Docket: **1884CV03802-BLS2**
Date: **June 17, 2019**
Parties: **B. BULLEN & Others V. COHNREZNICK LLP**
Judge: **/s/Kenneth W. Salinger Justice of the Superior Court**

MEMORANDUM AND ORDER ALLOWING DEFENDANTS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

The forty-eight plaintiffs were investors in, and allege they were defrauded of tens of millions of dollars by, a defunct hedge fund. The defendant in this case, CohnReznick LLP, was the outside auditor and accountant for the Fund. Plaintiffs claim that CohnReznick aided and abetted fraud and other misconduct by the Fund, was negligent and committed fraud on its own, conspired with the Fund to defraud its investors, and committed an unfair or deceptive act in violation of G.L. c. 93A.

CohnReznick has moved to dismiss this action for lack of personal jurisdiction and on other grounds. The Court agrees that it cannot exercise personal jurisdiction over CohnReznick in this action. It will therefore ALLOW the motion and dismiss this action without prejudice,' without reaching CohnReznick's other arguments.[2]

1. Legal and Procedural Background. "The question of personal jurisdiction ... goes to the court's power to exercise control over the parties." Leroy v. Great W. United Corp., 443 U.S. 173, 180 (1979). If a judgment were to enter against a defendant over which the court had no personal jurisdiction, the judgment would be void, a thus a "nullity." See Lamarche v. Lussier, 65 Mass. App. Ct. 887, 889 (2006) ("void"); Vazquez-Robles v. CommoLoCo, Inc., 757 F.3d 1, 4 (1st Cir. 2014) ("nullity").

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[1] Cf. Hollander v. Sandoz Pharmaceuticals Corp., 289 F.3d 1193, 1216 (10th Cir.), cert. denied, 537 U.S. 1088 (2002) (dismissal for lack of personal jurisdiction is without prejudice, as it does not preclude further litigation of claims in proper forum); Posner v . Essex Ins. Co. Ltd., 178 F.3d 1209, 1221 (11th Cir. 1999) (same).

[2] CohnReznick also seeks dismissal on the ground of forum non conveniens (arguing that if the action proceeds it should be brought in New York), on the theory that CohnReznick is an intended third-party beneficiary of a mandatory arbitration provision in Plaintiffs' contracts with the Fund, and under Mass. R. Civ. P. 12(b)(6) for failure to state any claim upon which relief may be granted.

A court generally may not exercise personal jurisdiction over a non-resident defendant unless it determines "that doing so comports with both the forum's long-arm statute and the requirements of the United States Constitution." SCVNGR, Inc. v. Punchh, Inc., 478 Mass. 324, 325 (2017). Thus, in most cases "[a]n assertion of personal jurisdiction over a nonresident defendant poses a two-pronged inquiry: `(1) is the assertion of jurisdiction authorized by statute,[3] and (2) if authorized, is the exercise of jurisdiction under State law consistent with basic due process requirements mandated by the United States Constitution?'" Lamarche, 65 Mass. App. Ct. at 892, quoting Good Hope Indus., Inc. v. Ryder Scott Co., 378 Mass. 1, 5-6 (1979). Massachusetts courts must first consider whether some statute authorizes the exercise of personal jurisdiction, and only reach the constitutional issue if there is a statutory basis for jurisdiction. SCVNGR, 478 Mass. at 330.

When a defendant moves to dismiss an action for lack of personal jurisdiction, the plaintiff bears the "burden of proving facts sufficient to establish" that the court may exercise jurisdiction over the defendant. Bulldog Inv'rs Gen. P'ship v. Secretary of the Commonwealth, 457 Mass. 210, 219 (2010); accord, e.g., American Int'l Ins. Co. v. Robert Seuffer GMBH & Co. KG, 468 Mass. 109, 120 n.12 (2014) ("burden of demonstrating the existence of minimum contacts").

If the defendant does not dispute jurisdictional facts alleged in the complaint, then the court may accept those facts and the plaintiffs burden is only one of production, not persuasion. Cepeda v. Kass, 62 Mass. App. Ct. 732, 737-738 (2004); see also Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 709 (2004) (same as to "facial attack" on subject matter jurisdiction based on factual allegations in complaint).

But where the defendant presents competent evidence to contradict the jurisdictional facts alleged in the complaint, "the prima facie evidence loses its artificial force" and the plaintiff has the burden to prove the existence of personal

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[3] No statutory basis for personal jurisdiction is required where the defendant is served with process while in Massachusetts. "[Ms a matter of both State common law and due process, Massachusetts courts have personal jurisdiction over nonresident individuals who are served with process while intentionally, knowingly, and voluntarily in Massachusetts." Roch v. Mollica, 481 Mass. 164, 168 (2019).

jurisdiction "by a preponderance of the evidence at an evidentiary hearing or at trial." Id. at 738 (quoting Burns v. Commonwealth, 430 Mass. 444, 451 (1999) as to "artificial force"); accord Abate v. Fremont Inv. & Loan, 470 Mass. 821, 830-831 (2015); see also Callahan (same as to "factual challenge" to subject matter jurisdiction). In deciding a motion to dismiss for lack of personal jurisdiction, a court has "discretion to determine personal jurisdiction by [a] preponderance of evidence without waiting for trial on merits." Miller v. Miller, 448 Mass. 320, 324-325 (2007).

In this case, CohnReznick presented affidavits and documentary evidence in an attempt to contradict Plaintiffs' factual allegations regarding personal jurisdiction. Plaintiffs responded by submitting their own affidavits and exhibits to describe the conduct by CohnReznick that gave rise to this lawsuit, the alleged connections between that conduct and Massachusetts, and CohnReznick's presence and activities in Massachusetts in general. The parties asked the Court to decide whether it has personal jurisdiction based on this evidentiary record.[4]

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[4] In a footnote on page 17 of Plaintiffs' opposition, at the end of their argument that the Court may exercise general jurisdiction over CohnReznick, Plaintiffs asked in the alternative that the Court allow discovery regarding "the nature and extent of CohnReznick's contacts with Massachusetts" before dismissing this action for lack of personal jurisdiction. But Plaintiffs never filed any motion or supporting memorandum seeking such discovery, never served any such discovery, and never specified what discovery would help Plaintiffs meet their burden of proving that the Court can exercise personal jurisdiction over CohnReznick.

Plaintiffs waived this issue by raising it in such a perfunctory manner. To assert a cross-motion, a party must file an actual motion and a supporting memorandum with a statement of reasons why the motion should be granted. Sup. Ct. Rule 9A(a). Plaintiffs did not do so. Since

Plaintiffs never moved for leave to conduct jurisdictional discovery, and instead litigated the jurisdictional issues without serving any discovery, they waived any right to obtain such discovery. Cf. American Ina Ins. Co. v. Robert Seuffer GMBH & Co. KG, 468 Mass. 109, 113-120 (2014) (defendant that asserted defense of lack of personal jurisdiction, but then litigated case without ever, moving to dismiss, waived personal jurisdiction defense).

If the issue had not been waived, the Court would have exercised its broad discretion to deny this request for discovery. See generally Crocker v. Hilton Int'l Barbados, Ltd., 976 F.2d 797, 801 (1st Cir. 1992) ("Trial courts have broad discretion to decide whether discovery is required on the issue of personal jurisdiction."). For the reasons discussed below, at pages 10-11, the undisputed facts regarding the nationwide breadth of CohnReznick's business activities make it clear that any exercise of general jurisdiction over CohnReznick would be unconstitutional. No discovery can change the fact that CohnReznick is not at home here. Cf. Daimler AG v. Bauman, 571 U.S. 117, 127 (2014). To the extent that Plaintiffs wish to discover additional information relevant to the exercise of specific jurisdiction, they have failed to articulate what discovery they are seeking or why it would be probative. "Litigants may be denied an opportunity for discovery if their complaints and affidavits have 'not made even a minimal showing warranting the requested discovery.'" E.A. Miller, Inc. v. South Shore Bank, 405 Mass. 95, 100 (1989), quoting MacKnight v. Leonard Morse Hosp., 828 F.2d 48, 51 (1st Cir. 1987). Since Plaintiffs never specified what jurisdictional discovery they were seeking, they failed to demonstrate that such discovery was warranted. See, e.g., Indah v. United States Securities and Exchange Comm 'n, 661 F. 3d 914, 925 n.7 (6th Cir. 2011); Whittaker Corp. v. United Aircraft Corp., 482 F.2d 1079, 1085-1086 (1st Cir. 1973).

Plaintiffs' assertion that the Supreme Judicial Court remanded the SCVNGR case "with instructions to allow" jurisdictional discovery is incorrect. In fact the SJC directed that, "[obi remand, consideration should be given to appropriate discovery" regarding the exercise of personal jurisdiction. See SCVNGR, 478 Mass. at 330. Unlike in this case, SCVNGR had served interrogatories seeking information about the nature and scope of the defendant's business in Massachusetts—thereby making clear what information it was seeking and providing a basis for showing why that specific discovery was warranted—and then asked to stay the motion to dismiss until that discovery was complete. Id at 327. Here, in contrast, Plaintiffs never served any jurisdictional discovery and have not shown they lack any material information about the nature and extent of CohnReznick's contacts with Massachusetts.

-3-

Neither side asked the Court to defer final resolution of personal jurisdiction until trial. In the exercise of its discretion, the Court declines to defer a final decision as to personal jurisdiction until trial because it would be unfair to force CohnReznick to defend itself in a Massachusetts court that lacks the power to act. [5]

Nor did either side request an opportunity to present live testimony or other additional evidence beyond their affidavits and exhibits, or to cross-examine any

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[5] A court has discretion to defer a final determination of personal jurisdiction until trial. See Mass. R. Civ. P. 12(d) (motions to dismiss, including for lack of personal jurisdiction, "shall be heard and determined before trial on application of any party, unless the

court orders that the hearing and determination thereof be deferred until the trial"); Cepeda, 62 Mass. App. Ct. at 738-739. If a judge opts to reserve final resolution of the issue until trial, the judge must still determine whether the facts alleged in the complaint are sufficient to make a prima facie showing of personal jurisdiction, and dismiss the action if no prima facie showing of jurisdiction has been made. Cepeda, supra, at 737-738.

-4-

witness. It was "not necessary ... to conduct an evidentiary hearing simply because facts proffered by the plaintiff are disputed by the defendant." Cepeda, supra, at 740.[6]

Since CohnReznick has presented evidence challenging Plaintiffs' recitation of the jurisdictional facts, and Plaintiffs had a full opportunity to present their own evidence on the issue, the Court must now "consider all relevant evidence proffered by the parties," "make all factual findings necessary for the determination of jurisdictional facts," and "determine whether the plaintiff has met its burden of proof by a preponderance of the evidence." Cepeda, supra, at 739-740.

2. Findings of Fact. The court makes the following findings of fact based on the affidavits submitted in support of or in opposition to CohnReznick's motion to dismiss this action for lack of personal jurisdiction over the Defendant.[7]

CohnReznick is a New Jersey limited liability partnership. Its headquarters is in New York. It has had an office in Boston, Massachusetts, since 2008. After a merger in 2014, CohnReznick had 15 partners and almost 100 employees working out of its Boston office. It appears to be undisputed that after that merger CohnReznick also had (and has) another office in or near Springfield, Massachusetts, and that it employed 55 to 60 certified public accounts in Massachusetts. At that time CohnReznick had 26 offices and 2,500 employees nationwide, so its Massachusetts business activities were and apparently are a fairly small part of the company's overall operations.

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[6] In deciding a motion supported by sworn affidavits, "the weight and credibility to be accorded those affidavits are within the judge's discretion" and "[t]he judge need not believe such affidavits even if they are undisputed." Commonwealth v. Furr, 454 Mass. 101, 106 (2009). An affidavit "is a form of sworn testimony the credibility of which is to be determined by the judge." Psy-Ed Corp. v. Klein, 62 Mass. App. Ct. 110, 114, rev. denied, 442 Mass. 1114 (2004).

[7] Though Plaintiffs cite to their First Amended Complaint in their memorandum in opposition, the complaint is not verified. Allegations in an unverified complaint are not evidence of anything and therefore cannot establish personal jurisdiction once the defendant has presented evidence challenge the facts alleged in the complaint. See Windsor v. Windsor, 45 Mass. App. Ct. 650, 654-655 (1998); see generally McInnes v. LPL Financial, LLC, 466 Mass. 256, 265 (2013); Breakironv. Gudonis, 452 Mass. 1008 (2008) (rescript).

-5-

CohnReznick audited the annual financial statements for the Platinum Partners Credit Opportunities Fund ("the Fund")[8] for each year from 2011 to 2014. It was retained to do this work by the Platinum Partners entities that ran the Fund ("Platinum"). Like CohnReznick, Platinum was based in New York. The engagement letters for this work provided that the audit reports

prepared by CohnReznick should not be "made available to recipients of any document to be used in connection with the sale of securities" without CohnReznick's "written consent." CohnReznick never provided written consent for such use of these audit reports.

CohnReznick's staff performed their audit work related to the Fund's annual financial statements at Platinum's New York office. CohnReznick issued these audit opinions from its New York office and sent them to Platinum in New York.

In September 2013, representatives of Shepherd Kaplan LLC ("SK")—which is a Registered Investment Advisor based in Boston, Massachusetts—met with Platinum representatives at a conference in Boston. They discussed the Fund. SK conducted due diligence into the Fund over the next six or seven months.

As part of its initial due diligence, SK asked Platinum to provide copies of the Fund's audited financial statements. Platinum did so. Platinum also sent SK other financial and business records, as well as marketing and offering materials, concerning the Fund. SK received, reviewed, and analyzed all of the materials provided by Platinum at SK's Boston office. SK did not obtain any financial statements, audit reports, or other materials directly from CohnReznick.

SK also asked Platinum for references as part of this initial due diligence. In response, Platinum listed Jay Levy of CohnReznick as a reference for Platinum's chief financial officer, Naftali Manela. An SK employee placed a telephone call to Levy in January 2014 to ask about Manela. During this phone call Levy said that he had "nothing but good things to say" about Manela, and that during CohnReznick's audit work Platinum had been fully transparent and very responsive to all of CohnReznick's requests. SK also reached out to Levy by email, asking him to confirm

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[8] The parties refer to the Fund as a singular entity. In fact, however, it consisted of the Platinum Partners Credit Opportunities Master Fund, LP, and two subsidiary or "feeder" funds known as the Platinum Partners Credit Opportunities Fund, LLC, and the Platinum Partners Credit Opportunities Fund (TE), LLC.

that Platinum was a client in good standing. Levy responded by email, telling SK that the Fund was a client in good standing.

After completing its initial due diligence regarding the Fund, in April 2014 SK negotiated with Platinum for an exclusive Fund share class (Class C) that removed sub-advisory fees and included certain informational rights. Thereafter, SK began recommending the Fund to its advisory clients.

Each Plaintiff is an advisory client of SK that invested in the Fund during 2014 through SK's Boston office, as a result of the Plaintiffs investment advisory relationship with SK. Whenever one of the Plaintiffs decided to invest in the Fund, SK would request subscription documents for that client from the Fund and then transmit the subscription agreement to the client. Each Plaintiff would then execute the subscription agreement and return it to SK in Boston. The SK operations department would then transmit the executed subscription agreement to the Fund and send instructions to the client's financial institution to execute a wire transfer to the Fund in the amount of the client's desired investment.

In February 2015, as part of its audit of the Fund's 2014 financial statements, CohnReznick sent emails to some or all of the Plaintiffs asking each of them to confirm the amounts they had contributed to the Fund during 2014. Some or all of the Plaintiffs responded to these inquiries. CohnReznick never had any other direct contact or communications with any of the Plaintiffs.

In addition to hiring CohnReznick to audit the Fund's financial statements, Platinum also retained CohnReznick to prepare year-end federal and state business income tax returns for the Fund for the years 2011 to 2015. That work included the preparation of associated Form K- is for Platinum to issue to each of the Fund's investors. CohnReznick staff did this work, and issued the Fund's tax returns and associated K-1s, from its New York or New Jersey offices. CohnReznick sent the Fund's tax returns and associated K- is directly to the Fund in New York; it never sent any of those forms directly to individual Fund investors.

Thus, CohnReznick prepared 2014 and 2015 Form K- is concerning the Fund for each of the Plaintiffs, providing information that these investors would need to complete their individual federal income tax returns. CohnReznick sent these K- is to

-7-

the Fund, so that the Fund could forward them to each investor, including each Plaintiff. In turn, the Fund sent the Form K- is to each Plaintiff, or sent them to SK in Boston so that SK could forward them to the Plaintiffs. CohnReznick did not communicate directly with any Plaintiff about their K- is.

During 2015 and 2016, SK conducted some on-going due diligence of the Fund and Platinum. As part of those efforts, in early 2016 2016 SK sent emails asking CohnReznick to confirm that the Fund was a client in good standing with CohnReznick. In response, CohnReznick told SK in March 2016 that it had been engaged by the Fund to audit its 2015 financial statements. Ultimately, however, CohnReznick never did audit the Fund's 2015 financial statements.

CohnReznick never initiated any contact or communications with SK. The only direct contact between CohnReznick and SK was initiated by SK, and was limited to the communications summarized above.

3. Analysis. Plaintiffs argue that the Court may exercise personal jurisdiction over CohnReznick as to all claims in this case under two provisions of the Massachusetts long-arm statute: G.L. c. 223A, § 3(a), which authorizes specific jurisdiction as to a cause of action arising from a defendant's transaction of business in Massachusetts, and G.L. c. 223A, § 3(d), which authorizes general jurisdiction as to a cause of action arising from tortious injury in the Commonwealth by an act or omission outside of Massachusetts that was committed by a defendant that regularly does business in Massachusetts. In the alternative, Plaintiffs assert that the Court may at least exercise specific jurisdiction over CohnReznick with respect to Plaintiffs' claim under the Massachusetts Uniform Securities Act, G.L. c. 110, § 414(h).

Based on its findings of fact, the Court concludes that Plaintiffs have not met their burden of proving that the Court may lawfully exercise personal jurisdiction over CohnReznick under any of these theories.

3.1. Specific Jurisdiction—Transacting Business. The Court cannot exercise personal jurisdiction over CohnReznick under G.L. c. 233A, § 3(a), because Plaintiffs' claims do not arise from CohnReznick transacting business in Massachusetts.

-8-

Plaintiffs' claims are based primarily on the audit reports concerning the Fund's financial statements and tax forms concerning the income that CohnReznick prepared and that Platinum sent to Plaintiffs through their registered investment advisor in Boston.

Those audit reports and tax forms do not give rise to personal jurisdiction under § 3(a) because they did not involve the transaction of any business in Massachusetts by CohnReznick. It is undisputed, and the Court has found, that CohnReznick did all of that audit and tax work in New

York or New Jersey, not in Boston. Furthermore, CohnReznick never sent any audit reports or tax forms to any of the Plaintiffs or to their Boston advisor. Instead, CohnReznick sent those materials to Platinum, which in turn sent them on to Plaintiffs' registered investment advisor. Even assuming that CohnReznick knew or should have known that Platinum would send the audit reports and tax forms to a Massachusetts entity, that still does not constitute the transaction of any business in Massachusetts by CohnReznick. See Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton LLP, 89 Mass. App. Ct. 718, 723, rev. denied, 476 Mass. 1103 (2016). In Fletcher, the auditor for some hedge funds did audit work and prepared annual audit reports outside of Massachusetts, addressed those reports to the funds' board of directors and shareholders, and knew that the funds would forward the reports to investors domiciled in Massachusetts. Id at 719-720 & 722. The Appeals Court held that the auditor's "knowledge that [the fund] would send the audit reports to Massachusetts does not constitute a contact with Massachusetts sufficient to support jurisdiction" under § 3(a). Id. at 723. The same is true here.

The fact that CohnReznick responded to several communications initiated in Boston by Plaintiffs' registered investment advisor does not suffice to establish personal jurisdiction either. CohnReznick's limited contacts with Shepherd Kaplan, all of which were initiated by SK, are "insufficient to constitute the transaction of business in the Commonwealth so as to come within the reach of s 3(a)." See Droukas v. Divers Training Academy, Inc., 375 Mass. 149, 153 (1978) (evidence that defendant placed advertisement in publication distributed in Massachusetts, and that plaintiffs

-9-

response to this advertisement led to parties' contract, held insufficient to demonstrate that defendant was transacting business in Massachusetts).

Finally, even assuming that CohnReznick's limited communications to confirm Plaintiffs' investments in the found constitute the transaction of business in Massachusetts, which is not at all clear, there would still be no personal jurisdiction under § 3(a) because Plaintiffs' claims do not arise from those contacts. The "arising from" language in this statute creates a "but for" test. See Tatro v. Manor Care, Inc., 416 Mass. 7634, 770-771 (1994). As explained above, CohnReznick sent emails in connection with its 2014 audit of the Fund to confirm the timing and amount of each Plaintiffs' investment. Nothing in Plaintiffs' complaint alleges or suggests that they would not have suffered their alleged injuries but for CohnReznick's email inquiries to confirm Plaintiffs' prior investments. Plaintiffs' claims do not "arise from" these contacts with Massachusetts because the fact that Plaintiffs' subsequently lost their investments was not the result of CohnReznick's action in sending the emails seeking confirmation of those investments. See Fern v. Immergut, 55 Mass. App. Ct. 577, 582-83 (2002) (negligence claim against partners in law firm did not arise from defendants' actions in sending draft opinion letter to plaintiffs in Massachusetts).

Having concluded that § 3(a) provides no basis for exercising personal jurisdiction over CohnReznick, the Court need not decide whether exercising such discretion would be constitutional. See SCVNGR, 478 Mass. at 330; Roberts v. Legendary Marine Sales, 447 Mass. 860, 865 (2006).

3.2. General Jurisdiction—Regularly Doing Business. The Court may not exercise general jurisdiction over CohnReznick under G.L. c. 223A, § 3(d), either. Jurisdiction under this provision "is based on the person's 'causing tortious injury in this commonwealth by an act or omission outside this commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from ... services rendered, in this commonwealth." Fern, 55 Mass. App. Ct. at 581 n.9, quoting § 3(d).

Section 3(d) is based on general jurisdiction. Connecticut Nat. Bank v.

Hoover Treated Wood Prod., Inc., 37 Mass. App. Ct. 231, 233 n.6 (1994). "General jurisdiction ... 'exists when the litigation is not directly founded on the defendant's forum-based

-10-

contacts, but the defendant has nevertheless engaged in continuous and systematic activity, unrelated to the suit, in the forum state.'" Id, quoting United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1088 (1st Cir. 1992).

If there were no constitutional limits on the exercise of personal jurisdiction, then CohnReznick may well be subject to suit in Massachusetts under § 3(d). As the Court has found, the record evidence shows that throughout the relevant time period CohnReznick regularly did business in Massachusetts and appears to have derived substantial revenue from services that it rendered in Massachusetts.

But as a matter of constitutional due process a court may only exercise general jurisdiction over a defendant whose contacts with the forum "are so 'continuous and systematic' as to render them essentially at home in the forum state." Daimler AG v Bauman, 571 U.S. 117, 127 (2014), quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 916, 919 (2011), quoting in turn International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement, 326 U.S. 310, 317 (1945).

In Daimler, the Supreme Court held that an automobile manufacturer that does business throughout the United States and most of the world could not constitutionally be subject to general jurisdiction in California even if one were to attribute to the manufacturer the tens of thousands of car sales made and billions of dollars of revenue earned by its subsidiary. See Daimler, 571 U.S. at 137-139 (no general jurisdiction), & id. at 142 (Sotomayor, J., concurring in the judgment) (describing sales and revenues). In a later decision, the Court held that a railway with significant operations in many states could not be subject to general jurisdiction in Montana even though it had "over 2,000 miles of railroad track and more than 2,000 employees" there. BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559 (2017).

The Court explained in both of these cases that "the general jurisdiction inquiry does not 'focus solely on the magnitude of the defendant's in-state contacts.'" BNSF, 137 S. Ct. at 1559, quoting Daimler, supra, at 139 n.20 (internal quotation marks and alterations omitted). "Rather, the inquiry 'calls for an appraisal of a corporation's activities in their entirety'; `[a] corporation that operates in many places can scarcely be deemed at home in all of them.'" BNSF, supra, quoting Daimler,

-11-

supra. "Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." Daimler; supra.

As the Court found above, the activities of CohnReznick in Massachusetts are a small part of its nationwide business and operations. As a result, under Daimler and BNSFthose activities do not make CohnReznick "at home" here, and it would be unconstitutional to subject CohnReznick to general jurisdiction.

3.3. Specific Jurisdiction—Securities Act Claim. Finally, the Court may not constitutionally exercise specific jurisdiction over CohnReznick with respect to Plaintiffs' claim under the Massachusetts Uniform Securities Act G.L. c. 110A, § 410 et seq. (the "MUSA").

Plaintiffs correctly note that the MUSA authorizes the exercise of specific personal jurisdiction over any defendant that is accused of violating the statute. See G.L. c. 110A, § 414(h); Bulldog, 457 Mass. at 216. Since Plaintiffs claim that CohnReznick aided and abetted securities fraud in

violation of the MUSA, the Court may exercise personal jurisdiction over CohnReznick with respect to that claim if doing so were constitutional.

"'The constitutional touchstone' of the determination whether an exercise of personal jurisdiction comports with due process 'remains whether the defendant established "minimum contacts" in the forum state." Bulldog, supra, at 217, quoting Tatro, 416 Mass. at 772, quoting in turn Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985). "[T]he Massachusetts Constitution provides the same level of protection as the [federal] due process clause with regard to personal jurisdiction." Roch v. Mollica, 481 Mass. 164, 168 (2019).

Plaintiffs must prove three things to establish that the exercise of specific jurisdiction under the MUSA would satisfy the constitutional due process requirements. First, jurisdiction must be based on contacts with Massachusetts by which CohnReznick "purposefully avail[ed] itself of the privilege of conducting activities" in Massachusetts, "thus invoking the benefits and protections of its laws." Bulldog, supra, quoting Asahi Metal Indus. Co. v. Superior Court of California, Solano Cty., 480 U.S. 102, 109 (1987). "Second, the claim must arise out of, or relate to the defendant's contacts with the forum." Bulldog, supra. Third, "the assertion of

-12-

jurisdiction over the defendant must not offend 'traditional notions of fair play and substantial justice.'" Id, quoting Tatro, 416 Mass. at 773, quoting in turn International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

Plaintiffs cannot satisfy these requirements for much the same reasons they cannot establish personal jurisdiction under G.L. c. 223A, § 3(a). Doing audit and tax work in New York and New Jersey, and sending that work product to the Fund in New York which in turn forwarded it to SK in Massachusetts, does not constitute "purposeful availment" of the privilege of doing business in Massachusetts. The same is true of the few times when CohnReznick responded to telephonic or email inquiries by Shepherd Kaplan. See Burger King, 471 U.S. at 475 ("This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person.") (internal quotations and citations omitted). Plaintiffs' claims do not relate at all to CohnReznick's emails, as part of its 2014 audit work, asking Plaintiffs to confirm their investments in the Fund. In any case, the acts of an auditor in sending confirmation requests to a particular forum and relying on the responses in conducting its audit does not constitute a purposeful availment of the privilege of conducting business in that forum. See Young v. FDIC, 103 F.3d 1180, 1191 (4th Cir. 1997). Since the claims against CohnReznick are based on conduct outside of Massachusetts, it would violate traditional notions of fair play and substantial justice to allow Plaintiffs to haul CohnReznick into a Massachusetts court. In sum, the Court concludes that it would violate due process to exercise personal jurisdiction over CohnReznick with respect to the Securities Act claim.

ORDER

Defendant's motion to dismiss for lack of personal jurisdiction is ALLOWED. Final judgment shall enter dismissing all claims without prejudice.

/s/Kenneth W. Salinger Justice of the Superior Court

-13-