

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NUMBER: 12-34121 (07)
COMPLEX LITIGATION UNIT

MARGARET SMITH, et al.,

Plaintiffs,

v.

JANET A HOOKER CHARITABLE
TRUST, et al.,

Defendants.

_____ /

NOTICE OF FILING AFFIDAVIT OF CATHARINE SMITH

Defendant, Catharine Smith, by and through their undersigned attorneys, hereby files the
Affidavit of Catharine Smith in Support of her Motion for Summary Judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed and served through the court's e-filing portal to Gary J. Rotella (rotellagar@aol.com), Rotella Law, PA, 150 N. Federal Highway, Ste. 250, Fort Lauderdale, FL 33304; Joseph P. Klapholz, Esq., Joseph P. Klapholz, P.A., 2500 Hollywood Blvd., Suite 212, Hollywood, FL 33020, (jklap@klapholzpa.com; dml@klapholzpa.com), Peter G. Herman, Esq., Tripp Scott, 110 SE Sixth Street, Suite 1500, Fort Lauderdale, FL 33301, (PGH@trippscott.com); Michael R. Casey, Esq., 1831 NE 38th St., # 707, Oakland Park, FL 33308, (mcasey666@gmail.com); Michael C. Foster, Esq., Annette M. Urena, Esq., Daniels Kashtan, 4000 Ponce de Leon Blvd., Suite 800, Coral Gables, FL 33146, (Mfoster@dkdr.com; aurena@dkdr.com); Marc S. Dobin, Esq., Dobin Law Group, PA, 500 University Boulevard, Suite 205, Jupiter, FL 33458, (service@DobinLaw.com); Julian H. Kreeger, Esq., 2665 South Bayshore Drive, Suite 2220-14, Miami, FL 33133 (Juliankreeger@gmail.com); Thomas M. Messana, Esq., Brett Lieberman, Esq., Messana, P.A., 401 East Las Olas Boulevard, Suite 1400, Fort Lauderdale, FL 33301, (tmessana@messana-law.com; bliberman@messana-law.com); Daniel W. Matlow, Esq., Daniel W. Matlow, P.A., Emerald Lake Corporate Park, 3109 Stirling Road, Suite 101, Fort Lauderdale, FL 33312, (dmatlow@danmatlow.com; assistant@danmatlow.com); Richard T. Woulfe, Esq., Bunnell & Woulfe P.A., One Financial Plaza, Suite 1000, 100 SE Third Avenue, Fort Lauderdale, FL 33394, (Pleadings.RTW@bunnellwoulfe.com); Joanne Wilcomes, Esq., McCarter & English, LLP, 100 Mulberry Street, Four Gateway Center, Newark, NJ 07102, (jwilcomes@mccarter.com); Thomas L. Abrams, Esq., 1776 N. Pine Island Road, Suite 309, Plantation, FL 33322, (tabrams@tabramslaw.com); Zach Hyman (zhyman@bergersingerman.com) Berger Singerman, 350 E. Las Olas Blvd., Ste. 1000, Ft. Lauderdale, Florida, 33301-4215, this 16th day of March, 2014.

MCCABE RABIN, P.A.
Attorneys for Defendant, Catharine Smith
1601 Forum Place, Suite 505
West Palm Beach, Florida 33401
Phone: (561) 659-7878
Fax: (561) 242-4848

By: _____

Ryon M. McCabe
Florida Bar No.: 009075
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CASE NUMBER: 12-34121 (07)
COMPLEX LITIGATION UNIT

MARGARET SMITH, et al.,

Plaintiffs,

v.

JANET A HOOKER CHARITABLE
TRUST, et al.,

Defendants.

AFFIDAVIT OF CATHARINE SMITH IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

Catharine Smith submits this affidavit and states as follows:

1. I submit this affidavit based upon my personal knowledge and in support of my Motion for Summary Judgment as to Plaintiffs' Third Amended Complaint.
2. On September 5, 1995, I executed the partnership agreement for S&P Associates, General Partnership. A true and correct copy of my signature page to the S&P Partnership Agreement received from S&P in discovery in this case is attached hereto as Exhibit A. I never executed a partnership agreement with, invested in, or received a distribution from P&S Associates, General Partnership.
3. According to the "Detail of Account" received from S&P in discovery in this case, a true and correct copy of which is attached hereto as Exhibit B, from September 6, 1995, to February 25, 1999, my late husband, Berry Smith, and I contributed a total of \$185,000 to S&P. My husband was solely responsible for writing the contribution checks and communicating with S&P. The "Detail of Account" shows that from November 6, 2000, to January 25, 2005, my late husband

and I received \$340,572.02 in distributions from S&P. *See* Exhibit B.

4. On March 5, 2004, Berry Smith, on behalf of himself and me, provided our written notice of withdrawal as partners to S&P:

Catharine and I wish to withdraw all our funds from the Partnership at your earliest convenience.

We have been completely pleased to have been your partners over the past several years and congratulate you for your excellent performance as General Partners.

Thank you, and best wishes for continued success.

A true and correct copy of the withdrawal letter to S&P received from S&P in discovery this case is attached hereto as Exhibit C (emphasis added).

5. The “Detail of Account” shows that I received my final distribution from S&P on January 25, 2005. *See* Exhibit B.

6. Thereafter, S&P issued its Year 2005 Schedule K-1 to me, which shows the partners’ share of income, deductions, and credits. Notably, the 2005 Schedule K-1 shows the following:

- a check mark indicating it is the “**Final K-1**”;
- an ending ownership percentage of **0.0%**; and
- an ending capital account of **\$0**.

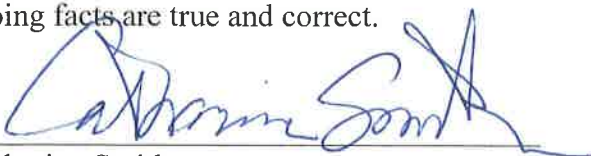
A true and correct copy of the 2005 Schedule K-1 S&P issued to me is attached hereto as Exhibit D (emphasis added).

7. On October 18 and 30, 2013, I, through my counsel, received from S&P two demand letters informing me that I allegedly received improper distributions in an amount totaling \$155,572.72. True and correct copies of these letters are attached hereto as Composite Exhibit E.

The letters attached statements detailing the funds contributed and disbursed from my capital account from 1995 through 2005. Although these statements do not specify exact dates, they definitively show that the last distribution I received from S&P was in 2005.

8. I never had any involvement whatsoever with S&P, its management and affairs, or its other partners beyond my husband, except for the contributions to S&P made in my name by my husband and the distributions referenced herein.

9. I swear and affirm that the foregoing facts are true and correct.

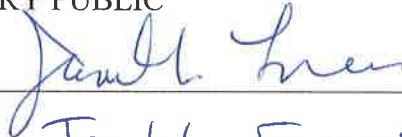

Catharine Smith

The foregoing instrument was sworn to, subscribed and acknowledged before me this 10th day of March, 2014, by Catharine Smith, who is personally known to me or produced identification

(SEAL)

NOTARY PUBLIC

Sign



Print

Janet L. Furness

State of

FL

at Large

My commission expires:



Complete #1, #2, and Exhibit A and mail this page only with check made payable to "S&P Associates, G/P" to:

S & P ASSOCIATES, General Partnership
c/o SULLIVAN & POWELL
225 N. FEDERAL HWY., SUITE 600
POMPANO BEACH, FL 33062

1) The parties hereto have executed this Agreement by the signature and date set forth below. (Sign and date)

[Signature] Date: 9-5-95

Date: _____

Date: _____

Date: _____

2) Please check one of the following:

I elect to receive my distributions on a quarterly basis.

I elect to have my quarterly distribution re-invested in the Partnership.

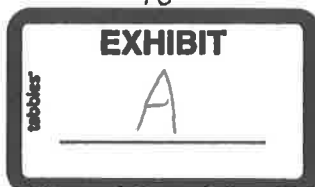
EXHIBIT A (Title of Your Account)

Name, Address &
Telephone # and Fax #

Soc. Sec. # or
Federal ID#

Capital Contribution

CATHARINE B. SMITH 287 26 3254 \$ 30,000
3733 SE STARBOARD LANE
STUART, FL, 34997



DETAIL OF ACCOUNT

S&P Associates General Partnership
 Account: Catherine B. & Berry C. Smith

Year	Date	Payee	Investments	Distributions	Check Number
1995	9/6/1995	S&P Associates	\$ 30,000.00		1360
1996	9/10/1996	S&P Associates, General Partnership	\$ 30,000.00		
1996			\$ 25,000.00		1590
1997	10/31/1997	S&P Associates	\$ 25,000.00		
1997			\$ 30,000.00		1824
1998	12/25/1997	S&P Associates, General Partnership	\$ 50,000.00		1849 **
1998			\$ 50,000.00		
1999	2/25/1999	S&P Associates, General Partnership	\$ 50,000.00		2053
1999			\$ 50,000.00		
2000	11/6/2000	Catherine B. & Berry C. Smith		\$ (15,000.00)	3776
2001				\$ (15,000.00)	
2002	2/4/2002	Catherine B. & Berry C. Smith		\$ (150,000.00)	4247
2003	12/26/2003	Catherine B. & Berry C. Smith		\$ (150,000.00)	4789
2004	3/9/2004	Catherine B. & Berry C. Smith		\$ (15,000.00)	
2004				\$ (158,262.96)	4850
2005	1/25/2005	Catherine B. & Berry C. Smith		\$ (158,262.96)	
2005				\$ (2,309.06)	5180
Totals			\$ 185,000.00	\$ (340,572.02)	

** Check not credited to the account until 1998

Ending Balance= \$ (155,572.02)



Berry C. Smith

5 March 2004

S & P Associates, General Partnerships
6550 North Federal Highway Ste 210,
Ft. Lauderdale, FL, 33308

Catherine and I wish to withdraw
all our funds from the Partnerships at
your earliest convenience.

We have been completely pleased to
have been partners over the past several
years and congratulate you for your
excellent performance as General Partners.

Thank you, and best wishes for
continued success.

Yours truly,

Berry C. Smith

Catherine B. Smith



Schedule K-1 (Form 1065)

2005

Final K-1 Amended K-1 OMB No. 1545-0099

Department of the Treasury Internal Revenue Service

For calendar year 2005, or tax year beginning ending

Partner's Share of Income, Deductions, Credits, etc.

See separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Table with 2 columns: Description and Amount. Rows include Ordinary business income (loss), Net rental real estate income (loss), Other net rental income (loss), Guaranteed payments, Interest income, Dividends, Royalties, Net short-term/long-term capital gain (loss), Collectibles gain (loss), Net section 1231 gain (loss), Other income (loss), Section 179 deduction, Other deductions, Self-employment earnings (loss), Credits & credit recapture, Foreign transactions, Alternative min tax (AMT) items, Tax-exempt income and nondeductible expenses, Distributions, Other Information.

Part I Information About the Partnership

Form with fields A-F: Partnership's employer identification number, Partnership's name, address, city, state, and ZIP code, IRS Center where partnership filed return, Check if this is a publicly traded partnership (PTP), Tax shelter registration number, Check if Form 8271 is attached.

Part II Information About the Partner

Form with fields G-K: Partner's identifying number, Partner's name, address, city, state, and ZIP code, General partner or LLC member-manager, Domestic partner, Foreign partner, What type of entity is this partner?

Table for Partner's share of profit, loss, and capital. Columns: Beginning, Ending. Rows: Profit, Loss, Capital.

Form for Partner's share of liabilities at year end: Nonrecourse, Qualified nonrecourse financing, Recourse.

Table for Partner's capital account analysis: Beginning capital account, Capital contributed during the year, Current year increase (decrease), Withdrawals & distributions, Ending capital account.

Form with checkboxes: Tax basis, GAAP, Section 704(b) book, Other (explain).

*See attached statement for additional information.

For IRS Use Only

EXHIBIT



Leonard K. Samuels
(954) 712-5142
LSamuels@bergersingerman.com

October 18, 2013

Catherine Smith & Berry Smith
Attention: Ryon M. McCabe, Esq.
McCabe Rabin, P.A.
1601 Forum Place, Suite 505
West Palm Beach, FL 33401

Re: P&S Associates, General Partnership
Case No.: 12-34121

Dear Mr. McCabe:

I am counsel for the court-appointed Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," together, the "Partnerships").

On October 7, 2013, Judge Streitfeld entered an order approving a method of distributing the Partnerships' assets to their respective partners in furtherance of winding up the Partnerships' business. As part of winding up the Partnership's business, each partner is entitled to a settlement of all partnership accounts.

In order to effectuate a settlement of partnership accounts, Florida law mandates that a partner contribute an amount equal to any excess of the charges over credits in the partner's account. *See Fla. Stat. § 620.8807.*

As of the date of this letter, the books and records of P&S state that your account has an excess of charges over credits because you have received \$155,572.02 from P&S in excess of your contributions to P&S, and there are partners in P&S who have received distributions from P&S that are less than their contributions. Enclosed as **Exhibit A** is a document setting forth the funds contributed to and disbursed from your P&S capital account from December 1992 through December 2008.

Therefore, pursuant to your obligation to contribute to P&S at the winding up of its business, **please pay the sum of \$155,572.02 no later than October 28, 2013, to:**

Berger Singerman, LLP Trust Account
Attn: Leonard Samuels, Esq.
350 E. Las Olas Blvd.
Suite 1000
Ft. Lauderdale, FL 33301



Catherine Smith & Berry Smith
Ryon M. McCabe, Esq.
October 18, 2013
Page 2

In the absence of a timely, conforming payment, appropriate action will be taken to recover this sum from you.

Should you have any questions, please do not hesitate to contact my colleague, Zachary Hyman, via e-mail at zhyman@bergersingerman.com or by phone at 954-712-5180. However, we must receive payment of the above amount no later than October 28, 2013.

Sincerely,



Leonard Samuels as, as Court-Appointed Counsel
for the Conservator of the Partnerships

Enclosure

Exhibit "A"
In re S&P Associates, General Partnership
 Catherine B. & Berry C. Smith

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1995		\$ 30,000.00		\$ 30,000.00
1996	\$ 30,000.00	\$ 25,000.00		\$ 55,000.00
1997	\$ 55,000.00	\$ 30,000.00		\$ 85,000.00
1998	\$ 85,000.00	\$ 50,000.00		\$ 135,000.00
1999	\$ 135,000.00	\$ 50,000.00		\$ 185,000.00
2000	\$ 185,000.00		\$ (15,000.00)	\$ 170,000.00
2001	\$ 170,000.00			\$ 170,000.00
2002	\$ 170,000.00		\$ (150,000.00)	\$ 20,000.00
2003	\$ 20,000.00		\$ (15,000.00)	\$ 5,000.00
2004	\$ 5,000.00		\$ (158,262.96)	\$ (153,262.96)
2005	\$ (153,262.96)		\$ (2,309.06)	\$ (155,572.02)
2006	\$ (155,572.02)			\$ (155,572.02)
2007	\$ (155,572.02)			\$ (155,572.02)
2008	\$ (155,572.02)			\$ (155,572.02)

Ending Balance= \$ (155,572.02)

October 30, 2013

Catherine & Berry Smith
Ryon M. McCabe, Esq.
McCabe Rabin, P.A.
1601 Forum Place, Suite 505
West Palm Beach, FL 33401

**Re: S&P Associates, General Partnership
Case No.: 12-34121**

Dear Mr. & Mrs. Smith:

I am counsel for the court-appointed Conservator (“Conservator”) of P&S Associates, General Partnership (“P&S”) and S&P Associates, General Partnership (“S&P”, together, the “Partnerships”).

By letter dated October 18, 2013, I requested that you immediately return the amount of \$155,572.02. A copy of that letter is attached hereto. While that letter contained a typographical error that referenced “P&S” instead of “S&P”, the amount owed by you to S&P was correctly noted in the letter and the exhibit that was attached to the letter. That amount was due on October 28, 2013.

Should you have any questions, please do not hesitate to contact my colleague, Zachary Hyman via e-mail at zhyman@bergersingerman.com or by phone at 954-712-5180.

Sincerely,



Leonard Samuels

October 18, 2013

Catherine Smith & Berry Smith
Attention: Ryon M. McCabe, Esq.
McCabe Rabin, P.A.
1601 Forum Place, Suite 505
West Palm Beach, FL 33401

Re: P&S Associates, General Partnership
Case No.: 12-34121

Dear Mr. McCabe:

I am counsel for the court-appointed Conservator of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P," together, the "Partnerships").

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In order to effectuate a settlement of partnership accounts, Florida law mandates that a partner contribute an amount equal to any excess of the charges over credits in the partner's account. *See Fla. Stat. § 620.8807.*

As of the date of this letter, the books and records of P&S state that your account has an excess of charges over credits because you have received \$155,572.02 from P&S in excess of your contributions to P&S, and there are partners in P&S who have received distributions from P&S that are less than their contributions. Enclosed as **Exhibit A** is a document setting forth the funds contributed to and disbursed from your P&S capital account from December 1992 through December 2008.

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Suite 1000
Ft. Lauderdale, FL 33301

Catherine Smith & Berry Smith
Ryon M. McCabe, Esq.
October 18, 2013
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In the absence of a timely, conforming payment, appropriate action will be taken to recover this sum from you.

Should you have any questions, please do not hesitate to contact my colleague, Zachary Hyman, via e-mail at zhyman@bergersingerman.com or by phone at 954-712-5180. However, we must receive payment of the above amount no later than October 28, 2013.

Sincerely,



Leonard Samuels as, as Court-Appointed Counsel
for the Conservator of the Partnerships

Enclosure

Exhibit "A"
In re S&P Associates, General Partnership
 Catherine B. & Berry C. Smith

Year	Cash Balance Forward	New Investment	Distributions	Ending Balance
1995		\$ 30,000.00		\$ 30,000.00
1996	\$ 30,000.00	\$ 25,000.00		\$ 55,000.00
1997	\$ 55,000.00	\$ 30,000.00		\$ 85,000.00
1998	\$ 85,000.00	\$ 50,000.00		\$ 135,000.00
1999	\$ 135,000.00	\$ 50,000.00		\$ 185,000.00
2000	\$ 185,000.00		\$ (15,000.00)	\$ 170,000.00
2001	\$ 170,000.00			\$ 170,000.00
2002	\$ 170,000.00		\$ (150,000.00)	\$ 20,000.00
2003	\$ 20,000.00		\$ (15,000.00)	\$ 5,000.00
2004	\$ 5,000.00		\$ (158,262.96)	\$ (153,262.96)
2005	\$ (153,262.96)		\$ (2,309.06)	\$ (155,572.02)
2006	\$ (155,572.02)			\$ (155,572.02)
2007	\$ (155,572.02)			\$ (155,572.02)
2008	\$ (155,572.02)			\$ (155,572.02)

Ending Balance= \$ (155,572.02)