

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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**BARRY J. BELMONT, PHILADELPHIA  
FINANCIAL SERVICES, LLC, THOMAS J.  
KELLY, JR., FRANCES R. KELLY and  
GARY O. PEREZ,**

**Plaintiffs,**

**v.**

**MB INVESTMENT PARTNERS, INC.,  
CENTRE MB HOLDINGS, CENTRE  
PARTNERS MANAGEMENT, LLC, ROBERT  
M. MACHINIST, MARK E. BLOOM,  
RONALD L. ALTMAN, LESTER POLLACK,  
WILLIAM M. TOMAI, GUILLAUME  
BÉBÉAR, P. BENJAMIN GROSSCUP,  
THOMAS N. BARR, CHRISTINE MUNN  
AND ROBERT A. BERNHARD,**

**Defendants.**

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**Civil Action No. 09-cv-04951**

**DEFENDANTS CENTRE MB HOLDINGS LLC, CENTRE PARTNERS  
MANAGEMENT LLC, LESTER POLLACK, WILLIAM M. TOMAI AND GUILLAUME  
BÉBÉAR'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Centre MB Holdings LLC, Centre Partners Management LLC, Lester Pollack, William M. Tomai and Guillaume Bébéar (the "Centre Defendants") move this Court to dismiss Plaintiffs' Amended Complaint.

The bases for this Motion are set forth in the accompanying Memorandum of Law. Additionally, the Centre Defendants respectfully request oral argument on their Motion before the Court.

Dated: April 13, 2010

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**Civil Action No. 09-cv-04951**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS CENTRE MB  
HOLDINGS LLC, CENTRE PARTNERS MANAGEMENT LLC, LESTER  
POLLACK, GUILLAUME BÉBÉAR AND WILLIAM TOMAI'S  
MOTION TO DISMISS THE AMENDED COMPLAINT**

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Defendants Centre MB Holdings LLC (“Centre MB Holdings”), Centre Partners Management LLC (“Centre Management,” with Centre MB Holdings, the “Centre Entities”) Lester Pollack (“L. Pollack”), William M. Tomai (“Tomai”), Guillaume Bébéar (“Bébéar” and with L. Pollack and Tomai, collectively, the “Centre Directors”; the Centre Directors together with the Centre Entities, the “Centre Defendants”) submit this memorandum of law in support of their motion to dismiss the claims asserted against them in the Amended Complaint (“Am. Compl.”) pursuant to Fed. R. Civ. P. 12(b)(6).<sup>1</sup>

### **PRELIMINARY STATEMENT**

This case is about alleged wrongdoing committed by Defendant Mark Bloom (“Bloom”), a former officer and director of Defendant MB Investment Partners, Inc. (“MB”). The Amended Complaint does not allege that any of the Centre Directors, who sat on MB’s board (the “Board”), knew of, participated in, profited from, or aided in any way, Bloom’s alleged fraud. Nevertheless, the Amended Complaint attempts to draw the Centre Defendants into the action by alleging two causes of action against them, both of which fail as a matter of law and thus should be dismissed.

First, the Amended Complaint alleges that, by virtue of their alleged positions as “controlling persons” over MB, the Centre Defendants are subject to so-called “control person liability” under Section 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). The Section 20(a) claim against the Centre Defendants should be dismissed for two reasons. As a threshold issue, in order to state a claim under Section 20(a), there must be an underlying violation of the Exchange Act by a controlled person. Here, Plaintiffs allege that MB was controlled by the

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<sup>1</sup> The Amended Complaint names several other defendants in addition to the Centre Defendants (i.e., the “MB Defendants” (as defined below), Ronald Altman, and Mark Bloom). Both the MB Defendants and Altman have respectively filed separate motions to dismiss this action (the “MB Motion” and the “Altman Motion”).

Centre Defendants and that MB violated Section 10(b) of the Exchange Act. However, and as is discussed at length in the MB Brief, MB did not violate Section 10(b) and, accordingly, the Section 20(a) claim must necessarily be dismissed. In particular, the Amended Complaint does not adequately allege that MB acted with scienter, a necessary element of any Section 10(b) claim. Moreover, a corporate entity may only be liable for fraud caused by individuals in its employ (i.e., Bloom) if there is an allegation that the entity profited from the alleged fraud. There is no such allegation here. See I.A.

Additionally, in order to state a claim under Section 20(a), the Amended Complaint must allege that the Centre Defendants actually controlled MB with respect to the alleged fraudulent transactions. Merely alleging that the Centre Defendants could have controlled MB based simply on the fact that the Centre Directors sat on the Board or were identified as control persons in an SEC filing is insufficient; the Amended Complaint must allege that the Centre Directors had actual control, i.e., influence over and directing the activities of the primary violator in connection with the alleged primary violation itself. There is no such allegation here. Similarly, the Amended Complaint lacks any such allegation against the Centre Entities; while they may have had an ownership interest in MB, there is no allegation that they controlled MB in connection with the activities that are at issue in the alleged fraud. See I.B.

Plaintiffs also allege that the Centre Directors are liable under the common law tort of “negligent supervision” for harm caused by MB’s personnel. This cause of action is also insufficiently pled. In particular, in order to survive a motion to dismiss, the Amended Complaint must allege that the harm caused was reasonably foreseeable. There is no such allegation in the Amended Complaint and, accordingly, the cause of action for negligent supervision should be dismissed. See II.



## STATEMENT OF FACTS

### The Parties

#### **A. Plaintiffs**

Plaintiffs Barry J. Belmont, Thomas J. Kelly, Jr., Frances R. Kelly, Philadelphia Financial Services LLC (through its principal and sole member, John Wallace) and Gary O. Perez (collectively, “Plaintiffs”) are investors who sought investment advice from Bloom. Am. Compl. ¶¶ 21-31.

#### **B. Defendants**

Defendant MB Investment Partners Inc. (“MB”) is an investment advisory company. *Id.* ¶ 8. Defendants Bloom, Robert M. Machinist (“Machinist”), Ronald L. Altman (“Altman”), P. Benjamin Grosscup (“Grosscup”), Thomas N. Barr (“Barr”), Christine Munn (“Munn”), and Robert Bernhard (“Bernhard”) were all officers and/or directors of MB. *Id.* ¶¶ 11-13, 17-20.

The Amended Complaint alleges that MB was majority owned by Defendant Centre MB Holdings, a limited liability company that held, according to Plaintiffs, 57% of MB’s capital stock and controlled the operations of MB through a “contractual operating agreement.” *Id.* ¶ 9. The Amended Complaint further alleges that Centre MB Holdings is principally owned by Centre Management, a limited liability company which owned the majority interest in Centre MB Holding and shared common directors with MB. *Id.* ¶10. The Centre Directors are affiliated with Centre Management in various executive capacities. *Id.* ¶¶ 14-16.

### Bloom’s Fraudulent Scheme

As detailed at length by the Plaintiffs in their Amended Complaint, Bloom engaged in a series of fraudulent activities related to North Hills, a hedge fund which Bloom “ostensibly managed” and which Plaintiffs acknowledge was under Bloom’s “almost complete control.” *Id.*

¶¶ 33-34. In particular, the Amended Complaint alleges that Bloom embezzled funds from North Hills for his own personal use, and that funds invested by investors in North Hills were used to repay other investors whose investments had been dissipated as a result of Bloom's fraud. *Id.* ¶¶ 35, 46.

The Amended Complaint further alleges that, on several occasions in 2006 and 2008, Bloom met with Plaintiffs either in person or on the telephone, and suggested several investment alternatives to them, one of which was North Hills. The Amended Complaint alleges that Bloom made material misrepresentations to Plaintiffs on these occasions by informing them that North Hills had "steady positive performance" (*id.* ¶ 23), "enjoyed consistently positive returns" (*id.* ¶ 29, 30), and was "conservatively-managed" (*id.* ¶ 31). In addition, the Amended Complaint alleges that Bloom provided Plaintiffs with copies of the North Hills Private Placement Memorandum (the "North Hills PPM"), which touted "[t]he judgment of the General Partner [*i.e.*, Bloom] in assessing strategies and money managers and constructing a balanced mix of investment approaches." *Id.* ¶ 68. Thus, the Amended Complaint alleges that, while "relying on" the North Hills PPM and Bloom's representations about his investment strategy for North Hills, the Plaintiffs invested funds in North Hills. *Id.* ¶ 69. Plaintiffs further allege that their investments in North Hills were made "through the offices of MB and its personnel" and that "each of the plaintiffs believed that MB either sponsored the fund or was intimately familiar with and recommended the investment." *Id.* ¶¶ 64, 67.

In February 2009, Bloom was arrested and charged with fraud by the United States Department of Justice (the "DOJ") in the United States District Court for the Southern District of New York (the "New York Court"). *Id.* ¶ 47. Bloom pled guilty in July 2009 to, among other things, diverting at least \$20 million from North Hills for his own use; misrepresenting and

overstating the value of North Hills investors' capital accounts in monthly statements to the investors; committing securities fraud; and committing mail and wire fraud and money laundering in connection with North Hills. *Id.* None of the Centre Defendants were mentioned in the Criminal Information (the "Information") filed by the DOJ.<sup>2</sup> Indeed, not once does the Information mention any of the Centre Defendants, let alone link them to Bloom's fraudulent activities, nor does it allege that any of the Centre Directors personally profited from Bloom's fraud.<sup>3</sup>

### **ARGUMENT**

The standards governing a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure are well-known. "[A] district court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the non-moving party. A court need, not however credit 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." *Sauers v. Lower Southampton Twp.*, 2010 WL 176858, at \*1 (E.D. Pa. Jan. 19, 2010) (Schiller, J.) (citations omitted). Indeed, the United States Supreme Court has made clear that, even under Rule 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions[;] . . . a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Instead, a

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<sup>2</sup> The Information, filed July 30, 2009, in *United States of America v. Mark Bloom*, No. S1 09 Cr. 367 (S.D.N.Y.) is referenced in paragraph 48 of the Amended Complaint. Thus, this Court is permitted to consider the contents of this document in connection with this Motion. See *Winer Family Trust v. Queen*, 503 F.3d 319, 327 (3d Cir. 2007) (citing *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (holding that a "'document integral to or explicitly relied upon in the Complaint' may be considered 'without converting the motion [to dismiss] into one for summary judgment'"). A copy of the Information is attached as Exhibit A to the memorandum of law submitted by the MB Defendants in support of their motion to dismiss (the "MB Brief").

<sup>3</sup> The Amended Complaint alleges that Bloom purchased a 14% interest in Centre Holdings using \$900,000 "wrongfully taken from North Hills." Am. Compl. ¶ 45(a).

Amended Complaint must plead “enough facts to state a claim to relief that is plausible on its face,” *id.* at 570, and the factual allegations “must be enough to raise a right to relief ‘above the speculative level.’” *Id.* at 555; *see also Sauer*, 2010 WL 176858, at \*1 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (citation omitted)). Put simply, “‘naked assertion[s] devoid of ‘further factual enhancement’” will not suffice. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

**I. PLAINTIFFS HAVE FAILED TO STATE A CLAIM UNDER SECTION 20(a) OF THE EXCHANGE ACT**

Section 20(a) of the Exchange Act provides that:

every person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of the action.

15 U.S.C. § 78(a). “The elements of a section 20(a) claim are: (1) an underlying violation by a controlled person or entity; (2) a controlling person; and (3) culpable participation in the fraud by the controlling person ‘in some meaningful sense.’” *In re CDNow, Inc. Sec. Litig.*, 138 F. Supp. 2d 624, 644 (E.D. Pa. 2001) (citations omitted); *see also Ravens v. Republic N.Y. Corp.*, 2002 WL 1969651 (E.D. Pa. Apr. 24, 2002) (same); *In re Goodyear Tire & Rubber Co. Sec. Litig.*, 1993 WL 130381, at \*22 (E.D. Pa. Apr. 22, 1993) (same).

Here, the Amended Complaint describes the fraud committed by Bloom in great detail but does not sufficiently allege an underlying violation of the Exchange Act by MB (i.e., the allegedly controlled person). Further, the Amended Complaint does not link any of the Centre Defendants to Bloom’s fraud; it does not allege that they were culpable participants; it does not allege that any of the Centre Directors profited from Bloom’s fraud; and it does not provide any

substantive detail regarding the how Centre Directors' actually "controlled" MB.<sup>4</sup> In short, Plaintiffs have in any event failed to properly plead a cause of action under Section 20(a) for two reasons: (i) they have failed to allege a primary violation of the Exchange Act by Defendant MB, and (ii) they have failed to allege that the Centre Defendants exercised control over MB.<sup>5</sup>

**A. Plaintiffs have not Pled a Violation of the Exchange Act by MB**

An essential element of any claim for control person liability under Section 20(a) is a primary violation of the federal securities laws by a controlled person. "Section 20(a) imposes joint and several liability on any person who 'controls a person liable under any provision of the [Exchange Act]. Accordingly, under the plain language of the statute, plaintiffs must 'prove not only that one person controlled another person, but also that the 'controlled person' is liable under the Act. If no controlled person is liable, there can be no controlling person liability.'" In re Alparma Inc. Sec. Litig., 372 F.3d 137, 153 (3d Cir. 2004) (quoting Shapiro v. UJB Fin. Corp., 964 F.2d 272, 279 (3d Cir. 1992)).

In Count III of their Amended Complaint, Plaintiffs allege that the Centre Defendants (among others) as "directors of MB" are controlling persons of MB and that because MB allegedly violated Section 10(b) of the Exchange Act, the Centre Defendants are liable under Section 20(a). As detailed in the MB Brief, however, Plaintiffs have failed to allege a primary violation by Defendant MB. See MB Br. at 12-14. In particular, the Amended Complaint fails to allege particular facts establishing that MB acted with scienter (a necessary element of any Section 10(b) claim) under the strict pleading standards of the PSLRA and the United States

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<sup>4</sup> Indeed, the names of the Centre Defendants only appear in the introductory paragraphs in which they are named as Defendants, in the paragraphs identifying the specific causes of action alleged against them, and collectively as the "directors" of MB in paragraphs 49, 51, 53 and 54.

<sup>5</sup> The Amended Complaint also does not adequately allege culpable participation by the Centre Defendants, the third element of a Section 20(a) violation.

Supreme Court's seminal decision in Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308 (2007). See MB Br. at 12-14. Additionally, Section 10(b) liability cannot be imputed to MB through Bloom's own actions since the Amended Complaint does not allege that MB benefited from Bloom's fraud. See id. at 15-20.

Absent a primary violation by a controlled person, "there can be no controlling person liability." Shapiro v. UJB Fin. Corp., 964 F.2d 272, 279 (3d Cir. 1992) (citation omitted). Thus, Plaintiffs' Section 20(a) claim against the Centre Defendants, which is based on an alleged violation by MB, a controlled person, should be dismissed as a matter of law. See In re NutriSystem, Inc. Sec. Litig., 653 F. Supp. 2d 563, 580 (E.D. Pa. 2009) (dismissing Section 20(a) claims where plaintiffs had not established an independent violation of the federal securities laws and noting that "[t]o be liable under Section 20(a), there must exist an independent violation of the federal securities laws."); Freed v. Universal Health Servs., Inc., 2005 WL 1030195, \*11 (E.D. Pa. May 3, 2005) (dismissing Section 20(a) claim where Amended Complaint failed to allege primary violation by controlled person).

**B. Plaintiffs have not Pled "Control" Over MB by the Centre Defendants**

Plaintiffs' Section 20(a) claim must also fail because the Amended Complaint does not sufficiently allege that the Centre Defendants "controlled" MB within the meaning of Section 20(a). "In order to establish a Section 20(a) violation, plaintiffs must plead facts showing . . . circumstances establishing the defendant's control over the company's actions." In re Adolor Corp. Sec. Litig., 616 F. Supp. 2d 551, 576 (E.D. Pa. 2009) (citation omitted); see also Majer v. Sonex Research, Inc., 2006 WL 2038604, at \*9 n.10 (E.D. Pa. July 19, 2006) ("In addition, individuals may be jointly and severally liable for a company's actions under § 20(a) of the [Exchange Act] if they *influenced and directed* its activities." (emphasis added)). Such control, however, must be *actual*, not merely hypothetical: "[i]n order to establish controlling person

liability under [Section 20(a)], a defendant must possess ‘*actual*’ control over the transactions in question.’” Antinoph v. Laverell Reynolds Sec. Inc., 1989 WL 102585, at \*5 (E.D. Pa. Sept. 5, 1989)) (emphasis added), aff’d, 911 F.2d 719 (3d Cir. 1990) (TABLE); see also In re Ravisent Techs., Inc. Sec. Litig., 2004 WL 1563024, at \*15 (E.D. Pa. July 13, 2004) (“To establish a defendant is a control person, a plaintiff must demonstrate ‘that the defendant had *actual* power or influence over the allegedly controlled person.’”) (emphasis added);<sup>6</sup> In re Digital Island Sec. Litig., 223 F. Supp. 2d 546, 561 (D. Del. 2002) (same) (quoting Antinoph). Accordingly, mere allegations of control based on board membership or stock ownership are insufficient for the purposes of alleging control person liability. See Ravisent, 2004 WL 1563024, at \*15 (“Status or stock ownership is not necessarily sufficient by itself to establish control person liability.”); Digital Island, 223 F. Supp. 2d at 561 (“[I]t is well-settled that ‘[t]he mere fact that an individual is a director of a firm is not sufficient to show he is a control[ling] person of the firm.’”).

With respect to the Centre Directors, the Amended Complaint contains no allegations describing their actual control over the general day-to-day operations at MB, much less over the specific acts taken by MB’s personnel in connection with the alleged fraud.<sup>7</sup> In

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<sup>6</sup> In Ravisent, where the alleged violation of the Act involved the filing of an allegedly false and misleading registration statement, the court concluded that allegations that the defendants were “CEO and CFO [were] sufficient to demonstrate ‘actual power’ or ‘influence’ over the company.” 2004 WL 1563024, at \*15. The facts in Ravisent are completely distinguishable from the facts here. There, the court considered whether a CEO and CFO possessed power and influence over the contents of the company’s registration statement. Here, however, the Centre Defendants are members of the board of directors or shareholders of MB, not officers as in Ravisent, and no allegations are pled suggesting that any of the Centre Defendants exercised any “actual” control over MB’s day-to-day operations, or, more importantly, over the alleged fraud committed by Bloom and Altman.

<sup>7</sup> The Amended Complaint alleges that Messrs. Tomai and Pollack “exercise executive responsibility for the operations of MB.” Am. Compl. ¶ 93. However, the Amended Complaint identifies Messrs. Tomai and Pollack as directors of MB, not officers, and provides no detail regarding any “executive responsibilities” they might have in their respective roles as directors. Id. ¶¶ 14-15.

particular, the Amended Complaint does not allege or even suggest that the Centre Defendants (i) had any control over MB's daily operations, (ii) knew of Bloom's and Altman's communications with the Plaintiffs or, even if they did, (iii) had any control over Bloom and Altman in the context of such communications or even over them generally. Similarly, the Amended Complaint does not allege that the Centre Directors had a duty to oversee North Hills, Bloom's fund in which Plaintiffs invested; indeed, North Hills was under Bloom's "almost complete control." Am. Compl. ¶ 33. Rather, the Amended Complaint's allegation that the Centre Directors were "controlling persons" is predicated on their status as directors of MB, and on the fact that a Form ADV was filed by MB with the Securities Exchange Commission (the "SEC") which identified Messrs. Tomai and Pollack and Centre MB Holdings as "control persons."<sup>8</sup> See *id.* ¶¶ 93, 94, 96, 97, 98. These allegations are clearly insufficient.

As noted above, courts have made clear that Section 20(a) liability cannot be premised solely upon a defendant's status as a director. See *Ravisent*, 2004 WL 1563024, at \*15 ("Status or stock ownership is not necessarily sufficient by itself to establish control person liability."); *Digital Island*, 223 F. Supp. 2d at 561 (allegations "that the individual defendants must have known about the alleged misstatements and omissions because they had access to the statements by virtue of their positions as directors . . . clearly cannot support a finding of control under Section 20(a).");. The result here should be no different.<sup>9</sup>

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<sup>8</sup> The Form ADV does not identify the two other Centre Defendants, Mr. Bébéar and Centre Management.

<sup>9</sup> The Amended Complaint notes that the Centre Directors were appointed to the Board to "exercise policy influence over the affairs of MB and thereby protect CPM's investment in MB." Am. Compl. ¶ 94. The role of any director of a public or private company is to influence the company's business and to maintain its financial health. The courts in *Ravisent* and *Digital Island* and were certainly aware of the typical duties of directors when they held that alleging board membership alone was insufficient to allege control under Section 20(a).



The allegation of control based on MB's Form ADV filing is a similarly insufficient basis upon which to rest control person liability under Section 20(a). Courts in this jurisdiction have held that the standard for Section 20(a) liability is "actual control over the transactions in question." Antinoph, 1989 WL 102585 at \*5; see also Digital Island, 223 F. Supp. 2d at 561 (same) (quoting id.). The Form ADV, however, does not provide any basis on which to allege that Messrs. Pollack and Tomai and Centre MB Holdings had actual control over the transactions in question here. Like the Amended Complaint, the Form ADV is silent as to any actual control that Messrs. Pollack, Tomai, and Centre MB Holdings had over: (i) Bloom and Altman with respect to the purported fraud, including private communications between Bloom and Altman and Plaintiffs concerning North Hills; (ii) the management and operations of North Hills, as the Amended Complaint concedes that North Hills was under Bloom's "almost complete control," Am. Compl. ¶ 33; or (iii) the preparation of the North Hills PPM, which the Amended Complaint admits Plaintiffs relied upon when investing in North Hills. Am. Compl. ¶¶ 68-69. Accordingly, the Section 20(a) claim against the Centre Directors should be dismissed.

The Amended Complaint is similarly deficient with respect to its claims against the Centre Entities. First, it alleges that Centre MB Holdings "exercised day-to-day control over the business and affairs of MB," presumably because it is alleged to have owned 57% of MB's capital stock, and because of an alleged operating agreement with MB and the Form ADV. The Amended Complaint then asserts a similar claim against Centre Management, presumably because it owned a majority interest in Centre MB Holdings. Neither allegation, however, is sufficient for the purposes of Section 20(a). Indeed, the Amended Complaint is devoid of any factual allegations concerning the actual control or influence exercised by the Centre Entities over MB. Instead, Plaintiffs rely on the same conclusory allegations concerning status as they did with

respect to the Centre Directors as a basis for alleging control person liability. As discussed above, however, status alone is insufficient to establish control under Section 20(a). Moreover, even if the Court were to accept Plaintiffs' allegation that Centre MB Holdings exercised "day-to-day" control over MB, that does not mean that Centre MB Holdings had actual power and control over Bloom's private communications with Plaintiffs or the content of the North Hills PPM, allegedly relied upon the Plaintiffs in making their investments in North Hills. Accordingly, the Section 20(a) claims against the Centre Entities should be dismissed.

## **II. PLAINTIFFS HAVE FAILED TO STATE A CLAIM FOR NEGLIGENT SUPERVISION**

Plaintiffs allege that the Centre Directors are liable under Pennsylvania law for the tort of "negligent supervision," by failing to supervise MB's personnel or to "create mechanisms that would reasonably protect customers from fraud . . ." Am. Compl. ¶ 104. "Under Pennsylvania law, an employer may be liable for negligent supervision 'where the employer fails to exercise ordinary care to prevent an intentional harm to a third party which (1) is committed on the employer's premises by an employee acting outside the scope of his employment and (2) is reasonably foreseeable.'" Petruska v. Gannon Univ., 462 F.3d 294, 309 n.14 (3d Cir. 2006) (citing Mullen v. Topper's Salon & Health Spa, Inc., 99 F. Supp. 2d 553, 556 (E.D. Pa. 2000)); see also Lerew v. AT&T Inc., 2008 WL 80055, at \*2, n.2 (M.D. Pa. Jan. 7, 2008) (same).

As a threshold issue, the Centre Directors were not "employers" of MB's personnel and therefore this cause of action may not be asserted against them. Indeed, we are not aware of a single case in which a Pennsylvania court (state or federal) considered a negligent supervision claim against corporate directors for the actions of corporate employees. Putting that issue aside, however, and assuming, *arguendo*, that MB's personnel caused harm to the Plaintiffs, the cause of action must still fail because the Amended Complaint does not allege that the harm was

reasonably foreseeable. The closest the Amended Complaint comes to doing so is by alleging that Bloom's extravagant lifestyle should have alerted the Centre Defendants to his fraud. See Compl. ¶¶ 42-43. This allegation does not suffice. First, there is no allegation that any of the Centre Defendants were personally aware of the fact that Bloom had bought expensive apartments and high-priced cars. See Mullen, 99 F. Supp. 2d at 556 (holding that once employee informed her employer of workplace harassment by her fellow employees "its persistence became reasonably foreseeable"). Second, even if the Centre Directors were aware of Bloom's spending habits, it does not follow that they should have assumed that Bloom was therefore engaged in fraud. Accordingly, the cause of action for negligent supervision should be dismissed.

**CONCLUSION**

For the foregoing reasons, Plaintiffs' claims against the Centre Defendants should be dismissed with prejudice.

Dated: April 13, 2010

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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**BARRY J. BELMONT, PHILADELPHIA  
FINANCIAL SERVICES, LLC, THOMAS J.  
KELLY, JR., FRANCES R. KELLY and  
GARY O. PEREZ,**

**Plaintiffs,**

**v.**

**MB INVESTMENT PARTNERS, INC.,  
CENTRE MB HOLDINGS, CENTRE  
PARTNERS MANAGEMENT, LLC, ROBERT  
M. MACHINIST, MARK E. BLOOM,  
RONALD L. ALTMAN, LESTER POLLACK,  
WILLIAM M. TOMAI, GUILLAUME  
BÉBÉAR, P. BENJAMIN GROSSCUP,  
THOMAS N. BARR, CHRISTINE MUNN  
AND ROBERT A. BERNHARD,**

**Defendants.**

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**Civil Action No. 09-cv-04951**

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2010, upon consideration of Centre MB Holdings, Centre Partners Management, LLC, Lester Pollack, William M. Tomai, and Guillaume Bébéar's Motion to Dismiss Plaintiffs' Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and the accompanying Memorandum of Law and any response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED and Plaintiffs' Complaint is hereby dismissed with prejudice.

BY THE COURT:

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J.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss of Defendants Centre MB Holdings LLC, Centre Partners Management, LLC, Lester Pollack, Guillaume Bébéar and William M. Tomai and the Memorandum of Law in Support of the Motion to Dismiss was served on this date via filing with the Court's ECF system (with the exception of Mark Bloom who has been served by U.S. Mail) and is available for viewing and downloading from the ECF System on this 13<sup>th</sup> day of April, 2010 by the following counsel:

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