SEC v. MOGLER, HINKELDEY, POLANCHEK, BUCKLEY & STEVENS

SEC Charges Five Arizona Residents with Stealing Millions from Investors to Fund Travel and Entertainment Sprees

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MACRS 2015 FALL CONFERENCE

Cause of Action

- On September 11, 2015, the Securities and Exchange Commission ("SEC") charged five Arizona residents with stealing millions of dollars from investors.
- The SEC alleges that Jason Mogler, James Hinkeldey, Casimer Polanchek, Brian Buckley and James Stevens (collectively, "Defendants") misappropriated roughly 97 percent of the $18 million they raised from 225 investors who were told the funds would be used to acquire and develop beachfront property in Mexico as well as to operate recycling facilities and purchase foreclosed residential properties for resale.

How Did They Do It?

- Defendants repeatedly lied about the purported progress of the investments to calm worried investors as time extended past when their promissory notes should have been repaid.
- In certain instances they made Ponzi-like payments to investors threatening them with lawsuits by using money from new investors, which Mogler termed "robbing Peter to pay Paul.”

Alleged Violations

- Defendants violated the antifraud provisions of the Securities and the Exchange Act, and the securities registration provisions of Section 5 of the Securities Act.
- Polanchek and Buckley violated the broker-dealer registration provisions of Section 15 of the Exchange Act.
- SEC seeking's permanent injunctive relief against Defendants from violations of antifraud and registration provisions of the federal securities laws, disgorgement of ill-gotten gains with prejudgment interest thereon, and civil penalties.

Who Are the Defendants?

- Mogler controls numerous investments, entities used to raise money from investors including Pangaea Investment Group LLC ("PI").
- Polanchek manages PI.
- Hinkeldey created Tri-Core-Companies LLC ("TCC") with Mogler.
- Buckley held the title of "Investor Relations" at the Arizona Investment Center ("AIC").
- Stevens was the manager of Tri-Core Mexico LLC.

Factual Allegations

- Defendants engaged in fraudulent securities offerings by companies purportedly involved in:
  - The acquisition and development of beach front property in Mexico;
  - Operating recycling facilities; and
  - Acquiring lender-owned and foreclosed residential properties for resale.
- Mogler made sizeable transfers of investor funds raised from each of the offerings into the TCC bank account to use as his personal so-called “treasure chest” and his “personal (expletive) candy store.”

Offerings

- Defendants offered and sold promissory notes for land offerings issued by TCC raising $10 million from investors;
- $6.2 million in recycling offerings; and
- $1.1 in lender-owned and foreclosed residential property investment offerings.

Defendants' Fraudulent Acts and Statements

- Defendants actively engaged in a scheme to solicit and lure prospective investors in these fraudulent offerings through radio, magazine and internet advertisements, marketing materials, cold calls, and investor presentations.
- Defendants touted investment opportunities in Mexican land recycling facilities, and lender owned and foreclosed real estate opportunities.
- Promissory notes were sold across the United States, Canada and Denmark.

Defendants Made Material Misrepresentations to Investors

1. The use of funds raised through the offerings;
2. The safety and security of the offerings;
3. The rate of return and time of payment; and
4. The brokerage qualifications of the individuals selling the promissory notes.

Defendants Represented Their Use of Investor Funds

- Defendants represented that funds raised from investors would be used to operate businesses including, development of property, recycling facilities and purchase and sale of foreclosed, bank-owned properties.

- Of the $18 million raised by Defendants, only $500,000 was spend on legitimate business expenses.

Who Stole What?

- Mogler stole $10 million.
- Polanchek stole $2 million.
- Hinkeldey stole $900,000.
- Buckley stole $500,000.
- Stevens stole $200,000.

Ponzi Scheme

- Defendants made $4 million in Ponzi-like payments to investors who had threatened them with lawsuits, or were close friends or family members of Defendants.

Mogler's Fraud

- Mogler used almost $10 million of the investor funds for strip club outings, vacations to Hawaii and Disneyland, car payments, food and entertainment, and other personal recreational and living expenses such as child support and mortgage payments.
- Mogler misrepresented his own educational and employment history.

Polanchek’s Fraud

- Polanchek used $1.2 million for strip club outings, purchasing designer clothing, gambling, vacationing at luxury spas and making car payments.

Fraud By Hinkeldey, Buckley & Stevens

- Hinkeldey absconded $900,000 for his own personal use.
- Buckley's received $500,000 in return for luring investors into fraudulent offerings, including commissions and referral fees.
- Steven diverted approximately $200,000 raised from investors to accounts he controlled.

Relief Sought

- SEC is asking the U.S. District Court of Arizona to disgorge all ill-gotten gains they received, together with prejudgment interest thereon.

How Did Investors Allow This To Happen?

- The investors in this case did not do their homework.
- The entities in this case were not registered with the SEC; and
- The individuals in this case were not registered with FINRA.

If You Take One Thing Away From This Presentation…

1. Book mark these two websites:
   a. http://www.sec.gov/edgar/searchedgar/companysearch.html
   b. http://brokercheck.finra.org/Search/Search?utm_source=bing&utm_medium=cpc&utm_campaign=BrokerCheck_PS_Branded_BR&utm_term=finra%20Brokercheck
2. Always run potential investment entities and their employees or placement agents through both websites' search engines.
3. Be suspicious of investment entities circumventing G.L. c. 32, § 23B or SEC guidelines.