

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

CASE NO. 12-24051 (07)
COMPLEX LITIGATION UNIT

MATTHEW CARONE, as Trustee for the Carone Marital Trust #2 UTD 1/26/00, Carone Gallery, Inc. Pension Trust, Carone FamilyTrust, Carone Marital Truste #1 UTD 1/26/00 and Matthew D. Carone Revocable Trust, JAMES JORDAN, as Trustee for the James A. Jordan Living Trust, ELAINE ZIFFER, an individual, and FESTUS AND HELEN STACY FOUNDATION, INC., a Florida Corporation,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, individually,

Defendant.

CONSERVATOR'S MOTION TO RETAIN AND COMPENSATE BARRY MUKAMAL AND MARCUM LLP AS AN EXPERT WITNESS IN THE INTERPLEADER ACTION

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), files this application to retain and compensate Barry Mukamal and Marcum LLP (together, "Marcum" or "Accountant") as the Conservator's expert witness in that certain related case styled *P&S Associates, General Partnership and S&P Associates, General Partnership, Plaintiffs v. Roberta P. Alves, et. al.*, Case No. 12-028324 (07) (the "Interpleader Action") *nunc pro tunc* to October 1, 2013, and in support thereof states as follows:

1. On January 17, 2013, this Court entered its Order Appointing Conservator (the "Order of Appointment"). Among other things, the Order of Appointment directed the Conservator to advance the Interpleader Action and make recommendations with regard to the method of distribution of assets to the partners.

2. In order to facilitate and support the Conservator in carrying out his duties, consistent with applicable Florida law, the Order of Appointment authorizes the Conservator to retain and compensate necessary professionals.

3. This Court's October 17, 2013, *Order on Conservator's Motion for Summary Judgment* in the Interpleader Action sets certain issues for trial on November 19, 20, and 21 of this year.

4. The Conservator seeks to, in his discretion, hire and employ Accountant to serve as the Conservator's expert witness for, among other things, consulting and testimony necessary for trial support in the Interpleader Action.

5. Marcum is an accounting, tax advisory, and litigation support firm that has over 50 years of experience serving middle market companies. As an independent registered public accounting firm, Accountant provides accounting services to hundreds of companies. Accountant is also one of the top 20 accounting and advisory firms in the country, providing services to privately-owned national firms as well as local businesses.

6. Mr. Mukamal brings more than 30 years of multidisciplinary experience to the Advisory Services Division of Marcum. Mr. Mukamal has been appointed as a Chapter 7 Panel Trustee in the Southern District of Florida, is a Certified Fraud Examiner, and has extensive experience testifying as an expert witness at the local, state and federal level. Mr. Mukamal's litigation support experience includes lost profits litigation, fraud investigations, accounting malpractice, and business valuation. In addition, he has been retained in investigations and embezzlement issues associated with financial fraud schemes, occupational fraud, and Ponzi schemes.

7. On March 15, 2013, the Conservator filed its motion to employ Marcum to prepare the Partnerships' year end tax form including K-1's. On March 22, 2013, this Court authorized Marcum's retention.

8. As a result of Marcum's earlier involvement, Marcum has already reviewed certain of the Partnerships' records and financial information. Thus, expanding Marcum's engagement to serve as the Conservator's expert witness will conserve estate resources and allows the trial in the Interpleader Action to continue on its current schedule without a delay attributable to the engagement of an expert witness.

9. Accountant's engagement is necessary as an expert witness for, among other things, testimony on certain issues for trial in the Interpleader Action.

10. Accountant's engagement will in no way be duplicative of any other professional retained by the Conservator.

11. Accountant holds no known interest adverse to the Conservator, the Partnerships or the general partners of the Partnerships and has the following limited connection to the Partnerships:

- a. as previously discussed, Accountant was retained pursuant to this Court's March 22, 2013 Order to prepare the Partnerships' K-1 tax forms and the year-end tax forms; and
- b. upon information and belief, from approximately 1994 through approximately 1998, a partner of Accountant, Alan Barbee, was a member of the same religious congregation as certain of the general partners of the Partnerships and certain insiders of the Partnerships.

12. Accountant has agreed to discount its ordinary and customary hourly fees for partners at \$475/hour, Senior Managers at \$330/hour and Support Staff at \$130/hour by 15% and has agreed to a cap of \$33,000. Consistent with the Order of Appointment, Accountant shall file applications for compensation with the court every sixty (60) days, or later as is deemed

reasonable and necessary within the discretion of Accountant, and will provide notice to the partners and other parties-in-interest in the manner more fully described in the Order of Appointment.

13. The Conservator deems the employment of Accountant necessary for the efficient administration of the Partnerships and to advance the Interpleader Action. The Conservator further believes that a Court Order authorizing the retention and the proposed compensation arrangement is necessary for Accountant to effectively serve the Conservator.

WHEREFORE, the Conservator requests that the Court enter an Order: (i) authorizing the retention of Accountant *nunc pro tunc* to October 1, 2013; (ii) authorizing the Conservator to pay Accountant consistent with the Order of Appointment; and (iii) granting such other relief as the Court deems just and proper.

Dated: October 23, 2013

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