

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

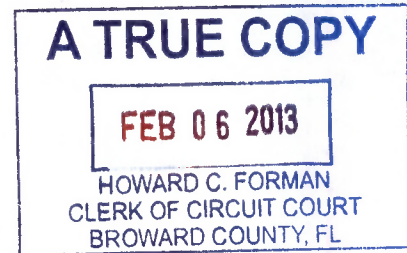
CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone Family Trust, Carone Marital Trust #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.
MICHAEL D. SULLIVAN, individually,

Defendant.



CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE COUNSEL

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S, General Partnership and S&P, General Partnership (together, the "Partnerships"), files this application to retain and compensate Thomas M. Messana, Esq. and the law firm of Messana, P.A. ("Messana"), to represent the Conservator as his general counsel on the terms set forth below (the "Application") and in support thereof states as follows:

1. On January 17, 2013, this Court entered its Order Appointing Conservator (the "Order of Appointment"). Among other things, the Order of Appointment directed the Conservator to take possession of all property of the Partnerships (the "Conservatorship Property"), and to do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property.

2. In order to facilitate and support the Conservator in carrying out his duties, consistent with applicable Florida law, the Order of Appointment specifically authorizes the

Conservator to retain and compensate legal counsel. *Creative Property Management, Inc. v. General Electric Credit Corp. of Georgia*, 314 So. 2d 807, 808 (Fla. 3d DCA 1975) (holding that where legal services are required and benefit the estate, court-appointed professional fiduciaries may be allowed a reasonable sum for legal fees); *see also Zirot v. Gilmer*, 336 So. 2d 680, 682 (Fla. 4th DCA 1976) (holding that professional fiduciary fees and expenses enjoy a priority over unsecured creditors).

3. Pursuant to the Order of Appointment, the Conservator seeks to retain Messina to furnish legal advice to the Conservator for such purposes as may be reasonable and necessary during the period of the Conservatorship. Through this Application, the Conservator seeks entry of a Court Order approving the terms of Messina's engagement and to provide notice to the parties-in-interest of same.

4. The attorneys at Messina have over 20 years of experience representing court-appointed professional fiduciaries, including receivers, trustees, and assignees.

5. Thomas M. Messina has regularly represented court-appointed professional fiduciaries associated with the fallout from Ponzi Schemes. Among Mr. Messina's prominent representations, he represented a court-appointed receiver in a case "described by the FBI as one of the largest Internet fraud prosecutions in the nation and arose from an investigation of CITX, a corrupt Pennsylvania Internet company, and its South Florida based marketing partner, PRSI..." The U.S. Department of Justice and U.S. Attorney General, *The Accomplishments of the U.S. Department of Justice 2001-2009* p. 40 (2012).

6. Mr. Messina is the co-chairperson of the of The Florida Bar Business Law Section's Receivership Study Group and is active on the Assignment for the Benefit of Creditors sub-committee. In addition, Mr. Messina is a current member of the Executive Counsel of The

Florida Bar's Business Law Section, a past president of the Bankruptcy Bar Association of the Southern District of Florida, and a former chairperson of The Florida Bar Bankruptcy/UCC committee. Mr. Messana has been recognized by Chambers & Partners, USA, as a Best Layer in America, a Super Lawyer, a Member of Florida's Elite Lawyers by Florida Trend and is "AV" rated by Martindale-Hubble and is generally regarded by his peers as an extremely competent professional fiduciary's attorney.

7. In consideration for Messana representing the Conservator, Messana's attorney fees shall be paid based on the time expended by lawyers and paralegals of Messana as an administrative expense of the Conservatorship.

8. Generally, the hourly rates of the attorneys and paraprofessionals at Messana range from \$175 per hour to \$525 per hour. However, at the request of the Conservator, Mr. Messana has agreed to reduce his hourly rate for this engagement to \$375. As such, the hourly rates of Messana, P.A. will range from \$175 per hour to \$375 per hour. The Conservator, in his professional business judgment, considers the rates reasonable and finds it to be within the range currently charged by other attorneys in the locality with similar experience and expertise.

9. Consistent with the Order of Appointment, Messana shall file applications for compensation with the court every sixty (60) days, or later as is deemed reasonable and necessary within the discretion of Messana, and will provide notice to the partners and other parties-in-interest in the manner more fully described in the Order of Appointment.

10. The Conservator deems the employment of Messana necessary for the efficient administration of the Conservatorship. The Conservator further believes that a Court Order authorizing the retention and the proposed compensation arrangement is necessary for Messana

to effectively represent the Conservator.

WHEREFORE, Philip Von Kahle, the Conservator, respectfully requests that this Court: (i) enter an Order (in substantially the form as the proposed Order attached hereto as Exhibit "A") appointing Thomas M. Messana and the law firm of Messana, P.A. as legal counsel for the Conservator *nunc pro tunc* to January 18, 2013; (ii) approve the terms of compensation of Thomas M. Messana and the law firm of Messana, P.A.; and (iii) and for such other and further relief as the Court deems just and proper.

Dated: January 30, 2013



Philip Von Kahle
The Court-Appointed Conservator

Exhibit "A" Proposed Order

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Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc.
Pension Trust, Carone Family Trust, Carone Marital
Trust #1 UTD 1/26/00 and Matthew D. Carone
Revocable Trust, JAMES JORDAN, as Trustee for
the James A. Jordan Living Trust, ELAINE ZIFFER,
an individual, and FESTUS AND HELEN STACY
FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

_____/

**ORDER GRANTING CONSERVATOR'S MOTION
TO EMPLOY MESSANA, P.A. AS LEGAL COUNSEL NUNC PRO TUNC**

THIS MATTER came before the Court on _____ at ____ a.m. upon the
Conservators Motion to Retain and Compensate Counsel (the "Motion") filed by the Court-
Appointed Conservator, Philip Von Kahle. The Court having reviewed the Motion, having heard
argument and proffer of counsel, finding that sufficient notice has been given to all partners and
parties-in-interest, finding that the proposed hourly rates of Messana, P.A. are reasonable and
otherwise finding sufficient cause exists to grant the relief requested, it is

ORDERED and **ADJUDGED** as follows:

1. The Motion is GRANTED.
2. Thomas M. Messana and the law firm of Messana, P.A. are hereby appointed as
legal counsel for the Conservator *nunc pro tunc* to January 18, 2013.
3. The terms of compensation of Thomas M. Messana and the law firm of Messana,
P.A. as set forth in the Motion are hereby approved.

Done and ordered in Chambers this _____, 2013.

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:
See attached service list