THE PRESS-ENTERPRISE COMPANY

Investors told they face millions in losses

RECEIVER: Hundreds of Inland people put money into a firm accused of running a Ponzi scheme.

July 1, 2004

By DEVONA WELLS / The Press-Enterprise

HEMET - The man tracking down money invested in D.W. Heath & Associates painted a bleak picture Wednesday for Inland investors whose life savings have been caught up in what the government now alleges was a Ponzi scheme.

More than 550 people peppered officials with questions in a meeting that overwhelmed organizers with unexpectedly large crowds. They wanted to know the whereabouts of their money, when they might get it back and why action wasn't taken sooner.

Some investors didn't get a chance to ask their questions at Wednesday's first meeting, because only so many could reach the microphone in the allotted hour. With so many more people than expected, dozens lined walls and many took chairs that had been put up on the stage of the auditorium of the James Simpson Senior Center. Frustration erupted in outbursts and grumbling, though many said they were happy for the details they've hungered for since they learned their money was in trouble.

(Terry Pierson / The Press Enterprise)

Receiver Robb Evans speaks to hundreds of people at the James Simpson Senior Center in Hemet who want to find out what can be done to recover money they invested in D.W. Heath & Associates.

But much of what was revealed Wednesday did little to boost hopes about the savings and Individual Retirement Accounts that more than 800 elderly investors are believed to have turned over to Heath & Associates.

At least $69.9 million was invested with Heath & Associates, according to the U.S. Securities and Exchange Commission. But receiver Robb Evans, CEO of Robb Evans & Associates, who was appointed by the court to seize assets and return money to investors, said he now knows of $145 million invested since 1990.

Of that, Heath & Associates put $50 million into two projects in Big Bear with another $42 million going to 50 different companies.

"I want to tell you it's an ugly, ugly picture," he said. "Many of those investments are totally worthless."

Losses called significant

Money will be recovered, Evans said. But based on what's been located so far, he said, losses will be significant.

In May, the SEC sued Heath & Associates and said it operated a Ponzi scheme paying early investors with money from later ones.

The assets of Heath & Associates, along with PCM Fixed Income Fund 1, Private Capital Management and Private Collateral Management, were frozen last month. The companies were placed into receivership. Daniel William Heath, 47, of Chino Hills, and Denis Timothy O'Brien, 49, of Yorba Linda, were sued for violating securities laws. Heath's assets also were frozen.

Had the SEC not interfered with his businesses, Heath believes he could have turned them profitable, said David Bortman, Heath's attorney. Reached by phone Wednesday afternoon, Bortman reiterated that Heath & Associates did not operate a Ponzi scheme.

Heath "assures me that these are all legitimate investments he made. Any mistakes he may have made were made in good faith. He never intended to mislead anyone or cheat or defraud anyone," Bortman said.

Heath, he said, continues to cooperate with the SEC and receiver.

Many attendees scribbled notes on legal pads and envelopes, exchanging phone numbers and names with fellow investors. At 10:45 a.m., 15 minutes before the scheduled start of the meeting, organizers began turning investors away and asking them to return for an impromptu meeting set up for later in the day.

Karen Pickl of Perris came to find out about the $400,000 her mother-in-law gave to Heath & Associates. The money included college funds for Pickl's 13-year-old and 17-year-old children.

Her mother-in-law, who has Alzheimer's disease, lives in a nursing home and hasn't been told about the state of her finances.

"I may have to go look for a second job to pay for her care," said Pickl, 53, who stood against a wall through the two-hour event.

Investors were lured to Heath & Associates with the promise of safe investments returning 5.5 percent to 8 percent yearly, according to the SEC. Others say they were told their money was put into specific projects funded by Heath & Associates. Of the $145 million brought in, Evans said, $40 million was returned to investors.

Question on lawsuit

Investor Marjorie McIntosh, who helped organize Wednesday's meeting, asked a question many say they've pondered: Would filing a class-action lawsuit do any good? McIntosh, of Hemet, put $40,000 into Heath & Associates.

"What I'm always worried about on a class-action is that money you would recover is split with lawyers," Evans, the receiver, said.

Some wanted to know why the assets of Heath were frozen but O'Brien's weren't. The SEC did not have enough evidence to go after O'Brien's personal assets, SEC attorney David Brown said.

But the Securities and Exchange Commission, which started looking into Heath & Associates in February, has not finished investigating, Brown said.

"Patience is something we ask you for as we go forward," he said.

The question that won the most applause came late in the morning meeting: "Are these guys going to do any jail time?"

The Riverside County district attorney's office has said it is investigating Heath & Associates, but did not send a representative to the meeting.

"I am here to assure you they are working many long hours," said Margo Hamilton, regional manager for Curtailing Abuse Relating to the Elderly, or C.A.R.E., which moderated Wednesday's meeting.

A few investors pointed fingers at First Trust Corp., Heath & Associates' IRA administrator, for not doing more to safeguard their money. First Trust, based in Denver, oversees more than 300,000 accounts and operates as a background player for its clients, said attorney James R. Hoy.

"We were not in a position to do due diligence to find out what Dan Heath says is true," he said.

Evans declined to discuss individual investments. He said his team is one or two months from starting to reconcile investor accounts with the records kept by Heath & Associates. While Evans called the Heath & Associates paperwork tracing its varied investments "absolutely abominable," he said the company kept good records of the individuals it took money from.

Recovering money

Four methods can be used to recover money and return it to investors, Evans said. Among them: liquidating the assets of Heath and Heath & Associates; securing a court judgment ordering Heath to repay money; and suing others who helped perpetrate the fraud. Also, those who made more money than they invested may have to repay it, he said.

Bortman, Heath's attorney, said the timing of returning money is in the hands of the receiver. But he said Heath wants to make his businesses healthy to get cash back to investors.

"It's extremely complicated, because now that the SEC has begun these proceedings, these companies are not allowed to continue to pull in money," he said.

In 1998, the state Department of Corporations ordered Heath to halt illegal sales of investments and to stop acting as an unlicensed securities broker. Several wanted to know Wednesday why the order wasn't enforced.

Evans said the department's investigation team, which follows up on such orders, was disbanded because of budget cuts.

Reach Devona Wells at (909) 368-9559 or dwells@pe.com.