

**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, as individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendants.

**CONSERVATOR’S MOTION FOR CONTEMPT AGAINST STEVEN JACOB AND
TO COMPEL INSPECTION OF CONSERVATORSHIP PROPERTY**

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”), hereby files this Motion For Contempt Against Steven Jacob (“Steve”), Fresh Start Tax, LLC (“Fresh Start”), Guardian Angel Trust, LLC (“GA”), and collectively with Steve and Fresh Start, “Jacob”) and to Compel Inspection of Property located at 1755 NE 52nd Street, Fort Lauderdale, FL. 33334 and stored at guardianangeltrust@msn.com, pursuant to this Court’s January 17, 2013 Order Appointing Conservator (the “Conservator Order”) and Fla. R. Civ. P. 1.380(b), and in support thereof states as follows:

Summary of Argument

First, the Conservator Order enjoined all persons from interfering with the Conservator’s administration of the Conservatorship and from acting or purporting to act on behalf of the Partnerships.

Next, the Conservator Order required all persons and entities in possession of Partnership property to turn such property over to the Conservator.

Jacob is knowingly and willfully violating this Court's Conservator Order by interfering with the Conservator and failing or refusing to turnover Partnership information demanded by the Conservator.

Based upon information contained in the Partnership's records, Jacob is **NOT** a partner in either S&P nor P&S. However, using Partnership letterhead and dubbing himself Managing General Partner, Jacob incited a letter writing campaign by urging the approximately 199 general partners to write the judge and directed them to communicate *ex parte* and directly with the judge notwithstanding the Court's earlier admonition that such communication was inappropriate. These guerilla tactics are designed to obstruct judicial process and the efficient administration of the Conservatorship estate.¹

Further, Jacob has failed and refused to permit the Conservator and his agents access to a Partnership Address and Guardian E-mail Address contained in his letter and certain computers located on Fresh Start's premises.

The Conservator and his agents ought to have access to the property identified by Jacob as a Partnership Address, the Guardian E-mail Address, all electronically stored information at Fresh Start and the ability to take possession of the Partnership's information therein.

Background & Argument

On January 17, 2013, this Court entered an Order Appointing Conservator (the "Conservator Order"). The Conservator is tasked with, among other things, taking possession of all property of the

¹ Upon information and belief, Jacob is a well educated and sophisticated businessman. He is a licensed CPA, holds a Bachelor of Arts in Accounting and a Masters of Accounting with a specialization in Tax from Florida Atlantic University, and spent six years with international accounting and consulting firm, KPMG Peat Marwick.

Partnerships (the “Conservatorship Property”) including all books, records and computer data, and reviewing, prosecuting, and investigating claims the Partnerships have, had or may have.

To aid the Conservator in his efforts, the Conservator Order states, among other things “all persons are hereby enjoined from: (i) interfering in any manner with the management of the Conservatorship Property by the Conservator or (ii) acting or purporting to act on behalf of the Partnerships, Conservatorship Property, and/or the Conservator.” (Conservator Order at 5-6).

Further, the Conservator Order requires “[a]ll persons and corporation now or hereafter in possession of any Conservatorship Property, or any part thereof, shall forthwith turn over such possession to the Conservator.” (Conservator Order at 2).

Jacob Purports to Have Authority to Act for Partnerships

Jacob continues to hold himself out as the Managing General Partner for S&P.

In a letter dated April 22, 2013, Jacob wrote to the general partners of the Partnerships and others, a “Call to Action” letter (the “Action Letter”).² Jacob’s Action Letter is written to make it appear as if on official Partnership letterhead.

In the Action Letter, Jacob refers to himself as “Steven F. Jacob, S&P Managing General Partner.” Jacob also signed the Action Letter as “Managing General Partner of S&P.”

Under the auspices of his contrived authority, the Action Letter purports to inform the approximately 199 general partners and others that “the Conservator is requesting approval to pay over \$165,000 in unauthorized fees.” (Action letter at 1). The Action Letter then encourages these individuals to write *ex parte* letters directly to the Judge (and includes the Court’s address and the Court’s judicial assistant’s name and phone number).

² A copy of Jacob’s Action Letter is attached hereto as **Exhibit “A”**. On April 24, 2013, the Conservator sent a formal cease and desist letter to Jacob demanding that Jacob cease all activities purportedly on behalf of the Partnerships. A copy of the cease and desist letter is attached hereto as **Exhibit “B”**.

Jacob's Action Letter violates this Court's Conservator Order, seeks to undermine the Conservator's authority, and inundate the Court with misinformed correspondences.

Jacob's sanctionable actions ought not be countenanced by this Court.

Despite Court Order and His Agreement, Jacob Refuses to Turnover Partnership Information

On or about March 12, 2013, the Conservator met with Jacob and requested information owned by or related to the Partnerships. Subsequently, the Conservator wrote a letter to Jacob dated March 15, 2013 in which he again requested that Jacob turnover information concerning the Partnerships. To date, Jacob has refused to comply with the Conservator's requests.

In a letter dated April 19, 2013, Jacob admitted to being in possession of records related to the Partnerships (the "Jacob's Claim Letter").³ According to Jacob, he "pulled together and evaluated all the records to determine the net equity not only the partnerships but of each individual partner." (Jacob's Claim Letter at 1). To date, Jacob has failed and refused to comply with the Conservator's demands to access certain electronically stored information, including "all the records" he used as part of his evaluation and the work product he purportedly prepared for the Partnerships.

On April 18 2013, this Court held a hearing (the "Contempt Hearing"), where it considered, among other things, the *Conservator's Motion for Contempt and to Compel Turnover of Partnerships' Books, Records and Electronically Stored Information* (the "Contempt Motion"). At the Contempt Hearing the parties engaged in negotiations outside of the presence of the Court at which time Sullivan and Jacob agreed to take all necessary steps to provide the Conservator access to all electronically stored information of or in any way related to the Partnerships located at 3696 Federal Highway, Suite 301, Ft. Lauderdale, FL 33308; the business office of Fresh Start Tax, LLC ("Fresh Start").⁴ This agreement included providing the Conservator access to electronically stored information related to or controlled by, among others, Sullivan & Powell aka Solutions in Tax, Inc.,

³ A copy of Jacob's Claim Letter is attached hereto as **Exhibit "C"**.

⁴ Jacob is the registered agent and manager of Fresh Start.

Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc.

Relying on the representations of the Sullivan and Jacob, the Conservator understood that the Contempt Motion was resolved and that the information would be promptly made available. Prompt delivery was particularly important as the electronically stored information is at risk of being overwritten and lost through the computers' normal operations. The risk of losing such information creates, or exacerbates, a spoliation issue that is of great concern.

On April 19, 2013, Dick Haslam (the "Haslam"), Lumar Motta, and Bill Straka of Moecker (the "Moecker Employees") visited the business offices of Fresh Start. The Moecker Employees were met by, among others, Sullivan and Jacob of Fresh Start, and Matt Elias who was introduced as Fresh Start's IT vendor. Sullivan and Jacob refused to provide the Moecker Employees access to certain electronically stored information they previously agreed to provide. Jacob should not be permitted to withhold Partnerships' information from the Conservator.

Additionally, Jacob's April 22, 2013 Action Letter identifies an e-mail address, guardianangeltrust@msn.com (the "Guardian E-mail Address") as an e-mail address for questions regarding the Partnerships' matters.

The Guardian E-mail Address mailbox contains Conservatorship Property. Jacob has refused to turnover the electronically stored information within the Guardian E-mail Address as required by the Conservator Order. (Conservator Order at 2). The Conservator and his agents should be provided access to the Partnerships' information within the Guardian E-mail Address. This access should be provided by, among other things, requiring Jacob to provide the Conservator and his agents with the password to the Guardian E-mail Address and access to any computers or server where electronically stored information related to the Partnerships' is held.

Further, Jacob's Action Letter identifies an address for the Partnerships located at 1755 NE 52nd Street, Fort Lauderdale, FL 33334 (the "Partnerships Address"). The Partnerships Address is displayed on the envelope of Jacob's Action Letter and within the Partnership letterhead.

Jacob has failed to provide access to the Conservatorship Property located at the Partnerships Address as required by the Conservator Order. (Conservator Order at 2). Accordingly, this Court should enter a break order allowing the Conservator and his agents to have access to the premises located at the Partnerships Address to take control of the Conservatorship Property, including any electronically stored information related to the Partnerships.

Conclusion

Jacob's contemptuous conduct ought not to be countenanced by this Court. His knowing and willful violations of the Conservator Order and his unreasonable demands upon the Conservator require judicial action. His failure and refusal to turnover information relevant to the Partnerships directly contravenes this Court's objective in appointing the Conservator. Jacob ought to be: (i) held in contempt; (ii) enjoined from interfering with the Conservator's administration of the Conservatorship; (iii) required to provide access to the Conservator to all information, including all electronically stored information (including all electronic correspondence) in his or Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc., the Partnerships Address, and Guardian Angel Email possession and control; and (iv) this Court ought to enter a break order permitting the Conservator to request the assistance of local police authorities to obtain access to the Partnerships Address.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) finding Jacob in contempt of court for willfully violating the Conservator Order; (ii) enjoining Jacob from interfering with the Conservator's administration of the Conservatorship, (iii) compelling Jacob to provide the Conservator and his agents access to inspect all information, including all electronically

stored information (including all electronic correspondence) in his or Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc., the Partnerships Address, and Guardian Angel Email possession and control, whether hard copy, stored on a hard drive, cloud, or otherwise, of or related to, in any way, the Partnerships; (iv) compelling Jacob to permit the Conservator and his agents to make copies of any and all hard drives or other storage devices (including cloud storage) upon which the Partnerships information was or may have been stored and to cooperate in all respects with the Conservator and his agents such that all of the information is delivered, in their entirety, to the Conservator; (v) compelling Jacob to provide the Conservator and his agents with the password for the guardianangeltrust@msn.com e-mail address and all electronically stored information (including all electronic correspondence) related to the Guardian E-mail Address, Sullivan & Powell aka Solutions in Tax, Inc., Guardian Angel Trust, LLC, SPJ Investments, Ltd., Fresh Start, and Michael D. Sullivan & Associates, Inc., and the Partnerships Address; (vii) entering a Break Order authorizing the Conservator and his agents to inspect and obtain information related to the Partnerships located at the Partnerships Address, 1755 NE 52nd Street, Fort Lauderdale, FL 33334, and the business office of Fresh Start Tax, LLC located at 3696 Federal Highway, Suite 301, Ft. Lauderdale, FL 33308; (viii) directing the U.S. Marshall Service and/or any local law enforcement agency to accompany and assist the Conservator in effectuating the terms of this Order, if so requested by the Conservator; and (ix) any for such other and further relief as this Court deems reasonable and just.

Dated: May 13, 2013

MESSANA, P.A.
Attorneys for Conservator
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401
By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422

Exhibit "A"
Jacob's Action Letter
Dated April 22, 2013

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
Page 2

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"
Cease and Desist Letter
Dated April 24, 2013

MESSANA P.A.

A Law Firm
www.messana-law.com

401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, Florida 33301

Telephone: 954-712-7400
Facsimile: 954-712-7401

Post Office Box 2485
Fort Lauderdale, Florida 33303

Thomas M. Messana
tmessana@messana-law.com
954-712-7415

April 24, 2013

VIA ELECTRONIC MAIL

Mr. Steven F. Jacob, CPA
3696 North Federal Highway, Suite 301
Fort Lauderdale, Florida 33308
jake@freshstarttax.com

IMMEDIATELY CEASE AND DESIST

Dear Mr. Jacob:

I am in receipt of your April 22, 2013 "Call to Action" letter (the "Letter").

PLEASE BE ADVISED, pursuant to Court Order you are precluded from "acting or purporting to act on behalf of the Partnerships...." Moreover, your purported election was specifically deemed moot by the Court.

In your Letter, which appears to be on Partnership letterhead, you violate the Court Order by purporting to act as the Managing General Partner of S&P Associates, General Partnership ("S&P"). Additionally, your Letter contains several misleading, incomplete, or false representations which, according to you, are "known and confirmed by all parties."

To be clear, you lack authority to act as Managing General Partner of S&P. Pursuant to Court Order, the Conservator was granted the authority to take action which could be lawfully taken by the managing general partner of the Partnerships. Through your actions, you are needlessly increasing the costs of this Conservatorship.

By this letter, I hereby demand that you **IMMEDIATELY CEASE AND DESIST** from holding yourself out to be the General Managing Partner of S&P, using Partnership letterhead, using the Partnerships' list of general partners, and publishing statements that you know to be false.

Absent your immediate compliance with this demand, the Conservator will pursue all legal remedies, including seeking damages and contempt sanctions.

PLEASE GOVERN YOURSELF ACCORDINGLY

Sincerely,


Thomas M. Messana

Copies Furnished To:
Philip J. von Kahle, Conservator at PhilVonKahle@Moecker.com

Exhibit "C"
Jacob's Claim Letter
Dated April 19, 2013

Steven F. Jacob, CPA & Associates, Inc.

1755 NE 52 Street
Fort Lauderdale, FL. 33334

Telephone (954)648-1796
Fax (954) 938-0069
jake@freshstarttax.com

Steven F. Jacob, CPA

April 19, 2013

SENT VIA CERTIFIED MAIL

Mr. Thomas M. Messana
401 E. Las Olas Blvd., Suite 1400
Fort Lauderdale, FL 33301

Dear Tom:

As you are aware, the conservator has advised me that I have crossed a line and refuses to accept anything from me directly. After several requests I still have not been informed what I did to be shunned by the conservator. Therefore, I am sending this material directly to you and copying the conservator.

The purpose of this letter is to give you a background of how the fees for Steven F. Jacob and Associates were calculated. A detailed bill is attached. I had emailed the conservator on February 28 and verbally asked on March 1 and March 12, what was still needed to complete my claim but never received a reply.

Madoff's fraud became public on December 11, 2008. On December 12, 2008, Mike Sullivan and I met in his office and started formulating a plan of action. Before Christmas 2008, Mike Sullivan went in for knee replacement surgery and was out of commission for several weeks. He asked that I take over and handle anything that comes up during that time frame. For that time frame I made certain I was in the office to handle any calls and whatever business needed to be done regarding the partnerships.

In early January claim forms were received by the Madoff trustee. That was the first instance we heard of the term net equity. Over the next several weeks I pulled together and evaluated all the records to determine the net equity not only the partnerships but of each individual partner. I worked closely with Chad Pugatch to put everything needed file an accurate claim. In addition I pulled together all information needed for partners to individually file their claims. Towards the end of the month there was a partnership meeting held to help explain all of this to the partners.

Steven F. Jacob, CPA & Associates, Inc.

1755 NE 52 Street
Fort Lauderdale, FL. 33334

Telephone (954)648-1796
Fax (954) 938-0069
jake@freshstarttax.com

Steven F. Jacob, CPA

April 19, 2013

In early February 2008, the SEC requested documentation and records. I coordinated this work with the SEC attorney Jim Sallah. I put together the records requested which was virtually all the records. I had billed the partnerships for my time in this work which totaled over \$50,000, but we agreed to a fee of \$31,000, of which \$29,000, was paid in the first quarter of 2009. All work was authorized by the managing General Partner, was necessary and benefited the partnerships and the partners in getting claims time filed and information out to all parties.

At that time, Mike Sullivan, the Managing General Partner, and I discussed the future and agreed that I was to be paid \$1,000 a month to help him with any partnership information needed in the future. Should there be any months where excess time was involved I could in fact bill additional amounts. However, I have never done that. The reason I have not been paid is that the partnership accounts were frozen in April 2009 by the Madoff trustee. As anyone involved can tell you I have been to all the meetings and handled many issue for the partnerships. These efforts have saved the partnerships tens of thousands in professional fees. That is how we have my current bills through July 2012, which includes the \$2,000 unpaid from prior to March 1, 2009.

Beginning in August 2012, a minority interest of partners attempted to take control. I put in additional time and continued to work on behalf of the partnerships all the way through to date. I have added the additional bill for this timeframe to my claim. Included in this is a dollar amount for \$9,100.00, which represents a bill sent to Glass Ratner for work performed at Maggie Smith's request. If Maggie Smith did not have authority to hire me then I will continue to try to collect from her. However based on the current the report submitted by the conservator he has approved fees of Glass Ratner and Berger Singerman. If that is the case then this portion of the bill would be a partnership debt and should be paid.

Steven F. Jacob, CPA & Associates, Inc.

1755 NE 52 Street
Fort Lauderdale, FL. 33334

Telephone (954)648-1796
Fax (954) 938-0069
jake@freshstarttax.com

Steven F. Jacob, CPA

April 19, 2013

It should be noted that I told Maggie Smith on several occasions that she was not the Managing General Partner because the vote was not valid. At our August 31 meeting with Maggie Smith, Carol Fox, and Mike Sullivan I also told both Maggie and Carol that Carol Fox was not independent in her role as a CPA conducting a Review. Carol Fox has family members that are net loser and winners in the partnership. Maggie Smith stated that due to Carol Fox's family accounts that she would no longer be working on the forensic review. Based on the bills your attorney recently sent me the fact now known is that Carol Fox continued to run the entire account even though she was not independent. It was also asked of Maggie Smith several times, why she was not contacting the partners nor returning any calls from partners. She eventually told me it was because Berger Singerman told her not to contact any partners except the group that was retained by Berger Singerman originally because the vote is contested.

On my October 10th 2012, meeting with Maggie Smith she confirmed to me that no money was missing from the partnerships. She commented that all records are in place and basically clean however she did have some questions regarding Kelco and the relationship of Avellino and Bienes. She asked if Mike would speak to her regarding these issues and I told her she should contact him directly. She never contacted Mike nor asked questions related to any of these issues.

The additional time spent for August 2012 regards representation of the partnerships. This can be shown as the election of December 17 specifically names me as managing general partner of S&P. Based on the facts stated above and the bills presented, I respectfully request the conservator approve the fees. Should you need additional information please contact me directly.

Very Truly Yours,



Steven F. Jacob, CPA

CC: Phil Von Kahle