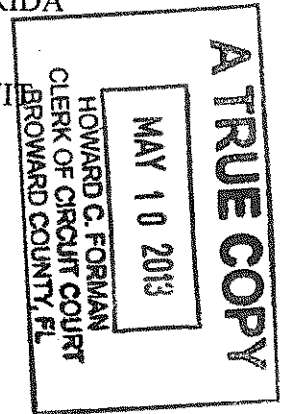


IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

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



MATTHEW CARONE, as Trustee for the Carone
Marital Trust #2 UTD 1/26/00, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

**MICHAEL SULLIVAN OBJECTION TO CONSERVATOR'S MOTION FOR
CONTEMPT AND TO COMPEL THE TURNOVER OF PARTNERSHIP BOOKS
AND RECORDS AND ELECTRONICALLY STORED INFORMATION**

1. My name is Michael Sullivan. I am a defendant named in the above entitled action as well as a partner in S&P Partnership and P&S Partnership.
2. I file this objection in opposition to the Conservator's original Motion for Contempt and to Compel turnover of Partnership Books and Electronically Stored Information as well as the Conservator's Supplement to Notice of Motion for Contempt and to Compel Turnover of Partnership Books and Records and Electronically Stored Information
3. The matter originates from the initial filing of a complaint against me by a number of minority partners and the subsequent entry of an order appointing a Conservator on behalf of S&P Partnership and P&S Partnership (the "Partnerships"). Attached is a copy of the Order appointing Philip J. von Kale as Conservator.
4. Paragraph 4 of the Order provides in essence that I am to turn over all of the Partnership property, "*to the extent it exists*" and that the property shall include "the accounts, books of account, checkbooks, assets, files papers, contracts, records, documents, monies,

securities, choses in action, keys, passcodes and passwords, computer data, archived and historical data and all other property, of the Partnership.

5. With respect to the foregoing, the following items have been handed over to the Conservator:
 - a) The two Partnership Computers consisting of one Apple and one Windows Desktop
 - b) All of the Books and Records previously delivered to Glass Ratner and now in the Conservator's possession.
 - c) Access to Fresh Start Tax, LLC server together with all of its contents.
 - d) Access to my personal computer .
6. I agreed to provide item d and Steve Jacob agreed to provide access to the Fresh Start Server as the result of an agreement reached at the Courthouse the last time we convened before your Honor on April 18, 2013.
7. As part of the overall agreement, the Conservator was supposed to provide us with a protective order with respect to non-partnership records and property. This would insure confidentiality over those records and property. To my knowledge, that Order has never been submitted for your Honor's signature, and if it has, I have never been served with a copy. Accordingly, the non-partnership information is not protected from disclosure to third parties including Berger Singerman, who represent the interests of the minority partners.
8. In support of the Conservator's Motion, he relies upon the affidavit of Dick Haslam, an employee of Michael Moecker & Associates ("Moecker") who purportedly has been retained by the Conservator.

9. Discussions were had with Mr. Haslam prior to April 19, 2013 that all of the electronically stored information needed by the Conservator was on the one Apple Desktop, one window Desktop, and on my personal Apple Desktop.
10. Steve Jacob, as General Manager for Fresh Start Tax also agreed to allow Mr. Haslam access to the Fresh Start Server.
11. Despite what was agreed to on April 18, 2013, Mr. Haslam's affidavit, claims that the electronically stored information is contained on additional non-partnership property including 14 desktops that belong to Fresh Start Tax as well as certain smart phones, e mail software storage systems and the Apple Cloud Storage. His assertion is based solely upon information and belief and he provides no facts which support his assertion.
12. On the 19th of April a disagreement ensued between Haslam and myself and Steve Jacob as to the scope of the agreement reached on April 19, 2013. Since my prior attorney, Robert Reynolds was present during the negotiations on April 18, 2013, Steve Jacob and I contacted Mr. Reynolds to let him know there was a dispute concerning the scope of what we were to provide.
13. Mr. Reynolds contacted Mr. Messana, Counsel for the Conservator to discuss the matter, resulting in Mr. Messana contacting Haslam to inform him that he was to only back-up the server, and to clone my personal computer, which took place on the following Friday. Also present Matthew Elias, our IT Consultant, who overheard the conversation that took place between Haslam. Sullivan and Jacob.
14. At all times relevant hereto we have been assured by the Conservator's Counsel that an Agreed Upon Protective Order was forthcoming which would protect the privacy of non-partnership information, yet no Order has ever been forthcoming.

- 15.
16. This is particularly troublesome in light of the Conservator's inexplicable action in filing a Motion to Appoint Berger Singerman as Counsel on behalf of the Partnerships, despite the blatant conflict of interest.
17. From the date of his appointment, Mr. von Kale has not acted in the best interest of the Partnership consistent with your Honor's directive that Mr. von Kale be impartial and objective.
18. The Court voiced its concern on December 21, 2012 when it stated: *"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."*
19. In fact, prior to the entry of the Order appointing Mr. von Kale had numerous meetings with the minority partners, Berger Singerman and Margaret Smith and has formed an opinion without ever conducting any meaningful due diligence.
20. To date, none of the Conservator's efforts have produced any movement towards distributing the Partnership proceeds to the Partners or winding down the affairs of the Partnerships. All of the Conservator's efforts have been exclusively based on pursuing frivolous lawsuits and lining the pockets of Berger Singerman and Glass Ratner all in violation of Paragraph 7(d) of the Order appointing the Conservator, which prohibits the Conservator from committing waste.
21. In addition, Mr. Haslam conveniently fails to include in his affidavit that the remaining computers are property of Fresh Start Tax, who is not a party to this litigation, that these

computers were all purchased post “Madoff,” and there clearly is no electronically stored information that relates to either of the Partnerships.

22. Based upon the foregoing, I am requesting that the Court put an end to this nonsense, all of which will result in the squandering of partnership money thereby injuring the partners overall.

23. I am asking that the Court enter an Order enjoining the Conservator from conducting any further witch hunt, which to date, has not produced one bit of evidence that there has been any wrongdoing or that there is a “pot of gold” at the end of the rainbow.

Michael Sullivan



Copies furnished to:
Thomas M. Messana, Esq. Berger Singerman and all interested parties.

EXHIBIT A

EXHIBIT A

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, 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,

Defendants.

ORDER APPOINTING CONSERVATOR

THIS CAUSE came before the Court at 10:00 a.m. on December 18, 2012, and at 1:30 p.m. on December 21, 2012, upon Plaintiffs' Motion to Appoint Receiver (the "Motion"), and the Court having reviewed the Motion, heard from counsel, and being otherwise duly advised in the premises, finds good cause to grant the relief requested.

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

1. Appointment. Philip J. Von Kahle is hereby appointed Conservator (the "Conservator") of P&S, General Partnership and S&P, General Partnership (together, the "Partnerships").

2. Oath. Within twenty (20) days of the date of this Order, the Conservator shall file with this Court an Oath of Conservator.

3. Bond. The Conservator shall post a surety bond in the amount of \$25,000.00 with the Clerk of Court within thirty (30) days of the date of this Order.

4. Possession of Conservatorship Property. The Conservator shall immediately take possession of all property of the Partnerships. The property of the Partnerships, to the extent it exists, shall include the accounts, books of account, checkbooks, assets, files, papers, contracts, records, documents, monies, securities, choses in action, keys, pass codes and passwords, computer data, archived and historical data, and all other property, of the Partnerships including but not limited to any and all funds being held by any third-party on behalf of the Partnerships (the "Conservatorship Property"), which are within the jurisdiction of this Court, except as is otherwise set forth herein, and shall retain custody, except as is set forth hereinafter, of all such Conservatorship Property, until further order of this Court. All persons and corporations now or hereafter in possession of any Conservatorship Property, or any part thereof, shall forthwith turn over such possession to the Conservator. Further, the Partnerships and any persons in active participation with them, shall grant the Conservator unfettered access to any accounts, records, documents, files, plans, engineering reports, permits (whether expired or not), and computer equipment owned by the Partnerships.

The Conservatorship Property includes, but is not limited to, those assets and funds held by Helen Davis Chaitman, Esq. and Becker & Poliakoff LLP on behalf of or for the benefit of the Partnerships. The Conservatorship Property also includes, but is not limited to, all of the books and records of the Partnerships that have been turned over to and are currently in the possession of Margaret Smith and/or Glass Ratner.

All Conservatorship Property must be returned to or transferred to the Conservator within seven (7) days of the date of this Order. All property turned over to the Conservator shall be

delivered subject to the lien rights of any parties, including the rights of any attorneys to charging, retaining or other common-law liens, and the transfer, delivery or otherwise placing the property in the possession of the Conservator shall not prejudice, destroy or otherwise affect any parties' lien rights..

The Conservator may at any time, apply to this Court for further powers and authority as may be necessary and appropriate to carry out the purposes of this Order.

5. Conservator's Powers. The Conservator is empowered, directed and authorized by this Court to act on its behalf as the Conservator of the Conservatorship Property, and to do any and all things necessary for the proper management, wind-down, preservation, maintenance, protection and administration of the Conservatorship Property. The Conservator shall have and possess all powers and rights to facilitate its management and preservation, maintenance, protection and administration including, but not limited to, the following:

(a) Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, including following up on the Interpleader action filed with the Court to determine how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions;

(b) Reviewing, prosecuting, dismissing, initiating and/or investigating any and all potential claims that may be brought or have been brought on behalf of the Partnerships;

(c) Taking any action which could lawfully be taken by the managing general partner of the Partnerships pursuant to the Partnership Agreements of the respective Partnerships;

(d) Investing the Partnerships' funds in an interest-bearing account or accounts at one or several federally insured banks and/or depository institutions;

(e) Calling a Special Meeting of either or both of the Partnerships;

(f) Paying all fees or costs less than \$2,500.00 out of the Conservatorship Property reasonably necessary to conserve, maintain, secure, operate, preserve and protect the Conservatorship Property, including all such fees or costs incurred prior to date of this Order;

(g) Paying any taxes, assessments and charges in the nature thereof, due in connection with the Conservatorship Property;

(h) Opening accounts in the name of the Conservator in order to fulfill his duties pursuant to this Order;

(I) Hiring legal counsel to assist the Conservator in performing the responsibilities with respect to the Conservatorship Property as set forth in this Order. Nothing contained herein shall require the Conservator to expend any of his own funds.

6. Previous Elections of Managing General Partners. The previous elections of Margaret J. Smith and/or Steven Jacob are moot, provided however, that any party may raise the validity of the election of Margaret J. Smith or anyone Ms. Smith allegedly retained on behalf of the partnerships in connection with any application for compensation.

7. Specific Duties of Conservator. The Conservator shall manage, preserve, protect, and maintain the Conservatorship Property in a reasonable, prudent, diligent and efficient manner. Without limitation of that general duty, the Conservator shall have the following specific duties:

(a) Operating Account. The Conservator may establish and maintain, at a bank whose deposits are insured by the Federal Deposit Insurance Corporation, a separate operating account or accounts into which the Conservator shall deposit all receipts, if any, related to the Conservatorship Property and from which the Conservator shall disburse all amounts due

and payable as reasonable, necessary and proper operating expenses of the Conservatorship Property, subject to the terms of this Order and the availability of funds.

(b) Records. The Conservator shall maintain a system of books and accounts concerning the maintenance of the Conservatorship Property. Upon reasonable notice, and at all reasonable times, the general partners of the Partnerships, and their respective agents, shall have reasonable access to such records, accounts and books and to all other material pertaining to the operation of the Conservatorship Property, all of which the Conservator agrees to keep safe, available and separate from any records not having to do with the operation of the Conservatorship Property.

(c) Legal Requirements. The Conservator shall ensure that all aspects of the Conservatorship Property, and its operation, management, and development, comply with any and all laws, regulations, orders or requirements affecting the Conservatorship Property having jurisdiction there over.

(d) No Waste. Without the approval of the Court, the Conservator shall not suffer, cause or permit: (i) any removal of any Conservatorship Property; nor (ii) any waste of the Conservatorship Property or any of the components thereof.

8. Net Proceeds. Except as otherwise authorized in this Order, all proceeds from the Partnerships' actions shall be held by Conservator in a Conservatorship account or accounts, pending further Order of this Court, subject to paragraph 12, below.

9. No Interference. Except as otherwise requested or authorized by the Conservator, or until further order of this Court, all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator as hereinabove

described until further order of this Court; or (ii) acting or purporting to act on behalf of the Partnerships, Conservatorship Property, and/or the Conservator.

10. Consultation. The Conservator shall meet or confer over the telephone, at least once, with Michael D. Sullivan, Steven Jacob, and Margaret J. Smith, to gather information that may assist him in carrying out his duties as Conservator, for the duration and to the extent that the Conservator deems necessary. The Conservator is encouraged, but is not required, to discuss the affairs of the Partnerships with other individuals as he deems it necessary and using his best judgment.

11. Consultants and Professionals. With the permission of the Court upon appropriate application and notice to all parties in interest, the Conservator may be empowered to retain others to provide legal or accounting services as may be necessary during the period of Conservatorship. All such persons shall be compensated in accordance with Paragraph 12 below.

12. Fees. The Conservator shall be compensated at a rate of \$ 300 per hour, plus the reasonable and necessary out-of-pocket expenses incurred by the Conservator on behalf of the Conservatorship Property, excluding travel, lodging and meal expenses. The Conservator and any professionals the Conservator retains after Court approval shall be authorized to file applications for compensation every sixty (60) days. Applications shall be filed in full with the Court only and shall not be served. The notice of hearing on the application shall be served on all partners and other parties in interest and shall set forth a) the amount of fees and costs that the applicant is seeking and b) a bulletin that any partner or other party in interest may obtain a full copy of the application by contacting the applicant, and provide the name of a person, email

address and telephone number at the applicant's office who can provide a copy of the application.

13. Creation of Website. In light of the significant number of interested parties, a website shall be set up within 20 days of entry of this order to provide notice to all Partners of ongoing developments, including but not limited to reports contemplated by paragraph 12. A notice of the existence of this website shall be mailed to each of the Partners listed on the certificate of service attached to Plaintiffs' Motion to Appoint Receiver. In order to preserve the assets of the Partnerships, any postings on the website will be deemed adequate notice to all Partners unless a Partner specifically requests for information to be mailed to him/her.

14. Applications for Reimbursement. Any accountants, attorneys, consultants and other professionals that have purported to incur costs and fees on behalf of the Partnerships prior to the date of this Order may submit an application within twenty-one (21) calendar days of the date of this Order to be reimbursed by the Partnerships for those amounts. The Conservator shall first review the fee/cost requests to determine a) if they are expenses properly chargeable to the Partnerships and b) if the fees and costs are reasonable. The Conservator shall then present the requests to the Court along with his recommendations and shall serve a notice of hearing in the same manner and that contains the same information as required in Paragraph 12 above. The Court shall make the final determination on any requests for fees and costs, and all partners and other parties in interest shall have the right to object.

15. Judicial Immunity. The Conservator and the Conservator's attorneys and agents: (i) may rely on any and all outstanding court orders, judgments, decrees and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution,

certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a Conservator, or as attorney or agent for Conservator; and (iv) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent or constitute misfeasance. Except for matters set forth in subsection (iv) of the preceding sentence, persons dealing with the Conservator shall only look to the Conservatorship assets and bond posted by the Conservator to satisfy any liability, and neither the Conservator nor his attorneys or his agents shall have any personal liability to satisfy any such obligation.

16. Further Instructions. The Conservator may at any time upon notice to all partners and parties in interest, apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary in order to enable him to perform properly and legally the duties of his Conservatorship and to maintain, operate, protect and preserve the real property.

17. Duration. This Conservatorship will continue for such time until the Court enters an order terminating the Conservatorship and discharging the Conservator; provided that to the extent the Conservator no longer desires to serve in that capacity, upon notice to Plaintiff and Borrower, the Conservator may apply to the Court for termination of his appointment.

18. Jurisdiction. Jurisdiction of this action is retained to enter further orders as are appropriate.

DONE AND ORDERED in Chambers at Broward County, Florida, on this ___ day of
January, 2013.

HONORABLE JEFFREY E. STREITFELD
Circuit Court Judge

Copies furnished to:

See attached service list