

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO: 12-34121(07)

Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of  
P&S ASSOCIATES, GENERAL PARTNERSHIP,  
and S&P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE TRUST, et al,

Defendants.

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**DEFENDANTS JAMES AND VALERIE JUDD'S**  
**MOTION FOR SUMMARY JUDGMENT**

Defendants, James Judd and Valerie Judd (“Defendants Judd”) move for Summary Judgment on the following grounds:

**PRELIMINARY STATEMENT**

1. So as not to be unnecessarily duplicative, Defendants Judd adopt and incorporate by reference the Motion for Summary Judgment and authorities filed by the other Defendants.

In addition:

**STATEMENT OF FACTS**

2. Plaintiffs have failed to allege that either Defendant James Judd or Defendant Valerie Judd were ever given a copy of the Amended Partnership Agreement for S & P Associates.

3. Neither Defendant James Judd nor Defendant Valerie Judd were ever given a copy of the Amended Partnership Agreement of S & P Associates, which Plaintiffs have attached to the Third Amended Complaint.

4. Defendant James Judd did not sign the page attached here to as Exhibit 1 or either of the checks attached hereto as Exhibit 2.

5. The signatures on Exhibits 1 and 2 hereto are those of Defendant Valerie Judd.

6. Contrary to Plaintiff's suggestion in paragraph 41 of the Third Amended Complaint, no "annual distributions" were made to, or received by, Defendant James Judd or Defendant Valerie Judd.

7. As shown on Exhibit 1 hereto, "quarterly distributions" were "reinvested in the Partnership" and became Capital Contributions.

8. The only monies received by either Defendant James Judd or Defendant Valerie Judd were returns of Capital Contributions received when Valerie Judd made requests to withdraw Capital Contributions when there was need for living expenses.

9. As shown on the Schedule K-1 (Form 1065) provided by S&P Associates (Exhibit 3 hereto), the balance for the Capital account for James Judd and Valerie Judd on December 31, 2007 was \$113,568.00.

10. All of the withdrawals that were made during 2008 were withdrawals of the Capital invested prior to December 31, 2007 from that Capital account.

11. No quarterly distributions of income were made to, or received by, James Judd or Valerie Judd from S&P Associates.

### **ARGUMENT**

12. There is no allegation that Defendants James or Valerie Judd were ever given a copy of the Amended and Restated S&P Partnership Agreement dated December 21, 1994 (hereinafter the "S&P Partnership Agreement").

13. There is no suggestion whatsoever that either James Judd or Valerie Judd were qualified investors or that they had knowledge of, or even a hint of, any impropriety.

14. There is no basis in the S&P Agreement for Plaintiffs to seek funds from any S&P Partner to benefit any partner of the P&S Partnership.

15. Section 4.05a of the S&P Partnership Agreement provides that a partner's capital account shall consist of that partner's initial capital contribution "increased by his or her additional contributions to capital by his or her share of Partnership profits transferred to capital" (emphasis added).

16. Section 7.01 of the S&P Partnership Agreement expressly provides that there should be an accounting by an independent accounting firm each year. Plaintiffs have not identified such independent accounting firm or firms and have not indicated what claim, if any, they have made against such firm or firms and what recovery has been gotten.

17. Section 7.04 of the S&P Partnership Agreement provides that books of account "shall be kept on a cash basis."

18. Plaintiffs have totally failed to disclose:

a. What income and/ or return on S&P's investment was received from the Madoff investments;

b. How much was invested in non-Madoff investments and what income or return was obtained from such investments (*See* ¶38 of the Third Amended Complaint);

c. What action was taken to recover from Madoff (or his conservator, or the Madoff Victim Fund), and what recovery there was;

d. What action was taken against the bank or banks that have liability (*e.g.*, counsel believes that there has been a substantial recovery for Madoff victims, including \$1.7 billion from JPMorgan Chase Bank);

e. What income distributions were made by S&P to S&P Partners between 1994 and the end of 2008, and when and to whom they were made.

19. A General Partner has a fiduciary duty to all partners equally and may not choose to favor one partner to the detriment of other partners. As successor General Partners, Plaintiffs have the same fiduciary duty to all of the partners equally and are estopped to favor some partners to the detriment of other partners.

Wherefore, Defendants Judd respectfully request this Court to enter an order granting their Motion for Summary Judgment.

Dated this 25<sup>th</sup> day of April, 2014.

Respectfully submitted,

s/ Julian H. Kreeger  
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Suite 220-14  
Miami, Florida 33133  
Telephone: 305-373-3101  
Facsimile: 305-381-873

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon Leonard Samuels, Esq. of Berger Singerman and counsel identified below registered to receive electronic notifications, and regular U.S. mail upon Pro Se parties on this 25<sup>th</sup> day of April, 2014 upon the following:

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By: s/ Julian H. Kreeger  
JULIAN H. KREEGER  
Florida Bar No. 098595

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  
6550 N. Federal Hwy., Suite 210  
Ft. Lauderdale, FL 33308-1404

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

\_\_\_\_\_  
*James Judd*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
Date: 7/14/2000  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_

2) Please check one of the following:

- I elect to receive my distributions on a quarterly basis (payable at 12%).
- I elect to have my quarterly distribution reinvested in the Partnership.

*mail  
7/24/00*

EXHIBIT A (Title of Your Account)

Name, Address Telephone # and Fax #	Soc. Sec. # or Federal ID#	Capital Contribution
<u>James Judd + Valerie Bruce Judd 2421 Barcelona Drive Ft Lauderdale FL 33301</u>	<u>944-28-4582</u>	<u>100 K</u>
<u>tel 954 467 2721 954 463-2334</u>	<u>123-62-3565</u>	_____
_____	_____	_____
_____	_____	_____

**JAMES JUDD**  
**VALERIE BRUCE JUDD**  
2421 BARCELONA DR  
FORT LAUDERDALE, FL 33301

**SchwabOne** 141

July 17, 2000 3-5  
310

Pay to the order of Sr P Associates, General Partnership 100,000.  
One hundred thousand Dollars

Charles Schwab  
FNB BANK N.A.  
Philadelphia, PA

For \_\_\_\_\_

⑆031000053⑆ 7011125896⑈ 20141

© HARLAND 1980

RECEIVED  
JUL 24 2000  
BY: JM

SP.Judd09/24/2013000004

EXHIBIT 2

JAMES JUDD  
2421 BARCELONA DRIVE 954-487-2721  
FT. LAUDERDALE, FL 33301

63-985-14

2264

DATE Oct 15, 2000

PAY TO THE  
ORDER OF

SEP Associates

\$ 80,000.

Eighty thousand

DOLLARS

Northern Trust Bank of Florida N.A.  
FT. LAUDERDALE, Florida

MEMO

⑆066009650⑆1416002918⑆ 2264

rec'd 10/17/00

For calendar year 2007, or tax year beginning \_\_\_\_\_ ending \_\_\_\_\_

Final K-1

Amended K-1

OMB No. 1545-0099

Department of the Treasury Internal Revenue Service

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

1 Ordinary business income (loss)	0.	15 Credits
2 Net rental real estate income (loss)		16 Foreign transactions
3 Other net rental income (loss)		
4 Guaranteed payments		
5 Interest income		
6a Ordinary dividends	1279.	17 Alternative min tax (AMT) items
6b Qualified dividends		
7 Royalties		18 Tax-exempt income and nondeductible expenses
8 Net short-term capital gain (loss)	7374.	
9a Net long-term capital gain (loss)	6626.	
9b Collectibles (28%) gain (loss)		19 Distributions
9c Unrecaptured sec 1250 gain		A 80000.
10 Net section 1231 gain (loss)		20 Other information
11 Other income (loss)		A 1279.
		B 3086.
12 Section 179 deduction		
13 Other deductions		
K* STMT		
14 Self-employment earnings (loss)	0.	

\*See attached statement for additional information.

For IRS Use Only

Part I Information About the Partnership

A Partnership's employer identification number  
65-0371254

B Partnership's name, address, city, state, and ZIP code  
S & P ASSOCIATES, GENERAL PARTNERSHIP  
MICHAEL SULLIVAN, GENERAL PARTNER  
6550 N. FEDERAL HWY., SUITE 210  
FORT LAUDERDALE, FL 33308-1404

C IRS Center where partnership filed return  
OGDEN, UT

D  Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number  
289-64-2983

F Partner's name, address, city, state, and ZIP code  
JAMES JUDD & VALERIA BRUCE JUDD  
2421 BARCELONA DRIVE  
FT LAUDERDALE, FL 33301

G  General partner or LLC member-manager  Limited partner or other LLC member

H  Domestic partner  Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	0.3618177%	0.3618177%
Loss	0.3618177%	0.3618177%
Capital	0.3618177%	0.3618177%

K Partner's share of liabilities at year end:

Nonrecourse \$ \_\_\_\_\_

Qualified nonrecourse financing \$ \_\_\_\_\_

Recourse \$ -97.

L Partner's capital account analysis:

Beginning capital account	\$ 181375.
Capital contributed during the year	\$ _____
Current year increase (decrease)	\$ 12193.
Withdrawals & distributions	\$( 80000.)
Ending capital account	\$ 113568.

Tax basis  GAAP  Section 704(b) book  Other (explain)