

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 FamilyTrust, Carone Marital Truste #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 MODIFY:

ORDER GRANTING CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE BERGER SINGERMAN, LLP AND MESSANA, P.A. AS SPECIAL LITIGATION COUNSEL IN THE 'MICHAEL D. SULLIVAN, ET AL.' MATTER AND APPROVING THE CONTINGENCY FEE COMPENSATION AGREEMENT

AND

ORDER GRANTING CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE BERGER SINGERMAN, LLP AS SPECIAL LITIGATION COUNSEL IN THE 'JANET A. HOOKER CHARITABLE TRUST, ET AL.' MATTER AND APPROVING THE CONTINGENCY FEE COMPENSATION AGREEMENT

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"), files this motion (the "Motion") to modify the July 2, 2013 Orders entered by this Court which, among other things, approved payments of certain expenses, including expenses of experts, and mediation in connection with certain suits advanced by the Conservator, styled *Margaret Smith, et. al., v. Michael D. Sullivan, et. al.* (the "Insider Matter") and *Margaret Smith,*

et. al., v. Janet A. Hooker Charitable Trust, et. al. (the “Net Winner Matter”, together with the Insider Matter, the “Lawsuits”) and in support thereof states as follows:

Introduction

With the assistance of counsel, certain experts, and mediators, the Conservator has successfully advanced the Lawsuits. To date, these efforts have resulted in net recoveries of approximately \$1.76 million dollars for the Partnerships.

Prosecution of the Lawsuits allowed the Conservator to provide an interim distribution to the Partnerships. Through this Motion, the Conservator seeks authority to increase the expense allowance in order to pay costs associated with the litigation and collection actions related to the Lawsuits. The Conservator believes an increase in his expense allowance is reasonable and in the best interest of the Partnerships as it will allow the Partnerships to further advance the Lawsuits and recover additional assets for distribution to partners.

Background and Argument

1. On December 10, 2012, the Partnerships commenced the Insider Matter against, among others, certain of the Partnerships’ principals, affiliates, related parties, and recipients of purported ‘management’ and ‘referral’ fees.¹ Similarly, on December 10, 2012, the Partnership commenced the Net Winner Matter against certain of their general partners on principles of partnership, contract, and fraudulent transfer law and principles of equity.²

2. 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

¹ The Insider Matter was originally commenced by Berger Singerman who filed the original complaint on the Partnerships’ behalf.

² The Net Winner Matter was originally commenced by Berger Singerman who filed the original complaint on the Partnerships’ behalf.

to review, prosecute, dismiss, initiate and investigate any and all potential claims that may be brought or have been brought on behalf of the Partnerships (the “Claims”).

3. On April 24, 2013, the Conservator filed motions to retain and compensate special counsel to advance the Insider Matter and Net Winner Matter (the “Retention Motions”). Additionally, the Retention Motions sought approval to pay up to \$50,000.00 in costs in each of the Lawsuits (the “Expense Allowance”).

4. On July 2, 2013, over the objection of defendants in the Insider Matter, the Court entered Orders which granted the Retention Motions (the “Retention Orders” and each, a “Retention Order”).³

5. The Conservator, through special counsel, advanced the Lawsuits to the benefit of the Partnerships and in a fiscally responsible manner. To date, the Conservator’s prosecution of the Lawsuits has resulted in net recoveries of approximately \$1.76 million dollars for the Partnerships. Such efforts allowed the Conservator to provide an interim distribution to the Partnerships.

6. Based on estimates through the date of filing this Motion, the Expense Allowance accounts do not have sufficient funds to pay reasonable and necessary going forward expenses of the Lawsuits.

7. Through this Motion the Conservator seeks to Modify the Retention Orders to authorize an increase the Expenses Allowance by:

- a. an additional \$30,000.00 for the Net Winner Matter; and
- b. an additional \$50,000.00 for the Insider Matter (the “Costs Requests”).

8. The Conservator believes granting the Costs Requests is in the best interest of the Partnerships because continuation of the Lawsuits will provide a benefit to the Partnerships. As mentioned, recovery in the Lawsuits has resulted in net recoveries of approximately \$1.76 million

³ Copies of the Retention Orders are attached as Composite **Exhibit “A”**.

dollars for the Partnerships to date. The Conservator anticipates additional recoveries are achievable given the necessary resources.

9. Therefore, the Conservator requests that this Court enter an Order authorizing the Costs Requests and keeping all other terms of the Retention Orders in full force and effect.⁴

WHEREFORE, the Conservator requests that the Court enter Orders modifying the Retention Orders as follows: (i) increasing the Conservator's Expense Allowance by \$30,000 on the same terms applicable to the Retention Order in the Net Winner Matter; (ii) increasing the Conservator's Expense Allowance by \$50,000 on the same terms applicable to the Retention Order in the Insider Matter; and (iii) granting such other relief as the Court deems just and proper.

Dated: February 12, 2015.

MESSANA, P.A.
General Counsel for the Conservator
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401

By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422
Thomas G. Zeichman, Esq.
Florida Bar No. 99239

⁴ To the extent granting authority to the Conservator to pay reasonable and necessary costs without further court order conflicts with the Order of Appointment, the order emanating from the instant Motion shall control and be deemed to modify the Order of Appointment solely to allow the Conservator to pay such reasonable and necessary costs on a monthly basis without requiring a further court order.

Composite Exhibit “A”

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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,

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**ORDER GRANTING CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE
BERGER SINGERMAN, LLP AS SPECIAL LITIGATION COUNSEL IN THE 'JANET
A. HOOKER CHARITABLE TRUST, ET AL.' MATTER AND APPROVING THE
CONTINGENCY FEE COMPENSATION AGREEMENT**

THIS MATTER came before the Court upon the *Conservator's Motion to Retain and Compensate Berger Singerman, LLP as Special Litigation Counsel in the 'Janet A. Hooker Charitable Trust, et al.' Matter and Approving the Contingency Fee Compensation Agreement* (the "Motion") filed by the Court-Appointed Conservator, Philip Von Kahle. The Court having reviewed the Motion, having heard argument and proffer of counsel, having reviewed *in camera* the proposed engagement agreements, finding that sufficient notice has been given to all partners and parties-in-interest, finding that the proposed standard contingency fee for recovery of Berger Singerman, LLP is 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. The law firm of Berger Singerman, LLP is hereby appointed as special litigation counsel in the 'Janet A. Hooker Charitable Trust, et al.' matter for the Conservator.

3. The terms of compensation of the law firm of Berger Singerman, LLP as set forth in the Motion is hereby approved.

Done and ordered in Chambers this

July 2, 2013
TRUE COPY
JUL 02 2013
JEFFREY E. STREITFELD
HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.

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ORDERED and **ADJUDGED** as follows:

1. The Motion is GRANTED.

2. The law firms of Berger Singerman, LLP and Messana, P.A. are hereby appointed as special litigation counsel in the 'Michael D. Sullivan, et al.' matter for the Conservator.

3. The terms of compensation of the law firms of Berger Singerman, LLP and Messana, P.A. as set forth in the Motion are hereby approved.

Done and ordered in Chambers this July 2, 2013.

TRUE COPY

JUL 02 2013

JEFFREY E. STREITFELD

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.