

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

P & S ASSOCIATES, GENERAL
PARTNERSHIP and S & P ASSOCIATES,
GENERAL PARTNERSHIP,

Plaintiff,

CASE NO. 12-028324 (07)
Complex Litigation Unit

v.

ROBERTA P. ALVES, ET AL.,
Defendants.

**NOTICE OF FILING AFFIDAVIT OF CONSERVATOR PHILIP VON KAHLE
IN SUPPORT OF THE DISTRIBUTION MOTION**

Philip J. Von Kahle, as Conservator for P&S, General Partnership and S&P, General Partnership, by and through counsel, hereby gives notice of filing the attached Affidavit of Conservator Philip Von Kahle in Support of the Distribution Motion.

Respectfully submitted this 3rd day of October, 2013.

MESSANA, P.A.
Attorneys for Conservator
Post Office Drawer 2485
Fort Lauderdale, FL 33303
Telephone: 954-712-7400
Facsimile: 954-712-7401
e-mail: tmessana@messana-law.com

By: /s/ Thomas M. Messana
Thomas M. Messana
Florida Bar No. 991422
Brett D. Lieberman
Florida Bar No. 69583

CASE NO. 12-028324 (07)
COMPLEX LITIGATION UNIT

Defendants.

¹ *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the “Conservator Suit”).

7. After my appointment, I received certain documents, including the available Partnerships' accounting records from GlassRatner.² I received additional information of the Partnerships' from, among others, the former managing general partner of the Partnerships, Michael D. Sullivan (together with the accounting records from GlassRatner, the "Partnerships' Books and Records").

8. I and, under my direction and direct supervision, the professional staff at Moecker have reviewed and analyzed the Partnerships' Books and Records.

9. The Brief Statement of Undisputed Facts section of the Distribution Motion (the excerpt is attached hereto as **Exhibit "A"**) is true and correct to the best of my knowledge and belief and is based upon, among other things, a review and analysis of the Partnerships' Books and Records by Moecker and myself.

10. Based upon, among other things, a review of the Partnerships' Books and Records, the pleadings, the record in this case and independent research, the Partnerships were each victims in what has become known as the largest fraud in human history, the Bernard L. Madoff Investment Securities LLC ("BLMIS") ponzi scheme (the "Ponzi Scheme").

11. During the review, analysis and investigation of the Partnerships' Books and Records certain issues were discovered, among other things, (i) that certain Partners received commissions or referral fees from the Partnerships; (ii) that certain Partners' accounts were moved from the Partnerships to other entities; and (iii) that it appears that management of the Partnerships did not comply with the Partnerships operating agreements in several respects.

12. The Partnership Property section of the Distribution Motion (the excerpt is attached hereto as **Exhibit "B"**) is true and correct to the best of my knowledge and belief and is

² Substantially all of the documents received from GlassRatner were in hardcopy form. The Conservator undertook significant efforts to input the relevant information into electronically analyzable format.

based upon, among other things, the review and analysis of the Partnerships' Books and Records by Moecker and myself.

13. Among other things, the Conservator is in possession of certain of the Partnerships' funds. Certain of these funds were previously held by BB&T. Certain other funds were previously held by the law firm of Becker and Poliakoff, LLP.

14. Substantially all of these funds were derived from the Ponzi Scheme.

15. Certain of these funds were derived from claims filed by the Partnerships in the BLMIS Liquidation.³

- a. S&P filed a claim in the amount of \$44,768,253.86 (the "S&P Claim") based on its statement balance losses.
- b. P&S filed a claim in the amount of \$18,180,533.93 (the "P&S Claim") based on its statement balance losses (together with the S&P Claim, the "Partnerships' Initial Claims").

16. The Madoff Trustee entered into settlement agreements with each of the Partnerships which sought to resolve, among other things, claims and disputes between the Partnerships and the Madoff Trustee (the "Settlement Agreements").⁴

17. Pursuant to the Settlement Agreements, among other terms, the Partnerships were denied claims based on their statement balances but were allowed claims based on the Partnerships' net investment losses.

18. The exhibits attached to the Distribution Motion are true and correct to the best of my knowledge and belief and are based upon a review and analysis of the Books and Records of the Partnerships.⁵

³ Other funds were derived from the Ponzi Scheme prior to its discovery.


⁴ Copies of the Settlement Agreements were attached as Exhibit "C" to the Second Amended Complaint in the above captioned matter.

⁵ Since the filing of the exhibits attached to the Distribution Motion only minor arithmetic corrections have been made.

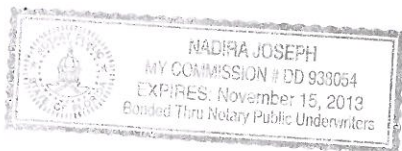
19. At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for S&P Partners is approximately \$3,900,000.00.

20. At this time, the funds available for the initial interim distribution, net of holdbacks for administrative costs and other claims, for P&S Partners is approximately \$1,000,000.00.

FURTHER AFFIANT SAYETH NAUGHT.


Philip Von Kahle
Court-Appointed Conservator

SWORN TO AND SUBSCRIBED before me this 3rd day of October, 2013, by Philip Von Kahle who is personally known to me or produced identification _____ and who did take an oath.




NOTARY PUBLIC, STATE OF FLORIDA

NADIRA JOSEPH
(Print, Type or Stamp Commissioned Name of Notary Public)