

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

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT FRANK AVELLINO'S MOTION TO COMPEL
PLAINTIFFS TO PRODUCE DOCUMENTS RELIED UPON BY
THEIR EXPERT, BARRY E. MUKAMAL**

Defendant, Frank Avellino, by and through his undersigned counsel, hereby files his Motion to Compel Plaintiffs to produce the documents relied upon by their expert, Barry E. Mukamal, and as grounds therefore states as follows:

1. On May 23, 2014 Plaintiffs served their Expert Disclosure, which included a report by Plaintiffs' expert, Barry E. Mukamal.
2. Exhibit 1 of the expert report includes a list of all the documents relied upon by Mr. Mukamal in forming his opinion. A copy of Exhibit 1 to Plaintiffs' expert's report is attached hereto as Exhibit "A".
3. The undersigned has repeatedly asked Plaintiffs' counsel to provide copies of the documents included in Exhibit 1, but to date Plaintiffs' counsel has ignored and/or refused to provide copies of the documents.

4. Without the documents relied upon by Plaintiffs' expert to form his opinions Defendant is unable to meaningfully review the report or adequately prepare to conduct the deposition of Plaintiff's expert.

WHEREFORE Defendant respectfully requests this Court to enter an Order compelling Plaintiffs' counsel to provide copies of the documents listed in Exhibit 1 to Plaintiffs' expert's report.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2016, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

HAILE, SHAW & PFAFFENBERGER, P.A.
Attorneys for Defendant Avellino
660 U.S. Highway One, Third Floor
North Palm Beach, FL 33408
Phone: (561) 627-8100
Fax: (561) 622-7603
gwoodfield@haileshaw.com
bpetroni@haileshaw.com
eservices@haileshaw.com

By: /s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
Florida Bar No. 563102

SERVICE LIST

THOMAS M. MESSANA, ESQ.
MESSANA, P.A.
SUITE 1400, 401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE, FL 33301
tmessana@messana-law.com
Attorneys for P & S Associates General Partnership

LEONARD K. SAMUELS, ESQ.
ETHAN MARK, ESQ.
STEVEN D. WEBER, ESQ.
BERGER SIGNERMAN
350 EAST LAS OLAS BOULEVARD, STE 1000
FORT LAUDERDALE, FL 33301
emark@bergersingerman.com
lsamuels@bergersingerman.com
sweber@bergersingerman.com
DRT@bergersingerman.com
Attorneys for Plaintiff

PETER G. HERMAN, ESQ.
THE HERMAN LAW GROUP, P.A.
1401 E. BROWARD BLVD., STE 206,
FORT LAUDERDALE, FL 33301
servicepgh@thlglaw.com
*Attorneys for Defendants Steven F. Jacob
and Steven F. Jacob CPA & Associates, Inc.*

JONATHAN ETRA, ESQ.
MARK F. RAYMOND, ESQ.
SHANE MARTIN, ESQ.
CHRISTOPHER CAVALLO, ESQ.
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
mraymond@broadandcassel.com
ssmith@broadandcassel.com
ccavallo@broadandcassel.com
jetra@broadandcassel.com
msouza@broadandcassel.com
smartin@broadandcassel.com
Attorneys for Michael Bienes

EXHIBIT 1

S&P Associates, General Partnership
P&S Associates, General Partnership

Documents Relied Upon

1. S&P Amended and Restated Partnership Agreement, dated December 21, 1994
2. P&S Associates GP Amended and Restated Partnership Agreement, dated December 21, 1994
3. Conservator's Motion for Summary Judgment To: (i) Approve Determination Of Claims, (ii) Approve Plan of Distribution, And (iii) Establish Objection Procedure
4. Complaint filed by Margaret J. Smith, et al v. Michael D. Sullivan et al, on December 10, 2012
5. Spreadsheets prepared by Moecker based on analysis of S&P and P&S records:
 - a. List of S&P and P&S checks for the payment of management fees
 - b. List of checks from S&P and P&S to Bernard Madoff Investment Securities, LLC ("BMIS")
 - c. List of deposits to S&P and P&S from BMIS
6. Spreadsheets prepared by Moecker that summarize information reported by S&P and P&S on partner annual statements as follows:
 - a. Annual summary by general partner of each general partners capital account beginning balance, new investments, management fees, expenses, gain (loss) and ending capital balance.
 - b. Cash-In Cash-Out annual total by partner and resulting net cash investment
7. S&P Tax Returns for the years ending 1993 through 2008
8. P&S Tax Returns for the years ending 1993 through 2008
9. S&P general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
10. P&S general ledgers, bank registers, financial statements and trial balances for certain periods during 1997 through 2008.
11. S&P monthly accounting files for the period of 1993 through 2008
12. P&S monthly accounting files for the period of 1993 through 2008
13. S&P reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
14. P&S reports from BMIS titled "Portfolio Management Report" for each year end 12/31 from 1993 through 2008
15. S&P quarterly management fee calculations prepared by managing general partner
16. P&S quarterly management fee calculations prepared by managing general partner
17. S&P Annual Partners Statements for 2008
18. Conversations with Moecker associates

