Contract and Breach of PRULPA

Treasury contends that Defendants breached their contractual obligations under the CEEF LPA and SIMA, the standards of care set forth in the CEEF LPA and SIMA, and their fiduciary duties under PRULPA by failing to adequately document their work, their retention of full management fees, and inadequate time devoted to Partnership activities.

Section 2.1(c) of the CEEF LPA defines the standard of care applicable to the General Partner, stating that "[t]he General Partner shall discharge its duties and responsibilities under the terms of this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a pooled investment fund with similar purposes to that of the Partnership." Trial Ex. P-10 at §2.1(c).[2]

As to BHM2's conduct regarding CEEF, both sides offered expert testimony to flesh out the standard of care applicable to BHM2: Professor Lerner for Treasury and Mr. Miller for the Defendants. Per Section 1.8 of the CEEF LPA, CEEF's investment mandate was ostensibly to invest in projects, albeit they were one step removed by virtue of "project companies." Trial Ex. P-10 at §1.8. Treasury sought to assist colleges in updating their infrastructure to be more

[2] The standard of care applicable to BHP is defined in Section 5(e) of the SIMA. BHP was obliged to "perform investment services under [the] Agreement subject to the exercise of the same degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence familiar with such matters exercise in the management of their own affairs." Trial Ex. P-9 at §5(e). This provision also states that BHP is a fiduciary with respect to Treasury. Id. However, BHP is not the general partner of CEEF; BHM2 is as the only signatory of the CEEF LPA. Therefore, PRULPA and the duties statutorily imposed upon a general partner, are not applicable to BHP.

environmentally friendly and generate returns on these investments through the savings that would be generated by the campus's reduced energy costs. Day 7 – Ferris Test. 24:2-26:1 The structure was novel and somewhat unique, and had defined, limited goals. Treasury was aware of the innovative structure of this investment vehicle and the lack of any substantial market or successful track record for these types of investments. The risk was disclosed, obvious and inherent in the investment structure.

The testimony of Mr. Miller, Ms. Ferris and Mr. King, bolstered by the unambiguous language of the CEEF agreements, established that CEEF diverged substantially and materially from a venture capital fund as described by Professor Lerner. So much so that CEEF can properly be classified as a project finance fund. Professor Lerner's expert report stated "[v]enture capital organizations finance these high-risk, potentially high-reward projects, purchasing equity or equity-linked stakes while the [start-up] firms are still privately held." Trial Ex. P-11 at 7 ¶8. CEEF's stated purpose was to own, manage, and invest in projects and "promot[e]Pennsylvania based college and university energy-efficiency retrofit projects through the extension of financial lending agreements to qualified higher education institutions." Trial Ex. P-8. Mr. Miller's opinion that CEEF was a project finance vehicle and subject to a different standard of care was sufficiently convincing. He testified persuasively to the marked differences that increase the complexity of project finance vehicles.

While Professor Lerner may be qualified to offer testimony on the standard of care applicable in the project finance sector, he ultimately offered very limited testimony as how that standard applies to the instant facts. The Court therefore lacks the requisite testimony to establish what would be required of a general partner of a project finance limited partnership. Without an established standard, the Court has no reference point against which to measure BHM2's conduct

to determine if such standard was breached. Even if this Court were to find that CEEF is a venture capital fund or that project finance and venture capital are sufficiently alike that they are subject to the same standard of care, the Court would find that BHM2 satisfied the standards of care and their fiduciary duties under the CEEF LPA and PRULPA. The merits of each allegation will be addressed below.

a. Adequate Documentation and Reporting on Investment Activities

BHM2 did not violate the standards of care or PRULPA in their reporting and documenting on investment activities. Neither the CEEF LPA nor the SIMA included explicit requirements for audited financials or formal quarterly reports. Mr. Welks, Treasury's primary overseer of CEEF, testified to the frequency and adequacy of BHM2's communication. Day 2 - Welks Test. at 84:9-86:3. Welks acknowledged that BHM2 communicated frequently and that he was aware of the difficulties that were arising as BHM2 attempted to create projects. Id.; Day 1 – Ferris Test. at 72:21-73:4. He was satisfied with the reporting activities at the time. In fact, Treasury itself had direct communication with points of contact at various institutions. Day 2 - Welks Test. at 37:15-38:11; Trial Ex. P-27. Much of the work about which Treasury raises concerns was done between 2010 and 2014 during the Investment Period. If it was unhappy with the absence of formal reporting on fundraising or deal-sourcing efforts, Treasury should have shared those concerns with BHM2 at that time. None of Treasury's representatives voiced any displeasure at all to BHM2 effectively amounting to ratification of BHM2's reporting activities.

As to internal documentation, BHM2 provided volumes of documents – about 600,000 pages – detailing their efforts to source projects and work with investors in accordance with the purposes of CEEF. Trial Ex. D-15. This evidence is satisfactory to demonstrate adequate internal documentation in satisfaction of BHM2's fiduciary obligations.

b. Deployment of Treasury's Capital and Devotion of Time Identifying Potential Investments and Co-Investors

Defendants did not breach the duties of loyalty or good faith and fair dealing. Nor did they breach the Standard of Care set forth in the LPA or the SIMA through lack of time or effort. Nor did they breach Section 2.1(b) of the CEEF LPA by failing to devote adequate time to the business of the Partnership. Section 2.1(b) of the CEEF LPA requires the General Partner to "devote such business time to the activities of the Partnership as is reasonably necessary to perform their respective duties to the Partnership."

The investment structure utilized by CEEF was far different from typical venture capital investments. Instead of co-investors joining CEEF as another limited partner, each individual project required a separate co-investor to match the equity contribution of CEEF and a third debt partner. These additional parties needed to be recruited for each individual project, adding immensely to the complexity. And it means that a project would need to be adequately identified before co-investors could be recruited. Given the difficulty in sourcing projects, it is unsurprising that the majority of BHM2's efforts focused on deal creation. They did not have an opportunity to recruit co-investors. The structure of these investments combined with the updated language in the LPA capping capital commitments at $12 million demonstrate that it was not expected of BHM2 to locate additional investors who would add capital to CEEF in the same way it was expected for BHIP. BHM2 did have a responsibility to source investors who would contribute to each "project company." Ms. Ferris testified to having a co-investor, Mitsui, who was potentially willing to work with them on future projects, but unfortunately those opportunities did not materialize due to difficulties with the institutions. Day 7 – Ferris Test. at 38:5-17.

Furthermore, Treasury's manifestation of its displeasure with BHM2's management or the fee structure was delayed. The Investment Period closed at the end of 2014. Trial Ex. 10. At that time, Treasury was aware that no further investments would be made and it was aware of the fee structure. If it felt that inadequate capital was deployed to justify the agreed-to fee structure and objected to further payments to BHM2 as the general partner, the time to raise those objections was shortly after it received knowledge of the relevant facts which would have enabled them to make such a determination. In addition, the LPA, which superseded the IMA, capped the total capital commitments to CEEF at $12 million, completely contradicting $30-50 million in additional co-investor capital contemplated by the IMA. Therefore, Treasury's allegation that BHM2 breached any obligation by failing to bring in tens of millions of dollars in co-investor capital directly to CEEF are meritless borderline disingenuous.

Treasury points to Ferris's operation of a commercial building and outside employment overlapping with the life of the fund as evidence of inadequate devotion to the business of the Partnership. While her outside activities during the life of the fund is a consideration when evaluating the adequacy of time spent on Partnership matters, it is not the only inquiry. She had team members who were also involved in management of the fund. Day 1 – Ferris Test. 39:10-13. It is common for individuals to make real estate investments, such as in vacation properties or commercial leases, while maintaining a full-time job. Simultaneously, Treasury complains that there was very little work for BHM2 to do once the Investment Period closed. If the work was as meager as Treasury alleges, it logically follows that satisfactorily completing such tasks would take up very little time. If one day of work a month was all that was necessary to perform the general partner's duties diligently, then that was all that was contractually required of BHM2. That is the benefit of the bargain which Treasury contracted for. The most important

consideration is how much work BHM2 completed. Overall, the evidence showed that BHM2 dedicated sufficient time and effort to Partnership business.

c. Reduction of Management Fees or Return of Undeployed Capital

BHM2 did not breach the standard of care set forth in the CEEF LPA or the SIMA by failing to invest the full capital commitment. Nor did they breach the standard of care by not reducing fees or returning capital. Treasury failed to establish that reduction of management fees or return undeployed capital was an element of BHM2's fiduciary duty as general partner of CEEF. All that Plaintiff's expert was able to say was that some general partners in some circumstances, such as when adverse market sector conditions cause investment losses, have reduced fees or returned capital. See Day 4 – Lerner Test. at 50:12-53:3; Trial Ex. P-11. First, there was no capital to return. While Treasury had made a ten-million dollar capital commitment, it retained those funds in their custody earmarked for potential future deployment in capital calls. The most that BHM2 could have done was tell Treasury that they did not intend to deploy all ten million dollars, a fact that Treasury seems to have been aware of at the conclusion of the Investment Period. Second, Treasury had contractual recourse: They could have removed BHM2 or terminated CEEF. They knew what the future management fees would be. Welks testified that Treasury did not remove BHM2 because it desired to have BHM2 continue overseeing the repayment of the Drexel loan and Treasury was ostensibly asleep at the wheel. Day 2 – Welks Test. at 93:16-94:20. Treasury's acquiescence and ambivalence permitted the accrual of management fees and claimed damages. In 2014, it knew the extent of the work, or lack thereof, which would be required going forward. The fact it did not protest or terminate - or even complain - indicates their satisfaction with BHM2's prior efforts. Perhaps it realized that the adequacy of a general partner's work is to be judged by their efforts, not by their results. Finally, Professor Lerner's evaluation of constituent

investment funds, while informative as to BHIP, did not provide examples of project finance funds and failed to identify those examples included in his survey and differentiate them. The Court lacks adequate evidence to annunciate industry standards as to this subsect of investment vehicles and cannot substitute a nonequivalent standard.

The LPA and SIMA were fairly negotiated in an arm's length transaction by two sophisticated parties. BHM2 completed the work they were contractually obligated to do in a diligent fashion. Treasury offers inadequate reasons that BHM2 should be obligated to relinquish fees they were contractually entitled to when they had done extensive work that they believed justified the fees. BHM2 had little or no indication that Treasury was dissatisfied with their work; this was a direct consequence of Treasury's lack of oversight or communication. See Day 2 – Welks Test. at 155:25-157:12. While Treasury's unhappiness with BHM2's failure to exit BHIP might have triggered scrutiny of BHM2's performance within CEEF, the Investment Period closed in 2014, and if Treasury had an issue with the lack of projects and co-investors such that the return of capital and fees was warranted, the time to raise that issue was when the number of projects and investors became fixed. If it had wished, Treasury, a sophisticated investor and arm of the state with ample legal resources at their disposal, was capable of negotiating terms that were more performance-based or utilizing the significant financial expertise their workforce possesses to review BHM2's performance years prior to this lawsuit.

II. BHIP - Breach of Contract and Breach of PRULPA

BHM was bound by the provisions of the BHIP LPA and the statutory fiduciary duties of care, loyalty and good faith and fair dealing. Plaintiff's breach of contract claims and violation of PRULPA claims overlap. As the BHIP does not provide a defined standard of care within the document, the statutorily defined standard of PRULPA, found at 15 Pa.C.S. § 8649(c), governs.

Therefore, they are the same. Any allegations of breach of the standard of care under the BHIP LPA and allegations as to breach of the standard of care under PRULPA are redundant. Such duplicative claims shall be consolidated and addressed concurrently for the sake of efficiency.

The standard of care codified at 15 Pa.C.S. § 8649(c) states that "[t]he duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct or knowing violation of law." The general partner's conduct must be *grossly negligent* or *reckless* to breach the BHIP LPA's standard of care. Likewise under PRULPA. This is a high standard and merely underperforming is not enough to demonstrate a breach. The duty of loyalty and duty of good faith and fair dealing are defined above.

Professor Lerner provided invaluable context and established general industry standards within the venture capital sector. However, while industry practice is informative, there must be more than a failure to do the same thing as preeminent members of the cohort might do in certain situations. The very small team at BHM was retained by Mr. Welks primarily because of its highly specialized experience and connections in the Pennsylvania clean tech market. Day 2 – Welks Test. at 19:24-21:19. The BHIP LPA and Subscription Materials heavily emphasize the environmental and geographic focus and called for BHM's expertise in that sector. These facts require consideration, as asserted by Mr. Miller. See Day 5- Miller Test. at 25:14-28:3. BHM's conduct should not be judged strictly against that of a general partner of a large, diversified general fund, but that of an expert in environmental venture capital focused on benefitting the economy of Pennsylvania, the expertise that was promised to Treasury. Id.

a. Co-Investor Capital and Diversification of BHIP Investments

The raising of additional capital from co-investors was not a requirement of the BHIP LPA, but clearly a contemplated goal. Welks testified that it was the understanding of Treasury that those co-investor values were aspirational. Day 2 – Welks Test.at 44:6-23. While very little additional capital was ultimately raised, the end result of those efforts is not the primary inquiry. The burden is on Treasury to demonstrate a lack of effort, and it failed to do so.

Professor Lerner cited the failure to retain potential investor communications or use a "customer relationship management software ("CRM") such as Salesforce and DealCloud" as a breach of the standard of care. Trial Ex. P-11. However, Ferris testified credibly to her efforts. Day 7 – Ferris Test. at 103:17-107:17. While there was limited documentation provided, the majority of these conversations would have occurred in the late 2000s. The lack of retention of communications of preliminary discussions with potential investors is unsurprising. Ferris used a rolodex, conducted in-person meetings and phone calls, and attended conferences. The lack of emails or use of a CRM is not ideal, but it does not tip the scales in favor of Treasury.

It appears from Treasury's conduct over the term of BHIP that it considered BHM's efforts to recruit investors and place investments during the Investment Period adequate. Treasury did not exercise their contractual right to reduce BHM's management fees in 2010, at which point almost no additional capital had been raised. Day 1 – Ferris Test. at 105:1-106:14. It was well aware of BHM's efforts and the failure of any additional capital to materialize. Day 2 - Welks Test. at 33:11-34:5. It did not advise BHM of their dissatisfaction at any point prior to 2017. Id. at 155:25-156:4. Not only does the Court not believe that BHM's conduct was "grossly negligent", it does not appear that Treasury thought so either.

b. Exit Opportunities and Attempted Distribution of BHIP's Assets

BHM breached its fiduciary duty in failing to prepare to distribute the assets in a manner that was legally permissible under the contract. "A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following: (1) an event or circumstance that the partnership agreement states causes dissolution." 15 Pa.C.S.A. § 8681. The Partnership was dissolved upon the expiration of the Initial Term per Section 7.1 of the BHIP LPA.

Under the LPA, BHM was entitled to extend the partnership for a further 2 years, although their right to compensation for those two years was not guaranteed. What it was not entitled to do was sit on its hands and give up on working toward winding up the Partnership and distributing the assets in accordance with Section 8682 of PRULPA, which states that "[a] dissolved limited partnership shall wind up its activities and affairs and... the partnership continues after dissolution only for the purpose of winding up." 15 Pa.C.S.A. § 8682. Given that a distribution in kind was not possible, BHM was obligated to seek ways to exit that were contractually and legally permissible. It failed to do so.

While there are provisions permitting the distribution of BHIP's assets in kind, BHM, as the General Partner and fiduciary to Treasury, should have been aware of the fundamental limitations Treasury was subject to. The inability of the government to directly hold assets is enshrined in the Pennsylvania Constitution. BHM was obligated to have a basic knowledge and understanding of the law applicable to their Limited Partner and account for such in their management of partnership assets. And it had a further responsibility to accommodate these limitations in preparation of the winding up of the partnership. This failure was grossly negligent and a breach of the standard of care.

c. Adequate Documentation and Reports on Investment Activities

BHM also breached the LPA by not adhering to the terms of the contract requiring quarterly reports. Trial Ex. P-7. Mr. Welks testified that he was satisfied with BHM's communication, but that it did not adhere to the reporting obligations imposed by the BHIP LPA. Day 2 -Welks Test. 37:15-38:11. It also breached the contract by not providing yearly audited financials from 2016 up until the assets had been distributed, as had been customary throughout the life of the Partnership. While the Court does not consider this behavior grossly negligent under PRULPA, it was a violation of the explicit terms of the BHIP LPA and a breach of contract. However, Treasury has failed to connect their damages to this breach and thus is not entitled to monetary damages.

d. Maintenance of Professional Networks and Due Diligence in Researching Potential Investments

Treasury and their expert failed to establish that use of a CRM is a requirement to fulfill one's fiduciary duty, especially not during the time in question. Much of this work was done between 2006 and 2011. Technology often utilized today was not as ubiquitous at that time. Ms. Ferris utilized a physical rolodex. Day 6 – Ferris Test. at 72:19-73:12. The efforts by Ferris and her employees were sufficient, not only to the Court but to Treasury itself at the time. Treasury voiced no complaints to BHM, it declined to reduce BHM's management fee as was its contractual right, and it retained a BHP entity again in connection with another investment vehicle, CEEF. See generally Day 2 – Welks Test. This is evidence of Treasury's satisfaction with BHM's work.

e. Advisory Committee and Conflicts of Interest

Section 2.5 of the BHIP LPA states that an "advisory committee of at least three individuals shall be appointed by the General Partner, at least two of whom shall be selected

from among the Limited Partners" to "resolve any dispute arising out of an alleged conflict of interest relating to Partnership matters between or among the Partnership, the Limited Partners, the General Partner or any of the employees or affiliates of the General Partner." Trial Ex. P-7 at § 2.5. Such an advisory committee was never established or utilized by BHM.

Next, the duty of loyalty obligates a general partner not to work on behalf of a party with an adverse interest to the partnership. 15 Pa.C.S.A. § 8649(b). The Comment to this subsection states that "the phrase 'adverse interest' is a term of art, meaning 'to be on the other side of the table' in some dealing with the limited partnership. Absent informed consent by the limited partnership, this duty is breached by the mere existence of the conflict of interest; the limited partnership need not prove that the outcome of the dealing was adverse to the partnership." 15 Pa.C.S.A. § 8649.

It seems unlikely that Ferris's work as the founder and managing partner of 40 West Workspace and the collection of rent was such a conflict of interest. "[A] general partner does not violate a duty or obligation under [the Business Corporation Law] or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest." Id. at § 8649(e). They must be representing an adverse party. Treasury has not shown that either Aircuity or PDS was an adverse party or that BHM was acting on their behalf. However, the failure to even attempt to implement an Advisory Board as was outlined in the BHIP LPA, when there any possibility of impropriety constitutes a breach of the agreement.

f. Response To Declining Market Conditions

Treasury contends that BHM should have made different investments in other sectors or returned capital after the bursting of the clean tech bubble in 2010. However, all investments had been deployed at that point. To pull out of these investments when the value of such assets had

plummeted would have resulted in substantial losses. Day 5 – Miller Test. at 59:6-60:18. Treasury retained and put their faith in a very small team of individuals with expertise in a very specific sector. Professor Lerner's examples pertained to very large firms whose teams include many individuals with investing expertise across multiple sectors allowing them to shift sector competently. Id. at 51:10-14. Sector shifting in this instance was impracticable and potentially irresponsible. Id. at 49:19-51:14.

In addition, Welks testified that he was in frequent contact with Ferris regarding BHIP and the potential difficulties they faced yet did not object to a continued green tech focus or request a return of capital. Day 2 - Welks Test. at 33:11-34:5. Finally, it is not clear that the timing of the market decline necessitated a change in BHM's strategy. The bursting of the clean tech bubble around 2009-2010 meant that potential investors and available capital being offered to companies in this sector were greatly reduced. Day 1 – Ferris Test. at 90:8-11. Such a downturn may have created an opportunity to acquire assets at a discount as companies competed for the limited funding. Ultimately, any strategic response to market conditions was within the discretion of the General Partner and staying the course was a justifiable business decision.

III. Piercing the Corporate Veil

As explained below, Treasury is not entitled to monetary damages. Even if it were, however, Treasury has failed to demonstrate that equity requires dismantling of the corporate form. The elements for piercing the corporate veil firmly weigh in favor of the Defendants. "[T]here is a strong presumption in Pennsylvania against piercing the corporate veil." Lumax Indus., Inc. v. Aultman, 669 A.2d 893, 895 (Pa. Super. 1995). In *Mortimer v. McCool,* the Pennsylvania Supreme Court "set forth a two-part inquiry to determine when to pierce the veil: First, there must be such unity of interest and ownership that the separate personalities of the corporation

and the individual no longer exist, and second, adherence to the corporate fiction under the circumstances would sanction fraud or promote injustice[.]" N. Strabane Twp. v. Majestic Hills LLC, 329 A.3d 87, 108 (Pa. Commw. Ct. 2024) (quoting Mortimer v. McCool, 255 A.3d 261, 286-87 (Pa. 2021)). Factors to be considered are "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." In re Dravo LLC, 307 A.3d 146, 155 (Pa. Super. 2023)(quoting Lumax Industries, 669 A.2d at 895)).

Under this test, the drastic remedy of piercing the corporate veil is not warranted here. There are absolutely no allegations of fraud or intermingling of assets between the defendant entities or individuals. Treasury alleges that BHIP was undercapitalized and lacked the capital to pay for audited financial statements. However, Treasury does not seek to pierce the corporate veil of BHIP and therefore capitalization concerns regarding the Partnership itself are not a relevant consideration.

BHM's financial health is the only subject of the undercapitalization inquiry. While financial hardship may have precluded the audits, BHM ultimately supplied the money required to file tax returns and "keep the lights on", so to speak, though it is not clear this was even BHM's burden. There is no evidence that BHM was undercapitalized. No bills went unpaid, no debt collectors came knocking. While Defendants were perhaps lackadaisical in their record maintenance, it does not rise to the level where the individuals should be held responsible for any debts owed by the partnership; nor did the acceptance of commercial rent from the two recipients of funding from the Partnership. The Plaintiff must show *substantial* intermingling of corporate and personal affairs for an improper purpose. The tenancies were tangential and not an opportunity

which was usurped from Treasury, nor did the situation create a conflict of interest with respect to Treasury.

IV. Treasury is Entitled to Injunctive Relief but No Damages

The guiding axiom in assessing damages for a breach of contract is that a court should aim to put the non-breaching party as "nearly as possible in the same position [it] would have occupied had there been no breach." Lambert v. Durallium Prods. Corp., 72 A.2d 66, 67 (1950). "The measure of damages for breach of contract is *compensation* for the loss sustained. The aggrieved party can recover nothing more than will compensate him." Id. The burden is on the plaintiff to prove their damages. Penn Elec. Supply Co. v. Billows Elec. Supply Co., 528 A.2d 643, 644 (Pa. Super. Ct. 1987).

BHM breached the BHIP LPA and PRULPA standard of care by failing to have an actionable plan to exit the investments or disburse the assets to their limited partner in a legal and contractually agreed-to manner. BHM breached the BHIP LPA by not continuing to distribute the annual documentation they were contractually obligated to provide. Finally, BHM breached the BHIP LPA by failing to institute the agreed-upon Advisory Board.

But Treasury has not demonstrated that it has been harmed monetarily as a direct result of the enumerated breaches; in fact, it may have benefitted from the retention of these assets. Treasury has received a total monetary disbursement from BHIP of $3.7 million. Day 1 – Ferris Test. at 157:7-158:10. Kathleen Greely, the CEO of PSD, testified that PSD's operating revenue has grown 10-20% per year and that PSD has paid over $1 million in distributions to its members in the 18 months prior to this litigation. Day 8 – Greely Test. at 43:2-43:5; Id. at 47:15-47:17. In addition Treasury - through BHIP - still owns these appreciating assets and possesses unrealized gains not accounted for in its damages assessment. By refusing to consider unrealized gains at all

in their calculation of damages, Treasury essentially asserts that an asset has no value at all because it is not in a liquid form. It is reasonable to believe and supported by the testimony of multiple witnesses that, given the recent distribution of dividends and the increase in revenues, these assets have significant worth and more value on the private market today compared to any time prior to 2017. See generally Day 5 – Miller Test; Trial Ex. P-12. By failing to include returned capital and unrealized gains in its damages calculation, Treasury has provided no reliable means of calculating damages related to these breaches.

Furthermore, in claiming "lost opportunity" damages, Treasury disregards its own stated incentives in creating these investment vehicles. Lost profits "are allowable where: (1) there is evidence to establish them with reasonable certainty; (2) there is evidence to show that they were proximately caused by the wrongful act; and (3) in contract actions, they were reasonably foreseeable." Hemispherx Biopharma, Inc. v. BioLife Plasma Servs., L.P., 344 A.3d 1140 (Pa. Super. 2025)(quoting Bolus v. United Penn Bank, 525 A.2d 1215, 1225 (Pa. Super. 1987)). "In cases involving lost profits, both the fact and amount of loss must be established with reasonable certainty." Arta, Inc. v. Ryan Corp., 531 A.2d 857, 859 (Pa. Cmwlth. 1987). Treasury has established neither.

Treasury sought to generate returns in a very specific way - by promoting Pennsylvania green tech businesses. Welks, the champion of this initiative, worked in operations, not investments. Day 2- Welks Test. at 11:13-12:18. While he oversaw these niche green tech investments, the regular investment arm of Treasury continued to invest in other endeavors using the billions of dollars at its disposal. Treasury did not forego other investment opportunities in the general stock market because of this investment. While it may believe that it would have seen better returns on their green tech investments had they elected to place the funds with another general partner who

would have selected other investments, the extent of any "lost opportunity" damages would be the difference between what Treasury would have received under such circumstances and what they actually received. There was no evidence that Treasury would have elected to place the Welks green tech funds in some other place – green tech or otherwise – had it not invested through BHIP and BHM. Treasury is thus not entitled to "lost opportunity" damages.

CONCLUSION

Joyce Ferris could have done more and better. But the fact that she did not does not mean that she is liable for everything that Treasury claims she is. The law does not require excellence, simply adequacy. The Court finds for: 1) all Defendants and against Plaintiff for Breach of Contract regarding the CEEF LPA and SIMA, 2) Plaintiff and against BHM for Breach of Contract regarding BHIP, 3) BHM2, BHP and Ferris and against Treasury for Breach of Contract regarding BHIP, 4) all Defendants and against Plaintiff for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding CEEF, 5) Plaintiff and against BHM for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding BHIP, and 6) BHM2, BHP and Ferris and against Treasury for Breach of the Pennsylvania Revised Uniform Limited Partnership Act regarding BHIP. The Court grants the injunction restraining BHM from implementing the plan of dissolution. To facilitate the winding up of the business of the partnership, the Court orders that a liquidating trust retain Treasury's share of the assets currently held by BHIP, and an independent trustee shall be appointed to oversee disbursement of such assets. No monetary damages are imposed.

Date: March 2, 2026

Respectfully Submitted,

BY THE COURT:

MICHAEL E. ERDOS, J.