

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.

**PLAINTIFFS' MOTION TO STRIKE PLEADINGS, AND IN THE ALTERNATIVE
MOTION FOR ADVERSE INFERENCE**

Plaintiffs, by and through the undersigned counsel, hereby file this Motion to Strike Pleadings, and in the Alternative Motion for Adverse Inference, and in support thereof state:

SUMMARY OF ARGUMENT AND RELIEF REQUESTED

After multiple court orders, Defendants Frank Avellino and Michael Bienes (collectively, "Defendants") finally appeared for their depositions. During the depositions, Defendants revealed that they are, and have been, engaged in the systematic and intentional destruction of evidence which is relevant to the instant dispute. Because Defendants have been under a duty to preserve evidence since at least December 2008, but have and continue to intentionally prevent Plaintiffs from obtaining discoverable evidence, they must be sanctioned. Accordingly, Plaintiffs respectfully request that the Court grant their Motion to Strike Pleadings, and in the Alternative Motion for Adverse Inference (the "Motion").

FACTUAL BACKGROUND

Since January 29, 2014, Plaintiffs served requests for production on Defendants seeking documents related to, *inter alia*, the Partnerships, Bernard L. Madoff, and communications with Michael Sullivan (the Partnerships' former Managing General Partner) and other partners in the Partnerships. *See Exhibit A; Exhibit B.*¹ In response, Defendants have not produced a single e-mail between Defendants and Sullivan. Defendants asserted that such documents did not exist. *Id.* The documents Plaintiffs have located, and Defendants' lack of production indicate that documents which are responsive to other document requests have been and **continue to be** destroyed.²

E-mails do not exist because Defendants testified at their depositions that they have a policy of deleting e-mails; they regularly and systematically deleted e-mails; and they are continuing to delete their e-mails. **Exhibit C** at 17:22-18:20; 100:25-101:22; **Exhibit D** at 90:16-91:6. That Defendants deleted e-mails that are relevant to the instant dispute is proven by e-mails produced by Sullivan to Plaintiffs.³ **Exhibit E.** Those e-mails date from October 27,

¹ In addition to Plaintiffs' First Requests for Production, it is highly likely that Defendants have not produced documents in response to Plaintiffs' other requests for production in this action. For example, in Plaintiffs' Fourth Requests for Production, Plaintiffs sought all documents exchanged between Defendants and any person identified as a witness, including Sullivan and Matthew Carone.

² For example, Document Requests 3, 5 and 13 sought all documents relating to any payments, transfers of funds, and/or compensation that Defendants received from the Partnerships, and/or Michael D. Sullivan & Associates, Inc. While Defendants admitted to receiving payments, they have not produced any documents pertaining to those transfers. Likewise, Document Requests 9 and 17 sought all documents that relate to any communications between Defendants and any partners of the Partnerships. Moreover, Document Requests 1 and 2 also sought all documents exchanged between Defendants, and as neither Defendant has objected to the production of such documents under any sort of common interest privilege, such documents should have been disclosed.

³ As part of his settlement obligations, Sullivan produced documents to Plaintiffs that are protected by the work product doctrine. Whether Plaintiffs are required to produce those documents was the subject of motion practice and the Court denied access to those documents.

2008 to April 5, 2011, and were sent by Sullivan or partners in the Partnerships to Defendant Avellino or Defendant Bienes. Those same e-mails were not produced by Defendants, even though they fell within the scope of Plaintiffs' requests for production (see **Exhibit A**; **Exhibit B**), and even though Defendants had a duty to preserve them because they had notice of the potential claims against them based on litigation against Defendant Avellino pending since December 29, 2008, and litigation involving Defendant Bienes pending since December 2010. Plaintiffs do not know what other relevant e-mails or evidence Defendants have deleted.

Legal Argument

Spoliation is “[t]he intentional destruction, mutilation, alteration, or concealment of evidence[.]” *Golden Yachts, Inc. v. Hall*, 920 So. 2d 777, 781 (Fla. 4th DCA 2006) (citing *Martino*, 835 So.2d, 1251, 1257 (Fla. 4th DCA 2003) (citing *Black's Law Dictionary* 1437 (8th ed.2004)). “In cases involving negligent spoliation, courts prefer to utilize adverse evidentiary inferences and adverse presumptions during trial to address the lack of evidence. In cases involving intentional spoliation, courts more often strike pleadings or enter default judgments.” *Id.* (citing *Martino v. Wal-Mart Stores, Inc.*, 908 So.2d 342, 346–7 (Fla.2005)). “[A]n adverse inference may arise in any situation where potentially self-damaging evidence is in the possession of a party and that party either loses or destroys the evidence.” *Golden Yachts, Inc.*, 920 So. 2d at 781.

To determine whether a sanction should be assessed against a party as a result of spoliation, the court must answer three threshold questions: 1) whether the evidence existed at

See Order Granting Defendant Frank Avellino's Motion to Compel Plaintiff to Produce Documents in Response to his Second Request for Production dated April 29, 2014, dated September 15, 2014; Order Denying Defendant Frank Avellino's Motion for Reconsideration and/or to Compel, dated December 15, 2014. Additional documents were produced by a partner of the Partnership.

one time, 2) whether the spoliator had a duty to preserve the evidence, and 3) whether the evidence was critical to an opposing party being able to prove its prima facie case or a defense. *Golden Yachts*, 920 So.2d at 781 (citing *Jordan ex rel. Shealey v. Masters*, 821 So.2d 342, 347 (Fla. 4th DCA 2002); *See, e.g., Hagopian v. Publix Supermarkets, Inc.*, 788 So.2d 1088, 1090 (Fla. 4th DCA 2001); *Fed. Ins. Co. v. Allister Mfg. Co.*, 622 So.2d 1348, 1351 (Fla. 4th DCA 1993)).

Here, there is no question that all three elements required to prove Defendants spoliated evidence are present. First, e-mails attached hereto as **Exhibit E** prove that e-mails between Defendants and Sullivan, and Defendants and partners of the Partnerships – which Defendants have not produced – existed. Plaintiffs submit that Defendants may have deleted additional e-mails exchanged with Sullivan and witnesses in this action.⁴

Second, Defendants Avellino and Bienes had a duty to preserve evidence from either December 8, 2008, and on, which is when Madoff was revealed as a fraud to the world, or at least December 29, 2008, and on, which is when, Plaintiffs’ believe, Defendant Avellino was first sued in connection with his dealings with BLMIS. *American Hospitality Management Co. of Minnesota v. Hettiger*, 904 So.2d 547, 549 (Fla. 4th DCA 2005) (“a defendant could be charged with a duty to preserve evidence where it could reasonably have foreseen the claim”).

On December 29, 2008, Nevena Ivenova, Avellino’s former housekeeper, sued Avellino alleging that Avellino knew or should have known that Bernard L. Madoff Investment Securities, LLC (“BLMIS”) was a fraud. *See Ivanova v. Avellino, et al.*, NO. 009-10114 (D. Mass). Then, on March 12, 2009, Defendant Bienes was interviewed by PBS Frontline, was asked if it surprised him to find out that Defendant Avellino had been sued, and was specifically asked

⁴ Plaintiffs respectfully request that Defendants be required to pay for a forensic expert to determine whether the aforementioned documents exist.

about his steering investors into the Partnerships. On August 17, 2009, Daniel Gascoyne, and other investors in the Kenn Jordan Foundation sued Defendant Avellino and others in connection with their involvement in the BLMIS fraud, and Avellino's operation of the Kenn Jordan Foundation. *See Grascoyne v. Avellino*, Case No. 09-111722. On or about December 12, 2010, Defendants were sued by Irving Picard, the Trustee for BLMIS in *Picard v. Frank Avellino, et al.*, Adv. Pro. No. 10-05421. Among other allegations, Picard made specific allegations regarding Defendants' role with the Partnerships.

Simply put, all of the above lawsuits and Defendant Bienes' interview arose out of Defendant Avellino's and/or Bienes' control over and solicitation of investors for Madoff Feeder funds (such as the Partnerships) they knew about the lawsuits related to their control over those feeder funds, and were aware of the potential for the claims asserted in this action. It was only through Defendant Avellino's and Bienes' control over Sullivan, which the deleted emails prove extended after Madoff was exposed, that they were not named as Defendants in this lawsuit at an earlier time. Accordingly, Defendants were required to preserve evidence and communications that relate to the Partnerships from at least December 2008 and on.

Finally, the deleted e-mails and any other deleted documents exchanged between Defendants and Sullivan are critical to Plaintiffs' claims. Defendants have alleged that the statute of limitations bars Plaintiffs' claims. Plaintiffs, on the other hand, claim that the doctrine of equitable estoppel and the continuing tort doctrine preserve their claims. To prove the application of either legal doctrine, Plaintiffs intend to show, *inter alia*, that Defendants were involved in the management of the Partnerships or otherwise prevented the Partnerships from taking legal action against them. Thus, documents and communications exchanged between Defendants and Sullivan are necessary for Plaintiffs to preserve their claims. Defendants have deprived Plaintiffs

of that crucial evidence by destroying it. Accordingly, the deleted e-mails and any other deleted documents exchanged between Defendants and Sullivan are critical to Plaintiffs' claims.

Because Defendants have intentionally destroyed evidence which could be used against them in connection with litigation, or have — at a minimum — failed to preserve it, they must be subjected to an appropriate sanction. Plaintiffs submit that the only appropriate sanction would be to strike Defendants' pleadings, and failing such a sanction, an adverse inference instruction as to the communications between Sullivan and Defendants. *League of Women Voters of Florida v. Detzner*, No. SC14-1905, 2015 WL 4130852, at *23 (Fla. July 9, 2015) ("Even in the absence of a legal duty, though, the spoliation of evidence results in an adverse inference against the party that discarded or destroyed the evidence.").

Plaintiffs reserve the right to supplement this Motion pending the outcome of their Expedited Motion to Compel Defendants Frank Avellino and Michael Bienes to Produce Computers for Inspection and to Produce Documents.

WHEREFORE Plaintiffs respectfully request the Court enter an Order: (i) striking Defendants' pleadings, establishing a rebuttable presumption of liability, and/or granting an adverse inference against Defendants with respect to the documents they withheld or deleted; (ii) granting Plaintiffs' request to include a spoliation instruction with the jury instructions to the jury; (iii) scheduling an evidentiary hearing on the issues raised by this Motion; (iv) allowing Plaintiffs the right to supplement this Motion pending the outcome of their Expedited Motion to Compel Defendants Frank Avellino and Michael Bienes to Produce Computers for Inspection and to Produce Documents; and (v) granting such further and additional relief the Court deems just and proper.

Dated: October 5, 2015

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
Steven D. Weber
Florida Bar No. 47543
sweber@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 October 5, 2015, 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.
Tripp Scott
110 SE 6th Street
15th Floor
Fort Lauderdale, FL 33301
Tel.: 954-525-7500
Fax.: 954-761-8475
pgh@trippscott.com
*Attorneys for Steven Jacob; Steven F. Jacob
CPA & Associates, Inc.*

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

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

Mark F. Raymond, Esq.
mraymond@broadandcassel.com
Jonathan Etra, Esq.
jetra@broadandcassel.com
Christopher Cavallo, Esq.
ccavallo@broadandcassel.com
Broad and Cassel
One Biscayne Boulevard, 21st Floor
2 S. Biscayne Boulevard
Miami, FL 33131
Tel.: 305-373-9400
Fax.: 305-373-9443
Attorneys for Michael Bienes

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

EXHIBIT “A”

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 SUMMPLEMENTAL RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Frank Avellino, files his supplemental response and objections to Plaintiff's First Request for Production of Documents dated January 29, 2014 (the "Request") as follows:

GENERAL OBJECTIONS

1. Defendant objects to the characterization of the Request as continuing in nature which goes beyond the obligations set forth in Rule 1.280(e), Florida Rules of Civil Procedure.
2. Defendant objects to the production of documents at the offices of plaintiff's counsel. Documents will be produced or made available for inspection at a mutually convenient location in Palm Beach County, Florida or as otherwise agreed to between the parties.
3. Defendant objects to the definition of "You" or "Your" or "Defendant" to the extent that it seeks privileged communications with their attorneys and accountants.
4. Defendant objects to this request to the extent it requires to produce documents in a manner otherwise as permitted by the Florida Rules of Civil Procedure.

5. Defendant objects to the time period commencing in 1992 as overly burdensome. Defendant has no obligation to nor has he maintained potentially responsive documents going back to 1992.

These objections are incorporated into each of the requests unless otherwise stated.

DEFENDANTS' SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION

1. All documents exchanged between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc., a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; James & Valerie Brue Judd; Roberta and Vania Alves; Janet A. Hooker Charitable Trust; Gilbert Kahn and Donald Kahan; Carone Family Trust; Carone Gallery, Inc. Pension Trust; Carone Marital Trust #1 UDT 1/26/00; Carone Marital Trust #2 UTD 1/26/00; Matthew D. Carone Revocable Trust; James A. Jordan Living Trust; Fernando Esteban; Margaret "E.K. Esteban; James A. Jordon; Marvin Seperson; and/or Scott Holloway; and any partner of P&S and/or S&P.

RESPONSE: As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located at this time.

2. All documents exchanged between Avellino & Bienes and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida corporation; Steven F. Jacob, CPA & Associates, Inc.; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc.; a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; Michael Bienes; Richard Wills; and/or Scott Holloway; and any partner of P&S and/or S&P.

RESPONSE: As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Avellino & Bienes and S & P and P & S. However, with this limitation, this request remains overly burdensome, harassing and requires the production of documents which are irrelevant and not likely to lead to admissible evidence. Avellino & Bienes ceased doing business more than twenty years ago. To the extent that any records still exist they have no relevance to this litigation and would require a significant expenditure of time and money to locate and produce.

3. All documents related to communications between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Kelco Foundation, Inc., a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Michael Bienes; Scott Holloway; Richard Wills and any partner of P&S and/or S&P.

RESPONSE: As a result of the parties meet and confer, Plaintiffs agreed to limit the request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located to date.

4. All documents related to any payments, transfers of funds, and/or compensation that You receive from Avellino & Bienes; S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Sullivan & Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Scott Holloway; and/or any partner of P&S and/or S&P.

RESPONSE: As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant

continues to search for responsive documents but has produced all such documents that have been located at this time.

5. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

RESPONSE: As a result of the parties meet and confer, Plaintiffs agreed to limit this request to all documents exchanged between Defendant and S & P and P & S. With such limitation, the documents previously produced respond to this request. Defendant continues to search for responsive documents but has produced all such documents that have been located at this time.

6. All documents that reflect Your receipt of any of the Kickbacks alleged in the Amended Complaint in this action.

RESPONSE: Defendant received referral fees from or on behalf of Michael Sullivan, records of which will be produced if located.

7. Unless such documents have been produced in response to a previous request, all documents concerning the factual basis for any affirmative defense that You will assert in this action.

RESPONSE: Objection. No answer has been filed by Defendant in this action. Defendant is unable at this time to identify what affirmative defenses, if any, he intends to assert in this action.

8. All documents related to Avellino & Bienes' involvement with S&P and/or P&S, and/or the involvement of any partners in P&S and/or S&P with Avellino & Bienes.

RESPONSE: As a result of the parties meet and confer this request has been limited to those partners of S & P and P & S of whom Avellino is aware, which includes Michael Sullivan and Gregory Powell.

Since this involves records of Avellino & Bienes, Avellino's objection to Request No. 2 is incorporated herein. Subject to and without waiving such objections, Defendant does not believe any responsive documents exist.

9. Any and all correspondence between You and any of current and/or former partner of P&S and/or S&P; including but not limited to any correspondence between You and any of the named Defendants in this action.

RESPONSE: See response to Request No. 1.

10. All communications made regarding investment advice and/or financial performance of S&P and P&S to partners of the P&S and/or S&P and/or potential investors in P&S and/or S&P.

RESPONSE: Defendant does not believe any such documents exist.

11. Any and all documents relating to your investment or decision to invest in P&S and/or S&P.

RESPONSE: Defendant does not believe any such documents exist.

12. Any and all documents and communications concerning the suitability of investment in P&S and/or S&P regardless of whether those persons or entities who received such communications or documents actually invested in S&P and/or P&S.

RESPONSE: Defendant does not believe any such documents exist.

13. Any and all documents relating to communications between You and/or Avellino & Bienes and any entity whose name includes the term “Holy Ghost.”

RESPONSE: Pursuant to the parties meet and confer, Plaintiffs’ counsel advised that “Holy Ghost” was an investor in Avellino & Bienes. Avellino continues to have no

recollection of “Holy Ghost” or that it was an investor in Avellino & Bienes. To the extent Plaintiffs seek production of documents from Avellino & Bienes, Avellino incorporates his response to Request No. 2 herein. Subject to such objections, Avellino does not believe any such documents exist.

14. Any documents which evidence or relate to any transfers made to any entity in which you hold an interest, and any subsequent transfers thereafter that relate to P&S and/or S&P.

RESPONSE: Pursuant to the parties meet and confer, Plaintiffs have agreed to limit this request to documents relating to transfers relating to P & S and S & P. Avellino will produce any documents responsive to this request that can be located.

15. Any and all documents and correspondence concerning You and the Securities and Exchange Commission, the Florida Office of Financial Regulation, and any other Governmental Regulatory Agency, including but not limited to any internal memorandum concerning compliance with regulations promulgated by such entities.

RESPONSE: Objection. This request is overly burdensome, and seeks documents irrelevant to this action and not likely to lead to admissible evidence. Additionally, the term “internal memorandum” is vague and ambiguous. Subject to and without waiving such objections, Defendant has no responsive documents other than possibly documents regarding a 1992 consent judgment entered into with the SEC, which documents are irrelevant and not likely to lead to admissible evidence, and, in any event, are publically available. Pursuant to the parties meet and confer, Plaintiffs requested that Avellino identify any documents that may have been sealed. Avellino is not aware of any such documents.

16. All documents evidencing or referencing that You and/or Avellino & Bienes were active in the management of the Partnerships.

RESPONSE: None exist.

17. All documents evidencing or relating to any transfers made to Reverend Richard Wills and/or Christ Church United Methodist in Ft. Lauderdale by You or on Your behalf, or by Avellino & Bienes or on Avellino & Bienes' behalf.

RESPONSE: Pursuant to the parties meet and confer, Plaintiffs agreed to limit this request to documents relating to P & S and S & P. Subject to such limitation, Avellino will produce all such responsive documents that can be located.

18. All correspondence between You and Reverend Richard Wills.

RESPONSE: Pursuant to the parties meet and confer, Plaintiffs agreed to limit this request to documents relating to P & S and S & P. Subject to such limitation, Avellino will produce all such responsive documents that can be located.

19. All documents that relate to any contact with, or communication between You and/or Avellino & Bienes and any partners of P&S and/or S&P.

RESPONSE: This seeks the same documents as sought by Request Nos. 9 and 13. Defendant incorporates herein his responses to those requests.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May 2014, the foregoing document is being served on those on the attached service list by email.

HAILE, SHAW & PFAFFENBERGER, P.A.

Attorneys for Defendants

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

eservices@haileshaw.com

syoffee@haileshaw.com

cmarino@haileshaw.com

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

SERVICE LIST

THOMAS M. MESSANA, ESQ.
MESSANA, P.A.
SUITE 1400, 401 EAST LAS OLAS BOULEVARD
FORT LAUDERDALE, FL 33301
tmessana@messana-law.com
Attorneys for P & S Associates General Partnership

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

PETER G. HERMAN, ESQ.
TRIPP SCOTT, P.A.
15TH FLOOR
110 SE 6TH STREET
FORT LAUDERDALE, FL 33301
pgh@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.
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
mraymond@broadandcassel.com
ssmith@broadandcassel.com
jetra@broadandcassel.com
msouza@broadandcassel.com
smartin@broadandcassel.com
msanchez@broadandcassel.com
Attorneys for Michael Bienes

ROBERT J. HUNT, ESQ.
DEBRA D. KLINGSBERG, ESQ.
HUNT & GROSS, P.A.
185 NW Spanish River Boulevard
Suite 220
Boca Raton, FL 33431-4230
bobhunt@huntgross.com
dklingsberg@huntgross.com
eService@huntgross.com
Sharon@huntgross.com
Attorneys for Defendant, Scott W. Holloway

PAUL V. DeBIANCHI, ESQ.
PAUL V. DeBIANCHI, P.A.
111 S.E. 12th Street
Fort Lauderdale, FL 33316
Debianchi236@bellsouth.net
*Attorneys for Father Vincent P. Kelly; Kelco
Foundation, Inc.*

MATTHEW TRIGGS, ESQ.
ANDREW B. THOMSON, ESQ.
PROSKAUER ROSE, LLP
2255 Glades Road
Suite 421 Atrium
Boca Raton, FL 33431-7360
mtriggs@proskauer.com
florida.litigation@proskauer.com
athomson@proskauer.com
*Attorneys for Defendants Kelco Foundation, Inc.
and Vincent T. Kelly*

EXHIBIT “B”

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

COMPLEX LITIGATION UNIT

CASE NO. CACE 12-034123 (07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; and S&P
ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; PHILIP VON KAHLE as Conservator
of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a
Florida limited partnership; and
S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, an
individual, STEVEN JACOB, an
individual, MICHAEL D.
SULLIVAN & ASSOCIATES, INC.,
a Florida corporation, STEVEN F. JACOB,
CPA & ASSOCIATES, INC., a Florida
corporation, FRANK AVELLINO,
an individual, MICHAEL BIENES,
an individual, KELKO FOUNDATION,
INC., a Florida Non Profit Corporation,
and VINCENT T. KELLY, an individual,

Defendants.

**DEFENDANT MICHAEL BIENES'S SUPPLEMENTAL RESPONSE TO
PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, MICHAEL BIENES ("Bienes"), hereby responds and objects to Plaintiffs'

First Request for Production of Documents (the "First Request"), stating:

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

GENERAL OBJECTIONS

1. These responses are made solely in relation to this action and are being offered only for the purpose of responding to the First Request.

2. Bienes objects to Plaintiffs' Instructions on the grounds that they are overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

3. Bienes objects to Plaintiffs' Definitions on the grounds that they are vague and ambiguous, overbroad, unduly burdensome, and impose discovery obligations greater than permitted under Fla. R. Civ. P. 1.350.

4. Bienes objects to the time frame specified for the First Interrogatories—January 1, 1992—on the grounds that it is overbroad and unduly burdensome in its scope.

5. Bienes objects to the Request insofar as it purports to require him produce or disclose privileged communications or attorney work product, on the ground that such a requirement is impermissible under the Florida Rules of Civil Procedure. In accordance with Rule 1.280(5), Bienes will produce a separate log of privileged information or communications or attorney work product being withheld from production, if any. Any inadvertent production or disclosure of privileged communications or work product should not be construed as a waiver of the privilege or of the work product doctrine which applies to such inadvertently produced documents or information.

6. Bienes objects to the First Request insofar as it purports to require him to produce or disclose information that is not relevant, and is not likely or reasonably calculated to lead to the discovery of admissible evidence.

7. Bienes objects to the First Request insofar as it purports to require him to produce or disclose information that equally ascertainable or available to Plaintiffs or is more readily available to Plaintiffs.

8. Bienes objects to the First Request insofar as it purports to require U.S. Bank to produce or disclose information that is a matter of public record.

9. Any objection or lack of objection to a particular request is not to be deemed an admission that Bienes has any information responsive to such request.

10. This response is made without prejudice to Bienes's right to supplement his production with any subsequently discovered documents or information responsive to the First Request.

11. This response is based on the best knowledge and information presently held by Bienes and is subject to correction, modification, or supplementation as and when additional responsive documents or information become known to Bienes.

12. Bienes reserves all other objections as to the admissibility, relevance, confidentiality, and materiality of any facts or information produced in response to the First Request. Currently, no documents or information is being withheld on the basis of the foregoing general objections.

DOCUMENTS REQUESTED

1. All documents exchanged between Defendant and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; James & Valerie Bruce Judd; Roberta and Vania Alves; Janet A. Hooker Charitable Trust; Gilbert Kahn and Donald Kahan; Carone Family Trust; Carone Gallery, Inc. Pension

Trust; Carone Marital Trust #1 UTD 1/26/00; Carone Marital Trust #2 UTD 1/26/00; Matthew D. Carone Revocable Trust; James A. Jordan Living Trust; Fernando Esteban; Margaret E.K. Esteban; James A. Jordon; Marvin Seperson; and/or Scott Holloway; and any partner of P&S and/or S&P.

Response: Bienes objects to this request on the grounds that it is overbroad as to time and scope; the request seeks "all documents," without any limitation as to subject matter, from 1992 to the present. Bienes is not in possession of any documents responsive to this request.

2. All documents exchanged between Avellino & Bienes and S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation; Grosvenor Partners, Ltd.; Avellino Family Foundation, Inc.; Mayfair Ventures; Kenn Jordan Foundation; Elaine Ziffer; and/or Scott Holloway; and any partner of P&S and/or S&P.

Response: After having received clarification from Plaintiffs' counsel on Friday, April 18, 2014, that the term "Avellino & Bienes" refers to Bienes's and Avellino's accounting firm, which was terminated in 1983, Bienes withdraws his objections based on vagueness, ambiguity, and unintelligibility.¹ Bienes has recently discovered and will be producing one document responsive to this request.

3. All documents related to any payments, transfers of funds, and/or compensation that You received from Avellino & Bienes; S&P; P&S; Michael D. Sullivan; Steven Jacob; Michael D. Sullivan & Associates, Inc., a Florida Corporation; Steven F. Jacob, CPA & Associates, Inc.; Frank Avellino; Gregg Powell; Sullivan & Powell; Kelco Foundation, Inc. a Florida Non Profit Corporation; Vincent T. Kelly; Vincent Barone; Edith Rosen; Sam Rosen; Premier Marketing Services, Inc., a Florida Corporation, Scott Holloway; and/or any partner of P&S and/or S&P.

Response: Bienes objects to this request on the grounds that it is overbroad in that it requests "any payments, transfers of funds, and or compensation" regardless of source or purpose, seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence, and seeks Bienes's private financial information which is protected from disclosure by Florida's Constitution absent a showing of relevance and compelling need. Bienes recently discovered and will be producing one document responsive to this request.

4. All documents that refer to or reflect the transactions and/or events alleged in the Amended Complaint in this action.

Response: Bienes objects to this request on the grounds that it impermissibly calls for Bienes to adopt, by implication, Plaintiffs' allegations regarding the matters at issue in the

¹ This withdrawal applies globally in this amended response.

Amended Complaint, and therefore, seeks to place an obligation on Bienes that exceeds those permitted by the applicable Florida Rules of Civil Procedure. Bienes is not in possession of any documents responsive to this request.

5. All documents that reflect Your receipt of any of the Kickbacks alleged in the Amended Complaint in this action.

Response: Bienes objects to this request on the grounds that it impermissibly calls for Bienes to adopt, by implication, Plaintiffs' allegations regarding the matters at issue in the Amended Complaint, and therefore, seeks to place an obligation on Bienes that exceeds those permitted by the applicable Florida Rules of Civil Procedure. Bienes did not receive "kickbacks" and is not in possession of any documents responsive to this request to the extent it asks for information related to "kickbacks." Bienes has recently discovered and will be producing a single document relating to his receipt of a charitable contribution from Sullivan.

6. Unless such documents have been produced in response to a previous request, all documents concerning the factual basis for any affirmative defense that You will assert in this action.

Response: Bienes objects to this request on the grounds that it is premature given that a motion to dismiss the Amended Complaint is pending and discovery in this case is ongoing.

7. All documents related to Avellino & Bienes' involvement with S&P and/or P&S, and/or the involvement of any partners in P&S and/or S&P with Avellino & Bienes.

Response: Bienes is not in possession of any documents responsive to this request.

8. Any and all correspondence between You and any of current and/or former partner of P&S and/or S&P; including but not limited to any correspondence between You and any of the named Defendants in this action.

Response: Bienes objects to this request on the grounds that it is overbroad as to time and scope; the request seeks "any and all correspondence," without any limitation as to subject matter, from 1992 to the present. Bienes has recently discovered and will be producing a single document responsive to this request.

9. All communications made regarding investment advice and/or financial performance of S&P and P&S to partners of the P&S and/or S&P and/or potential investors in P&S and/or S&P.

Response: Bienes objects to this request on the grounds that it is vague and ambiguous in that it does not specify the sender or the recipient of the requested communications. To the extent this request seeks communications from Bienes, Bienes further objects to this request because it presumes, without basis, that Bienes had knowledge or now knows the identity of the partners or potential investors of S&P/P&S, which he did and does not.

Bienes states that he is not in possession of any documents responsive to this request.

10. Any and all documents relating to your investment or decision to invest in P&S and/or S&P.

Response: Bienes objects to this request because it presumes Bienes, without basis, that invested in P&S/S&P and impermissibly calls for Bienes to adopt Plaintiffs' position with regard to certain allegations in the Amended Complaint, and therefore, seeks to place an obligation on Bienes that exceeds those permitted under the applicable Florida Rules of Civil Procedure. Bienes states that he is not in possession of any documents responsive to this request.

11. Any and all documents and communications concerning the suitability of investment in P&S and/or S&P regardless of whether those persons or entities who received such communications or documents actually invested in S&P and/or P&S.

Response: Bienes objects to this request because it presumes, without basis, that Bienes was or is in possession of documents or communications concerning the suitability of investing in P&S and/or S&P and impermissibly calls for Bienes to adopt Plaintiffs' position with regard to certain allegations in the Amended Complaint, and therefore, seeks to place an obligation on Bienes that exceeds those permitted under the applicable Florida Rules of Procedure. Bienes is not in possession of any documents responsive to this request.

12. Any and all documents relating to communications between You and/or Avellino & Bienes and any entity whose name includes the term "Holy Ghost."

Response: Bienes is not in possession of any documents responsive to this request.

13. Any documents which evidence or relate to any transfers made to any entity in which you hold an interest, and any subsequent transfers thereafter which relate to P&S and/or S&P.

Response: After having received clarification from Plaintiffs' counsel on Friday, April 18, 2014, that this request relates only to transfers "which relate to P&S and/or S&P" that were allegedly made to Bienes or any entity he owned or controlled, Bienes withdraws his prior objections and states that he is not in possession of any documents responsive to this request.

14. Any and all documents and correspondence concerning You and the Securities and Exchange Commission, the Florida Office of Financial Regulation, and any other Governmental Regulatory Agency, including but not limited to any internal memorandum concerning compliance with regulations promulgated by such entities.

Response: Any non-privileged documents in Bienes's possession, custody, or control will be produced at a mutually agreeable place and time.

15. All documents evidencing or referencing that You, Avellino, or Avellino &

Bienes were active in the management of the Partnerships.

Response: Bienes objects to this request on the grounds and to the extent that it presumes, without basis, that Bienes was active in the management of the Partnerships and impermissibly calls for Bienes to adopt Plaintiffs' position as to the allegations of the Amended Complaint, and therefore, seeks to place a burden on Bienes that exceeds those permitted by the applicable Florida Rules of Civil Procedure. Bienes states that he is not in possession of any documents responsive to this request.

16. All documents that relate to any contact with, or communications between You and/or Avellino & Bienes and any partners of P&S and/or S&P.

Response: Bienes objects to this request on the grounds and to the extent that it presumes, without basis, that (a) Bienes knew or now knows the identity of the partners of P&S/S&P, or that (b) Bienes had contact or communications with partners of P&S and/or S&P. Bienes states that he is not in possession of any documents responsive to this request.

17. All documents that relate to any contact with, or communications between you and/or Avellino & Bienes and any partners of P&S and/or S&P.

Response: Bienes objects to this request on the grounds and to the extent that it presumes (a) Bienes knew or now knows the identity of the partners of P&S/S&P, or that (b) Bienes had contact or communications with partners of P&S and/or S&P. Bienes states that he is not in possession of any documents responsive to this request.

/s/ Jonathan Etra

Mark F. Raymond (373397)
mraymond@broadandcassel.com

ssmith@broadandcassel.com

Jonathan Etra (686905)

jetra@broadandcassel.com

msoza@broadandcassel.com

Shane P. Martin (056306)

smartin@broadandcassel.com

msanchez@broadandcassel.com

BROAD AND CASSEL

One Biscayne Tower, 21st Floor

2 South Biscayne Boulevard

Miami, Florida 33131

Telephone: 305.373.9400

Facsimile: 305.373.9443

Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 2014, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messina, Esq., Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com); Leonard K. Samuels, Esq., Etan Mar, Esq., Steven D. Weber, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, FL 33301 (lsamuels@bergersingerman.com, emark@bergersingerman.com, sweber@bergersingerman.com); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); Gary A. Woodfield, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservice@haileshaw.com); and via Regular U.S. Mail to: Michael D. Sullivan & Associates, Inc., 6550 N. Federal Highway, Suite 210, Ft. Lauderdale, FL 33308; Michael Sullivan, 2590 N.E. 41st Street, Ft. Lauderdale, FL 33308; and Frank Avellino, 223 Coral Lane, Palm Beach, FL 33480; Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 (bobhunt@huntgross.com, dklingsberger@huntgross.com, eService@huntgross.com, Sharon@huntgross.com).

/s/ Jonathan Etra

Jonathan Etra

Michael D. Sullivan & Associates, Inc.

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

Michael D. Sullivan

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

Susan H. Moss, E.A.

e-mail: Gop9401@aol.com

March 9, 2004

Michael & Diane Bienes
141 Bay Colony Dr.
Ft. Lauderdale, FL 33308

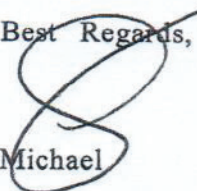
Dear Michael & Diane:

Please find enclosed a check made payable to 56 Arlington House, LLC.

I want to take this time to thank both you and Diane for your kindness and generosity throughout the years. What makes both of you so special is your generosity in sharing your blessings with all of God's people.

May the Lord continue to richly bless your lives.

Best Regards,


Michael

MB000001

EXHIBIT “C”

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

One Town Center Road
Suite 301
Boca Raton, Florida 33486
Wednesday, 10:10 a.m. - 12:59 p.m.
September 9, 2015

DEPOSITION OF FRANK AVELLINO

VOLUME 1 of 2
(Pages 1 through 143)

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

1 Q. -- to get those on the record and make
2 sure that we're on the same page as we go along.

3 A. Right.

4 Q. So as you can tell, I'm going to be asking
5 you a series of questions. As you know, you've been
6 put under oath and are required to answer the
7 questions truthfully as though you were in front a
8 judge and jury. Okay?

9 A. Sure.

10 Q. Also, if you don't understand any
11 questions, please let me know and I'll rephrase them
12 to make them understandable to you. Okay?

13 A. Okay.

14 Q. And for purposes of the court reporter, I
15 would ask that you do what you have been doing, and
16 that is answer verbally as opposed to the nodding of
17 head. Okay?

18 A. Sure.

19 Q. All right.

20 Do you -- do you have an e-mail address?

21 A. Yes.

22 Q. And what is your e-mail address?

23 A. It's Franknanc@aol.com.

24 Q. And how long have you used that e-mail
25 address?

1 A. Oh, since I've had e-mail.

2 Q. Do you recall about the time that would
3 be?

4 A. Probably ten years, twelve years.

5 Q. And do you maintain e-mails going back
6 that far?

7 A. No.

8 Q. How long do you maintain e-mails for?

9 A. Three days. I -- I'm not an e-mail
10 person, so...

11 Q. And so up to three days, you would hit the
12 delete button?

13 A. I delete them overnight if I have to.

14 Q. Okay. All right. And so have you made
15 any effort to -- to locate or find or get your hands
16 on any e-mails that you've previously deleted?

17 A. No.

18 Q. So you've done -- made no effort to
19 retrieve deleted e-mails?

20 A. No.

21 Q. And what type of computer do you use?

22 A. It's an ancient computer now --

23 Q. It's what? I'm sorry?

24 A. I think it's a -- a Sony, I think.

25 Q. And how long have you had this computer?

1 A. Four years.

2 Q. And is it a desktop or a laptop?

3 A. Laptop.

4 Q. And have you used any other computers
5 during that four-year period --

6 A. No.

7 Q. -- for personal --

8 A. No.

9 Q. Okay. And do you know what computer you
10 had before that?

11 A. No. I can't -- as I said, I'm not a
12 computer person, so...

13 Q. And do you share the use of that computer
14 with anybody else since --

15 A. My wife.

16 Q. And your wife's name is Nancy Avellino?

17 A. Right.

18 Q. And do you share the e-mail address with
19 your wife?

20 A. Yes. It's FrankNanc.

21 Q. So you both use the same e-mail for --

22 A. Same one.

23 Q. Okay. Have you used any other e-mail
24 addresses in the past?

25 A. Not that I recall.

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 every three days, roughly?

2 A. Maybe every day. Maybe every once a week.
3 I mean, I -- yes, I delete them.

4 Q. And you've been doing that since you
5 started using e-mail about ten years ago?

6 A. Yes.

7 Q. And it's been your practice ever since?

8 A. It's a practice. It's a matter of getting
9 them off the computer.

10 Q. Okay. And so your personal practice is to
11 remove e-mails every three days or so, and it has
12 been since you've had e-mail.

13 A. Yes.

14 Q. Did it ever become a point in time where
15 you stopped that practice?

16 A. Did I stop the practice of deleting?

17 Q. Yes.

18 A. No. It's random.

19 Q. And that's been going on since about 2004?

20 A. Since e-mails.

21 Q. Okay. Since at least 2004?

22 A. Yeah.

23 Q. Okay. Now, in terms of the A -- Avellino
24 & Bienes documents and statements and records, where
25 are those?

EXHIBIT “D”

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

2 CASE No.12-034123(07)

3
P&S ASSOCIATES, GENERAL PARTNERSHIP,
4 a Florida limited partnership, et al.,
5 Plaintiffs,

6 -vs-

7
MICHAEL D. SULLIVAN, et al.,

8 Defendants.

9
10 DEPOSITION OF MICHAEL BIENES
VIDEOTAPED

11
12 VOLUME II
PAGES 85 - 215

13
Thursday, September 10, 2015
14 12:52 p.m. - 4:50 p.m.

15
16 Berger Singerman LLP
17 One Town Center Road
Suite 301
18 Boca Raton, Florida 33486

19
20
21
22 Reported By:
Gabrielle Cardarelli, FPR, RPR
23 Notary Public, State of Florida
Esquire Deposition Services
24 Job #22282
25

1 A Never had a housekeeper by that name.

2 Q Okay. So you don't recall referring
3 Ms. Duarte in to -- in to -- over to Mr. Sullivan?

4 A I don't recall Ms. Duarte.

5 Q Do you keep an e-mail account?

6 A Yes, sir.

7 Q And what is your e-mail address?

8 A Michaelbienes@AOL.com.

9 Q And how long have you maintained that e-mail
10 address?

11 A I got my first computer in '07. And I -- we
12 signed up for AOL and I've had that address ever since.

13 Q Okay. And do you maintain all of your
14 e-mails?

15 A Maintain?

16 Q Yeah. Do you keep them? Do you keep your
17 e-mails?

18 A No.

19 Q Or do you have a practice of deleting them?

20 A I delete them.

21 Q How often do you delete them?

22 A Sometimes daily.

23 Q Okay. And if you -- have you been deleting
24 e-mails routinely and sometimes daily, since 19 -- since
25 2007?

1 A Yes.

2 Q Okay. And you maintain that through today?

3 A Yes.

4 Q Okay. Do you share that e-mail address with
5 anybody or is it just yours?

6 A It's just mine.

7 Q Okay. And does your wife have an e-mail
8 address?

9 A Yes.

10 Q And what is her e-mail address?

11 A Dmbienes@AOL.com.

12 Q And what -- how long have you had your current
13 computer?

14 A I don't have a computer anymore. I mean, I
15 have one but it's in the closet.

16 Q Do you not use a computer?

17 A I have a tablet.

18 Q Oh, okay.

19 A IPad.

20 Q Okay. And how long have you had your iPad?

21 A Oh, say about a little over three years,
22 estimated.

23 Q Okay. And the hard drive for your computer is
24 in your closet, as well?

25 A The computer is in the closet.

1 Q Right. Okay. Just -- all right. And the
2 computer in the closet, is it a desktop or a laptop?

3 A Laptop.

4 Q Okay. And what make is it, do you know?

5 A I think Sony.

6 Q In terms of -- in terms of your being -- of
7 your involvement in the church, I understand you were
8 knighted by the Catholic church; is that right?

9 A I received a knighthood from the Holy Father.

10 Q And when was that?

11 A There were three ranks: The first rank, the
12 first time, I can't remember the year. It could have
13 been in the 1990s, but I'm very vague on the date and
14 time.

15 Q And were you born Catholic or did you convert
16 to Catholicism?

17 A I converted.

18 Q And when did you convert?

19 A I believe 1983. That's -- I think.

20 Q Okay. And you said you were -- you talked
21 about a knighting. Were there three stages in which you
22 were involved?

23 A Yes, sir.

24 Q And you said the first one was in the 1990s --
25 was very vague. Tell me about the other stages.

EXHIBIT “E”

From: Michael Sullivan <mdsassoc@bellsouth.net>
Sent: Tuesday, February 24, 2009 10:40 AM
To: Frank & Nancy Avellino <franknanc@aol.com>
Subject: Fwd: From ABA Listserv re Madoff losses

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address investit@bellsouth.net

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

Begin forwarded message:

From: marvgutter@aol.com
Date: February 23, 2009 8:25:22 PM EST
To: mdsassoc@bellsouth.net
Subject: From ABA Listserv re Madoff losses

Date: Thu, 19 Feb 2009 08:43:43 -0800
From: "Jim Counts, CPA" <james.counts.cpa@EARTHLINK.NET>
Subject: Regarding Treatment of Madoff losses.

The IRS is getting a lot of calls from taxpayers on how to treat the Madoff

losses.

The call centers are being told to say:

Taxpayers are calling for information on how to properly report losses from the Madoff Ponzi scheme.

Final procedures have not been established at this time.

If a taxpayer calls with an inquiry, inform them that:

We are aware of the Madoff issues and are considering the appropriate tax treatment. Unfortunately we do not have any further guidance at this time.

Additional information will be provided when it is available.

Looking for work? Get job alerts, employment information, career advice and job-seeking tools at AOL Find a Job
< <http://jobs.aol.com/?ncid=emlcntuscare00000001>> .

Michael Sullivan <mike@sullivan4irmatters.com>
To: Frank & Nancy Avellino <franknanc@aol.com>
(No Subject)

February 24, 2004 12:50 PM

Will check for 1099 for back years

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address mike@sullivan4irmatters.com

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

Michael Sullivan <mdsassoc@bellsouth.net>
To: Fernando Esteban <festebsan@comcast.net>
Re: Re IRA

March 18, 2009 11:22 AM

Fernando
You need to contact Fiserv to close the account. you should have \$1000 balance left in the account.
Thank you

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address investit@bellsouth.net

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

On Mar 18, 2009, at 11:18 AM, Fernando Esteban wrote:

Dear Mr. Michael D. Sullivan,

Thank you for having arranged our receiving of the CD referring to the meeting of January 30th.

Tinka (Margaret) and I are back in Nantucket and have been going through the mail. One of the bills was from Fiserv in connection to the fee service. Could you be so kind as to clarify something for us? Are our IRA accounts with Fiserv alive? Somehow we understood that these were wiped out via B. Madoff's sad scheme. And if these were wiped out, why pay for something that does not exist? If however these accounts are still in existence, we would love to know. Normally for something like this we would have been in touch with Frank Avellino but we know he is en route to Florida with Nancy and is very much involved with other matters.

Your timely response will be greatly appreciated as we are attempting to file our income tax forms.

Sincerely yours,

Michael Sullivan <mike@sullivan4ismatters.com>
To: FrankNancy@aol.com
Re: (no subject)

March 30, 2009 2:23 PM

I have a forklift! I use it for Gail

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address mike@sullivan4ismatters.com

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

On Mar 30, 2009, at 11:01 AM, FrankNancy@aol.com wrote:

DEAR MICHAEL,
WE DID NOT GO. NOT FOR THE REASONS NANCY CALLED YOU ABOUT. NANCY HAS BEEN AN INVALID WITH A SEVERE BACK PROBLEM AND HAS BEEN BED RIDDEN. SHE THOUGHT SHE WOULD BE BETTER TO ATTEND THE FUNERAL BUT THERE WAS NO WAY SHE COULD GET OUT OF BED OR LEFT BY HERSELF. WHEN SHE REALIZED THAT THERE WOULD BE NO WAY TO GO, SHE CALLED SATURDAY NIGHT AND LEFT A MESSAGE ON THE TELEPHONE FOR AUDREY THAT SHE AND HER FAMILY WERE IN OUR PRAYERS AND THOUGHTS.

NANCY WILL ATTEMPT TO CALL (WHILE IN BED) TO EXPRESS OUR REGRETS.

I WILL HAVE TO FIGURE OUT HOW TO GET HER ON A PLANE SATURDAY FOR NEW YORK.

BEST WISHES,

FRANK

In a message dated 3/30/2009 10:34:19 A.M. Eastern Daylight Time, mike@sullivan4ismatters.com writes:

Did you go to Fred's funeral?

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address mike@sullivan4ismatters.com

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

Feeling the pinch at the grocery store? Make dinner for \$10 or less.

From: Michael Sullivan <mdsassoc@bellsouth.net>
Sent: Monday, May 4, 2009 1:53 PM
To: Frank & Nancy Avellino <franknanc@aol.com>
Subject: Madoff Feeder Michael Bienes Speaks (Video) - Business Exchange

[http://bx.businessweek.com/bernard-l-madoff/
madoff-feeder-michael-bienes-speaks-video/
7244120119652188668-8f0ce0816e4f8b18cb2542266ae1e993/](http://bx.businessweek.com/bernard-l-madoff/madoff-feeder-michael-bienes-speaks-video/7244120119652188668-8f0ce0816e4f8b18cb2542266ae1e993/)

Michael D. Sullivan
6550 North Federal Highway
Suite 210
Fort Lauderdale Florida 33308

Landline (954) 492-0088
Fax transmission (954) 938-0069
Email address investit@bellsouth.net

"The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer."

Matthew Carone <mattcarone@comcast.net>
To: james.judd <jamesmj@mac.com>
[Fwd: Re: P&S]

December 25, 2008 12:04 PM

VERY INFORMATIVE!---MATT

----- Original Message -----

Subject: Re: P&S

Date: Thu, 25 Dec 2008 09:57:10 EST

From: Frank Nardone <frankn@comcast.net>

To: mattcarone@comcast.net

Hi Matt,

I have been informed by P&S that legal counsel has been retained and that all you can do at this time is wait for information from the authorities as this goes on. I believe you will be advised as to what you can do when the information is available.

Best, Frank

In a message dated 12/24/2008 1:36:19 P.M. Eastern Standard Time, mattcarone@comcast.net writes:

Hi Frank,

Is there any light at the end of this tunnel?---any ideas as to how

I should proceed?---We've both seen happier holidays---Best, Matt

One site keeps you connected to all your email: AOL Mail, Gmail, and Yahoo Mail. [Try it now.](#)

Matthew Carone <mattcarone@comcast.net>
To: dmbienes@aol.com
Re: P&S

March 19, 2008 9:49 AM

Hi Diane/Michael,

Thanks for getting back to me. It takes the edge off my worries. I did hear from Frank who sent a similar reply. Hopefully I'll be recuperating somewhere around April 30th. Best to both of you.-----Lech???? Are people from there called Lechers??? -----Hugs, Matt

dmbienes@aol.com wrote:

Hi Matt

Don't think there is need to be concerned. They stocks we see they are invested in are all solid and not in areas that are in Banking. We have watched the current trades and so far all is fine. If you want you can call Frank who should still be in Palm Beach until the weekend when he returns to NYC.

Going to Lech Austria Sat for one week.
In Fla 30th April.

Hope tests turnout well.

Love, no. 3, me
Dianne

-----Original Message-----

From: Matthew Carone
To: Michael Bienes
Sent: 18 Mar 2008 19:47
Subject: P&S

Let your email find you with BlackBerry from Vodafone

Dmbienes@aol.com
To: mattcarone@comcast.net
Re: Bris

January 13, 2009 11:09 AM

1 Attachment, 39 KB

Dear Matt

You've got to be kidding. We are wiped out!

Trying to pickup the pieces but there aren't any left.

Probably didn't hear from Frank as we all only now what's in the papers.
Besides, he has his own problems.

Love
Dxo

In a message dated 1/13/2009 10:50:14 A.M. Eastern Standard Time, mattcarone@comcast.net writes:

Hi Diane,

Are you still in London?—Frank said he would keep me informed, but I haven't heard from him in a while. I doubt if anyone is in my financial situation. Any advice?—Matt

Dmbienes@aol.com wrote:

Dearest Matt

I was going to e-mail you today but you got me 1st.

Glad someone sees the funny side.

I swear to you that we never had a clue and have nothing left.

We are in shock.

So very sorry.

Much Love
Dxo

In a message dated 1/12/2009 10:39:48 A.M. Eastern Standard Time, mattcarone@comcast.net writes:



james judd <jamesmj@mac.com>
To: Matthew Carone <mattcarone@comcast.net>
Re: [Fwd: Re: P&S]

December 25, 2008 2:05 PM

thanks Matt.. Hope you had a great evening with your gang yesterday. We are cooking a giant bird today to eat at 6'ish.
On Thursday, December 25, 2008, at 12:53PM, "Matthew Carone" <mattcarone@comcast.net> wrote:
VERY INFORMATIVE!----MATT

----- Original Message -----

Subject: Re: P&S

Date: Thu, 25 Dec 2008 09:57:10 EST

From: FrankNanci@aol.com

To: mattcarone@comcast.net

Hi Matt

I have been informed by P&S that legal counsel has been retained and that all you can do at this time is wait for information from the authorities as this goes on. I believe you will be advised as to what you can do when the information is available.

Best, Frank

In a message dated 12/24/2008 1:36:19 P.M. Eastern Standard Time, mattcarone@comcast.net writes:

Hi Frank,

Is there any light at the end of this tunnel?----any ideas as to how I should proceed?---We've both seen happier holidays-----Best, Matt

One site keeps you connected to all your email: AOL Mail, Gmail, and Yahoo Mail. Try it now

<<http://www.aol.com/?optin=new-dp&icid=aolcom40vanity&ncid=emfentaoicom00000025>>