

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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

Case No. 12-034123 (07)
Complex Litigation Unit

**PLAINTIFFS' OBJECTION TO FRANK AVELLINO'S NOTICE OF PRODUCTION
TO NON-PARTY UNDER RULE 1.351**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (the "Partnerships", and together with the Conservator, the "Plaintiffs"), pursuant to Fla. R. Civ. P. 1.351, hereby file this Objection to Defendant, Frank Avellino's ("Defendant"), Notice of Production to Non-Party Under Rule 1.351, and in support thereof states as follows:

1. On June 5, 2014, Defendant filed his Notice of Production to Non-Party Under Rule 1.351 (the "Notice") to Atlas, Perlman, Trop & Borkson, P.A. ("Respondent"). A true and correct copy of the Notice is attached hereto as **Exhibit "A."**
2. Respondent was a law firm which is not presently operating. Respondent was the attorney of the Partnerships.
3. The Notice seeks documents related to Respondent's representation of the Partnerships and is improperly directed at discovering documents protected by the attorney-client and work product privilege.
4. Among other things, the Notice requests "All documents evidencing all communications [Respondent] had with P&S and/or S&P, or anyone acting on their behalf."

Notice at p. 7, Request 2. Respondent was formerly the attorney of the Partnerships and this request plainly demands turnover of communications between the Partnerships and their attorneys. These communications are protected by attorney-client privilege and/or the work product doctrine, and Defendant's request for such documents is improper.

5. Requests 1 and 3 are similarly improper because Request 1 seeks "all documents regarding all services" Respondent performed for or on behalf of the Partnerships and Request 3 seeks billings records for services rendered on behalf of the Partnerships. Such documents may contain information protected by the attorney-client privilege and/or work product doctrine and should not be produced to Defendant because such information was produced in connection with Respondent's representation of the Partnerships.

6. Further, Requests number 1, 2, and 3 in the Notice are overly broad, unduly burdensome,¹ and seek irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence related to the claims and/or defenses in the instant litigation

7. Simply put, the Defendant is not entitled to the documents requested in the Notice. Accordingly, this Court ought to sustain the Plaintiffs' objection to the Notice and deny the Defendant's request to issue a subpoena on the Respondent.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) sustaining the Plaintiffs' objection to the Notice; (ii) denying Defendant's request to issue a subpoena on the Respondent; and (iii) such other and further relief as this Court deems necessary and proper.

Dated: June 16, 2014

Respectfully submitted,

BERGER SINGERMANN LLP
Attorneys for Plaintiffs
350 East Las Olas Blvd, Suite 1000

¹ Among other things, the Notice fails to limit the time period for the documents requested.

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Exhibit “A”

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.

NOTICE OF PRODUCTION TO NON-PARTY UNDER RULE 1.351

YOU ARE NOTIFIED that after ten (10) days from the date of service of this notice, if service is by delivery, or fifteen (15) days from the date of service, if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the clerk of this court for issuance of the attached subpoena directed to:

Atlas, Perlman, Trop & Borkson, P.A. , who is not a party and whose address is 350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, FL, to produce the items listed at the time and place specified in the subpoena.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being sent by electronic service via the Florida Courts E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 to all parties on the attached service list and my email and facsimile to Thomas M. Messana, Esq., Messana, P.A., Suite 1400, 401 east Las Olas Boulevard, Fort Lauderdale, FL 33301, facsimile no. (954) 712-7401 this 5th day of June, 2014.

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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.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

(Records May Be Mailed in Lieu of Deposition)

To: Atlas, Pearlman, Trop & Borkson, P.A.
350 East Las Olas Boulevard, Suite 1700
Fort Lauderdale, FL 33303

YOU ARE COMMANDED to appear at Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33418, on June 30, 2014 at 10:00 AM., and to have with you at that time and place the following:

See Attached Exhibit A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or

(3) object to this subpoena,

you may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated this ____ day of June, 2014

FOR THE COURT

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant

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By: _____

Gary A. Woodfield, Esq.

FL Bar No. 563102

If you are a person with a disability who needs any accommodation in order to respond to this subpoena, you may request such assistance by contacting Robert G. Haile, Jr., Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33418 at 561-627-8100.

EXHIBIT A

1. All documents regarding all services You performed for or on behalf of P & S Associates General Partnership ("P&S") and or S & P Associates General Partnerships ("S&P"), including, but not limited to formation documents, partnership agreements and all amendments thereto.

2. All documents evidencing all communication You had with P&S and/or S&P, or anyone acting on their behalf.

3. All time records and/or billing records and billing statement or invoices for services rendered on behalf of P&S and/or S&P.