

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)

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

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

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**DEFENDANTS FRANK AVELLINO AND MICHAEL BIENES' MOTION FOR  
SANCTIONS PURSUANT TO SECTION 57.105, FLORIDA STATUTES**

Defendants, Frank Avellino ("Avellino"), and Michael Bienes ("Bienes") file this Motion for Sanctions against Plaintiff, Philip Von Kahle, as Conservator of S&P Associates, a General Partnership ("S&P") and P&S Associates, a General Partnership ("P&S") (the "Conservator") and Plaintiff's counsel, pursuant to Section 57.105, *Florida Statutes*, and as grounds therefore state as follows:

1. On June 27, 2014, Plaintiff filed its Third Amended Complaint (the "TAC") as ordered to do so by this Court.

2. More than eighteen months after filing his initial complaint and having conducted extensive discovery in this action, Plaintiff sets forth for the first time in the TAC expansive "factual" assertions alleging, on information and belief, that defendants Avellino Bienes:

- formed a relationship with Michael Sullivan and Greg Powell in order to have a new avenue to profit from Madoff's Ponzi scheme (TAC ¶ 20);
- Avellino and Bienes used Sullivan as a front man. (TAC ¶ 21);

- Avellino and/or Bienes presented Sullivan with the idea of administering a fund that would invest for others. (TAC ¶ 22);
- Avellino and Bienes advised the Partnerships to invest in BLMIS. (TAC ¶ 25);
- Avellino and Bienes used the Partnerships through Sullivan as a front man. (TAC ¶ 25);
- The Partnerships through Sullivan relied on Avellino and Bienes' advice to invest with BLMIS. (TAC ¶26);
- The Partnerships invested millions of dollars with BLMIS based upon the advice of Avellino and Bienes. (TAC ¶ 27);
- Avellino and Bienes acted as investment advisors for Sullivan and the Partnerships. (TAC ¶28).

3. Plaintiff and his counsel have filed these claims knowing, or Plaintiff and his counsel should have known, that the aforesated claims are not supported by the material facts necessary to establish the claims and are not supported by the application of existing law to such facts. Therefore, pursuant to Section 57.105, *Florida Statutes*, attorney's fees and costs incurred should be assessed against Plaintiff and his counsel.

4. Pursuant to Section 57.105, *Florida Statutes*, Avellino and Bienes are serving this motion upon Plaintiff and his counsel via e-mail delivery, but this motion will not be filed or presented to the court unless within 21 days after service of this motion Plaintiff fails to withdraw paragraphs 11 through 30 of the TAC and dismiss Counts VIII, X, XI and XII of the TAC, which arise from and are based upon such factual allegations, the failure of which will result in Avellino and Bienes filing this motion with the court and seeking an award of attorney's fees and expenses incurred against Plaintiff and his attorneys.

WHEREFORE, Defendants, Frank Avellino and Michael Bienes,, request that this court enter an order finding that Avellino and Bienes are entitled to an award of attorney's fees, together with expenses and costs incurred in refuting and defending the claims of Plaintiff, against Plaintiff and his counsel pursuant to Section 57.105, *Florida Statutes*.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of July 2014, the foregoing document is being served by email on those on the attached service list.

/s/ Gary A. Woodfield  
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