

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
CIVIL DIVISION

ROSIE ANDUJAR  
13404 Crossburn Avenue  
Cleveland, OH 44135

and

BARBARA ASSAD  
17814 Saratoga Trail  
Strongsville, OH 44136

and

THOMAS ASSAD  
17814 Saratoga Trail  
Strongsville, OH 44136

and

MICHAEL G. COYLE  
108 East Parkleigh Drive  
Seven Hills, OH 44131

and

RAFAEL REYEZ DAVILE  
8203 Stratford Drive  
Parma, OH 44129

and

KATHLEEN DE ANGELIS  
7390 Ballash Road  
Medina, OH 44256

and

GARY ELLIOT  
3301 Ruby Avenue  
Cleveland, OH 44109

and

CASE NO.: \_\_\_\_\_

Judge: STUART A FRIEDMAN



CV 05 565095

**COMPLAINT: MONEY  
DAMAGES; INJUNCTIVE  
RELIEF; AND OTHER  
EQUITABLE RELIEF**

(Jury Demand Endorsed Hereon)

GERALD E. FUERST  
CLERK OF COURTS  
CIVIL DIVISION  
COURT OF COMMON PLEAS  
CUYAHOGA COUNTY

2005 JUN 13 P 2:52

FILED

DAVE FRANZ :  
10494 Edgerton Road :  
North Royalton, OH 44133 :

and :

HIDIE FRANZ :  
10494 Edgerton Road :  
North Royalton, OH 44133 :

and :

BETTY GILLIS :  
8531 Spencer Court :  
North Ridgeville, OH 44039 :

and :

STEVE GILLIS :  
8531 Spencer Court :  
North Ridgeville, OH 44039 :

and :

JOY SETH HURD, III :  
1307 Wager Road, Apt. # 306 :  
Rocky River, OH 44116 :

and :

TERESA JINDRA :  
7512 Estate Avenue :  
Hudson, OH 44236 :

and :

TODD JINDRA :  
7512 Estate Avenue :  
Hudson, OH 44236 :

and :

INGRID KARRELL :  
4749 W. Mill Road :  
Broadview Heights, OH 44147 :

and :  
FRANK KELLY :  
19686 Laurel Avenue :  
Rocky River, OH 44116 :

and :  
FRANK W. KOSMERL :  
15942 Paulding Boulevard :  
Brook Park, OH 44142 :

and :  
LINDA LATKO-TOTH :  
264 Avon Belden Road :  
Avon Lake, OH 44012 :

and :  
RAYMOND LATKO :  
264 Avon Belden Road :  
Avon Lake, OH 44012 :

and :  
DIANE M.C. MULCHAN :  
12628 Doria Court :  
Strongsville, OH 44149 :

and :  
ALBERT MUTH :  
4569 Paradise Road :  
Seville, OH 44273 :

and :  
KATHLEEN POTTER :  
82748 NorthStar Circle :  
Seville, OH 44273 :

and :

ELAINE M. QUINLAN :  
29929 Elgin Road :  
Wickliffe, OH 44092 :

and :

THOMAS J. QUINLAN :  
29929 Elgin Road :  
Wickliffe, OH 44092 :

and :

JOHN ROF :  
19134 Saratoga Trail :  
Strongsville, OH 44136 :

and :

RUXANDRA ROF :  
19134 Saratoga Trail :  
Strongsville, OH 44136 :

and :

ANTHONY ROLANDO :  
6178 St. Francis Drive :  
Seven Hills, OH 44129 :

and :

JAMES STEPANEK :  
10016 Crows Nest Cove :  
Reminderville, OH 44202 :

and :

PATRICIA STEPANEK :  
10016 Crows Nest Cove :  
Reminderville, OH 44202 :

and :

MARY ANNE TUPTA :  
10060 Ridgewood Drive :  
Twinsburg, OH 44087 :

and :

ROBERT TUPTA :  
10060 Ridgewood Drive :  
Twinsburg, OH 44087 :

and :

SHARON TRUCHON :  
32995 Boulder Drive :  
North Ridgeville, OH 44039 :

and :

LAWRENCE S. TYJEWSKI :  
5926 Deerview Lane :  
Medina, OH 44256 :

and :

VALERIE J. VACCO-ROLANDO :  
6178 St. Francis Drive :  
Seven Hills, OH 44129 :

and :

CYNTHIA L. WEBSTER :  
433 N. Center Street :  
La Grange, OH 44050 :

and :

DAVID J. WEBSTER :  
433 N. Center Street :  
La Grange, OH 44050 :

and :

ROBERT J. WEILAND :  
4002 Behrwald :  
Cleveland, OH 44109 :

Plaintiffs-Beneficiaries, :

v. :

BISHOP ANTHONY PILLA :  
As Trustee of the Roman Catholic :  
Diocese of Cleveland. :  
1027 Superior Avenue :  
Cleveland, OH 44114 :

and :

THOMAS J. KELLEY :  
Director of the Catholic Cemetery :  
Association for the Roman Catholic :  
Diocese of Cleveland :  
19000 Lake Road, #209 :  
Rocky River, OH 44116 :

and :

JOSEPH H. SMITH :  
Chief Financial Officer of the :  
Roman Catholic Diocese of Cleveland :  
and Director of the Diocesan Legal Office :  
31641 Compass Cove :  
Avon Lake, OH 44012 :

and :

ANTON ZGOZNIK :  
Assistant Treasurer for the :  
Roman Catholic Diocese of Cleveland :  
110 West Streetsboro Street :  
Hudson, OH 44236 :

and :

ANTON ZGOZNIK, as Statutory Agent for :  
Institutional Business Solutions, :  
formerly Monastra & Associates, Inc. :  
7325 Production Drive :  
Mentor, OH 44060 :

and :

ANTON ZGOZNIK, as Statutory Agent for :  
Institutional Financial Advisors :

36060 Freed Court  
Eastlake, OH 44095 :

and :

ANTON ZGOZNIK, as Statutory Agent for :  
Zgoznik & Associates :  
7325 Production Drive :  
Mentor, OH 44060 :

and :

WILFRED L. ANDERSON, as Statutory Agent :  
for Alexander Systems, Ltd. :  
2760 Brainard Hills Drive :  
Pepperpike, OH 44124 :

and :

ZRINO JUKIC, as Statutory Agent for :  
ZJ & Associates, Inc. :  
9063 Arden Drive :  
Mentor, OH 44060 :

and :

JIM PETRO :  
Attorney General of the State of Ohio :  
State Office Tower :  
30 E. Broad Street, 17<sup>th</sup> Floor :  
Columbus, OH 43215-3428 :

and :

JOSEPH H. SMITH, as Statutory Agent for :  
JHS Enterprises, Inc. :  
P.O. Box 40092 :  
Bay Village, OH 44140 :

and :

JOSEPH H. SMITH, as Statutory Agent for :  
Tee Sports, Inc. :  
31353 St Andrews :  
Westlake, OH 44145 :

Defendants.

:

:

Now come Plaintiffs, by and through undersigned counsel, Santiago Feliciano Jr., complaining of the Defendants and hereby state their Claim for Relief as follows:

### INTRODUCTION

1. That at all relevant times, Plaintiff, Rosie Andujar, resides at 13404 Crossburn Avenue, City of Cleveland, County of Cuyahoga, State of Ohio, and is a parishioner of La Sagrada Familia of the Roman Catholic Diocese of Cleveland.

2. That at all relevant times, Plaintiff, Barbara Assad, resides at 17814 Saratoga Trail City of Strongsville, County of Cuyahoga, State of Ohio and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

3. That at all relevant times, Plaintiff, Thomas Assad, resides at 17814 Saratoga Trail City of Strongsville, County of Cuyahoga, State of Ohio and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

4. That at all relevant times, Plaintiff, Michael G. Coyle, resides at 108 East Parkleigh Drive, City of Seven Hills, County of Cuyahoga, State of Ohio and is a parishioner of St. Charles of the Roman Catholic Diocese of Cleveland.

5. That at all relevant times, Plaintiff, Rafael Reyvez Davile, resides at 8203 Stratford Drive, City of Parma, County of Cuyahoga, State of Ohio, and is a parishioner of St. Charles Borromea of the Roman Catholic Diocese of Cleveland.

6. That at all relevant times, Plaintiff, Kathleen De Angelis, resides at 7390 Ballash Road, City of Medina, County of Medina, State of Ohio, and is a parishioner of Our Lady Help of Christians Parish of the Roman Catholic Diocese of Cleveland.



7. That at all relevant times, Plaintiff, Gary F. Elliot, resides at 3301 Ruby Avenue, City of Cleveland, County of Cuyahoga, State of Ohio, and is a parishioner of St. Albert the Great of the Roman Catholic Diocese of Cleveland.

8. That at all relevant times, Plaintiff, Dave Franz, resides at 10494 Edgerton Road, City of North Royalton, County of Cuyahoga, State of Ohio, and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

9. That at all relevant times, Plaintiff, Hidir Franz, resides at 10494 Edgerton Road, City of North Royalton, County of Cuyahoga, State of Ohio, and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

10. That at all relevant times, Plaintiff, Betty Gillis, resides at 8531 Spencer Court, City of North Ridgeville, County of Lorain, State of Ohio, and is a parishioner of St. Peter's North Ridgeville of the Roman Catholic Diocese of Cleveland.

11. That at all relevant times, Plaintiff, Steve Gillis, resides at 8531 Spencer Court, City of North Ridgeville, County of Lorain, State of Ohio, and is a parishioner of St. Peter's North Ridgeville of the Roman Catholic Diocese of Cleveland.

12. That at all relevant times, Plaintiff, Joy Seth Hurd, III, resides at 1307 Wager Road, Apt. # 306, City of Rocky River, County of Cuyahoga, State of Ohio, and is a parishioner of St. Rose of Lima of the Roman Catholic Diocese of Cleveland.

13. That at all relevant times, Plaintiff, Teresa Jindra, resides at 7512 Estate Avenue, City of Hudson, County of Cuyahoga, State of Ohio, and is a parishioner of SS. Cosmas and Damian of the Roman Catholic Diocese of Cleveland.

14. That at all relevant times, Plaintiff, Todd Jindra, resides at 7512 Estate Avenue, City of Hudson, County of Cuyahoga, State of Ohio, and is a parishioner of SS. Cosmas and Damian

of the Roman Catholic Diocese of Cleveland.

15. That at all relevant times, Plaintiff, Ingrid Karrell, resides at 4749 W. Mill Road, City of Broadview Heights, County of Cuyahoga, State of Ohio, and is a parishioner of St. Albert the Great of the Roman Catholic Diocese of Cleveland.

16. That at all relevant times, Plaintiff, Frank Kelly, resides at 19686 Laurel Avenue, City of Rocky River, County of Cuyahoga, State of Ohio, and is a parishioner of St. Christopher of the Roman Catholic Diocese of Cleveland.

17. That at all relevant times, Plaintiff, Frank W. Kosmerl, resides at 15942 Paulding Boulevard, City of Brook Park, County of Cuyahoga, State of Ohio, and is a parishioner of St. Rose of Lima of the Roman Catholic Diocese of Cleveland.

18. That at all relevant times, Plaintiff, Linda Latko-Toth, resides at 264 Avon Belden Road, City of Avon Lake, County of Lorain, State of Ohio, and is a parishioner of both St. Joseph's Avon Lake and Holy Spirit of the Roman Catholic Diocese of Cleveland.

19. That at all relevant times, Plaintiff, Raymond Latko, resides at 264 Avon Belden Road, City of Avon Lake, County of Lorain, State of Ohio, and is a parishioner of St. Joseph's Avon Lake of the Roman Catholic Diocese of Cleveland.

20. That at all relevant times, Plaintiff, Diane M.C. Mulchan, resides at 12628 Doria Court, City of Strongsville, County of Cuyahoga, State of Ohio, and is a parishioner of St. Peter's of the Roman Catholic Diocese of Cleveland.

21. That at all relevant times, Plaintiff, Albert Muth, resides at 4569 Paradise Road, City of Seville, County of Medina, State of Ohio, and is a parishioner of St. Francis Xavier of the Roman Catholic Diocese of Cleveland.

22. That at all relevant times, Plaintiff, Kathleen Potter, resides at 82748 NorthStar Circle, City of Seville, County of Medina, State of Ohio, and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

23. That at all relevant times, Plaintiff, Elaine Quinlan, resides at 29929 Elgin Road, City of Wickliffe, County of Cuyahoga, State of Ohio, and is a parishioner of Our Lady of Mt. Carmel of the Roman Catholic Diocese of Cleveland.

24. That at all relevant times, Plaintiff, Thomas J. Quinlan, resides at 29929 Elgin Road, City of Wickliffe, County of Cuyahoga, State of Ohio, and is a parishioner of Our Lady of Mt. Carmel of the Roman Catholic Diocese of Cleveland.

25. That at all relevant times, Plaintiff, John Rof, resides at 19134 Saratoga Trail, City of Strongsville, County of Cuyahoga, State of Ohio, and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

26. That at all relevant times, Plaintiff, Ruxandra Rof, resides at 19134 Saratoga Trail, City of Strongsville, County of Cuyahoga, State of Ohio, and is a parishioner of St. Adelbert of the Roman Catholic Diocese of Cleveland.

27. That at all relevant times, Plaintiff, Anthony Rolando, resides at 6178 St. Francis Drive, City of Seven Hills, County of Cuyahoga, State of Ohio, and is a parishioner of St. Columbkille of the Roman Catholic Diocese of Cleveland.

28. That at all relevant times, Plaintiff, Patricia Stepanek, resides at 10016 Crows Nest Cove, City of Reminderville, County of Summit, State of Ohio, and is a parishioner of SS. Cosmas and Damian of the Roman Catholic Diocese of Cleveland.

29. That at all relevant times, Plaintiff, James Stepanek, resides at 10016 Crows Nest Cove, City of Reminderville, County of Summit, State of Ohio, and is a parishioner of SS.

Cosmas and Damian of the Roman Catholic Diocese of Cleveland.

30. That at all relevant times, Plaintiff, Mary Anne Tupta, resides at 10060 Ridgewood Drive, City of Twinsburg, County of Cuyahoga, State of Ohio, and is a parishioner of SS. Cosmas and Damian of the Roman Catholic Diocese of Cleveland.

31. That at all relevant times, Plaintiff, Robert Tupta, resides at 10060 Ridgewood Drive, City of Twinsburg, County of Cuyahoga, State of Ohio, and is a parishioner of SS. Cosmas and Damian of the Roman Catholic Diocese of Cleveland.

32. That at all relevant times, Plaintiff, Sharon Truchon, resides at 32995 Boulder Drive, City of North Ridgeville, County of Lorain, State of Ohio, and is a parishioner of St. Peter's North Ridgeville of the Roman Catholic Diocese of Cleveland.

33. That at all relevant times, Plaintiff, Lawrence Tyjewski, resides at 5926 Deerview Lane, City of Medina, County of Medina, State of Ohio, and is a parishioner of St. Francis Xavier of the Roman Catholic Diocese of Cleveland.

34. That at all relevant times, Plaintiff, Valerie J. Vacco-Rolando, resides at 6178 St. Francis Drive, City of Seven Hills, County of Cuyahoga, State of Ohio, and is a parishioner of St. Columbkille of the Roman Catholic Diocese of Cleveland.

35. That at all relevant times, Plaintiff, Cynthia L. Webster, resides at 433 N. Center Street, City of La Grange, County of Lorain, State of Ohio, and is a parishioner of St. Vincent De Paul of the Roman Catholic Diocese of Cleveland.

36. That at all relevant times, Plaintiff, David T. Webster, resides at 433 N. Center Street, City of La Grange, County of Lorain, State of Ohio, and is a parishioner of St. Vincent De Paul of the Roman Catholic Diocese of Cleveland.

37. That Plaintiffs, as parishioners of their respective parishes, are members of the Roman Catholic Diocese of Cleveland, and are therefore beneficiaries of all ecclesiastical goods held in the name of the Roman Catholic Diocese of Cleveland for the good of the universal church.

38. That this Honorable Court has competent jurisdiction over property matters of the Roman Catholic Diocese of Cleveland both under the United States Constitution, Ohio Law, and The Code of Canon Law (*see* Memorandum of Law, attached as Exhibit A).

39. That civil laws to which the law of the Church yields *are to be observed in canon law with the same effects*, insofar as they are not contrary to divine law and unless canon law provides otherwise (*emphasis added*). The Code of Canon Law, Canon 22.

40. That at all relevant times, the principal place of business of the Roman Catholic Diocese of Cleveland (“Diocese of Cleveland”) is 1027 Superior Avenue, City of Cleveland, County of Cuyahoga, State of Ohio.

41. That from January 1981 to the present, Anthony Michael Pilla (“Bishop Pilla”) was the Diocesan Bishop of the Diocese of Cleveland.

42. That from 1994 to January 2004, Joseph H. Smith (“Mr. Smith”) was the Chief Financial Officer (“CFO”) of the Diocese of Cleveland and from October 2000 to January 2004 he was the Director of the Diocesan Legal Office; his duties as CFO for the Diocese of Cleveland included managing the Diocese of Cleveland Cemeteries Association; the Diocese of Cleveland Building Commission; Diocese of Cleveland Legal Office; and the Diocese of Cleveland Offices of Pension, Finance, and Insurance. Mr. Smith resides at 31641 Compass Cove, City of Avon Lake, County of Lorain, State of Ohio.

43. That at all relevant times, Thomas J. Kelley (“Mr. Kelley”) was the Director of the Catholic Cemetery Association for the Diocese of Cleveland and resides at 19000 Lake Road, #209, City of Rocky River, County of Cuyahoga, State of Ohio

44. That at all relevant times, Anton Zgoznic (“Mr. Zgoznic”) is the Assistant Treasurer of the Diocese of Cleveland and resides at 110 West Streetsboro Street, City of Hudson, County of Cuyahoga, State of Ohio.

45. That at all relevant times, Mr. Zgoznic is the Statutory Agent for Institutional Business Solutions (“IBS”), formerly Monastra & Associates (“Monastra”), located at 7325 Production Drive, City of Mentor, County of Lake, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

46. That at all relevant times, Mr. Zgoznic is the Statutory Agent for Institutional Financial Advisors (“IFA”), located at 7325 Production Drive, City of Mentor, County of Lake, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

47. That at all relevant times, Mr. Zgoznic is the Statutory Agent for Zgoznic & Associates (“Zgoznic Associates”), located at 7325 Production Drive, City of Mentor, County of Lake, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

48. That at all relevant times, Wilfred L. Anderson is the Statutory Agent for Alexander Systems, Ltd. (“Alexander Systems”), located at 2760 Brainard Hills Drive, City of Pepper Pike, County of Lake, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

49. That at all relevant times, Zrino Jukic is the Statutory Agent for ZJ & Associates (“ZJ”), located at 9063 Arden Drive, City of Mentor, County of Lake, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

50. That at all relevant times, Jim Petro (“Attorney General”) is the Attorney General for the State of Ohio, located at State Office Tower, 30 E. Broad Street, 17<sup>th</sup> Floor, City of Columbus, State of Ohio.

51. That at all relevant times, Mr. Smith is the Statutory Agent for JHS Enterprises (“JHS”), located at P.O. Box 40092, City of Bay Village, County of Cuyahoga, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

52. That at all relevant times, Mr. Smith is the Statutory Agent for Tee Sports, Inc. (“Tee Sports”), located at 31353 St Andrews, City of Westlake, County of Cuyahoga, State of Ohio, which is a corporation authorized and existing in the State of Ohio.

#### **COUNT ONE – CONVERSION**

53. Plaintiffs restate all matters set forth in paragraphs 1 – 52 above as if fully rewritten herein.

54. That at all relevant times, Mr. Smith, Mr. Kelley, and Mr. Zgoznic, as directors of their respective departments within the Diocese of Cleveland, were assigned to and entrusted with managing the assets of the Diocese of Cleveland.

55. That Mr. Smith, Mr. Kelley, and Mr. Zgoznic wrongly diverted assets of the Diocese of Cleveland for their financial gain (*see* Business Records, attached as Exhibit C).

56. That Mr. Smith, Mr. Kelley, and Mr. Zgoznic wrongfully converted assets through a network of small businesses, including but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ (*see* Business Records, attached as Exhibit C).

WHEREFORE, Plaintiffs demand:

I. Judgment against Mr. Smith and the businesses that he controls, including, but not limited to JHS Enterprises, Inc. and Tee Sports, Inc., in the amount of \$678,231.00 (Six Hundred

and Seventy-Eight Thousand, Two Hundred and Thirty-One Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Smith and his businesses, which should be returned to Diocese of Cleveland;

II. Judgment against Mr. Kelley in the amount of \$331,786.00 (Three Hundred and Thirty One Thousand, Seven Hundred and Eighty-Six Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Kelley, which should be returned to Diocese of Cleveland;

III. Judgment against Mr. Zgoznic and the businesses that he controls, including, but not limited to IBS, IFA, and Zgoznic Associates, in the amount of \$1,000,000.00 (One Million Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Zgoznic and his businesses, which should be returned to Diocese of Cleveland; and

IV. An amount that will fully, fairly, and completely reimburse Plaintiffs and all other members of the Diocese of Cleveland for their damages and losses, together with all interests, costs, and attorney's fees incurred herein, as well as any further relief, whether legal or equitable, that this Honorable Court may deem just and equitable.

#### **COUNT TWO – COMPEL ACCOUNTING**

57. Plaintiffs restate all matters set forth in paragraphs 1 – 56 above as if fully rewritten herein.

58. That Bishop Pilla, in his ecclesiastical capacity as Bishop of the Diocese of Cleveland, is identified by both civil and church law as trustee of all real and personal property of the Diocese of Cleveland (*see* Statement of the Catholic Conference of Ohio, attached as Exhibit B and Mannix v. Purcell, et al., 46 Ohio St. 102, 19 N.E. 572).



59. That in his capacity as Trustee, Bishop Pilla is charged, according to civil law under the Ohio Revised Code Section 1715.17, with the responsibility of keeping property conveyed in trust for the use of a religious society, church, or association, whether incorporated or not, he and the trustees and their successors, appointed as provided in the instrument creating the trust, or in case no provision for successor trustees is made in such instrument, then by such successor trustees as are appointed by a competent court.

60. That in his capacity as Trustee, Bishop Pilla is to have special vigilance that abuses do not enter the ecclesiastical discipline, ...and *the administration of goods*. The Code of Canon Law, Canon 392, Section 2 (emphasis added).

61. That under both Ohio and Church law, Bishop Pilla, in his capacity as Trustee of the Diocese of Cleveland, is under a duty to keep a separate account of the income, receipts, and disbursements of the trust and to render an accounting to the beneficiaries.

62. That Plaintiffs are both parishioners of their respective parishes, which are separate juridic persons, and members of the Diocese of Cleveland, which is also a separate juridic person; therefore, Plaintiffs are beneficiaries of all the ecclesiastical goods held in the name of the Diocese of Cleveland as well as their respective parishes. The Code of Canon Law, Canons 113-118 (define the status and the obligations of a juridic person).

63. That Plaintiffs, as beneficiaries of the trust of the Diocese of Cleveland, may, by a proper proceeding, compel Bishop Pilla to render to the proper court an account of the administration of the trust of the Diocese of Cleveland.

WHEREFORE, Plaintiffs demand:

I. That Bishop Pilla, as trustee of the ecclesiastical goods of the Diocese of

Cleveland, render a full, complete, and accurate accounting of: 1.) all trust property that has come to the his knowledge or into his possession and that has not been previously listed or inventoried; 2.) the receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately; 3.) all property being administered by him with an accurate description of each asset; 4.) the cash balance on hand and the name and location of the depository where the balance is kept; and 5.) all known liabilities owed by the trust for the entire period since Bishop Pilla became successor trustee. The trust accounting should describe, in detail, all assets related to: 1.) the Diocese of Cleveland Cemeteries Association; 2.) Diocese of Cleveland Building Commission; 3.) the Diocese of Cleveland Offices of Pension, Finance, and Insurance; and 4.) the third party businesses of Mr. Smith, Mr. Kelley, and Mr. Zgoznic, including, but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ; and

II. That Plaintiffs be permitted to inspect the books and records of the trust of the Diocese of Cleveland.

### **COUNT THREE – BREACH OF DUTY OF LOYALTY**

64. Plaintiffs restate all matters set forth in paragraphs 1 – 63 above as if fully rewritten herein.

65. That at all relevant times, Bishop Pilla, Mr. Smith, Mr. Kelley, and Mr. Zgoznic, as directors of their respective departments within the Diocese of Cleveland, were assigned to and entrusted with managing the assets of the Diocese of Cleveland.

66. That the administrators of ecclesiastical goods must:

- a. exercise vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary;
- b. take care that the ownership of ecclesiastical goods is protected by civilly valid methods;
- c. observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws;
- d. keep well organized books of receipts and expenditures;
- e. draw up a report of the administration at the end of the year; and
- f. organize correctly and protect, in a suitable and proper archive, the documents and records on which the property rights of the Church or the institute are based, and deposit authentic copies of them in the archive.

The Code of Canon Law, Canon 1284 Section 2.

67. That Bishop Pilla, Mr. Smith, Mr. Kelley, and Mr. Zgoznic, breached their undivided duties of loyalty by:

- a. failing to administer the trust in the best interest of the Diocese of Cleveland by self-dealing in direct violation of the I.R.C. 501(c)(3) by not following the prescripts of I.R.C. section 4958;
- b. operating in their own self interests by diverting church funds to Mr. Smith, Mr. Kelley, and Mr. Zgoznic, by way of an elaborate system of undocumented and unbilled consulting fees, through a network of small businesses, including but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ (*see Business Records, attached as Exhibit C*); and
- c. failing to provide an adequate accounting of all the ecclesiastical property of the Diocese of Cleveland.

WHEREFORE, Plaintiffs demand:

I. Judgment against Mr. Smith and the businesses that he controls, including, but not limited to JHS Enterprises, Inc. and Tee Sports, Inc., in the amount of \$678,231.00 (Six Hundred and Seventy-Eight Thousand, Two Hundred and Thirty-One Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Smith and his businesses, which should be returned to Diocese of Cleveland;

II. Judgment against Mr. Kelley in the amount of \$331,786.00 (Three Hundred and Thirty One Thousand, Seven Hundred and Eighty-Six Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Kelley, which should be returned to Diocese of Cleveland;

III. Judgment against Mr. Zgoznic and the businesses that he controls, including, but not limited to IBS, IFA, and Zgoznic Associates, in the amount of \$1,000,000.00 (One Million Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Zgoznic and his businesses, which should be returned to Diocese of Cleveland; and

IV. An amount that will fully, fairly, and completely reimburse Plaintiffs and all other members of the Diocese of Cleveland for their damages and losses, together with all interests, costs, and attorney's fees incurred herein, as well as any further relief, whether legal or equitable, that this Honorable Court may deem just and equitable.

#### **COUNT FOUR – BREACH OF DUTY OF CARE**

68. Plaintiffs restate all matters set forth in paragraphs 1 – 67 above as if fully rewritten herein.

69. That a trustee and directors owe the beneficiaries of a trust a duty to exercise that degree of care and skill, which an ordinary prudent person would exercise in dealing with his own property; however, if a trustee has greater skill than one of ordinary prudence, he is under a greater duty to exercise such skill.

70. That a trustee and directors must also exercise the utmost care not to divert funds entrusted to him from the purposes of the trust.

71. That Bishop Pilla, because of his position as a Roman Catholic Priest and Bishop of

the Diocese of Cleveland is under a greater duty to manage and control the ecclesiastical property of the Diocese of Cleveland than an ordinary trustee.

72. That Mr. Smith, because of his skill as an attorney licensed to practice law in the State of Ohio and a certified public accountant, has a greater duty to manage and control the ecclesiastical property of the Diocese of Cleveland.

73. That Bishop Pilla and Mr. Smith breached this duty of care by:

- a. failing to exercise due diligence in his capacity as Trustee of the Diocese of Cleveland;
- b. failing to regulate conflict of interest transactions by Mr. Smith, Mr. Kelley, and Mr. Zgoznic, and their businesses, including, but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ (*see* Business Records, attached as Exhibit C);
- c. participating in questionable activity regarding the assets of the Diocese of Cleveland by not seeking reimbursement for the funds that were wrongfully diverted to Mr. Smith, Mr. Kelley, and Mr. Zgoznic, and their businesses, including, but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ (*see* Business Records, attached as Exhibit C);
- d. violating the I.R.C. Section 501(c)(3) by not following the prescripts of I.R.C. Section 4958; and
- e. inadequately and fraudulently maintaining the records and books of the Diocese of Cleveland by not providing a written invoice or documentation supporting a calculation of the “consulting” fees paid to Mr. Smith, Mr. Kelley, and Mr. Zgoznic, and their businesses, including, but not limited to but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ (*see* Business Records, attached as Exhibit C).

WHEREFORE, Plaintiffs demand:

I. Judgment against Mr. Smith and the businesses that he controls, including, but not limited to JHS Enterprises, Inc. and Tee Sports, Inc., in the amount of \$678,231.00 (Six Hundred and Seventy-Eight Thousand, Two Hundred and Thirty-One Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Smith and his businesses, which should be returned to Diocese of Cleveland;

II. Judgment against Mr. Kelley in the amount of \$331,786.00 (Three Hundred and Thirty One Thousand, Seven Hundred and Eighty-Six Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Kelley, which should be returned Diocese of Cleveland;

III. Judgment against Mr. Zgoznic and the businesses that he controls, including, but not limited to IBS, IFA, and Zgoznic Associates, in the amount of \$1,000,000.00 (One Million Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Zgoznic and his businesses, which should be returned to Diocese of Cleveland; and

IV. An amount that will fully, fairly, and completely reimburse Plaintiffs and all other members of the Diocese of Cleveland for their damages and losses, together with all interests, costs, and attorney's fees incurred herein, as well as any further relief, whether legal or equitable, that this Honorable Court may deem just and equitable.

#### **COUNT FIVE – NEGLIGENT SUPERVISION**

74. Plaintiffs restate all matters set forth in paragraphs 1 – 73 above as if fully rewritten herein.

75. That at all relevant times, Mr. Smith, Mr. Kelley, and Mr. Zgoznic, as directors of their respective departments within the Diocese of Cleveland, were assigned to and entrusted with managing the assets of the Diocese of Cleveland.

76. That Bishop Pilla, as Trustee of the Diocese of Cleveland and Diocesan Bishop of the Diocese of Cleveland, has the responsibility of supervising those individuals entrusted with managing the assets of the Diocese of Cleveland

77. That Bishop Pilla is liable for the negligent supervision of Mr. Smith, Mr. Kelley, and Mr. Zgoznic because:

- a. as Diocesan Bishop of the Diocese of Cleveland, he was the employer of Mr. Smith, Mr. Kelley, and Mr. Zgoznik;
- b. Bishop Pilla failed to: adequately supervise Mr. Smith, Mr. Kelley, and Mr. Zgoznik; demand an accurate accounting of funds supervised by Mr. Smith, Mr. Kelley, and Mr. Zgoznik; and pursue legal action against Mr. Smith, Mr. Kelley, and Mr. Zgoznik to regain trust assets
- c. the dishonest acts of Mr. Smith, Mr. Kelley, and Mr. Zgoznik caused ecclesiastical property of the Diocese of Cleveland to be improperly diverted through a network of small businesses, including but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznik Associates, and ZJ (see Business Records, attached as Exhibit C); and
- d. Bishop Pilla's negligence in supervising Mr. Smith, Mr. Kelley, and Mr. Zgoznik damaged Plaintiffs, as members of the Diocese of Cleveland, by the loss of millions of Diocesan assets.

WHEREFORE, Plaintiffs demand:

I. Judgment against Mr. Smith and the businesses that he controls, including, but not limited to JHS Enterprises, Inc. and Tee Sports, Inc., in the amount of \$678,231.00 (Six Hundred and Seventy-Eight Thousand, Two Hundred and Thirty-One Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Smith and his businesses, which should be returned to Diocese of Cleveland;

II. Judgment against Mr. Kelley in the amount of \$331,786.00 (Three Hundred and Thirty One Thousand, Seven Hundred and Eighty-Six Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Kelley, which should be returned Diocese of Cleveland;

III. Judgment against Mr. Zgoznik and the businesses that he controls, including, but not limited to IBS, IFA, and Zgoznik Associates, in the amount of \$1,000,000.00 (One Million Dollars), plus interest and costs, the amount believed to be improperly taken by Mr. Zgoznik and his businesses, which should be returned to Diocese of Cleveland; and

IV. An amount that will fully, fairly, and completely reimburse Plaintiffs and all other members of the Diocese of Cleveland for their damages and losses, together with all interests, costs, and attorney's fees incurred herein, as well as any further relief, whether legal or equitable, that this Honorable Court may deem just and equitable.

#### **COUNT SIX – CHARITABLE TRUST**

78. Plaintiffs restate all matters set forth in paragraphs 1 – 77 above as if fully rewritten herein.

79. That the Catholic Church as an institution is a charitable trust defined as "...any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose." Ohio Revised Code Section 109.21.

80. That Attorney General Jim Petro ("Attorney General") is a necessary party in any action to any action involving a charitable trust Ohio Revised Code Section 109.25.


81. That Bishop Pilla, identified both by Canon law and by civil law as the person by whom the property is held to fiduciary duties, is specifically prohibited from any act of "self-dealing," making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust,

82. That Bishop Pilla and Mr. Smith, each in his capacity as a trustee of a charitable trust, has knowingly and willfully violated their fiduciary duties by diverting church funds to Mr. Kelley, Mr. Smith, and Mr. Zgoznic, by way of an elaborate scheme of undocumented and unbilled consulting fees, through a network of small businesses, including but not limited to Alexander Systems, IBS, IFA, JHS, Monastra, Tee Sports, Zgoznic Associates, and ZJ.



WHEREFORE, Plaintiffs demand that the Attorney General, pursuant to the authority vested in him by Chapter 109 of the Ohio Revised Code, investigate transactions and relationships of trustees of the Diocese of Cleveland, and that he institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse of it, or in the alternative, that he participate in the within matter as a Plaintiff, on behalf of the beneficiaries of the trust.

Respectfully submitted,

  
SANTIAGO FELICIANO, JR. (#0020278)  
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Cleveland, OH 44115  
(216) 583-0950  
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[felicianocl@hotmail.com](mailto:felicianocl@hotmail.com)  
Counsel for Plaintiffs

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury in accordance with the Ohio Rules of Civil Procedure.

  
SANTIAGO FELICIANO, JR. (#0020278)  
Counsel for Plaintiffs

**INSTRUCTIONS FOR SERVICE**

To the Clerk of Courts:

Please serve the summons and complaint upon Defendants at the addresses listed on the complaint, by certified U.S. mail, return receipt requested.

  
SANTIAGO FELICIANO, JR.  
Counsel for Plaintiffs