

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

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

Plaintiffs,

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

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR APPOINTMENT OF COMMISSIONER TO
TAKE DEPOSITIONS IN THE STATE OF NEW JERSEY AND
TO EMPLOY LOCAL COUNSEL**

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (the "Partnerships", and together with the Conservator, the "Plaintiffs"), pursuant to Fla. R. Civ. P. 1.300 and 1.310, hereby file *Plaintiffs' Motion for Appointment of Commissioner to Take Deposition in the State of New Jersey and to Employ Local Counsel* to retain local counsel and appoint a commissioner in the state of New Jersey, to issue subpoena *duces tecum* and administer oaths and take the oral testimony of THOMAS AVELLINO, a resident of Holmdel, New Jersey, and LORRAINE AVELLINO McEVOY, a resident of Fair Haven, NJ, and in support thereof states as follows:

1. Plaintiffs find it necessary to issue a subpoena *duces tecum* and take the deposition of Thomas Avellino, who resides in Holmdel, Monmouth County, New Jersey, because it is believed that Thomas Avellino has significant information that is material to the resolution of issues in this litigation. Among other things, it is believed that Thomas Avellino has knowledge and information related to investments in BLMIS made by and/or facilitated by Defendant Frank Avellino that may establish Defendant Frank Avellino's knowledge that Bernard L. Madoff Investment Securities, LLC ("BLMIS") was operated as a Ponzi scheme. Additionally, Thomas

Avellino's name appears on certain software utilized by the Partnerships that may further establish Defendant Frank Avellino's relationship with the Partnerships.

2. Additionally, Plaintiffs find it necessary to take the deposition of Lorraine Avellino McEvoy, who resides in Fair Haven, Monmouth County, New Jersey, because it is believed that Lorraine Avellino McEvoy has significant information that is material to the resolution of issues in this litigation. Among other things, it is believed that Lorraine Avellino McEvoy has knowledge and information related to investments in BLMIS made by and/or facilitated by Defendant Frank Avellino that may establish Defendant Frank Avellino's knowledge that Bernard L. Madoff Investment Securities, LLC ("BLMIS") was operated as a Ponzi scheme.

3. It is necessary for the Plaintiffs to secure the appointment of a commissioner located in the state of New Jersey, for the taking of Thomas Avellino's and Lorraine Avellino McEvoy's depositions and to issue subpoena *duces tecum*.

4. The commissioner sought to be appointed by the Plaintiffs is State Shorthand Reporting Services, Inc., 212 Monmouth Road, Oakhurst, NJ 07755, or such other person or entity as is authorized to administer oaths and take depositions in the State of New Jersey.

5. Further, under New Jersey Rules of Court 1:21-1; 4:11-4, the Plaintiffs are required to employ counsel licensed in New Jersey to facilitate the issuance of a subpoena *duces tecum* by the appropriate New Jersey Superior Court.

WHEREFORE the Plaintiffs respectfully request that this Court grant its Motion and enter an Order: (i) appointing a commissioner for the purpose of administering oaths and taking depositions in the state of New Jersey; (ii) authorizing the Plaintiffs to employ counsel licensed to practice law in the state of New Jersey for the purpose of facilitating the issuance of subpoenas, (iii) and for such other and further relief as this Court deems necessary and proper.

Dated: September 3, 2014

Respectfully submitted,

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