

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.

STEVEN JACOB, et al.

Defendants.

**PLAINTIFFS' STATEMENT OF MATERIAL FACTS IN OPPOSITION TO
DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT**

Plaintiffs provide the following material factual statement in support of their opposition to Defendants Frank Avellino and Michael Bienes' Material Factual Statement in Support of their Motion for Summary Judgment:

1. Defendant Frank Avellino ("Avellino") and Defendant Michael Bienes ("Bienes") (Avellino and Bienes are collectively the "Defendants") were among the first people in history to operate a feeder fund for Bernard L. Madoff Investment Securities, LLC ("BLMIS"). Transcript of Deposition of Michael Bienes ("Bienes Tr.") 178:18-25¹; Transcript of the Deposition of Frank Avellino ("Avellino Tr.") at 32:13-19.² Through a partnership known as Avellino & Bienes ("A&B"), Avellino and Bienes invested millions of dollars in BLMIS.

2. Michael D. Sullivan, through an entity he controlled, S&P Investment Group, Inc., invested with A & B. Avellino Depo. Exh. 3; Avellino Depo. Tr. 12:7-10, 33:8-17.

¹ A true and correct copy of excerpts from the Bienes Tr. is attached hereto as **Exhibit "A"**.

² A true and correct copy of excerpts from the Avellino Tr. is attached hereto as **Exhibit "B"**.

3. In 1992, Defendants Avellino and Bienes were prohibited by the Securities and Exchange Commission from participating in the sale of securities or providing investment advice pursuant to a final judgment entered in Case No. 1:92-cv-08314-JES in the Southern District of New York (the “Final Judgment”). *See* Bienes Depo. Exh. 30.

4. After entry of the Final Judgment, Avellino and Bienes created a network of “front men” feeder fund partnerships and charitable foundations throughout the United States to invest in BLMIS. Transcript of Trial in *Daley v. Avellino*, Vol. 5 at 101:25-102:4. (Attached hereto as **Exhibit “C”**). Frank DiPascali, who served as Madoff’s “right-hand” for several decades and was aware of the Madoff Ponzi Scheme, testified that Avellino and Madoff had a meeting during which it was decided that certain individuals, such as Avellino, would receive commissions for bringing investors to Madoff. Transcript of Testimony of Frank DiPascali (“DiPascali Tr.”) [ECF 858 at p. 33-34].³ DiPascali also testified that Avellino and Madoff worked together to bring former investors in A&B to Madoff directly by providing extra money to certain people’s individual accounts. DiPascali Tr. [ECF 858 at p. 34-35]. DiPascali’s testimony helped prosecutors convict five of Madoff’s associates.

5. In 1992, Sullivan and Gregory Powell formed S&P Associates General Partnership (“S&P”) and P&S Associates General Partnership (“P&S”) (S&P and P&S are collectively, the “Partnerships”) to serve as investment vehicles in BLMIS, and S&P and P&S then began to invest partners’ funds into BLMIS. Complaint ¶¶ 21-22.

6. Although Sullivan had no investment experience, Avellino felt comfortable referring former investors to Sullivan. Avellino Tr. at 91:3-14; 121:6-25; 122:8-17; 123:7-22 178:15-20; 244:10-25; 245:1-25; 246:1-13.

³ A true and correct copy of excerpts of the DiPascali Tr. is attached to Plaintiffs’ Response to Defendants’ Amended Motion for Summary Judgment as Exhibit 12.

7. Bienes stated that it must have been Avellino who introduced Sullivan to Madoff. Bienes Depo. Tr., Exh. No. 37 at AVE02950RTP.

8. Avellino⁴ gave Sullivan advice as to how to structure the Partnerships so as to “prevent Sullivan from making the same mistakes,” because “he knew [Avellino] had gone through hell [with Madoff] once before.” Avellino Tr. at 205:13-15. In fact, Avellino met with the Partnerships’ accountants when they were formed. Avellino Tr. at Exh. 6.

9. Avellino and Bienes also gave Sullivan advice on how to invest with Madoff to avoid regulatory scrutiny. Avellino Tr. at 121:6-25; 122:8-17; 123:7-22; Bienes Tr. at 187-188. Avellino also acted as Sullivan’s main contact point for all affairs relating to BLMIS. Sullivan Tr. at 183:1-16. Avellino provided Sullivan with information concerning Madoff, and also had his son, Thomas Avellino, provide Sullivan with software, which permitted Sullivan to track Partnership investments and returns. Avellino Tr. at 45:14-25; 46:1-18; 153:10-16; 202-203. Avellino and Bienes also operated out of an office which was on the same floor in the same building as the Partnerships’ office. Avellino Tr. 87:10-14.

10. Sullivan stated that the business of the Partnerships came to him from Avellino, that Avellino reminded Sullivan that it was his gift alone, that Avellino was the “main source”, and that “[i]f something happens to the stock market, to our investors, to Frank our contact or myself this investment partnership could change drastically.” Avellino Depo., Exh. 15 (emphasis added); Transcript of the Deposition of Michael D. Sullivan (“Sullivan Tr.”) at 178-179.⁵

11. Avellino and Bienes tracked the returns of certain investors in S&P and P&S, and tracked the movement of former A&B customers to the Partnerships. *See* Avellino Tr. at 88:20-

⁴ Avellino testified that when dealing with the Partnerships, he was acting on both his own behalf, and on Bienes’ behalf. Avellino Tr. at 255:2-6; *see also* Bienes Tr. 155:17-18.

⁵ A true and correct copy of excerpts from the Sullivan Tr. are attached to Plaintiffs’ Response to Defendants’ Amended Motion for Summary Judgment as Exhibit 5.

23; 100:1-24; 154:1-23; Avellino Tr. at 176:1-11 (Exh. 13); Avellino Depo. Exh. 10, 14; Avellino Tr. 173:13-25; 174:1-4.

12. The Partnerships at Sullivan's direction and through entities such as Sullivan & Powell/Solutions in Tax and Michael D. Sullivan & Assoc., transferred funds to Defendants and their co-conspirators in exchange for their referral of investors to the Partnerships. Avellino Tr. 173:13-25; 174:1-4 Avellino Depo. Exh. 13; Bienes Depo Exh. 36. Additionally, Avellino directed that Sullivan use the Partnerships' funds to pay his pastor \$50,000. Avellino Tr. 156:14-25, 157:1-22. Bienes also directed the payment of management fees to various entities he controlled. Bienes Tr. 101:5-25, 102:1-25, 103:20-25, 104:13.

13. Kickbacks to Defendants and the other recipients were documented in the books and records of Sullivan's entities, and not in the Partnerships' books and records. Sullivan Tr. at 10-17; 193:8-194:6; Affidavit of Philip Von Kahle ("Von Kahle Aff.") ¶¶ 2-7;⁶ Affidavit of Barry Mukamal ("Mukamal Aff.") ¶ 6;⁷ Declaration of Margaret Smith ("Smith Decl.") ¶ 3;⁸ Transcript of March 8, 2016 Deposition of Michael D. Sullivan ("Sullivan Tr. (3-8-2016)") at 43:7-18.⁹

14. Other partners were unable to obtain information disclosing the kickbacks despite requests for information from Sullivan, the managing general partner. *See* Transcript of the

⁶ A true and correct copy of the Von Kahle Aff. is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 1.

⁷ A true and correct copy of the Mukamal Aff. is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 3.

⁸ A true and correct copy of the Smith Decl. is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 4.

⁹ A true and correct copy of excerpts from the Sullivan Tr. (3-8-2016) is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 6.

March 2, 2016 Deposition of Brett Stacey Stepelton, as Corporate Representative of Festus & Helen Stacey Foundation, Inc. ("Festus Tr.") at 40; 74:16-26; 75:1-2; 76:11-15.¹⁰

15. On December 15, 2008 and despite the fact that the Partnerships had no capital as of that date, Sullivan caused a transfer of \$20,000 from P&S to Michael D. Sullivan & Associates and \$20,000 from S&P to M.D. Sullivan & Associates. *See* Mukamal Aff. ¶ 7.

16. After Madoff's Ponzi scheme was revealed, Sullivan adjusted the books and records of the Partnerships to conceal the amount of kickbacks that he received. Specifically, in January 2008, Sullivan took \$750,000 out of the Partnerships to pay himself management fees for the coming year. In January 2009, Sullivan stated on the tax returns that the management fee was \$300,000 to reflect what he perceived was a loss due to the Ponzi scheme. However, Sullivan did not return the \$300,000 that he did not state on the tax returns to the Partnerships' accounts. Sullivan Tr. (3-8-2016) 28:1-6, 61:10-18, 114:16-25.

17. Avellino and Bienes were involved in communications with partners of the Partnerships, concerning the Madoff Ponzi scheme after it was publically disclosed. Among other representations, Avellino and Bienes they claimed that they were victims of the Madoff Ponzi scheme and lost all of the money they invested in BLMIS. *See* Affidavit of Matthew Carone ("Carone Aff."), Exh. B, C, D, E, H, I, O, P;¹¹ Bienes Depo. Exh. 37 at AVE02951RTP, AVE02959RTP; Avellino Depo. Exh. 13, 14.

18. From 2009 to 2012, Sullivan professed Avellino's and Bienes' innocence to the partners and refrained from suing the Partnerships. Carone Aff. Exh. Q; Sullivan Tr. (3-8-2016) Exh. 23, 118:24-25, 120:6-7.

¹⁰ A true and correct copy of the Festus Tr. is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 2.

¹¹ A true and correct copy of the Carone Aff. is attached to Plaintiffs' Response to Defendants' Amended Motion for Summary Judgment as Exhibit 9.

19. Sullivan told partnerships of the Partnerships that Avellino and Bienes were “broke”, had “nothing left”, “can’t even afford health insurance”, “never had a clue”, and “had no connection with S&P or P&S.” Carone Aff., Exh. E, O, P, Q.

20. On August 10, 2012, Sullivan sent a letter to partners stating that suing Avellino and Bienes “would be an incredible waste of your money.” Avellino Tr. Exh. 21. Sullivan went on to state that “Partnership funds were never paid to Avellino and Bienes or anyone else[,]” and that “[n]o commissions were paid from partnership assets.” *Id.*

21. On August 17, 2012, a special meeting of the Partnerships occurred that resulted in more than 51% of the voting interest of the Partnerships voting to remove Sullivan as Managing General Partners of the Partnerships and replace him with Margaret Smith. Smith Decl. ¶ 2. Sullivan refused to step down as Managing General Partner and refused to turn over the Partnerships’ assets, books and records to Smith. *Id.* ¶ 4-5.

22. In response to a verified complaint filed in this Court by certain partners, this Court entered an order, on August 29, 2012, whereby Sullivan resigned as Managing General Partner of the Partnerships, Smith was deemed the Managing General Partner, and Smith was to be given “full access to all of the Partnerships’ books, records, assets and property and . . . afforded all of the rights and duties of a Managing General Partner, including but not limited to those contemplated by Article 8.02 of each of the Partnerships’ respective Partnership Agreements.” *See* Agreed Order Resolving Plaintiffs’ Emergency Motion for Temporary Injunction.¹²

¹² A true and correct copy of the Agreed Order Resolving Plaintiffs’ Emergency Motion for Temporary Injunction is attached to Plaintiffs’ Response to Defendants’ Amended Motion for Summary Judgment as Exhibit 8.

23. It was only after receiving records and analyzing same, in conjunction with documents received in approximately May 2012, was it established that Defendants and others received distributions from capital contributions of other partners in the Partnerships. Smith Decl. ¶ 3; Mukamal Aff. ¶ 5.

24. It was similarly not until the books and records of Sullivan's entities such as Michael D. Sullivan & Associates and Sullivan & Powell/Solutions in Tax were made available that the unlawful kickbacks paid to Defendants were discoverable. *See* Sullivan Depo. Tr. 193:8-194:6; Smith Decl. ¶ 3; Von Kahle Aff ¶ 7.

25. Plaintiffs filed their initial Complaint on December 10, 2012. However, the Partnership funds necessary to permit the Plaintiffs to prosecute the claims against Defendants were tied up by Helen Chaitman, on behalf of Michael D. Sullivan, who continued to challenge Smith's appointment as Managing General Partner. Smith Decl. ¶ 4-5. Chaitman also represented Avellino and Bienes. Avellino Privilege Log at 4.¹³

26. On January 17, 2013, Philip Von Kahle was appointed as Conservator of the Partnerships.

27. Philip Von Kahle, Conservator of the Partnerships, was appointed as a successor to Margaret Smith. The Conservator did not have a complete copy of the books and records of the Partnerships until after August 19, 2013, when the Court entered an Order Compelling

¹³ A true and correct copy of Avellino's Privilege log is attached hereto as **Exhibit "D"**.

28. Michael Sullivan to Authorize the Conservator Access to Financial and Insurance Information. *See* Von Kahle Aff. ¶ 5.

Dated: August 1, 2016

BERGER SINGERMANN LLP
Attorneys for Plaintiffs
350 East Las Olas Blvd, Suite 1000
Fort Lauderdale, FL 33301
Telephone: (954) 525-9900
Direct: (954) 712-5138
Facsimile: (954) 523-2872

By: s/ LEONARD K. SAMUELS
Leonard K. Samuels
Florida Bar No. 501610
lsamuels@bergersingerman.com
Zachary P. Hyman
Florida Bar No. 98581
zhyman@bergersingerman.com

and

MESSANA, P.A.
Attorneys for Plaintiffs
401 East Las Olas Boulevard, Suite 1400
Ft. Lauderdale, FL 33301
Telephone: (954) 712-7400
Facsimile: (954) 712-7401

By: /s/ Thomas M. Messana
Thomas M. Messana, Esq.
Florida Bar No. 991422
tmessana@messana-law.com
Brett D. Lieberman, Esq.
Florida Bar No. 69583
blieberman@messana-law.com
Thomas G. Zeichman, Esq.
Florida Bar No. 99239
tzeichman@messana-law.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 1, 2016, a copy of the foregoing was filed with the Clerk of the Court via the E-filing Portal, and served via Electronic Mail by the E-filing Portal upon:

Peter G. Herman, Esq.
1401 E. Broward Blvd. Suite 206
Fort Lauderdale, FL 33301
Tel: 954-315-4874
Fax: 954-762-2554
PGH@thlglaw.com
ServicePGH@thlglaw.com
***Attorneys for Steven Jacob; Steven F. Jacob
CPA & Associates, Inc.***

Thomas M. Messana, Esq.
Messana, P.A.
401 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301
Tel.: 954-712-7400
Fax: 954-712-7401
tmessana@messana-law.com
Attorneys for Plaintiff

Gary A. Woodfield, Esq.
Haile, Shaw & Pfaffenberger, P.A.
660 U.S. Highway One, Third Floor
North Palm Beach, FL 33408
Tel.: 561-627-8100
Fax.: 561-622-7603
gwoodfield@haileshaw.com
bpetroni@haileshaw.com
eservices@haileshaw.com
***Attorneys for Frank Avellino
and Michael Bienes***

By: s/Leonard K. Samuels
Leonard K. Samuels

EXHIBIT A

MICHAEL BIENES

DEPOSITION EXCERPTS

DATED: SEPTEMBER 10, 2015

1 IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
2 IN AND FOR BROWARD COUNTY, FLORIDA
3 CASE No.12-034123 (07)

4 P&S ASSOCIATES, GENERAL PARTNERSHIP,
5 a Florida limited partnership, et al.,
6 Plaintiffs,

7 -vs-

8 MICHAEL D. SULLIVAN, et al.,
9 Defendants.

10 DEPOSITION OF MICHAEL BIENES
11 VIDEOTAPED

12 VOLUME II
13 PAGES 85 - 215

14 Thursday, September 10, 2015
15 12:52 p.m. - 4:50 p.m.

16
17 Berger Singerman LLP
18 One Town Center Road
19 Suite 301
20 Boca Raton, Florida 33486

21
22 Reported By:
23 Gabrielle Cardarelli, FPR, RPR
24 Notary Public, State of Florida
25 Esquire Deposition Services
Job #22282

1 Bienes." Do you see that?

2 A First --

3 Q First page, right there?

4 A Yeah.

5 Q Okay. The payments on this page total
6 \$481,162.96. Do you see that?

7 A Yes.

8 Q Okay. And so there's a payment -- this
9 document indicates there's a payment on February 10th,
10 2003, in the amount of 15,000 to FPOM, Inc. What is
11 FPOM, Inc.?

12 A Florida Philharmonic Orchestra Musicians.

13 Q And is that a group in which you were actively
14 involved?

15 A Yes.

16 Q Okay. And what was the level of your
17 involvement?

18 A We created it and ran it.

19 Q Okay. All right. On 2/10/2003, the "we"
20 would be you and your wife?

21 A Yes. Yes.

22 Q Okay. On -- also, on February 10th, 2003, it
23 indicates a payment of \$42,500 to American Friends of
24 Covant Garden, Inc. And it has paren, Bienes, close
25 paren. What is American Friends of Covant -- Covent

1 Garden, Inc.?

2 A From my knowledge, it was an American-based
3 support group for the Royal Opera House in London.

4 Q And you were involved in that organization?

5 A No.

6 Q Okay. Was it an organization in which you --
7 which you made charitable contributions?

8 A I'm sorry. I don't remember.

9 Q Okay. Do you know if it's an organization
10 which Michael Sullivan was involved or made charitable
11 contributions?

12 A I would have no knowledge of that.

13 Q Okay. Let's go now to Arlington House, LLC.
14 On March 4th, 2004, there's a payment of \$51,836.62 to
15 56 Arlington House, LLC. Open paren, Michael Bienes,
16 close paren. What is Arling -- 56 Arlington House?

17 A Well, it's -- it's an LLC. It's a
18 corporation.

19 Q Do you care to tell me what it is? I didn't
20 ask what form it was.

21 MR. ETRA: Objection. Argumentative.

22 THE WITNESS: 56 Arlington House was our
23 address in London. It was a flat that we had.

24 BY MR. SAMUELS:

25 Q And were you a member of this LLC, 56

1 Arlington House?

2 A I would assume I am.

3 Q Okay. And were there any other members of 56
4 Arlington House?

5 A I would think my wife.

6 Q Okay. And 56 Arlington House is not a
7 charitable entity, right? It's an owner of real estate?

8 A Two parts. It is not a charitable entity. It
9 owns no real estate.

10 Q Okay. It lets -- what did you say, again?

11 A It is not a charity. It owns no real estate.

12 Q Right. But what did you say it did, again? I
13 thought you said it's an address in London.

14 A Yes.

15 Q Okay. What is its purpose?

16 A To pay the rent on that flat.

17 Q Okay. And did you -- have you and your wife
18 spent time at that flat?

19 A Yes.

20 Q Now, would you agree that these payments on
21 behalf of Avellino & Bienes -- and we'll just focus on
22 the ones to Bienes: To FPOM Inc., to 56 Arlington
23 House, LLC; and to American Friends of Covent Garden,
24 Inc., were made by S&P or P&S or Michael Sullivan or one
25 of his entities?

1 MR. ETRA: Objection.

2 MR. SAMUELS: -- at your -- as a referral fee
3 for you referring investors into Michael Sullivan
4 or one of his entities?

5 MR. ETRA: Objection. I thought you were
6 done.

7 THE WITNESS: No.

8 BY MR. SAMUELS:

9 Q Why were these payments made by S&P, P&S,
10 Michael Sullivan or one of his entities?

11 MR. ETRA: Objection.

12 THE WITNESS: I don't know his mind,
13 Mr. Sullivan. I don't know his mind.

14 BY MR. SAMUELS:

15 Q So your answer is you do not know why these
16 payments were made?

17 A I could guess.

18 Q And your guess is what?

19 A Well, you showed me a letter that accompanied
20 a check. It was to support Dianne and my charitable
21 interests.

22 Q Okay. And why would Michael Sullivan be
23 supporting Dianne and your charitable interests?

24 A That letter gives you a hint.

25 Q Well, I'm asking you.

1 BY MR. SAMUELS:

2 Q Told him what? You may have told him what?

3 A If he doesn't want to give to my charities
4 direct for whatever reason, but he still wants to give,
5 then let him make out the check to 56 Arlington. I'm
6 surmising now. I can't bring that conversation into my
7 mind's eye and ear. I don't have it like I did with the
8 conversation of Sullivan's son. That, I can do.

9 Q If he wanted to take the tax deduction by
10 paying commissions to you, and while at the same time
11 supporting your charities, couldn't he just have paid
12 you directly?

13 A You mean, to my own name?

14 Q Yeah.

15 A Oh, yes. Yes, he could have.

16 Q So why wouldn't he do that?

17 A Because I asked him, through Frank Avellino,
18 to do it through 56 Arlington.

19 Q And why would it be better for you to do it
20 through 56 Arlington, than just get the money --

21 A It was not better.

22 Q -- if you were going to be paying the money to
23 charity, anyway?

24 A It was not better, it was not worse -- worse,
25 it was just a simplification.

1 It's always us as GPs.

2 "We didn't create one of those partnerships --
3 you know, and the trick is who's a general partner? A
4 shell corporation is a general partner. Who owns the
5 shell? The boys. We never did that. There was no
6 corporation. We always stood behind it. That's how
7 much we believed in Bernie.

8 "So you were promising people how much?"

9 And you said, "All depends. Big amounts,
10 18 percent; smaller amounts, 17, 16, even as low as 15."

11 Do you see that?

12 A I'm on page --

13 Q Now, I'm over on page 24.

14 A Oh, okay. Wait a minute. Yeah, I see that.

15 Q So you recall promising people 18 percent;
16 smaller amounts, 17, 16, or even as low as 15?

17 A Uh-huh. Yeah.

18 Q Okay. And then on page 25, it says: "At the
19 time, were you the only people that you were aware of
20 that were feeding Bernie Madoff money?"

21 And you said, "Yes. Yes."

22 "In the '70s?

23 "Yes. Yes. We thought we were the only
24 ones." Do you see that?

25 A Yes, sir.

1 Q So, does that refresh your recollection that
2 you were the only ones trading money into Bernie Madoff
3 in the '70s?

4 MR. ETRA: Objection.

5 THE WITNESS: It doesn't have to refresh my
6 recollection. It's what I thought.

7 BY MR. SAMUELS:

8 Q Okay. Very good.

9 So let's go now to page 26. "Why did you need
10 to know? I mean, it's money."

11 You say, "No. No. No. It's not the money;
12 it's people. I don't want bad people. I don't want
13 people we don't know. I don't want people who shouldn't
14 be giving us money."

15 Do you see that?

16 A Yes.

17 Q So you were careful in terms of who you were
18 taking money from, right?

19 A I would say so.

20 Q Why is that?

21 A Obvious reasons. Are you not careful who
22 you're taking as clients?

23 Q I'm asking you. It's a deposition.

24 A Because we're running a financial service, and
25 we didn't want people who were not going to be solid and

1 Highway.

2 MR. WOODFIELD: What page?

3 MR. SAMUELS: Page 2950.

4 BY MR. SAMUELS:

5 Q You say, "Yeah, I met them quickly because
6 Avellino said to me, 'we're being audited by the IRS.'
7 I knew this was going to follow the SEC thing. It
8 always does. And I said, 'okay. We'll handle it.'"

9 "He says: 'Michael, I'd like Sullivan and
10 Powell to handle it." They're too emotional -- "you're
11 too emotional."

12 "So I went up to their office and I met them,
13 and I saw the Bible and the crucifix and the lama ding
14 dong. And he says, 'You know, Frank really said it.'"

15 "I said: 'Look guys, I'm going to give you a
16 word of advice: Do it right. Do it right. Be precise.
17 If there's any question about who gets what, give it to
18 your client."

19 So at this point in time, after the SEC thing,
20 you were, in fact, aware that Sullivan was going to be
21 investing with Madoff, correct?

22 MR. ETRA: Objection to form.

23 THE WITNESS: I'm too confused. I don't
24 remember. I wasn't under oath and I was trying to
25 be cooperative.

1 BY MR. SAMUELS:

2 Q Well, when you're saying, "look guys, I'm
3 going to give you a word of advice: Do it right. Do it
4 right. Be precise," were you referring to his going to
5 do business with Madoff?

6 A I don't remember ever saying it to them.

7 Q Then you say, "Who introduced Sullivan, Powell
8 and Jacob to Bernie Madoff?"

9 And you say, "My partner must have. I
10 certainly didn't"; is that right?

11 A I said that.

12 Q And is that your understanding?

13 A Not now.

14 Q What is your understanding in terms of who
15 introduced Sullivan?

16 A You didn't need an introduction. You just had
17 to pick up the phone.

18 Q And where did you get that understanding from?

19 A From reading the list of 6,500 names that were
20 invested with Madoff, and all the banks and hedge funds
21 and everybody else. You didn't need an introduction.
22 Those people were not introduced, they called or wrote
23 or sent a carrier pidgeon.

24 Q And how do you know how those people -- you
25 don't know how those people got to Madoff, right?

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EXHIBIT

37

HIGHLIGHTS

Meeting the
young Bernie
Madoff

"The tougher we
were, the more
money came in."

"Who am I to say,
'Bernie, show me
your books'?"

A visit from the
SEC in 1992

Does he feel
responsible for
his former
investors staying
with Madoff?

Why he took
Madoff at his

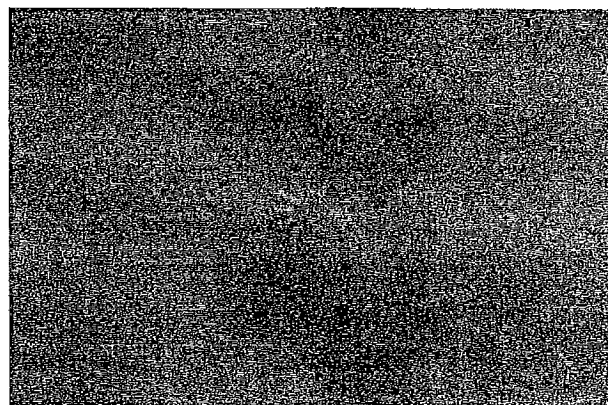
Let's go back to
the early days.
You grew up in
Brooklyn?

No. I grew up in
Long Beach, Long
Island, N.Y., a
bedroom
community 26
miles from New
York City.

And when you
were growing up,
what was your
ambition?

Well, my mother
always said,
"You've gotta
make a living, and

WATCH AN EXCERPT



Bienes, along with his partner
Frank Avellino, funneled
money to Madoff's investment
advisory business for
decades. By the time the
Securities and Exchange
Commission shut them down
for being unlicensed in 1992,
the men had more than 3,200
clients with \$441 million

once that they had a Bible in their office and they did prayers and big Methodist things. I said, "Those the guys down the hall from the office that we opened and never used?" "Yeah. Yeah. Yeah."

That's on North Federal Highway.

Yeah. Then I met them quickly, because [Avellino] said to me, "We're being audited by the IRS." I knew that was gonna follow this SEC thing. It always does. And I said: "OK. We'll handle it." He says: "Michael, I'd like Sullivan and Powell to handle it. You're too emotional."

So I went up to their office, and I met them, and I saw the Bible and the crucifix and the whole lama ding dong. And he says, "You know, Frank really said it." I said: "Look guys, I'm gonna give you a word of advice: Do it right. Do it right. Be precise. And if there's any question about who gets what, give it to your client. Don't get --"

Who introduced Sullivan, Powell and [Steven F.] Jacob [another partner of Sullivan's] to Bernie Madoff?

My partner must have. I certainly didn't.

And who introduced all those clients that used to be going to Avellino & Bienes to Sullivan and his partners?

I don't [know] if he had clients who used to go to Avellino & Bienes.

Well, I've talked to people and seen that they invested with you --

I never introduced anyone to --

You never suggested --

Never. Never.

-- ever, that you could go to Michael Sullivan --

No. No. No.

-- and that you could continue to invest with Madoff through Sullivan.

Somebody may have said to me, "How is this Sullivan guy? I hear-- " And I would say, "As far as I know, he's an upright, outstanding, religious man." And I said: "But I don't know anything more than that. I don't really know him. He handled a tax case for me very successfully. And we paid him a fee. And it came out no change."

So people that I'm talking to in the community who say they were guided by you and your partner Frank to Sullivan are lying?

If they're saying I did, they have to be. They have to be. Wait a minute -- no. I'll tell you. I was getting ready to leave for London last year. And the car was coming to take me to the airport. And the guard comes to the door. And he says, "One of your neighbors would like to speak to you." I know her. She lives in the area. And she comes. She says, "I don't want to bother you. But I know you know about inve--" I said, "Look. I've told your husband I don't want anything to do with this." ... So she says: "No, no, Harry doesn't know anything about this. I've heard that there's this firm that handles money." And I said, "Who?" And she said, "Sullivan." I said: "I know him. He's an upright man. I know he's licensed; I think he's licensed. So you do what you want." She says, "Oh." I said, "What are you looking to invest?" She says, "Well, I have \$20 million." I said: "Are you out of your mind? Are you out of your total head? If you want to go with anybody, you open very small. You open modestly. And I mean tiny. You don't buy the whole pie." I didn't take her over there.

Why'd you tell her that? I mean, you had all your money with Madoff.

responsibility?

Of course I did.

But, I mean, there's no part of you that feels some kind of contrition for having participated in steering people toward Bernie Madoff?

Let me tell you something, OK? Figure this one out. You go with Bernie in '92, and 16 years later the whole thing explodes. Suppose you were making 10 percent a year and you took the money. You'd have 160 percent, wouldn't you? Wouldn't you? What's your problem? What's your problem?

Well, what's your problem? You lost all your money, too.

Yeah. And I don't go around blaming anyone for it. I did it for myself.

But you've got a problem, right?

Yeah.

You've used home equity.

Yes.

You've borrowed money.

Yes. From a bank. From a bank. Not from people.

But you're in trouble now?

Yes. Big trouble.

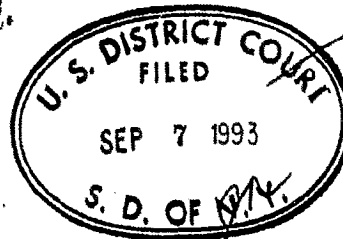
A lot of people are in big trouble.

Yes. But I don't point fingers at anyone. And I don't even point fingers at anything. I don't point fingers at any

Richard H. Walker
Edwin H. Nordlinger
Kathryn A. Ashbaugh
Keith W. Miller
Lynne E. Johnston

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center, 12th Floor
New York, New York 10048
(212) 748-8155

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

AVELLINO & BIENES,
FRANK J. AVELLINO, and
MICHAEL S. BIENES,

Defendants.
-----X

92 Civ. 8314 (JES)

FINAL JUDGMENT OF
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF BY CONSENT
AGAINST AVELLINO &
BIENES, FRANK J.
AVELLINO, AND MICHAEL
S. BIENES

93,2049

Plaintiff Securities and Exchange Commission (the
"Commission"), having filed a Complaint against defendants
Avellino & Bienes ("A&B"), Frank J. Avellino ("Avellino"), and
Michael S. Bienes ("Bienes") for preliminary and permanent
injunction and other equitable relief ("Complaint") on November
18, 1992, and the Court having entered an Order of Preliminary
Injunction And Other Equitable Relief on Consent, on November 17,
1992 ("Order"), and defendants A&B, Avellino, and Bienes, in the

EXHIBIT

30

9.16.93
MCC
A. L.

MADOFF_EXHIBITS-03574

attached Consent incorporated herein, having entered a general appearance, having admitted the in personam jurisdiction of this Court over them and the jurisdiction of this Court over the subject matter of this action, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and, without admitting or denying the allegations of the Complaint, having consented, without trial, argument or adjudication of any issue of fact or law, to the entry of this Final Judgment of Permanent Injunction and Other Equitable Relief by Consent Against Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes ("Final Judgment"), it is hereby:

I.

ORDERED, ADJUDGED AND DECREED that the attached Consents of defendants A&B, Avellino, and Bienes be and hereby are incorporated herein with the same force as if fully set forth herein.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from,

directly or indirectly, singly or in concert, violating Section 5(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a)], by making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise; or, by carrying or causing to be carried through the mails and in interstate commerce, any securities, by any means or instruments of transportation, for the purpose of delivery after sale, without a registration statement being in effect as to those securities.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from, directly or indirectly, singly or in concert, violating Section 5(c) of the Securities Act [15 U.S.C. §§ 77e(c)], by making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities through the use or medium of any prospectus or otherwise, without a registration statement being filed as to such securities.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, their partners, agents, servants, employees, and attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service, facsimile, or otherwise, and each of them, be and hereby are permanently enjoined from, directly or indirectly, singly or in concert, violating, or aiding and abetting violations of Section 7 of the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. § 80a-7], by, while acting as an investment company organized or otherwise created under the laws of the United States or of a state, or aiding and abetting any such investment company:

A. offering for sale, selling, or delivering after sale, by the use of the mails or any means or instrumentalities of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offering for sale, selling, or delivering after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by the use of the mails or any means or instrumentalities of interstate commerce; or

B. purchasing, redeeming, retiring, or otherwise

acquiring, or attempting to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or

C. engaging in any business in interstate commerce.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, shall each pay to the United States Treasury a civil penalty in the amount of \$250,000.00 for A&B, \$50,000.00 for Avellino, and \$50,000.00 for Bienes, pursuant to Section 20 of the Securities Act and Section 42 of the Investment Company Act [15 U.S.C. §77t and 80a-42]. These amounts shall be paid within ten (10) business days of the entry of this Final Judgment.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants A&B, Avellino, and Bienes, shall pay the civil penalties specified in Section V. above, to the United States Department of Treasury, by transmitting such payments in the form of a U.S. postal money order, a certified check, a bank cashier's check, or a bank money order made payable to the Comptroller, Securities and Exchange Commission. Such payments shall be mailed to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that identifies the defendant, the name and the case number of this litigation, and the name of the court. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee, Lee S. Richards ("Trustee"), of the law firm Richards Spears Kibbe & Orbe, appointed pursuant to the Order, shall retain authority, custody and control over Chemical Bank Account No. 611120216, which contains the funds reserved to cover the checks distributed to noteholders. The Trustee shall direct that a stop order be placed on all checks issued to noteholders from this account that have not been redeemed as of the date of the entry of this Final Judgment. The Trustee shall issue replacement checks to these noteholders. The Trustee shall also pay to A&B from this account \$3,383.95, which constitutes monies that are separate from the funds reserved to cover the checks distributed to noteholders. This payment shall be made within 10 days of the entry of the Final Judgment. The Trustee shall use his best efforts to distribute all monies remaining in the account, after the payment to A&B of the \$3,383.95, to those noteholders who failed to present their original checks for

payment. At the conclusion of 90 days from the date the replacement checks are issued, any monies remaining in this account shall be transmitted to the United States Department of the Treasury, by transmitting such monies to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that states the name and the case number of this litigation, the name of the court, and specifies that this money is being sent pursuant to Section VII. of this Final Judgment. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall retain authority, custody and control over the proceeds resulting from the liquidation of four A&B noteholder accounts: Harry and Elaine Simon Account #1, Harry and Elaine Simon Account #2, Harry Simon Keogh Account, and the Jordan Sands Account. These funds are currently subject to an Order of Attachment issued in Dillon v. Simon, et al., New York Supreme Court, I.A.S. Part 3, Nassau County, May 8, 1992, as amended December 18, 1992 (Burke, J.), and a Temporary Restraining Order issued in National Westminster Bank USA v. Simon, et al., New York Supreme Court, I.A.S. Part 55, New York County, February 18, 1993 (Tom, J.).

The Trustee shall retain the power to distribute these monies, whether to the noteholders or to another person or entity, pursuant to an order of this Court, or an order entered in either Dillon v. Simon or National Westminster Bank USA v. Simon. Any monies that are not distributed within 60 days after final judgments have been entered in both Dillon v. Simon and National Westminster Bank v. Simon, shall be transmitted to the United States Department of the Treasury, by transmitting such monies to:

Comptroller
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

under cover of letter that states the name and the case number of this litigation, the name of the Court, and specifies that this money is being sent pursuant to Section VIII. of this Final Judgment. A copy of the cover letter shall be simultaneously transmitted to Keith W. Miller, Branch Chief, Securities and Exchange Commission, 7 World Trade Center, New York, New York 10048.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall distribute \$4,156.16, presently held by the Trustee, to the noteholders who have submitted claims for interest earned from November 16, 1992 until the date the redemption check was sent by the Trustee to the noteholder. Such distribution shall be made within 10 days of the entry of this Final Judgment.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment does not constitute a determination of any claim of any A&B noteholder against A&B, Avellino, or Bienes, including, but not limited to, claims for the redemption of any note issued by A&B which was not previously redeemed, and the payment of interest from November 16, 1992 until the date the redemption check was sent by the Trustee to the noteholder.

XI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including the implementation and enforcement of the Final Judgment.

XII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court is hereby directed to enter this Final Judgment.

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center, 12th Floor
New York, New York 10048
(212) 748-8155

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-against-

AVELLINO & BIENES,
FRANK J. AVELLINO, and
MICHAEL S. BIENES,

Defendants.

92 Civ. 8314 (JES)

CONSENT OF
AVELLINO & BIENES

MADOFF_EXHIBITS-03583

Complaint upon it, appears and admits the in personam jurisdiction of this Court over it and the jurisdiction of this Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice, and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant A&B agrees that this Consent shall be incorporated by reference in and be made part of the Final Judgment to be entered against it.

3. Defendant A&B waives any right it may have to appeal the Final Judgment.

4. Defendant A&B enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant A&B further acknowledges that a violation of any of the terms or provisions of the Final Judgment may place it in contempt of this Court and subject it to civil and criminal sanctions.

6. Defendant A&B further acknowledges that it has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having

appropriate civil, administrative or criminal jurisdiction. ~~In~~ this connection, defendant A&B acknowledges that no representations regarding the above have been made so as to induce it to enter into this Consent.

7. Defendant A&B acknowledges that no promise or representation has been made by plaintiff Commission or its ~~st~~aff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant A&B further acknowledges that it has ~~been~~ informed that plaintiff Commission has not waived, and does ~~not~~ waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its ~~rights~~ to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or ~~administrat~~ive proceedings against defendant A&B, its partners, agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant A&B arising from or related to facts not alleged in the Complaint.

9. Defendant A&B waives any right it may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, ~~or~~ that any criminal action bars the relief consented to in this action.

10. Defendant A&B agrees to pay a civil penalty in the amount of \$250,000.00, which amount is referred to in Section V. of the Final Judgment.

11. Defendant A&B agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant A&B further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant A&B agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

14. Defendant A&B consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Final Judgment for all purposes.

15. Defendant A&B acknowledges that Frank J. Avellino and Michael S. Bienes have the authority to bind A&B to the terms of this Consent. Defendant A&B agrees to be bound to this Consent upon the signatures of Frank J. Avellino and Michael S. Bienes. Frank J. Avellino and Michael S. Bienes, in both their

RESOLVED, that

FRANK J. AVELLINO

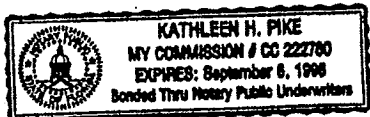
MICHAEL S. BIENES

DIANNE K. BIENES

6

State of Florida)
) ss.:
County of Broward)

The foregoing instrument was acknowledged before me this 4th
day of Dec, 1993, by Michael S. Bienes who is personally known
to me or produced Florida Driver's License B520-557-36-266
as identification.



Notary: Kathleen H. Pike
Print
Name: KATHLEEN H. PIKE
Notary Public, State of Florida
My commission expires: Sept. 8, 1998

State of Florida)
) ss.:
County of Broward)

The foregoing instrument was acknowledged before me this 4th
day of Dec, 1993, by Dianne K. Bienes who is personally known to
me or produced Florida Driver's License B520-164-42-762 as
identification.



Notary: Kathleen H. Pike
Print
Name: KATHLEEN H. PIKE
Notary Public, State of Florida
My commission expires: Sept. 8, 1998

Richard H. Walker
Edwin H. Nordlinger
Kathryn A. Ashbaugh
Keith W. Miller
Lynne E. Johnston

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center, 12th Floor
New York, New York 10048
(212) 748-8155

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
SECURITIES AND EXCHANGE COMMISSION,	:	
	:	92 Civ. 8314 (JES)
Plaintiff,	:	
	:	
-against-	:	
	:	CONSENT OF
	:	<u>FRANK J. AVELLINO</u>
	:	
AVELLINO & BIENES,	:	
FRANK J. AVELLINO, and	:	
MICHAEL S. BIENES,	:	
	:	
Defendants.	:	
-----x	:	

1. Defendant Frank J. Avellino ("Avellino"), having read and understood the terms of the annexed Final Judgment Of Permanent Injunction And Other Equitable Relief By Consent Against Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes ("Final Judgment"), waives the entry of Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, admits the service of the Summons and Complaint upon him, appears and admits the in personam jurisdiction of this Court over him and the jurisdiction of this

Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant Avellino agrees that this Consent shall be incorporated by reference in, and be made part of, the Final Judgment to be entered against him.

3. Defendant Avellino waives any right he may have to appeal the Final Judgment.

4. Defendant Avellino enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant Avellino further acknowledges that a violation of any of the terms or provisions of the Final Judgment may place him in contempt of this Court and subject him to civil and criminal sanctions.

6. Defendant Avellino further acknowledges that he has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate civil, administrative or criminal jurisdiction. In this connection, defendant Avellino acknowledges that no

representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Avellino acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant Avellino further acknowledges that he has been informed that plaintiff Commission has not waived, and does not waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its rights to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or administrative proceedings against defendant Avellino, his agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant Avellino arising from or related to facts not alleged in the Complaint.

9. Defendant Avellino waives any right he may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, or that any criminal action bars the relief consented to in this action.

10. Defendant Avellino agrees to pay a civil penalty in the amount of \$50,000.00, which amount is referred to in Section V. of the Final Judgment..

11. Defendant Avellino agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant Avellino further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant Avellino agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

14. Defendant Avellino consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Final Judgment for all purposes.

Frank J. Avellino
Frank J. Avellino

State of Florida)
) ss.:
County of Broward)

Sworn to and subscribed before me this 4th day of June 1993. Frank J. Avellino personally appeared before me, is personally known to me or produced Florida Driver's License #A145-260-36-225 as identification, and did take an oath.



Notary: Kathleen H. Pike
Print
Name: Kathleen H. Pike
Notary Public, State of Florida
My commission expires: Sept. 8, 1996

Richard H. Walker
Edwin H. Nordlinger
Kathryn A. Ashbaugh
Keith W. Miller
Lynne E. Johnston

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 World Trade Center, 12th Floor
New York, New York 10048
(212) 748-8155

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
	:
-against-	:
	:
	:
	:
AVELLINO & BIENES,	:
FRANK J. AVELLINO, and	:
MICHAEL S. BIENES,	:
	:
Defendants.	:
	:
-----X	

92 Civ. 8314 (JES)

CONSENT OF
MICHAEL S. BIENES

1. Defendant Michael S. Bienes ("Bienes"), having read and understood the terms of the annexed Final Judgment Of Permanent Injunction And Other Equitable Relief By Consent Against Avellino & Bienes, Frank J. Avellino, and Michael S. Bienes ("Final Judgment"), waives the entry of Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, admits the service of the Summons and Complaint upon him, appears and admits the in personam jurisdiction of this Court over him and the jurisdiction of this

Court over the subject matter of this action, and hereby consents to the entry of the annexed Final Judgment without further notice and without admitting or denying the allegations contained in the Complaint of plaintiff Securities and Exchange Commission ("Commission").

2. Defendant Bienes agrees that this Consent shall be incorporated by reference in, and be made part of, the Final Judgment to be entered against him.

3. Defendant Bienes waives any right he may have to appeal the Final Judgment.

4. Defendant Bienes enters into this Consent voluntarily and acknowledges that no tender, offer, promise or threat of any kind has been made by plaintiff Commission or any of its members, officers, agents or representatives in consideration of this Consent.

5. Defendant Bienes further acknowledges that a violation of any of the terms or provisions of the Final Judgment may place him in contempt of this Court and subject him to civil and criminal sanctions.

6. Defendant Bienes further acknowledges that he has been informed and understands that plaintiff Commission, at its sole and exclusive discretion, may refer or grant access to this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate civil, administrative or criminal jurisdiction. In this connection, defendant Bienes acknowledges that no

representations regarding the above have been made so as to induce him to enter into this Consent.

7. Defendant Bienes acknowledges that no promise or representation has been made by plaintiff Commission or its staff with regard to: (1) any criminal liability that may have arisen or that may arise from the facts underlying this action; or (2) immunity from such criminal liability.

8. Defendant Bienes further acknowledges that he has been informed that plaintiff Commission has not waived, and does not waive, consistent with the principles of res judicata, collateral estoppel, and the doctrine of finality of judgments, its rights to commence, at its sole and exclusive option: (a) any civil action, civil or criminal contempt proceedings, or administrative proceedings against defendant Bienes, his agents, servants, employees and attorneys-in-fact as a result of this matter; or (b) any further proceedings or action against defendant Bienes arising from or related to facts not alleged in the Complaint.

9. Defendant Bienes waives any right he may have to assert that, under the Double Jeopardy Clause, the relief consented to in this civil action bars any criminal action, or that any criminal action bars the relief consented to in this action.

10. Defendant Bienes agrees to pay a civil penalty in the amount of \$50,000.00, which amount is referred to in Section V. of the Final Judgment..

11. Defendant Bienes agrees to accept service by regular mail of all process with respect to this matter, and any proceeding or actions in connection therewith or deriving therefrom, including process relating to any depositions, hearings, trials or other court or administrative proceedings or investigations, by service upon Ira Lee Sorkin, Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin, 551 Fifth Avenue, New York, New York 10176.

12. Defendant Bienes further acknowledges that this Consent embodies the entire understanding of the parties.

13. Defendant Bienes agrees that the Final Judgment may be presented by the Commission to the Court for signature and entry without further notice.

14. Defendant Bienes consents that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Final Judgment for all purposes.

Michael S. Bienes
Michael S. Bienes

State of Florida)
) ss.:
County of Broward)

Sworn to and subscribed before me this 4th day of June, 1993. Michael S. Bienes personally appeared before me, is personally known to me or produced Florida Driver's License # 0520-557-36-266 as identification, and did take an oath.



Notary: Kathleen H. Pike
Print: KATHLEEN H. PIKE
Name: KATHLEEN H. PIKE
Notary Public, State of Florida
My commission expires: Sept. 8, 1996

So closed

✓ DATED: NEW YORK, NEW YORK
SEPTEMBER 2, 1993

J. S. Bienes

A TRUE COPY

JAMES M. PARKER

By [Signature]

Deputy Clerk

5

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 9/9/93.

MADOFF_EXHIBITS-03599

EXHIBIT B

DEPOSITION EXCERPTS

OF FRANK AVELLINO

DATED: SEPTEMBER 9, 2015

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

3 COMPLEX LITIGATION UNIT
4 CASE NO.: 12-034123(07)

5 P&S ASSOCIATES, GENERAL PARTNERSHIP,
6 a Florida limited partnership, et al.,

7 Plaintiffs,

8 v.

9 MICHAEL D. SULLIVAN, et al.,

10 Defendants.

ORIGINAL

11 _____/
12 One Town Center Road
13 Suite 301
14 Boca Raton, Florida 33486
15 Wednesday, 10:10 a.m. - 12:59 p.m.
16 September 9, 2015

17 DEPOSITION OF FRANK AVELLINO

18 VOLUME 1 of 2
19 (Pages 1 through 143)

20
21 Taken on behalf of the Plaintiffs before
22 SUSAN MATOS, Court Reporter and Notary Public in and
23 for the State of Florida at Large, pursuant to
24 Plaintiffs' Third Re-Notice of Taking Videotaped
25 Deposition in the above cause.

1 might have stated it.

2 Q. It stated a --

3 A. A rate of return.

4 Q. -- return that Avellino & Bienes was
5 obligated to pay.

6 A. Yes.

7 Q. Okay. And the money that Avellino &
8 Bienes received from these people you provided notes
9 to, did that money get invested into Bernie Madoff?

10 A. All of it was, yes.

11 Q. Did the SEC review the books and records
12 of Avellino & Bienes?

13 A. By the firm of Price Waterhouse.

14 Q. Excuse me?

15 A. By the firm of Price Waterhouse.

16 Q. Price Waterhouse on behalf of the SEC?

17 A. Yes.

18 Q. Okay. And how is it that Avellino &
19 Bienes was comfortable providing notes with a rate
20 of return based upon investments that were being
21 made by these people into Bernie Madoff?

22 A. Experience dictated it.

23 Q. Okay. Experience being the returns that
24 were previously obtained through investments with
25 Bernie Madoff?

1 A. Not that I recall.

2 Q. Never?

3 A. Not that I recall.

4 Q. Okay. So through all the years, 1970s
5 until 2008, you don't recall ever saying to anybody
6 you thought it would be a good idea to invest with
7 Madoff?

8 A. Using your words, no.

9 Q. Okay.

10 A. You said any good idea to invest. No.
11 Circumstances were probably different in 1992, '93.
12 So would I say that I recommend anybody? No.

13 Q. Okay. So in the circumstances 1992 and
14 1993 -- well, we spoke earlier before then where you
15 would have issued notes, right, to people in
16 Avellino & Bienes, and then the money that you
17 received, the proceeds, would then be invested with
18 Mr. Madoff, correct?

19 A. Yes.

20 Q. Did the people he issued the notes to
21 understand that the money that they were giving you
22 was going to be invested with Mr. Madoff or his
23 company?

24 A. I don't know. I don't remember.

25 Q. You don't remember if you told them what

1 you were doing with their money?

2 A. No.

3 Q. Okay. So do you recall any discussions
4 with any of those investors asking you how it is you
5 would be able to give them any type of return noted
6 in the promissory notes?

7 A. No.

8 Q. Do you recall having discussions with any
9 investors in Avellino & Bienes about the fact that
10 their money ultimately was going to be invested with
11 Madoff?

12 A. I don't recall. I may have, but I don't
13 recall.

14 Q. Okay. In fact, all the notes that -- all
15 the notes that Avellino & Bienes issued to
16 investors, that money went into Madoff, right?

17 A. Yes.

18 Q. Okay. And so your testimony is that you
19 don't recall discussing with any of those people the
20 fact that their money was going to be invested with
21 Madoff?

22 A. No.

23 Q. Okay. Under what premise did these people
24 give you money?

25 A. On the premise that I was Avellino &

1 Q. What part? What city?

2 A. Holmdel.

3 Q. And what does -- what does he do?

4 A. I don't know now.

5 Q. Do you know if he's employed?

6 A. I don't think so.

7 Q. What was the last job you recall him
8 having?

9 A. I don't speak to him much, so I don't
10 know.

11 Q. Do you recall at any point in time him
12 being involved in computer software?

13 A. Yes.

14 Q. And do you recall at any point in time
15 Thomas Avellino assisting S&P or P&S in establishing
16 or -- a computer software system?

17 A. He might have sent them a software
18 calculation package.

19 Q. And you've saying he might have.

20 A. Might have. He may have. May have
21 just -- I don't know. I think he did.

22 Q. And would that have been done at your
23 recommendation to Mr. Sullivan?

24 A. Probably.

25 Q. Okay. And why did you recommend that

1 Mr. Sullivan use a software package from your son
2 Thomas?

3 A. Make his life a lot easier.

4 Q. Mr. Sullivan's life?

5 A. Sullivan and Greg Powell, the accounting.

6 Q. And why would it make their life a lot
7 easier?

8 A. Well it was a calculation of -- if you saw
9 it, you'd understand it.

10 Q. Did --

11 A. And add percentage dates. It was a -- it
12 was a formula.

13 Q. And how did the formula work; do you
14 recall?

15 A. You put a dollar and you look at the time
16 and you look at the rate of return and days, and it
17 would calculate the income for each one of those
18 accounts.

19 Q. Okay. And did Thomas provide software for
20 the -- any of the other entities that we've
21 mentioned: Mayfair, Grosvenor, any of those?

22 A. Not that I know of, no.

23 Q. Do you know if Thomas ever provided any
24 software to any entity in which you were involved?

25 A. No.

1 A. It was an office. I -- I didn't recall
2 going there more than once a week.

3 Q. So when you're operating as Avellino &
4 Bienes in -- up until the time you stopped operating
5 as Avellino & Bienes, how many times a week would
6 you go to the office space --

7 A. Before --

8 Q. -- at 6550?

9 A. Say it again.

10 Q. While you were operating as Avellino &
11 Bienes, until the time that Avellino and Bienes quit
12 doing business, how often would you go to the office
13 space at 6550?

14 A. I can't recall, maybe once a month.

15 Q. Okay. And now you said you would go once
16 a week.

17 A. Well, when it was supposed to be starting,
18 it was once a week. But then after that, it was
19 maybe once a month. I'm just guessing. I don't
20 like to guess.

21 Q. All right. So after Avellino & Bienes
22 ceased operating, what did you next do for work?

23 A. Nothing.

24 Q. That is the last job that you had was
25 Avellino & Bienes?

1 A. Yes.

2 Q. Okay. How did you earn income after --
3 strike that.

4 After Avellino & Bienes ceased operating,
5 did you have money directly or indirectly invested
6 with Madoff?

7 A. Yes.

8 Q. And so you continued to get returns up
9 until 2008?

10 A. Yes.

11 Q. Okay. What other sources of income did
12 you have?

13 A. None.

14 Q. That was it, all through Madoff?

15 A. All through Madoff.

16 Q. Okay. And you received some money from
17 S&P and P&S, and we'll get to that later. So you
18 had income there too, right?

19 A. Yes.

20 Q. And that came from people investing in
21 Madoff, right, directly --

22 A. From S&P?

23 Q. Yeah.

24 A. Yes.

25 Q. And P&S. Okay.

1 investments, are you?

2 A. Not that I know of.

3 Q. And prior to the formation of S&P and P&S,
4 you're not aware of Mr. Sullivan having any
5 experience outside of his tax business in finance.

6 A. Exactly, yes.

7 Q. No experience.

8 A. No experience.

9 Q. Okay. And prior to S&P or P&S, you're not
10 aware of Mr. Sullivan having any experience in the
11 brokerage business.

12 A. Not that I know of.

13 Q. And he's not a C.P.A.?

14 A. No.

15 Q. And do you know who Michael Powell was?

16 A. Greg Powell?

17 Q. Greg Powell. I'm sorry.

18 A. It was his partner.

19 Q. Okay. And prior to P&S and S&P, are you a
20 aware of Mr. Powell having any background in
21 investments?

22 A. Not that I know of.

23 Q. Or securities?

24 A. Not that I know of.

25 Q. Or finance?

1 A. At that point, yes, by them. By Greg and
2 by Michael.

3 Q. And how was that fee calculated, do you
4 know?

5 A. Well, he had sent statements that said
6 50 percent of fees, half to Mr. Bienes, half to me;
7 which means 50 percent of 100 percent.

8 Q. And so you would get statements?

9 A. He would send a -- a summary, if you will.

10 Q. Okay. And did you ever tell him something
11 to the effect of why are you paying me?

12 A. Did I ever ask him?

13 Q. Yes.

14 A. No.

15 Q. Okay. So you got a summary and you were
16 paid a fee, based upon people who you referred into
17 the partnership.

18 A. People I may have spoken to. Did I refer
19 them to them? I'm not so sure I referred them in.

20 Q. Spoken to about their ability to invest in
21 S&P and P&S, and that their money would then be
22 invested in Madoff.

23 A. Each one was different, so I can't give a
24 broad answer on that.

25 Q. You mentioned that you delete e-mails

1 Q. So this bill is incorrect.

2 A. Probably.

3 Q. Okay. So the fact that you're on here is
4 a mistake.

5 A. Probably.

6 Q. All right. So -- so just so I'm clear,
7 before S&P and P&S are set up, you're instructing
8 him to go to an attorney.

9 A. Yes.

10 Q. You're telling him to make sure they do
11 things right.

12 A. Yes.

13 Q. And you're aware that they have accounts
14 of other people.

15 A. Evidently they did.

16 Q. What are you basing that on, the fact that
17 they had accounts of other people?

18 A. For the same reason he's asking me what do
19 I do? And if he goes to an attorney and the
20 attorney sets him up properly, and I feel that he's
21 doing the right thing -- and, remember, he's a
22 friend, dear friend at church.

23 Q. He asked you what do you do for what?

24 A. Sending money to Mr. Madoff.

25 Q. For sending -- he asked you what to do to

1 send money to Mr. Madoff?

2 A. I -- I -- I don't want to guess. I don't
3 recall.

4 Q. Well, what exactly -- were you assisting
5 him in figuring out a way to send money of others to
6 Mr. Madoff?

7 A. Not at all.

8 Q. Okay. You were sending -- you were
9 telling him you need to go to a lawyer, you need to
10 get his 1065s in order, and you need to do things
11 properly so he wouldn't get in trouble like you
12 were.

13 A. Exactly.

14 Q. Okay. So in terms of all of that, was
15 that in connection with him having accounts with
16 Madoff?

17 A. Evidently, yes.

18 Q. Okay. And so did he ask you for
19 assistance in establishing an account with Madoff?

20 A. No.

21 Q. Did he ask you for assistance in finding
22 the name of a lawyer who can help him with paperwork
23 to ensure that he would have the ability to invest
24 with Madoff?

25 A. No.

1 Q. So why did you give him an attorney's
2 name?

3 A. I didn't give him any attorney's name.

4 Q. You never gave him the name of an
5 attorney?

6 A. No. I don't know who his attorney was.

7 Q. You told him to make sure he went to an
8 attorney.

9 A. Yes.

10 Q. And you told him to make sure he went to
11 an attorney in connection with what specifically?

12 A. That he doesn't have the same problem that
13 Avellino & Bienes had with the SEC. Cover all of
14 your bases and do it properly.

15 Q. In connection with his efforts to invest
16 in Madoff --

17 A. Yes.

18 Q. -- either directly or indirectly. Okay.

19 And knowing that Madoff would only accept
20 accounts of clients, family and friends, and
21 referrals of clients -- let's go through that for a
22 minute.

23 Mr. Sullivan was not family to Mr. Madoff,
24 right?

25 A. Right.

ORIGINAL

1 S&P or P&S or Powell were making payments to Christ
2 Church?

3 A. I can't recall.

4 Q. Okay. And so we have payments that went
5 to 27 Cliff, LLC on here too. Did you direct
6 Mr. Sullivan or Mr. Powell or anyone on their behalf
7 to make payments to 27 Cliff, LLC?

8 A. I gave them 27 Cliff, LLC, but did I
9 direct payments? They made it to 27 Cliff.

10 Q. And you gave them 27 Cliff, LLC for the
11 purpose of having payments made to you or on your
12 behalf?

13 A. On behalf of Avellino, yes.

14 Q. Okay. And who did you give 27 Cliff, LLC
15 to?

16 A. It was put in an account, period. That's
17 it.

18 Q. But you're saying you gave them 27 Cliff,
19 LLC. Did you give it to Mr. Sullivan, the name of
20 that entity?

21 A. I can't recall.

22 Q. Or someone at their office?

23 A. I can't recall.

24 Q. Do you know who Susan Moss is?

25 A. I believe she worked in Sullivan's office.

1 Q. Okay. Did you give it to Ms. Susan Moss?

2 A. I don't know.

3 Q. And these payments would come with
4 statements?

5 A. I think so.

6 Q. And the statements would indicate how the
7 money was calculated, correct?

8 A. Yes.

9 Q. And it was calculated based upon accounts
10 that you were to receive monies from.

11 A. Yes.

12 Q. Okay. And these accounts were designated
13 as accounts you received money from as a result of
14 your connection to the accounts, either through --
15 previously through A&B or otherwise referring these
16 accounts to Sullivan and Powell?

17 A. I don't know.

18 Q. When you looked at these statements, did
19 you recognize the names of the accounts?

20 A. Some.

21 Q. And did you and Mr. Bienes get the exact
22 same amounts?

23 A. Yes.

24 Q. So let's go to the next page of this
25 document.

1 BY MR. SAMUELS:

2 Q. There's again a payment to 27 Cliff, LLC,
3 commission Frank Avellino.

4 You would agree that was a commission
5 payment?

6 A. It was a payment.

7 Q. And they called it commission, you --

8 A. They called it commission.

9 Q. And you don't dispute that, do you?

10 A. It's their books.

11 Q. I'm saying you don't dispute this being a
12 commission.

13 A. No, I don't dispute that. No.

14 Q. Okay. And following that are the checks.

15 Do you recall directing Mr. Sullivan or
16 someone at S&P or P&S to make payments that you were
17 owed as commissions, directly to Richard J. Wills?

18 A. Yes.

19 Q. Okay. And why did you do that?

20 A. Because I wanted to.

21 Q. To have him paid directly?

22 A. Yes.

23 Q. And why did you want -- why didn't you
24 just take the commission payments and pay him
25 separately, instead of directing Mr. Sullivan to pay

1 Mr. -- I'm sorry, Pastor Wills?

2 A. It was easy.

3 Q. Bishop Wills. I'm sorry.

4 A. Bishop Wills. Yeah, it was easy. I mean,
5 that's...

6 Q. It was easier just to do it that way and
7 use S&P and P&S.

8 A. Exactly.

9 Q. Okay. And do you know if these payments
10 were made to pay -- to assist Bishop Wills in paying
11 his mortgage?

12 A. I don't know.

13 MR. SAMUELS: 9.

14 (Plaintiffs' Exhibit 9 was marked for
15 Identification by the reporter.)

16 BY MR. SAMUELS:

17 Q. So I'd like to show you the first page of
18 this document. Paid to Richard J. Wills on behalf
19 of Frank Avellino, and a number of \$3,000 payments
20 totaling \$50,000.

21 Do you see that?

22 A. Yes.

23 Q. Okay. And that is your recollection that
24 you directed Michael Sullivan to make \$50,000 worth
25 of payments to Mr. Wills?

1 A. Carone.

2 Q. Right. But they at some point came into
3 invest in S&P and P&S --

4 A. Yes.

5 Q. -- and you were getting commissions on
6 them, right?

7 A. Yes.

8 Q. So why were you claiming that you should
9 get commissions on them if you did not in any way
10 discuss with them the possibility of investing in
11 S&P or P&S?

12 A. I don't recall. I don't recall.

13 Q. Well, what were the parameters under which
14 you were to get paid a commission or management fee?

15 A. If an account was earmarked by Sullivan
16 and Powell as people that they thought I would get
17 something from, they would earmark it. Simple as
18 that.

19 Q. And what was the criteria they were using
20 to earmark an account that they thought you would
21 get something from?

22 A. People -- people they recognized that I
23 might have known.

24 Q. That you might have known.

25 A. Yes.

1 Q. That simple.

2 A. Yes, it is.

3 Q. As someone you might have known.

4 A. Yes, it is.

5 Q. Okay. Why are you pointing out that Scott
6 Holloway and Dick Wills were not part of your old
7 accounts, do you know?

8 A. No, I don't.

9 Q. Did you expect to get commissions on
10 investments made by Scott Holloway and Dick Wills?

11 A. No.

12 Q. Now, you're talking about "P&S accounts
13 with Monsignor Kelly" -- is that right?

14 A. Monsignor Kelly.

15 Q. Monsignor Kelly.

16 -- "may be the only accounts we may have
17 some claims on."

18 Do you see that?

19 A. Yes.

20 Q. So when you're talking about "we may have
21 some claims on," you're talking about you may have
22 claims on for commissions or management fees.

23 A. Yes.

24 Q. And why would claims on commissions or
25 management fees to P&S with Monsignor --

1 Q. So why did you say you may have claims on
2 those accounts?

3 A. I don't know. The year is 2000.

4 Q. Do you know what you meant when you
5 said -- or what you meant what you said, "Since you
6 only take half the management income and give the
7 other half to charity, I do not see how this can be
8 negotiated."

9 What were you referring to?

10 A. I don't know. I can't remember.

11 Q. Okay. I'm going back to Pages 2, 3, 4 and
12 5 of this exhibit; do you know who prepared that?

13 A. No.

14 Q. Okay. If you go to the next page, which
15 is Bates-labeled Number 006, where it says P&S
16 accounts?

17 MR. WOODFIELD: I'm not sure he knows how
18 to read the Bates numbers.

19 THE WITNESS: What am I looking at?

20 MR. SAMUELS: I'm sorry. At the bottom
21 there's certain pages, Page 6.

22 MR. WOODFIELD: It would be after the --
23 it says Avellino then an under slash and --

24 MR. SAMUELS: There you go. That's it.

25 THE WITNESS: This one.

1 managed all his work. He had no clue what
2 investments were. He called me one day and said,
3 Could you come down to my studio? It was down in
4 the Las Olas area. As a friend, I went down there.

5 He showed me these statements. And the
6 first thing I looked at, I said, Matt, your
7 statements from whatever broker he had, shows you
8 had \$10 at the beginning of the year. At the end of
9 the year, you had \$2. Don't you think you lost some
10 money? What do you think you did? And that's where
11 it left.

12 He said, Oh, my God. What do I do now?
13 And I said, There's a guy if you want -- and he knew
14 the way I lived. He was with -- around for a while.
15 And he said, What is it you do? I said, I have been
16 very successful in some businesses I had. And if
17 you want anything to talk to, you could go to
18 Michael Sullivan, who's a very dear friend. I trust
19 him totally. You could call him up and go to him.
20 And that's what he did.

21 Q. When you're saying he knew the way you
22 lived, what do you mean by that?

23 A. Well, he knew that I gave to a lot of
24 charity. He knew I traveled all over the world. He
25 knew that my life was in good shape with Nancy.

1 Madoff, what do you mean by that?

2 A. Whatever positions he had with Madoff,
3 could not be pledged. It's a very simple answer.
4 And if you don't understand that, I'm sorry.

5 Q. When you say -- my understanding is that
6 someone in S&P, like Michael --

7 A. Mm-hmm.

8 Q. -- his money would be through S&P or P&S
9 invested in --

10 A. Right.

11 Q. -- stocks with Bernie Madoff securities,
12 right?

13 Yes?

14 A. Yes.

15 Q. So why is it that his investments could
16 not be pledged? What -- what is it about the
17 investments that made it -- that they couldn't be
18 pledged?

19 A. I am not an expert in it. All I know is I
20 remembered, they could not be pledged.

21 Q. And why are you involving yourself in the
22 dialogue on whether or not investment Paragon
23 Ventures Limited in S&P could be pledged?

24 A. I can't recall why it happened.

25 But I'm telling you, that's the answer

1 that I knew and that was the end of it, as far as I
2 was concerned.

3 Q. Instead of the why it's happened, why are
4 you giving advice to Mr. Sullivan on whether or not
5 securities could be pledged?

6 A. He may have asked could I pledge
7 Sullivan -- Donald Kahn's money for whatever, I
8 don't know what he was pledging. But the answer has
9 always been no. We could never pledge. And it's as
10 simple as that.

11 Q. And it was your position to advise
12 Mr. Sullivan on issues like this, as it pertained to
13 S&P and P&S?

14 A. I wasn't advising anything. I was giving
15 him a fact.

16 Q. And Mr. Sullivan brought you in the loop
17 of this conversation why?

18 A. Because he didn't know who else to ask.

19 Q. How about asking Madoff?

20 A. I don't know. Maybe he did ask Madoff
21 too.

22 Q. Why didn't you refer him to Madoff?

23 A. Why did I not refer him to Madoff?

24 Q. Yes.

25 A. I don't know.

1 (Plaintiffs' Exhibit 18 was marked for
2 Identification by the reporter.)

3 BY MR. SAMUELS:

4 Q. Okay. I'd like to show you what's been
5 marked as Exhibit 18. From FrankNanc@aol.com. That
6 would be from your e-mail, correct?

7 A. Mm-hmm.

8 Q. Do you recall having discussions with
9 Michael Sullivan about whether or not he should
10 change the account at Madoff to -- from a general
11 partnership to an LLC?

12 A. No.

13 Q. Why would Mr. Sullivan ask you these
14 questions?

15 A. As a friend. He knew I had gone through
16 hell once before.

17 Q. And, apparently, he didn't know who to
18 call at Madoff to inquire about doing this, right?

19 A. Evidently.

20 Q. And so you told him to be in touch with
21 Jodi Crupi?

22 A. Yes.

23 Q. And how did you know that Jodi Crupi was
24 the person who he should be contacting?

25 A. Every once in a while, I would call.

1 Q. Okay. So are you saying you can't -- are
2 you saying that he was working with the accountants
3 to make sure that their communications would be
4 privileged?

5 A. Yes.

6 Q. Okay. Do you know of any other reason?

7 A. I can't think of any other reason.

8 Q. Did you ever have Mr. Woodfield meet with
9 Mr. Sullivan on your behalf?

10 A. I don't recall.

11 Q. Well, since Madoff became known as a Ponzi
12 scheme in 2008, do you know if Mr. Woodfield has
13 ever met with Mr. Sullivan or his representatives to
14 discuss these -- the claims brought in this case?

15 A. I can't -- I don't know. I can't
16 remember.

17 Q. Now, you were getting paid money from the
18 S&P and P&S partnerships as commissions or
19 management fees.

20 What did you do to ensure that you were
21 getting paid the proper amount?

22 A. All I know is I received checks, and I
23 didn't do anything.

24 Q. You didn't do anything.

25 A. No.

1 A. Of all the notes, we paid the notes.

2 Q. Right. And so you expected to make
3 something higher than that from Bernie Madoff,
4 right?

5 A. Prudently, yes.

6 Q. Okay. And did, in fact, you earn more
7 than at Bernie -- from Bernie Madoff than called for
8 in the notes?

9 A. I don't know.

10 Q. In terms of Michael Sullivan, do you know
11 if Michael Sullivan exercised any independent
12 judgment or investment skills to warrant his receipt
13 of management fees?

14 A. Not that I know of.

15 Q. You're not aware of any investment skills
16 that he had?

17 A. No.

18 Q. And you're not aware of any investment
19 skills that he used?

20 A. No.

21 Q. And as we went over today, he had no prior
22 investment experience.

23 A. As far as I know.

24 Q. So why were you comfortable referring
25 people to him?

1 A. He was my friend.

2 Q. So a friend is good enough, you didn't
3 need the expertise to get you comfortable?

4 A. Doesn't need expertise.

5 Q. And why would he not need expertise if
6 he's given money to invest?

7 A. He's giving all his money to Bernard L.
8 Madoff. He's not the investor, Bernard L. Madoff
9 was.

10 Q. I thought you just said you weren't sure
11 whether he was giving it all to Madoff?

12 A. Well, I'm just saying the -- what do I
13 know what he's doing with the other money. I don't
14 know what he's doing with it.

15 Q. So --

16 MR. WOODFIELD: Frank, if you could just
17 turn --

18 THE WITNESS: Oh, I'm sorry.

19 MR. WOODFIELD: No. Turn your chair
20 straight so she can get you.

21 THE WITNESS: Oh, I didn't know I did that
22 again.

23 BY MR. SAMUELS:

24 Q. So -- so, in essence, you were comfortable
25 referring people to Michael Sullivan, even though he

1 had a lack of investment experience or expertise and
2 not knowing whether or not all the money was going
3 to Bernie Madoff.

4 A. Yes.

5 Q. And what would make you comfortable doing
6 that?

7 A. Michael Sullivan.

8 Q. What is it about Michael Sullivan's
9 background and experience that caused you to be
10 comfortable --

11 A. He was honest -- he was honest. He was a
12 church member. And I trusted him. To me, it's as
13 simple as that.

14 Q. And after reading a letter he sent to
15 Bette Anne --

16 A. Yes.

17 Q. -- that we went over today, do you still
18 believe him to be honest and trustworthy?

19 A. Yes.

20 Q. And there's nothing in that letter that
21 changes your mind, that causes you to think he might
22 be deceitful or dishonest?

23 A. Not at all.

24 Q. So you agree with what he said in that
25 letter?

1 A. He had accounts of his own.

2 Q. Did you refer former customers and
3 accounts of Avellino & Bienes to invest their funds
4 directly with Bernie Madoff?

5 MR. ETRA: Objection to form.

6 THE WITNESS: Repeat the question. What
7 was that?

8 BY MR. SAMUELS:

9 Q. Did you refer former customers of Avellino
10 & Bienes to invest their funds directly with Bernie
11 Madoff?

12 A. I was told to have them call Bernie
13 Madoff, that was it. Just call him up.

14 Q. That's what you told people?

15 A. Yeah.

16 Q. And do you know of any former customers of
17 Avellino & Bienes that set up their own accounts
18 with Bernie Madoff after Avellino & Bienes was out
19 of business?

20 A. They did, but I don't know.

21 Q. You don't know who?

22 A. I can't remember. No.

23 Q. Can you think of anybody?

24 A. No.

25 Q. Not one person?

1 A. No.

2 Q. In terms of testimony given by
3 Mr. DiPascali, I'm just going to read you some
4 questions and answers.

5 "Question: How did you" --

6 MR. WOODFIELD: I'm sorry. What is this
7 from?

8 MR. SAMUELS: It's from testimony given by
9 Mr. DiPascali.

10 MR. WOODFIELD: Testimony?

11 MR. SAMUELS: In the --

12 MR. WOODFIELD: Criminal case?

13 MR. SAMUELS: Yeah.

14 BY MR. SAMUELS:

15 Q. It says, "Direct Examination.

16 "How did you come to learn if certain of
17 these accounts had a rate of return that was
18 targeted?

19 "Answer: As it pertained to me?

20 "In the basket split-strike strategy.

21 "Answer: Yes. I was called into a
22 meeting that was about to break up between Bernie
23 and Frank Avellino.

24 "Can we step back? Frank Avellino was out
25 of the Avellino -- was that the Avellino of Avellino

1 A. Yes.

2 Q. So when you were dealing with Mr. Sullivan
3 or Mr. Powell or in connection with S&P or P&S, you
4 were acting on your own behalf as well as on behalf
5 of Mr. Bienes?

6 A. Yes.

7 Q. You never maintained a license to act as
8 an investment advisor, correct?

9 A. Correct.

10 Q. And were you aware that Bernie Madoff was
11 not registered as an investment advisor with the
12 FCC?

13 A. Not at all.

14 Q. You didn't know one way or the other?

15 A. No.

16 Q. In terms of the commissions and management
17 fees that you -- that you received, some of those
18 commissions and management fees that you received
19 were in connection with your talking to people and
20 telling them that they could invest with S&P or P&S,
21 correct?

22 A. I received checks because of those people.

23 Q. Right. And some of those people you
24 actually told them if they want to stay with Madoff,
25 they can call Mr. Sullivan.

S & P Investment Group, Inc.

SAVINGS OF AMERICA
SUITE 600
225 NORTH FEDERAL HIGHWAY
POMPANO BEACH, FLORIDA 33062

MICHAEL SULLIVAN
GREGORY POWELL

BROWARD
(305) 782-3500
TELEFAX
(305) 782-3602

March 9, 1992

Ersica P. Gianna
P.O. Box 39121
Ft. Lauderdale, FL 33339

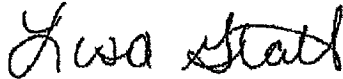
Dear Ersica:

We are in receipt of your check in the amount of \$100,000.00. These funds will be credited to the following account:
Savings Account - \$100,000.00

Please find a copy of the Enclosed letter which was sent to Avellino and Bienes.

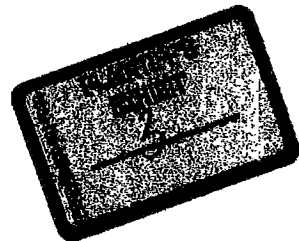
If you have any questions please feel free to call us.

Sincerely,



Lisa Glatt
For the Firm

Enclosure



GIANNA 0002

CONFIDENTIAL

08-13-15_PLAINTIFFS_0014392

S & P Investment Group, Inc.

REDACTED

SAVINGS OF AMERICA
SUITE 600
225 NORTH FEDERAL HIGHWAY
POMPANO BEACH, FLORIDA 33062

MICHAEL SULLIVAN
GREGORY POWELL

COPY

BROWARD
(305) 782-3500
TELEFAX
(305) 782-3602

March 9, 1992

Avellino & Bienes
Heron Tower
70 East 55th Street
New York, New York 10022

RE: Ersica P. Gianna
P.O. Box 39121
Ft. Lauderdale, FL 33339
SSN: -

Dear Lola:

Enclosed is check # 102 in the amount of \$ 100,000.00. Please credit the funds as follows:

1. \$100,000.00 - Savings Account - Ersica P. Gianna

Please send acknowledgements to S & P Investment Group, Inc. Ms. Gianna has requested that quarterly statements and interest earned be sent directly to her at the aforementioned address.

This will be a non roll-over account and funded as follows:

Fifteen percent (15%) to Ersica P. Gianna

One percent (1%) to S & P Investment Group Inc.

If you have any questions please contact Michael Sullivan or Lisa Glatt. Our office hours are 9-5 Monday - Friday. Thank you for your cooperation and courtesy concerning this matter.

Sincerely,

Lisa Glatt

Lisa Glatt
For the Firm

Enclosure

GIANNA 0003

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08-13-15_PLAINTIFFS_0014393

Tax Consultants
Sullivan & Powell

SAVINGS OF AMERICA
SUITE 600
115 NORTH FEDERAL HIGHWAY
POMPANO BEACH, FLORIDA
33062

MICHAEL SULLIVAN
GREGORY POWELL
HOWARD HALL
LEAH CHRISTOS

BROWARD
(305) 782-3500
TELEFAX
(305) 782-3602

Date: 12/23/92

Erica P. Gianna
P.O. Box 39121
Ft. Lauderdale, FL 33339

Dear Partner,

We are in receipt of your check in the amount of \$100,000⁰⁰ as a capital contribution to S & P Associates, General Partnership. These monies will be forwarded, when funds have cleared, to the investment broker.

We acknowledge our responsibility as managing partners to keep you informed with the return on our collective investments and your proportionate share of the profits and losses.

It is our intent that everyone receive a copy of the Partnership Agreement for review and as part of your financial records. If you have not received this document, please indicate in the space provided or call our office and we will be happy to provide a copy.

If we are in need of additional information, it will be indicated below and we would appreciate your response as soon as possible so records and distributions can be accurate.

1. ☐ I did not receive a copy of the Partnership Agreement and would like to have a copy mailed to me.
2. ☐ Your Social Security Number _____
3. ☐ Please complete all sections of page 12 of the agreement (enclosed).
4. ☒ Please complete section #2 of page 12 of the agreement (enclosed).
NOTE: Page 12 was recently modified to include this distribution election.
5. ☐ Other: _____

Sincerely,
Michael Sullivan and Greg Powell, Managing Partners
S & P Associates, General Partnership

GIANNA 0005

CONFIDENTIAL

08-13-15_PLAINTIFFS_0014395

REDACTED



Avellino & Bienes

*Heron Tower
70 East 55th Street
New York, N.Y. 10022*

*Telephone (212) 688-6677
Telecopier (212) 826-8113*

March 11, 1992

*Ersica P. Gianna
P.O. Box 39121
Ft. Lauderdale, FL 33339*

Dear Participant:

We are in receipt of a check in the amount of \$100,000.00. These funds will be credited to the following account:

ERSICA P. GIANNA
SS#

Interest thereon is calculated at the annual rate of 15.0%, computed quarterly. In accordance with instructions, interest earned will be sent to you quarterly until further notice.

Please be advised that funds can be returned, within two weeks, upon written request. Interest is earned until day of withdrawal.

Very truly yours,

AVELLINO & BIENES

A handwritten signature in cursive script, appearing to read 'Lola Kurland'. The signature is fluid and elegant, with a long, sweeping tail on the 'd'.

Lola Kurland

LK:ed

cc: S&P Investment Group

GIANNA 0080

CONFIDENTIAL

08-13-15_PLAINTIFFS_0014470

REDACTED

11/16/97

Enclosed please find a check for *****101,927.00 which represents *****1,927.00 in interest for the period ending 11/16/1997 and your principal of *****100,000.00 -

A STATEMENT OF YOUR ANNUAL INTEREST WILL BE PROVIDED AT THE END OF THE CALENDAR YEAR.

033496

Dec 2 - 1992
Date

08-13-15_PLAINTIFFS_0017438

Certified
Public
Accountants
Chartered

Confidential Document

REDACTED

American Institute of
Certified Public Accountants
Member-SEC Practice
Section
Member-Private Companies
Practice Section



**Ahearn
Jasco +
Company**

February 4, 1994

P & S Associates General Partnership
Attention: Mr. Greg Powell
225 N. Federal Highway, Suite 600
Pompano Beach, FL 33062

Acct.
FOR PROFESSIONAL SERVICES RENDERED:

- Progress Billing for Tax Services Rendered in Connection with the Preparation of Federal Form 1065 for the Year Ended December 31, 1993 Including Review of Client Data and Initial Set-Up of Tax Return Information.
- Meeting at Client's Office with Mike Sullivan, Greg Powell and Frank Avelino Regarding Partner Reports, Form 1065 and Other Matters.

TOTAL AMOUNT DUE FOR THE ABOVE PROFESSIONAL SERVICES

\$ 350.00

2/17 #1060



"To Ensure Proper Credit, Please Write Your Account Number On Your Check."

190 Southeast 19th Avenue
Pompano Beach, Florida 33060
Phone: 305/781-8800
FAX: 305/785-8673

CONFIDENTIAL

08-13-15_PLAINTIFFS_0020556

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A&B (55)

FILE DATE: 10/17/202

AVE00032RT5

0209 S&P Associates, G/P - Mgt. fees to A&B

Acct #	Name	YTD Mgt. fee	x 1/2 %	from 2000	from 2001	Paid	Accrued Amt
	Alves	1,460.46		1,283.63	1207.58	0.00	
	Judd	4,504.08		1,028.25	3241.89	0.00	
	Hooker Trust	79,983.23					
TOTALS:		84,487.31		42,243.66	2311.88	4449.47	0.00
							49,005.01

4/11/02 meeting - Give YTD Mgt fee to Frank verbally in Jan. after year end & he will decide split (50% hopefully) and how much to pay to whom

4/11/02 meeting - Give YTD Mgt fee to Frank verbally in Jan. after year end & he will decide split (50% hopefully) and how much to pay to whom.

Confidential

FRANK AVELLINO
27 CLIFF ROAD
NANTUCKET, MASSACHUSETTS 02554-3639
Telephone: (508) 325-7042; Fax: (508) 325-7070

June 5, 2000

Greg Powell
Sullivan & Powell

Tel: 954-492-0088
Fax: 954-566-9700

Dear Greg,

Thank you for responding with the list.

The two names I recognize on the P&S Associates list is John Crowley (Michael and Dianne's friend) and of course, Carone Pension Trust.

As for the S&P list the accounts attributable to our old accounts are:

Vania P. Alves
Patricia Hidalgo
Stanley & Emilie Leonardi (Dianne's uncle)

The other accounts like Scott Holloway, Dick Wills etc. were never part of my old accounts.

In summary, the P&S accounts with Msgr. Kelly may be the only accounts we may have some claims on. Since you only take half of the management income and give the other half to charity I do not see how this can be negotiated.

Please feel free to call me should you have any questions.

Sincerely,

Frank Avellino



AVELLINO_P&S000001
MB02311RTP

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08-13-15_PLAINTIFFS_0019210

P&S Associates, General Partnership 6/5/2000

Dorothy K.	Bulger	74,000.00
Holy Ghost	Central Account	260,000.00
Holy Ghost	Congress	4,000.00
Robin Leusen	Costa	130,937.06
Robin Leusen	Costa	49,131.47
John J.	Crowley	55,000.00
Centro de	da Juventude (CCJ)	70,698.23
Kelco	Foundation	23,850.68
Paul J.	Frank	100,000.00
Congregation	Holy Ghost	200,000.00
Holy Ghost	Ireland Inc.	117,344.08
Holy Ghost	Ireland/Kenema	60,000.00
Rev. Msgr.	Kelly	10,000.00
Rev. Msgr.	Kelly	30,000.00
Janet E.	Molchan	125,700.00
Janet E.	Molchan	60,000.00
Holy Ghost	Mombasa	113,000.00
Abraham and	Newman	85,000.00
Mary Ellen	Nickens	100,000.00
Holy Ghost	Pastoral Juvenil	52,069.00
Caróna	Pension Trust	100,000.00
Edith	Rosen	30,000.00
Paroquia de	Santa Luzia	20,000.00
Projeto	Sao Miguel Paulista	48,000.00
Susan M. &	Shaheen	41,560.97
Pamela S.	Snedeker	70,000.00
Alma L.	Snedeker	35,000.00
Pamela S.	Snedeker	170,000.00
Holy Ghost	SouthWest Brazil	343,000.00
Solutions in	Tax, Inc.	892.00

Frank A.
FAX 508.325.7070
4 Pages TOTAL

PVS Page 1 of 1
Done

AVELLINO_P&S000002
MB02312RTP

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08-13-15_PLAINTIFFS_0019211

pg 1 y2

Ettoh Ltd.		250,000.00	Solutions in Tax,	26,000.00
SPJ Investments,		335,186.12	Richard D. & Ann R. Akins	8,900.00
Vanila P.	Alves	49,000.00	Katherine F. Astley	64,000.00
Barbara	Aymes	90,000.00	Kathryn L. Babcock	10,000.00
Sylvia M.	Barbosa	54,728.07	Grace P. Barcroft	200,000.00
Dolores	Barone	55,000.00	Mary M. Barrows	30,000.00
Ada S.	Bickel	80,000.00	Roger G. & Terry A. Bond	300,000.00
Laurel & William	Bonhage	143,000.00	Carl & Annette Boschetti	25,000.00
Martin L. & Gloria	Braun	8,000.00	James R. & Ruth J. Brown	50,000.00
Denise B.	Bryan	37,000.00	Walter M. & Brenda Buckley	225,000.00
James	Caplinger	140,000.00	James Caplinger	5,616.29
Gary R.	Chapman	1,915.00	Gary R. Chapman	67,000.00
Leon	Chase	20,000.00	John & Lois Combs	150,000.00
Dave & Melanie	Cooksey	4,000.00	Janet Cooper	800.00
Marina P.	Correia	33,000.00	Denise A. Cram	10,000.00
James & Brigitte	Crowe	10,000.00	Sally Dickman	30,000.00
Leo & Mary	Dunham	10,000.00	Esther Fellman	50,000.00
Morton	Fellman	50,000.00	Deborah Fellman	30,000.00
Hampton	Financial	238,700.00	Ralph C. Fox	271,627.47
Carol L.	Fox	16,597.00	Carol L. Fox	15,456.57
Carol L.	Fox	15,000.00	Ersica P. Glanna	195,000.00
Wallace M.	Goodman	76,467.47	Lila R. Goodman	58,999.32
Wallace M.	Goodman	70,061.41	David & Gertrude Gordon	47,000.00
Jesse, Lois or	Goss	48,705.19	Elizabeth S. Harris	5,000.00
Mary S.	Haslam	25,000.00	Robert H. & Dorothy Heintz	6,000.00
Patricia	Hidalgo	100,000.00	Phillip A. & Jolene Hocott	60,276.85
Phillip A.	Hocott	452,991.14	Jolene O. Hocott	123,331.38
Scott W.	Holloway	220,960.33	Adam S. Holloway	30,000.00
Alicia N.	Holloway	10,128.07	Vernie M. Holloway	104,000.00
Zelda G.	Holloway	137,917.84	Howard H. & Joyce Horwitz	20,000.00

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Sax Associates, General

Confidential Partnership

SULLIVAN POWELL

6/5/2000

PAGE 80

Pg 2 of 5

Joan L.	Hughes	75,525.19	Lawrence	Hughes	252,048.28
Direct Resource	Inc.	45,480.50	R.G. Bond &	Inc.	100,000.00
Millie	Irwig	60,000.00	Herbert	Irwig	25,000.00
Millie	Irwig	25,000.00	Aaron T. & Lynette	Ishikawa,	37,800.00
Alice B.	Iuen	20,000.00	Edward M. & Phyllis	Jacobs	60,000.00
Kim D.	Janicek,	6,774.95	Jack	Kleinmann	157,323.37
C. Paul & Rose M.	Lambert	90,000.00	Rosemary	Leo-Sullivan	29,500.00
Stanley & Emilie	Leonardi	70,000.00	Beverly B.	Lewis	50,000.00
Nancy V.	Lozito	20,000.00	Dorothea V.	Marema	13,346.70
Rita M.	Marama	18,000.00	Theresa	Mataragas	28,000.00
Christie C.	McGarey	4,477.36	Catharine B.	McGarey	4,555.69
Robert B. Chase	McGarey	9,050.00	Louise	McIlvaine,	143,706.93
Louise	McIlvaine,	54,099.37	Dr. Edward D.	Michaelson	5,000.00
Susan M. Serafini	Michaelson	25,000.00	Martha	Mohr-Franta	225,000.00
Paul H.	Mueller	141,687.63	Karen	Newman	10,000.00
Louis S. & Darlene	O'Neal	45,000.00	Marcio S.	Oliveira	24,000.00
Rose	Orofino	25,000.00	Paul & Tina	Paolozzi	38,000.00
JS&P, General	Partnership	1,180,265.51	Beverly J.	Payne	20,000.00
Robert R. & Gail	Podwill	60,000.00	Jeffrey W.	Possér	20,000.00
Joan M.	Pousser	7,000.00	Greg and/or Bette	Powell	59,100.00
Harvey L. & Yvonne	Powell	25,500.00	Bette Anne	Powell	10,452.66
Glen D. & Barbara J.	Powell	20,000.00	Paul A.	Profe, Rev.	200,000.00
Etha A.	Profe, Rev.	225,000.00	Irwin B. & Mary N.	Reed	40,000.00
Mildred R.	Richardson	90,000.00	Edith	Rosen	70,000.00
Lynn	Rosen	34,000.00	Sam	Rosen	80,000.00
Garry & Nancy A.R.	Rothbaum	10,000.00	Phil & Mica	Roughton	25,000.00
Lucille	Rowlette	105,000.00	ASH & KAH Educ.	S. Holloway	29,263.05
Carmelo & Bertha	Santamaria	50,000.00	Angela M.	Silecchia	85,000.00
Kathryn and/or	Silecchia	35,757.50	Kathryn &/or	Silecchia	5,000.00
Lisa I. & Jeffrey S.	Sliwa	16,404.01	Catharine B. &	Smith	185,000.00

AVELLINO_P&S000004
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S&P Associates, General Partnership

Confidential SULLIVAN POWELL

6/5/2000

PAGE 04

Joseph A. Spezio	130,000.00	Ann M. Sullivan	340,526.28
Michael D. & L. Gail Sullivan	42,000.00	Ann M. & Michael D. Sullivan	108,239.66
Michael D. & L. Gail Sullivan	40,000.00	Mary Jo Sullivan	5,000.00
Marilyn A. Swiger	1,000.00	Viviarine Walker	45,506.21
Cindy Wallick	129,500.00	Gregg Wallick	429,400.00
Alvin S. & Evelyn K. Weaver	10,600.00	Jennifer J. Weber	324,630.64
Anne W. Wenzel	123,287.28	Richard F. & Betty West	39,000.00
Elsa Williams	170,000.00	Dr. John I. Williams	50,000.00
Evelyn L. Willis	15,000.00	Johanna Willis	8,600.00
Eileen W. & Richard Willis, Jr.	20,000.00	Jack B. & Barbara Wirick	12,000.00
Mark D. Wirick	29,590.50	Hans & Ruth Wirtz	84,000.00
James E. Yonge, trustee	100,000.00	Elisabeth M. Zittel	10,000.00

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08-13-15_PLAINTIFFS_0019214

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SULLIVAN & POWELL

2004

	Account Balance 12/31/2004	
P&S ACCOUNTS		
Carone Pension Plan	474,986	
James Jordan Trust	400,000	
Carone Marital Trust	511,000	
Carone Marital Trust	630,000	
Carone Revocable Trust	160,486	
Paragon Ventures	0	5,000,000 Was returned
Elaine Ziffer	1,000,000	
Carone Family Trust	336,000	
Total	3,501,472	

Management fee	115,153.18	MB	FA
	50% 57,576.59		
	50%	28,788.30	28,788.30

S&P Accounts

Vania Alves	76,769	
James Judd	180,000	
Hooker Trust (Donald Kahn)	117,991	4,000,000 Was returned
James Jordan IRA	3,060,250	
Fernando Esteban IRA	19,226	
Margaret Esteban IRA	547,717	
Total	4,001,943	

Management fee	106,909.07	
	50% 52,954.54	
	50%	26,477.27 26,477.27
Total		55,265.57 55,265.57

AVELLINO_P&S000006
MB02316RTP

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08-13-15_PLAINTIFFS_0019215

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Gross Annualized Percentage Rates (by year)

	<u>S&P Assoc.</u>	<u>P&S Assoc.</u>
	(Fr. Kelly's group)	
<u>Year ending</u>	<u>Gross %</u>	<u>Gross %</u>
1993	16.58	16.74
1994	14.91	16.42
1995	17.92	17.66
1996	18.36	18.51
1997	20.56	21.46
1998	18.61	19.89
1999	18.33	* ~21.32

*1999 records at CPA, so don't have an exact figure

<u>Average</u>	<u>17.90</u>	<u>18.85</u>
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AVELLINO_P&S000007
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08-13-15_PLAINTIFFS_0019216

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S&P Associates, Gen. Partnership - Net Annualized Percentage Rates

<u>Qtr. ending</u>	<u>% (NET)</u>
3/31/93	18.85
6/30/93	15.82
9/30/93	12.56
<u>12/31/93</u>	<u>13.26</u>
3/31/94	13.66
6/30/94	11.95
9/30/94	12.30
<u>12/31/94</u>	<u>11.41</u>
3/31/95	12.37
6/30/95	14.36
9/30/95	13.71
<u>12/31/95</u>	<u>13.95</u>
3/31/96	13.74
6/30/96	13.11
9/30/96	13.79
<u>12/31/96</u>	<u>14.36</u>
3/31/97	18.11
6/30/97	20.30
9/30/97	17.42
<u>12/31/97</u>	<u>16.10</u>
3/31/98	16.87
6/30/98	17.06
9/30/98	14.32
<u>12/31/98</u>	<u>14.54</u>
03/31/99	18.68
06/30/99	17.36
09/30/99	14.55
<u>12/31/99</u>	<u>14.32</u>
<u>Average NET Return 1993-1999</u>	<u>13.99</u>

AVELLINO_P&S000008
MB02318RTP

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08-13-15_PLAINTIFFS_0019217

Frank J. Avellino
27 Cliff Road
Nantucket, MA 02554-3639
Telephone: (508) 325-7042
Fax: (508) 325-7070

VIA FED EX

Re: Margaret E. K. Esteban - Retirement Accounts, Inc.

Dear Susan,

Enclosed please find two checks one for \$537,618.80 and another for \$83.00 made payable to Retirements Accounts, Inc. for the new Margaret E. K. Esteban IRA account. The funds are the proceeds of a rollover from a previous IRA account with Royal Alliance Associates, Inc. which was terminated on July 23, 2004.

All of the attached documents have been properly signed and dated according to your indications.

Please acknowledge receipt of this package by either calling me or by fax at the above numbers. I have made copies for Margaret and myself. Please send a formal copy and receipt to Ms. Esteban at 123 Main Street, Nantucket, MA 02554.

Thank you for your kind consideration.

Sincerely,

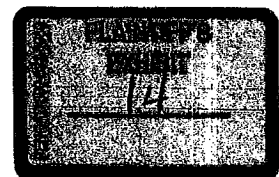
Frank

Frank Avellino

Hi Susan,

*I am sending by Fed Ex today (8/17/94)
For tomorrow A.M. delivery.*

Frank



Confidential Document
Michael D. Sullivan & Associates, Inc.

Port Royale Financial Center, Suite 210
6550 North Federal Highway
Fort Lauderdale, FL 33308

Michael D. Sullivan
0088

Telephone 954-492-

0069

Fax 954-938-

Susan H. Moss, E.A.
mail: Gop9401@aol.com

e-

June 18, 2013

Dear Bette Anne:

Over the Holiday I will let you know what I will do over the next 5 years. Please forgive me if I sound angry but everything seems to point to me being the bad guy. Somehow all the money I have brought into the business to pay for the life style you have enjoyed does not even enter into this equation! It seems I get to do all the hard work, minus my best friend and partner while everyone else just goes on with life as usual.

As I continue to pray, I will be able to finalize this with you within the next 30 days. I will base my gift to you over a 5 year period as long as certain life and market conditions continue as the have.

BA, know this, I will never leave you without. I should not have to justify this but I feel I cannot do enough to satisfy you.

Right off the bat you should be completely aware that the gift of this business was only given to me not Greg. It came from a close friend in my church, Frank Avellino. He came to me alone as an individual. Most of the people who came into our partnership were friends of our church. I was reminded constantly by Frank that this was my gift alone.

Because Greg was my closest friend and partner I wanted to share the gift I had been given with him. And I did for 11 years. We have all been blessed.

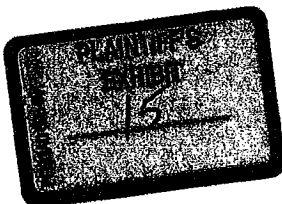
Greg has been called home to be as we know, is in a glorious fife, one we all long for. My goal with this letter is to clear up some of the apparent confusion you have regarding compensation as evidenced in your letter to me.

You stated that you thought you were not going to have any financial problem. I cannot unfortunately guarantee that for a number of reasons. If something happens to the stock market, to our investors, to Frank our contact or myself this investment partnership could change drastically. this is a very fragile business with no certain guarantees. You must deal with the real possibility of this taking place.

If something were to happen to me, death or grave illness, the business in effect would be closed. You have no idea or apparently never understood just how important my relationship to this business is. I am the person who deals with the main source, Frank Avellino. He has given and entrusted to me this gift and can take it back at any time and earn the entire commissions for himself. BA, 955 of all the business ever generated through this company came in through my efforts alone. I am not boasting but this is what the Lord dealt to me.

Basically all the investors are from my contacts or personal relationships that I have nurtured thought the years.

AVE00253RTP



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08-13-15_PLAINTIFFS_0020552

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In most business firms the partner who brings in the money makes significantly more money. The income producers are the key to any business.

In no way shape or form is any of this to take anything away from Greg. He was my best friend and together we make each other complete. I am simply pointing out facts you need to be aware of.

I felt in your heart there was a time that you felt when Greg was called home that you would be a partner in this business. I don't know where you got that idea but that could and would never happen. For one thing Frank Avellino would never have allowed it. Greg was my only partner and it would be inconceivable to have anyone else fill his roll. Both of us knew that and that is one of the reasons in the partnership agreement all decisions would be left to the surviving partner in the event of a death.

As I look at your expenses you sent me it appears you want me to keep up two homes and operate everything as if Greg was still here and working. I would like nothing more than to have Greg still here.

This is a working business not a monthly ATM. This business requires constant work and care.

Bette Anne at some point you will have to make some changes in your lifestyle. I told you that I would help support you and I want to make sure we both know just what is reasonable and what God would bless. There must be boundaries of with a beginning and ending to help you move on with your life. This is only healthy for you. You must rely on yourself for your own self esteem. But still know I will always be there to help you along the way.

I want you to know that I have talked to five strong Christian brother both in business and pastors. Each one of them not knowing what the others have advised have all given me basically the same advice. Each one of them knew my special relationship with Greg.

You stated in your letter that all the hard work Greg had done should count for something. Greg was a hard worker and enjoyed the fruits of our business as have you and your children over these last few years. However this last year as you know Greg worked no more that 20 days - making a total of 150 hours and took a large compensation for this. He was able to complete his work in 150 in a year that we had the most clients we have ever had. If he did this last year what do you think the work load was for him in prior years with less clients?

Greg worked on so many other things ministry, m church retreats not just business. Greg loved to be in the office all day. He loved to "piddle around". The bulk of his daily effort were not spent on S&P.

Greg was the very best friend and worker and was a true witness to his disciple, methodicalness, but all his time was not spent on business related work.

You also said, I do not know where your peace come from. For the last 20 years (through toe Lord) I have made enough contacts, nurtured clients that have helped pay for four of your houses, boats, cabins, multiple wedding reception, vacation tickets and good times for the children. You have not missed a pay check since Greg passed away. I sleep well knowing these thins I have done honoring God. You may not like how things are happening and may never like them but Greg knew why it was to happen. That is one of the reasons out of all the many people in your families he appointed me as the executor of his will. I know all the facts.

You made the comment that you have to crawl to me for money. Please do not try and make me feel that I have not helped you. The truth is tat there was no estate planning done nor was there sufficient life insurance left to you. Why Greg did not do better planning is beyond me. I have made sure over the years that my family is provided for if anything were to happen to me as they can not count on proceed form this business. This discussion about your needing money, crawling to me and what I am going to to support you should have taken place with Greg and a financial advisor not me. But I will honor Greg and God with helping you.

I legally owe you no money. We both know that. If I died first this business would have been dissolved within a year and the accounts given to other parties. I want to give you enough money for a few years but this again will be restricted to what the future holds. The business could be worth nothing if I die, the market crashes or Frank or Bernie dies. All of our financial lives cud change overnight. Everything is only for a season of time.

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If I wanted to keep all the money BA I just would after all I am the only one doing the work. The monies I send you are not part of an agreement as Greg and I had none. These are gifts to you.

If I did not have a written agreement with Greg who was my partner for 20 years, I will not have one with someone who is not my partner. The money I send to you are not of "all the hard work" that you feel is owed to Greg but are sent to you out of Christian friendship and love. Both Greg and I lived by faith.

Finally, you said Greg told one of his children if he died you would have no financial concerns. If you sold one of your homes and put the proceed in the investment you would have one house free and clear and have over 400K coming a nice yearly income. I am sure Greg was thinking in those terms.

You also stated it was hard to believe that Greg and I had no business agreement. I find it hard to believe that you would think there was an agreement when you and he had never discussed your own financial plans in the event of his death. May I remind you that you are still receiving his pay check.

AVE00255RTP

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08-13-15_PLAINTIFFS_0020554

P&S Associates, General Partnership

Coral Ridge Office Center, Suite 301
3696 North Federal Highway
Fort Lauderdale, FL 33308

Michael D. Sullivan

Telephone: 954-492-0088
Fax: 954-938-0069

August 10, 2012

Dear Partner,

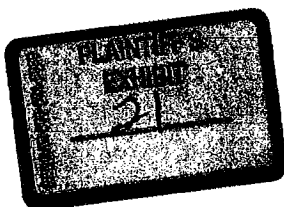
This letter is in response to the recent, undated letter from members of the group represented by Berger Singerman, LLP, (BS Group) regarding changing the Managing General Partner of S&P Associates and P&S Associates (together, the "Partnerships"). The BS Group letter makes slanderous and insupportable accusations against me to serve their own purposes which they specifically state are unproven. Below I will address each item of their letter.

Please be aware that what the BS Group is really hoping to do is to get its hands on your money so it can use your money to fund expensive litigation. My goal all along has been to make sure the partnership funds are distributed to you as quickly as possible and with as few legal expenses as possible.

Regarding the BS Group and the records, I have actually met several times with members of this group and answered their questions. But think about this: if any of this were true, do you really think Irving Picard, the Madoff Trustee with his army of forensic accountants and attorneys would have just given me a complete release of all liability? He did so in connection with the settlement, which now gives us the ability to get some of your hard-earned money back to you.

The malicious and slanderous allegations made against me:

- The BS Group wants me to sue Frank Avellino and Michael Bienes. But that would be an incredible waste of your money. Picard has sued Avellino and Bienes. If we tried to sue them now, the bankruptcy court would prevent the lawsuit from proceeding.
- The BS Group claims I have withheld records but, in fact, we have given them all the records, the same exact books and records given to Irving Picard. They have had those records for almost a year. In a recent conversation with the first forensic accountant they hired Ali Ansari, the records actually sat in his office for 6 months completely untouched. They have still only done a preliminary review because they want to use your money to fund this. This will drain partnership funds that should be going directly into your pocket.
- The BS Group has seven bullet points as to why they believe I should be removed. However, they also state "these findings are based on a preliminary review of the documents." In other words, they are making statements without proof.
- Partnership funds were never paid to Avellino and Bienes or anyone else. Avellino and Bienes have never had any control over the partnerships. To insinuate that I am a "front man" or that anyone else has control is both slanderous and malicious and without merit.



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- All partners signed a partnership agreement that the Managing General Partner would receive fees of 20% of the profits. That was all that was paid to the Managing General Partner. This amount can be proved. There were no additional management fees paid to companies controlled by me.
- The charitable contributions made were a reduction of management fees and not paid out of any partnership funds whatsoever. Each partner's account was completely unaffected by this. Other charities including the Festus and Helen Stacey Foundation received the same decreased management fees. The only difference is how those funds were directed by the specific charity.
- SPJ Investments held the IRA for the partnerships, under law an IRA cannot be invested in a General Partnership. All funds are accounted for and all Limited Partners received statements. JS&P is closed and all activity is reflected in the books and records of the partnerships. Guardian Angel Trust is a partner in S&P and I have absolutely no financial interest in this company and this has been stated to the group more than once. I have never had possession of any records for this partner. Regarding the statement that these companies held "millions of dollars of partnership assets" that is completely false. All the funds were properly shown on the records of the partnerships, the same as every partner. These companies were investors in the partnerships like everyone else. They did not hold partnership investments. Like all partners in the partnership they received K-1's and filed separate tax returns. The accusation that these companies held partnership funds is absurd and unfounded.
- All funds were invested for each partner. Throughout the start of the partnerships right up until the past months all partners have received statements or letters asking them to confirm the amount invested is correct. There has never been a discrepancy that wasn't immediately resolved with any partner. To insinuate that these funds are in anyway missing is intentionally malicious and slanderous against me. Again, all records have been turned over to the Madoff trustee. After a thorough investigation of the records, the identical records that had been turned over to the BS Group almost a year ago, the trustee approved our claim.
- No commissions were paid from partnership assets. For the group to say that commissions were paid from partnership assets is a complete fabrication and again is slander. In fact, the partnership was entitled to charge a 20% management fee plus direct expenses of the partnership, yet the Managing General Partner only charged legal, accounting, bank fees and at times direct supplies. The Managing General Partner did not pass on rent, bookkeeping/administrative fees or other operating expenses on to the partners even though he was entitled to do so.
- The BS Group has had control of the records for almost a year and now states there are missing items. These are the same documents that were reviewed and considered complete by the Madoff Trustee.

Another factor to consider is that the Festus and Helen Stacey Foundation (original members of the BS Group) sent in their financial advisor, Patrick Kelly and their CPA to review our books and records and the Madoff investment in the same year the Madoff fraud was discovered. They visited our office and were provided access to all our books and records. They also visited with our accountant Mike Kuzy. After a review the Foundation's investment was never changed. As a side note Patrick Kelly had stated to a witness and myself he was planning on investing in the Madoff fund.

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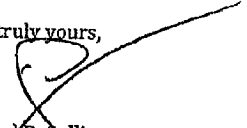
The BS Group goes on to say that many millions of dollars are unaccounted for in the partnerships, yet they offer no proof. And once again, Irving Picard has reviewed partnership records and verified our claim. Their solution is to change the General Managing Partner because of unproven allegations. At the same time they offer no plan on how much the change will cost or what benefit it will provide to all partners. They offer no proof because there is no proof!

As stated in my previous letter, we are nearing the end. Our attorney Helen Chaitman is in control of all the funds for both partnerships. We hope to start distributions later this year as soon as we receive the court decision on how to distribute the fund. Don't allow a small group of partners to spend your share of the distributions coming to you. If anyone believes anything is wrong they have a right to sue using their own money. **Do not let them use your money for their witch-hunt** that is based on slander, maliciousness and a personal vendetta against me. Let them fund their own witch-hunt.

As I said before this is a personal vendetta solely against me and I apologize for all of you being dragged in to this. As a result, those making these malicious and slanderous statements or participated in the BS Group letter against me will be held responsible.

If you have sent a proxy to The BS Group voting for a change in the Managing General Partner you **still have a right to change your vote**. We have enclosed a proxy if you are unable to attend the meeting. You can fax the signed and dated proxy directly to me at 954 938-0069.

Very truly yours,


Michael D. Sullivan
Managing General Partner

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PROXY

SPECIAL MEETING OF THE PARTNERS OF P & S ASSOCIATES

August 17, 2012

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being a partner of P & S Associates, a general partnership (the "Partnership"), entitled to vote at a special meeting (the "Meeting") of the partners of the Partnership, does hereby constitute and appoint the following person(s) in the following order, namely, Janet Jordan and Roger Bond (each, a "Proxy Holder"), to be my true and lawful agent, with full power of substitution, to attend the Meeting of the members of the Partnership to be held on August 17, 2012 at 11:00 a.m. or any continuation or adjournment thereof, with full power to vote and act for me and in my name and stead, in the same manner, to the same extent, and the same effect that I might, were I present in person.

The Proxy Holder(s) shall cast a vote for or against the following proposals.

Proposal Number 1:

AS TO THE PROPOSED REMOVAL AND REPLACEMENT OF THE MANAGING GENERAL PARTNER

For: _____ Against: _____

Proposal Number 2:

AS TO AMENDING THE PARTNERSHIP'S PARTNERSHIP AGREEMENT TO REFLECT THE CHANGE OF MANAGING GENERAL PARTNER (IF PROPOSAL NUMBER ONE PASSES)

For: _____ Against: _____

By: _____
Name:
Title:

Date

Voting will occur at the Meeting, and at the conclusion of the Meeting, polling will close and proxies and/or ballots will be counted.

4431473-1

810/710 0804

08/02/2012 11:01

561 391 5026

From: Burt Moss Financial

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08-13-15_PLAINTIFFS_0014737

EXHIBIT C

TRIAL TRANSCRIPT IN DALEY V. AVELLINO

NANTUCKET, SS. COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *

JOHN J. DALEY, III,
NANCIE B. TAYLOR,

* Docket No. NACV2009-00009
* NACV2009-00010

Plaintiffs,

v.

FRANK AVELLINO, et al.,

Defendants.

* * * * *

JURY TRIAL

BEFORE THE HONORABLE JOHN C. CRATSLEY

APPEARANCES:

For the Plaintiffs:

Donovan Hatem, LLP
Word Trade Center East
2 Seaport Lane, 8th floor
Boston, MA 02210
By: Kenneth B. Walton, Esq.
Peter C. Lenart, Esq.

For the Defendants:

Edwards Angell Palmer & Dodge, LLP
111 Huntington Avenue
The Prudential Center, 29th floor
Boston, MA 02199
By: Thomas H. Wintner, Esq.

For the Defendants:

Haile, Shaw & Pfaffenberger P.A.
660 US Highway One, Third Floor
North Palm Beach, FL 33408
By: Gary Woodfield, Esq.

Recording produced by digital audio recording system.

Transcription Company:

Fiore Reporting and Transcription Service, Inc.
4 Research Drive, Suite 402
Shelton, CT 06484
(203) 929-9992

Nantucket, Massachusetts
May 12, 2011

1 "It's not my thing, so don't tell me. Don't talk about it."
2 Whatever. That would be -- sorry -- that was the general
3 gist of --

4 Q Question: It doesn't change your answer to my question
5 that you never described or explained puts and calls to Mr.
6 Daley, right?

7 A Right.

8 Q Question: Now, when you accepted Mr. Daley's million
9 dollar check in 2001, did you know that amount of money
10 would be used to purchase securities?

11 A Definitely.

12 MR. LENART: Page 158.

13 Q Question: Paragraph 140 of the trustee's complaint
14 states: In or about late 1992 or early 1993, despite the
15 requirements of a preliminary injunction, the ongoing
16 litigation with the SEC and their clear knowledge that their
17 prior investment activities were prohibited, Avellino and
18 BLMIS attempted to find people willing to act as, quote,
19 "front men" to operate partnerships so that they could
20 continue to raise and pool money from others to invest with
21 BLMIS, but avoid the scrutiny of regulators. Is that a
22 correct statement, sir?

23 A On the advice of counsel, I invoke my Fifth Amendment
24 rights.

25 Q Question: Following the SEC investigation, you and Mr.

1 Bienes, did you undertake any action to recruit front men to
2 continue to fund Madoff or BLMIS?

3 A On the advice of counsel, I invoke my Fifth Amendment
4 rights.

5 Q Question: Was Kenn Jordan the front man who you
6 recruited to funnel money to Bernard Madoff or BLMIS?

7 A On the advice of counsel, I invoke my Fifth Amendment
8 rights.

9 MR. LENART: Page 165.

10 Q Question: Still on page 49, paragraph 147, the trustee
11 alleges: In or about February, 1993, just after the
12 issuance of the preliminary injunction, Kenneth Jordan, a
13 close friend of Avellino, and a former A and B investor,
14 established an IA account at BLMIS in the name of KJA. Is
15 that a correct statement, sir?

16 A On the advice of counsel, I invoke my Fifth Amendment
17 right.

18 Q Question: The next sentence on paragraph 147 contends
19 that KJA IA account was utilized to invest funds with BLMIS
20 that had been pooled from numerous investors who were given
21 limited partnership interests in KJA. Is that a correct
22 statement, sir?

23 A On the advice of counsel, I invoke my Fifth Amendment
24 rights.

25 Q Sir, has Kenn Jordan Associates ever had an IA account?

EXHIBIT D

***DEFENDANT FRANK AVELLINO'S
PRIVILEGE LOG***

IN THE CIRCUIT COURT OF THE 17TH 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.

DEFENDANT FRANK AVELLINO'S
NOTICE OF FILING PRIVILEGE LOG

Defendant, Frank Avellino, by and through his undersigned counsel, hereby files his Privilege Log relating to documents produced in response to Plaintiffs' Fifth Request for Production of Documents dated October 5, 2015. A copy of the Privilege Log is attached hereto as **Exhibit A**.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2015, 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.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant Avellino

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

gwoodfield@haileshaw.com

bpetroni@haileshaw.com

syoffee@haileshaw.com

cmarino@haileshaw.com

By: /s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
Florida Bar No. 563102
Susan B. Yoffee, Esq.
Florida Bar No. 511919

SERVICE LIST

THOMAS M. MESSANA, ESQ.
THOMAS ZEICHMAN, ESQ.
MESSANA, P.A.
SUITE 1400, 401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE, FL 33301
tmessana@messana-law.com
tzeichman@messana-law.com
Attorneys for Plaintiffs

LEONARD K. SAMUELS, ESQ.
ETHAN MARK, ESQ.
STEVEN D. WEBER, ESQ.
BERGER SINGERMAN
350 EAST LAS OLAS BOULEVARD, STE 1000
FORT LAUDERDALE, FL 33301
emark@bergersingerman.com
lsamuels@bergersingerman.com
sweber@bergersingerman.com
DRT@bergersingerman.com
Attorneys for Plaintiffs

PETER G. HERMAN, ESQ.
TRIPP SCOTT, P.A.
15TH FLOOR
110 SE 6TH STREET
FORT LAUDERDALE, FL 33301
pgh@trippscott.com
ele@trippscott.com
*Attorneys for Defendants Steven F. Jacob
and Steven F. Jacob CPA & Associates, Inc.*

JONATHAN ETRA, ESQ.
MARK F. RAYMOND, ESQ.
SHANE MARTIN, ESQ.
CHRISTOPHER CAVALLO, ESQ.
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
mraymond@broadandcassel.com
ssmith@broadandcassel.com
ccavallo@broadandcassel.com
jetra@broadandcassel.com
Attorneys for Michael Bienes

**DEFENDANT FRANK AVELLINO'S PRIVILEGE LOG RELATING TO DOCUMENTS
PRODUCED IN RESPONSE TO PLAINTIFFS' FIFTH REQUEST FOR
PRODUCTION OF DOCUMENTS, DATED OCTOBER 5, 2015**

"AC" = Attorney-Client Communication

"JD" = Joint Defense

BATES NUMBER	DATE	TO	FROM	CC	TYPE OF DOCUMENT	SUBJECT	PRIVILEGE
AVELLINO_P&S000760 Through AVELLINO_P&S000762	12/02/11	Nancy Avellino	Helen Davis Chaitman, Esq.	Lourdes Blanco	Email String	SEC Claims	AC/JD
	12/02/11	Helen Davis Chaitman, Esq.	Nancy Avellino			SEC Claims	AC/JD
	11/29/11	Nancy Avellino	Helen Davis Chaitman, Esq.			SEC Claims	AC/JD
	11/29/11	Helen Davis Chaitman, Esq.	Nancy Avellino			SEC Claim	AC/JD
AVELLINO_P&S000763 Through AVELLINO_P&S000771	11/03/11	Michael Sullivan	Helen Davis Chaitman, Esq.		Email String	P&P/S&P Settlements	AC/JD
	10/28/11	Helen Davis Chaitman, Esq.	Thomas Wearsch, Esq.			P&P/S&P Settlements	AC/JD
	11/08/11	Frank & Nancy Avellino	Michael Sullivan			2 nd Circuit and Litigation of Customer Status for Retirement Account Investors	AC/JD
	11/08/11	Michael Sullivan	Helen Davis Chaitman, Esq.			2 nd Circuit and Litigation of Customer Status for Retirement Account Investors	AC/JD
	11/08/11	Helen Davis Chaitman, Esq.	Michael Sullivan			2 nd Circuit and Litigation of Customer Status for Retirement Account Investors	AC/JD
	11/08/11	Michael Sullivan	Helen Davis Chaitman, Esq.			2 nd Circuit and Litigation of Customer Status for Retirement Account Investors	AC/JD
	06/21/11	Tom Avellino	Michael Sullivan			Peshkin v. Levy- Church, et al. Appellant's Brief	AC/JD
	06/21/11	Helen Davis Chaitman, Esq.	Helen Davis Chaitman, Esq.			Peshkin v. Levy- Church, et al. Appellant's Brief	AC/JD

Philip J. Von Kahle v. Michael D. Sullivan, et al.
Case No. 12-034123 (07)

BATES NUMBER	DATE	TO	FROM	CC	TYPE OF DOCUMENT	SUBJECT	PRIVILEGE
AVELLINO_P&S000754	04/05/11	Frank & Nancy Avellino	Michael Sullivan			S&P/P&S Claims	AC/JD
	04/05/11	Michael Sullivan, Chat Pugatch, Beth Pugatch	Helen Davis Chaitman, Esq.	Helen Davis Chaitman, Esq.		S&P/P&S Claims	AC/JD
	04/04/11	Frank & Nancy Avellino	Michael Sullivan			Peshkin v. Levy- Church, et al.	AC/JD
	09/01/15	Frank and Nancy Avellino	Michael Sullivan		Email String	Legal Invoices	AC/JD
	08/25/15	Mark Raymond, Jonathan Etra, Shane Martin	Diane & Michael Bienes			Legal Invoices	AC/JD
AVELLINO_P&S000755	09/04/15	Frank & Nancy Avellino	Michael Bienes		Email	Deposition Preparation	AC/JD