

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

MARGARET SMITH, et al.,

Case No. 12-034123 (07)

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

CONSERVATOR'S CASE MANAGEMENT CONFERENCE RESPONSES

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"), pursuant to this Court's Third Order Resetting Deadlines and Case Management Conference, files Conservator's Case Management Conference Responses (the "Response"), and states as follows:

- A. A brief factual statement of the action, which includes claims and defenses.** The Complaint alleges that Sullivan and other insiders used their position within the Partnerships to misappropriate assets including paying commissions and referral fees to the other Defendants. Co-Defendants are accused of, among other things, aiding and abetting breaches of fiduciary duty. Additionally, certain other defendants are alleged liable for
- B. A brief statement on the theory of damages of any party seeking affirmative relief.** The Partnerships contend that the Defendants are liable for breach of fiduciary duty, aid and abet breach of fiduciary duty, negligence, unjust enrichment and that damages be calculated based on the harm to the Partnerships.
- C. The likelihood of settlement.** Consistent with this Court's instructions the Conservator has filed a litigation report concerning this matter. However, the case has not been advanced beyond the filing of the report. Accordingly, it is too early in the proceeding to determine whether settlement is likely, although we anticipate that at least some of the defendants would offer to settle their claims rather than litigate.
- D. The likelihood of appearance in the action of additional parties and identification of any non-parties to whom any of the parties will seek to allocate fault.** Unknown given the early status of the proceeding, but it is

possible that other defendants will be added as more records are provided pursuant to prior orders of this Court.

- E. The proposed limits on the time: (i) to join other parties and to amend the pleadings, (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any nonparties whose identity is not known, (iv) to disclose expert witnesses, and (v) to complete discovery.** Conservator would agree to any reasonable time limits so long as the Conservator and his counsel are given the opportunity to review and prepare for this case.
- F. Name the attorneys responsible for handling the action.** Leonard Samuels and Etan Mark of Berger Singerman were Plaintiff's Counsel at commencement. However, since the appointment of the Conservator, Thomas Messana, Messana PA, has been engaged as general counsel to the Conservator. The Conservator has filed a motion to retain Berger Singerman as co-counsel to advance this matter. This Court has preliminarily granted the motion to retain subject to an in camera review of the engagement agreement. Harry Winderman has filed a notice of appearance on behalf of Michael Sullivan in this matter.
- G. The necessity of a protective order to facilitate discovery.** Too early to determine; however, given the sensitivity of financial records one may be sought.
- H. Proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment.** Conservator will make every effort to simplify the issues, once defendants are served and appearances are made.
- I. The possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence.** Conservator will make every effort to obtain admissions and stipulations once defendants are served and appearances are made.
- J. Suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, or mediation.** Unknown given the early status of the proceeding, although Conservator would be amenable to an early mediation once defendants are served and appearances are made.
- K. A preliminary estimate of the time required for trial.** 5- 7 days if the case is not otherwise resolved at the summary judgment stage.
- L. Requested date or dates for conferences before trial, a final pretrial conference, and trial.** Conservator believes that this case should be ready for trial by the second quarter on 2014, but given the fact that many defendants have not been served, Conservator is unable to obtain any agreement for a proposed trial date. Conservator would agree to any reasonable date so long as the Conservator and his counsel are given the opportunity to review and prepare for this case.

- M. A description of pertinent documents and a list of fact witnesses the parties believe to be relevant.** Unknown as documents are still be produced pursuant to prior orders of this court. Conservator certainly expects to use the Partnership Agreements and documents setting forth money invested, and distributions made, to the various partners.
- N. Number of experts and fields of expertise.** Unknown.
- O. Any other information that might be helpful to the court in setting further conferences and the trial date.** The Conservator filed a motion for extension of time to serve parties in this matter with a summons and complaint. Such motion was granted on June 28, 2013.
- P. Number of parties, number of preemptory challenges.** 6 per side would be acceptable to Conservator. Conservator is uncertain as to how the Court will handle this issue gives the multiple defendants in this case.
- Q. A statement of any concerns or procedures for the jury selection process.** Unknown given the early status of the proceeding.
- R. A statement of any need for special equipment necessary for the trial of the case, including a description of the equipment.** Unknown given the early status of the proceeding.
- S. A statement of the need for any special courtroom facilities, interpreters, etc.** None known at this time.
- T. A statement of any efforts to date and to resolve the case, including mediation or arbitration. Be prepared to discuss names of mediators or arbitrators who counsel can agree to in the event the court orders mediation or arbitration. A list of at least five (5) certified mediators who are acceptable for mediation.** Conservator is open to mediation with any reasonable mediator.
- U. Any special matters that the parties would like to bring to the attention of the court.** Payment of legal fees to Berger Singerman, which the Conservator recommends be paid at a substantial discount of the amount billed, noting that the amount billed was at a substantially discounted rate.

Dated: July 1, 2013

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