

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

CASE NO: 12-34121(07)

PHILIP J. VON KAHLE, as Conservator of  
P&S ASSOCIATES, GENERAL  
PARTNERSHIP, and S&P ASSOCIATES,  
GENERAL PARTNERSHIP,

Complex Litigation Unit

Plaintiffs,

vs.

JANET A. HOOKER CHARITABLE  
TRUST, et al,

Defendants.

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**DEFENDANTS/COUNTER-PLAINTIFFS JAMES AND VALERIE JUDD'S RESPONSE  
TO PLAINTIFFS' MOTION TO DISMISS AMENDED COUNTERCLAIM**

Throughout the course of this litigation, Plaintiffs and their counsel, the court appointed Plaintiffs and their counsel have repeatedly flooded Defendants Judd and the Court with inconsistent allegations and repeated assertions based upon a falsely verified return of service, while resisting discovery by professing not to understand the very terminology that they themselves used and asserting that discovery sought was "irrelevant."

1. Put simply, in July 2000, Defendants Judd were led to believe that S&P Associates was a legitimate investment with "quarterly distributions reinvested in the Partnership" (as set forth in the one page Agreement dated 7/14/2000 signed by Valerie Judd). At no time did the Judds sign, nor did they receive, the 14 page Amended and Restated Partnership Agreement dated December 21, 1994.

2. S&P Associates sent periodic “Activity / Status Reports” reflecting the balance on their account; and

3. S&P Associates sent K-1s for each year that were filed by S&P Associates with their Form 1065 Income Tax Returns under penalty of perjury with the Internal Revenue Service. These K-1s showed the balance of the Judds’ capital account at the end of the year.

4. The Judds justifiably relied on these K-1s for the preparation of their tax returns and payment of their income taxes.

5. Consistent with these assurances, from time to time, the Judds were allowed to withdraw portions of their account for needed living expenses until December 3, 2008, when the last withdrawal was made.

6. At no time was there any hint or suggestion during this period to the Judds that there was any impropriety by S&P Associates, Sullivan individually, or Powell individually.

7. In ¶ 141 (page 30) of Plaintiffs’ action against Michael Sullivan et al. (Broward Case No. 12-034123), Plaintiffs allege that Avelino and Bienes intentionally omitted telling the Partnerships that BLMIS was a Ponzi scheme. This is inconsistent with the earlier allegation in ¶29 that Avelino and Bienes “should have known that BLMIS was a Ponzi scheme” (emphasis added).

8. In ¶ 30, Plaintiffs alleged that the failure to disclose the BLMIS Ponzi scheme resulted in a loss to S&P of \$10,131,036.00.

9. In ¶ 31 et. seq. Plaintiffs allege that Sullivan paid “kickbacks to the Defendants.”

10. If, as Plaintiffs suggest in the Third Amended Complaint in *P&S Associates, et. al. v. Sullivan, et al.* (Broward Case No. 12-034123):

- a. the investments by S&P in BLMIS dating back to December 1994 – more than 5 years before the Judd investment – were investments in a Ponzi scheme;
- b. S&P knew, or should have known that BLMIS was a Ponzi scheme or was not being properly audited;
- c. S&P Associates itself was not properly being audited each year;
- d. S&P Associates was paying improper “kickbacks” as alleged in ¶¶ 35-43; and
- e. The K-1s sent by S&P to Defendants Judd under penalty of perjury were not accurate,

then the Defendants Judd were fraudulently misled into thinking that they were investing in a legitimate investment that was fraudulent from the outset and should be entitled to rescission and the return of their investment with prejudgment interest.

11. If Plaintiffs’ establish the foregoing allegations, they have established the elements of actionable fraud and the reliance by the Judds to their injury, and the Judds are entitled to recover.

12. Moreover, the Court appointed conservator and Plaintiffs’ counsel should be required to exhaust all remedies available and recover from all of the wrongdoers, including BLMIS, Madoff, their conservator and successors, the Defendants in the *P&S, et al. v. Sullivan, et al.* case (Broward Case No. 12-034123) if Plaintiffs’ allegations have substance, the accountants who provided incorrect audit reports, incorrect K-1s and the professional liability insurance policies maintained by each of these Defendants and foregoing entities before attacking innocent partners who were misled by S&P Associates.

Although Defendants believe they have sufficiently stated a cause of action, at a minimum, the Judds should be given leave to give a more definite statement.

Wherefore, Defendants/Counter-Plaintiffs Judd respectfully pray for an order denying Plaintiffs/Counter-Defendants' Motion to Dismiss the Judds' Amended Counterclaim and/or, at a minimum, allowing Counter-Plaintiffs Judd to file a further Amended Counterclaim.

Respectfully submitted,

s/ Julian H. Kreeger  
 JULIAN H. KREEGER, P.A.  
 Florida Bar No. 098595  
 Attorneys for Defendants James and  
 Valerie Judd  
 Offices at Grand Bay Plaza  
 2665 Bayshore Drive, Suite 220-14  
 Miami, Florida 33133  
 Telephone: 305-373-3101  
 Facsimile: 305-381-873

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail upon Leonard Samuels, Esq. of Berger Singerman and counsel identified below registered to receive electronic notifications, and regular U.S. mail upon Pro Se parties on this 18<sup>th</sup> day of August, 2014 upon the following:

Counsel	E-mail address:
Ana Hesny, Esq.	<a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a> ; <a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a>
Eric N. Assouline, Esq.	<a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a> ; <a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a>
Annette M. Urena, Esq.	<a href="mailto:aurena@dkdr.com">aurena@dkdr.com</a> ; <a href="mailto:cmackey@dkdr.com">cmackey@dkdr.com</a> ; <a href="mailto:service-amu@dkdr.com">service-amu@dkdr.com</a>
Daniel W Matlow, Esq.	<a href="mailto:dmatlow@danmatlow.com">dmatlow@danmatlow.com</a> ; <a href="mailto:assistant@danmatlow.com">assistant@danmatlow.com</a>
Debra D. Klingsberg, Esq.	<a href="mailto:dklingsberg@huntgross.com">dklingsberg@huntgross.com</a>
Robert J. Hunt, Esq.	<a href="mailto:bobhunt@huntgross.com">bobhunt@huntgross.com</a>
Joanne Wilcomes, Esq.	<a href="mailto:jwilcomes@mccarter.com">jwilcomes@mccarter.com</a>
Evan Frederick, Esq.	<a href="mailto:efrederick@mccaberabin.com">efrederick@mccaberabin.com</a>
Etan Mark, Esq.	<a href="mailto:emark@bergersingerman.com">emark@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a> ; <a href="mailto:lyun@bergersingerman.com">lyun@bergersingerman.com</a>
Evan H Frederick, Esq.	<a href="mailto:efrederick@mccaberabin.com">efrederick@mccaberabin.com</a> ; <a href="mailto:janet@mccaberabin.com">janet@mccaberabin.com</a> ; <a href="mailto:beth@mccaberabin.com">beth@mccaberabin.com</a>
B. Lieberman, Esq.	<a href="mailto:blieberman@messana-law.com">blieberman@messana-law.com</a>
Jonathan Thomas Lieber, Esq.	<a href="mailto:jlieber@dobinlaw.com">jlieber@dobinlaw.com</a>
Mariaelena Gayo-Guitian, Esq.	<a href="mailto:mguitian@gib-law.com">mguitian@gib-law.com</a>

Counsel	E-mail address:
Barry P. Gruher, Esq.	<a href="mailto:bgruher@gjb-law.com">bgruher@gjb-law.com</a>
William G. Salim, Jr., Esq.	<a href="mailto:wsalim@mmsslaw.com">wsalim@mmsslaw.com</a>
Domenica Frasca, Esq.	<a href="mailto:dfrasca@mayersohnlaw.com">dfrasca@mayersohnlaw.com</a> ; <a href="mailto:service@mayersohnlaw.com">service@mayersohnlaw.com</a>
Joseph P. Klapholz, Esq.	<a href="mailto:jklap@klapholzpa.com">jklap@klapholzpa.com</a> ; <a href="mailto:dml@klapholzpa.com">dml@klapholzpa.com</a>
Julian H Kreeger, Esq.	<a href="mailto:juliankreeger@gmail.com">juliankreeger@gmail.com</a>
L Andrew S Riccio, Esq.	<a href="mailto:ena@assoulineberlowe.com">ena@assoulineberlowe.com</a> ; <a href="mailto:ah@assoulineberlowe.com">ah@assoulineberlowe.com</a>
Leonard K. Samuels, Esq.	<a href="mailto:lsamuels@bergersingerman.com">lsamuels@bergersingerman.com</a> ; <a href="mailto:vleon@bergersingerman.com">vleon@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a>
Marc S Dobin, Esq.	<a href="mailto:service@dobinlaw.com">service@dobinlaw.com</a> ; <a href="mailto:mdobin@dobinlaw.com">mdobin@dobinlaw.com</a> ;
Michael C Foster, Esq.	<a href="mailto:mfooster@dkdr.com">mfooster@dkdr.com</a> ; <a href="mailto:cmackey@dkdr.com">cmackey@dkdr.com</a> ; <a href="mailto:kdominguez@dkdr.com">kdominguez@dkdr.com</a>
Michael Casey, Esq.	<a href="mailto:mcasey666@gmail.com">mcasey666@gmail.com</a>
Richard T. Woulfe, Esq.	<a href="mailto:pleadings.RTW@bunnellwoulfe.com">pleadings.RTW@bunnellwoulfe.com</a>
Michael R. Casey, Esq.	<a href="mailto:mcasey666@gmail.com">mcasey666@gmail.com</a>
Brett Lieberman, Esq.	<a href="mailto:blieberman@messana-law.com">blieberman@messana-law.com</a>
Marc Dobin, Esq.	<a href="mailto:service@dobinlaw.com">service@dobinlaw.com</a>
Peter Herman, Esq.	<a href="mailto:PGH@trippscott.com">PGH@trippscott.com</a>
Robert J Hunt, Esq.	<a href="mailto:bohunt@huntgross.com">bohunt@huntgross.com</a> ; <a href="mailto:sharon@huntgross.com">sharon@huntgross.com</a> ; <a href="mailto:eservice@huntgross.com">eservice@huntgross.com</a>
Ryon M McCabe, Esq.	<a href="mailto:rmccabe@mccaberabin.com">rmccabe@mccaberabin.com</a> ; <a href="mailto:janet@mccaberabin.com">janet@mccaberabin.com</a> ; <a href="mailto:beth@mccaberabin.com">beth@mccaberabin.com</a>
Steven D. Weber, Esq.	<a href="mailto:sweber@bergersingerman.com">sweber@bergersingerman.com</a> ; <a href="mailto:lwebster@bergersingerman.com">lwebster@bergersingerman.com</a> ; <a href="mailto:drt@bergersingerman.com">drt@bergersingerman.com</a>
Thomas J. Goodwin, Esq.	<a href="mailto:tgoodwin@mccarter.com">tgoodwin@mccarter.com</a> ; <a href="mailto:wendt@mccarter.com">wendt@mccarter.com</a> ; <a href="mailto:jwilcomes@mccarter.com">jwilcomes@mccarter.com</a>
Thomas L Abrams, Esq.	<a href="mailto:tabrams@tabramslaw.com">tabrams@tabramslaw.com</a> ; <a href="mailto:fcolumbo@tabramslaw.com">fcolumbo@tabramslaw.com</a>
Thomas M. Messana, Esq.	<a href="mailto:tmessana@messana-law.com">tmessana@messana-law.com</a> ; <a href="mailto:tmessana@bellsouth.net">tmessana@bellsouth.net</a> ; <a href="mailto:mwslawfirm@gmail.com">mwslawfirm@gmail.com</a>
Zachary P Hyman, Esq.	<a href="mailto:zhyman@bergersingerman.com">zhyman@bergersingerman.com</a> ; <a href="mailto:DRT@bergersingerman.com">DRT@bergersingerman.com</a> ; <a href="mailto:clamb@bergersingerman.com">clamb@bergersingerman.com</a>

By: s/ Julian H. Kreeger  
JULIAN H. KREEGER  
Florida Bar No. 098595