

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel CORY)
STREISINGER, director of the Dept-)
ment of Consumer and Business)
Services, in her official capacity,)

Plaintiff,)

vs.)

GUY B. RENCHER II, an individual;)
et al.,)
Defendants.)

No. 0204-03988

OPINION AND ORDER

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DEPARTMENT OF JUSTICE
PORTLAND LEGAL

This matter came before the court for a bench hearing on penalties and sanctions resulting from a finding by pro-tem Circuit Court Judge Richard Maizels of numerous statutory violations of state securities laws. Sixteen defendants were originally named in the complaint, but the hearing on penalties and sanctions was limited to the conduct of Guy B. Rencher, The Rencher Law Firm, LLP, Robert J Skirving and Paul James Peiffer. Rencher and the Rencher Law Firm were apparently found to be separately liable for 23 securities sales violations and also Rencher was found liable for 16 separate sales involving misrepresentation or omission of material facts. Skirving and Peiffer were found to have committed a total of 39 acts consisting of 23 sales of unregistered securities by an unlicensed salesperson and 16 counts of misrepresentation or omission of material facts during those sales.

The State is requesting a penalty of \$20,000 per violation against each defendant. In addition, the State seeks disgorgement of monies and an injunction against further unlawful acts.

The court is required to make a judgment call regarding penalty sanctions while disgorgement and injunctive relief have a factual and legal basis. In assessing a penalty the court should weigh mitigation and aggravation factors and to this extent I have reviewed the factors in OAR 213-08-002(1)(b) (aggravating) and OAR 213-08-002(1) (mitigating) of the criminal sentencing guidelines (since the penalty here is somewhat punitive) and I have reviewed the NASD guidelines and the three tiered system for assessing penalties under federal laws and, finally, the ABA's model sanctions for lawyer discipline.

Based on the facts presented in this case I used the following standards as a guide for determining assessment of civil monetary penalties. I considered 1) the nature and extent of the harm to the victims, 2) whether the conduct of defendants was continuous or persistent, 3) defendants motivation to harm, 4) defendants past conduct of a similar nature, 5) actual monetary gain by defendants. Other subjective factors were considered which included the possibility of other sanctions (injunction, civil law suit, criminal prosecution, etc.), whether the violation involved a breach of public trust and the general nature and extent of the scheme that resulted in a significant financial loss to several people.

The penalty phase of this case took the better part of two and half days and the courts file is in 10 binders each over an inch thick. I will not attempt to summarize the facts presented to me in court or through a review of the files in any detail. The summary I will include is very general and may not be entirely accurate, but it reflects my understanding of the basics of what occurred. Different witnesses had somewhat different views of what was supposed to happen and what actually did happen to investor's money and since most of the invested money was lost and unaccounted for there is some guess work involved regarding

the financial details, but the defendant's motives were pretty clear.

Sometime in the summer of 1999, Rencher learned of "The Bank of Nations" that was supposedly returning around 20% on invested money. The Bank was located on an off shore island and the principals were Skirving and Peiffer with Skirving the president of the Bank. Rencher met Skirving and Peiffer and was interested in pursuing a plan of gathering investors together to raise a stake of \$10,000,000.00 which Rencher was convinced was the minimum necessary to take full advantage of the financial opportunities offered by Skirving and Peiffer. Rencher and his law partner, John Larson, ultimately set up a series of LLC's to collect the money and the LLC's would be "managed" by a management company called "Chase Hamilton" which basically consisted of Rencher and Larson.

Rencher was apparently impressed by Skirving and Peiffer who claimed to have been principals in the "First Bank of Grenada" (which was the subject of a Wall Street Journal expose' that Rencher missed during his due diligence research). They stated they had "problems" with that bank and decided to form a new one. It was during the Spring of 2000 when Rencher was ready to solicit investors, but he had a difficult time getting documents or a clear explanation of how everything was supposed to work. According to Rencher he told Skirving that he had "no way to determine if you are running a legitimate bank or a Ponzi scheme." Skirving, apparently sensing he's about to lose a ten million dollar investment, sends Rencher to Las Vegas to talk to a person named Bill O'Connor who could explain the details that Skirving, as president of the Bank of Nations, could not.

O'Connor gives Rencher an explanation that rivals the old Abbot and Costello routine of "who's on first." O'Connor had an answer for every question except one. O'Connor told a story of

trading in "mid-term notes" from corporations (which included banks) where funds are placed with a "trustee" more or less to form a sort of capital base from which trading in these notes can be leveraged to such an extent that great sums of money can be made. Of course, Rencher's \$10,000,000.00 would be added to other accounts to total many millions more and, this was all perfectly safe cause the LLC's still "owned" the money and further, the money was backed by a Bank of the Nations CD. Since Bank of the Nations was represented by Stoel, Rives (who was to prepare some documents) what could go wrong?

I heard no testimony regarding the actual amount of money that could be made which would cover an interest return of 15-19% over and above management fees. Assuming, for the sake of argument only, that MTN's could be traded based solely on investor's deposited money, the interest rate margins necessarily would have to be very small requiring hundreds of millions of dollars to cover all expenses of the rolling transactions including the various brokers and management fees and still give a double digit return to the initial investors who are at the bottom of this food chain. Either the market is not liquid for the MTN's which means an extraordinary risk, or the market is very liquid meaning very little risk, but also minuscule margins of profit (which has to pass through many hands).

It is one thing to draw up an elaborate maze of money invested in a local LLC circling through Nevada to an off shore island and somehow back, but it appears Rencher at no time could give his investors a clear picture of exactly how large sums of money would be made on a monthly basis at an unheard of interest rate during a worldwide recession. The answer, of course, is that it was and is impossible.

There is neither the time nor the space to detail each of the defendants participation in this scheme. The court record

and case file do a complete breakdown. For the penalty purposes I feel that Mr. Rosenhouse's characterization is fairly accurate. Skirving was the architect of this Ponzi type scheme pledging his own personal assets as a guarantee for only the amount of time it would take for the scheme to unravel. Peiffer was the front man and promoter taking care of the details and acting as go between and collector of documents. Rencher was the lynchpin without whom the scheme could not get off the ground.

Robert J. Skirving

Skirving was present the first half day of trial and absent thereafter. Testimony indicated that he clearly was the mastermind behind this scheme to defraud investors and his intent from the beginning was to enrich himself at other's expense. It was a classic Ponzi type scheme designed from the beginning to give investors an almost immediate "return" on their money of 15% or more from money these same investors had paid in and from new money solicited and obtained by Rencher and Peiffer.

There was uncontroverted testimony that Skirving received at least \$750,00 of the money collected and most of the rest went to "management" fees and to the original investors as "interest" in order to keep the scheme going. A large undetermined amount of money is simply unaccounted for.

My finding under ORS 59.255(2)(b) is that Skirving is to disgorge his illegal gains in the amount of \$750,000.00 and that money is directed to be placed in trust and held for disbursement to the various victim investors in the proportion of their current actual out of pocket loss. The 39 separate violations were committed with the sole intent to defraud investors and that conduct was persistent and devastating in its harm to several people who lost virtually all they owned. I find the maximum

penalty of \$20,000 for each count is appropriate and I so order \$780,000 to be levied as a penalty. Finally, Skirving is enjoined permanently from violating State of Oregon securities laws.

Paul James Peiffer

Peiffer has been found in violation of the securities laws of the State of Oregon in the past involving an off shore bank scheme similar to the present one. By any definition of the phrase "aid and abet" Peiffer did so with Skirving and on his behalf. Peiffer characterizes himself as simply a salesman who went along with the flow of things assisting Skirving. He was the go between, the transfer agent, the most visual principal and the out front promoter of Skirving's fraudulent scheme. He claims he received no proceeds and that he is broke and destitute living only on social security. The record testimony by Kenneth Reusser paints an entirely different picture. It was clear by any measure that Reusser was neither an "accredited investor" nor a person of any monetary means save for equity in his home. Peiffer took every advantage he could of a very vulnerable elderly man in poor health and his efforts produced a personal bankruptcy and led to foreclosure of Reusser's house.

There is no proof that Peiffer ever got money directly from the money investors put into the LLC's, in fact no proof he got paid anything. On that basis there will be no order of disgorgement. His culpability in assisting Skirving while knowing full well that Bank of the Nations was not operational and knowing there was no guarantee behind any of the money provided by investors contrary to representations, requires a court ordered sanction. Because Peiffer appeared not to profit directly as did Skirving I find \$10,000.00 per violation to be

appropriate and order the sum of \$390,000.00 to be paid to the State of Oregon pursuant to ORS 59.255(1). Peiffer is also enjoined permanently from violating any State of Oregon securities laws.

Guy B. Rencher

Rencher acted as an attorney and was in a position of trust in selling others on Skirving's get rich quick scheme. He repeatedly stated he spent at least a year on due diligence, but he missed all sorts of red flags from not understanding just how the money was to be generated to pay back investors all the way to failing to pay \$20.00 (as his securities specialist lawyer friend suggested) to run background checks on the principal players. He further claims it was a simple "oversight" that he did not act to extend Skirving's pledge of about 3 million dollars backed by hard assets thereby allowing that guarantee to expire days before the scheme collapsed. Rencher further promotes his naivety by stating he invested in the scheme himself, however, he invested much less than the \$303,000.00 he took out as his share of "management" fees from Chase Hamilton.

I find that Rencher did not, in fact, conduct a due diligence of the type and nature that needed to be done before giving away \$10,000,000.00 of money entrusted to him. Further, investors John Lamb, Tim West and Debra Ghores were not "accredited investors." Rencher noted they said they were, but each testified that they did not meet the definition provided by David Tatman of the State of Oregon Department of Commerce, and that they were never asked the specific questions regarding whether they had a million dollars of net worth excluding their home or a yearly salary of income exceeding \$200,000.

As to the financial maze that was supposed to produce all

the cash flow needed to provide the promised rate of return to investors Rencher said only that, after talking with O'Connor in Las Vegas, he was "satisfied" that the trading of MTN's was "profitable."

Rencher never explained to this court's satisfaction how he could guarantee that the money he passed on to Skirving was still "owned" by the investors and secured by a CD when he had no idea where the money was. One promise he made to each investor was that they could withdraw their money at anytime although it might take up to 90 days to get it returned. The investors had no bearer bond or CD and Rencher himself had no clue where the money was if he needed to get it back quickly.

The State pointed out that Rencher's background contained questionable securities transactions in the past up to and through his suspension from the practice of law. Rencher's credibility has been questioned by others in formal proceedings and it is difficult to fathom just what his motive was in participating in a scheme that had "Ponzi" written all over it. The State graciously suggests it was purely greed, but it may have been more than that when one considers that Rencher covered his own "investment" with management fees and attorney's fees thus insuring he would not be a loser. The firm (Larson and Rencher) took in over a half million in management fees and attorney's fees and there is nothing in the record to show they did any "management," much less at the level requiring the compensation they took back.

I find that \$330,000.00 to have been gained by Rencher through this fraudulent scheme and that the money came directly from investors money through pass through. I would have required Rencher to disgorge that sum except that this issue was not presented to the judge in the State's summary judgment motion and it would be prejudicial to Rencher at this point to include that

payment as a sanction.


I further find that a suitable penalty is \$20,000.00 for each of the 16 violations that involved misrepresentation to investors for a total of \$320,000.00. The Rencher Law firm LLP I find that on the 23 counts of selling unregistered securities that \$5000 per count is appropriate for a total against the firm of \$115,000.00.

I further find that Rencher is permanently enjoined from illegally selling securities within the State of Oregon.

The State had asked for more than I found to be appropriate and I did not assess a penalty against all the violations found by Judge Maizels. I have attempted to apportion the culpability among the defendants and I am mindful that many of the victims may independently seek recovery either individually or through an insurer. There is still the possibility of criminal prosecution.

Finally, while Rencher LLP was a listed defendant the State at one point said it was proceeding on three defendants so if the firm was removed by the parties this opinion would not apply to the firm. Attorney's fees were requested by the State and that could be dealt with later upon the state presenting a judgment based on this opinion. A detailed, line item statement of reasonable attorney fees (along with the relevant points and authorities) can be filed at a later date with defendants having the statutory time to object. State to prepare the judgment.

So Ordered this 22 day of September, 2003.


FRANK L. BEARDEN
Circuit Judge