

**IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA**
CASE NO.: 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendants.

**CONSERVATOR’S REPLY TO
THE LIMITED OBJECTIONS TO CONSERVATOR’S FEE REPORT**

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”), by and through undersigned counsel, hereby files the Conservator’s Reply to the Limited Objections to Conservator’s Fee Report, and in support thereof states as follows:

SUMMARY OF ARGUMENT

The Conservator reviewed, analyzed, and submit recommendations to this Court with respect to certain professionals’ fee applications seeking payment from the Partnerships. Of the several applications, only the Conservator’s recommendations as to Berger and GlassRatner have been met with objection. Among other things, Berger and Margaret Smith of GlassRatner were instrumental in the ouster of Michael Sullivan (“Sullivan”) as General Managing Partner of the Partnerships. Berger and Margaret Smith of GlassRatner also commenced a certain lawsuit against affiliates and insiders of the Partnerships (the “Insider Lawsuit”).

Unsurprisingly, the defendants in the Insider Lawsuit (and their affiliates) are the primary objectors to Berger and GlassRatner’s fees.

The objections lack merit and were filed with inappropriate and ulterior motives.

The Conservator's recommendations are based on sound business and legal principles and ought to be ratified by this Court.

RELEVANT BACKGROUND

1. On January 17, 2013, this Court appointed the Conservator over the Partnerships by entering its *Order Appointing Conservator* (the "Conservator Order").

2. Among other things, the Conservator Order directed the Conservator to evaluate the fee applications of the various professionals who purported to incur fees and costs on behalf of the Partnerships. Among the claims considered by the Conservator were those asserted by:

- Berger Singerman LLP ("Berger");
- Rice, Pugatch, Robinson & Schiller, LLP ("Rice");
- Becker & Poliakoff, LLP ("Becker");
- Deutsch Rotbart & Associates, P.A. ("Rotbart"); and
- GlassRatner Advisory & Capital Group, LLC ("GlassRatner");
- Steven F. Jacob, CPA & Associates, Inc.

3. On April 1, 2013, the Conservator filed his *Conservator's Fee Report* with this Court (the "Fee Report").

4. On April 18, 2013, this Court conducted a hearing on, among other things, the Fee Report ("Fee Hearing"). The morning of the Fee Hearing, Steve Jacob ("Jacob") filed his *Opposition Response and Objections to Conservator's Fee Report* (the "Jacob Opposition"). During the Fee Hearing, Burt Moss ("Moss") made an appearance and requested additional time to analyze and respond to the Fee Report.

5. At the hearing, the Court articulated its decision to: (i) approve the Fee Report's recommendations as to Rice, Becker, and Rotbart in all respects; (ii) continue the Fee Hearing as to

the fees of Berger and GlassRatner; and (iii) permit Burt Moss (and only Burt Moss)¹ additional time within which to file a response to the Fee Report's recommendations as to Berger and GlassRatner

6. On April 24, 2013, this Court entered its written *Order Approving In-Part and Continuing In-Part Conservators Fee Report* (the "Fee Order") to memorialize the oral ruling.

7. Upon information and belief, on or around April 22, 2013, Jacob, purporting to act as S&P Managing General Partner, sent a letter on Partnership letterhead to all general partners of the Partnerships and others (the "Call to Action Letter"). Attached hereto as **Exhibit "A"** is a copy of the Call to Action Letter.

8. In relevant part, Jacob's Call to Action Letter states:

"The purpose of this letter is to give you current information and request a call to action from all partners. **The following facts are known and confirmed by all parties** ... 4) On April, 18, 2013 a hearing was held to approve fees for professionals involved in the administration of the Partnerships. **The conservator is requesting approval to pay over \$165,000.00 in unauthorized fees.** I filed an objection, with the Court to fees unauthorized by the Partnership." (emphasis added).

9. The Call to Action Letter further states:

"Please contact Judge Streitfeld, in writing, and let him know you oppose paying any fees not authorized by the partnership... Regardless of whether or not you fax me, please mail a hard copy of your objection to unauthorized fees directly to the Judge at: The Honorable Judge Jeffrey D. Streitfeld, Broward County Courthouse, 201 SE 6th Street, Room 920A, Fort Lauderdale, Florida 33307. If needed, the number and name of Judge Streitfeld's judicial assistant is Suzanne Tracy at (954) 831-7809." (emphasis added).

¹ Upon information and belief, Jacob submitted a proposed order to the Court which would have permitted any and all parties authority to file a response to the Conservator's Fee Report. However, Fee Order entered by this Court only permits Moss additional time to file a response.

10. On April 25, 2013, Moss filed his *Opposition Response and Objections to Conservator's Fee Report* (the "Moss Objection").

11. On April 26, 2013, Jacob filed his *Response and Memorandum of Law Opposing Conservator's Fee Report* (with the Jacob Opposition, the "Jacob Objection").

12. On April 29, 2013, Sullivan filed his *Opposition Response and Objections to Conservator Report* (the "Sullivan Objection", and together with the Jacob Objection and Moss Objection, the "Objections").

ARGUMENT

The Fees Requested by Berger and GlassRatner are Reasonable

13. The Conservator exercised prudent business judgment in recommending payment of the amounts of Berger and GlassRatner's fees and costs in the Fee Report.

Berger Singerman LLP's Fee Application

14. Through Berger's fee application, it sought payment of \$172,331.71.

15. Based on the *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985) factors, the costs of litigation, Berger's voluntarily reduced rates, the attendant costs and delays if engagement of replacement counsel were made necessary in the proceedings commenced by Berger on behalf of the Partnerships, and concepts of unjust enrichment and equity, the Conservator recommended that Berger be paid \$125,000 for the services they provided for the benefit of the Partnerships.

16. Under the *Florida Patient's Compensation Fund v. Rowe* Case, factors for reasonableness include:

- (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

17. The Partnerships were greatly benefitted by the services of Berger, who acted on behalf of and for the benefit of the Partnerships by, among other contributions:

- a. Commencement of two lawsuits and the review of voluminous documents;
- b. Successful consolidation of all the pending actions before one court;
- c. Successful removal of prior managing partner, Michael D. Sullivan;
- d. Obtained order appointing a professional neutral, the Conservator; and
- e. Obtained an order compelling Becker Poliakoff to send Partnerships' funds to Conservator.

18. As noted in the Fee Report, Berger agreed to a significantly reduced hourly rate for its engagement. In fact, the hourly rates charged in Berger's fee application were capped at \$300/hour. The hourly rates for certain partners involved in this engagement typically exceed \$500/hour.

19. The recommendation of the Conservator to pay Berger \$125,000 results in additional savings for the Partnerships of \$47,321.71, a further 27% reduction from the amount requested by Berger, which amount already reflects a significant voluntary discount.

20. Moreover, by reaching a negotiated agreement to a reduced fee with Berger, the Conservator avoided incurring additional litigation costs associated with a contested fee hearing and the uncertainty of the ultimate award which, absent agreement, could be the full amount of the sums sought through Berger's fee application. Upon information and belief, Berger submits that its entire application for payment is reasonable and ought to be paid by the Partnerships.

GlassRatner Advisory & Capital Group, LLC's Fee Application

21. Through GlassRatner's fee application, it sought payment of \$44,675.95.

22. Employing similar considerations as in the analysis of Berger's fee application, the Conservator recommended GlassRatner be paid \$27,552.00.

23. Among other factors, the volume of the information analyzed by GlassRatner justify the time recorded and labor involved. Further, in the ponzi context, professionals must evaluate novel and complex issues which require extensive skill. GlassRatner's fee falls within the fee customarily charged by professionals for the services provided by GlassRatner. Accordingly, the *Rowe* factors support the recommendation of \$27,552.00 reflected in the Conservator's Fee Report.

24. The recommendation of the Conservator to pay GlassRatner \$27,552.00, reduced its fee by approximately 38%.

25. Additionally, the factors utilized to evaluate non-attorney professionals in the professional fiduciary context support Fee Report's recommendation on GlassRatner's fee application. "Among the factors to be considered are 'the nature and extent of the services rendered by the receiver, the responsibility assumed by him, the character and extent of the property committed to his care, the beneficial results of his management, the complexity of his task, the opinions of persons of experience as to the value of the services rendered by the receiver, and proof of any other material factors.'" *Se. Bank, N.A. v. Ingrassia*, 562 So. 2d 718, 720 (Fla. 3d Dist. Ct. App. 1990) quoting *Lewis v. Gramil Corp.*, 94 So.2d 174, 177 (Fla.1957).

26. Based on the review of GlassRatner's supporting materials, the Conservator believes that the nature and extent of the services rendered, the complexity associated with ponzi matters, and the valuable analysis provided justify the Fee Report recommendation. The reduced fee award to GlassRatner also furthers the policy of ensuring that those who render essential services in the professional fiduciary context are compensated as "economically and reasonably as possible." *Lewis v. Gramil Corp.*, 94 So. 2d 174, 177 (Fla. 1957) ("We feel constrained to say that while sufficient fees

should be allowed to induce competent persons to serve as receiver, as attorney for receiver, or to render other essential services, receiverships should be administered as economically as reasonably possible, and therefore allowances for services performed by court officers must be just but should be moderate rather than generous.”)

27. In sum, the Conservator’s negotiated resolutions with Berger and GlassRatner reduced their fee applications by approximately \$65,000.000, without incurring significant expense to the Partnerships necessarily attendant to litigating the issues.

The Fee Report’s Recommended Charges of Berger and GlassRatner are Properly Chargeable Against the Partnerships

28. Prior to the appointment of the Conservator, on August 29, 2012, this Court entered an *Agreed Order Resolving Plaintiff’s Emergency Motion for Temporary Injunction* (“Agreed Order”).² Among other things, the Agreed Order provided that Maggie Smith (“Smith”) of GlassRatner was deemed the Managing General Partner for the Partnerships effective upon entry of the Agreed Order.³ Agreed Order at ¶3.

29. The Agreed Order also provided that Sullivan would not contest the appointment of Smith. Agreed Order at ¶5 (“[Sullivan] does not now and will not in the future challenge the appointment of Smith as Managing General Partner on August 17, 2012”).⁴

30. After the entry of the Agreed Order, the actions of Berger and GlassRatner were at the direction of Smith, the court-approved manager of the Partnerships. Even prior to the Agreed Order, the actions of Berger and GlassRatner inured to the benefit of the Partnerships.

31. The Objections’ reliance on certain provisions of the Partnerships’ partnership agreements is misplaced.

² A copy of the Agreed Order is attached hereto at **Exhibit “B”**.

³ Upon information and belief, Jacob received notice of the Agreed Order and had an opportunity to be heard in connection with its entry.

⁴ By filing the Sullivan Objection, Sullivan has violated the Agreed Order.

32. From its inception and continuing until that fateful day in December of 2000, the Partnerships sole purpose was to invest in Bernard L. Madoff Investment Securities, LLC (“BLMIS”). And on that day, BLMIS became known to be a fraudulent enterprise, the largest ponzi scheme in the history of the world.

33. Here, from conception it was “unlawful for all or substantially all of the business of the partnership to be continued.” Fla. Stat. §620.8801 (articulating the events causing dissolution of a partnership). As such (and in the face of a court order authorizing Smith to take action), the Partnerships’ partnership agreements do not support the Objections to the Berger or GlassRatner fees.⁵

34. In the Conservator’s professional business judgment, the retention of Berger and GlassRatner was within Smith’s court-approved authority and conferred a substantial benefit to the Partnerships because, among other things, their services began a process of investigation and recovery for the Partnerships and fashioned an orderly procedure to administer the assets of the Partnerships and pursue its potential litigation claims against others.⁶ Accordingly, these claims are properly chargeable against the Partnerships.

The Real Purpose of Sullivan, Jacob and Moss’ Objections Are to Frustrate, Delay and Impose Additional Burdens upon the Conservator’s Administration of the Estate, Including the Insider Lawsuit

35. On December 10, 2013, Berger commenced the Insider Lawsuit against, among others, Sullivan, Jacob, Michael D. Sullivan & Associates, Inc., and Steven F. Jacob, CPA & Associates, Inc. (the “Defendants”).⁷

⁵ In addition, the Partnerships were irretrievably broken. Factions of partners were suing other factions of partners. It was inconceivable that the pieces of P&S and S&P could be put back together again.

⁶ Additionally, principles of unjust enrichment and equitable considerations auger in favor of finding Berger and GlassRatners fees properly chargeable against the Partnerships.

⁷ Moss is the spouse of a former employee of the Partnerships and her involvement is presently being investigated by the Conservator.

36. The Insider Lawsuit alleges, among other things, improprieties of the Defendants by employing Partnership assets “to pay Sullivan and a number of shell entities he set up for that purpose unearned and excessive ‘management fees’ numbering the many millions of dollars.” The Insider Lawsuit further alleges that “the assets of the Partnerships were funneled to Sullivan and other Defendants in the form of ‘commissions’ or ‘referral fees.’”

37. Jacob, Sullivan, and Moss’ spouse are all presently employed by Fresh Start Tax, LLC⁸ a successor to Sullivan and Powell, P.A.

38. Under the guise of objecting to fees, the Objections seek to challenge the authority of Berger to commence the Insider Lawsuit and to distract this Court and the Conservator from advancing same.

39. The Defendants’ intentions are reflected in Jacob’s misleading and improper Call to Action Letter, which, upon information and belief, prompted more than twenty individuals to send letters directly to the Court.⁹

40. Defendants’ intentions are further reflected in Sullivan, Jacob, and their affiliates (Sullivan & Associates, Fresh Start Tax, LLC f/k/a Sullivan & Powell, P.A., Guardian Angel Trust, LLC) contempt of this Court’s Conservator Order requiring the turnover of all Partnership Property (such subject being brought before this Court on separate hearing set for May 14, 2013).

41. Additionally, in other aspects of the Conservatorship, the Defendants are imposing significant burdens upon the Conservator in investigating the litigation claims of the Partnerships.

42. For additional perspective, by filing their Objections and by catalyzing a letter writing campaign by misinforming other partners, Sullivan, Jacob and Moss, are imposing costs upon the

⁸ According to its website (www.freshstarttax.com), Jacob and Sullivan are founders of Fresh Start Tax, LLC.

⁹ On March 19, 2013, this Court, through electronic correspondence from its Judicial Assistant, reminded the parties that letters from litigants directed to the Judge were inappropriate.

Partnerships and their partners that may far outweigh any savings they achieve by advancing their Objections.

43. The Defendants are imposing additional cost, delay, and burden upon the Conservator and the Conservatorship Estate in the hopes that litigation fatigue deters the Conservator from fully investigating and advancing the Insider Lawsuit.¹⁰

44. The Objections are inappropriate, were filed for an undue purpose, and ought to be overruled.

WHEREFORE, the Conservator respectfully requests that this Court enter an Order: (i) overruling the Objections; (ii) ratifying the recommendations of the Conservator in the Fee Report in its entirety; (iii) authorizing the Conservator to make distributions to Berger and GlassRatner in the amounts set forth in the Fee Report from the Partnerships' assets, such distributions being allocated to each of the Partnerships based on their current assets; (iv) finding that the fees and costs recommended by the Conservator for Berger and GlassRatner are reasonable considering the factors of *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985) and *Lewis v. Gramil Corp.*, 94 So. 2d 174, 177 (Fla. 1957); and (v) for any further relief that this Court deems necessary and appropriate.

Dated: May 9, 2013

MESSANA, P.A.
Attorneys for Conservator
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Telephone: (954) 712-7400
Facsimile: (954) 712-7401
By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422
Brett D. Lieberman, Esq.
Florida Bar No. 69583

¹⁰ Significantly, the Call to Action Letter takes aim at the fees of the Conservatorship all the while exacerbating these costs.

EXHIBIT A

S&P and P&S Associates, General Partnerships

1755 NE 52 Street
Fort Lauderdale, FL. 33334

Telephone (954) 648-1788
Fax (954) 938-0089

Steven F. Jacob, S&P Managing General Partner

guardianangeltrust@man.com

April 22, 2013

S&P and P&S Partners

RE: Call to Action

Dear Partner:

The purpose of this letter is to give you current information and request a call to action from all partners.

The following facts are known and confirmed by all parties:

1. There is no money missing, all dollars invested are accounted for.
2. A conservator has been appointed by the court to wind down both partnerships and distribute available funds.
3. There is currently an approximate amount of Five (5) million dollars available to distribute to partners and additional funds are expected from the Madoff Trustee.
4. On April 18, 2013 a hearing was held to approve fees for professionals involved in the administration of the Partnerships. The conservator is requesting approval to pay over \$165,000.00 in unauthorized fees. I filed an objection, with the Court to fees unauthorized by the Partnership.

In mid January, a conservator was appointed by the court to handle the affairs of both S&P and P&S partnerships. The court directed the conservator to wind down the affairs of the partnership and proceed with the court proceeding to determine the distributions to the partners. Once the court makes the decision on how to distribute the funds, the conservator is to make distributions to the partners. The Judge has asked this to be done by September 2013.

In addition to the unauthorized fees (\$165,000.00) presented to the court, the conservator has presented a budget to the Judge for 2013, which states that he and his attorney anticipate receiving almost \$400,000.00. These fees appear very high to compensate the attorney and conservator for just one year of service. Further they seem high, based on the Judges instructions to distribute the funds by September 2013.

The call to action for all partners is two-fold. First please pray for all parties involved to make sound decisions that benefit the partners, as the partners are the victims of the Madoff fraud. Second, **get involved!** Decisions are being made that have a direct effect on the amount each partner will receive.

S&P and P&S Associates, General Partnerships

1755 NE 52 Street
Fort Lauderdale, FL. 33334

Telephone (954) 648-1796
Fax (954) 938-0069

Steven F. Jacob, S&P Managing General Partner

guardianangeltrust@msn.com

April 22, 2013
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The Judge only knows what he hears and right now the professionals are doing most of the talking and most of that talk appears to be how much they can make. It is time he hears the partners. Each of you has a stake in this. Don't stand by and let the money that is meant for partners to be spent on unauthorized and unnecessary fees.

Please contact Judge Streitfeld, in writing, and let him know you oppose paying any fees not authorized by the partnership. Since funds belonging to the partnership are available, please make the judge aware that you wish the conservator to distribute proceeds as soon as possible so the funds won't all be lost on unnecessary professional fees. This would cause partners victimized by Madoff to be victimized again.

Due to the April 29 due date, you can fax or email your reply to me and I will forward all I receive to the Judge on Friday April 27. My fax number is (954) 938-0069. Regardless of whether or not you fax me, please mail a hard copy of your objection to unauthorized fees directly to the Judge at:

The Honorable Judge Jeffrey D. Streitfeld
Broward County Courthouse
201 SE 6th Street, Room 920A
Fort Lauderdale, Florida 33307

If needed, the number and name of Judge Streitfeld's judicial assistant is Suzanne Tracy at (954) 831-7809.

If you have questions my contact information is guardianangeltrust@msn.com or you can call me at (954) 648-1796. If you have an email please send me an email with it to keep your contact information up to date.

Sincerely,



Steven F. Jacob, CPA
Managing General Partner of S&P

EXHIBIT B

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

CASE NO. 12-24051 1071
COMPLEX LITIGATION UNIT

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,

Plaintiffs,

v.

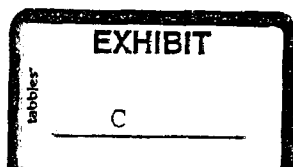
MICHAEL D. SULLIVAN, individually,

Defendant.

**AGREED ORDER RESOLVING PLAINTIFFS'
EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

THIS CAUSE came before the Court on Plaintiffs' Emergency Motion for Temporary Injunction, and this Court having been advised of an agreement between the parties and being otherwise duly advised in the premises, it is hereby ORDERED that:

1. This Order implements the agreement of the Parties and is entered on an agreed basis. Plaintiffs' Emergency Motion for Temporary Injunction is resolved as provided herein.
2. Defendant Michael D. Sullivan ("Defendant") shall resign as Managing General Partner of both P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together with P&S, the "Partnerships"), and consents to the appointment of Margaret J. Smith ("Ms. Smith") as Managing General Partner in his



stead. Plaintiffs' agreement to allow Defendant to resign is not a waiver of any positions asserted in this action.

3. Ms. Smith is deemed the Managing General Partner of the Partnerships effective upon entry of this Order and will remain as such unless and until she withdraws from her role as Managing General Partner, or is removed consistent with the terms of the Partnership Agreements.
4. As Managing General Partner, Ms. Smith will be given full access to all of the Partnerships' books, records, assets and property and will be afforded all of the rights and duties of a Managing General Partner, including but not limited to those contemplated by Article 8.02 of each of the Partnerships' respective Partnership Agreements.
5. Defendant does not now and will not in the future challenge the appointment of Ms. Smith as Managing General Partner on August 17, 2012. Defendant agrees that he is no longer authorized to act in any capacity as Managing General Partner of the Partnerships, and is to direct all Partnership business to Ms. Smith. In so consenting to his withdrawal as Managing General Partner, Defendant reserves all other rights and defenses, and such consent to Ms. Smith's appointment shall not be deemed or considered an admission of liability either on his own behalf or on behalf of any of his employees, affiliates, assigns or agents.
6. The Parties further reserve all rights with respect to the action styled *P&S Associates, et al. v. Roberta Alves, et al.*, Case No. 2012CA013587, currently pending in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County (the "Interpleader Case"). Defendant may not act as representative or Managing General Partner of the Partnerships with respect to that action. However, the Parties specifically agree, as a condition of the

relief provided herein, that the Interpleader Case will not be unilaterally dismissed by Ms. Smith in her capacity as the Managing General Partner of the Partnerships. Without prejudice to the rights of the Managing General Partner pursuant to paragraphs 7.05 and 8.02 of the Partnership Agreements, it is the intent of the Parties that the Interpleader Action provide the basis for the methodology used to determine how distributions will be made to partners, *i.e.*, without limitation, based on the amount in the partner's capital account (last statement balance), in the amount of the net investment of the account holder over the life of the account, or based on other equitable principles. Plaintiffs reserve all defenses to the Interpleader Action, and do not, by virtue of this Order, concede that venue in Palm Beach County is appropriate.

7. On or before September 5, 2012, Defendant shall provide to Ms. Smith all books and records not previously provided to Plaintiffs or their representatives, including electronic records of the Partnerships. Subject to Defendant's right to raise any written objection under the Florida Rules of Civil Procedure, Defendant shall provide the books and records of JS&P Associates, General Partnership, and SPJ Investments, Ltd. Defendant has represented that he does not have custody, possession or control of the books or records, electronic or otherwise, of Guardian Angel Trust, LLC. Defendant further agrees to use his best efforts to insure an efficient, orderly and smooth transition from his role as Managing General Partner to Ms. Smith's role as Managing General Partner.
8. This case is hereby stayed pending further order of the Court, but for a period of not less than 60 days, without prejudice to the rights of any parties to this action. This stay will be lifted upon a motion by either party.

9. This Order is binding on all Parties, including Ms. Smith, who is not a named party but has submitted herself to the jurisdiction of this Court by accepting the appointment as Managing General Partner as provided in paragraph 3 above.

10. Defendant, by agreeing to the terms of this Order specifically denies and does not admit any liability or wrongdoing and nothing in this Order shall constitute any finding of liability or wrongdoing either by Defendant or any of his employees, affiliates, assigns or agents. It is Defendant's position that he has agreed to the relief herein to preserve the resources of the Partnerships.

DONE AND ORDERED in Chambers in Broward County, Ft. Lauderdale, Florida, on this _____ day of August, 2012.

JEFFREY E. STREIFELD

AUG 29 2012

JEFFREY E. STREITFELD
CIRCUIT COURT JUDGE

A TRUE COPY

Copies furnished to:

All Counsel of Record