

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> 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.

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**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO REOPEN DISCOVERY  
AND TO DEPOSE NON-PARTY, ANNETTE BONGIORNO**

Defendants, Frank Avellino and Michael Bienes (“Defendants”), by and through their undersigned counsel, file this opposition to Plaintiffs’ motion to reopen discovery and conduct the deposition of Annette Bongiorno. Plaintiffs’ motion is devoid of facts but rather is based upon pure and erroneous speculation and lacks sufficient grounds for the relief requested.

1. After six complaints, years of relentless discovery, including conducting the depositions of Bernard Madoff in North Carolina prison and ex-Madoff employee, Eric Lipkin in New Jersey, both of whom refuted any claim by Plaintiffs that Defendants had knowledge of Madoff’s Ponzi scheme before it became public, Plaintiffs now seek to reopen discovery to conduct the deposition of yet another ex-Madoff employee desperately hoping to discover evidence of Defendants’ involvement with the Plaintiff Partnerships that has failed to materialize because it doesn’t exist. A parsing of Plaintiffs’ motion reveals it is based on utter and inaccurate speculation, not facts and should be denied.

2. In their usual “shoot first, ask questions later” approach Plaintiffs seek to conduct Ms. Bongiorno’s deposition “because recent events give rise to a need to testify Bongiorno.” (sic) and “has indicated a willingness to cooperate with third parties...”. Motion, ¶5. Plaintiffs fail to identify the “need” they refer to nor provide support for the claim that Ms. Bongiorno is willing to cooperate with them. Ms. Bongiorno recently entered into an agreement with the Madoff Trustee in which she agreed to cooperate with the Trustee. There is no indication or agreement that she will cooperate with third parties and Plaintiffs offer no support for such contention.

3. More significantly, Plaintiffs’ motion makes illogical leap that because there may have been correspondence between the Plaintiff Partnerships and BLMIS that was directed to Ms. Bongiorno she therefore, “has knowledge that is directly relevant to Plaintiffs’ claims that Defendants had a fiduciary relationship with the Partnerships, that Defendants took control of the Partnerships, and that Defendants’ caused the transfer of improper kickbacks to themselves and others.” Motion, ¶7.

4. Not only is there no support for Plaintiffs’ contention that Ms. Bongiorno has knowledge of Defendants’ involvement with the Partnerships, it is patently untrue. Had Plaintiffs’ counsel made any effort to attempt to verify this allegation before filing their motion they would have learned that their contention is baseless.

5. Attached is an email from Roland Riopelle, Esq., dated September 23, 2016. He is Ms. Bongiorno’s attorney who has represented her for a number of years including representing her in the six month criminal trial with other Madoff employees in New York. Based upon his communication with his client, he confirms that Ms. Bongiorno has no recollection of Plaintiffs, P&S or S&P, Michael Sullivan, Greg Powell or knowledge of any

involvement that Defendants may have had with the Partnerships or with Madoff on behalf of the Partnerships.

6. Based upon the foregoing, conducting the deposition of Ms. Bongiorno would be a needless and costly exercise that would provide no relevant evidence in this case. Accordingly, Plaintiffs' motion should be denied.

WHEREFORE, Defendants request that this Court enter an order denying Plaintiffs' motion in its entirety.

**HAILE, SHAW & PFAFFENBERGER, P.A.**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of October, 2016, the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin Order No. 13-49.

/s/ Gary A. Woodfield  
Gary A. Woodfield

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