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BREAKING NEWS

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Vaughan Ponzi scheme fallout drags on

By Richard Metcalf / Journal Staff Writer

Monday, September 15th, 2014 at 12:02am

FOR THE RECORD: This story incorrectly reported how investors David and Lee Ann Lankford of Cave Creek, Ariz., ended up owing \$67,404. The Lankfords did not settle the clawback case against them, but lost on a summary judgment.

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James Richards says Judith Wagner “was supposed to protect us;” instead “she’s turned 180 degrees and is victimizing us.” (Marla Brose/Albuquerque Journal)

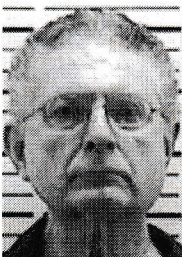
The idea of being implicated in fraud outrages 85-year-old James Richards, a semiretired veterinarian who says he hasn’t had so much as a traffic ticket since high school.

But that’s where he finds himself, implicated in the massive fraud perpetrated by former real-estate executive and now-convicted felon Doug Vaughan. The implication comes in a clawback lawsuit filed against him by Judith Wagner, trustee in the ongoing Vaughan Company Realtors bankruptcy case.

“They say I should have known I was dealing with a Ponzi scheme, that I went ahead and invested anyway,” he told the **Journal**. “That made me complicit with Vaughan.”

Richards said he had no idea Vaughan was up to anything illegal, a status likely shared with most of the 600 investors who gave a total of about \$75 million to Vaughan. They thought their money was being used for real-estate investments, but Vaughan’s investment program turned out to be a Ponzi scheme.

When the scheme collapsed once and for all in February 2010, Vaughan and his flagship real-estate brokerage filed for bankruptcy court protection. The \$75 million was gone.



VAUGHAN: Ran real-estate Ponzi scheme

As is typical in bankruptcies involving fraud, clawbacks were filed to recover or claw back certain types of payments made by Vaughan prior to the bankruptcy filing. The clawbacks came as a shock to most targeted investors, many of whom are middle-class retirees who rarely if ever have been in court.

“(Wagner) was supposed to protect us. If Vaughan had any assets, she was supposed to distribute them to us,” Richards said. “She’s turned 180 degrees and is victimizing us.”

The shock turned to outrage and, in the case of one couple, an unsuccessful attempt was made to countersue Wagner for “extortion, incompetence and fraud.”

Although they are civil lawsuits, clawbacks are designated a “complaint” and read like criminal indictments. The ones in the Vaughan Company Realtors case have multiple counts using the term “fraudulent transfers.” Perhaps the biggest blow contained in the clawbacks is the cash they seek to recover.

The clawback filed against Richards seeks \$162,675 in “net winnings,” or the alleged amount he received from Vaughan in excess of his original investment of \$300,000 made in 2001-04. He said he has spent about \$35,000 fighting the clawback, but the legal battle has taken a toll.

“I’m just worn out. My health has gone to hell. I’ve lost 20 pounds,” Richards said. “I wake up at 12 o’clock wondering how to get out of this.”

Richards is among about three dozen defendants in seven clawback cases who inadvertently wiped out their chances for jury trials on what could be described as a legal technicality.



WAGNER: Trustee in Vaughan bankruptcy

“I had every expectation I would win a jury trial,” he said. “Without a jury trial, my ass is grass. It’s not just me. It’s everybody else who settled, too.”

In the months following Vaughan Company Realtors’ filing for bankruptcy, the defendants all had taken the routine step of filing a “proof of claim” in court. The claim makes them eligible for any payouts that might be forthcoming from the company’s bankruptcy estate.

The legal technicality is that, by filing a claim, the defendants “extinguished” their right to a jury trial if sued by the bankruptcy estate in a clawback action, both U.S. Magistrate Judge Stephan M. Vidmar and U.S. District Judge William P. Johnson ruled in separate but related decisions.

The two decisions derailed the core strategy behind the defendants moving their cases from Bankruptcy Court, where the clawback litigation originated, to federal District Court. The rationale for the move is apparently that a jury of peers would be more sympathetic to their plight than a federal judge.

The defendants didn’t know they were giving up their right to a trial by jury when they filed their claims, their lawyers say in court documents. In May, the defendants attempted unsuccessfully to withdraw their claims.

Case law, which is basically judges’ decisions in similar cases from the past, appears to be a little muddy on the effect of a filed claim on the right to a jury trial in a clawback.



James Richards examines paperwork in his clawback lawsuit in the Vaughan bankruptcy case.

In the Bernard L. Madoff Investment Securities bankruptcy case, for example, a judge in New York ruled that a filed claim did not block a jury trial in a clawback moved from Bankruptcy Court to District Court.

The Madoff bankruptcy case is tied to what’s been described as the biggest Ponzi scheme in history. Ponzi schemes purport to be legitimate enterprises but are investment scams where money put up by later investors is used to pay fictitious profits to earlier ones.

In Vaughan's case, many small investors arrived relatively late in the scheme, when Vaughan was giving lower interest rates, said James Askew, Wagner's lead lawyer in the clawbacks. Because they came later, they received fewer payments, he said.

These rank-and-file investors are the ones who were cleaned out by the 2010 collapse.

"The trustee is asking net winners and those who received very high interest rates, referral fees and high interest rates in lieu of referral fees to pay back the ill-gotten gains so that those small investors who received nothing can recover something," Askew said.

Richards was sued in a clawback because he was an early investor with Vaughan, receiving an interest rate of 20 percent on his investment notes, he said. In addition, he noted Richards received around \$160,000 more from Vaughan than his original investment.

Vaughan, 66, is serving a 12-year prison term.

Recent clawback settlementsThe following are recent settlements of clawbacks approved by Bankruptcy Court Judge Robert Jacobvitz in the Vaughan Company Realtors bankruptcy case. As a rule, the defendants admit to no wrongdoing or liability.

Academy Plumbing, Heating, Air Conditioning & Electric, Jules F. Appelman Trust of Albuquerque, \$136,453

The Lyman S. Atchley Family Trust of Albuquerque, \$22,500

Gloria Bercovitch of Del Rey Beach, Fla., \$27,012

Betty Berry of Farmington, \$5,000

The D.C. & Bernice Burris Revocable Trust of Springfield, Mo., \$8,000

Jerry and Connie Davis of Oklahoma City, Okla., \$79,593

David DeFuria of Winchester, Calif., \$51,578

Durano Enterprises, Durano Construction and others of Albuquerque, \$28,253

Andy Feld and Julie Feld of Colorado, \$55,000

Norman and Cherie Fenton of Rio Rancho, \$23,237

Vicki Frank of Devils Tower, Wyo., \$10,027

William Galbreth and others of Albuquerque, \$100,000

Diana Golden, Jeremy Golden, Golden Family Trust of Albuquerque, \$45,000

Adelina Graef of Palm Bay, Fla., \$30,000

Adam Gray and Andrew Gray of Belleville, Texas, \$3,500

Francis Hovorka of Albuquerque, \$140,205

David and Lee Ann Lankford of Cave Creek, Ariz., \$67,404

Michael Menke of Albuquerque, \$22,684

Stephan Moffat of Albuquerque, \$64,000

Daniel R. and Marsha J. Mowery of Albuquerque, \$20,000

Scott O'Hara of Broomfield, Colo., \$13,606

Steven Pazand of Albuquerque, \$56,547

Michael Rosenberg of Albuquerque, \$205,448

Ernie Stein (hometown not available), \$3,000

Irene Tarro of Albuquerque, \$10,000

Ultima Homes and Ken Hightower of Albuquerque, \$4,000

The Henry Valencia Trust of Espanola, \$60,000

WE Investments of Albuquerque, \$30,000

Julius and Diane Wollen of Albuquerque, \$187,500