

FOCUS: CORPORATE SECURITIES

Securities Fraud and Federal Equity Receivers

By Dennis Roossien

When a victim of a securities fraud seeks legal advice, it often seems that there is little that can be done. The perpetrator is holding the victim's money and is generally spending it rapidly. In the most serious cases, there are no real assets available to pay a judgment even if the victim obtained one, and so once the cash is spent, the victim is left with nothing.

Under these circumstances, counsel may wish to consider efforts to obtain an equity receiver, whether by persuading federal authorities to seek one in connection with an enforcement action or by ancillary to private litigation. As the Securities and Exchange Commission has consistently shown, a federally appointed equity receiver will effectively stop a fraudulent scheme in progress, and will seize the fruits of the fraud before they are lost forever.

Halting the Scheme & Seizing Assets

Two cases from the Northern District of Texas illustrate how a receiver can halt an ongoing fraud and seize the existing assets for the benefit of the victims of the scheme.

IPIC International, Inc. – IPIC was a Ponzi scheme, but there were elaborate props that appeared to be operating businesses and a charismatic set of con artists who had convinced hundreds of investors to part with more than a \$100

million. Complaints to the Department of Justice sparked a 60-day investigation that resulted in parallel criminal indictments and an SEC civil action in which a receiver was appointed ex parte. Within a day, the receiver determined the true character of the various supposed business operations, and within 30 days, produced a report to the federal court that set out the true facts. The receiver also immediately seized the primary accounts and physical assets that could be wasted or moved. The receiver then moved to recover further domestic and foreign funds and assets, thus obtaining most of the value that remained at the time the litigation was commenced.

Le Club Prive – Even in an Internet fraud such as *Le Club Prive*, quick action can lead to a sizable recovery. In this case, the receiver recovered enough to pay all of the investors in full, primarily because the SEC acted promptly to initiate an enforcement action and armed the receiver with both a broad federal court order and the details of the primary accounts into which funds had been deposited. Over the following months, the receiver was able to trace further transfers from those accounts so as to recover assets domestically and in several offshore havens.

When a Client Has a Claim

There are a number of things that the investor can do to increase the authorities' ability to interrupt a scheme and recover a substantial portion of the "invested" funds. For example, counsel

should advise the client to collect all of the relevant promotional material and any specific account information, such as where funds were deposited and from where any payments back to the client were made.

If the client is aware of other investors, similar information should be gathered from each of them. It is best if a group of investors can be assembled. Counsel should then facilitate the making of a complaint to the SEC and/or the FBI.

Remember, especially in Ponzi schemes, your client may have unwittingly marketed the scheme to friends and family members. Be sure to obtain a clear understanding of the extent of such sales efforts and whether commissions were paid to the client. Many times potential clients seeking counsel are being pressured by persons whom they have recruited to invest in the scheme. Counsel should be cautious under such circumstances, particularly in receiving a retainer that may have come from commission payments, since those commission payments were made with the proceeds of the fraud.

Counsel should never overestimate the prospect of recovery. While some matters have resulted in 100 percent claim payments, those are rare. Often, the funds available to recover have been diminished by paying the first-tier investors a return, keeping up the appearance of a legitimate business, and supporting the lifestyle of the perpetrators, etc.

If federal authorities choose not to pursue a case, it is possible to seek the same relief privately. The relief is not limited to mass frauds; a receiver can be effective in any case where it can be shown that the perpetrator of a scheme will waste the assets during the course of litigation. Both federal and state courts can appoint receivers on the basis of their respective equitable power under such circumstances, although a private litigant would have to marshal the substantial evidence necessary to support an ex parte request for a receiver. **HN**

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