

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

CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**DEFENDANT, FRANK AVELLINO'S MOTION FOR A
CASE MANAGEMENT CONFERENCE**

Defendant, Frank Avellino, by and through his undersigned attorneys, files this Motion for a Case Management Conference and in support thereof states as follows:

1. On December 12, 2013, this Court entered the Case Management Order in this matter which provides that fact discovery is to be completed by June 25, 2014, dispositive motions filed by June 2, 2014, and the action tried in the fourth quarter of 2014.

2. Despite Avellino's diligent efforts, multiple amended complaints that have dramatically changed the claims asserted against Avellino, as well as Plaintiff's dilatory compliance with his discovery obligations has made compliance with the deadlines imposed in the Case Management Order impossible.

3. On November 26, 2013, Avellino served his initial discovery demands of Interrogatories and Request for Production on Plaintiff which was directed at Plaintiff's initial complaint. Plaintiff's responses as well as his supplemental responses were inadequate, necessitating the filing of a motion to strike/compel. Not until the hearing on the motion to

compel/strike on April 28, 2014, did Plaintiff finally agree to the entry of an agreed order regarding the inadequacies of his discovery responses. As of the filing of this motion, Avellino has not received Plaintiff's supplemental responses to discovery served over six months ago.

4. Avellino's initial discovery was directed to Plaintiff's initial complaint. Since then Plaintiff has twice filed amended complaints, the latest of which raised for the first time new and significant allegations against Avellino. In the Second Amended Complaint Plaintiff, for the first time has alleged that Avellino and Bienes directed the Partnerships to invest in Madoff and, consequently, are responsible for the Partnerships' losses that total in excess of \$12 million. See, Second Amended Complaint, ¶¶ 93-96. This claim is dramatically different from the allegations of the earlier complaints that sought to recover approximately \$300,000 in payments made to Avellino.

5. Presently, not only is the action not at issue, Avellino is uncertain as to the claims asserted against him. On April 28, 2014, this Court heard defendants' motions to dismiss the Second Amended Complaint. On June 3, 2014, this Court entered an order on defendants' motions to dismiss granting, in part, and providing Plaintiff leave to amend. As of the filing of this motion no amended complaint has been served.

6. All parties recognize the inability to comply with the existing deadlines. In response to Avellino's motion to extend the deadlines filed on May 19, 2014, Plaintiff has proposed extending the discovery deadline to August 15, 2014, with dispositive motions to be filed by July 1, 2014. However, this will not provide Avellino adequate time to complete discovery particularly in light of the newly asserted claims and whatever additional claims may be asserted in Plaintiff's amended complaint yet to be filed. Moreover, Avellino believes that a viable motion for summary judgment exists on grounds of Statute of Limitations and that

Plaintiff lacks facts to support his claims, among other grounds. Plaintiff's failure to timely comply with the outstanding discovery precludes Avellino from filing a summary judgment motion which, in any event, should not be filed until an amended complaint is filed and discovery is completed.

7. These and other issues should be addressed now rather than at the Final Case Management Conference presently scheduled for August 1, 2014. Avellino suggests that a Case Management Conference be conducted at the next status conference presently scheduled for June 20, 2014.

8. This motion is being made in good faith and not for the purposes of delay.

WHEREFORE, defendant, Avellino requests that this Court conduct a Case Management Conference and such other and further relief as the Court may deem just and appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June 2014, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

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