

**IN THE CIRCUIT COURT OF
THE ELEVENTH CIRCUIT, IN
AND FOR DADE, FLORIDA**

JAMES GREIFF,

CASE NO: 13-21888-CA

Plaintiff,

vs.

**RICHARD ALAN CAHAN,
And BECKER & POLIAKOFF, a
Florida professional service corporation,**

Defendants.

COMPLAINT

Plaintiff, James Greiff, sues Defendants, Richard Alan Cahan, and Becker & Poliakoff, a Florida professional service corporation, and says:

Jurisdiction and Venue

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, costs, and attorney's fees.
2. Venue is proper in Dade County, Florida because the Defendants maintain their primary place of business in this county, and because the wrongful acts that are the subject of this action occurred primarily in this county.

Identification of the Parties

3. Plaintiff, James Greiff, is an individual, *sui juris*, residing in Walton County, Florida. The Plaintiff will be referred to herein as “Plaintiff “ or as “Greiff.”

4. Defendant, Richard Alan Cahan, is an individual, *sui juris*, residing in Dade County, Florida. This defendant will be referred to herein as “Cahan.”

5. At all material times hereto, Cahan was licensed to practice law in the State of Florida, and was holding himself out to the public as a lawyer.

6. Defendant, Becker & Poliakoff, P.A., is a Florida professional service corporation holding itself out to the public as a law firm. This law firm maintains offices throughout the state of Florida, but conducts the practice of law in Dade County at its Coral Gables office located at Alhambra Towers, 121 Alhambra Plaza, 12th Floor, Coral Gables, Florida. This Defendant will be referred to herein as “B & P.”

Common Allegations

7. Prior to establishing an attorney client relationship with the Defendants, Plaintiff was named as a defendant in certain lawsuits in which money damages were sought against him. These actions included an adversary proceeding filed in the bankruptcy court of the Southern District of New York, styled as *Irving H. Picard, as Trustee for the liquidation of the Bernard L. Madoff*

Investment Securities LLC. (Hereafter, this action shall be referred to as the “New York Adversary Proceeding”). In that action, the trustee sought to recover from Plaintiff, and other former clients of Bernard Madoff, sums of money that had been paid to them as investment income before Mr. Madoff’s firm declared bankruptcy. The trustee demanded the return of monies in excess of two million dollars (\$2,000,000.00) in that action.

8. To protect himself, Plaintiff retained legal counsel through the New York office of Defendant B & P. Defendant B & P entered an appearance on behalf of Plaintiff in the adversary action, and the law firm agreed to defend and protect Plaintiff from the claims of the Trustee.

9. Plaintiff then sought legal advice from his personal legal counsel regarding the best legal means to protect his assets from any judgment that would be entered against him. Plaintiff’s legal advisor recommended Defendant Cahan as an attorney who specialized in the area of lawful asset protection, and he suggested that Plaintiff seek legal advice from him. Plaintiff agreed that his contact information could be provided to Defendant Cahan for this purpose.

10. Defendant Cahan subsequently initiated contact with Plaintiff by calling him on his cell phone. Cahan introduced himself as an attorney who specialized in helping individuals protect their assets from the claims of creditors.

11. Defendant Cahan and Plaintiff had several phone conversations regarding this issue. During these phone conversations, Plaintiff explained that he had substantial assets that he had acquired through successful business enterprises, including money that he had invested with Bernard Madoff before his firm went bankrupt, and before it was discovered that his clients, including Plaintiff, were victims of a massive Ponzi scheme. Plaintiff expressed his concern about judgments being entered against him by which his personal assets could be seized. Plaintiff further informed Defendant Cahan that Defendant B & P was representing him in the New York Adversary Proceeding.

12. Defendant Cahan explained that he was expert in the area of asset protection. He told Plaintiff that he could help him with a legal and lawful scheme by which his assets would be protected from the claims of creditors. Defendant Cahan explained that his methods involved the use of a Post-Nuptial Agreement for transferring Plaintiff's assets to Plaintiff's wife, and placing them in off shore accounts that were not subject to legal process. Defendant Cahan represented that he had done this successfully for many clients.

13. Plaintiff informed Defendant Cahan that he had been married for a period of approximately six years, having had a child with his wife. Plaintiff further explained to Defendant Cahan that most of his wealth had been acquired before his marriage and that his wife had no substantial assets of her own. At this

time, Plaintiff had no concerns regarding his wife divorcing him and he had no need for legal advice regarding the resolution of any marital conflict, and in fact, no marital conflict existed to Plaintiff's knowledge.

14. After several phone conversations, all of which were initiated by Defendant Cahan, Defendant Cahan stated that Plaintiff would need to pay a legal fee and retain him before he would provide any further advice regarding the protection of Plaintiff's assets. Cahan demanded, and Plaintiff paid, a flat fee of forty-four thousand dollars (\$44,000.00) for the purpose of retaining him as Plaintiff's legal advisor. Plaintiff paid the fee with his credit card. Cahan told Plaintiff that he was lowering his customary fee of fifty-five thousand dollars (\$55,000.00) in consideration of the referral relationship he enjoyed with Plaintiff's legal advisor.

15. During these phone conversations, Defendant Cahan never mentioned that he would represent Plaintiff's wife exclusively, nor did he ever mention that other lawyers would be used to create this scheme of asset protection. At all times, Defendant Cahan represented that he would be the lawyer creating the asset protection scheme for the benefit of Plaintiff, and for the specific purpose of assisting Plaintiff with protecting his personal assets from the claims his creditors.

16. At the time the fee was paid, Defendant Cahan had never met with nor spoken to Defendant's wife. Defendant's wife had not initiated any

communication with Defendant Cahan, nor had she even sought legal advice regarding any legal liabilities of her own.

17. After Plaintiff paid Defendant Cahan the forty-four thousand dollars, Defendant Cahan explained to Plaintiff that the best means of protecting his assets required that Plaintiff's wife enter into a retainer agreement with Defendant Cahan and B & P so that they could represent her as a client. Defendant Cahan further explained that Plaintiff's wife would waive her attorney client privilege so that Plaintiff could participate in any and all communications between Defendant Cahan and Plaintiff's wife.

18. Believing that Defendant Cahan was representing his best interests and advising him in the best means for protecting his assets, as Defendant Cahan had promised to do, Plaintiff agreed to this arrangement.

19. Defendant Cahan then arranged for a meeting with two additional attorneys, Andrew Leinoff and Henry Bugay. These lawyers were introduced to Plaintiff as attorneys who would represent Plaintiff and his wife in the preparation of a Post-Nuptial Agreement, by which Plaintiff's assets would be transferred to his wife. Defendant Cahan assigned Mr. Leinoff to Plaintiff's wife, and assigned Bugay to represent Plaintiff.

20. Plaintiff agreed to all of the arrangements recommended by Defendant Cahan, believing them to be in his best interest and designed for the purpose of

allowing him to protect his assets from the claims of his creditors. In fact, Defendant Cahan told Plaintiff that he and his wife had to have separate lawyers in order for the asset protection scheme to be effective. Plaintiff agreed to retain Bugay, believing that such retainer was necessary to effectuate the asset protection scheme recommended by Defendant Cahan.

21. Regardless of the arrangements recommended by Defendant Cahan, Plaintiff at all times material to the allegations in this Complaint, reasonably believed that Defendant Cahan remained his lawyer, for the purpose of advising him and arranging for the protection of Plaintiff's assets, as Defendant Cahan had promised to do during his initial conversations with Plaintiff.

22. Based on the advice of Defendant Cahan, Plaintiff executed a Post-Nuptial Agreement, dated March 30th, 2011. In that agreement, Plaintiff agreed to convey unconditionally substantially all of his personal wealth to his wife. These assets included:

- a. Liquid funds in savings accounts, money market accounts and equity accounts valued at approximately \$1,400,000.00, with a credit back to Plaintiff in the amount of \$200,000.00;
- b. A beachside condominium valued at approximately one million dollars, free and clear of any mortgage;

- c. A beachside home valued at approximately \$3,000,000.00, encumbered with a mortgage of approximately \$700,000.00;
- d. Two (2) plots of land in a gated community in Alpharetta, Georgia, valued at approximately one million four-hundred thousand dollars;
- e. Two luxury automobiles, a BMW and an Aston Martin DB9.

23. In all, Plaintiff conveyed unconditionally to his wife assets having a total value of approximately six million dollars. Nearly all these assets had been acquired by Plaintiff before he entered into the marriage with his wife, such that it was highly unlikely that she would have any legal claims to these assets in the event of a dissolution of the marriage. All the assets were acquired as a result of the Plaintiff's earnings and employment. Plaintiff's wife did not make any money of her own and did not own any substantial assets before the marriage.

24. As consideration for this transfer, the Post-Nuptial Agreement recited that Plaintiff's wife would waive any and all claims she might have against income earned by Plaintiff for the three (3) year period following the execution of the agreement. However, at the time of the execution of the agreement, Plaintiff was not earning income, and he had no prospects or plans of any kind for earning income. In fact at this time, Plaintiff's business was insolvent.

25. The Post-Nuptial Agreement was a sham. Defendant Cahan created the agreement as a devise solely for the purpose of creating a vehicle for the transfer of Plaintiff's assets to his wife, and in furtherance of the scheme of asset protection conceived of and devised by Defendant Cahan, and recommended by him to Plaintiff.

26. Following the legal advice of Defendant Cahan, Plaintiff proceeded to transfer his assets unconditionally to his wife. Liquid assets transferred to Plaintiff's wife were deposited in an off shore account that was established with the assistance of Defendant Cahan.

27. Following the final transfer of Plaintiff's wealth, Plaintiff's wife commenced an action for the dissolution of marriage. During that action, Plaintiff's wife sought to enforce the Post-Nuptial Agreement and sought to retain all of the assets transferred by Plaintiff to her pursuant to that agreement.

28. Defendant defended this effort and sought through his legal counsel to have the Post-Nuptial Agreement rescinded and declared invalid as a sham.

29. On September 24, 2012, the court in the dissolution action entered an order enforcing the Post-Nuptial Agreement, finding the agreement to be valid and controlling as to the assets that were the subject of the agreement.

30. As a result of Defendant Cahan's scheme of asset protection, Plaintiff now has almost no assets or wealth. In addition to the marriage dissolution

proceeding commenced by Plaintiff's wife (which remains pending), Plaintiff's wife has called upon Plaintiff to indemnify and protect her pursuant to the provisions of the Post-Nuptial Agreement. Specifically, Plaintiff's wife has been sued by his judgment creditor for being the recipient of a fraudulent transfer of Plaintiff's assets. Plaintiff's judgment creditor has demanded that Plaintiff's wife satisfy the judgment held by this creditor against Plaintiff. As a result, Plaintiff's wife has retained attorneys to protect her newly acquired assets and has incurred substantial legal fees. Plaintiff's wife has demanded Plaintiff pay those legal fees pursuant to the indemnification provisions of the Post-Nuptial Agreement, by which Plaintiff was required to indemnify and hold harmless his wife from any and all obligations arising from the parties' ownership interest in the property conveyed pursuant to the agreement.

31. Furthermore, as of the time of the filing of this Complaint, Defendant B & P is still acting as counsel of record for Plaintiff in the New York Adversary Proceeding. However, Plaintiff's counsel in that action has informed him that she must withdraw and that Plaintiff must find a new lawyer. Because of the financial devastation inflicted upon Plaintiff by Defendant Cahan and the law firm, Plaintiff is without financial ability to retain a new lawyer to protect him. If Defendant B & P abandons Plaintiff as a client in the New York Adversary Proceeding, Plaintiff will be exposed to enormous liability for the damages sought by the trustee.

32. In addition to these substantial economic losses suffered by Plaintiff as a result of the negligent and reckless asset protection scheme recommended by Defendant Cahan, Plaintiff has suffered and will continue to suffer enormous anxiety, concern and mental suffering as a result of losing nearly all his wealth, and in being subjected to the legal demands and claims made upon him by his wife, all of which originate from the Post-Nuptial Agreement created and recommended by Defendant Cahan.

33. All conditions precedent to bringing this action against Defendants been performed, have occurred, or have been waived.

COUNT I
NEGLIGENCE OF DEFENDANT CAHAN

34. The allegations of paragraphs 1 through 33 as set forth above are realleged in full and incorporated herein by reference.

35. This is an action for negligence arising out of the legal malpractice of Defendant Cahan.

36. At all times material hereto, Defendant was retained or employed by Plaintiff and entered into an attorney-client relationship with Plaintiff to serve as his legal counsel and attorney to offer legal services, counseling and advisement. Specifically, Defendant Cahan agreed to advise and assist Plaintiff with legal means for protecting his assets from creditors.

37. At all times material hereto, Defendant Cahan owed Plaintiff a reasonable duty of care in representing, counseling and advising Plaintiff in a professional manner with diligence and due care in conformity with and under generally accepted practices.

38. At all times material hereto, Defendant Cahan breached a reasonable and acceptable duty of care owed to Plaintiff during the rendering of professional legal services to Plaintiff, by negligently advising and acting or failing to act on behalf of Plaintiff's best interests. Such negligent acts and omissions included, but were not limited to, the following:

- a. Defendant Cahan was negligent and reckless in recommending to Plaintiff a course of action that involved the transfer of his assets at time when judgment creditors were pursuing him for the recovery of judgments for money damages;
- b. Defendant Cahan was negligent and reckless in recommending to Plaintiff a scheme that required the complete and unconditional transfer of almost all of his wealth to his wife, solely for the purpose of avoiding creditors, and not to resolve any actual marital conflict;
- c. Defendant Cahan was negligent and practiced below accepted standards of professional care for recommending the unconditional transfer of assets to his wife, when there were alternative, less

dangerous and risky methods of titling Plaintiff's assets to protect them;

d. Defendant Cahan was negligent and reckless in failing to advise Plaintiff of the risks and dangers of the asset protection scheme that he recommended to Plaintiff, and by failing to recommend or present alternative, less risky means of protecting his assets.

39. Not only was Defendant Cahan's professional conduct negligent, certain actions alleged herein rose to the level of gross negligence in that it constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant Cahan.

40. As a direct and proximate result of the breach of the reasonable duty of care by Defendant Cahan, Plaintiff was damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment

interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

COUNT II
LIABILITY OF DEFENDANT B & K

41. The allegations contained in paragraphs 1 through 33, and paragraphs 35 through 39 as set forth above are re-alleged in full and incorporated herein by reference.

42. At all times material hereto, Defendant Cahan was acting individually and as an agent, servant, employee, partner and joint venturer, or one or more of them, of Defendant B & P, and was acting within the scope of his employment and with the permission of and consent of Defendant B & P. All of Defendant Cahan's conduct was in furtherance of the interest of Defendant B & P, and for its benefit.

43. All of the negligent acts and omissions alleged herein were committed by Defendant Cahan within the scope of his employment by Defendant B & P and if furtherance of the best interest of his employer, Defendant B & P. Defendant B & P is vicariously liable as the employer of Defendant Cahan for all negligent acts and omissions alleged herein under the doctrine of *respondeat superior*.

44. Furthermore, Defendant B & P is liable for its own negligence acts and omissions for:

- a. Failing to properly supervise Defendant Cahan, so as to prevent harm to the clients of the law firm;
- b. Failing perform a conflict of interest check so as to protect Plaintiff from Defendant Cahan acting as counsel to his wife, and contrary to Plaintiff's interest;
- c. By abandoning the client by withdrawing as his counsel in the New York Adversary Proceeding, leaving him without counsel and the ability to defend his own interest;

45. Not only was Defendant B & P's professional conduct negligent, certain actions alleged herein rose to the level of gross negligence in that it constituted a conscious disregard and indifference to the life, safety, and rights of its own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant B & P.

46. As a direct and proximate result of the breach of a reasonable duty of care by Defendant B & P, Plaintiff was damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

COUNT III
BREACH OF FIDUCIARY DUTY
Defendant Cahan

47. The allegations contained in paragraphs 1 through 33 as set forth above are realleged in full and incorporated herein by reference.

48. At all times material hereto, Defendant Cahan served as legal counsel for Plaintiff for the provision of legal services, counseling and advisement. Defendant Cahan owed a fiduciary duty of the utmost loyalty, good faith and candor in undertaking all necessary actions on behalf of and for the benefit of Plaintiff.

49. At all times material hereto, Defendant Cahan owed a fiduciary duty to Plaintiff to disclose any and all material matters bearing on his representation of Plaintiff. At all times material thereto Defendant had a fiduciary obligation to Plaintiff that formed the foundation of the attorney-client relationship.

50. At all times material hereto, Defendant Cahan breached his fiduciary duty owed to Plaintiff by among, but not limited to, the following:

- a. First agreeing to represent Plaintiff and advise him regarding the protection of his assets, and then changing the plan and representing Plaintiff's wife, even though she never sought his representation and advise;
- b. By representing Plaintiff's wife in a transaction that was repugnant to Plaintiff's financial interest;
- c. By failing to disclose to Plaintiff the extreme danger of embarking on the asset protection scheme that Defendant Cahan recommended;
- d. By acting in his own best interest and in the best interest of his law firm, instead of protecting and aiding the financial interest of his own client, Plaintiff James Greiff.

51. Defendant Cahan's breach of fiduciary duty rises to the level of intentional conduct with respect to certain actions alleged in this complaint, in that it constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon the a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant Cahan.

52. As a direct and proximate result of the breach of his fiduciary duty by Defendant Cahan, Plaintiff was damaged. Such damages include, but are not

limited to, the loss of nearly all of Plaintiff's wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant Cahan for all compensatory damages, together with pre-judgment interest, post-judgment interest, all costs of court incurred herein, and for such additional and further relief as this court deems just and equitable.

COUNT IV
BREACH OF FIDUCIARY DUTY
Defendant B & P

53. The allegations contained in paragraphs 1 through 32 as set forth above are re-alleged in full and incorporated herein by reference.

54. At all times material hereto, Defendants B &P served as legal counsel for Plaintiff for the provision of litigation services, counseling and advisement. Defendant B & P owed a fiduciary duty of the utmost loyalty, good faith and candor in undertaking all necessary actions on behalf of and for the benefit of Plaintiff.

55. At all times material hereto, Defendant B & P owed a fiduciary duty to Plaintiff to disclose any and all material matters bearing on its representation of

Plaintiff. At all times material thereto Defendant had a fiduciary obligation to Plaintiff that formed the foundation of the attorney-client relationship.

56. At all times material hereto, Defendant B & P breached its fiduciary duty owed to Plaintiff by among, but not limited to, the following:

e. Representing him as a client in the New York Adversary Proceeding and protecting his best interest in that proceeding, while permitting Defendant Cahan to represent his wife in a transaction that was repugnant to Plaintiff's financial well-being;

f. By failing to advise Plaintiff of the extreme conflict of interest that existed between representing him in the New York Adversary Proceeding, while representing his wife in a transaction that was repugnant to Plaintiff's financial well-being.

g. By allowing Defendant Cahan to represent Plaintiff's wife in a transaction that was repugnant to Plaintiff's financial interest;

h. By failing to disclose to Plaintiff the extreme danger of embarking on the asset protection scheme that Defendant Cahan recommended;

i. By acting in the law firm's best interest, instead of protecting and aiding the financial interest of his its client, Plaintiff James Greiff.

57. Defendant B & P's breach of fiduciary duty rises to the level of gross negligence in that certain of its actions alleged herein constituted a conscious disregard and indifference to the life, safety, and rights of his own client. Upon a proffer of evidence pursuant to section 768.71, Florida Statutes, Plaintiff will amend this Complaint to allege a claim for punitive damages against Defendant B & P.

58. As a direct and proximate result of the breach of their fiduciary duty by Defendants, Plaintiff has been and will be severely damaged. Such damages include, but are not limited to the loss of nearly all of his wealth, financial liabilities to his soon to be ex-wife, extreme mental pain, anxiety and anguish, attorneys fees incurred in having to resolve legal problems created by Defendant Cahan's negligence, pending liabilities in the New York Adversary Proceeding, pre-judgment interest, post-judgment interest, and other damages compensable by law.

WHEREFORE, Plaintiff demands judgment for against Defendant B & P for all compensatory damages, together with pre-judgment interest, post-judgment

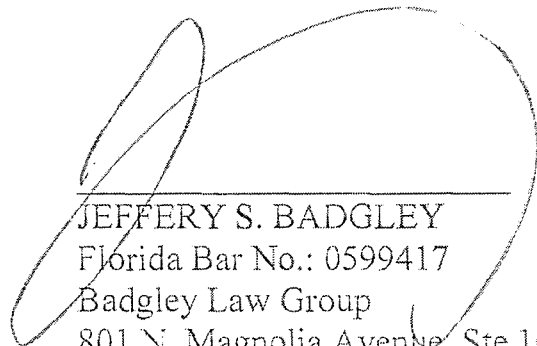
interest, all costs of court incurred herein, and for such additional and further relief as appears equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demand jury trial for all issues so triable by law.

Dated June 20th, 2013.

Respectfully submitted



JEFFERY S. BADGLEY
Florida Bar No.: 0599417
Badgley Law Group
801 N. Magnolia Avenue, Ste.101
Orlando, Fl. 32803
Tel: (407)-781-0420
Fax: (407)-781-0706
jbadgley@badgleylawgroup.com