

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, a Florida limited
Partnership, *et al*,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

_____ /

RE-NOTICE OF TAKING DEPOSITION DUCES TECUM

PLEASE TAKE NOTICE that the undersigned counsel will take the deposition of:

Deponent: Michael Sullivan

Date: December 1, 2015

Time: 9:30 AM

Place: Broad and Cassel
1 Financial Plaza, #2700
Fort Lauderdale, FL 33394

DUCES TECUM: See Attached Exhibit A.

upon oral examination before a Notary Public or other officer authorized by law to take depositions in the State of Florida. The oral examination will continue from day to day until completed. This deposition is being taken for the purposes of discovery, for use at trial, or for such other purposes as are permitted under applicable Florida Rules of Civil Procedure.

KINDLY GOVERN YOURSELF ACCORDINGLY.

EXHIBIT A

DUCES TECUM

DEFINITIONS AND INSTRUCTIONS

As used in this request, the terms listed below are defined as follows:

A. "Communication(s)" means any oral or written transmission of information, thoughts or data, including but not limited to through meeting, conversation, discussion, correspondence, message, electronic or other occurrence whereby thoughts, opinions, or data are transmitted between two or more persons.

B. "Document" is used in its broadest sense under the Rules of Civil Procedure and includes graphic matter of any kind or nature, whether written, printed, typed, recorded, filmed punched, transcribed, taped, or produced or reproduced by any means, including without limitation electronically. The term "document" includes, but is not limited to, all papers, books, contracts, licenses, inter-office communications, records, personal notes, cablegrams, telexes, e-mails, electronic data, studies, calendars, diaries, desk calendars, appointment books, agendas, minutes, pamphlets, envelopes, telephone messages, graphs, records or meetings, summaries or records of telephone conversations, voice mails, summaries or records of personal conversations or interviews, employee notebooks, summaries or records of meetings or conferences, tabulations, analyses, evaluations, projections, work papers, charts, statements, summaries, journals, billing records, and invoices, and all communicative material of any kind. The term "document" also includes every other means by which information is recorded or transmitted, including, but not limited to, photographs, videotapes, tape recordings, microfilms, punch cards, computer programs, printouts, all recordings made through data processing techniques, and the written information necessary to understand and use such materials. The term "documents" is further defined to mean the original, any drafts, and any non-identical copies (i.e., those bearing notations or marks not found on the original). "Documents includes all information electronically created, stored, maintained, transmitted or received by way of computers, networks, telephones, PDAs, hard drives, software, networks, internet, clouds, mobile device or otherwise, regardless of whether printed, and all information referred to as "Electronically Stored Information" (ESI). Such ESI shall be produced in searchable PDF format.

C. "Person" means a natural person, firm, proprietorship association, partnership, corporation, limited liability company, professional association, professional limited liability company, and any other type of organization or entity.

D. The words “relate”, “related to”, “pertain to”, “pertaining to”, or “regarding,” “refer” or “referring” or any derivation thereof, mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts, controverts, or contradicts, directly or indirectly, and includes the specific item mentioned.

E. “And” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside the scope. “Each” shall be construed to include the word “every,” and “every” shall be construed to include the word “each.” “Any” shall be construed to include the word “all”, and “all” shall be construed to include the word “any.”

F. “You” or “Your” refers to Michael Sullivan, individually and jointly with any other person or entity, any of his agents, and anyone acting on his behalf.

INSTRUCTIONS

A. You are to furnish all documents that are in your possession, custody or control, including, without limitation, all documents in the possession, custody or control of any agents, employees, representatives, principals, accountants and/or attorneys as of the date of your response to these requests.

B. If you object to producing any document because of a privilege, you shall make the claim expressly, pursuant to Federal Rule of Civil Procedure 1.280(b)(6), and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

C. If your response to any request refers to or identifies a document that once existed, but it no longer exists, state the circumstances under which it was destroyed or ceased to exist, including:

- (a) The identity of each person who determined that each such document would be removed or destroyed;
- (b) The identity of each person who authorized the destruction or removal of each such document;
- (c) The identity of each person who removed or destroyed each such document;

- (d) The substance and content of each such document; and
- (e) The date and location at which and the manner in which each such document was removed or destroyed.

D. If you object to producing any documents requested pursuant to this Request, produce all documents responsive to each request which do not fall within the parameters of your objections.

E. Prior to incurring any expense in responding to this Request which you will expect or request the Defendant to pay, contact the undersigned counsel with the estimated cost and itemization of same.

F. Unless otherwise specified, this Request includes all documents created or maintained at any time within four years of the date of this Requests, through the date of the production of the documents (“the subject period”). The subject period includes the current time, and the use of the past tense (such as, by way of example only, “have had”) is to be interpreted as including the present tense.

DOCUMENTS WITHHELD

If any document responsive to this subpoena is withheld on the grounds of privilege or other objection, provide the following information with respect to each such document:

- (A) The reason for withholding the document;
- (B) A statement of the basis for the claim of privilege, work product or other ground of non-disclosure;
- (C) A brief description of the document, including (i) the date of the document; (ii) number of pages, attachments and appendices; (iii) the names of its author, authors or preparers and an identification by employment and title of each such person; (iv) the name of each person who was sent, shown blind carbon copied on the document, or has had access to or custody of the document, together with an identification of each such person; (v) the present custodian; (vi) the subject matter of the document; and (vii) in the case of any document relating to or referring to a meeting or conversation, an identification of such meeting or conversation.

DESTROYED DOCUMENTS

If any documents responsive to this subpoena were at one time in existence, but have been lost or destroyed, a list should be provided of the documents so lost or destroyed stating the following information for each such document; (a) the type of document, (b) the date on which it ceased to exist; (c) the circumstances of its loss or destruction, (d) the identity of all persons having knowledge of the circumstances of its loss or destruction, and (e) the identity of all persons having knowledge of its content.

DOCUMENTS

1. All documents, including but not limited to written or sworn statements You provided to Plaintiffs' counsel or that Plaintiff's counsel provided You or Your counsel including, but not limited to in connection with the settlement agreement dated June 26, 2014, that You entered into in this action.
2. All documents that evidence Avellino and/or Bienes' purported involvement in the management of P & S or S & P partnerships (the "Partnerships").
3. All documents that evidence all purported assistance Avellino and/or Bienes provided the Partnerships' in their operation or management.
4. All documents that evidence all purported assistance Avellino and/or Bienes provided in the Partnerships opening accounts with BLMIS.
5. All documents that evidence all purported assistance Avellino and/or Bienes provided in the transfer of A & B customers and accounts to the Partnerships.
6. All documents that evidence all investors Avellino and/or Bienes purportedly brought to the Partnerships.
7. All documents that evidence the reliance by any partners of the Partnerships on Avellino and/or Bienes in investing with the Partnerships.
8. All documents relating to BLMIS or Bernard Madoff provided You by either Avellino or Bienes.

9. All documents that evidence any statements or actions taken by either Avellino or Bienes in preventing or otherwise discouraging any partner from withdrawing their funds from the Partnership.

10. All documents that evidence that either Avellino and/or Bienes sought out new recruits to invest in the Partnerships.

11. All documents that evidence that Avellino purportedly used Bishop Wills to assist in the recruitment of investors in the Partnership.

12. All documents that evidence that Avellino acted as an intermediary for certain partner(s) checks sent to or from the Partnerships.

13. All documents evidencing or relating to all monies provided Avellino and/or Bienes by the Partnerships and/or You or any entity owned or controlled by You.

14. All documents that evidence or relate to any assistance Avellino provided You and/or the Partnerships in seeking the recovery of funds from Picard.

15. All documents that evidence any agreement or understanding by the Partnerships, You, or anyone one or entity owned or controlled by You to pay Avellino any money relating to the Partnerships or otherwise.

16. All documents including but not limited to e-mails sent to You or Your attorney by any attorney representing the Partnerships and/or the Conservator in this action.

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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