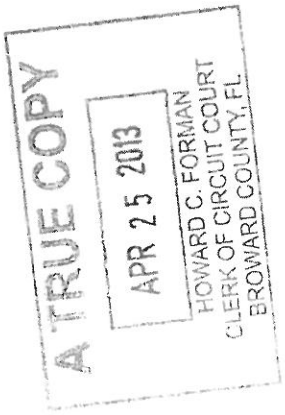
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDCIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT



MATTHEW CARONE, as Trustee for the Carone Martial Trust # 2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, JAMES JORDAN, as Trustee for The James A. Jordan Living Trust, ELAINE ZIFFER As individual and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN

Defendant

OPPOSITION RESPONSE AND OBJECTIONS TO CONSERVATOR'S FEE REPORT

My name is Burt Moss. I am a Partner in both the P&S Associates Partnership and the S&P Associates Partnership (thru SPJ Investors).

I agree with and ratify the objections raised by Steven Jacob in his Opposition Response and Objections To Conservators Fee Report filed with the Court on April 18, 2013.

However, I would like to expand upon the rationale why the Conservator erred in his recommendation regarding the fees to Berger, Singerman and Glass, Ratnor:

1. The Partnership Agreement(s) in Article 14.08 requires Arbitration to resolve disputes or claims. Clearly the suit brought about by the Berger, Singerman and Glass Ratnor Firms on behalf of their clients, Matthew Carone, et al; James Jordan; Elaine Ziffer and the Festus and Helen Stacy Foundation, Inc is a dispute.

This was an attempt to side step the provisions of the Partnership Agreements to resolve their claims against Michael Sullivan as the Managing General Partner of both Partnerships. This was a direct violation of the terms and conditions of the Agreements that all Partners signed and they should not be rewarded for this breach. This breach has caused thousands of dollars in extra expense for legal fees that has been born by all of the Partners.

2. Article 8.03 of the Partnership Agreement(s) prohibits "Partners" without the Consent of the Managing General Partner or "all of the other Partners" to act on the behalf of the Partnership to execute an agreement for the Partnership.

   The engagement of the Berger, Singerman law firm and the Glass, Ratnor firm was in direct violation of this provision.

   The Partners who engaged the Berger, Singerman firm and Glass, Ratnor firm did not have the consent of Michael Sullivan, MGP or all of the partners when they engaged these firms. This breach has also caused thousands of dollars in extra expenses to be incurred by all partners.

   The Florida Statutes Section 620.8401 (2012) item (10) provides; "An act outside the normal course of business of a partnership...may be undertaken only with the consent of all of the partners" The hiring of BS and GR did not have the approval of all the partners.

3. Article 8.02 (a) of the Partnership Agreement(s) empowers the authority to engage
   Firms or terminate attorneys, Accountants or other personnel at the discretion of the Managing General Partner only.

   The Berger, Singerman and Glass, Ratnor firms were engaged by the Partners in question without proper authority.

   They did not have consent of the Managing General Partner (MGP) or all of the Partners.

4. Due to the failure to comply with Sections 8.03, 14.08, and 8.02(a) of the Partnership Agreement by the Partners in question,(Carone, Jordan, Ziffer and Stacy Foundation), they should be subject to default pursuant to Section 10.01(b) of the Partnership Agreement.

   They clearly violated the terms and provisions of the Partnership Agreement(s) and should not be reimbursed for this. Possibly, their default may make them ex-partners .This is an event causing" disassociation." (Fla. Statutes 620.8601 (2) and (3).

5. Section 14.03 of the Partnership Agreement limits the Liability of Partners due to Several factors and the engagement of the Berger, Singerman Law firm and Glass, Ratnor firm should be subject to this provision. The Partners that did not approve or engage these firms should not be forced to have their claims reduced by these unauthorized expenses. (Exhibit 1)

6. The Glass Ratnor firm was represented at the special meetings of the Partnerships on 8/17/12 by Margaret Smith and Carol Fox.

   When introducing Ms. Fox (P&S transcript page 16 lines 15-25, pages 17 and 19) nowhere did Ms. Fox disclose that she and her family were Partners in the S&P Partnership and that a number of conflicts of interest existed due to that relationship.(Exhibits 2 and 3)

   The conflicts include:
   (a) She had a vested interest in the claims of the S&P Partnership as opposed to the P&S Partnership. P & S Partners needed to know this.
   (b) She would be compensated directly if her firm was engaged by the Partnerships
   (c) In the claim for Fee's presented by the Glass Ratnor firm, Carol Fox CPA was billing for 289.20 hours of the total 589.20 hours purportedly spent by that firm to try to uncover improprieties. Her hours on this matter were over one half of the Glass, Ratnor bill – 55%.
   (d) As a victim of the Bernard Madoff Ponzi Scheme, Ms. Fox was motivated to try and find someone else to blame no matter the cost to the other victims of the Partnerships if she was able to recoup a portion of her losses by the other Partners being forced to pay her fee's.

7. Aside form the Partnership provisions detailed above, the proof that the firms in question were not representing the Partnerships can be found in the transcripts of the disputed Partnership elections held on August 17, 2012. In the transcript of the P&S Associates Special Meeting, on page 14 lines 23-25 Mr. Samuels of Berger, Singerman states: "There's also been extensive forensic accounting work done already and paid for by my clients out of pocket, and we do have some initial findings."

   If this is the case, why did the claims filed with the Conservator from both Berger, Singerman and Glass, Ratnor predate this meeting? Clearly the clients he referred to were Carone, Ziffer, Jordan and the Stacy Foundation. The first 27 pages of the 50 page claim for fees presented by Berger, Singerman is actually made out to the Festus & Helen Stacy Foundation-not the Partnerships. Those fees are for work from 4/5/2012-8/30/2012. (Exhibit 6) The claim for fee's submitted by Glass,

Ratnor commences on 5/8/2012 and retainers were paid by individual partners-not the partnerships. (Exhibit 5)

If the forensic accounting had significant findings, why were so many hours required after the 8/17/12 meetings? What did they uncover? What revenue have they brought to the Partnerships?

8. On page 19 lines 16-18 of the P&S Transcript for Special Meeting of the P&S Partnership, Mr. Jacob questioned Mr. Samuels if a report of his findings would be available to all Partners.

   On page 19, lines 19-23 Mr. Samuels responded: "That the report that was done so far was done on behalf of our clients (referring to Carone, Ziffer, Jordan, and Stacy Foundation) at this point in time, so it's not available to everybody at this point because it was done under the auspices of attorney/client privilege at this time".(Exhibit 2)

   This is further evidence that the Berger, Singerman firm does not represent the Partnerships and only those Partners who chose to hire them. As of this date, that report has never been seen by all or sent to all Partners.

9. I concur with Mr. Jacob regarding the necessity to legitimize or reject the disputed Elections held on 8/17/2012. If in fact the Court finds that those elections were not held Pursuant to the Provisions of the Partnership Agreements. The fee's claimed by Berger, Singerman and Glass Ratnor should be a moot point and clearly belong to the Partners who engaged them – not all of the Partners!

10. On November 20, 2012 – the Becker and Poliakoff law firm as counsel for both Partnerships filed a motion with this Court, specifically on pages 6&7 Article II spelled out the reasons why Berger, Singerman and Glass, Ratnor should not be engaged to represent the Partnerships. We concur with their representations. (Exhibit4)

11. Fees should be "Reasonable". On every occasion that I attended ranging from the disputed elections on 8/17/2012 to the most recent hearing on 4/18/2013 the Berger, Singerman law firm has had three to five attorneys attending at each of those meetings/hearings. While I do not have the capacity to examine every hour they billed, I have to believe they are billing or have billed for every attorney in attendance.
    I am certain that the Berger, Singerman firm has at least one competent member to handle those matters alone and the necessity to have multiple attorneys at every turn is nothing short of "padding the bill".

Despite all objections above, it is unreasonable to have incurred a "discounted" bill of $125,000.00 for such a short period of time .It was the strategy of using multiple Attorneys that created such a large fee claim.

12. The Conservator is proposing to engage the Berger, Singerman firm to handle Claw-back proceedings on a contingency fee basis. Some of the hourly fee's presented by Berger, Singerman encompass preparation and research for the filings necessary to allow those suits to take place.

    I do not object to the hiring of Berger, Singerman to handle these matters on a contingency basis, but am of the belief that the hours spent to allow the pursuit of these matters should be subject to the 'Contingency Agreement" and should not be paid by both hourly fee's and contingency fee's. If the Court holds that Berger, Singerman should be paid by the Partners, they should not be paid double!

13. To date, the professional fees incurred by the Partnerships have been paid by whichever Partnership had the cash. The S&P Partnership has received approximately 75% of the claim allowed by the Madoff Trustee leaving P&S only 25%. Of the known fees paid from 2009 to present (4/18/2013) 60% has been paid by P&S and only 40% by S&P. If this was on a pro-rata basis for claims allowed – P&S should have only paid 25%! If the Court allows this to continue and if P&S has to pay 50% of the costs it will mean those Partners will lose a significantly greater percentage of their claim than those by the S&P Partnership. I ask the Court for relief on behalf of the P&S Partners to not allow their disbursement from the Madoff Trustee to be so greatly diminished in this manner.

    This relates to the subject at question – Conservators Fee Request – since the impact to the P&S Partners is so greatly impacted. I urge the Court to fix this and instruct the Conservator to adjust fees on a pro-rata basis based proportionately to the claims allowed before any disbursements are made.(Exhibit7)

14. The Conservator cites Florida Patient's Compensation Fund vs Lena Rowe as the authority for the payment of the disputed fee's. We disagree with this case as the rationale to pay Berger, Singerman and the Glass, Ratnor firm for the following reasons:

    The foundation of the cited case law is section 786.56 of the Florida Statutes. This section directs a trial court to award reasonable attorney's fee to the prevailing party in a medical malpractice action.(Exhibit8)

    The Carone et.al group vs. Sullivan case is not a Medical Malpractice case nor is there a "prevailing party"! The "American Rule" which is adopted by the State of Florida provides that attorney fees may be awarded by a court only when author-

ized by Statute or by agreement of the parties. See Hampton's Estate v. Fairchild Florida Construction Co., 341 So. 2d 759 (Fla.1976)

Clearly, in this matter there is no agreement of the parties! Additionally, the Conservator has failed to provide the Florida Statute that would award attorney fee's in a disputed situation such as this.

15) The Glass Ratnor firm is not a law firm and is in essence an "expert witness' for the Carone et. al v. Sullivan lawsuit. The Florida Statutes do not require the award of fee's for expert witnesses. (In the Supreme Court of Florida State of Florida Appellant/Cross Apellee)) 77-116-CFA) Bennie Demps.

16) The "Conservator" has failed to provide proof of applying any standard to determine that the fee's sought by Berger, Singerman and Glass, Ratnor are "reasonable"! The mere statement that they are reasonable does not meet the standards set in Florida Patients Compensation Fund v. Rowe, 471 So. 2nd 1145 (Fla. 1985)

Respectfully Submitted

Burt Moss, Partner of S&P
And P&S Partnerships

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