

Securities/Investment Fraud: Do You Have a Case?

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Investment fraud is rampant in our country. Telemarketing fraud alone is estimated to cause some 40 billion dollars in consumer losses every year. Small-stock fraud has outstripped all efforts by the SEC and NASD to control or even to curb it.

The most effective and, therefore, most dangerous fraudulent investment schemes are related to their victims' basic needs: health and financial security. The most effective and dangerous appeals are to an individual's desire to be competent and aggressive in obtaining and securing these needs, for self and family. Most successful investment schemes also rely heavily upon stressing the good sense and logic of the recommended investment by pointing out its relationship with some widely publicized economic or political fact or event: i.e., the Asian economic turmoil, the health care crisis, some technological or medical advance or prediction, or even the el niño effect.

Victims of investment fraud frequently are beset by feelings of self-blame, embarrassment and a desire to cut their losses and learn from their own bad experience. Numerous valid and viable cases, go unpursued and unprosecuted. This, of course, does nothing to right the wrong that has been done, or to prevent the flow of fraud to future victims.

Obviously, not every investment loss is actionable. This is so even if the disappointed investor relied upon the advice or recommendations of a broker, or other professionally qualified person, to his detriment. The following definitions and explanations may help you determine whether you need professional advice and whether you just might have a case that should be pursued.

Disputes over investment losses typically are categorized as "securities fraud" cases. They are subject to and controlled by a vast body of state and federal laws, including laws relating to contracts, conversion, fiduciary duty, unfair business practices and, most especially, "securities" and "fraud."

The definition of a security is extremely broad and flexible. It can include virtually any instrument that might be sold as an investment. The tests to determine whether a particular instrument is a security have included the finding of the existence of a common enterprise, the purpose of the seller being to raise money, the purpose of the buyer being to generate a profit, and an investment the profits of which are to come solely from the efforts of others.

"Fraud" can consist of the use of any device or scheme to deceive, promises made with no intention to perform, the misrepresentation of material facts, and the non-disclosure of material facts. Under the securities laws, such non-disclosure is statutorily defined as being the omission "to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, no misleading." (15 U.S.C. Section 78j(b))

Liability for securities fraud may arise from a number of sources, including but not limited to: advertising and promotional materials; registration statements, documents and information filed with the SEC; published or offered financial statements; prospectuses; published or offered opinions or professional accountants, attorneys and financial advisors; and oral and written communications, promotions and offers for sale.

Perpetrators of actionable securities fraud come in all shapes and sizes and do include those who are or appear to be real estate developers, scientists and inventors, and account executives in the most reputable of stock brokerage firms.

If you have suffered an investment loss, ask yourself the following two questions:

1. In making the investment, was I induced by, or did I rely upon, anything which I now believe to have been untrue or misleading?
2. Was the loss significant enough to warrant the expenditure of some of my time and effort to recover it?

If the answers to both of the above questions is, "Yes," then you would be well-advised to contact a securities specialist and request a thorough review and analysis of your case. Numerous investment losses are, indeed, recoverable, in whole or in part; and yours just might be one of them.

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