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Retirement Funds Hit by FAC Debacle

Among the cruel twists of the alleged fraud is that so many investors were risking their retirement nest eggs.

By E. Scott Reckard, Times Staff Writer

Deep down, Michael O'Hara knew the huge profits at **Financial Advisory Consultants Inc.** "were just too good to be true."

So when his 70th birthday rolled around in 2000, and he had to start drawing down his individual retirement accounts, he hedged his bets by taking out more money than required by law.

O'Hara, a prosperous insurance agent from Placentia, regarded the \$106,000 he had deposited in the 1990s in an FAC investment fund as "Vegas money." And with the fund reporting annual returns of nearly 40%, O'Hara seemed to have hit the jackpot: Late last year, even after he had withdrawn \$123,000, his FAC account balance was \$700,000.

Then FAC crapped out. Two days before Christmas, the Securities and Exchange Commission charged the Lake Forest company and its owner, James P. Lewis Jr., with operating an elaborate, 20-year fraud.

An FBI raid of FAC's office on El Toro Road turned up assets worth a bit more than 1% of the \$813.9 million that Lewis' clients supposedly had accumulated. Lewis, known to his family, friends and clients as an investment genius, was nowhere to be found. As of late Friday, he was being sought by the FBI.

Among the cruel twists of the FAC debacle is that so many investors, like O'Hara, were gambling with their retirement funds. Many lost virtually everything. According to SEC filings and attorneys involved in the case, the victims include Lewis' computer technician, who mortgaged his house to invest with FAC, and the mother of Lewis' live-in companion, who handed over her entire \$250,000 in retirement savings.

FAC's books listed 1,340 IRAs and Keough retirement accounts, according to analysis by Robb Evans & Associates, the court-appointed receiver in the case. That indicates that as many as about 40% of the 3,290 active investors lost at least some of their retirement savings.

Barry Minkow, the San Diego private investigator who uncovered the alleged fraud and

alerted authorities, said attracting and retaining IRA money was an integral part of Lewis' modus operandi.

IRAs, tax-sheltered accounts set up to encourage retirement savings, are designed to keep money locked up for years, with heavy penalties for savers who withdraw funds before they are 59 1/2. Investors aren't required to take any funds out until they reach 70 1/2.

The 57-year-old Lewis "targeted IRA money because it didn't have to be paid back anytime soon," said Minkow, a former teen tycoon who spent seven years in prison for defrauding investors and banks in the infamous ZZZZ Best carpet-cleaning scam in the 1980s.

Lewis would ask prospects how their IRAs were performing, then suggest they move the accounts to FAC, "and he'd pay the transfer fees," Minkow said.

In material sent to investors, Lewis wrote that "many of our clients work all their lives to build up a base of assets they can depend on for retirement.

"But savings alone aren't sufficient to last through a retirement which could extend to 20 to 30 years or longer," he wrote. "Investing for retirement is a long-term endeavor which can be enhanced by investing in our funds."

Lewis had operated his investment firm since 1983, never registering himself or his funds with state or federal authorities. His financial reports said FAC's Growth Fund made its nearly 39% annual profit by investing in, and then reselling, distressed companies, though Lewis never told investors the names of the companies, describing them only by project numbers.

FAC's supposedly safer Income Fund reported more than 19% annual earnings from equipment leasing and insurance premium financing, also vaguely described in written material.

Accepting new clients only on referral, Lewis appears to have benefited indirectly from the stock bubble of the late '90s, which gave investors inflated expectations about risk and return.

"It was not like this was the only thing that was soaring in the late '90s," investor O'Hara said. "You could pick up the paper and see all these high-tech companies going crazy, rising 300% or 500% a year. So here was this guy making 40% — so what?"

In another twist, Lewis also seems to have benefited from the bust that followed, which played havoc with stock portfolios, and from the decline in interest rates, which battered holders of conservative certificates of deposit.

Temecula real-estate agent Charles N. Woolstenhulme, one of the last investors to give Lewis money, told the SEC he had been hearing about FAC since 1999 or 2000 from a

friend at church who consistently reported big profits.

Woolstenhulme, 45, asked for investor material last October and decided to transfer \$100,000 from a Fidelity IRA to FAC based on the firm's claims about its fat returns.

"I was also comforted to learn from friends at my church that FAC had been in business for approximately 20 years," Woolstenhulme said in a declaration attached to the SEC's request to have a judge freeze Lewis' assets.

On Dec. 8, Woolstenhulme received confirmation that the rollover from Fidelity was complete. Just four days later, he saw a TV news report that FAC was not properly registered as an investment advisor or investment company. He tried to get Fidelity to stop payment on its check, but it was too late, and his appeals for FAC to return his money went unanswered.

Ray and Helga Leger had a different kind of insult added to their injury, having paid dearly to convert their IRA account with FAC to a Roth IRA five years ago. Unlike traditional IRAs, which give savers an immediate tax break, Roth IRAs allow earnings on already taxed dollars to accumulate and be withdrawn tax-free in retirement.

To complete the transformation to a Roth IRA, the Legers paid an extra \$8,000 a year in taxes for four years. Ray Leger, 66, said he and his wife would have taken some money out last year but were prevented from doing so under Roth IRA rules. They had planned to withdraw a large amount in 2004, the earliest they could under the law, but the government shut down FAC before the new year arrived.

"They said if you put money in a Roth, you can get it after five years, but you can't touch it until then," Leger said. "So we just let it sit there and make money — money we were going to live on until we went to the happy hunting ground."

Exactly how much money investors handed over to Lewis has not been determined, SEC attorneys said, although documents filed in court Friday suggest it was about \$100 million. It clearly was far less than the \$813.9 million he supposedly owed to his clients, because their accounts had been hugely over-inflated by phony investment earnings.

In court filings, investigators said Lewis' assets were woefully inadequate to cover his obligations, although they identified \$2.3 million in cash and \$5.8 million in investments in two private companies, including a money-losing software concern he was keeping afloat with infusions of \$100,000 a month. In addition, Lewis was listed as the joint owner of homes in Laguna Niguel, Villa Park, Palm Desert, San Diego and Greenwich, Conn.

According to statements to the SEC by Lewis' computer technician and administrative assistant, he spent most of his mornings trading foreign currencies, a highly speculative practice that can run up huge gains and losses, although he claimed to be doing so with his own money. The SEC's court filings show he also set up trading accounts in the

names of several friends and relatives.

Lewis also squandered FAC funds on high-end jewelry and apparel, and wrote checks on his personal account for \$100,000 to a luxury jeweler and for \$50,000 to a Mercedes-Benz dealer as a deposit on a top-of-the-line limousine valued at more than \$400,000, the SEC said.

Douglas J. Pettibone, a lawyer who had represented Lewis in civil matters for several years, said he had been kept in the dark about any fraud that may have occurred. U.S. District Judge Audrey Collins in Los Angeles last week granted Pettibone's request to be removed as attorney of record in the SEC lawsuit. Pettibone said that as far as he knew, Lewis had hired no one to replace him.

An attorney for Lewis' estranged wife, Sally A. Lewis, 58, of Laguna Niguel, said Lewis had moved out in 2000, straining relations with his family. However, no one suspected that Lewis was anything other than a successful investor, and many family members and their friends had lost money in the meltdown of FAC, attorney Thomas H. Bienert of San Clemente said.

"This guy was extremely close to the vest about his actual business dealings," Bienert said. "The family is extremely distressed by all of this and wishes that he were here to deal with all the questions."

Lewis also victimized the family and friends of Blakney A. Boggs, 37, a former teaching pro at several Orange County golf courses who lived with Lewis after he left his wife, according to Boggs' attorney, H. Dean Steward of San Clemente.

Steward said Boggs and her family never suspected Lewis was anything other than a successful businessman and golf enthusiast. Property records show the couple bought a 6,400-square-foot Villa Park mansion for \$1.25 million in October 1999.

They attracted attention by installing elaborate landscaping, including a backyard pool with a swim-up outdoor bar featuring four televisions, but lived quietly, neighbors said. The home looks out across much of Orange County to Santa Catalina Island. Boggs and Lewis paid neighbor children \$1 a package to wrap Christmas presents.

This apparent tranquillity was smashed when Lewis disappeared, breaking off contact with Boggs, who had persuaded friends and at least three family members to entrust him with their savings, Steward said.

That included "a quarter of a million bucks" in retirement money from Frances Boggs of Irvine, Blakney's mother, Steward said.

"It was everything she had," the attorney said. "Her daughter is just traumatized by it all."

However, in the Friday court filings, the receiver said FAC checkbooks showed

payments of \$600,000 to Boggs family members during a three-year period.

O'Hara, the insurance agent who luckily came out ahead on his investments with Lewis, said he also encouraged many family members and friends to hand over money to Lewis and now torments himself for doing so.

"I should have been smarter than this," he said. "There was always this nagging feeling that this ain't right. Why ain't everybody I know doing this? If it's so good, why is he sharing it with everyone? And I had a son-in-law telling me all along: 'Get out, get out, get out.'"

"The lesson," O'Hara said, "is if it smells like a rat, and looks like a rat, then it's a rat."

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