

EXHIBIT

#13

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding

In re:

JAMES F. WALKER,

Debtor.

FILE COPY

MOTION FOR ALL REMEDIES AVAILABLE FOR DEBTOR'S COUNSEL, GARY J. ROTELLA'S BREACH OF HIS MANDATORY DISCLOSURE REQUIREMENTS PURSUANT TO 11 U.S.C. §329 AND BANKRUPTCY RULES 2014 AND 2016

COMES NOW, Mary Alice Gwynn, Esquire, an interested party, and files this Motion seeking all remedies available for Debtor's counsel, Gary J. Rotella, Esquire's, and/or Gary J. Rotella and Associates, P.A., breach of his mandatory disclosure requirements pursuant to 11 U.S.C. §329 and Bankruptcy Rules 2014 and 2016, and further states as follows:

1. On May 23, 2003, [DE #8] Gary J. Rotella, Esq., counsel for Debtor, filed a Disclosure of Compensation of Attorney for the Debtor, pursuant to 11 U.S.C. §329 and Bankruptcy Rule 2016. (Attached as Exhibit "A")
2. According to Mr. Rotella's Disclosure of Compensation of Attorney for the Debtor, he states he has agreed to accept \$2,500 as a retainer, to be paid by the Debtor's son, Christopher Walker, and that he has not agreed to share the above disclosed compensation with any other person, unless they are members and associates of his law firm. (Exhibit "A")
3. Mr. Rotella further states that, in return for the above disclosed fee, "I have agreed to render legal services for all aspects of the Bankruptcy case, including



- a. Analysis of debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs, and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed].

\$350.00 per hour for all aspects of the instant bankruptcy representation."

4. Two months later, on July 21, 2003, the Debtor's counsel entered into a new and separate compensation agreement, titled the Guarantee of Payment and Assignment of Proceeds, with the Debtor and Debtor's wife, Carol Ann Walker.

(Attached as Exhibit "B")

5. Mr. Rotella never disclosed the Guarantee of Payment and Assignment of Proceeds as a mandatory requirement pursuant to 11 U.S.C. §329 and Bankruptcy Rules 2014 and 2016.

6. Disclosure of Compensation, either before or after a bankruptcy case is filed, is mandatory and not permissive. See In re: Whaley, 282 B.R. 38 (M.D. Fla. August, 2002).

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If, in fact, Mr. Rotella would have abided by his disclosure obligations pursuant to Bankruptcy Rule 2016, the interested parties and creditors certainly would have vehemently objected to such an agreement. Mary Alice Gwynn and Arthur Niewirth, as prior counsel for Creditor, Eleanor Cole, previously brought to the Court's

attention that at least Forty Thousand Dollars (\$40,000) of Eleanor Cole's money, that was being held in the Holtzman Krinzman trust account, was used and transferred to the Bahamas to stop a foreclosure action on behalf of Debtor, James Walker and his wife, Carol Ann Walker; leaving Creditor, Cole, With an equitable interest in the Cat Cay property.

8. In addition, Debtor's counsel, Gary Rotella's failure to disclose as provided under Bankruptcy Rule 2016, the Guarantee of Payment and Assignment of Proceeds is unlawful because it allows fee splitting with other attorneys, such as Daniel Hughes, Esq. and Kevin Gleason, Esq., which is prohibited. Gary Rotella, Esquire, testified that his law firm had a joint defense agreement with Kevin Gleason, Esquire, who represents Carol Ann Walker (Debtor's wife), to preserve Carol Ann Walker's interest in the Cat Cay property.

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9. In fact, in the Guarantee of Payment in paragraph 8, it states "the law firm", meaning Gary Rotella's law firm (Gary Rotella and Associates, P.A.) "has advanced a concerted effort to protect Carol Ann's rights and interest in that certain real property located and described as Lot 32 on North Cat Cay...."

10. The Guarantee of Payment also breaches Bankruptcy Rule 2016, which prohibits the compensation for legal services rendered outside the Bankruptcy matter. For example, in the Guarantee of Payment and Assignment of Proceeds, it states:

a. Paragraph #2 - "Given the underlying issues, disputes and concerns in the matter styled Eleanor C. Cole v. James F. Walker, In the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, Case Number 89-21462(09) (hereinafter "Cole") independent and through her

lawyers, Mary Alice Gwynn (hereinafter "Gwynn") and Robert A. Angueira (hereinafter "Angueira"), together with the State Court Receiver, Linda J. Walden (hereinafter "Walden") and her lawyer H. Michael Muniz (hereinafter "Muniz"), the difficulties and problems arising from their collective failure to adhere to proper practice before both the United States Bankruptcy For the Southern District of Florida and Circuit Court of The Seventeenth Judicial Circuit, In and For Broward County, Florida, the scope and Law Firm's representation has been far more extensive and intensive and well beyond what was originally contemplated by either Law Firm or James F. Walker."

b. Paragraph #5 - "Law Firm believes that egregious improprieties have occurred in the Broward Civil Court Case in particular with respect to Emergency Motion for An Appointment of A Receiver and entry of Order On Emergency Motion for An Appointment of A Receiver and Amended Order on Plaintiff's Emergency Motion for An Appointment of A Receiver on January 9 and 10, 2003, respectively."

11. Mr. Rotella's testimony that he disclosed the new compensation Agreement to the U. S. Trustee's office is not sufficient, and will not assist him or correct his failure to disclose mandatory obligation to disclose to the Bankruptcy Court. According to the case In re: Whaley, id.:

"Congress imposed mandatory fee disclosure requirement to prevent overreaching by debtors' attorneys and to give interested parties the ability to evaluate the reasonableness of the fees paid."

12. The rational behind mandatory disclosure of an attorney's compensation is to

provide notice to all parties. In re: Whaley, id.

“Disclosure of attorney compensation provides notice to all parties in interest of payments made by the debtor and gives interested parties the opportunity to object to any unreasonable fees paid to any particular attorney.” [citing 11 U.S.C. §329 and Bankruptcy Rule 2016.]

“Duty to disclose extends not only to the initial payments received by the debtor’s attorney, but also to all undisclosed payments made to the attorney at any time, either before or after the case is filed.”



“Intentional failure of a debtor’s attorney to timely disclose fees received cannot later be cured by filing a statement of compensation, particularly after a party in interest, such as the Trustee, objects.”

13. As further support, in the case In re: Automend, Inc. 85 B.R. 173 (M.D.Fla. April, 1988), it states:

A “security interest obtained by debtor’s attorneys to guarantee their fees violated statute governing employment of professional persons if attorneys were employed without specific, affirmative order supported by appropriate disclosures and argument in support thereof.”

14. Since Debtor's counsel failed to abide by his mandatory disclosure of the Guarantee of Payment and Assignment of Proceeds, in violation of 11 U.S.C. §329 and Bankruptcy Rule 2016, and further failed to obtain an Order from the Bankruptcy Court approving the new compensation agreement, Debtor's counsel should be sanctioned.
15. As sanctions for Debtor's counsel's failure to make his mandatory disclosure pursuant to 11 U.S.C. §329 and Bankruptcy Rules 2016, the Court should order Mr. Rotella to disgorge his 50% interest that he obtained illegally through the undisclosed Guarantee of Payment Agreement entered into on July 21, 2003. The Court should further strike Debtor's right to receive any attorney fees from the

estate, or from any parties or creditors.

16. Attached as Exhibit "C" is a copy of Cole's letter indicating that what Gary Rotella was trying to do was limit his liability of not getting paid, by sanctioning all other parties to make sure that his fees are covered, in the event any portion of his Guarantee Payment Agreement should fail or Carol Ann Walker's interest should be lost.
17. In addition, Mr. Rotella, by entering into the Guarantee of Payment, actually admits that Carol Ann Walker's interest in the Cat Cay property is held as "tenant's in common". Otherwise, Mr. Rotella would not have accepted this Guarantee of Payment, that limits Carol Ann Walker's exposure to only her 50% interest.
18. Debtor's counsel's acceptance of Carol Ann Walker's 50% interest in the property as guaranteed of payment of his fees is in total contradiction of the assertions he has made to this Court and to the creditors. Mr. Rotella has held steadfast to his false assertions that the Cat Cay property is exempt.
19. The Bankruptcy Court should also impose sanctions on Debtor's counsel for failure to abide by the mandatory disclosure requirements under 11 U.S.C. §329 and Bankruptcy Rule 2014. Mr. Rotella also failed to disclose his previous representation of Debtor's brother, Robert Walker, in a Chapter 11 bankruptcy, which was later converted to Chapter 7 bankruptcy of Robert Walker's corporation. The Debtor is believed to have also held an interest or an office in this brother's corporation. Mr. Rotella has also failed to disclose that he previously represented Mr. Walker's son, Christopher Walker, in another bankruptcy Chapter 7 case. Lastly, Mr. Rotella failed to disclose his representation of Isabel Walker (wife of

Robert Walker) in various legal matters. Once again, Mr. Rotella failed to abide by the Bankruptcy Rule's mandatory disclosure requirements.

20. "Attorneys who breach that [sic] trust by failing to disclose compensation should suffer strict and quick consequences that could include the imposition of sanctions or the disgorgement of all fees paid in the case" or all security interest obtained in the case. See In re: Kisseberth, 273 F.3d 714 (6th Cir. 2001).
21. Proper and adequate notice is the **most important element** in all bankruptcy proceedings. In the context of an employment application, such notice, to be effective, requires disclosure. The disclosure must contain enough information as will reasonably convey the information required by 11 U.S.C. §327 and §329 and Bankruptcy Rules 2014 and 2016. It is, therefore, incumbent upon the Debtor and his attorneys to make as full a disclosure as would normally be expected in an employment application to the Court. In re: Automend, Inc. pg. 7.
22. "The Court may order the disgorgement of fees when the disclosure requirements are not met, regardless of whether the fees are excessive. In re: Park-Helen Corp., 63 F.3d 877 (9th Cir. 1995) cert. denied, 516 U.S. 1049 (1996)
23. The Court should impose additional sanctions on Debtor's counsel for his failure to provide proper and mandatory disclose under 11 U.S.C. §329 and Bankruptcy Rules 2014 and 2016, in the nature of striking all of debtor's counsel's previous and present motions for sanctions against any parties and/or creditors.
24. As additional authority in support of this Motion For All Remedies Available for Debtor's counsel's failure to make the mandatory disclosure requirements pursuant to 11 U.S.C. §329 and Bankruptcy Rules.2014 and 2016, undersigned counsel lists

the following:

- A. In re: Waldorf, Slip Copy, 2005 WL 419714 (Bankr.M.D.Fla., Feb. 04, 2005)(No. 02-14899)
- B. In re: Adam Furniture Industires, Inc. 158 B.R. 291, 24 Bankr.Ct.Dec. 935 (Bankr. S.D.Ga., Aug 17, 1993)(NO. 92-60200)

WHEREFORE, Mary Alice Gwynn, as an interested party, requests this Honorable Court to Order that Gary J. Rotella, Esquire, individually, and as agent for Gary J. Rotella, P.A., Gary J. Rotella and Associates, and/or any association, company, corporation or other entity for which Gary J. Rotella has an interest in,

- A. immediately disgorge his interest in the Cat Cay property; *ink*
- B. relinquish any rights to the Cat Cay property;
- C. extinguish any and all rights to seek attorney's fees and costs in this bankruptcy case from either the estate, or any of the parties and/or creditors.

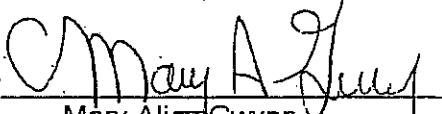
Ms. Gwynn also requests the Court to strike any past or present rulings awarding Debtor's counsel sanctions against any parties or creditors.

Ms. Gwynn further requests this Court to award attorney's fees in costs as sanctions pertaining to this motion, and the defense of any/all of the sanctions motions previously heard by this Court; and for other and further relief the Court deems appropriate.

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida, and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by facsimile and/or U.S. Mail this 27 day of May, 2005, to all parties listed on the Service List.

MARY ALICE GWYNN, P.A.
805 George Bush Boulevard
Delray Beach, FL 33483
Telephone: (561) 330-0633
Facsimile: (561) 330-8778

By 
Mary Alice Gwynn
Florida Bar No. 879584

Service List

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Bruce Kravitz, Esquire
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West Palm Beach, FL 33406

UNITED STATES BANKRUPTCY COURT
Southern District of Florida
West Palm Beach

In re: James F Walker
339-30-1939
Debtor

Case No. 03-32158
Chapter 7

DISCLOSURE OF COMPENSATION OF ATTORNEY
FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$	2,500.00
Prior to the filing of this statement I have received	\$	0.00
Balance Due	\$	2,500.00

2. The source of compensation paid to me was:

- Debtor
- Other (specify)

3. The source of compensation to be paid to me is:

- Debtor
- Other (specify) Debtor's Son, Christopher Walker

4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a) Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b) Preparation and filing of any petition, schedules, statement of affairs, and plan which may be required;
- c) Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereon;
- d) [Other provisions as needed]
\$350.00 per hour for all aspects of the instant bankruptcy representation.

6. By agreement with the debtor(s) the above disclosed fee does not include the following services:

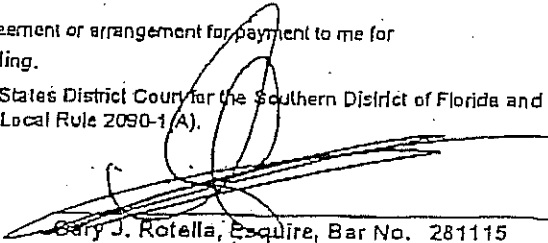
2003 MAY 27 AM 9:55
CLERK OF DISTRICT COURT
FT LAUDERDALE

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

Dated: 5/23/03


Gary J. Rotella, Esquire, Bar No. 281115

New River Center, Suite 1850
200 East Las Olas Boulevard
Fort Lauderdale, FL 33301-2276

GUARANTEE OF PAYMENT AND ASSIGNMENT OF PROCEEDS

1. Gary J. Rotella & Associates, P.A. (hereinafter "Law Firm") represents James F. Walker having filed a Voluntary Chapter 7 Petition under Title 11 of the United States Bankruptcy Code with the Clerk of the United States Bankruptcy Court of the Southern District of Florida on James F. Walker's behalf on April 25, 2003 the same having been assigned Case Number 03-32158-BKC-PGH and Bankruptcy Court Judge Paul G. Hyman, Jr.

2. Given the underlying issues, disputes and concerns in the matter styled Eleanor C. Cole v. James F. Walker, In The Circuit Court Of The Seventeenth Judicial Circuit, In And For Broward County, Florida, Case Number 89-21462 (09) (hereinafter "Broward Civil Court Case") together with the manifestations of disdain by Eleanor C. Cole (hereinafter "Cole") independent and through her lawyers, Mary Alice Gwynn (hereinafter "Gwynn") and Robert A. Angueira (hereinafter "Angueira"), together with the State Court Receiver, Linda J. Walden (hereinafter "Walden") and her lawyer H. Michael Munitz (hereinafter "Munitz"), the difficulties and problems arising from their collective failure to adhere to proper practice before both the United States Bankruptcy Court For The Southern District Of Florida and Circuit Court Of The Seventeenth Judicial Circuit, In And For Broward County, Florida, the scope of Law Firm's representation has been far more extensive and intensive and well beyond what was originally contemplated by either Law Firm or James F. Walker.

3. Law Firm's representation of James F. Walker has already resulted in the filing of Motion To Resolve The Report Of Disputed Election And To Ratify The Election Of Linda J. Walden As Permanent Chapter 7 Trustee and Debtor, James F. Walker's Objection To Motion To Resolve The Report Of Disputed Election And To Ratify The Election Of Linda J. Walden As Permanent Chapter 7 Trustee And Request For Determination Of Contempt And Award Of



Sanctions as well as Debtor, James F. Walker's Emergency Motion For Turnover Pursuant To 11 U.S.C. §542, Debtor, James F. Walker's Motion For Entry Of An Order To Show Cause, Finding Of Contempt And Award Of Sanctions and as of this date Debtor, James F. Walker's Emergency Motion To Stay Sale Of Debtor's Interest In Real Property In Violation Of 11 U.S.C. §362, B.R. 6004-1 And Local Rule 6004-1.

4. The representation of James F. Walker and/or other members of his family necessitates the filing of a Notice Of Appeal with the Clerk of the United States District Court For The Southern District Of Florida with respect to the Order Resolving Election And Ratifying The Election Of Linda Walden As Permanent Chapter 7 Trustee in addition to involvement in the matter styled *In The Matter Of Lor Number 32 On North Car Cay In The Bimini Chain Of Islands In The Commonwealth Of The Bahamas and In The Matter Of A Judgment Of The Supreme Court Entered By The Plaintiff Against The First Defendant On The 3rd Day Of December, 1996 In An Action The Short Reference To The Record Whereof Is Common Law Action / 1990 / Number 1355 Between Eleanor C. Cole (Plaintiff Herein) As Plaintiff And James F. Walker (First Defendant Herein) As Defendant And In The Matter Of The Supreme Court Act, 1996, Section 63, Sub-Section 2 And In The Matter Of The Rules Of The Supreme Court, Order 31 Between Eleanor C. Cole and James F. Walker And Carol Ann Walker, In The Supreme Court, Commonwealth Of The Bahamas, No. 286.*

5. Law Firm believes that egregious improprieties have occurred in the Broward Civil Court Case in particular with respect to Emergency Motion For An Appointment Of A Receiver and entry of Order On Emergency Motion For An Appointment Of A Receiver and Amended Order On Plaintiff's Emergency Motion For An Appointment Of A Receiver on January 9 and 10, 2003 respectively.

6. Consequently, Law Firm contemplates the necessity to prosecute Defendant's Motion To Dissolve Ex-Parte Order On Plaintiff's Emergency Motion For An Appointment Of Receiver as well as a separate Motion For Contempt And Sanctions to be filed against Cole and the lawyers referenced hereinabove within the Broward Civil Court Case. Law Firm has interviewed M. Daniel Hughes, Esquire, for the purpose of representing James F. Walker in the Broward Civil Court Case and arguing these motions before the Honorable Robert L. Andrews in light of Cole's pending Motion To Disqualify Barry G. Roderman & Associates, P.A. and Law Firm has recommended to James F. Walker that he retain Mr. Hughes immediately for this purpose.

7. As a predicate to the undertakings contemplated in the preceding two (2) Paragraphs, Law Firm has ordered the Trial transcript of the testimony of Walden before Judge Hyman heard on Wednesday, July 9, 2003. Moreover, Law Firm has scheduled the taking of the Depositions Duces Tecum of Muniz and the United States Postal Service for Tuesday, July 22, 2003 at 10:00 and 11:00 a.m. respectively. Subpoenas Duces Tecum In A Bankruptcy Proceeding were served on Muniz on Monday, July 14, 2003 and on the Postmaster on Wednesday, July 16, 2003. Cole has intentionally and wrongfully scheduled Law Firm's deposition for the same date and time as Law Firm previously scheduled Muniz's deposition, necessitating the filing of a Motion For Protective Order by Law Firm.

8. Law Firm has advanced a concerted effort to protect and preserve Carol Ann Walker's Glewa
rights and interests in that certain real property located at and described as Lot Number 32 on North Cat Cay situate in the Bimini range of cays in the Commonwealth of The Bahamas (hereinafter "Cat Cay Property").

9. With respect to the preceding Paragraph, Law Firm has filed and served Debtor, James F. Walker's Emergency Motion To Stay Sale Of Debtor's Interest In Real Property In Violation Of 11 U.S.C. §362, B.R. 6004-1 And Local Rule 6004-1. The hearing on same took place on Thursday, July 17, 2003 at 1:00 p.m. and an Order was entered by Judge Hyman staying the sale.

10. Given the necessity for the extensive rendition of these legal services and James F. Walker's financial inability to pay for same, Carol Ann Walker hereby agrees to guarantee and pay Law Firm all indebtedness incurred by Law Firm on behalf of James F. Walker as recited herein.

11. Carol Ann Walker recognizes James F. Walker's requirements and needs for the rendition of services by Law Firm and for it to continue to represent James F. Walker under these circumstances whereby it continues to render legal services on his behalf without contemporaneous payment.

12. Carol Ann Walker acknowledges that Law Firm shall only continue to represent James F. Walker if she, Carol Ann Walker, agrees to be jointly and severally responsible and liable, together with James F. Walker, for the indebtedness incurred on his behalf by Law Firm and guarantees payment of all Law Firm's Statements For Rendition Of Services for attorneys fees and costs, including the amount presently owed to Law Firm.

13. Carol Ann Walker acknowledges receipt of the Aforementioned Disclosure Of Compensation dated July 15, 2003, furnished to the Office Of The United States Trustee and appended hereto as Exhibit "A".

14. As security for Carol Ann Walker's promise to pay Law Firm as recited herein, she hereby assigns to Law Firm all of her rights to proceeds from any sale of her interest in the Cat Cay Property which she purportedly owns, together with James F. Walker, as a fifty percent (50%) tenant

in common, up to the total amount of attorneys' fees and costs incurred by Law Firm in representation of James F. Walker at the time of the sale of the Cat Cay property. Carol Ann Walker presently has the right to receive proceeds from the sale of the Cat Cay Property ordered by the Supreme Court, Commonwealth Of The Bahamas in the matter as styled at Paragraph 4 hereinabove and the same is hereby assigned to Law Firm towards payment of past, current and future attorneys' fees and costs incurred by Law Firm on behalf of James F. Walker.

15. Carol Ann Walker promises that should Law Firm's representation of James F. Walker conclude, prior to the sale of the Cat Cay Property, then she will execute a Promissory Note and Mortgage against the Cat Cay Property in favor of Law Firm in the amount then owed and contemplated to be owed by James F. Walker to Law Firm for attorneys' fees and costs.

16. Law Firm agrees that Carol Ann Walker's financial liability to it on account of the rendition of services on behalf of James F. Walker shall be limited to her interest in the Cat Cay Property and Law Firm shall not look to Carol Ann Walker for any amount beyond either her fifty percent (50%) interest in the Cat Cay property or proceeds therefrom.

17. Carol Ann Walker agrees to execute any documents necessary as requested by Law Firm in order to create a security interest in favor of Law Firm in the Cat Cay Property as well as any other documents of any nature whatsoever which may be required by Law Firm in order to protect its rights and interests.

18. Carol Ann Walker further agrees that if Law Firm's representation of James F. Walker is ongoing, subsequent to the sale of the Cat Cay Property, that the repository of the proceeds of sale from her fifty percent (50%) interest, either Sidney S. Collie, Esquire, Sidney S. Collie & Co., #20 Parliament Street, Post Office Box N9481, Nassau, Bahamas or any other designated repository

is authorized by this Guarantee Of Payment And Assignment Of Proceeds to pay Law Firm the amount then owed and contemplated to be incurred by Law Firm on behalf of James F. Walker to Law Firm as and for attorneys' fees and costs without further notice or instruction by Carol Ann Walker and upon presentation of Law Firm's Statement(s) For Rendition Of Service to said repository.

19. Carol Ann Walker agrees that this document may be recorded in the Bahamas and in the United States of America.

20. If, at any time, it becomes necessary to commence litigation arising from Carol Ann Walker's failure to comply with the terms of this Guarantee Of Payment And Assignment Of Proceeds or to consent to the validity of the Guarantee Of Payment And Assignment Of Proceeds or the enforcement thereof, then Carol Ann Walker shall be responsible for all reasonable attorneys' fees and costs incurred by Law Firm.

21. This Guarantee Of Payment And Assignment Of Proceeds shall be binding upon Carol Ann Walker's heirs, legal representatives, and assigns.


22. By his execution below, James F. Walker acknowledges and agrees to the terms as set forth in the instant Guarantee Of Payment And Assignment Of Proceeds.

DATED this 21st day of July, 2003.

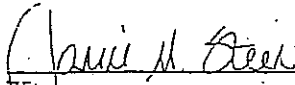
Janine H. Steen
Witness

Janine H. Steen
Printed Name

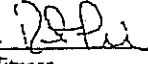
By: Carol Ann Walker
Carol Ann Walker



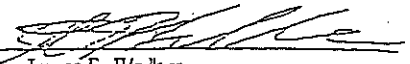
Witness
ROBERT PRICE
Printed Name



Witness
Janine M. Steen
Printed Name



Witness
ROBERT PRICE
Printed Name

By: 

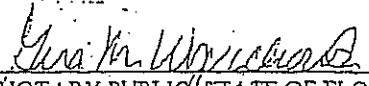
James F. Walker

STATE OF FLORIDA)
)SS.
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State
aforesaid to take acknowledgments, personally appeared Carol Ann Walker, to me known or who
produced _____ as identification, to be the person
described in and who executed the foregoing instrument and acknowledged before me that he
executed the same.

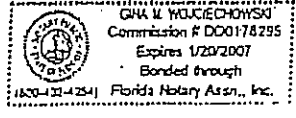
WITNESS my hand and official seal in the County and State last aforesaid this 21st day of
July, 2003.

My Commission Expires: _____



NOTARY PUBLIC/STATE OF FLORIDA

GINA M. WOJCIENOWSKI
Printed Name



STATE OF FLORIDA)
)SS.
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid to take acknowledgments, personally appeared James F. Walker, to me known or who produced _____ as identification, to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 21st day of July, 2003.

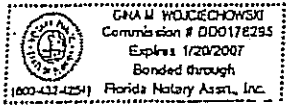
My Commission Expires: _____

Gina M. Wojciechowski

NOTARY PUBLIC, STATE OF FLORIDA

Gina M. Wojciechowski

Printed Name



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
THE FORUM BUILDING, EIGHTH FLOOR
1675 PALM BEACH LAKES BOULEVARD
WEST PALM BEACH, FLORIDA, 33401

5-16-05

TO THE BANKRUPTCY COURT

CASE# 03-32158 -BKC-PGH-

RE: TAKE JUDICIAL NOTICE OF THE FOLLOWING
NOTICE OF REHEARING AND CONSIDERATION

I read, in the appeal filed by the removed trustee, that the criminal debtor James Walker has no position To remove a trustee especially since the estate has benefited by this trustee's efforts. It now becomes Clear that the debtor and his counsel must remove the creditors to allow the criminal debtor Walker to Claim a position for removal.

The next logical step expected by the Walker crew would be for debtor's counsel to put in a claim Against the Cat Cay property, take over James Walker's stolen 1/2, then Gary Rotella will now be given Sanctions against everyone, with these funds going to criminal Walker as cash for the property. This Will successfully legitimize criminal Walker's stolen money and the property he bought with it.

At any time the debtor could have allowed the court to sell this Cat Cay property. This case should Have been over in 90 days. Instead some 600 filings have been made. Lawyers are going after Lawyers for money.

Since I filed notice of appeal denying my position in the Bankruptcy Proceeding and striking my claim, The judge immediately changed his position and now wants to have a new hearing. The judge knows He is wrong. I am the victim here. James Walker stole \$250,000.00 from me and now his counsel, Gary Rotella, has an agreement with the debtor and his wife. Rotella now owns 1/2 of the asset that Walker holds in the Bahamas.

The creditors elected a trustee who was very aggressive; this trustee brought assets into this no asset Estate. Now the group of bankruptcy trustees who are associated with James Walker have to be Protected from disclosure.

After my husband's death, I decided to invest the \$250,000.00 with my then friend and neighbor, James F. Walker. About 1988 Walker instructed me to put the funds into his attorneys' Holtzman And Krinzman Trust Account. Holtzman wrote checks from this account per Walker's instructions. This investment was to go into income producing property owned by James Walker on the 17th Street Causeway in Ft. Lauderdale.

When I asked Walker for proof that I had an ownership interest in the 17th Street property, he could Not show where my money went. I then filed a civil suit and went to the Broward County State Attorney. It was learned that Walker always used lawyer's trust accounts through which to pass Money. Walker was charged and convicted of Grand Theft, sentenced to 5 years in prison, given Early release and is now on probation. None of the lawyers was charged.

It was later learned that Walker spent most of my money for himself and his wife to buy the property On CatCay in the Bahamas, just off the coast of Florida, about 50 miles east of Miami. The Broward

EXHIBIT
C
Temp No. 5706

State Attorney's office has always known this. Ms. Widmer, the ASA, and the wife of Berry Rodderman (Walker's criminal lawyer) are very best friends.

Though Walker was convicted as a felon, he was never required to surrender any of his assets and was only required to pay me \$250.00 a month as restitution.

After years of attempting to recover all my funds in the Bahamas from the Walkers, in 2002 I sought Action here in Florida, hiring a lawyer who filed suit for me against Walker in Broward County. That judge appointed a State Receiver who uncovered additional assets Walker had managed to hide From the Criminal Court.

On April 25, 2003, just as the state court was to place all these assets under the control of the receiver, James Walker filed a "no asset" Chapter 7 bankruptcy that stopped all state court action. I was Named as the largest creditor.

The receivership case (Linda Walden was the receiver) was never mentioned on the bankruptcy Schedule filed by the criminal debtor Walker. The trustee assigned to this case, Deborah Menotte, Took no action to insure the property in Cat Cay or to address the no asset claim. Also, Ms. Menotte Had dealings with James Walker and his company, Delray Chemical Co., between 1990 and 1993.

Believing that Walker was about to outmaneuver trustee Menotte, I asked if we could have a Different trustee. I was told that the creditors could elect their own trustee. I contacted a second Creditor who agreed to an election. We elected the state appointed receiver because she had the most Knowledge of the Walker assets. The assigned trustee Menotte had never disclosed her prior dealing With the Walkers while she was employed with attorneys Danny and Michael Bakst, creating a Conflict. (See enclosed letter).

Before this elected trustee, Linda Walden, was ratified, Walker and counsel on July 3, 2003 Represented to the criminal court that he needed to travel to the Bahamas to sell his property in Cat Cay for the purpose of restitution, that the current assigned trustee Menotte had already Partitioned the property and was putting it up for sale. Walker was given permission to travel for the Purpose of selling his Cat Cay property. Menotte had never insured the asset. (Transcript of Criminal hearing for travel enclosed.)

The elected trustee was ratified despite a major effort by the debtor's counsel, Gary Rotella, to block The ratification. The newly elected trustee went to the Bahamas, blocked the sham sale and convinced The Bahamian Supreme Court to allow jurisdiction of the Cat Cay asset to be under the control of the US Bankruptcy Court. The asset was brought into the estate.

The debtor's bankruptcy counsel represented to the bankruptcy court that both he and his client, the Debtor, really went to the Bahamas to stop the sale. This was the complete opposite of what was Represented to the criminal court.

On July 21, 2003, at the same time the Cat Cay sale was to go through, the debtor's counsel, Gary Rotella, took 1/2 of the Cat Cay property for himself. This agreement was never disclosed but was Found by the elected trustee, Linda Walden, during discovery. (Agreement enclosed)

It was discovered during the receivership that \$40,000.00 of my money went to James Walker's Wife, Carol Ann Walker, for her alleged part ownership share of the Cat Cay property.

Debtor's counsel is profiting from the successful theft of my funds by James Walker.

In 2004 the elected trustee forced Walker to sign over to her his property rights for Cat Cay. The Trustee could now sell this asset. The debtor then immediately filed to remove the ELECTED

Trustee, claiming that she knew the creditors before receivership. This removal hearing was very flawed and the elected trustee was not allowed discovery.

It was established that the elected trustee brought assets into the bankruptcy estate, and did nothing to harm the estate. However, as learned in the receiver case, many of James Walker's assets have touched lawyers who are now bankruptcy trustees.

The elected trustee was removed despite serious questions concerning if anyone had ever identified the documents produced by the debtor's witness. Exhibit KKK remains in question. I read portions of the transcript.

Substantial new evidence was discovered by the elected trustee, prior to removal, that James Walker has assets in Cincinnati, Ohio. (See enclosed Sales Agreement.) During this time period James Walker sold the Cloverleaf Tract at 16970 NW NY Ave, Miami, FL. He sold this property on or about November 6, 1991 for \$2,162,700. These were never disclosed to the Criminal Court.

The debtor has now removed the last 2 creditors because his counsel claimed they were no shows for a deposition. I have no knowledge of ever being subpoenaed for a deposition, nor has my lawyer informed me of such.

Because of my substantial medical issues, I am seldom able to speak or even be available to speak. The judge in this bankruptcy has seen me one time. I was in a wheel chair, could not walk, and could not wear my prosthetic nose because of infection. The debtor's counsel has been representing to the judge that I am making up my condition. The judge has done nothing for me. (My medical records are available if requested.)

The attorney I hired had virtually no contact with me. He was very intimidated by debtor's counsel who continuously threatened him with bar complaints and sanctions if he attempted to do anything for me. My attorney abruptly withdrew.

My claim came from the criminal court 14 years ago. There is nothing I can add to this bankruptcy. At any time Walker could have turned over this Cat Cay asset. He instead chose to fund litigation to retain his stolen assets.

This entire bankruptcy case is in appeal. The debtor and his counsel are attempting to legitimize the debtor's stolen property. My entire claim has been struck and I have been sanctioned \$237,000.00 after my lawyer was allowed to withdraw. I first learned of this withdrawal later that day and for the first time.

Walker will now go to the criminal court to have his probation dropped, and then claim he owes nothing any longer to me because of the sanction. Walker will have managed to keep his stolen gains.

Respectfully submitted,

Eleanor C. Cole

Eleanor C. Cole

EXHIBIT

#14

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Judge Paul G. Hyman, Jr.

In Re:

Case No. 03-32158-BKC-PGH

JAMES F. WALKER,
Debtor.

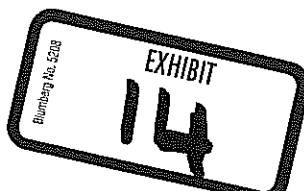
EXCERPT OF PROCEEDINGS - JUDGE'S RULING
VARIOUS MOTIONS

July 1, 2005

The above entitled cause came on for hearing before the HONORABLE PAUL G. HYMAN, JR., one of the Judges in the UNITED STATES BANKRUPTCY COURT, in and for the SOUTHERN DISTRICT OF FLORIDA, at 1675 Palm Beach Lakes Boulevard, 8th Floor, West Palm Beach, Palm Beach County, Florida, on July 1, 2005, commencing on or about 1:00 p.m., and the following proceedings were had:

COPY

Reported by: Jacquelyn Ann Jones, Court Reporter
OUELLETTE & MAULDIN COURT REPORTERS
(305) 358-8875



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APPEARANCES:

GARY J. ROTELLA & ASSOCIATES, P.A.
By: GARY J. ROTELLA, ESQUIRE, and
JAY L. FARROW, ESQUIRE
On behalf of the Debtor

KEVIN C. GLEASON, P.A.
By: KEVIN C. GLEASON, ESQUIRE
On behalf of Gary J. Rotella & Associates

MARY ALICE GWYNN, P.A.
By: MARY ALICE GWYNN, ESQUIRE
On behalf of Herself

HUGHES HUBBARD & REED, LLP
By: AVIVA L. WERNICK, ESQUIRE
On behalf of Susan Lundborg

DZIKOWSKI & WALSH
By: JOHN L. WALSH, ESQUIRE
On behalf of Chapter 7 Trustee Patricia Dzikowski

UNITED STATES TRUSTEE'S OFFICE
By: HEIDI FEINMAN, ESQUIRE

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THE COURT: Thank you. This matter has come before the Court upon a motion for all remedies available, et cetera, and a joinder thereof.

The first issue is the standing. As the parties have noted, the Court has an independent role to deal with whether appropriate disclosure has been made. The Court considers the motion and the joinder as the parties' efforts to bring an alleged failure to disclose to the Court's attention, and the Court considers the motions in light of a, really just an attempt to bring such alleged violations to the attention of the Court as "friends of the Court." And I mean that in the legal sense, obviously.

There is no question that the existence of a guarantee by the debtor's spouse was required to be disclosed. It was referenced in a disclosure, but the disclosure was not timely filed, as admitted by Mr. Gleason and as reflected by the court record.

The Court finds that the guarantee was not required to be attached to the disclosure, that the disclosure, once it was filed was adequate, that the parties did have knowledge of the guarantee prior to its filing with the court. In fact, the Court has an independent recollection of early in the case there being

1 references to this guarantee.

2 Having said that, it does not excuse Mr.
3 Rotella from not having timely filed the motion -- or not
4 having timely filed the notice. He should have timely
5 filed the notice. He didn't do it.

6 The question then is, what is the appropriate
7 remedy. The parties seek severe remedies, disgorgement
8 of fees, posting of a bond, temporary restraining order,
9 or a restraining order from attorneys from imposing a
10 lien on Bahamian property, et cetera. The Court finds
11 those types of remedies to be extreme and unwarranted in
12 this case.

13 First of all, disgorgement of fees would be
14 applicable only when the fees were paid from an asset of
15 the estate. Although the disgorgement cases relate
16 generally to a Chapter 11 case where Chapter 11 attorneys
17 have received payment from the estate, and they failed to
18 make an appropriate disclosure, and subsequently that
19 disclosure is discovered, and the Court has a remedy,
20 makes the attorney disgorge the fees back to the estate.

21 There was no money paid from the estate in this
22 case. In fact, the only moneys have been paid from the
23 debtor's son or through the guarantee of the debtor's
24 spouse. So disgorgement is not appropriate.

25 The Court does not have any sort of

1 jurisdiction to restrain Mr. Lockhart from pursuing any
2 claim in nonestate property, therefore, that remedy is
3 inappropriate. As far as posting a bond, similar, the
4 Court has no jurisdiction to require Mr. Lockhart to do
5 that. He has not appeared before this Court, he has not
6 filed any sort of notice of appearance before this Court.

7 The Court also finds that there really has been
8 no harm to the estate for the untimely disclosure. The
9 fact that there was an alleged omission within the
10 guarantee as to the debtor's interest in the property,
11 frankly, is not material. The Court ruled on the issue
12 concerning the debtor's interest in that Bahamian
13 property. Part of the objection that was originally
14 raised was that Mr. Rotella, on the record at the 341
15 meeting, asserted he was not going to assert that the
16 property was exempt, and then subsequently did assert
17 that it was exempt.

18 The Court didn't need to reach any of those
19 issues whether it's an admission as to the debtor, and
20 that's because it was clear to the Court that the debtor
21 was not entitled to exempt the property, and whatever the
22 small significance of the alleged omission in the
23 guarantee was, it would have been totally immaterial
24 to the Court's ruling on the underlying objection to the
25 exemption.

1 As to the fee sharing issue, there's no
2 testimony that there is a sharing of fees. The only
3 evidence the Court has is that Mr. Rotella paid, or is
4 obligated to pay either Mr. Gleason's or Mr. Lockhart's
5 fees. If there is a fee sharing agreement, Mr. Rotella
6 is under an existing obligation under the rules to file
7 such an agreement or notice of an agreement with the
8 Court and he's -- I'll reaffirm that obligation, but
9 there is no evidence before the Court that there is any
10 fee sharing agreement. And frankly, Mr. Gleason's
11 characterization of the fee -- the history of the fee
12 sharing requirement is an accurate one. It goes back to
13 referral fees, back under the old act. And there is no
14 evidence that there is any such situation here.

15 Therefore, I will deny the motion and the
16 joinder. I will deny any sanctions as to Mr. Rotella --
17 against Mr. Rotella, because although he did not timely
18 file the disclosures, I find that there's no evidence
19 that he intentionally did not disclose it, and even if he
20 did, there was no harm to the parties or to the estate by
21 failure to timely file the disclosures. I will deny
22 Mr. Gleason's request for sanctions against the movants,
23 since I did find that there was an untimely filing of the
24 notice of disclosure by Mr. Rotella.

25 You want to prepare the order?

1 MR. FARROW: Yes, Your Honor.

2 There's actually one other issue. Last night
3 around 5:00 we received two joinders, one on behalf of
4 Eleanor Cole and --

5 THE COURT: I'll deny the other motions, the
6 other joinders -- thank you.

7 MR. FARROW: Thank you, Your Honor.

8 THE COURT: -- by Mr. Kravitz and Ms. Cole.

9 MS. GWYNN: Your Honor, can we request on the
10 record before Mr. Rotella and Mr. Farrow that before he
11 submits the order that he also submits to Ms. Wernick and
12 myself a copy of the proposed order?

13 THE COURT: Sure. Absolutely. That's common
14 courtesy.

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MR. FARROW: Yes, Your Honor.

(The proceedings were concluded.)

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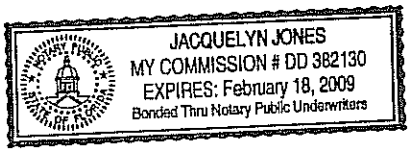
C E R T I F I C A T E

The State of Florida)
County of Palm Beach)

I, JACQUELYN ANN JONES, Court Reporter, certify that I was authorized to and did stenographically report the foregoing excerpt of hearing; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

In witness whereof I have hereunto set my hand and seal this 7th day of July, 2005.



Jacquelyn Jones
JACQUELYN ANN JONES

Commission No. CC 995956
Expires Feb 18, 2005

EXHIBIT

#15

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding

In re:

JAMES F. WALKER,

Debtor.

_____ /

**MOTION TO COMPEL INVESTIGATION BY TRUSTEE AND MOTION TO
TAKE ACTION AGAINST THE LAW FIRM OF FERRELL, P.A., GARY
ROTELLA, ESQUIRE, AND GARY J. ROTELLA & ASSOCIATES, P.A.**

COMES NOW, Mary Alice Gwynn, prior counsel for Judgment Creditor Eleanor Cole and Cole's present counsel in pursuing this investigation into the serious conflict of interest with the Ferrell Firm, that has damaged Creditor, Cole, throughout the entire proceeding. Cole files this Motion to Compel an Investigation by the Trustee, and Motion to Take Action Against Ferrell, P.A., Gary J. Rotella, Esq., Gary J. Rotella and Associates, P.A., for covertly covering up this known conflict, with the intent to deceive the Creditors. Cole requests the Court to compel the Trustee to investigate the following allegations:

1. Attached as Exhibit #1 is an Order from the Bankruptcy Court dated August 8, 2003, approving the employment of Ferrell, P.A. In the Court's Order, the Court states that the Ferrell firm "**hold[s] no interest adverse to the estate** in the matters upon which they are engaged, that Francis L. Carter and Ferrell Schultz Carter Zumpano & Fertel, P.A., are disinterested persons as required by 11 U.S.C. §327(a), and have disclosed any connections with parties set forth in Bankruptcy Rule 2014, and that their employment is necessary would be in the interest of the estate..." Francis

Carter, Esq. was lead counsel with Gary Murphree, Esq. Both Carter and Murphree were partners in the Ferrell law firm at the time they agreed to represent the Creditor-elected Trustee, Linda Walden.

2. It has recently been discovered that the firm of Ferrell, P.A., in violation of both the Bankruptcy Rules and the Rules of Professional Conduct regulating the Florida Bar, failed to make the following disclosures:
 - a. The main partner in the Ferrell Law firm, who represented the Creditor-elected Trustee, Linda Walden, was also the President of the Board of Directors of the Cat Cay Yacht Club.
 - b. Milton Ferrell, Esq. was also the President of the Cat Cay Yacht Club at the same time Eleanor Cole commenced legal action in the Bahamas against the Cat Cay property owned by the Debtor. The Cat Cay Yacht Club was also a Creditor in this Bankruptcy proceeding. The Cat Cay Yacht Club and Association is the quasi-governmental and legislative body, that controls all property on Cat Cay island, or at least the Debtor's property, **the main disclosed asset in the Bankruptcy estate**.
 - c. The firm of Ferrell, P.A., and their Bahamian counter-parts, undertook legal representation of the Cat Cay Yacht Club. Attached as Exhibit #2, is a copy of the Ferrell, P.A. stationary, which shows offices in Nassau, Bahamas.
 - d. The above conflicts prevented the Ferrell firm from aggressively pursuing the Cat Cay property, the same property that the Ferrell Firm previously controlled through Milton Ferrell's previous undisclosed position with the

Club.

3. Ferrell's failure to disclose the above conflicts prevented the firm from pursuing rent from the Cat Cay Yacht Club employees, who were living there on the Walker property, which was discovered by the firms' client, Creditor-elected Trustee, Linda Walden.
4. The undersigned adopts all of the allegations contained in Carl Shuhi, President of Fla. Precision Calipers, Inc.'s Amended Motion to Compel Investigation by Trustee... and exhibits attached thereto. [DE #1901]
5. In addition, Creditor, Cole, and undersigned counsel, were damaged by the conflict of interest in that the conflict prevented Ferrell, who represented the Creditor-elected Trustee, from pursuing various, vital legal motions, which, according to the Bankruptcy Court's rulings, only the Trustee had standing to bring.
6. The undersigned counsel had numerous conversations with the Creditor-elected Trustee, Linda Walden, regarding Mr. Rotella's conflict of interest in owning fifty percent (50%) in the sole asset of the Bankruptcy estate, as a guarantee of payment for his fees.
7. Undersigned counsel was informed by the Creditor-elected Trustee that she had requested her counsel, Gary Murphree, to either file a separate Motion to Disqualify Mr. Rotella, or to file a joinder in Creditor, Cole's Motion, to no avail. Mr. Murphree refused to do so, and now it is clear why Mr. Murphree could not follow through and protect the Creditors from Mr. Rotella's ownership of the Cat Cay property.
8. As a result of the Ferrell law firm's conflict of interest and failure to protect the Creditors' rights, the undersigned counsel, in an effort to protect Creditor, Cole's

rights, had to file her own Motion(s) to Disqualify, and was sanctioned over \$80,000 in doing so.

9. At the hearing on May 28, 2004 on Cole's Renewed Motion to Disqualify the Law Firm of Gary J. Rotella..., the Court made the following ruling:

"Frankly, even assuming the allegations are correct, I don't find any conflict that would disqualify Mr. Rotella based on the assertions of Ms. Cole. If Mr. Walker were in here saying 'Mr. Rotella has a conflict because of this interest he may have in the proceeds from the sale of my wife's interest,' it would be a different issue, **or if the trustee were here**, but that's a different issue." **[Emphasis added]** [See Exhibit #3 - May 28, 2004 transcript, excerpt pg. 3]
10. The Court ultimately ruled that Cole did not have standing to raise any of the issues raised in her motions, as it should have been raised by the Trustee.
11. As a result, Creditor, Cole, and undersigned counsel, were damaged in that the Court denied the Motion to Disqualify and the Renewed Motion to Disqualify, on the basis that Cole did not have standing, whatsoever, to raise the issues raised in the Motions. [See Exhibit #4 - DE #426, transcript pg. 66 only]
12. Likewise, because of the conflict of interest, the Trustee should have brought an adversary action against Carol Ann Walker to protect Cole's equitable interest in Carol Ann Walker's ownership interest in the property. It was brought to Gary Murphree's attention that Cole's funds were traced leaving the United States, and used to stop the threat of a foreclosure action by Mary Kraft Kiem, on the Cat Cay property. Gary Murphree, refused to do so. The undersigned counsel was forced to file an adversary action on May 13, 2004 in an attempt to protect Cole's rights; which was later dismissed by the Court. Undersigned counsel was sanctioned again by the Court and had to pay Kevin Gleason, Esq. \$5,000 in attorney's fees.

13. Ultimately, the Debtor's counsel, Gary Rotella, Esq., filed an Emergency Motion to Stop the Sale of the Property on July 7, 2003. [DE #46] In the Debtor's Motion, he accused undersigned counsel and the Creditor-elected Trustee, Walden, of secretly orchestrating a covert sale in violation of the Automatic Stay.
14. Debtor's counsel, Gary Rotella, Esq., made additional unfounded, scandalous remarks against Walden and Gwynn in his Emergency Motion to Stay the Sale. The Court heard the Debtor's Emergency Motion and reserved jurisdiction to award sanctions against the Debtor. After the hearing, the Creditor-elected Trustee and her counsel, Gary Murphree, made numerous trips to the Bahamas and discovered that Mr. Rotella's Motion was unfounded. Ms. Walden demanded Mr. Murphree to file motions for sanctions pursuant to the Court's Order dated July 17, 2003, to no avail. [DE #55]
15. As a result of Mr. Murphree's failure to file the appropriate motion for sanctions, the undersigned counsel was once again forced, in protection of her client's rights, to file a Motion for Sanctions Against Gary J. Rotella, Esq., which was ultimately withdrawn by the undersigned counsel, Gwynn.
16. Cole's successor counsel, Arthur Neiwirth, Esq., believed there was merit to the Motion and filed a Motion to Reconsider, Alter and/or Amend Cole's Withdrawal of Motion for Sanctions Against Gary J. Rotella Pursuant to the July 17, 2003 Order. [DE #455]
17. After much insistence, the Creditor-elected Trustee was finally successful in getting Mr. Murphree to file a Joinder Motion in Mr. Neiwirth's Motion to resurrect Cole's withdrawn Motion for Sanctions. [DE #459] Gary Murphree, for the firm, failed to

pursue this Motion and thus a hearing was never held. The fact that the firm filed a Joinder in Mr. Neiwirth's Motion to resurrect Cole's withdrawn Motion for Sanctions is support that both attorneys of record believed there was merit to Cole's original Motion for Sanctions against Rotella.

18. Oddly enough, Mr. Rotella never sought sanctions against attorneys, Neiwirth or Murphree, for attempting to resurrect Cole's withdrawn Motion for Sanctions; but instead, unmercifully sought sanctions against the undersigned counsel, Gwynn, the counsel who withdrew the Motion.
19. As a result of the conflict of interest, the Trustee's counsel failed to pursue Cole's Motion for Sanctions against Gary Rotella; and, undersigned counsel and Cole were sanctioned unjustly and unfairly and are still fighting the Judgment, presently in the Eleventh Circuit.
20. Finally, because of the conflict of interest, the Ferrell firm **refused** to advance the most crucial pleading in the Bankruptcy proceeding, to wit: the Trustee's Complaint Objecting to Debtor's Discharge filed on October 6, 2003. Oddly enough, this Complaint does not show up on the Docket Report, and was traced as having been taken out of the current file and transferred to Atlanta, Ga. As a closed file. The Trustee's Complaint is attached hereto as Exhibit #5.

WHEREFORE, Mary Alice Gwynn, prior counsel for Creditor, Eleanor Cole, requests this Honorable Court to order an investigation by the Trustee into the allegations made in this Motion, and in all other motions for investigation; and to take the appropriate punitive actions against the law firm of Ferrell, PA, Gary J. Rotella, Esq., and Gary J. Rotella & Associates, P.A.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

**Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding**

In re:

JAMES F. WALKER,

Debtor.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing instrument is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Mary Alice Gwynn
Florida Bar No.: 879584
805 George Bush Boulevard
Delray Beach, FL 33483
Telephone: 561-330-0633
Facsimile: 561-330-8778
E-mail: mgwynnlaw@aol.com

SERVICE LIST

In re: James F. Walker
Case No.: 03-32158-BKC-PGH
United States Bankruptcy Court, Southern District of Florida

Service by CM/ECF generated notice

Gary J. Rotella, Esq.
rotellagar@aol.com
Gary J. Rotella & Associates, P.A.
New River Center, Suite 1850,
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301
Tel: 954-763-2500
Fax: 954-467-2231
Attorney for Debtor: James Walker

John L. Walsh, Esq.
jwalsh@dwlawyer.com
Dzikowski & Walsh, P.A.
1601 Sawgrass Corporate Parkway
Suite 120
Ft. Lauderdale, FL 33323

Heidi Feinman, Esq.
USTPRegion21.MM.ECF@usdoj.gov
Office of the U.S. Trustee
51 Southwest 1st Avenue, Suite 1204
Miami, FL 33130

Kevin C. Gleason, Esq.
kgpaecmf@aol.com
2699 Stirling Road, Suite A201
Ft. Lauderdale, FL 33312

Service by facsimile to:
Gary M. Murphree, Esq.
142A Beacom Blvd.
Miami, FL 33135

Aviva L. Wernick, Esq.
Hughes Hubbard & Reed LLP
201 South Biscayne Blvd., Suite 2500
Miami, Florida 33131

EXHIBIT

#16

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF FLORIDA

3
4 CASE NO. 03-32158-BKC-PGH

5 In Re:

6 JAMES F. WALKER,

7 Debtor.
_____/

COPY

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10 MOTION TO COMPEL INVESTIGATION AND MOTION TO TAKE ACTION AGAINST
11 FERRELL, P.A., GARY J. ROTELLA, ESQUIRE, GARY J. ROTELLA &
12 ASSOCIATES, P.A., GARY MURPHREE, ESQUIRE FILED BY CREDITOR CARL
13 SHUHI and JOINDER FILED BY INTERESTED PARTY MARY A. GWYNN (Re:
14 [1880] MOTION TO COMPEL MOTION FILED BY CREDITOR CARL SHUHI)
15 REPLACES ENTRY NO. 1887 and AMENDED MOTION ([1880] MOTION TO
16 COMPEL MOTION AND MOTION TO TAKE ACTION AGAINST FERRELL, P.A.,
17 GARY J. ROTELLA, ESQUIRE, GARY J. ROTELLA & ASSOCIATES, P.A.)
18 FILED BY CREDITOR CARL SHUHI

19
20 June 26, 2007

21 The above-styled cause came on for hearing before the
22 HONORABLE PAUL G. HYMAN, JR., Chief Judge of the United States
23 Bankruptcy Court, in and for the Southern District of Florida,
24 at 1515 N. Flagler Drive, West Palm Beach, Palm Beach County,
25 Florida on Tuesday, June 26, 2007, commencing at or about 10:30
a.m., and the following proceedings were had:

Reported by: Anna M. Meagher

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APPEARANCES:

DZIKOWSKI & WALSH, by
JOHN L. WALSH, ESQUIRE
On behalf of the Patricia Dzikowski,
Chapter 7 Trustee.

GARY J. ROTELLA & ASSOCIATES, P.A., by
GARY J. ROTELLA, ESQUIRE and
JAY FARROW, ESQUIRE
On behalf of the Debtor and Gary J. Rotella, Esquire.

GARY MURPHREE, ESQUIRE
On behalf of Gary Murphree, Esquire

STEVE WASSERSTEIN, ESQUIRE
On behalf of the Ferrell law firm.

MARY ALICE GWYNN, ESQUIRE
On behalf of Elenore Cole.

CARL J. SHUHI, PRO SE

Via Telephone:

PATRICIA DZIKOWSKI, CHAPTER 7 TRUSTEE
OFFICE OF THE UNITED STATES TRUSTEE, by
HEIDI A. FEINMAN, ATTORNEY/ADVISOR

- - - - -

1 THE COURT: Walker.

2 Mr. Walsh, do I need to get Ms. Dzikowski on the
3 phone?

4 MR. WALSH: Yes, Judge.

5 (Thereupon, the Court contacts Ms. Dzikowski via
6 telephone.)

7 MS. DZIKOWSKI: Patricia Dzikowski.

8 THE COURT: Good morning. It's Judge Hyman. How are
9 you?

10 MS. DZIKOWSKI: Good morning, Judge.

11 THE COURT: Why don't I take appearances for the
12 record?

13 MR. ROTELLA: Gary Rotella and Jay Farrow on behalf
14 of the debtor and myself, your Honor.

15 MR. MURPHREE: Good morning, your Honor. Gary
16 Murphree on behalf of myself.

17 MR. WASSERSTEIN: Good morning, your Honor. Steve
18 Wasserstein on behalf of the Ferrell law firm.

19 MS. GWYNN: Mary Alice Gwynn on behalf of creditor
20 Cole. Good morning.

21 MR. SHUHI: Carl J. Shuhi on behalf of myself.

22 THE COURT: Okay. Mr. Walsh?

23 MR. WALSH: John Walsh on behalf of Patricia
24 Dzikowski, Chapter 7 Trustee. Ms. Dzikowski is on the phone,
25 Judge, and I believe in my discussion with your courtroom deputy

1 yesterday, she indicated that Ms. Dzikowski is going to
2 conference in Ms. Feinman.

3 THE COURT: Okay. That's fine.

4 MS. DZIKOWSKI: Should I do that now, Judge?

5 THE COURT: Yeah, do it now.

6 MS. DZIKOWSKI: Okay. Everyone is here, Judge.

7 THE COURT: Okay. Ms. Feinman, since you're the
8 second person on the call, you really need to keep your voice
9 up.

10 MS. FEINMAN: Thank you, your Honor, and basically
11 I'm here just to listen, so --

12 THE COURT: That's fine.

13 Mr. Walsh, you're not getting away so easy. Come on
14 up to the podium, because it's all directed -- no, stay at the
15 podium. I have a couple of questions.

16 MR. WALSH: Yes.

17 THE COURT: Have you reviewed the motions and the
18 joinders?

19 MR. WALSH: I reviewed the initial motion filed by
20 Mr. Shuhi, the amended motion filed by Mr. Shuhi, and the
21 joinder, the joinder by Ms. Gwynn. Ms. Gwynn's -- I guess these
22 aren't even on for today. Ms. Gwynn filed another motion that I
23 received last night by ECF, but I don't think it's on for today,
24 but essentially it's the same argument, Judge.

25 THE COURT: Okay. Have you investigated, through the

1 course of this case, the allegations raised in the motion?

2 MR. WALSH: If I could back up --

3 THE COURT: Yes, sir.

4 MR. WALSH: -- and finish my response to your last
5 question?

6 THE COURT: Oh, I'm sorry, I thought you were done.

7 MR. WALSH: I was, and as you were asking me the
8 question, I remembered there is another pleading, which I have
9 also reviewed that was filed, I believe, yesterday, which was in
10 response to the Ferrell firm's response to the motion.
11 Mr. Shuhi has also filed a response to Ferrell's responsive.
12 I've reviewed both of those pleadings as well.

13 In answer to the second question, as I understand the
14 argument that's being raised, Judge, the allegations seem to
15 center on, at least from the estate's perspective, the
16 non-disclosure of Mr. Ferrell's, I guess, association or
17 relationship as an officer or director of the Cat Cay Yacht Club
18 over in the Bahamas.

19 Candidly, Judge, it was our office that found that
20 out. It's in Mr. Ferrell's statement in Martindale Hubbell.
21 We're the ones that found it. That was the basis for our
22 initial objection to the Ferrell firm. If your Honor will
23 recall, at the time all these matters played out, in July and
24 August, I guess now going on two years ago, that was the crux of
25 the argument. There were services provided.

1 We believed and we served discovery to the extent of
2 what exactly this conflict was, whether it rose to the level of
3 should it have been disclosed. Candidly, I think it probably
4 should have. I think it should have been listed as a
5 disclosure. I am not sure it would have precluded
6 representation, but certainly it should have been disclosed.

7 Which then takes us to the next step of if it's not
8 disclosed, what is the remedy to the estate, and from our
9 perspective, at the time we were looking at these things, it was
10 that the fees -- the most drastic remedy, I guess, that the
11 Court would have would be to deny fees altogether for failure to
12 disclose initially. We didn't reach an adjudication on the
13 Ferrell fee application, because as the Court was advised,
14 Mr. Rotella acquired the Ferrell firm's administrative claim,
15 and as part of the settlement agreement to the sale, agreed to
16 subordinate that to the costs of the Chapter 7 administrative
17 claimants as they then existed.

18 There were no claims allowed at that time. All the
19 claims had been resolved. The last claim to be disposed of was
20 the Susan Lumborg claim, which by an agreement, again, prior --
21 I think it was late July, early August, maybe a week before the
22 settlement agreement, we finally disposed of the Lumborg claim.

23 Mr. Shuhi's claim had been disposed of previously.
24 The Cole claims had been disposed of previously. Cat Cay had
25 agreed to withdraw their claim. The Court had ruled on the

1 other administrative claimants, those being the attorneys in the
2 Bahamas and, I believe, the appraiser in the Bahamas who had
3 been employed by the prior Chapter 7 trustee in the case,
4 Ms. Walden.

5 We had looked at all the claims. The only people
6 remaining with a claim to the assets of this estate were the
7 administrative claims of Ms. Dzikowski, my firm, and then the
8 bundle of claims that Mr. Rotella had, which he had agreed to
9 subordinate to all other allowed claims.

10 So I guess, the short answer is yes, to the best of
11 my gleaning of what is really at play here, it's the
12 non-disclosure of the Cat Cay involvement by Mr. Ferrell. That
13 was looked at. It was investigated, discovery was served. I'm
14 not sure that I know exactly what his involvement was, but
15 certainly from Ms. Dzikowski's perspective, it should have
16 been -- it was a potential conflict which should have been
17 disclosed. It was not, which then moved us on to the remedy
18 section, which got resolved through the settlement and
19 resolution process.

20 Now, if there is anything else in here that I -- and,
21 again, there are a number of other matters and issues raised,
22 but, candidly, from estate's perspective that's the issue.
23 There are allegations of malpractice and disclosures of
24 attorneys and such. I don't think those touch on this
25 bankruptcy estate. There may be separate claims or causes of

1 action as against Ms. Walden, by Ms. Walden as against her
2 counsel, but candidly those don't involve this estate. Those
3 are personal claims of other parties.

4 THE COURT: Okay. Thank you.

5 MR. WALSH: Thank you.

6 THE COURT: And I agree. Thank you for your
7 recitation.

8 Since the trustee has investigated the matter and the
9 motions merely seek an investigation, the history of this case
10 is convoluted, it's extensive, the Court has entered numerous
11 orders dealing with these same types of issues, therefore, I'm
12 denying the motions and the joinders as moot, since the trustee
13 has investigated all these matters and all those issues have
14 been brought up by the Court.

15 Mr. Walsh, if you can submit the order, I would
16 appreciate it?

17 MR. FARROW: Your Honor, if I may comment on behalf
18 of the debtor and Mr. Rotella?

19 THE COURT: No.

20 MR. FARROW: Thank you.

21 MR. WALSH: Judge, I have a simple order that states
22 for the reasons stated on the record, it's denied with
23 prejudice, is that sufficient?

24 THE COURT: Yes, sir.

25 MR. WALSH: I'm circulating copies to all parties.

1 They can take a look at it while you're --

2 THE COURT: I don't need to hear from anyone on these
3 matters that have been litigated over and over and over, and
4 comments from you would just invite comments from everyone else,
5 and I ruled on the pleadings and the prior court orders and
6 Mr. Walsh's representation that he has investigated these
7 alleged claims.

8 (Whereupon, the hearing was concluded.)

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CERTIFICATE

STATE OF FLORIDA:
COUNTY OF PALM BEACH:

I, Anna M. Meagher, Shorthand Reporter and Notary Public for the State of Florida at Large, do hereby certify that the foregoing proceedings were taken before me, in the cause, at the time and place, and in the presence of the Court and counsel as stated in the caption hereto on Page 1 hereof; that the foregoing computer-assisted transcription, consisting of pages numbered 1 through 10, inclusive, is a true and accurate record of my Stenographic notes taken at said proceedings.

I further certify that I am not of counsel, I am not related to nor employed by any attorney in this case.

Dated this 19th day of July 2007.

My Commission Expires:
December 7, 2008
Commission #DD355554

Anna M. Meagher, Notary Public
State of Florida at Large

EXHIBIT

#17

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding

In re:

JAMES F. WALKER,

Debtor.

**MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S JUNE 26TH,
2007 ORDER DENYING COLE'S MOTION TO
COMPEL INVESTIGATION BY TRUSTEE AND MOTION TO
TAKE ACTION AGAINST THE LAW FIRM OF FERRELL, P.A., GARY
ROTELLA, ESQUIRE, AND GARY J. ROTELLA & ASSOCIATES, P.A.**

COMES NOW, Mary Alice Gwynn, prior counsel for Judgment Creditor Eleanor Cole and Cole's present counsel in pursuing this investigation into the serious conflict of interest with the Ferrell Firm, files this Motion for Rehearing on the Court's June 26th, 2007 Order, as Creditor, Cole and Pro Se Creditor Shuhi have, been damaged throughout the entire Bankruptcy proceeding, and further states:

1. A hearing was conducted on June 26, 2007, on Creditor's Motion to Compel Investigation, and Amended Motion to Compel an Investigation, on the Ferrell law firm's conflict of interest. [DE #1880 and DE #1901]
2. On behalf of Creditor, Eleanor Cole, the undersigned files this Motion for Rehearing, as the Court would not allow either Creditor, Carl Shuhi or the undersigned counsel for Cole, to present any arguments at the hearing. The Court only allowed the Trustee's counsel to make unsupported hearsay statements on the record, and the Court based its decision solely on those unsupported hearsay statements.

3. In not allowing either filing party to put on any argument, the Court should reconsider the following before rendering a final decision.
4. The Court only heard statements of the Trustee's counsel, wherein Mr. Walsh informed the Court that the Trustee was well aware of the conflict, and that the Trustee had performed her own unannounced investigation. Patricia Dzikowski, as the current Chapter 7 Trustee, had an obligation to disclose this conflict, not only to the Court, but to all the Creditors, and Ms. Dzikowski did not. Further, Trustee, Patricia Dzikowski, had no standing to secretly respond to undisclosed conflict of interest, as she was not a party involved, when the non-disclosure issue occurred. Her only involvement should have been to take whatever action the court would order after the Trustee reported this issue to the Court and Creditors. Such action by Trustee Dzikowski raises the question of what involvement Ms. Dzikowski has with the Ferrell firm that made her privilege to information that the Creditors and Walden did not have until recently. This should be reason enough for the court to reconsider this matter and now order an independent investigation. Further, the Court erred in not conducting an Evidentiary Hearing on this matter.
5. Without conducting a full evidentiary hearing, the Court took the Trustee's counsel's word as judicial truth, 1) without putting Mr. Walsh under oath, and 2) without any supporting facts, reports or documents to support his allegations, which ultimately deprived the creditors of their right to cross-examine the Trustee's counsel's statements, which was error. Whether there is a conflict situation here, is not an issue for the Trustee to decide. It is a judicial decision for the Court to decide.
6. The Creditors have previously outlined their allegations of conflict in their Motion(s)

to Compel and Investigation.

7. The Ferrell law firm stated in their Response in Opposition to the Creditors' Motion to Compel, [DE #1898], that Mr. Ferrell's involvement with the Cat Cay Yacht Club **did not require disclosure**. Likewise, it is not for Attorney Ferrell to decide if his involvement with the Cat Cay Yacht Club needed to be disclosed, but again is a judicial determination.
8. **Bankruptcy Rule 2014** gives a specific list of facts that must be included in the application, both with regard to the trustee, and in the verified statement from the person to be employed. Pursuant to the Rule, the applicant and the professional **must disclose**, in detail "**all of the person's connection with the debtor, creditors**, or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee", and not merely those they believe rise to the level of a conflict. *In re: Gulf Coast Orthopedic Center*, 265 B.R. 318 (N.D. Fla. 2001) also citing *In re: Keller Financial Services of Florida, Inc.*, 243 B.R. 806 (N.D. Fla. 1999). Clearly, the Rule and the case law make it abundantly clear, the Ferrell firm should have disclosed their interest in the Cat Cay Yacht Club to the Creditors.

Further, in the *In re: Gulf Coast, supra*, the Court held:

"These disclosure requirements are not discretionary and the duty of the professional to disclose all connections with the Debtor, Debtor in possession, insider, **creditors**, or parties of interest, is a **must**, including fee arrangements." (Emphasis added)

"The duty to disclose the professional's connection under FRBP 2014 is a mandatory requirement and the scope of the disclosure is far broader than what is required for disqualification."

In the case of *In re: Keller Financial, supra*:

"A mere violation of the disclosure rule alone was enough to disqualify a professional and deny all compensation, regardless whether the undisclosed connections or fee arrangements are materially adverse to the interest of the estate or insignificant." See also *In re: Smitty's Truck Stop, Inc.*, 210 B.R. 844 (10th Cir. 1997)

9. The former elected Trustee's counsel is a well seasoned Bankruptcy firm charged with the expert knowledge of knowing all of the Bankruptcy disclosure Rules. The Ferrell firm failed to disclose its connections with the Cat Cay Yacht Club, and additionally erred when it continued to withhold this information when the Yacht Club became a Creditor in this Bankruptcy proceeding.
10. Under §327(c) it states:

"In a case under Chapter 7, Chapter 12 or 11 of this title, a person is not disqualified for employment under this section solely because of such persons employment by, or representation of a creditor, **unless there is an objection by another creditor** or the United States Trustee, in which case the Court shall disapprove of the employment if there is an actual conflict of interest." **[Emphasis added]** *In re: Maynard*, 172 B.R. 353 (M.D. Fla. 1994)
11. Pursuant to *Maynard*, the Ferrell firms assertion that it did not have to disclose is incorrect. The above case also reiterates that the Creditors should be given an opportunity to object the employment, once the disclosure is made.
12. If the Ferrell firm had made the required statutory disclosure, the Creditors certainly would have objected to the firm's employment, and would not have had to suffer the damages resulting from this conflict.
13. *In re: Finao Corporation*, 2005 WL 419704 (Bankr. M.D. Fla. 2005), states:

"Section 327(a) of the Bankruptcy Code provides:
11 USC §327. Employment of professional **persons**

(a) Except as otherwise provided in this section, the **trustee**, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional **persons**, *that do not hold or represent an interest adverse to the estate, and that are **disinterested persons***, to represent or assist the **trustee** in carrying out the **trustee's** duties under this title.

11 U.S.C. §327(a)(Emphasis supplied). The term "**disinterested person**" is defined in §101(14) of the Bankruptcy Code to mean a **person** that "**does not have an interest materially adverse to the interest of the estate or any class of creditors or equity** security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor." **[Emphasis added]** (See also *In re: Jennings*, 199 Fed.Appx. 845 (11th Cir. 2006))

14. Milton Ferrell, Francis Carter, and Gary Murphree of the Ferrell law firm were not "disinterested persons" as their interests were materially adverse to their client, the Elected Trustee Linda J. Walden, and her fiduciary duties to the Creditors, Eleanor Cole and Carl Shuhi.
15. The Ferrell law firm, through its partners, Francis L. Carter and Gary Murphree, additionally made material misrepresentations to the Court in their Application for Employment, which was also reflected in the Court's Order Approving Employment of the Trustee's Attorney [DE #81]. The Court's Order held the following:

"... that, Francis L. Carter and Ferrell Schultz Carter Zumpano & Fertel, P.A., hold no interest adverse to the estate in the matters upon which they are engaged, that Francis L. Carter and Ferrell Schultz Carter Zumpano & Fertel, P.A. are disinterested persons as required by 11 U.S.C. §327(a), **and have disclosed any connections with parties set forth in bankruptcy** Rule 2014, and that their employment is necessary and would be in the best interests of the estate..."
16. In the Ferrell law firm's Response in Opposition, the Ferrell firm alleges that Mr. Ferrell's involvement with the Cat Cay Yacht Club did not require disclosure. However, the firm lied to the Court when they affirmatively asserted that the firm had disclosed any connections with the parties set forth in Rule 2004.
17. As stated above, whether or not a party is disinterested is a **question of law** which

requires a hearing from the Court; which the Court never held. It is not for Mr. Ferrell, nor the current Trustee, to decide if there is an actual conflict.

18. The Court clearly erred in not conducting an evidentiary hearing on whether a conflict existed, violating 11 U.S.C. §327(c), which states:

“In a case under Chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person’s employment by or representation of a creditor, **unless there is objection by another creditor or the United States trustee**, in which case the court shall **disapprove** such employment if there is an actual conflict of interest.” **[Emphasis added]** *In re Maynard*, 172 B.R. 353 (M.D. Fla. 1994)

19. In this case, the Creditors and the Creditor-elected Trustee (**Ferrell’s client**), Walden, were wrongfully deprived of their opportunity to object to the Ferrell firm’s employment, as they **were never informed of even the a“potential” of a conflict.** Such conduct violated the Creditors and their elected Trustee’s Substantive and Procedural Due Process Rights, in violation of the 14th Amendment.
20. The Court, in accepting the Trustee’s counsel’s hearsay argument without conducting an evidentiary hearing, violated §327(c) and further violated the Creditors’ Due Process Rights.
21. The Court cannot look at this “undisclosed conflict of interest” through a rear-view mirror, or an “after the fact” approach, because it circumvents the whole intent of requiring a Trustee’s counsel to fully disclose and give their client, and the Creditors, a chance to object, and ultimately, for the Court to decide whether a conflict exists.
22. The Court did not fulfill its judicial duty by not fully examining this undisclosed conflict. The Court just accepted the Trustee’s counsel’s unsupported hearsay statements that the Successor Region 21 Panel Trustee, knew of the undisclosed

relationship, conducted her own secret investigation, and since the firm was not paid, there was no harm to the Estate. When in fact, the Ferrell firm did receive compensation, between \$15,000 to \$20,000 from debtor's counsel, Gary Rotella, who purchased the Ferrell firm's administrative claim. The Court's acceptance of the "no harm - no foul" band aid over this undisclosed conflict, is wrong. "When a conflict of interest exists, it is immaterial whether or not the estate suffered harm." In re: Florida Peach Corporation of America, International Division, 110 B.R. 589 (M.D. Fla. 1990)

23. The issue is not only the nondisclosure of the Ferrell conflict of interest, but more importantly now is it is impossible to predict how this entire proceeding would have turned out, if the Ferrell firm would have properly disclosed their conflict to the Creditors and Walden up front, as required. The only way to really tell is to put all the parties back into their respective positions, when the Ferrell firm failed to disclose.
24. The conduct exhibited here fell far below the required "disinterested professional", who has a fiduciary duty of high honesty and loyalty to all Creditors and parties in a Chapter 7 case. Woods v. City National Bank & Trust, supra; Moser v. Darrow, supra.

Not only did the Ferrell firm breach their mandatory disclosure requirements under 11 U.S.C. §327(a)(c) and Bankruptcy Rule 2014, but the firm also violated the Rules of Professional Conduct regulating the Florida Bar, which mandates a referral from this Court to the Florida Bar.

25. Pursuant to the *Rules Regulating the Florida Bar - Rule 4.17 Conflict of Interest*;
General Rule:

(a) **Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer shall not represent a client if:

- (1) the representation of 1 client will be directly adverse to another client; or
- (2) there is a substantial risk that the representation of 1 or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

- (4) each affected client give informed consent, confirmed in writing or clearly stated on the record at a hearing.

26. Francis L. Carter, Esq., and/or the Ferrell law firm, knew that representing the Trustee in this Bankruptcy litigation "would be materially limited by the personal interest of one or more of the lawyers" involved in the representation.

27. Under "Comments", the Florida Bar further states:

Loyalty to a client

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, **or from the lawyer's own interests.**

Lawyer's interests

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. A lawyer may not allow related business interests to affect representation...

Other conflict situations

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise, and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

28. *Rule 4-8.4 Misconduct* - gives the guidelines for what determines misconduct.

A lawyer shall not:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation...

29. Under "Comments", the Florida Bar further states:

Lawyers are subject to discipline when they violate **or attempt to violate the Rules of Professional Conduct...**

30. On April 26, 2006, this Court sent the Florida Bar a letter requesting the Chief Disciplinary Counsel open an investigative file on the undersigned counsel, as to the Court's **biased finding of unprofessional conduct**, made in an Order issued on the same exact date (wasting no time). The order failed to cite to any breaches of the Rules of Professional Conduct or any Ethical violations by the undersigned. (Attached as Exhibit 1)

31. Therefore, this Court should immediately request an investigation into the serious ethical breach of the Ferrell law firm and Gary J. Rotella, Esq., and Gary J. Rotella and Associates, P.A. for their non-disclosure, in violation of the Professional and Ethical Rules cited above.

32. Pursuant to the above detailed *Rules of Professional Conduct*, Milton Ferrell, Esq., Francis Carter, Esq., Gary Murphree, Esq., and the law firm of Ferrell. P.A., at minimum, attempted to deceive their client and this Court, by misrepresenting their relationship with the Cat Cay Yacht Club. Such actions are in violation of the *Rules* and are subject to sanctions by this Court and referral to the Florida Bar for disciplinary actions.

33. Ironically, Counsel for the Debtor, Gary Rotella, was successful in removing the

Creditor-elected Trustee, Walden, based on an alleged immaterial non-disclosure that she was the Resident Agent for Creditor's Shuhi's corporation. The Ferrell law firm represented the Trustee during the removal proceedings, knowing all along that they were in a conflict situation themselves.

34. How Ms. Walden's(a non-region 21 Panel Trustee) alleged immaterial non-disclosure became fraud on the Court, is mind boggling and more importantly, **in direct conflict** with this Court's ruling in the recent case involving the issue of whether or not a Region 21 Panel 7, Trustee committed fraud on the court. In re: Baron's Stores, Inc. 2007 Bankr. LEXIS 1372.

35. In Baron's, Judge Hyman held:

"Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, **will constitute fraud on the court**. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court." **[Emphasis added]** (attached as Exhibit 2)

Also in Baron, this court interestingly distinguishes the caselaw cited by the aggrieved party, as cases involving material nondisclosures such as failure to disclose fee arrangements. (page 14) However, in Walker, when this court was faced with Debtor's Counsel, Gary Rotella's material nondisclosure of his fee arrangements in obtaining a 50% interest in the only disclosed asset in the bankruptcy estate, this court ruled Mr. Rotella's nondisclosure was not important, immaterial and according to the court caused no harm estate. Ultimately, this court refused to sanction Mr. Rotella, or require him disgorge any interest in the Cat Cay property.

36. Here the Trustee's counsel admitted to the Court that the alleged conflict should have been disclosed early on. However, Mr. Walsh misinforms the Court that, since the Ferrell firm did not receive any fees, there is no adequate remedy; and thus, the

issue is basically moot. We all know Ferrell's administrative claim was bought by Mr. Rotella.

37. The Court's conduct of rejecting this failure to disclose as "no harm no foul or no harm to the Estate type attitude which was rejected by the Court in the case of *In re: Fla. Peach Corporation of America*, 110 B.R. 589 (N.D. Fla. 1990).
38. Bankruptcy judges are frequently called upon to strike a delicate balance between conflicting forces. **Disinterestedness** is a worthy objective for which much substance might appropriately be sacrificed. The public's confidence in the integrity of the administration of the bankruptcy system is of utmost importance. *In re: Eastern Charter Tours, Inc.*, 167 B.R. 995 (M.D. Ga. 1994)
39. With that allegiance to the public, this Court should compel an investigation into the Creditors' allegations and conduct an evidentiary hearing on the matter, and award sanctions and damages. This Court should further refer the matter to the Florida Bar to conduct an investigation into the Ferrell firm's failure to disclose this conflict in violation of the Rules of Professional Conduct and Ethical Rules.

WHEREFORE, Mary Alice Gwynn, Esq., as prior counsel for Creditor, Eleanor Cole, and on behalf of Cole's interest in this issue, requests this Honorable Court for: 1) a rehearing and reconsideration of the Creditors' Motion(s) to Compel Investigation by the Trustee; 2) to conduct an Evidentiary Hearing to allow the Creditors an equal opportunity to present evidence and arguments regarding this critical violation of 11 U.S.C. §327(a)(c), Rule 2014; 3) an Order referring this matter to The Florida Bar for an investigation; 4) put the Creditors and the Elected Trustee back into the position they were in, when the Ferrell

firm failed to disclose the firm's relationship to the Cat Cay Yacht Club in their employment affidavit; and 5) the Court should immediately correct all the wrongdoings to the Creditors, undersigned counsel and the Creditor Elected Trustee.

SERVICE LIST

In re: James F. Walker
Case No.: 03-32158-BKC-PGH
United States Bankruptcy Court, Southern District of Florida

Service by CM/ECF generated notice

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Miami, Florida 33131

EXHIBIT

#1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
The Forum Building Complex
1675 Palm Beach Lakes Boulevard
West Palm Beach, Florida 33401

RECEIVED
APR 28 2006
THE FLORIDA BAR
FT. LAUDERDALE OFFICE
(954) 769-5771

PAUL G. HYMAN, JR.
BANKRUPTCY JUDGE

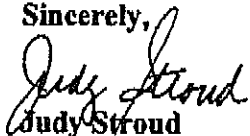
April 26, 2006

The Florida Bar
Ft. Lauderdale Branch
Chief Disciplinary Counsel
Cypress Financial Center, Suite 900
5900 North Andrews Ave.
Ft. Lauderdale, FL 33309

Dear Chief Disciplinary Counsel:

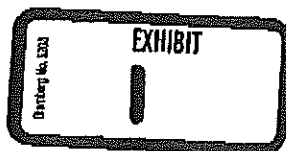
Judge Hyman asked me to send you a copy of the enclosed Memorandum Order which he entered today in the case of *In re James F. Walker*, Case No. 03-32158-BKC-PGH. Judge Hyman requests that your office investigate the findings therein relating to Mary Alice Gwynn, Esquire's unprofessional conduct.

Sincerely,


Judy Stroud

Law Clerk to the
Honorable Paul G. Hyman, Jr.,
United States Bankruptcy Judge

Enclosure: Memorandum Order entered April 26, 2006



EXHIBIT

#2

EXHIBIT

#17-A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding

In re:

JAMES F. WALKER,
Debtor.

**SUPPLEMENT TO MOTION FOR REHEARING AND RECONSIDERATION OF
COURT'S JUNE 26TH, 2007 ORDER DENYING COLE'S MOTION TO
COMPEL INVESTIGATION BY TRUSTEE AND MOTION TO
TAKE ACTION AGAINST THE LAW FIRM OF FERRELL, P.A., GARY
ROTELLA, ESQUIRE, AND GARY J. ROTELLA & ASSOCIATES, P.A.**

COMES NOW, Mary Alice Gwynn, prior counsel for Judgment Creditor Eleanor Cole and Cole's present counsel in pursuing this investigation into the serious conflict of interest with the Ferrell Firm, files this Supplement to the Motion for Rehearing and Reconsideration of the Court's June 26th, 2007 Order..., to add the following Exhibits to the prior Motion:

1. August 23, 1991 Final Judgment in favor of the Cat Cay Yacht Club, Inc. against James F. Walker.
2. Letter dated June 30, 1999, from the Bahamian Ministry of Finance advising the "Chairperson" of the Owners Associate of Cat Cay Island, who would be Milton Ferrell, Jr., of the tax reassessments.
3. Letter dated July 12, 1999 from Milton Ferrell, Jr., as President of the Cat Cay Yacht Club, to all property owners. In Mr. Ferrell's letter, he offers the services of Higgs & Johnson to assist any club members.

1



4. Letter dated July 22, 1999 from the Bahamian Ministry of Finance to the law firm of Higgs & Johnson, P.A., responding to the letter regarding the tax assessment.
5. Letter dated July 26, 1999 from the law firm of Mombach, Boyle & Hardin, P.A. advising Eleanor Cole of the Bahamian Ministry of Finances reassessment of the properties on the Cat Cay Island. The letter is "carbon copied" to the Cat Cay Yacht Club, at the same time Milton Ferrell was President.
6. A copy of the Cat Cay Yacht Club Rules and Regulations - including Milton Ferrell listed as an active member, as well as a dock owner, listing the Ferrell firm's address.

Section 7.02 - President states:

The President shall be the chief executive officer of the Club; shall have general and active management of the business and affairs of the Club, subject to the directions of the Board of Directors and Executive Committee; and shall preside at all meetings of the Equity Members and Board of Directors.

Section 14 - Sales and Rental Services of the Bylaws states the following:

14.01 - Sales - Each member, as a condition to membership, acknowledges that sales of real property and docks on Cat Cay are governed by the provisions of these Bylaws.

14.01(b) The Club will provide a "listing" service to Club Members only and will not act as a realtor or broker. Each member wishing to list his property for sale shall sign and deliver the Club's listing agreement. The Island Manager's sole duty is to notify prospective purchasers of property available and to arrange for the property to be shown to prospective purchasers on the island. Members must notify the Island

Manager of prospective purchasers who may visit the property.

14.02 - *Rentals* - Each Member, as a condition to membership, irrevocably appoints Cat Cay Yacht Club, Inc. as its exclusive agent if the Member desires to rent or lease his property located on North Cat Cay, Bahamas, and Cat Cay Yacht Club, Inc. shall be entitled to a fee to be set by the Board of Directors, which shall be a percentage of the gross rental charged by the lessor with respect to each rental, as set by the Board.

Pursuant to the Bylaws, the Club controls the exclusive rentals of all property. This explains why the Ferrell firm failed to pursue rent from the Yacht Club when the Estate property was being used by the Club's "maintenance crew".

In addition to the rentals, the Club is also involved in all sales of property in Cat Cay, and receives a fee of a minimum of 1%, if not 3% of the sale price. The Club would receive either 1% or 3% of the Cole sale.

7. Letter dated February 16, 2001 from Higgs & Johnson, P.A., the same law firm referenced in Mr. Ferrell's letter dated July 12, 1999 to all Cat Cay property owners, wherein he notifies Stephen Turnquist, Esq., Cole's Bahamian counsel of his interest in buying the property.
8. Five days later, on February 22, 2001, Mr. Turnquist acknowledges receipt of Higgs & Johnson's offer to buy letter

These Exhibits clearly show that Mr. Ferrell was well aware of this conflict of interest, and was actively involved in the Cat Cay property at the time Eleanor Cole domesticated her Judgment. It could further be inferred that Mr. Ferrell was assisting Higgs & Johnson in buying the property back for the Yacht Club so they could sell it to

another adjacent landowner, or perhaps back to Walker, and would receive the 3% commission.

WHEREFORE, Mary Alice Gwynn, Esq. files these supplemental Exhibits in support of her Motion for Rehearing and Reconsideration of the Court's June 26th, 2007 Order..., filed on July 5, 2007.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case No.: 03-32158-BKC-PGH
Chapter 7 Proceeding

In re:

JAMES F. WALKER,

Debtor.

_____ /

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing instrument is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Mary Alice Gwynn
Florida Bar No.: 879584
805 George Bush Boulevard
Delray Beach, FL 33483
Telephone: 561-330-0633
Facsimile: 561-330-8778
E-mail: mgwynnlaw@aol.com

SERVICE LIST

**In re: James F. Walker
Case No.: 03-32158-BKC-PGH
United States Bankruptcy Court, Southern District of Florida**

Service by CM/ECF generated notice

Gary J. Rotella, Esq.
rotellagar@aol.com
Gary J. Rotella & Associates, P.A.
New River Center, Suite 1850,
200 East Las Olas Blvd
Ft. Lauderdale, FL 33301
Tel: 954-763-2500
Fax: 954-467-2231
Attorney for Debtor: James Walker

John L. Walsh, Esq.
jwalsh@dwlawyer.com
Dzikowski & Walsh, P.A.
1601 Sawgrass Corporate Parkway
Suite 120
Ft. Lauderdale, FL 33323

Heidi Feinman, Esq.
USTPRegion21.MM.ECF@usdoj.gov
Office of the U.S. Trustee
51 Southwest 1st Avenue, Suite 1204
Miami, FL 33130

Kevin C. Gleason, Esq.
kgpaecmf@aol.com
2699 Stirling Road, Suite A201
Ft. Lauderdale, FL 33312

Service by facsimile to:
Gary M. Murphree, Esq.
142A Beacom Blvd.
Miami, FL 33135

Aviva L. Wernick, Esq.
Hughes Hubbard & Reed LLP
201 South Biscayne Blvd., Suite 2500
Miami, Florida 33131

EXHIBIT

#1

81352675

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

CASE NO. 90-23852-18

3/91

CAT CAY YACHT CLUB, INC.,
a Florida corporation,

Plaintiff,

vs.

JAMES F. WALKER,

Defendant.

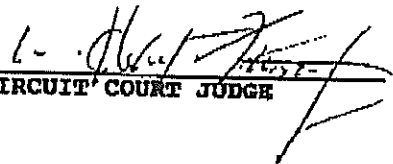
FINAL JUDGMENT

THIS CAUSE, having come before the Court upon the stipulation of Settlement and Order Adopting Stipulation entered on March 26, 1991 and upon Plaintiff's Affidavit of Non-Compliance, and the Court having reviewed the Court file, and being otherwise fully advised in the premises, it is therefore

ORDERED AND ADJUDGED as follows:

1. Plaintiff CAT CAY YACHT CLUB, INC. shall recover judgment from Defendant JAMES F. WALKER in the sum of \$7,025.72 as principal, with \$242.53 for interest and costs of \$144.00 making a total of \$7,412.28, which shall bear interest at the rate of 12% a year, for which execution issue forthwith.

DONE AND ORDERED in Chambers, at Fort Lauderdale, Broward county, Florida this 22nd day of August, 1991.


CIRCUIT COURT JUDGE

Copies furnished to:

Mitchell D. Adler, Esq.
John L. Walker, Esq.

RECORDED IN THE OFFICIAL RECORDS BOOK
OF BROWARD COUNTY, FLORIDA
COUNTY ADMINISTRATOR

91 AUG 23 PM 2:18

BK 18716 PG 0327

EXHIBIT

#2

FROM: PRICE 1 INC

PHONE NO. : 2423514374

Aug. 02 1999 11:40AM P2

JUL-02-99 09:12 AM



MINISTRY OF FINANCE
MINISTRY OF ECONOMIC DEVELOPMENT
BUSINESS LICENCE / VALUATION SECTION
P.O. BOX F-4313
FREEPORT, C.B. BAHAMAS
PHONE # (442) 351-4374
FAX # (442) 351-4396

June 30, 1999

Cat Cay
Bimini, Bahamas

Att: Chairperson, Property
Owners Association
Cat Cay, Bimini, Bahamas

RE: REASSESSMENT FOR REAL PROPERTY
TAX CALCULATIONS

Dear Sir/Madam

The Real Property Tax Department is in the process of reassessing all properties on the Island known as Cat Cay.

A copy of the enclosed Declaration Form is to be completed by each Property Owner and returned to the following address by the 21st of July 1999.

Ministry Of Economic Development
Valuation/Business Licence
P.O. Box F42512
PH (242)351-4374 Fax (242)351-4396

If you require any further information, please feel free to contact the undersigned.

A handwritten signature in dark ink, appearing to be a stylized name.

EXHIBIT

#3

FROM : PAIGE I INC

PHONE NO. : 3055874789

Aug. 02 1999 11:48AM P1

**CAT·CAY**
BAHAMAS**Cat Cay Yacht Club, Ltd.**
a private island

July 12, 1999

To: Cat Cay Property Owners

Re: Reassessment For Real Property Tax Calculations

The Real Property Tax Department is in the process of reassessing all properties on the Island. Each property owner is required to complete a Declaration Form and return it to the Valuation/Business License Section of the Ministry of Economic Development by July 21, 1999.

Since the Club was recently notified of the July 21st deadline, the law firm of Higgs & Johnson will be requesting from the appropriate authorities an extension of time to respond, for all property owners on the Island. Higgs & Johnson will be assisting the Club in completing the appropriate forms for Club property.

It is the responsibility of every property owner on the Island to comply with the government's request. Peter Higgs of Higgs & Johnson will be available for consultation, in the event any property owner desires further assistance. Mr. Higgs may be contacted at 242-322-8571.

With kindest personal regards,

Milton M. Ferrell, Jr.
President
Cat Cay Yacht Club, Inc.

Enclosures

EXHIBIT

#4

No. F-1000
In reply, please
quote this number



MINISTRY OF FINANCE
MINISTRY OF ECONOMIC DEVELOPMENT
FINANCIAL SERVICES / INVESTMENT PROMOTION
P.O. BOX 1-010
JANUARY, G.P. BOX 1000
PORT KAITUMA, JAMAICA
TELEPHONE 4120 121-4124
FAX 4120 121-4125

July 22, 1999

Wynn Simpson & Co.
P.O. Box F-01519
Kingston, Grand Bahama
Bahamas

Attn: Mr. Peter T. Wynn

RE: CAT TAX PROPERTY TAX REASSESSMENTS

Dear Sir,

I am in receipt of your letter dated 13th July 1999, in respect to the above captioned matter.

My Department appreciates your quick response and takes this opportunity to gladly extend the deadline for assessments from 21 July 1999 to August 31st 1999 as requested.

In the event that you feel that this office can be of any further assistance as you assist us in the implementation required to ensure timely filing of local property tax returns for the year 2000, please feel free to call on us any time.

EXHIBIT

#5

PEOPLE PRICE INC

PHONE NO. 1 3055874789

Aug. 22 1999 11:40AM P1

MOMBACH, BOYLE & HARDIN, P.A.

ATTORNEYS AT LAW

OSWALD J. BOYLE
DAVID C. HARDIN
STEPHEN D. MOMBACH
JOHN D. BOYLE
BOYD L. BOYD
DONALD A. BOGERTS
DAVID G. BOGERTS
DAVID G. BOGERTS

OSWALD J. BOYLE, CLU, SUITE 1900
200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301-3078
1984 489-1700
TELECOMM (800) 497-8310
4000 HATCH (800) 438-0400

July 28, 1999

Ms. Eleanor Cole
1660 Thumb Point Drive North
Hutchinson Island South, FL 34949

Dear Ms. Cole:

We have recently been advised that the Ministry of Finance is conducting a reassessment of the residential properties on the island. In that regard, enclosed you will find copies of correspondence relating to the reassessment for your information.

Sincerely yours,

MOMBACH, BOYLE & HARDIN, P.A.

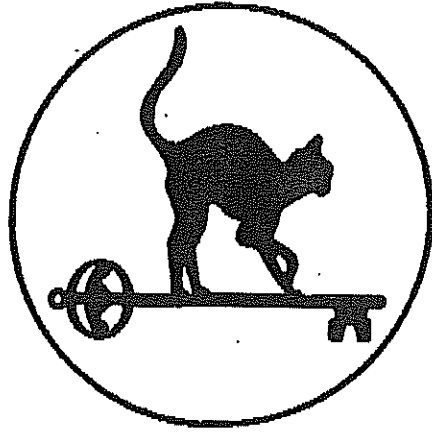

David C. Hardin

DCH/mc
Encl.

cc: Cat Cay Yacht Club
Hutchinson Island South, Florida 34949

EXHIBIT

#6



CAT • CAY
BAHAMAS

Mailing Address

CAT CAY YACHT CLUB

1100 Lee Wagener Boulevard

Ste 104 – Box 14

Ft. Lauderdale, Florida 33315

Island

(242) 347-3565 - Phone

(242) 347-3564 - Fax

E-mail – catcayclub@yahoo.com

REV. 09/01

Name/Address Acct. # Yacht Home

-- F --

Falla, Enrique R. & Lucrecia 642
600 Grapetree Dr., #4
Key Biscayne, FL 33149
Office: (305) 361-3044
Home: (305) 361-7387
Children: Ileana, Enrique

Fanjul, Alfonso & Tina 171 Crili 95'
340 Royal Poinciana Way, Suite 316 Crili 47'
Palm Beach, FL 33480
Office: (561) 655-6303
Fax: (561) 835-4795
Cellular: (561) 685-0703
Children: Crista, Lillian


Fernandez, Nelson & Dolores 669
7351 SW 80 Court
Miami, FL 33143
Home: (305) 275-5182
Bus: (305) 633-6491
Children: Nelson Jr., Susana, Alex, Teresita

Ferrell, Jr., Milton M. & Lori 170 Mahogany 82'
Ferrell Schultz Carter & Fertel, P.A. Mahogany 40'
201 South Biscayne Boulevard
Miami Center, 34th Floor
Miami, Florida 33131
Office: (305) 371-8585
Fax: (305) 371-5732
Miami Home: (305) 576-6324
Fax: (305) 576-7425
115 Griffin Court
Ketchum, Idaho 83340
Idaho Home: (208) 726-9003
Fax: (208) 726-9036
E-mail: mmmf@ferrellscf.com
Children: Whitney, Morgan




2000 1/1

EQUITY SHAREHOLDERS – ACTIVE MEMBERS

Baez, Manuel
) Bailey, Patricia*
 Belcher, J. Anthony, Jr.
 Berger, Joel Paul
 Blake, Michael
 Bu, Annelene
 Case, Rick
 Case, Rita
 Cisneros, Oswaldo
 Cobb, Charles E., Jr.
 Coles, Kenneth
 Cox, David
 Dahl, James
 Daitch, Peter
 Davis, Charles L., Sr.
 Davis, Charles L., Jr.
 Davis, Roy D.
 De La Cruz, Carlos
) Devaney, John
 Diaz, Manuel C.
 Doverspike, Carl
 Doverspike, Kay
 Eckert, William, III
 Ferrell, Milton M. 
 Fournier, Arthur
 Gardner, Allan
 Gettel, Douglas E.
 Griffin, William
 Gruber, Thomas
 Gruodis, Victor
 Gutierrez, Amparo
 Gutierrez, Raul Jr.
 Hagen, Stein Erik
 Heathcote, John
) Herron, Rick
) Higginbottom, Elzie L.
 Hull, Richard F.
 Hummer, Paul
 Hvide, J. Erik
 Jordan, Henrique
 Kaiser, Marc

Kazickas, Joseph P.
 Keeler, Cora
 Kelly, Patrick
 Kirkpatrick, Sandra
 Lamadrid, Lorenzo
 Lowe, Mary Ralph
 Minter, Fred. M.
 Miranda, Adelaida
 Morrison, R. Scott
 Mortensen, Lance
 Ortega, Jose A.
 Palenzuela, Gonzalo
 Paleologos, Celia
 Remmert, Mrs. William*
 Ringdal, Helge
 Robert, Bruce P.
 Robert, Mary A.*
 Rodriguez, J. Ramon
 Roeschel, Hans
 Roy, Jean Francois
 Russell, Luther J.
 Shumaker, Thomas C.
 Snavely, C.M..
 Solares, Manuel
 Stephens, Robert L.
 Stephens, Willis H., Jr.
 Stott, Donald B.
 Stout, David
 Suarez, Diego
 Tatum, Joseph
 Trulaske, Robert
 Uznis, Evelyn
 Vergopia, Salvatore
 White, Dennis
 Whitson, Don E.
 Wold, Keith C.
 Wollberg, Maria
 Woodruff, Donald
 Wymbs, Norman E.
 Yanes, Enrique
 *Honorary Member

DOCKOWNERS

A-1	Annelene BU	B-1	Hans Roeschel
A-2	Scott Morrison	B-2	Manuel Solares
A-3	Ed Downs	B-3	Marc Kaiser
A-4	Carl Doverspike	B-4	Charles Davis, Sr.
A-5	Henrique Jordan	B-5	Bob Cury
A-6	Elzie Higginbottom	B-6	Wilfred Cassel
A-7	R.L. Stephens	B-7	Donald Stott
A-8	Bill Eckert	B-8	Allan Gardner
A-9	Sandra Kirkpatrick	B-9	Duane Lewis
A-10	Eric Appelbaum	B-10	Herb Wertheim
A-11	Ron Picou	B-11	Raul Gutierrez
A-12	Milton Ferrell 	B-12	Jose Ortega
A-13	Donald Woodruff	B-13	Adelaida Miranda
A-14	Cora Keeler	B-14	William Ponsoldt
A-15	Louis Poma	B-15	Pedro Adrian
A-16	Julio Del Rey	B-16	Pedro Llovera
A-17	Cat Cay Yacht Club	B-17	Thomas Bird
A-18	Sandra Kirkpatrick	B-18	Joan Grasso
A-19	Manuel Diaz	B-19	Llovio Sergio
A-20	Manuel Baez	B-20	Robyn Arrington
		B-21	Robyn Arrington
		B-22	Guy Wolfenbarger
		B-23	Pedro Llovera
		B-24	Milton Ferrell
		B-25	Diego Suarez
		B-26	Carlos De La Cruz
		B-27	Carlos Musso
		B-28	Hans Roeschel

**AMENDED AND RESTATED
BYLAWS
OF
CAT CAY YACHT CLUB, INC.**

(a Florida corporation not for profit)

**ARTICLE ONE
Name and Purpose**

Section 1.01 Name. The name of the organization is CAT CAY YACHT CLUB, INC., a Florida corporation not for profit.

Section 1.02 Purpose.

(a) The purpose of CAT CAY YACHT CLUB, INC. (the "Club"), directly and through its wholly owned subsidiary, CAT CAY YACHT CLUB LTD., a Bahamian corporation, is to provide and maintain Club houses, residential facilities, dining facilities, golf links, tennis courts, yacht basin, swimming pool and all facilities and appurtenances necessary or useful for the carrying out of these purposes on the Island of North Cat Cay.



(b) To encourage and promote social functions, yachting, golf, tennis, deep-sea fishing, sea bathing, and all other lawful social, sporting and athletic activities and recreations for the sole benefit and private use of Club Members and Members' guests.

(c) To assist Members who own real property on North Cat Cay, Bahamas, in the sale and/or rental of their property and to charge a fee for such administrative services.

**ARTICLE TWO
Membership**

Section 2.01 Classes of Membership. There shall be four (4) classes of membership, Regular, Junior, Equity and Honorary Memberships. No Regular, Junior or Honorary Member, by virtue of his or her membership, shall have any proprietary interest in and to any assets or property of the Club. Likewise, the holding of Regular, Junior or Honorary Membership does not entitle the holder to vote in any election or to any income, increments, or other pecuniary gains, benefits or advantages from the Club's operation, but a Regular Member may be the non-Equity member of the Board of Directors, as provided in Section 5.01. For purposes of these Bylaws, any reference to the masculine gender will be deemed to apply to both male and female members.

Section 2.02 Equity Members.

(a) Equity Members shall be Regular Members in good standing, who have purchased equity certificates in the Club. Equity Members shall enjoy all the privileges afforded Regular Members and, subject to such conditions as may be imposed by these Bylaws, shall be the only Members of this Club who shall have an equity interest in the assets of the Club by virtue of their membership. Equity Members in good standing only shall be entitled to vote at meetings of Members. An Equity Member is no longer in good standing during a period of suspension, when he has been expelled, or when he is otherwise no longer a Regular Member of the Club. There shall be one hundred twenty-five (125) equity certificates (including the aggregate fractional certificates referred to in subparagraph (b) below) issued and outstanding. The Board of Directors will set the price of equity certificates, which will never be less than \$50,000.00 for a full certificate. No Regular Member shall purchase more than ten (10) equity certificates and the provisions of Article Four, Section 4.07, shall apply. The Club may assess Regular and/or Equity Members in accordance with the following procedure. The Board will adopt a resolution stating the amount and method of payment of the assessment, which will be considered at a regular or special meeting of the Equity Members. The assessment must be passed by the affirmative vote of at least fifty-one percent (51%) of the outstanding equity certificates owned by Equity Members in good standing. No equity certificate may be issued to more than one Regular Member (i.e. no joint owner) and no equity certificate may be issued to a corporation, partnership, trust, or other any artificial entity, subject to the "grandfathered" certificates referred to in subparagraph (c) below.

(b) Fractional shares of equity certificates may be sold to Equity Members for an amount equal to twenty percent (20%) of the full price of an equity certificate. For each fractional share, an Equity Member shall be entitled to one vote (e.g., an Equity Member who paid \$50,000 shall be entitled to five (5) votes. If the price of an equity membership is increased in the future above \$50,000, the purchase price of a fractional share shall likewise be increased to twenty percent (20%) of the increased price of an equity certificate; however, the purchaser shall still be entitled to only five (5) votes total for the full equity certificate. The foregoing is subject to the voting limitations set forth in subparagraphs (c) and (d) below. Fractional shares may only be sold to existing Equity Members. New Equity Members must purchase an equity certificate at a minimum of \$50,000 so as not to violate the provisions of subparagraph (a) above.

(c) Only persons who become Regular Members of the Club in accordance with these Bylaws may own and vote equity certificates in accordance with these provisions. Notwithstanding the foregoing, certain existing owners of shares who are not Regular Members (or are otherwise anomalies) shall be permitted to vote, on the terms and conditions applicable to each:

(1) Siegel-Robert, Inc. owns two equity shares and may vote same by a corporate representative and it shall be considered an Equity Member for purposes of these Bylaws. Siegel-Robert, Inc. may not purchase any additional equity certificates or fractional shares.

(2) Rita Case owns one equity certificate, although she is not now a Regular Member. She shall be entitled to vote and shall be considered an Equity Member for the purposes of these Bylaws. The equity certificate may only be transferred to her surviving spouse in accordance with the first paragraph of Section 2.08 so long as he is or becomes a Regular Member. She may not purchase any additional equity certificates or fractional shares, unless she becomes a Regular Member.

(3) Intentionally omitted

(4) Kay Doverspike owns one equity certificate, although she is not now a Regular Member. She shall be entitled to vote and shall be considered an Equity Member for the purposes of these Bylaws. The equity certificate may only be transferred to her surviving spouse in accordance with the first paragraph of Section 2.08 so long as he is or becomes a Regular Member. She may not purchase any additional equity certificates (or fractional shares), unless she becomes a Regular Member.

(5) Maria Wollberg owns one equity certificate, although she is not now a Regular Member. She shall be entitled to vote and shall be considered an Equity Member for the purposes of these Bylaws. The equity certificate may only be transferred to her surviving spouse in accordance with the first paragraph of Section 2.08 so long as he is or becomes a Regular Member. She may not purchase any additional equity certificates (or fractional shares), unless she becomes a Regular Member.

(6) Tony Belcher and Fred Minter each own half of a \$50,000 equity certificate. They shall both be considered Equity Members for purposes of these Bylaws. Since the share cannot be split in equal \$10,000 increments, they will designate in writing prior to each meeting of Equity Members who will be entitled to two (2) votes and who will be entitled to three (3) votes. Absent such a declaration, each will only be entitled to two votes. Since they are now Regular and Equity Members, either may purchase additional fractional shares. The provisions of this subparagraph will no longer apply at such time as each has purchased additional fractional shares to equal a full \$50,000 equity certificate. Although the certificate states that the Minter share is held by "Mr. and Mrs. Fred Minter", it is recorded on the Club's books as being owned by Fred Minter. The Minter half and the Belcher half of the share may be transferred to a surviving spouse, if any, upon their respective deaths, in accordance with the first paragraph of Section 2.08.

(d) No Equity Members who are also Regular Members may purchase more than ten (10) full equity certificates (including any fractional shares). Equity Members who are not also Regular Members shall not be permitted to purchase additional equity certificates. Each Equity Member may vote the certificates he or she owns, subject to the foregoing limitation.

(e) The Board of Directors adopted a resolution to allow Equity Members, so electing within a specified time, to prepay the then existing annual dues for ten years (subject to the following provisions). In the event a Member who elected to join the program resigns or is expelled from the Club, no portion of the prepaid dues will be refunded to him or her. In the event such a Member dies, his or her spouse shall be entitled to the benefit of the balance of the ten year prepayment of dues, so long as the spouse retains the equity certificate. The foregoing shall not affect the Member's obligation to pay other charges, assessments, etc. in accordance with these Bylaws. The Member will be obligated to pay annual dues at the expiration of the ten year period.

(f) The Board of Directors adopted a resolution to allow Equity Members, so electing within a specified time, to prepay the then existing annual dues for twenty years (subject to the following provisions). In the event such a Member resigns or is expelled from the Club, no portion of the prepaid dues will be refunded to him or her. In the event such a Member dies, his or her spouse shall be entitled to the benefit of the balance of the twenty year prepayment of dues, so long as the spouse retains the equity certificate. If the deceased Member is not survived by a spouse, his or her personal representative may designate a child of the deceased Member to enjoy the balance of the twenty year prepayment of dues, so long as that child is a Regular Member of the Club. In the event the Member who prepaid his dues lives beyond the twenty years, he will no longer be required to pay any annual dues for the rest of his life and, at the time of his death, his spouse shall likewise not be required to pay any annual dues for the balance of her lifetime. (This does not apply to a child or children of the Member). The foregoing shall not affect the Member's obligation to pay other charges, assessments, etc. in accordance with these Bylaws.

Section 2.03 Regular Members. Regular Members shall be twenty-five (25) years of age and over. Memberships shall include the spouse of the Member and their unmarried children under twenty-five (25) years of age. In order to have unlimited use of the Club facilities, all Members' children twenty-five (25) years of age or over must apply for Regular membership or else they will be subject to guest rules. There will be a limit of three hundred (300) Regular Members over twenty-five (25) years of age.

Section 2.04 Junior Members. Junior Members shall be under twenty-five (25) years of age and shall pay dues and initiation fees as specified by the Board of Directors. Such memberships shall have no voting rights and may be canceled at the will of the Board of Directors. The number of Junior Members will be set by the Board from time-to-time.

A Junior Member shall be entitled to automatically succeed to Regular membership prior to or upon reaching the age of twenty-five years. Commencing with the beginning of the fiscal year after his twenty-fifth birthday, full Regular Member dues will be payable.

Each Junior Member shall be required to have his or her sponsoring Member guarantee any house account or other sums that may be due to the Club by such Junior Member. If any Junior Member shall be delinquent, the sponsoring Member shall also be deemed delinquent simultaneously for the full amount of such delinquency.

Section 2.05 Honorary Members. Any gentleman or lady of legal age shall become a Honorary Member of the Club upon election and approval of the Board of Directors of the Club and shall, thereafter, not be subject to dues during his or her lifetime. Any Honorary membership may be revoked by resolution of the Board of Directors.

Section 2.06 Membership Privileges, Club House and Pool Privileges. All social privileges of the Club facilities and Club-owned amenities shall be granted to each person holding an Equity, Regular, Junior or Honorary membership and his or her spouse and children under the age of twenty-five (25) years.

Section 2.07 Change in Membership Classification. A Regular Member may become an Equity Member by purchasing an available equity certificate in accordance with these Bylaws and paying of any fees imposed by the Board of Directors.

Section 2.08 Transfer of Equity Memberships. Equity memberships may only be transferred in accordance with this Section. Upon the death of an Equity Member, the equity certificate shall automatically be reissued to the surviving spouse or legal heir designated by the deceased Member or his executor/personal representative, upon the designated heir becoming a Regular Member. In the event of divorce, the equity certificate will remain in the name of the person to whom it was issued.

In the event an Equity Member desires to transfer the equity certificate, the following procedures shall pertain. The Equity Member shall (i) resign, (ii) pay all sums due the Club, and (iii) tender the Equity certificate to the Club. In the event all available Equity membership certificates are not issued, the Member shall be placed on a waiting list maintained by the Club. The name of any Equity Member who has been suspended, expelled or who has resigned and who wishes to sell his equity certificate shall be placed on the waiting list, effective as of the date of his suspension, expulsion or resignation. The name of a deceased equity member whose equity certificate is not transferred to a spouse or legal heir shall be placed on the waiting list as of the date of death.

If an Equity Member owns more than one equity certificate, then, so long as the Equity Member retains at least one equity certificate, the Equity Member may transfer any additional equity certificates to a close family member or to the Club without being required to resign or pay a transfer fee if that close family member is a Regular Member or applies for Regular Membership within thirty (30) days of the proposed transfer and is accepted for membership. "Close family member" includes a spouse, parents, children or grandchildren of the Equity Member.

Upon reaching the age of 70, an Equity Member may elect to transfer the equity certificate to a close family member, as defined in this Section, as part of the Equity Member's estate planning, so long as the designee has been approved as a Regular Member of the Club in accordance with these Bylaws. The Equity Member will then become a Regular Member of the Club.

At such time as all equity certificates are issued, the Club will commence repurchasing the Members' certificates, starting at the top of the waiting list. For those former Members who were on the waiting list prior to May 1, 1999, the price for each equity certificate will be equal to the highest price a Regular Member or the Club, by action of the Board of Directors, is willing to pay for an equity certificate, less a transfer fee set by the Board. In no event will the Club accept a purchase price of less than the selling Member's purchase price, without prior permission of the Member or legal successor.

For those Members who are placed on the waiting list after May 1, 1999, the price for each equal certificate shall be as currently set by the Board of Directors, less a transfer fee set by the Board of Directors. In no event will the Club require a Member to accept a purchase price of less than the selling Member's purchase price (less the transfer fee) without prior permission of the Member or his or her legal successor.

Section 2.09 *Nomination of Candidates for Election to Membership.*

(a) The ownership or rental of property on the Island of North Cat Cay or South Cat Cay will not automatically entitle such owner or tenant to Regular membership or to any Club privileges.

(b) Every candidate for membership must be sponsored by one, and seconded by one other, Member of the Club. The application shall be in such form and contain such particulars as the Board of Directors shall, from time to time, determine and shall be signed by the sponsor and seconder. Such applications shall be sent to the Main Office, which will refer them to the Membership Committee for processing, then place them before the Board of Directors for consideration. A recommendation for approval by the Committee must be furnished to the Board at least one week prior to the meeting during which the application will be considered. Any omission from, inaccuracy in the particulars, or unfavorable new information relating to any candidate subsequently coming to light shall render the election voidable in the discretion of the Board of Directors.

(c) Records of all applications for membership shall be kept at the Club's Main Office.

(d) When a candidate has been duly approved, the Club shall promptly notify this candidate in writing and send a copy of these Bylaws, the Club's Rules and Regulations, and an invoice for such initiation fee and prorated dues as may be then payable. If such dues and initiation fee are not paid within thirty (30) days from the date of such approval, such approval may be rendered void. Until such candidate's dues and initiation fee have been paid in full, such person shall not be permitted to use the facilities of the Club.

(e) All notifications shall be sent to the last address supplied by the Member.

Section 2.10 *Guests and Transients.* All guests, including Members' children over twenty-five (25) years of age, must be sponsored by Members in good standing. Each Member sponsoring a guest must complete and transmit, by facsimile or mail, a Guest/Sponsor form to the Main Office. The office will send a confirmation to the guest and to the sponsoring Member and to the office on the island. If the foregoing is not completed, the guest will not be allowed to stay on the island and will be treated as a "transient". Guests must sign the Guest Register at the Front Desk each time they visit the Club. No suspended or expelled Member shall be entitled to be a guest or to sponsor a guest. No guest shall sign the name of a Member to a check or voucher. Cash or approved credit cards are accepted for service or merchandise at the Club. All guests who are staying in rental rooms must arrange for credit with the Front Office at the time of registration. Guests must pay all charges at the Administration Office on the island at the end of their visit.

The rules and regulations relating to guests and transients, including charges and fees, shall be adopted by resolution of the Board of Directors, as amended from time to time.

Section 2.11 Safety Regulations. It is not intended that residents and guests of Cat Cay, including young people, should be subject to an excessive number of rules and regulations. Nevertheless, certain rules are necessary in the interests of safety and to ensure consideration of others. There are also Bahamian laws which affect local activities such as boating, fishing, water skiing, and the use of drugs, which Members must adhere to. No motorcycles or motor scooters shall be allowed on the Island, so posted at entrances. No dogs shall be allowed in any Club building or restaurant area. Dogs on other Club property must be on a leash. Electric vehicles and bicycles are the only transportation allowed.

Other rules and regulations may be adopted by the Board and will be posted from time to time, as circumstances warrant.

Parents are particularly requested to bring rules to the notice of children and young people and to cooperate in enforcing the rules. The Island Manager and the Dock Master have the authority and support of the Board of Directors in enforcing these Bylaws, and the Club's Rules and Regulations.

Section 2.12 Indebtedness. Monthly accounts must be paid within thirty days. Members failing to pay their accounts within thirty days may have their credit and charge privileges and utility service terminated and the Member's name posted on the bulletin board of the Club by action of the Board of Directors or the Executive Committee. Members will be advised by certified mail, overnight delivery, or facsimile transmission prior to suspension or termination. In order to be eligible for reinstatement (prior to suspension or expulsion), a posted Member must pay all of the accounts in full and may be requested to pay a deposit of one month of the Member's prior year's monthly average, which will be refunded (if not used) at the expiration of one year from reinstatement. If a guest's payment is not honored (i.e. bounced check or reversed credit card charge), the account will be charged to the sponsor.

Section 2.13 Denial of Entry. The Board of Directors and the Island Manager shall have the right to deny entry to any non-Member to the Club premises, without stating any reason. If such individual is brought by a Member, as a guest, the Board of Directors, or the Island Manager, will request the Main Office to notify this Member that the individual should not be brought to the Club again.

Section 2.14 Tipping. Since there is a service charge included in food and beverage charges, tipping is not permitted at the Club. The giving of gratuities to anyone in the service of the Club is positively prohibited since it eventually causes deterioration of the service. Violation of the foregoing prohibition shall be cause for disciplinary action. Opportunity is given to contribute as liberally as one desires to the Employees' Christmas Fund.

Section 2.15 Club Employees. No Member or resident shall employ, retain, use, hire, or otherwise engage, temporarily or permanently, an employee of the Club except by hiring such employee through policies established by the Island Manager and approved by the Board of Directors. No Member shall employ a former employee of the Club, without the prior written consent of the Board of Directors or the Executive Committee. Consent may be withdrawn by the Club upon written notice to the Member/employee.

Section 2.16 Member Employees. No Member or resident may employ, retain, use, hire or otherwise engage, temporarily or permanently, or cause to be present on North Cat Cay, Bahamas, and engaged in a gainful occupation, any person who is not a citizen of the Commonwealth of the Bahamas, or who does not hold a valid permit to engage in a gainful occupation in the Commonwealth of the Bahamas on North Cat Cay issued by the Bahamian Government, with the exception of boat crews.

Section 2.17 Subscriptions. The main office shall send statements for dues when authorized by the Board of Directors. Dues for new Members will be prorated for the current year. If dues are not paid within thirty (30) days from the date of the statement, the provisions of Section 2.12 and Section 2.20 shall apply.

Section 2.18 Taking Up Memberships. When a duly approved Member has paid the initiation fee and applicable dues or, in the case of a Honorary Member, has been notified by the Office of approval, such Member shall be entitled to all benefits and privileges of the Club and shall be bound by these Bylaws and applicable Rules and Regulations.

Section 2.19 Resignations. Members wishing to resign must notify the Office by letter no later than July 1st of each year, failing which they will be liable for the normal annual dues. The Board of Directors may require the payment of an initiation fee if former Members re-apply for membership.

Section 2.20 Suspension and Expulsion. Any Member may be suspended or expelled for the violation of any Bylaw, Rule or Regulation, for the failure to pay dues or any charge within thirty days of the date due, or for any other act or for any conduct which, in the opinion of the Board of Directors, renders him or her undesirable as a Member, or for any matter or thing deemed prejudicial to the Club or its membership; provided, however, that no person shall be suspended or expelled except by action of the Board of Directors of the Club, upon the affirmative vote of two-thirds of a quorum present.

Section 2.21 Appeal. Any person aggrieved by a decision of the Board of Directors of the Club to suspend or expel a Member shall have the right to appeal, within thirty (30) days of such suspension or expulsion, to the Board of Directors (or an ad hoc committee appointed by the Board of Directors, for the sole purpose of hearing the appeal) for reconsideration. The person aggrieved shall submit his appeal in writing to the Secretary of the Club and the Chairman of the Board of Directors shall call a special meeting of the Board of Directors of the Club (or appoint an ad hoc committee, which shall call a meeting for the appeal) for the purpose of reconsideration of such suspension or expulsion, shall give the aggrieved party notice thereof, and shall grant the aggrieved party an opportunity to be heard during such meeting. If an ad hoc committee is appointed, it shall make a written recommendation to the Board, for the Board's final decision. During the pendency of such appeal, the suspended or expelled Member shall be denied the privileges of the Club. Following reconsideration, any suspension or expulsion shall be final.

Section 2.22 Effect of Suspension. During the period of suspension, a suspended Equity Member shall not be entitled to vote on any question or matter submitted to the Equity Members of the Club. A suspended Member shall be denied privileges, facilities, services and property of the Club. The Board may suspend a Member for a specific period of time; otherwise a suspension shall be in force until it is lifted by further action of the Board of Directors, upon a two-thirds affirmative vote of a quorum present.

Section 2.23 Effect of Expulsion The Member shall forfeit his membership in the Club without reimbursement and shall be denied the privileges, facilities, services and property of the Club. An Equity Member will not be entitled to vote on any question or matter submitted to the Equity Members of the Club, but an expelled Equity Member may submit his equity certificate for resale in accordance with Section 2.08 of these Bylaws.

A Member expelled in accordance with these Bylaws shall not thereafter be accepted for membership unless approved by the Membership Committee and, upon submission of his membership application to the Board of Directors, approval of the membership by a "super majority" of the Board, being at least 75% of the full Board of Directors (i.e., at least nine Board members).

Section 2.24 Limited Use of Club Property for Expelled or Suspended Members.

If a suspended or expelled Member owns property on the island, at the Board's discretion, he may be allowed to travel the interior roadways on the island, on the most direct route to and from his property. In consideration of the foregoing, the suspended or expelled Member must acknowledge that the property is subject to the Club's Building Standards and that he shall continue to be liable for homeowner charges generally assessed against all homeowners. Failure of the suspended or expelled Member to comply with the Building Standards and/or to pay applicable homeowner charges may result in the Board of Directors denying the suspended or expelled Member the use of the interior roadways on the island.

Section 2.25 Refund of Dues. In the event of resignation, suspension or expulsion of a Member, no dues will be refunded. All unpaid indebtedness owing to the Club, if any, shall be deducted from the proceeds of the sale of an equity certificate, if applicable.

Section 2.26 Deceased Members. Upon the death of any Member, his or her membership in the Club shall be terminated immediately and the Club shall not be required to refund prepaid dues; provided, however, that the spouse of said decedent, should he or she elect to do so, may continue said membership. In the event the spouse shall continue said membership, the same shall terminate upon his or her death or resignation.

ARTICLE THREE Initiation Fees and Dues

Section 3.01 Member Fees. Initiation fees and dues will be adopted each year by the Board of Directors. The rate schedule, as authorized, will continue until, from time to time, altered by two-thirds (2/3rds) vote of the Directors at a meeting at which a quorum is present.

) There will be no initiation fee or annual dues for Honorary Members of the Club.

Section 3.02 Payment of Membership Dues and Fees. All initiation fees and dues shall be paid as directed by the Board of Directors.

ARTICLE FOUR

Meetings of Equity Members

Section 4.01 Location. All meetings of Equity Members of the Club shall be held on North Cat Cay, Bahamas, except as otherwise directed or approved by the Board of Directors. The Chairman of a meeting may exclude Equity Members who are not in good standing from attending the meeting.

Section 4.02 Annual Meeting of Equity Members. The Annual Meeting of Equity Members shall be held at Cat Cay during the first week of May or as otherwise set by the Board of Directors. At such meeting, the Board of Directors shall submit to the Equity Members of the Club a report dealing with the state and condition of the Club during the preceding Club year. Thereafter, the meeting shall proceed to transact such other business, including the election of the Board of Directors, as may properly come before the meeting. Only Equity Members in good standing shall be entitled to vote at the Annual Meeting. The Equity Members shall elect Members to fill vacancies on the Board of Directors and adopt an annual budget at the Annual Meeting (or at any special meeting called for these purposes prior to the fiscal year-end). The Board of Directors will recommend a proposed annual budget prior to the Annual Meeting (or the special meeting called for this purpose). Regular Members in good standing are welcome to attend the Annual Meeting of Equity Members, but cannot vote.

Section 4.03 Special Meetings. Special meetings of Equity Members of the Club shall be called by the President at the request of a majority of the Board of Directors or the Secretary of the Club at the written request of not less than twenty-five Equity Members. Any request for a special meeting of the Equity Members of the Club shall state the purpose or purposes for which the meeting is being called.

Section 4.04 Notices of Meetings Written notice of the time and place of each meeting of the Equity Members of the Club shall be mailed, postage prepaid, to each Equity Member entitled to vote at such meeting at his address as it appears on the Membership Roster of the Club, at least fourteen days prior to the date of the meeting.

Section 4.05 Order of Business. The order of business at the Annual Meeting of the Equity Members and, insofar as practical, at all special meetings, shall be as follows:

1. Call to order by the presiding Officer.

2. Reading and approval of the minutes of the previous meeting.
3. Election of Directors of the Club
4. President's State of the Club
4. Adoption of Budget (if applicable)
5. Report of the Committees of the Club (if any)
6. Unfinished business
7. New business
8. Adjournment

In the absence of any objection, the presiding officer may nonetheless vary the order of business at any meeting at his discretion.

Section 4.06 Quorum. The presence, in person or by written proxy, of not less than fifty-one percent (51%) of the Equity Members of the Club in good standing shall constitute a quorum. The Equity Members present at a duly authorized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided by statute, adjourn the meeting to such time and place as they may determine.

Section 4.07 Voting. Each Equity Member of the Club in good standing shall have the right to vote for each full or fractional equity certificate he owns for the election of each Director of the Club and for any other question or matter submitted to the Equity Members. There shall be no right of cumulative voting. A majority of the votes cast shall decide every question or matter submitted to the Equity Members unless otherwise provided by statute or by these Bylaws. The vote upon any question or matter submitted to the Equity Members of the Club shall be taken viva voce; provided, however, that the vote upon any question or matter shall be by ballot if demanded by any Equity Member or if directed by the presiding officer of the meeting.

ARTICLE FIVE

Board of Directors

Section 5.01 Number and Qualification. The property and affairs of the Club shall be managed and controlled by the Board of Directors, which shall be composed of twelve (12) members, ten of whom shall be Equity Members and two of whom shall be a Regular Member who is not an Equity Member.

Section 5.02 Nomination of Candidates for Election, Term of Office and Procedures. The Board shall appoint a Nominating Committee, who shall present a slate of candidates, each of whom will have indicated his willingness to serve if elected, for approval and recommendation by the Board to the Equity Members. Such slate shall be included with the notice of the Annual

Meeting mailed to the Equity Members. There shall be four vacancies on the Board each year. Each Director will hold a three (3) year term. A form proxy, to be signed by Equity Members who will not be present at the meeting, shall be sent to all Equity Members with the notice of the meeting and the proposed slate of candidates. Any other Member in good standing wishing to run (including Regular Members if the non-Equity Member seat is up for election) must notify the Secretary in writing addressed to the Main Office, no later than one week prior to the Annual Meeting. No nominations will be taken from the floor at the Annual Meeting. No director can be re-elected within a period of one year of the expiration of his term as a Director.

Section 5.03 Vacancies. Vacancies in the Board of Directors occurring by reason of death, resignation or otherwise, may be filled by an affirmative vote of a majority of the remaining Directors. The person so appointed by the Board shall be deemed to be filling the term of the person creating the vacancy and, therefore, the one year rest referred to in Section 5.02 above shall not apply.

Section 5.04 Powers of Directors. The Board of Directors shall exercise all the powers of the Club which are not reserved or conferred on the Equity Members by statute, the Articles of Incorporation or these Bylaws. Without limiting the generality of the foregoing, the Board of Directors shall elect all the Officers of the Club and shall, from time to time, make such rules and regulations as, in its sole discretion, it shall deem necessary for the use of the facilities of the Club by the Members thereof, their families and guests. The Board may approve expenditures in excess of the annual budget only in a utility-related emergency which expenditures cannot exceed the sum of \$100,000.00 in total during any fiscal year. If the Board approves additional expenditures, other than emergency expenditures, in excess of the annual budget during a fiscal year, it must recoup the excess by increasing revenues over budget in the current fiscal year (e.g., admit new members, special assessments or otherwise increase the revenue over the current budget).

Section 5.05 Annual Meetings of Directors. The Annual Meeting of the Board of Directors shall be held immediately following the Annual Meeting of the Equity Members of the Club at the same location as such meeting. At the Annual Meeting of Directors, the Annual Meeting of the Club's subsidiaries, Cat Cay Yacht Club, Ltd. and Cat Cay Utility, Ltd., shall also occur. At the Annual Meeting of Cat Cay Yacht Club, Ltd., the Club, through its Board of Directors, will vote its shares to name the President, Secretary and Treasurer of the Club selected at the meeting, as officers and directors of each subsidiary, together with such other officers and directors as they shall deem appropriate. The officers and directors of each subsidiary shall also own, in trust, the shares of each subsidiary, to the extent required by applicable Bahamian law. Transfer of shares in each subsidiary shall be deemed automatic at the conclusion of

each officer's term and the commencement of the incoming officer's term, without the necessity of issuing new share certificates and trust agreements. Transfer of the shares in each subsidiary to an officer are deemed held in trust for the Club and shall not confer any beneficial ownership rights to the officer. This provisions shall be deemed retroactive to the incorporation of each subsidiary.

Section 5.06 Regular and Special Meetings. Regular meetings of the Board of Directors shall be held upon written notice from the President on at least a quarterly basis. Special Meetings of the Board of Directors of the Club may be called by the President or the Secretary of the Club, who shall state the purpose or purposes for such meeting. Equity and Regular Members may attend Board meetings as observers only, at the pleasure of the Board. Directors may attend meetings via telephone.

Special meetings of the Board of Directors of the Club shall be held on North Cat Cay, Bahamas, or at such other place as the Executive Committee may, from time to time, direct.

Section 5.07 Notices of Meetings. No notice shall be required for the annual meeting of the Board of Directors of the Club or for adjourned meetings of the Board, whether annual or special meetings. Five days notice for any Regular meeting and fourteen days written notice shall be given for special meetings of the Board of Directors and such notice shall state the time, place and purposes of the special meeting; provided, however, that all the Directors may unanimously waive notice of any meeting.

Full and detailed minutes of each meeting of the Board of Directors shall be kept, mailed promptly to each Board member, and confirmed at the next meeting of the Board.

Section 5.08 Quorum The presence, in person or by telephone, of not less than fifty-one percent (51%) of the Directors of the Club shall constitute a quorum. The Directors present at a duly authorized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum. If a meeting cannot be organized because a quorum has not attended, those present may, except as otherwise provided by statute, adjourn the meeting to such time and place as they may determine.

Section 5.09 Voting. A majority of the votes cast by the Board of Directors shall decide every question or matter submitted to the Directors unless otherwise provided by law or by these Bylaws. The election (or removal) of officers must be by written ballot.

ARTICLE SIX

Committees

Section 6.01 Standing Committees. The standing committees of the Club shall be the Executive Committee, the Entertainment Committee, the Nominating Committee, the Membership Committee, the Standard Committee, and the House Committee.

Section 6.02 Other Committees. In addition to the standing committees, the Club shall have such other committees as the Board of Directors shall, from time to time, determine.

Section 6.03 Executive Committee. The Board shall elect an Executive Committee consisting of five Board members. The Board shall also elect a President from the members of the Executive Committee chosen by the Board. The Board may either elect a Secretary and Treasurer or the President may appoint a Secretary and Treasurer, as the Board sees fit. Election of the Executive Committee shall take place at the Annual Meeting of the Board of Directors or at a special meeting of the Board. A majority of the members of the Executive Committee shall constitute a quorum and any action will require the affirmative vote of a majority of the members of the Executive Committee at a meeting at which a quorum is present. The Executive Committee shall submit the annual operating budget on a cash adjusted basis to the Board of Directors for approval, and the Executive Committee shall exercise full financial and management control of the Club operations and Club officers and management shall be required to have Executive Committee prior approval before execution of any contracts, salaries, expenses, housing or any other commitments on behalf of the Club. The Executive Committee will report to the Board of Directors all major actions taken between Board meetings, for ratification by the Board. The Executive Committee may approve expenditures in excess of the annual budget only in a utility-related emergency, which expenditures cannot exceed the sum of \$50,000.00 in total during any fiscal year. If the Executive Committee approves additional expenditure, other than emergency expenditures, in excess of the annual budget during a fiscal year, the Board of Directors must recoup the excess, upon specific recommendation of the Executive Committee, by increasing revenues over the current budget (e.g., admit new members, special assessments or otherwise increase the revenue over the current budget). Vacancies on the Executive Committee may be filled by the Board.

Section 6.04 Entertainment Committee...The Entertainment Committee shall be responsible for the entertainment and social activities of the Club. The Entertainment Committee shall be appointed by the Executive Committee.

Section 6.05 Nominating Committee. The Nominating Committee shall consist of at least three (3) members appointed by the Executive Committee. It will send a notice to all Equity Members, requesting those persons interested in serving on the Board to so notify the Nominating Committee. The Nominating Committee will propose a slate of nominees for the vacancies on the Board of Directors, and propose nominations for the Flag Officers of the Club, for consideration by the Board of Directors. The Board of Directors will review and approve the Nominating Committee's recommendations, or approve an alternate slate.

Section 6.06 Membership Committee. The Membership Committee shall be responsible to process applications for all classes of membership. The Membership Committee shall be composed of at least three (3) Directors designated by the Executive Committee. The Chairman of the Membership Committee, and any other member thereof, shall be appointed by the Executive Committee and shall have such powers and authorities as shall, from time to time, be determined by the Board of Directors of the Club.

Section 6.07 Standards Committee. The Executive Committee shall also act as the Standards Committee, which shall be responsible to develop architectural and design standards, which will hereafter be referred to as the "Building Standards", for any buildings or other improvements constructed on North Cat Cay, Bahamas. The Standards Committee shall also approve all architectural and engineering plans or drawings therefor to assure compliance with the Building Standards. The Standards Committee shall recommend changes to the Building Standards to the Board of Directors from time-to-time, who shall consider them for adoption. The Building Standards will be included in the Club's Rules and Regulations. The Board of Directors shall have the power to grant variances upon good cause shown by a Member.

Section 6.08 House Committee. The House Committee shall consist of not less than three (3) members appointed by the Executive Committee. The House Committee shall advise the Executive Committee on all matters relating to the conduct of Members and the management of the Club premises and shall recommend appropriate House Rules and any subsequent amendments or changes to the House Rules to the Board of Directors. The House Rules will be included in the Rules and Regulations.

Section 6.09 Meetings of Committees. Each committee of the Club shall meet at the call of the chairman thereof, upon written or oral notice to each member of the committee. A majority of the members of the committees shall constitute a quorum for the transaction of business and rules herein with respect to meetings of the Board of Directors of the Club shall be applicable to meetings of the committees of the Club. Attendance by telephone may be deemed presence at any meeting.

ARTICLE SEVEN Officers

Section 7.01 Officers. The officers of the Club shall consist of a President, a Secretary and a Treasurer. No one may hold more than one office at a time. The Secretary may appoint an Assistant Secretary. All officers, except the Assistant Secretary, must be members of the Board of Directors. The officers will be selected in accordance with Section 6.03 and will hold such offices for one year.

Section 7.02 President. The President shall be the chief executive officer of the Club; shall have general and active management of the business and affairs of the Club, subject to the directions of the Board of Directors and Executive Committee; and shall preside at all meetings of the Equity Members and Board of Directors.



Section 7.03 Secretary and Assistant Secretary. The Secretary, or his Assistant Secretary, shall record the minutes of all meetings of the Equity Members and Board of Directors and Executive Committee; shall send all notices of all meetings; and perform such other duties as may be prescribed by the Board of Directors or the President.

Section 7.04 Treasurer. The Treasurer shall oversee the Club's funds and financial records; shall arrange for a full and accurate accounting of receipts and disbursements and render accounts thereof at the annual meetings of the Equity Members and whenever else required by the Board of Directors or the Executive Committee; and shall perform such other duties as may be prescribed by the Board of Directors or the President.

Section 7.05 Removal of Officers. Any officer elected or appointed by the Board of Directors may be removed by a two-thirds (2/3rds) vote of the Directors at a meeting at which a quorum is present.

Any vacancy in any office may be filled by the Board of Directors.

Section 7.06 Island Manager. The Island Manager and other key employees shall be employed by the Executive Committee, with approval of the terms and conditions of their employment by the Board of Directors. The Island Manager directs and is responsible for all operating and administrative activities of the Club on the island. He reports directly to the Executive Committee and will deliver a Manager's Report at each Board of Directors meeting. The Island Manager recommends policies and changes he deems necessary and, when approved by the Executive Committee and the Board of Directors, has authority to operate the Club within such approved policies and procedures. All island employees of the Club, except as otherwise specified herein, shall be

employed, discharged or otherwise controlled by the Island Manager, in keeping with the organizational chart, budget limitations and rules and regulations regarding employees approved by the Executive Committee upon recommendation of the Island Manager. The Island Manager shall establish all charges for food, beverages, services, etc. in and about the Club, subject to the approval of the Executive Committee and review by the Board of Directors.

Section 7.07 Controller. A Controller will be employed by the Executive Committee, with the approval of the terms and conditions of employment by the Board of Directors. The Controller shall compile monthly statements, annual statements and tax returns, and shall review and report to management and the Board concerning:

- (a) all accounting books and record, including the compiled monthly statements, annual statements and tax returns;
- (b) payroll records;
- (c) all transactions in posting, charges, credits and dues, Club payables and receivables;
- (d) logs of marina and fuel charges; and
- (e) shipments of goods entering North Cat Cay Island.

The Controller will report to management and the Board of Directors.

Section 7.08 Other Positions. The Board of Directors may, from time-to-time, appoint a Director of Real Estate, a Director of Membership, and/or a Social Director upon terms and conditions acceptable to the Board of Directors.

Section 7.09 Flag Officers. The Flag Officers shall be, in order of rank, Commodore, Vice Commodore, Rear Commodore, and Fleet Captain. Each shall be elected by the Board of Directors.

Section 7.10 Commodore. The Commodore shall have general charge and control of the yachting affairs of the Club, subject to the Executive Committee and the Board of Directors, and shall perform such other duties as the Board of Directors shall prescribe.

Section 7.11 Flag Officers and Others. The duties and powers of other officers who may, from time to time, be chosen by the Board of Directors of the Club shall be specified by the Board of Directors at the time of the appointment of such other officers.

Section 7.12 Compensation. No officer of the Club shall receive any salary from the Club on account of service as an officer of the Club.

Section 7.13 Roster of Members. Each Member of the Club shall give to the Secretary a mailing address for entry onto the Membership Roster and all notices and other communications of the Club to such Member shall be sent to such address until the Secretary shall receive notification in writing of any change thereof. Any notice or other communication set to any Member at his last known address shall be deemed to have been received. The names of the Board of Directors and the Standing Committee members shall be printed in the Membership Roster and posted in the Administration Office.

Section 7.14 Retiring Officer. A retiring President may continue for one more year on both the Board of Directors and Executive Committee, *ex officio*, without a vote, to assist with advice during this transitional period, at the pleasure of the Board or Executive Committee, as the case may be.

Section 7.15 Surety Bond/Directors and Officers Insurance. A surety bond may be purchased by the Club, covering the faithful performance of such officers or employees as shall be designated to handle Club funds, from time to time. The Club shall also endeavor to obtain directors and officers liability insurance coverage, so long as it is available.

ARTICLE EIGHT Books and Records

Section 8.01 Books and Records. The Club shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the Equity Members and Board of Directors.

Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 8.02 Equity Members' Inspection Rights. Any Equity Member, upon written demand stating the purpose therefor, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, the relevant books and records of accounts, minutes and records of Equity Members and to make extracts therefrom.

Section 8.03 Financial Information. The Executive Committee will engage a certified public accounting firm to prepare financial statement and tax returns. The accounting firm will only be authorized to be in contact with the Executive Committee and the Board of Directors. If monthly statements shall be prepared, at the direction of the Executive Committee, they shall be sent to the Executive Committee no later than fifteen (15) days after the end of each

month. Not later than three (3) months after the close of each fiscal year, the accounting firm shall prepare an audited balance sheet showing the financial condition of the Club at the close of its fiscal year, and a profit and loss statement showing the results of the operations of the Club during its fiscal year.

The Club shall mail to each Equity Member a copy of the annual financial statements, and to Regular Members at the Board's discretion.

The annual balance sheet and profit and loss statement shall be prepared in accordance with generally accepted accounting principles and shall consist of the following, in detail:

Balance Sheets-Assets and Liabilities:

- (a) Accounts receivable
- (b) Inventories
- (c) Prepaid expenses
- (d) Schedule of property, plant and equipment
- (e) Accumulated depreciation
- (f) Liabilities-Shareholders investment
- (g) Notes payable
- (h) Accounts payable
- (i) Accrued liabilities

Statement of Income and Expenses (Including all Departments)

- (a) Department operations, sales/profits
- (b) Revenue and expenses
- (c) Utilities cost and expenses
- (d) List of utilities outstanding
- (e) List of house accounts outstanding
- (f) List of dues outstanding
- (g) List of employees (names, salaries, departments)

The financial statements shall be filed in the registered office of the Club in this state, shall be kept for at least five years, and shall be subject to inspection during business hours by an Equity Member, in person or by agent or attorney.

**ARTICLE NINE
Corporate Seal**

The Board of Directors shall provide a corporate seal, which shall be in circular form.

ARTICLE TEN
No Discrimination

No person shall be denied membership in the Club on account of his or her race, creed, color, or nationality and no guest of a Member shall be denied the use of the facilities of the Club on account of his or her race, creed, color or nationality.

ARTICLE ELEVEN
Club Year

The fiscal year of the Club shall be July 1 through June 30.

ARTICLE TWELVE
Interpretation of Bylaws and Rules

Except as expressly provided by statute, the Articles of Incorporation, these Bylaws or the Rules and Regulations, any dispute concerning the meaning or interpretation of the foregoing shall be settled by the Board of Directors and any decision of the Board of Directors, subject to reconsideration thereof, shall be final and binding on all persons concerned.

ARTICLE THIRTEEN
Amendment and Alteration

These Bylaws may be amended or altered in any respect by resolution of the Board of Directors, from time to time, which must be approved by not less than a seventy percent (70%) vote of the equity certificates owned by Equity Members in good standing at a regular or special meeting of the Equity Members. Notwithstanding the foregoing, any amendment which increases or decreases the number of equity certificates from the one hundred twenty-five (125) allowed under Section 2.02 or the price of an equity certificate set forth in that Section must be approved by one hundred percent (100%) of the then existing Equity Members in good standing. However, an amendment which increases the number of Regular Members above three hundred (300) shall only need a majority vote of the equity certificates by Equity Members. In the event an Equity Member who is not in good standing (i.e. a resigned Equity Member) does not approve, he must offer his equity certificate to the Club for redemption at the same price he paid for it. However, an amendment which increases the number of Regular Members above three hundred (300) shall only need a majority vote of the equity certificates by Equity Members in good standing.

ARTICLE FOURTEEN
Sales and Rental Services

Section 14.01 Sales. Each Member, as a condition to membership, acknowledges that sales of real property and docks on Cat Cay are governed by the provisions of these Bylaws.



(a) No sign may be displayed on any residential property, except a sign designating the name of the property.

(b) The Club will provide a "listing" service to Club Members only and will not act as a realtor or broker. Each Member wishing to list his property for sale shall sign and deliver the Club's listing agreement. The Island Manager's sole duty is to notify prospective purchasers of property available and to arrange for the property to be shown to prospective purchasers on the island. Members must notify the Island Manager of prospective purchasers who may visit the property.



(c) For all sales where a buyer has been shown the property by the Club, its agents or employees, with the permission of the owner, the seller will be obligated to pay a commission to the Club of three percent (3%) of the sales price at closing (whether a written listing notice has been executed or not).

(d) For all sales where the buyer has not been shown the property by the Club, its employees or agents, then the seller shall be obligated to pay a transfer fee to the Club at closing based on one percent (1%) of the sales price. Notification of sale by the owner, certification of sales price and agents of closing must be delivered by registered mail to the Club's main office ten (10) days prior to closing to the attention of the Controller. Failure to comply with this provision will result in the imposition of sanctions by the Board and appropriate legal action.

Section 14.02 Rentals. Each Member, as a condition to membership, irrevocably appoints Cat Cay Yacht Club, Inc. as its exclusive agent if the Member desires to rent or lease his property located on North Cat Cay, Bahamas, and Cat Cay Yacht Club, Inc. shall be entitled to a fee to be set by the Board of Directors, which shall be a percentage of the gross rental charged by the lessor with respect to each rental, as set by the Board.



Section 14.03 Payment of Fees. Each Member who has had his property on North Cat Cay, Bahamas, sold or rented as contemplated by Sections 14.01 and 14.02 shall be obligated to pay unpaid fees pursuant to Section 14.01 and 14.02 at the time the closing of the sale or other transfer of the property occurs or at the time the purchaser or lessee take possession of the property. The Member whose property was involved in such transactions shall be personally

liable to pay such fees when earned and failure to do so shall cause to be created a lien upon such Member's property for the amount of such unpaid fees plus interest at a rate of twelve percent (12%) per annum until paid. If Cat Cay Yacht Club, Inc., or its subsidiary, takes legal action against the Member to collect its fee, the Member shall be liable for all costs of collection, including attorneys' fees at both the trial and appellate level. If the seller fails to pay, the buyer will be liable for same.



Section 14.04 Island Manager's Authority. The Island Manager is authorized and has the power to negotiate contract rates and fees for rentals to groups (such as a rendezvous) (including any group which has an officer or a person who is also a Member of the Club), group representatives and other non-individual parties, subject to approval of the Executive Committee.

ARTICLE FIFTEEN

Custom Charges

All charges by Bahamian Customs on Members' personal shipments are personal charges and will not be paid by the Club. All Members shall make their own arrangements directly with the Custom Officer. The Club will not be responsible for shipments, charges, seizures or loss of any shipments of individuals, Members, guests or transients.

CLUB ASSETS

Victoria Dining Room

)Cone Bar and Patio

BU's Bar

Nauticat Restaurant and Bar

Haigh House

Windsor 1 and 2

Kitten Key Club House

Marina Area - including Fuel Dock and Air Supply Station

Customs - Police - Immigration Houses

Victoria Hotel

)Airport

Employees Houses

Boutique (House)

Commissary (House)

Golf Course

Tennis Courts

Pool Area and Beach

Boat Storage Area

Carts and Maintenance Equipment

Repair Shop Area with Jail & Storage Shed Area

)Laundry, Garage Area

Parks: Ryder, Massey and Bruce G. Robert Park/Grill Area

Roads

Power Plant

EXHIBIT

#7



Honor Et Integritas

HIGGS & JOHNSON

COUNSEL & ATTORNEYS-AT-LAW
SANDRINGHAM HOUSE 83 SHIRLEY STREET P. O. BOX N-3247 NASSAU, BAHAMAS
TEL: (242) 322-6571-9 FAX: (242) 328-7727 e-mail: hj@courtwire.com www.higgsjohnson.com.bs

OUR REF: LRP/ac/21562/8064

YOUR REF:

16th February, 2001

ADVERS
GODFREY W. HIGGS, CBE
(1977-1986)
YVONNE JOHNSON (1947-1977)

Messrs. Callenders & Co.
Chambers
One Millars Court
Nassau, Bahamas.

Attention: Stephen A. Turnquest, Esq.

Dear Sirs,

I am led to believe that you may have an outstanding judgment in favour of your Client, Mrs. Eleanor Cole, against one Walker and which attaches to his property at Cat Cay.

As previously mentioned at the telephone this Firm represents an adjoining owner of the same and in the event the property is realized by your Client I should be most grateful if you could so advise me so that an appropriate offer can be made.

Yours faithfully,
HIGGS & JOHNSON

Leon R. Potier

ADVERS
C. DUNKLEY
T. HIGGS
D. J. LOWE
A. CASH
R. POTIER
M. JOHNSON, JR.
DER DEAL
K. F. DELANEY
INGO H. COOKE
RE PINDER
ER L. THOMPSON
CAITOR
M. FITZGERALD

ADVERS
OF CALL TO THE BAHAMAS BAR
E. V. COOK
E. M. GOUTHRO
STEPHEN GOUTHRO
M. N. BENJAMIN
N. J. MELVIN
ARCHER
E. C. SANDS
Y. SMITH
A. L. GLOYER
D. R. RODGERS

ADVERS
Y. A. D. JOHNSTONE, CMO
MARY CHRISTIE
HIGGS

ADVERS
SNOWLES

ADVERS
OFFICE
COURT
12519
GRAND BAHAMA

ADVERS
51-5050
51-5515
51-4855

ADVERS
ALEX



EXHIBIT

#8

February 22, 2001

SAT/udm/16772(1)

Leon R. Potier, Esq.
Higgs & Johnson,
Chambers,
Sandringham House,
83 Shirley Street,
Nassau, Bahamas.

Dear Mr. Potier,

Re: Eleanor Cole/James Walker

I acknowledge with thanks receipt of your February 16 letter.
We thank you for your client's interest and we undertake to
advise you at the appropriate time so that your client might make a suitable
offer.

Regards,

Yours sincerely,
CALLENDERS & CO.

Stephen A. Turnquest



SAT Correct.

EXHIBIT

#18



ORDERED in the Southern District of Florida on August 16, 2007.

Paul G. Hyman, Chief Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division

IN RE:

CASE NO: 03-32158-BKC-PGH

JAMES F. WALKER,

Chapter 7 Proceedings

Debtor.
_____ /

ORDER DENYING MOTION FOR REHEARING AND RECONSIDERATION OF COURT'S
JUNE 26TH, 2007 ORDER DENYING COLE'S MOTION TO COMPEL
INVESTIGATION BY TRUSTEE AND MOTION TO TAKE ACTION AGAINST THE
LAW FIRM OF FERRELL, P.A., GARY ROTELLA, ESQUIRE, AND GARY J.
ROTELLA & ASSOCIATES, P.A. (C.P. 1908) AND SUPPLEMENT THERETO
(C.P. 1910)

THIS MATTER came before the Court upon Mary Alice Gwynn's ("Ms. Gwynn") *Motion for Rehearing and Reconsideration of Court's June 26th, 2007 Order Denying Cole's Motion To Compel Investigation by Trustee and Motion to Take Action Against the Law Firm of Ferrell, P.A., Gary Rotella, Esquire, and Gary J. Rotella & Associates, P.A. (C.P. 1908), and Supplement Thereto (C.P. 1910)* (collectively, the "Motion"). For the reasons stated below, the

Court denies the Motion which seeks rehearing of the Court's *Order Denying Motion to Compel* ("Order") (C.P. 1906).

Federal Rule of Civil Procedure 59(e), made applicable to bankruptcy proceedings by Bankruptcy Rule 9023, allows bankruptcy courts to reconsider orders and judgments after their entry. A motion to alter or amend an order or judgment shall be filed no later than 10 days after entry of that order or judgment. See Bankr. R. 9023. The Motion was timely filed, and thus the Court has jurisdiction to review it. Under Federal Rule of Civil Procedure 59(e), a court may grant a motion to alter or amend an order or judgment if the movant presents: (1) newly discovered evidence that was not available at the time of trial, or (2) evidence in the record that clearly establishes manifest error of law or fact. See *In re Prince*, 85 F.3d 314 (7th Cir. 1996); *In re Investors Fla. Aggressive Growth Fund, Ltd.*, 168 B.R. 760 (Bankr. N.D. Fla. 1994). In the instant case, neither of the requirements for a court to grant a motion for rehearing under Rule 59(e) has been presented to this Court.

The Motion and the underlying Motion to Compel Investigation by Trustee allege that the Former Trustee's counsel failed to disclose conflicts and that as a result Eleanor Cole ("Ms. Cole"), Carl Shuhi ("Mr. Shuhi"), and the Former Trustee suffered damage. As to Ms. Cole, the Court notes significantly that even if all of the allegations concerning the nondisclosures by the Former

Trustee's counsel are true, the nondisclosures were unrelated to the damage suffered by Ms. Cole in connection with the striking of her proofs of claim. The Court struck Ms. Cole's proofs of claim as a sanction for her repeated failures to obey this Court's orders to cooperate with discovery. The Court specifically found that Ms. Cole's "refusal to appear and testify at her deposition, while under Subpoena, or to otherwise participate in discovery after twenty (20) months of scheduling and rescheduling her examination, was willful and in complete disregard for this Court, its law and the parties involved in this Proceeding." See Memorandum Order at 18 (C.P.1472) (quoting Order Granting Debtor, James F. Walker's Emergency Motion for Default Judgment Against Eleanor C. Cole as Sanctions for Refusal to Obey Subpoena, Appear and Testify at Deposition, and Amended Motion to Strike Claim at 16 (C.P.805)). Ms. Cole herself bears responsibility for damage she may have suffered as a result of the striking of her proofs of claim.

As to the Former Trustee, Mr. Shuhi and creditors other than Ms. Cole, the Court notes that Ms. Gwynn does not represent the Former Trustee, Mr. Shuhi or creditors other than Ms. Cole. The Court has previously warned Ms. Gwynn that she may not seek relief for parties that she does not represent. Mr. Shuhi's *pro se* motions have been ruled upon by separate orders of this Court. Any claims of the Former Trustee against her counsel must be brought by the Former Trustee. It is critical to note however, that this Court's orders relating to the Former Trustee's removal are final orders

now under appeal. Consequently, the Court is divested of jurisdiction to consider any issues relating to the Former Trustee and her counsel.

Ms. Gwynn also raises issues related to the Ferrell administrative claim and the sale of the estate's interest in the Cat Cay Property. This Court's orders relating to the sale of the estate's interest in the Cat Cay Property are also final orders now under appeal. Thus, the Court is also divested of jurisdiction to consider any issues relating to those matters.

The Court notes that motions which seek relief for matters that are the subject of final orders currently on appeal are frivolous, totally devoid of merit and wasteful of this Court's resources. The Court hereby gives notice that the filing of additional frivolous motions or motions to reconsider may result in imposition of Rule 11 sanctions.

While Bankruptcy Rule 2014 requires professionals to disclose all relevant connections so that courts can determine if there are any conflicts or potential conflicts of interest, "[n]either Rule 2014 nor the Bankruptcy Code mandates a sanction for violation of Rule 2014, In such situations, whether to impose a penalty and the nature and extent of the penalty is generally a matter left to the bankruptcy court's discretion." *Miller Buckfire & Co., LLC, v. Citation Corp., (In re Citation Corp.)*, 2007 WL 2128165 at *6 (11th Cir. July 26, 2007). The proffer of the current Trustee's counsel regarding the Trustee's investigation into the nondisclosures of

the Former Trustee's counsel is satisfactory to the Court. The Former Trustee has been removed and her counsel is no longer active in this matter. The damage suffered as a result of the striking of Ms. Cole's claims is unrelated to the nondisclosures of the Former Trustee's counsel. Given these circumstances and the fact that a new Trustee and counsel have been appointed, the Court does not find that imposition of sanctions is appropriate.

The Court, having reviewed the Motion, the applicable law, and being otherwise fully advised in the premises, hereby:

ORDERS AND ADJUDGES that the Motion is **DENIED**.

###

Copies Furnished To:

Mary Alice Gwynn, Esq.
Gary J. Rotella, Esq
Bryan R. Cleveland, Esq.
John L. Walsh, Esq
AUST