

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

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

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

Plaintiffs,

vs.

STEVEN JACOB, et al.,

Defendants.

**PLAINTIFFS' OBJECTION TO FRANK AVELLINO'S NOTICE
OF PRODUCTION TO NON-PARTY MARGARET J. SMITH AND GLASSRATNER
ADVISORY AND CAPITAL CROUP, LLC UNDER RULE 1.351**

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. 1.351, hereby file this Objection to Defendant Frank Avellino's ("Avellino") Notice of Production to Non-Party Under Rule 1.351, and in support thereof states as follows:

1. On September 14, 2015, Avellino filed a Notice of Production to Non-Party Under Rule 1.351 to Records Custodian, GlassRatner Advisory and Capital Group, LLC (the "GlassRatner Notice"). A true and correct copy of the GlassRatner Notice is attached hereto as **Exhibit A**.

2. On the same day, Avellino filed a Notice of Production to Non-Party Under Rule 1.351 to Margaret J. Smith, Esq., GlassRatner Advisory and Capital Group, LLC (the "Smith Notice"). A true and correct copy of the Smith Notice is attached hereto as **Exhibit B**.

3. Margaret Smith (“Smith”), of GlassRatner Advisory and Capital Group, LLC (“GlassRatner”), was previously the Managing General Partner of the Partnerships. At the time that Smith was Managing General Partner, Berger Singerman LLP (“Berger Singerman”) represented Smith and the Partnerships in litigation before this Court.

4. The subpoenas attached to the Smith Notice and the GlassRatner Notice (the “Subpoenas”) contain two requests that – without any time limitation – seek from Smith and GlassRatner: “1) All Partnership documents provided to you by any partner, person or entity and 2) All documents evidencing when you received any Partnership documents.”

5. Plaintiffs object to Requests 1 and 2 because the Smith Notice, the GlassRatner Notice, and the Subpoenas may require Smith and GlassRatner to produce documents that they received from counsel for Smith, as Managing General Partner; from counsel for the Partnerships; or from other persons or entities with a common interest to the Partnerships that are protected by the attorney-client privilege, work product privilege, accountant-client privilege, or other privilege. Plaintiffs have not and do not agree to waive those privileges. *Nova S.E. U., Inc. v. Jacobson*, 25 So. 3d 82, 86 (Fla. 4th DCA 2009)(“The privilege belongs to the client, *see Neu v. Miami Herald Pub. Co.*, 462 So.2d 821, 825 (Fla.1985), and may be claimed by the client or the lawyer on behalf of the client”).

6. Plaintiffs further object to Requests 1 and 2 as vague and ambiguous because Requests 1 and 2 are subject to more than one interpretation. The Subpoenas define “Partnership” to mean “P&S Associates General Partnership., its officers, directors, employees, agents and representatives; and S&P Associates, General Partnership, its officers, directors, employees, agents and representatives.” Using that definition of Partnership, Request 1 and 2 could be read to seek 1) all documents received by Smith and GlassRatner from the Partnerships’, their officers, directors, employees, agents and representatives, and documents showing when Smith and GlassRatner

received them; 2) all documents of the Partnerships and documents showing when Smith and GlassRatner received them; or 3) all documents related to the Partnerships and documents showing when Smith and GlassRatner received them.

7. Finally, Plaintiffs object to Requests 1 and 2 as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Depending on how Requests 1 and 2 are interpreted, the Subpoena may seek documents that have no bearing on this action, including but not limited to documents such as payments for fees and expenses and correspondence and documents related to issues, claims, and/or defenses in other litigation that are not relevant to this action.

8. Accordingly, this Court ought to sustain Plaintiffs' objection to the GlassRatner Notice and the Smith Notice.

WHEREFORE the Conservator respectfully requests the entry of an Order: (i) sustaining Plaintiffs' objections to the GlassRatner Notice and the Smith Notice; (ii) denying Avellino's request to issue the Subpoena on Smith and GlassRatner; and (iii) such other and further relief as this Court deems necessary and proper.

Dated: September 29, 2015

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 2015, a true and correct copy of the foregoing document was served on the following parties:

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By: s/Leonard K. Samuels
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EXHIBIT A

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.

MICHAEL D. SULLIVAN, et al.

Defendants.

NOTICE OF PRODUCTION TO NON-PARTY UNDER RULE 1.351

YOU ARE NOTIFIED that after ten (10) days from the date of service of this notice, if service is by delivery, or fifteen (15) days from the date of service, if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the clerk of this court for issuance of the attached subpoena directed to:

Records Custodian, GlassRatner Advisory and Capital Group, LLC, who is not a party and whose address is 3424 Peachtree Road, Suite 2150, Atlanta, GA 30326, to produce the items listed at the time and place specified in the subpoena.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being sent by electronic service via the Florida Courts E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 to all parties on the attached service this 14th day of September, 2015.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

gwoodfield@haileshaw.com

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By: /s/ Gary A. Woodfield, Esq.

Gary A. Woodfield, Esq.

Florida Bar No. 563102

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Attorneys for Michael Bienes

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Defendants.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION
(Records May Be Mailed in Lieu of Deposition)

To: Records Custodian, GlassRatner Advisory & Capital Group, LLC
c/o Registered Agent
Corporate Creations Network, Inc.
11380 Prosperity Farms Road, #22E
Palm Beach Gardens, FL 33410

YOU ARE COMMANDED to appear at Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33418, on _____, 2015 at 10:00 AM., and to have with you at that time and place the following:

See Attached Exhibit A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

If you fail to:

- (1) appear as specified; or

- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena,

you may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated this ____ day of September, 2015.

FOR THE COURT

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendant

660 U.S. Highway One, Third Floor

North Palm Beach, FL 33408

Phone: (561) 627-8100

Fax: (561) 622-7603

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By: _____

Gary A. Woodfield, Esq.

FL Bar No. 563102

EXHIBIT A

Definitions

1. "Partnership" shall mean P&S Associates General Partnership., its officers, directors, employees, agents and representatives; and S&P Associates, General Partnership, its officers, directors, employees, agents and representatives.
2. "You" shall mean GlassRatner Advisory & Capital Group, LLC, its agents and/or representatives.

Documents

1. All Partnership documents provided to you by any partner, person or entity.
2. All documents evidencing when you received any Partnership documents.

EXHIBIT B

IN THE CIRCUIT COURT OF THE 17TH
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NOTICE OF PRODUCTION TO NON-PARTY UNDER RULE 1.351

YOU ARE NOTIFIED that after ten (10) days from the date of service of this notice, if service is by delivery, or fifteen (15) days from the date of service, if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the clerk of this court for issuance of the attached subpoena directed to:

Margaret J. Smith, Esq., GlassRatner Advisory and Capital Group, LLC, who is not a party and whose address is 1400 Centerpark Blvd., Suite 410, West Palm Beach, FL 33401, to produce the items listed at the time and place specified in the subpoena.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being sent by electronic service via the Florida Courts E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 to all parties on the attached service this 14th day of September, 2015.

HAILE, SHAW & PFAFFENBERGER, P.A.

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By: /s/ Gary A. Woodfield, Esq.

Gary A. Woodfield, Esq.

Florida Bar No. 563102

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*Attorneys for Defendants Steven F. Jacob
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To: Margaret J. Smith, Esq.
GlassRatner Advisory & Capital Group, LLC
1400 Centrepark Blvd., Suite 410
West Palm Beach, FL 33401

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Dated this _____ day of September, 2015.

FOR THE COURT

HAILE, SHAW & PFAFFENBERGER, P.A.

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