

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

P & S ASSOCIATES, GENERAL
PARTNERSHIP and S & P ASSOCIATES,
GENERAL PARTNERSHIP,

CASE NO. 12-028324 (07)
Complex Litigation Unit

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

**CONSERVATOR'S MOTION FOR ENTRY OF AN ORDER APPROVING
STIPULATION
WITH THE MOSS PARTIES**

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), by and through undersigned counsel, hereby files this motion to for entry of an order approving the stipulation with the Moss' parties (the "Motion"), and states as follows:

Background

1. To resolve the dispute between various partners as to an appropriate distribution method, in July of 2012, the Partnerships filed the instant interpleader action (the "Interpleader Action").
2. On January 17, 2013, this Court appointed Philip Von Kahle as Conservator of the Partnerships in a parallel proceeding¹ by entering the *Order Appointing Conservator* (the "Conservator Order").
3. The Conservator Order directed the Conservator to, among other things, advance the Interpleader Action.

¹ *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the "Conservator Suit").

4. On May 31, 2013, the Conservator filed his: *Motion for Summary Judgment to (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedures* (the “Distribution Motion”).

5. On October 7, 2013, this Court granted the Conservator’s Distribution Motion, adopted the recommendations of the Conservator to apply the ‘Net Investment’ method for distributions, and set for trial other outstanding issues.

6. On November 18, 2013, the Conservator filed a copy of a stipulation entered into between the Conservator and Burt and Susan Moss (the “Stipulation”).² Among other things, the parties to the Stipulation agreed that the Conservator was permitted to holdback in reserve \$50,000 from the Moss Parties initial distribution (the “Holdback Funds”).

7. On November 19, 2013 the Court conducted a trial on the remaining issues.

8. On December 20, 2013, the Court entered its Findings of Fact, Conclusions of Law, and Final Order of Distribution (the “Distribution Order”).

9. After several modifications of the Stipulation, the Conservator and the Moss Parties have entered into the Eleventh Modification of Stipulation (the “Modification”,³ collectively with the Stipulation, the “Modified Stipulation”).⁴ Among other things, the Modification resolves the issue of the Holdback Funds by providing that:

The Conservator and the Moss Parties have agreed to resolve the issue of the Conservator recommending to holdback \$50,000.00 (the “Holdback Funds”) from the initial distribution to the Moss Parties with respect to account number PS M52 by stipulating and agreeing that the Conservator shall retain and the Moss Parties waive any interest or claim to \$20,000.00 of the Holdback Funds and the Conservator shall distribute the remaining balance of \$30,000.00 of the Holdback

² The Stipulation is attached hereto as Exhibit “A”.

³ The Modification is attached hereto as Exhibit “B”.

⁴ To the extent the terms of the Modified Stipulation differ from the Motion, the Modified Stipulation controls.

Funds for account number PS M52 to the Moss Parties within ten (10) days of the entry of an Order approving the Stipulation and this modification of Stipulation.

10. Resolution through stipulation, rather than through litigation, conserves the Partnerships', the Moss Parties', and the Court's resources.

11. The Conservator believes approval of the Modified Stipulation would be in the Partnerships' best interest and therefore requests approval of same.

WHEREFORE the Conservator request that this Court enter an Order approving the Modified Stipulation, and for such other relief as the Court deems just and proper.

Respectfully submitted this January 22, 2015.

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Exhibit “A”

IN THE CIRCUIT COURT OF THE 17th
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P & S ASSOCIATES, GENERAL
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CASE NO. 12-028324 (07)
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Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

STIPULATION BETWEEN THE CONSERVATOR AND THE MOSS PARTIES¹

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships") and Burt and Susan Moss (the "Moss Parties"), through their undersigned counsel, hereby stipulate and agree as follows (the "Stipulation"):

1. In the Distribution Motion, the Conservator recommended reserving, but withholding all proposed distributions to the Moss Parties (the "Holdback Issue").
2. The Holdback Issue includes two accounts which the Moss Parties invested directly with P&S: PS M67 and PS M52 (the "Direct Accounts").
3. Additionally, the Conservator recommended withholding funds from an entity, SPJ Investments, Ltd. ("SPJ"), of which Burton Harold Moss IRA was a partner (the "Indirect Account"). SPJ then invested in S&P.
4. The Moss Parties filed an objection to the Distribution Motion's recommendation to reserve, but withhold all distributions to the Moss Parties (the "Moss' Objection").

¹ Capitalized terms not defined herein shall have the meaning ascribed them in the May 31, 2013 *Conservator's Motion for Summary Judgment to (i) Approve Determination Claims; (ii) Approve Plan of Distribution, and (iii) Establish Objection Procedures* (the "Distribution Motion").



5. The Conservator and Moss Parties have agreed to resolve the Holdback Issue and the Moss Objection through the method of distribution in this Stipulation.

6. First, the Moss Parties stipulate that the Conservator's calculation of their Net Investment claim amount as reflected in Exhibit "A" attached to the September 30, 2013 *Reply in Favor of Motion for Summary Judgment* (the "Reply") is true and accurate. Further, the Moss Parties represent that the Moss Parties' Net Investment claim amount in SPJ is \$514,533.31. The Conservator has no facts to dispute this representation

7. Additionally, the Moss Parties agree with the Conservator's recommendation to distribute directly to the partners of SPJ or their qualified custodians.² The Moss Parties agree to cooperate with the Conservator to advance the Conservator's recommendation regarding SPJ, including joining in favor and support of the Conservator's recommended means of distributing to SPJ's investors. Accordingly, the Conservator's ability to distribute directly to the Moss Parties based upon their Indirect Account is contingent upon Court approval, which may be subject to challenge by, among others, SPJ.

8. Prior to making any distribution, the Moss Parties will provide the Conservator with all tax returns for the Moss Parties and the Burt Moss & Associates, Inc. for the years of 2003 through 2008, the period of time the Moss Parties invested in the Partnerships. The Moss Parties represent, and the Conservator enters into this Stipulation with the express understanding, that none of the funds invested by the Moss Parties were derived from the Partnerships. If the Conservator obtains information after the date of this Stipulation that gives the Conservator reasonable cause to believe that any of the funds invested in the Moss Parties Direct Accounts or

² The Moss Parties' have designated as its qualified custodian: Millennium Trust Company ("Millennium").

[REDACTED]

Indirect Account were derived from the Partnerships, the Conservator shall notify the Moss Parties thereof in writing, which notice shall include such new information. The Moss Parties shall then have the right, within ten (10) business days of receipt of such notice, to respond in writing to the Conservator, refuting or explaining such new information. If after reviewing the Moss Parties' response, the Conservator reasonably believes that the new information materially affects Conservator's decision to enter into this Stipulation, on written notice to the Moss Parties, the Conservator may petition the Court with jurisdiction over the Partnerships to declare this Stipulation void.

9. The Moss Parties agree that the Conservator will reserve, but holdback \$50,000.00 from the initial distribution to the Moss Parties with the account number PS M52 until further Order of the Court without prejudice to the parties ability to advance same upon appropriate motion or by the Court *sua sponte*.

10. Susan Moss agrees to appear for no more than five (5) hours on a mutually convenient date and time within the next thirty (30) days to answer questions posed by counsel for the Conservator related to: *P&S Associates, General Partnership, et al. v. Michael D. Sullivan, et al.*, Case No. 12 034123(07) (the "Insider Action") and *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Roberta P. Alves, et. al.* Case No. 12-028324 (07) (the "Interpleader Action"), currently pending in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Statement").

11. The Statement will be transcribed under oath by a court reporter.

12. The Moss Parties will be provided with a copy of the Statement at no cost.

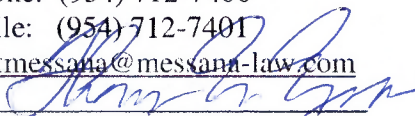
13. Within ninety (90) days after the Statement, the Conservator's attorneys will advise the Moss Parties' attorneys as to whether the Conservator will sue the Moss Parties.

[REDACTED]

14. Within ten (10) days after compliance with paragraphs 6 through 11 of this Stipulation, as determined by the Conservator, or after entry of an Order of the Court authorizing the Conservator to distribute, which ever is later, the Conservator shall distribute to the Moss Parties pursuant to Net Investment their proposed distributions for the Direct Accounts as reflected in Exhibit "A" attached to the Reply, less holdbacks as specified in Paragraph 9 of this Stipulation. Within ten (10) days after entry of an Order by the Court authorizing the Conservator to distribute directly to partners of SPJ, the Conservator shall distribute the Moss Parties' pro rata share in SPJ to Millennium for the benefit of the Moss Parties.

15. Nothing in this Stipulation shall preclude the Conservator's attorneys from deposing the Moss Parties, including Susan Moss, on a date and time other than when Susan Moss appears for the Statement, whether as a party or a non-party witness in the civil actions identified in Paragraph 10 of this Stipulation or otherwise.

Dated October 28, 2013.

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Exhibit “B”

P & S ASSOCIATES, GENERAL
PARTNERSHIP and S & P ASSOCIATES,
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Plaintiff,

v.

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Defendants.

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**ELEVENTH MODIFICATION TO STIPULATION BETWEEN THE CONSERVATOR
AND THE MOSS PARTIES**

Philip J. von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships") and Burt and Susan Moss (the "Moss Parties"), through their undersigned counsel, hereby agree to modify the Stipulation entered into between the Conservator and the Moss Parties dated October 28, 2013 (the "Stipulation") effective as of January 9, 2015 (the "Effective Date") as follows:

1. The Conservator and the Moss Parties have agreed to resolve the issue of the Conservator recommending to holdback \$50,000.00 (the "Holdback Funds") from the initial distribution to the Moss Parties with respect to account number PS M52 by stipulating and agreeing that the Conservator shall retain and the Moss Parties waive any interest or claim to \$20,000.00 of the Holdback Funds and the Conservator shall distribute the remaining balance of \$30,000.00 of the Holdback Funds for account number PS M52 to the Moss Parties within ten (10) days of the entry of an Order approving the Stipulation and this modification of Stipulation.

2. Within 10 days from the entry of an Order approving the Stipulation and this modification of Stipulation, the Conservator agrees to file a stipulation of dismissal with prejudice,

[REDACTED]

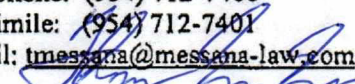
with each party to bear its own attorneys' fees and costs, in the above-styled action for the following parties:

- i. Burt Moss;
- ii. Susan Moss;
- iii. Burton H. Moss IRA; and
- iv. Burt Moss & Associates, Inc. 401K Plan.

3. The Conservator and the Moss Parties have complied with paragraphs 10 through 13 of the Stipulation and shall not have any further obligations with respect to the same.

4. The terms and deadlines in the Stipulation shall be extended through and until the Court enters an Order approving the Stipulation and this modification of Stipulation. In the event the Court does not enter an Order approving the Stipulation and modification, the terms and deadlines in the Stipulation shall be extended through and until five (5) business days after entry of an Order which denies approval of the Stipulation and this modification of Stipulation.

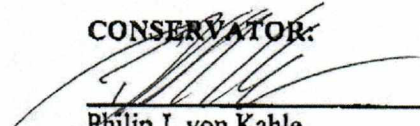
Dated January 9, 2015.

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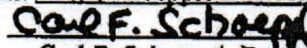
Thomas M. Messana, Esq.
Florida Bar No. 991422

AGREED AND ACCEPTED:

CONSERVATOR:


Philip J. von Kahle

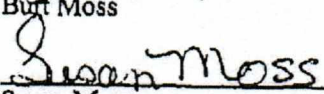
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AGREED AND ACCEPTED:

MOSS PARTIES:


Burt Moss


Susan Moss