

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

MATTHEW CARONE, et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

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

**CONSERVATOR'S MOTION TO
STRIKE STEVE JACOB'S OPPOSITION RESPONSE AND INCORPORATED
MEMORANDUM OF LAW TO CONSERVATOR'S LITIGATION STATUS
REPORT DATED MAY 20, 2013**

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, pursuant to 1.140 of the Florida Rules of Civil Procedure, hereby moves to strike Steve Jacob's ("Jacob") *Opposition Response and Incorporated Memorandum of Law to Conservator's Litigation Status Report Dated May 20, 2013*, filed on May 31, 2013 (the "Jacob Opposition"), and in support thereof states as follows:

Summary of Argument

Jacob is not a partner of the Partnerships and Jacob is not an attorney representing a partner of the Partnerships. What Jacob is: a defendant in a lawsuit brought by the Partnerships. Jacob objects to the Partnerships suing him and would like the lawsuit dismissed before a determination of the merits. However, he lacks standing and legal authority to appear before this Court in connection with the Litigation Report.

The Court ought to strike the Jacob Opposition.

Relevant Background

The Conservator was appointed pursuant to this Court's January 17, 2013 *Order Appointing Conservator* (the "Conservator Order" or "C.O.).

Prior to his appointment, Margaret Smith, acting on behalf of and for the benefit of the Partnerships, commenced two separate lawsuits:

- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Janet A. Hooker Charitable Trust, et al.*, Case No. 12-034121 (07) (the "Net Winner Suit"); and
- *Margaret Smith as General Partner of P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Michael D. Sullivan, et al.*, Case No. 12-034123 (07) (the "Insiders Suit") (together, the "Lawsuits").

The Conservator was charged with, among other things, investigating the claims and causes of action of the Partnerships, including the Lawsuits, and reporting to this Court whether such claims ought to be pursued for the benefit of the Partnerships. (C.O. at 3).

On May 14, 2013, the Court conducted a hearing (the "Hearing"). At the Hearing the Court requested a report from the Conservator concerning whether pursuing the Lawsuits would be in the best interest of the Partnerships.¹ Rather than an exhaustive review of the Lawsuits, the Court asked the Conservator to provide "the strongest points, with the understanding is that you are not giving me a full disclosure of every piece of evidence you have." (Hearing Tr. at 38:2-5).

¹ "I want you to tell me, similar to a motion to amend, now that everything has been checked, our investigation causes us to reach the following conclusion why it's in the best interest of the partnership to proceed with this action at this time." (Hearing Tr. at 37:22 to 38:2).

The Court stated that the Conservator would have until May 20, 2013 to file the report regarding the Lawsuits. Further, the Court stated that parties-in-interest would have until May 29, 2013 to file responses to the Conservator's recommendations within the report. Jacob attended the Hearing.

Consistent with the Court's statements at the Hearing, on May 22, 2013, the Court entered a *Scheduling Order* (the "Scheduling Order") which provided that the deadline for responses to the Conservator's Litigation Report would be May 29, 2013. Jacob was provided a copy of the Court's Scheduling Order.

On May 20, 2013, the Conservator filed his Litigation Status Report (the "Litigation Report"). The recommendations within the Litigation Report were based on, among other things, the Conservator's review of the available books and records as interviews with certain individuals familiar with the Partnerships and the Madoff Ponzi. Further, the Conservator evaluated the proposed fee structure for the Lawsuits. In the Conservator's business judgment the fee arrangement provides the Partnerships with a great opportunity to potentially recover millions of dollars without incurring substantial costs or exposure.

On May 31, 2013, Jacob filed his untimely Opposition to the Litigation Report.

Argument

1. The Conservator has reviewed the books and records of the Partnerships and determined that Jacob is not a partner of the Partnerships.

2. As a non-partner, Jacob does not have standing to petition the Court regarding its determination of whether the Lawsuits should go forward. *Vaughan v. First Union Nat. Bank of Florida*, 740 So. 2d 1216, 1217 (Fla. 2d Dist. Ct. App. 1999) ("Any litigant must

demonstrate that he or she has standing to invoke the power of the court to determine the merits of an issue.ö)

3. Other than being a defendant in the Insiders Suit, Jacob does not have a direct stake in the outcome of whether the Lawsuits are advanced. The Court's determination of the Litigation Report concerns whether partnership funds should be used to pursue the Lawsuits. As a non-partner, Jacob does not have any direct claim to the Partnership assets and therefore lacks standing to object to the manner in which they are used. *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th Dist. Ct. App. 2007) (öThe party must allege that he has suffered or will suffer a special injury.... Thus, the court must determine whether the plaintiff has a sufficient interest at stake in the controversy which will be affected by the outcome of the litigation.ö)

4. Accordingly, Jacob lacks standing to object to the Litigation Report. *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th Dist. Ct. App. 2007) (öTo have standing, a party must establish an injury that may be redressed by the requested relief.ö)

5. To the extent that Jacob purports to represent entities who may be partners of the Partnerships, such actions are not permitted. Florida law requires business entities to be represented by attorneys. *Szteinbaum v. Kaes Inversiones y Valores, C.A.*, 476 So. 2d 247, 248 (Fla. 3d Dist. Ct. App. 1985) (öIt is well recognized that a corporation, unlike a natural person, cannot represent itself and cannot appear in a court of law without an attorney.ö)

6. Jacob, as a non-attorney, is not authorized to represent entities before this Court. *James D. Pauls, Ltd. v. Pauls*, 633 F. Supp. 34, 35 (S.D. Fla. 1986) (Answering in the

negative the question òmay a general partner, who is not a licensed attorney, represent a limited partnership in a *pro se* lawsuit?ö)

7. Jacob's actions, which include filing pleadings on behalf of certain entities, constitutes the unlicensed practice of law. *The Florida Bar v. Embassy of Heaven Church*, 761 So. 2d 1053, 1055 (Fla. 2000) (per curiam) (holding that non-lawyer employees and representatives of an entity should be òpermanently and perpetually enjoined from engaging in the unlicensed practice of law in the State of Florida.ö) The Court ought not to consider pleading filed in violation of Florida law.

8. Finally, Jacob's Opposition was filed after the Court's deadline for responses to the Litigation Report. Jacob attended the Court Hearing and was provided a copy of the Scheduling Order. Jacob does not provide a good faith explanation for filing his Opposition after the Court's deadline. Accordingly, the Court should strike it.

WHEREFORE, Conservator respectfully requests that this Court Strike Steve Jacob's *Opposition Response and Incorporated Memorandum of Law to Conservator's Litigation Status Report Dated May 20, 2013* in its entirety and grant such other relief as the Court deems appropriate.

Respectfully submitted June 3, 2013

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