

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

Case No: 12-034121(07)
Complex Litigation Unit

P&S ASSOCIATES, GENERAL PARTNERSHIP,
et al.,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, et
al.,

Defendants.

**PLAINTIFFS RESPONSE AND OBJECTIONS TO DEFENDANT
ALEX MOLCHAN'S FIRST REQUEST FOR ADMISSIONS FROM PLAINTIFFS**

Pursuant to Florida Rule of Civil Procedure 1.370, Plaintiffs, by and through their undersigned counsel, hereby respond and object to Defendant ALEX E. MOLCHAN TRUST DTD 05/19/94's ("Alex Molchan") First Request for Admissions from Plaintiffs:

RESPONSE AND OBJECTIONS TO ADMISSIONS REQUESTED

1. That the last distribution made by P&S to Alex Molchan occurred in 1998.

Response: Admit.

2. That the last distribution made by P&S to Alex Molchan in 1998 came as a result of his request to close his account with P&S and receive the balance of his capital account with P&S.

Response: Plaintiffs deny that the last distribution made by P&S to Alex Molchan in 1998 came as a result of his request to close his account with P&S and receive the balance of his

capital account with P&S because Alex Molchan wrote P&S a letter on or about February 7, 1997, which stated that “I desire that my account be closed and that a check for the full amount be sent to me at my home address[,]” but Alex Molchan received a distribution on February 6, 1998, nearly a year after making that request.

3. That Alex Molchan’s request to close his account with P&S and receive the balance of his capital account with P&S constituted an election to “withdraw” as a Partner from P&S within the meaning of Section 9.03 of the P&S Amended and Restated Partnership Agreement.

Response: Plaintiffs object to Request for Admission Number 3 because it calls for a legal conclusion.

4. That P&S provided Alex Molchan with a Schedule K-1 from its U.S. Partnership Form 1065 for tax year 1998 showing that his capital account at year end was \$0.

Response: Admit.

5. That P&S did not provide Alex Molchan with a Schedule K-1 from its U.S. Partnership Form 1065 for tax year 1999 or subsequent years.

Response: Plaintiffs lack sufficient knowledge to admit or deny that P&S provided Alex Molchan with a Schedule K-1 from its U.S. Partnership Form 1065 for tax year 1999 or subsequent years because they do not have possession custody or control of the Schedule K-1 from its U.S. Partnership Form 1065 for tax year 1999 or subsequent years, and to the extent that such documents exist, they are likely being held by third parties, and/or Alex Molchan and have not been produced to Plaintiffs.

6. That Alex Molchan was not a “Partner” in P&S within the meaning of the P&S Amended and Restated Partnership Agreement during 1999 and subsequent years.

Response: Plaintiffs object to Request for Admission Number 6 because it calls for a legal conclusion.

7. That the closing of Alex Molchan's account at P&S in 1998 constituted his being "dissociated" from P&S within the meaning of Section 620.8601(1) of the Revised Uniform Partnership Act.

Response: Plaintiffs object to Request for Admission Number 7 because it calls for a legal conclusion.

8. That the closing of Alex Molchan's account at P&S in 1998 did not result in the "dissolution and winding up" of the business of P&S within the meaning of Section 620.8603(1) of the Revised Uniform Partnership Act.

Response: Plaintiffs object to Request for Admission Number 8 because it calls for a legal conclusion.

9. That when the last distribution was made by P&S to Alex Molchan in 1998, he was not in "default" or a "defaulting Partner" within the meaning of ARTICLE TEN of the P&S Amended and Restated Partnership Agreement.

Response: Plaintiffs admit that when the last distribution was made by P&S to Alex Molchan in 1998, he was not in "default" or a "defaulting Partner" within the meaning of ARTICLE TEN of the P&S Amended and Restated Partnership Agreement, because Alex Molchan's default occurred when he refused to comply with the demand letter he received from Margaret Smith in 2012, which constitutes the required notice in ARTICLE TEN of the P&S Amended and Restated Partnership Agreement.

10. That Alex Molchan's withdrawal from P&S and the closing of his account at P&S in 1998 did not constitute an "assignment, transfer or termination of a defaulting Partner's

interest” in P&S within the meaning of Section 10.02 of the P&S Amended and Restated Partnership Agreement.

Response: Plaintiffs object to Request for Admission Number 10 because it calls for a legal conclusion.

11. That all distributions received by Alex Molchan from P&S were made from monies received by P&S from Bernard L. Madoff Investment Securities, LLC.

Response: Plaintiffs object to Request for Admission Number 11 as irrelevant to the instant proceedings. Regardless of whether the funds involved in the distributions received by Alex Molchan originated from the Bernard L. Madoff Investment Securities, LLC, the distributions that Alex Molchan received were made in violation of the terms of the P&S’ Partnership Agreement, and therefore Molchan is required to remit payment of those funds.

Dated: January 21, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon counsel identified below registered to receive electronic notifications and regular U.S. mail upon *Pro Se* parties this 21st day of January, 2014, upon the following:

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