

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)
Complex Litigation Unit

PHILIP J. VON KAHLE, as Conservator of
P&S Associates General Partnership and
S&P Associates, General Partnership,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.,

Defendants.

DEFENDANT FRANK AVELLINO'S REQUEST TO PRODUCE TO PLAINTIFF

Defendant, Frank Avellino, by and through his undersigned counsel and pursuant to Rule 1.350, Florida Rules of Civil Procedure, requests that Plaintiff Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, (hereinafter "Plaintiff"), produce the documents identified below at the offices of Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, Florida 33408, or other mutually agreed upon location, within thirty (30) days.

DEFINITIONS AND INSTRUCTIONS

For the purpose of this Document Request, the following words and phrases are defined:

1. "Document" is used in its broadest sense under the Florida 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 of 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 or maintained, by way of computers, networks, telephones, PDAs, hard drives, software or otherwise, regardless of whether printed. Any document which you contend is subject to the work product or attorney-client privileges shall be identified with your reasons for claiming the privilege.

2. A document "relates to" a particular fact, matter, or event when it proves or disproves, or tends to prove or disprove, that fact, matter, or event or contains information concerning, explaining, or providing a background for understanding that fact, matter, or event, or is evidence of or a result of that fact, matter, or event, or could lead to additional relevant information concerning, explaining, or providing a background for understanding that fact, matter, or event, or was produced, altered, or signed as a part of or as a result of that fact, matter, or event.

3. "Reflecting", "reflect" or any other derivative shall be construed as referring to, responding to, relating to, pertaining to, connected with, comprising, memorializing, commenting on, regarding, discussing, showing, describing, concerning, analyzing and constituting.

4. "Refer", "relate", "related to" or evidencing shall mean, directly or indirectly, refer to, reflect, mention, describe, pertain to, arise out of, or in connection with, or in any way legally, logically, or factually be connection with the matter identified.

5. "And" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the demand all documents that 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."

6. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside its scope.

7. A plural noun shall be construed as a singular noun and a singular noun shall be construed as a plural noun, whenever necessary to bring within the scope of the demand all documents which might otherwise be construed to be outside its scope.

8. "Partnerships" shall mean P&S Associates, General Partnership and S&P Associates, General Partnership, their general and limited partners, members and representatives and agents.

9. "Avellino" shall mean Frank Avellino.

10. "Sullivan" shall mean Michael D. Sullivan.

8. "You" or "Your" shall mean Plaintiffs and their partners, associates, members and representatives and agents.

INSTRUCTIONS

1. You are to produce all responsive documents within your possession, custody, or control or in the possession, custody, or control of your attorneys, accountants, or other agents, wherever located.

2. Produce each document requested herein with an indication of the particular paragraph or subparagraph hereof to which the document is responsive.

3. With respect to any responsive document, which was formerly in your possession, custody, or control, and has been lost or destroyed, state:

- a. The type of document;
- b. The subject matter and contents of the document;
- c. The author of the document;
- d. Each person to whom the original or a copy of the document was sent;
- e. The date on which the document was prepared or transmitted;
- f. The date on which the document was lost or destroyed and, if destroyed;

and

g. The condition of and reasons for such destruction and the persons requesting and performing the destruction,

4. This request shall be deemed continuing so as to require prompt, further, and supplemental production (without further request by Defendant or her attorneys) if you locate or obtain possession, custody, or control of additional responsive documents at any time prior to

trial herein.

PRIVILEGE

1. Whenever a request calls for the production of a document claimed by you to be privileged, supply sufficient factual detail to enable the Court to determine whether or not such document is entitled to a claim of privilege, including:

- a. the date or dates of the documents;
- b. the name and position of each person who participated in the preparation of the document;
- c. the name and position of each person to whom the document was addressed, and the name of each person to whom the document, or the contents thereof have been communicated by copy, exhibition, reading, or oral conversation of any kind;
- d. the general subject matter of the document; and
- e. the basis or bases for the claim of privilege.

DOCUMENTS TO BE PRODUCED

1. All documents evidencing and/or referencing any introductions to any of the general partners of the Partnerships by Avellino.
2. All documents evidencing and/or referencing any assets of the Partnerships which were funneled to Avellino in the form of commissions or referral fees.
3. All documents evidencing and/or referencing that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.
4. All documents evidencing and/or referencing that Avellino knew or should have known that Sullivan's management fees came directly from capital contributions of the other partners rather than from the Partnerships' profits.

5. All documents evidencing and/or referencing that Avellino was a co-conspirator with Sullivan and others.
6. All documents evidencing and/or referencing all management fees or other compensation, distributions or other payments made to Avellino.
7. All documents evidencing and/or referencing any controls Avellino had over the Partnerships.
8. All documents evidencing and/or referencing that Avellino was active in the management of the Partnerships.
9. All documents evidencing and/or referencing the allegation that Avellino knew or should have known of the millions of dollars of Partnership assets were being misappropriated.
10. All documents evidencing and/or referencing the allegation that Avellino knew that distributions were improperly being made to Partners and other third parties, but did nothing to prevent it.
11. All documents evidencing and/or referencing any aiding and abetting by Avellino of Sullivan's breach of fiduciary duty of loyalty and care to the Partnerships.
12. All documents evidencing and/or referencing any damages you allege you incurred as a result of any actions or statements by Avellino.
13. All documents evidencing and/or referencing all management or referral fees, made by or on behalf of the Partnerships.

HAILE, SHAW & PFAFFENBERGER, P.A.

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By: /s/ Gary A. Woodfield
Gary A. Woodfield, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2013, the foregoing document is being served on Thomas M. Messina, Esq, Massana, P.A., 401 East Las Olas Boulevard, Suite 1400, Fort Lauderdale, Florida 33301, tmessana@messana-law.com, Etan Mark, Esq., Berger Singerman, 350 East Las Olas Blvd., Suite 1000, Fort Lauderdale, FL, 3330, emark@bergersingerman.com, Peter G. Herman, Esq., 110 SE 6th Street, 15th Floor, Fort Lauderdale, FL 33301, pgh@trippscott.com; asg@trippscott.com; ele@trippscott.com; rep@trippscott.com; and Mark F. Raymond, Esq. Jonathan Etra, Esq., and Christopher Cavallo, Esq., Broad and Cassel, One Biscayne Tower, 21st Floor, 2 South Biscayne Blvd., Miami, FL 33131, jetra@broadandcassel.com; ccavallo@broadandcassel.com and mraymond@broadandcassel.com by email and by electronic service via the Florida Courts E-Filing Portal in compliance with Fla. Admin. Order No. 13-49.

/s/ Gary A. Woodfield
Gary A. Woodfield