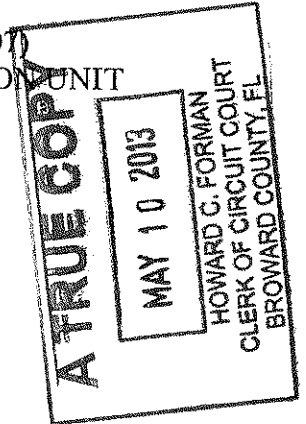


IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 12-24051 (01)
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 Martial 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 as individual and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN

Defendant

**OPPOSITION RESPONSE AND INCORPORATED MEMORANDUM OF LAW
TO CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE BERGER
SINGERMAN, LLP AND MESSANA, P. A. AS SPECIAL LITIATION COUNSEL
IN THE MICHAEL D SULLIVAN ET. AL. MATTER AND APPROVING THE
CONTINGENCY FEE COMPENSATION AGREEMENT**

Steven Jacob, ("Jacob") as a 40% partner in interest of the S&P General Partnership ("S&P") opposes the 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 states as follows:

The four plaintiffs, (“Stacy Foundation”) defendant and the partners of S&P and P&S (collectively “the partnerships”) have all been victimized by Bernard L. Madoff’s unprecedented \$65 billion dollar Ponzi scheme.

STATEMENT OF FACTS

1. All moneys of the partnerships have been accounted for and there is no money missing.
2. All books and records of the partnerships that are in existence have been in the possession and control of the Stacy Foundation since October 2011, except for two years that were provided in August of 2012. All books and records are currently in possession and control of the conservator.
3. The partnerships are not insolvent. Nor have they filed or ever filed for bankruptcy.
4. The Partnerships are not Ponzi schemes.
5. The Partnerships invested in a Ponzi scheme.
6. The Madoff Trustee, Irving Picard and the SEC have reviewed all the records of the partnerships and approved the claims of the partnerships. They have spent hundreds of thousands of dollars and concluded there are no problems.
7. The only business that remains for the partnership is to distribute the funds received from the Madoff Trustee to its partners.
8. The Conservator has submitted a proposed budget of almost \$400,000.00 in fees for less than one year work for a company with no current business.
9. Berger Singerman has submitted bills in the approximate amount of \$175,000.00.

10. Berger Singerman is requesting an additional amount of \$50,000.00 in this motion and in contradiction to the consent order conservators counsel is requesting that he pay Berger Singerman the \$50,000.000 without bills or court approval.

11. It is clear from the transcripts of the hearings (Attached as Exhibit A to the Janet Hooker Opposition Response) held on December 18, 2012, and December 21, 2012, before this Court and the Consent Order filed January 17, 2013, that the Conservator was appointed with limited authority.

12. Contrary to the Courts instructions regarding the Conservator on December 21, 2012,

“The idea is not to try to persuade him. I mean I don’t want you to try to one up each other on the number of persons and the amount of time spent to condition him on one side – if there are camps – on one side or the other on an issue. Let’s try to avoid that, please.”

Berger Singerman billed seven hours to the partnerships for phone conversations, memos, and face to face meetings **PRIOR** to the conservator’s appointment by the Court on January 17, 2013. In contrast, attorney Chad Pugatch, charged .40 hours for a call to ask if the conservator could serve, and reporting back to Michael Sullivan and Rob Reynolds.

13. The Helen and Festus Stacy Foundation and others had the same insider relationship as defendants named in the above suit.

14. No money was paid from Partnership funds to the alleged insiders.

15. Irving Piccard stays litigation involving Avelino & Bienes two of the alleged insiders named in the above suit.

16. On December 18, 2012, seven days after Bernard Madoff confessed to authorities, Michael Sullivan engage attorney Chad Pugatch, to protect the interest of the partners in the partnerships and assist in obtaining the maximum recovery back to the partnerships

from Madoff. In late 2009, Helen Chaitman, a renowned attorney for the victims of Madoff was also engaged.

ARGUMENT

The funds paid to the alleged insiders were not paid from partnership funds and the partnership has no standing to pursue these claims. To allow the partners to be further victimized by the Stacy Foundation and their former counsel Berger Singerman (“BS”) results in manifest injustice to partners in the partnerships. The Stacy Foundation consist of four (4) minority partners, who have hijacked and terrorized the partnership, and have caused and continue to cause significant damages to the approximately 190 remaining partners in the partnerships. The Stacy Foundation in concert with its counsel BS have raised many unsupported false allegations, improperly noticed a meeting of the partnership and incorrectly calculated the partnership vote, all in attempt to use partnership funds to fund their own agenda over the rights of the other partners. In fact, contrary to what has been alleged to this Court and continues to be alleged, all the books and records have been made available to the Festus and Helen Stacy Foundation and any other partner since the beginning. The Festus and Helen Stacey Foundation have had actual possession of the books and records since October of 2011. According to the BS bills, already in evidence before this Court, BS was engaged to research and file the above insider matter in May and June of 2012. If the case had so much merit, why was it not filed? When the case was filed, why was it not served? Pursuant to BS’s bills Jacob was not considered an insider until November when he took a stand against further wasting of time and money of the innocent victims of Madoff by requesting a special election to confirm that Maggie Smith was never the managing general partner of S&P.

BS has billed numerous hours related to this law suit and was ready to file it in August of 2012. Now they want to be paid for additional costs plus a contingency fee for work already done. The conservator would know this as it's reflected in BS bills that are already in evidence before this Court. Jacob made attempts at a good faith conference and there was no response from the Conservator's Counsel. The Conservator has provided no cost benefit analysis or upside to proceeding with this case. There has been no communication of how this could benefit the partners or the partnership. The only ones it appears to benefit is BS, the conservator and his attorney. There is also no mention of the down side to this lawsuit to the partnership and specifically each individual partner. The partnerships are general partnerships and all partners are jointly and severably liable. Should just one defendant file a counter claim every partner will suffer. If a defendant counter claims will that be covered under BS contingency agreement, or can the Court and the partners expect to see BS back at the well for more fees. The only group that could possibly benefit from this litigation will be BS, the conservator and his counsel. The conservator has already presented a budget of almost \$400,000, for less than a year work for a partnership that has no ongoing business other than to distribute money to the partners. Absent a unanimous vote from all partners it seems unconscionable to submit the partners to liabilities that could potentially take away all the assets that were acquired prior to the conservator taking over. The Conservators job is to preserve the assets for the partners not gamble them away on the allegation and whim of BS and the Stacy Foundation. Certainly, if the Stacy Foundation or any of the partners want to litigate for their benefit, they can do so with their own money. As this

Court has already touched on this issue in the transcripts of December 18, 2012, page 43 and 44.

“The partnership I invested in could not bring a suit, but I can bring a suit on my own behalf because I was injured by this misconduct.”

The insider case can easily be separated from the partnership and returned to the partners who wish to pursue it. This will save TIME AND MONEY and not expose the partnership and partner’s assets.

Even if BS was not causing undue influence on the conservator and his counsel, BS represented the Stacy Foundation and there is no doubt the BS Law Firm would have a conflict of interest. There was no way to resolve the net winner matter/net loser matter without an Interpleader. This is the only legal matter the partnerships should be involved in. The conservator fails to state under what statute or rules of conduct is it now permissible for BS to represent a case against certain alleged insiders when his prior client the Stacey Foundation was an alleged insider. He cannot do so if he must choose a side of one partner against the other.

RELIEF REQUESTED

Jacob respectfully requests that this Court:

1. Deny the Motion to Appoint Special Council in the Insider Matter and not subject the partnerships nor the partners to the liabilities associated with prolonged litigation.
2. Separate the Litigation from the General Partnership and allow any partner that wishes to pursue it to do so outside the Partnership.

May 10, 2013

Respectfully Submitted



Steven Jacob
Partner of S&P

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