

Mazzarelli, J.P., Friedman, Richter, Abdus-Salaam, JJ.

7105-

7105A Mutual Benefits Offshore Fund,  
Plaintiff-Respondent,

Index 650438/09

-against-

Emanuel Zeltser, et al.,  
Defendants-Appellants,

Mark Zeltser, et al.,  
Defendants.

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Sternik & Zeltser, etc., et al.,  
Counterclaim Plaintiffs-Appellants,

-against-

Christopher Samuelson, et al.,  
Counterclaim Defendants.

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Sternik & Zeltser, New York (Emanuel Zeltser of counsel), for  
Sternik & Zeltser.

Emanuel Zeltser, New York, appellant pro se.

Bruce D. Katz & Associates, New York (Bruce D. Katz of counsel),  
for Joseph Kay, appellant.

Gusrae Kaplan Nusbaum PLLC, New York (Mikhail Ratner and Martin  
P. Russo of counsel), for respondent.

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Orders, Supreme Court, New York County (Bernard J. Fried,  
J.), entered November 4, 2010, which granted plaintiff's motion  
to dismiss defendants Sternik & Zeltser and Joseph Kay's  
counterclaims, and granted plaintiff's motion to disqualify

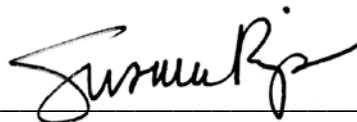
defendants Emanuel Zeltser and Sternik & Zeltser as counsel for counterclaim-plaintiffs, unanimously affirmed, without costs.

Sternik & Zeltser, sued herein solely in its capacity as plaintiff's former counsel, lacks standing to assert a counterclaim in its separate capacity as a purported trustee or representative of an entity that is not a party to the action (see *Ruzicka v Rager*, 305 NY 191, 198 [1953]; see also *Bramex Assoc. v CBI Agencies*, 149 AD2d 383, 385 [1989]). Kay lacks standing to assert a counterclaim because the record does not support his allegation that he has an ownership interest in plaintiff's investment or that he otherwise has a stake in the outcome of the dispute over the funds at issue (see *Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 279 [2006], appeal dismissed 8 NY3d 837 [2007]).

We have considered defendants' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 15, 2012



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