

Litigators of the Week: In Pursuit of Funds from Kazakhstan Bank Collapse, Boies Schiller Team Gets \$100M Verdict

By Ross Todd
December 23, 2022

It's one of the biggest corporate frauds you likely don't remember—or never heard about. More than a decade ago, an internal investigation at Kazakhstan's BTA Bank found that Mukhtar Ablyazov abused his position as chairman of the bank to steal billions through a fraudulent loan scheme.

Last week, jurors in Manhattan federal court routed a significant sliver of those funds back to the bank thanks to the work of our Litigators of the Week, **Matthew Schwartz, John Zach and Craig Wenner** of Boies Schiller Flexner. The Boies trial team secured a \$100 million verdict against Triadou, a shell company previously controlled by Ablyazov's son-in-law that funneled funds into real estate investments in the U.S. With interest, the total recovery could come in at more than twice that amount.

Lit Daily: Who was your client and what was at stake?

Matthew Schwartz: At trial, we represented BTA Bank JSC, a publicly traded financial institution headquartered in Almaty, Kazakhstan. In 2009, bank regulators in Kazakhstan discovered during a routine examination that BTA was severely undercapitalized. A subsequent investigation determined that the bank's chairman at the time, Mukhtar Ablyazov, had abused his position to steal billions of dollars from the bank using a fraudulent loan scheme. Ablyazov was later convicted of the fraud in Kazakhstan and sentenced to jail in London for criminal contempt of court for hiding the proceeds of that crime. Over the next several years, BTA Bank worked to locate the stolen money, ultimately learning that tens of millions of dollars had been invested in U.S. real estate through a shell company, Triadou SPV, which was the defendant in this case. The trial was about proving Ablyazov's fraud and money laundering scheme and following the money to Triadou's U.S. investments to recoup some of BTA's stolen money.

How did this case come to you and the firm?

Schwartz: I was introduced to BTA Bank in 2015 by another client based in Kazakhstan, who was happy with our work. Over the last eight years, we've steadily expanded our client base in Central Asia, and I've personally been to Kazakhstan more times than I can count.



Courtesy photos

(L-R) Matthew Schwartz, John Zach and Craig Wenner of Boies Schiller Flexner.

Who was on the team and how did you divide the work?

Craig Wenner: This victory was a real team effort. We are representing BTA in a number of related lawsuits and arbitrations pending in the United States, and there is a large team supporting those efforts. Matthew has been leading the team from the beginning. I took responsibility for handling the day-to-day management of the cases, especially as they got more complex and the team got larger. John joined the case a few months before trial to serve as co-lead trial counsel and to be a set of fresh eyes on an extraordinarily complicated fact pattern. We were supported by a tremendous trial team, including associates **Valecia Battle, Sabina Mariella, Sophie Roytblat, Lindsey Ruff** and **Erica Sweeting**; counsel **Marshall Dore Louis**; and paralegals **Isabelle Wilkinson** and **Olivia McKenzie**. Valecia, Sabina and Lindsey each got to take key witnesses at trial and did a tremendous job.

What were your key trial themes and how did you hammer them home with the jury?

John Zach: Before joining Boies Schiller, Matt and I were both securities fraud prosecutors at the U.S. Attorney's Office for the Southern District of New York. We approached this case like a criminal prosecution, albeit with a lower burden of proof, because that's really what it was. Our goal was to demonstrate to the jury that Ablyazov and his accomplices had perpetrated one of the largest and most complex fraud and money laundering schemes in history, and we used techniques we learned as prosecutors—for example, relying on cooperating witnesses and undercover recordings—to prove our case.

Mr. Schwartz, in your opening you described Mukhtar Ablyazov as “a man that you never heard of, in a country that you probably can’t find on a map.” Despite the size of the fraud at the heart of your case, were you worried about a scheme that you yourself said could be “hard to follow” would resonate with New York jurors?

Schwartz: We knew that if we succeeded in explaining the scheme, it would resonate with New Yorkers. After all, this is a case about foreign criminals who laundered billions in stolen money, some of it into Manhattan real estate—something that New Yorkers should care about. The challenge was making the scheme accessible to the jury. We did that by stripping away a lot of extraneous detail, using experts to provide overviews of the scheme, and relying on cooperating witnesses who could offer an insider’s perspective. We also constantly reminded the jury—in opening statements, through our examination of witnesses, and in closing—that the scheme was designed to be hard to follow, and that the bad guys were hiding behind complexity.

Here three key figures in your case—Ilyas Khrapunov, who owned Triadou, Gennady Petelin, whom you labeled the frontman, and Ablyazov, the mastermind—all testified via videotape. Did you see that as an advantage or a challenge?

Wenner: Knowing that many of the key witnesses would never step foot in a U.S. courtroom made it extra important that we approached fact discovery with an eye toward trial. We took depositions of some of these figures four and five years ago, when we were still learning the facts, knowing that we were almost certainly preserving their trial testimony. That was a challenge, but there were also advantages. We locked the conspirators into their fraudulent cover stories early on, which we proved were false at trial using additional discovery from third parties.

Zach: There were definitely advantages. In a case where we were pretty explicitly calling the defendant and its accomplices criminals, that fact was underscored by the refusal of key witnesses to appear live at trial. In fact, the only person who appeared live who was associated with the defendant was the very person we argued had been hand-picked by Ilyas Khrapunov to be the “legitimate face” of the defendant; all of the other decision-makers refused to come. I think that was meaningful to the jury.

A verdict is one thing. Collecting on it is another. What are your next steps on that front?

Schwartz: A critical feature of our work on this case was that it arose from an intelligence-led investigation into the current whereabouts of assets stolen from BTA. As a result, at the very outset of the case, we were able to locate hard assets here in the United States held by the defendant and sought their attachment. Almost six years ago, the district court held an evidentiary

hearing and determined that we were likely to prevail on the merits, and so froze all of Triadou’s domestic assets. As a result, there are tens of millions of dollars sitting in an escrow account, which we will execute on immediately following issuance of the judgment. Other assets will be the subject of further enforcement proceedings, which is an area where we have deep experience.

What will you remember most about this matter?

Zach: I only joined the team a few months ago, as the case was ramping up for trial. One of the great things about BSF is that we do real trial work, and throughout my time here and at the SDNY I have really enjoyed jumping into trials at the last minute, because it forces you to focus on the things that really matter. Litigating a case for years provides a level of understanding and attention to detail that is an invaluable part of a trial team, but it’s also important not to lose the forest for the trees. Over the course of just a few months, the team helped me to learn about this incredibly complicated fraud and money laundering scheme and put together a detailed, but thematically compelling closing. It was also great to work again with our principal expert, who Matt and I have known since we were prosecutors, to unravel the truly devious ways these guys laundered billions of dollars across three continents in a way the jury would understand, without losing critical detail.

Wenner: This was a very logistically challenging trial. Witnesses had to be brought in from Kazakhstan and prepared through interpreters, and others testified by live remote means from overseas and elsewhere. On top of that, there was a COVID outbreak in the middle of trial, and I had to participate remotely during quarantine. I had the unique experience of sitting in my home office examining a witness who was sitting in Kazakhstan for the benefit of a judge and jury and opposing counsel sitting in a courtroom in lower Manhattan. But in the end, it all worked quite smoothly, and I was able to come back to the courtroom for the conclusion of the case and to experience the verdict live.

Schwartz: BTA Bank has been pursuing justice for more than a decade. For the first time, we were able to get many of the key participants in the crime under oath. I will never forget sitting in courthouses and conference rooms in Europe taking the oral testimony of Mukhtar Ablyazov, Ilyas Khrapunov, and their accomplices for the very first time in BTA’s asset recovery efforts and knowing that a jury of New Yorkers was going to watch that very testimony and decide whether they were telling the truth. This trial represented the first time that a jury or any fact finder was able to see testimony from the key participants in the fraud and to hear a robust defense mounted by skilled and well-funded counsel. I’ll always remember the client’s satisfaction that the jury really understood what had happened and that BTA had been victimized on such a massive scale.