

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 RESPONSE TO PLAINTIFFS' FIFTH REQUEST
FOR PRODUCTION OF DOCUMENTS**

Defendant, Frank Avellino, responds to Plaintiffs' Fifth Request for Production of Documents dated October 5, 2015 (the "Request") as follows:

GENERAL OBJECTIONS

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.

Defendant objects to the definition of "You" or "Your" or "Defendant" to the extent that it seeks privileged communications with their attorneys and accountants.

Defendant objects to this request to the extent it requires the production of documents in a manner otherwise as permitted by the Florida Rules of Civil Procedure.

DEFENDANTS' RESPONSE TO REQUEST FOR PRODUCTION

1. All documents and communications exchanged between You and Bienes including but not limited to e-mails sent to You or Your attorney by any attorney representing Bienes.

RESPONSE: Defendant objects to this request as overly burdensome, irrelevant, not likely to lead to admissible evidence and protected by a joint defense/common interest privilege. Avellino and Bienes were partners in an accounting firm and an investment firm from approximately 1968 until 1992. Documents exchanged between them, to the extent that any such documents still exist, could be voluminous and have nothing to do with the issues in this action. Certain communications between Avellino and Bienes involving their attorneys and communications between their attorneys are attorney/client communication subject to the parties' joint defense/common interest agreement and are privileged. Non-privileged documents will be produced.

2. Any documents which evidence a common interest privilege agreement between You and Bienes.

RESPONSE: Objection. The term "evidences" is vague and overly burdensome. For example, communications between the attorneys for defendants Avellino and Bienes arguably "evidences" the existence of a joint defense/common interest privilege. No written agreement exists. The parties and their counsel entered into an oral joint defense/common interest agreement.

3. All documents pertaining to Your retention or preservation of evidence in connection with litigation being pursued against You.

RESPONSE: Defendant objects to this request as vague, incomprehensible and irrelevant particularly as it relates to other actions. Further, Defendant does not know what is meant by “pertaining to”, and objects to same. Notwithstanding and subject to such objections, Defendant is not aware of the existence of responsive documents.

4. All tax returns that You filed, or that were filed on Your behalf with the Internal Revenue Service, between January 1, 1999 and the present.

RESPONSE: Objection. This request seeks personal financial information of not only Defendant but also his non-party wife which is protected from disclosure by Art. I, section 23 of the Florida Constitution. Moreover, such request seeks information irrelevant to the issues in this action and is not likely to lead to admissible evidence.

5. All documents pertaining to all open or closed checking, savings, bank credit cards, NOW, Time or other deposit or checking account in Your name or under Your signatory authority, including but not limited to applications for credit, credit reports, monthly statements, financial statements, signature cards, corporate board authorization minutes, bank statements, cancelled checks, deposit checks, wire transfer forms, credit and debit memorandums, IRS Form 1099, IRS Form 1089, correspondence, or back-up withholding documents.

RESPONSE: Objection. This request is vague, overly broad and burdensome seeking documents for the last fifty-five years and seeks personal financial information of not only

Defendant but also his non-party wife which is protected from disclosure by Art. I, section 23 of the Florida Constitution. Moreover, such request seeks information irrelevant to the issues in this action and is not likely to lead to admissible evidence.

6. All Forms 4789 and Form 4790 filed with the Department of Treasury, Internal Revenue Service or the United States Customs Service by You between January 1, 2000 and the present, concerning currency transaction conducted by You or on Your behalf.

RESPONSE: Objection. This request seeks personal financial information of not only Defendant but also his non-party wife which is protected from disclosure by Art. I, section 23 of the Florida Constitution. Moreover, such request seeks information irrelevant to the issues in this action and is not likely to lead to admissible evidence. Notwithstanding and subject to such objections, no such documents exist.

7. All documents and communications exchanged between You and Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc.

RESPONSE: Objection. This request has been previously made and responded to. Notwithstanding and subject to the foregoing, Defendant has conducted a further search and located additional responsive documents which will be produced, together with a privilege log.

8. All documents and communications exchanged between You and Scott Holloway, Ralph C. Fox, Steve Jacob, Jack Kleinmann, Richard Wills, Edward Michaelson, Gary Chapman, Sam Rosen, Edith Rosen, Marketing Services, Inc., Vincent Barone, Abraham

Newman, James E. Yonge, Wayne Horwitz, Direct Response Group, Inc., Susan Moss Booking and Tax Service, and Vincent Kelly.

RESPONSE: Defendant objects to this request as overly burdensome, irrelevant, not likely to lead to admissible evidence. Subject to and without waiving his objections, Defendant has no responsive documents other than communications with Wills which will be produced.

9. All documents and communications exchanged between You and Helen Chaitman and/or any person or entity associated with the law firm of Becker Poliakoff, P.A. between December 8, 2008 and the present.

RESPONSE: Objection. Such communications are subject to the attorney client privilege and, in any event irrelevant. A privilege log will be produced.

10. All documents and communications exchanged between You and Margaret Esteban and/or Fernando Esteban.

RESPONSE: Defendant objects to this request as overly burdensome and irrelevant. The Estebans are longtime social friends. Production of documents pursuant to this request would include irrelevant, private communications. Notwithstanding and subject to the foregoing, responsive documents will be produced.

11. All documents and communications exchanged between You and any general partner of S&P and/or P&S.

RESPONSE: See response to Interrogatory 7. Defendant is not aware of any documents or communication with Greg Powell. To Defendant's knowledge, Michael Sullivan and Greg Powell are the general partners of S&P and P&S. If all of the investors in S&P and P&S were general partners, Defendant is not aware of the identity of such individuals or entities and, thus, is unable to respond to this request. In any event, such a request would be overly broad and burdensome.

12. All documents and communications relating to Your direct and/or indirect investment with BLMIS, including but not limited to any documents and communications between You and Ahearn & Jasco, P.A.

RESPONSE: Defendant objects to this request as overly burdensome and irrelevant. Defendant invested with BLMIS from the 1960's until 2008. To the extent that Defendant has responsive documents (and he does not believe that he has such documents) they would be voluminous and irrelevant to the issues in this action. In any event, Plaintiffs have obtained documents from Irving Picard, the Trustee for BLMIS which may be responsive. With regard to documents and communications with Ahearn & Jasco, P.A., such documents constitute personal financial information of not only Defendant but also his non-party wife which is protected from disclosure by Art. I, section 23 of the Florida Constitution and are further subject to the accountant/client and attorney/client privileges.

13. All documents relating to any charitable contributions made by You or for Your benefit.

RESPONSE: Defendant objects to this request as overly burdensome, irrelevant and not likely to lead to admissible evidence and seeks personal financial information of not only Defendant but also his non-party wife which is protected from disclosure by Art. I, section 23 of the Florida Constitution.

14. All documents related to Sullivan; Michael D. Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc. transferring money to You and/or 27 Cliff, LLC

RESPONSE: Objection. Defendant has responded to request 7 and previously produced responsive, non-objectionable documents. To the extent that the term “related to” seeks documents other than those previously produced, Defendant objects to such request as vague, overly broad and burdensome.

15. All documents related to Sullivan; Michael D Sullivan & Associates, Inc.; Sullivan & Powell, Inc.; and/or Solutions in Tax, Inc. transferring money to Bienes and/or 56 Arlington House, LLC

RESPONSE: Defendant has no responsive documents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2015, 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.

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