

Riverside County's largest-ever fraud case heads for trial

April 4, 2007

By LOU HIRSH / The Press-Enterprise

Investors with D.W. Heath & Associates who lost millions of dollars could find out in six weeks how the court treats a case of alleged fraud that wiped out the life savings of many people.

The trial, now set for May 21, will come nearly three years after operators of the now-defunct investment firm were arrested in Riverside County's largest-ever fraud case.

Authorities say investors handed over more than \$192 million to the defendants in an investment Ponzi scheme. A federal judge shut down the firm in 2004, and all three defendants remain in Riverside County Jail without bail.



Daniel Heath
The Press-Enterprise

Investors such as Albert Rumpilla, 63, of Diamond Bar, say they hope the defendants spend the rest of their lives in jail if convicted. Rumpilla and his wife invested \$17,000 with Heath & Associates.

"It sounds like a small amount compared to some other people, but for me it might as well have been \$1 million, because it was the same result -- he wiped me out," Rumpilla said recently after hearing of the trial date.

Daniel W. Heath, who was president of Heath & Associates, along with his father, John Heath, and Denis O'Brien, were arrested in July 2004 and charged with numerous felony counts of securities fraud and grand theft. They are accused of bilking more than 1,600 investors, many of them seniors who turned over their life savings and retirement accounts.

The timing could still change, depending on scheduling conflicts, but prosecutors say they are now more confident than ever that the trial will finally happen. They have lined up between 60 and 70 witnesses to testify, including investors, financial experts, government regulators and Heath & Associates employees, and proceedings could take several weeks.

"We're hoping to clear everyone's calendars and get this done," said county Deputy District Attorney Michael Quesnel.

"We'd like to get some closure," added Deputy District Attorney Michael Silverman.

A fourth defendant, Larre Schlarmann, pleaded guilty in 2005 to money laundering and nine other felony charges, and was sentenced to 15 years in prison. Prosecutors have said Schlarmann likely will testify at the upcoming trial.

'Getting Something Back'

Paul Hering, 76, of Lake Forest, with his wife, Ruby Gartman, 78, invested about \$240,000 with Heath & Associates. So far, they've gotten back a little more than \$43,600, thanks to efforts by court-appointed receivers to find and sell assets.

The couple has scrimped to get by since losing much of their retirement nest egg in their Heath & Associates investment, which Hering said is compounded by concerns about his wife's health.

"At least we're getting something back," Hering said recently. "I guess it's better than getting nothing."



John Heath
The Press-Enterprise

Hering said he's glad to hear the Heath & Associates case finally might make it to court, but he's skeptical about whether true justice can be done, considering the number of lives affected.

'Slap on Wrist' Feared

"They'll probably let them off with a slap on the wrist," he said. "Then they'll probably be free to operate again under another name."

Diamond Bar resident Rumpilla said he and wife, Sandra, resisted entreaties in 2004 by John Heath that they refinance their home, which was fully paid off, and put proceeds into Heath & Associates investments. But the \$17,000 they did fork over represented all their spare cash.

Authorities say Heath & Associates took in the investments as part of a Ponzi scheme that used money from new investors to pay earlier ones. Many of those investments were made after Heath & Associates defied a 1998 state order to stop selling investments, and as the Department of Corporations failed to investigate many consumer complaints about the firm.

Heath & Associates, with offices in Hemet, Brea and Pasadena, continued to operate through April 2004, when a federal judge shut it down.

Daniel Heath faces 403 charges, followed by 67 for O'Brien and 59 for John Heath. If convicted, Daniel Heath could be sentenced to 167 years in prison, O'Brien faces 39 years and John Heath could get a 33-year sentence.

Barry O. Bernstein, the attorney for Daniel Heath, recently maintained his client's innocence. Attorneys for John Heath and O'Brien did not return calls seeking comment.

Earlier this month, Bernstein filed a motion asking for the case to be dismissed, contending that the state was required by law to prosecute the defendants within three years after Heath & Associates received its desist-and-refrain orders

from the Department of Corporations in 1998.

The court is scheduled to hear arguments on that plea Friday.

Prosecutors said recently the plea is without merit.



Larre Schlarmann
The Press-Enterprise

Projected Returns

Kenton Johnson, executive vice president of court-appointed receiver Robb Evans & Associates, said investors will ultimately get back no more than 22 cents on the dollar for their investments.

So far, about 19 percent of the \$115 million in approved claims has been returned to investors, more than the 15 percent receivers projected when the process began.

"We believe there's going to be a final distribution of some amount," Johnson said. "We just don't know the amounts yet or the timing."

State regulators' failure to warn the public and stop Heath & Associates from taking investors' money was detailed in a 2005 investigation by The Press-Enterprise that prompted state lawmakers to request an audit. The fallout has already spurred changes at the California Department of Corporations.

In January, the Bureau of State Audits released the findings of its nearly yearlong examination of the corporations department. Auditors found many problems in the way the department processes license applications, handles consumer complaints and monitors its own activities.

For instance, in reviewing 20 complaints relating to securities regulation, auditors found four in which "unnecessary delays" increased the length of the process, and in one case the department did not begin its investigation until 277 days after the complaint was received.

"When Corporations does not investigate complaints promptly, its ability to protect consumers from fraudulent activities is compromised," auditors concluded. The audit recommended streamlining of the department's handling of complaints.

Department of Corporations officials would not comment on the audit or the Heath & Associates case. Department spokesman Mark Leyes said officials would have more to say following the conclusion of a 60-day comment period for the audit. The department will detail to auditors its plans for addressing the problems sometime this month.

In a preliminary response, corporations department Commissioner Preston DuFauchard said the department has "no substantial disagreements" with the audit's findings.

Since 2005, the department has acknowledged making several changes in response to the Heath & Associates case. A new database tracks complaints, relations with district attorneys have improved, and firms issued desist-and-refrain orders are put on special watch lists.

For budget reasons, the corporations department in 2003 cut all 14 of its investigator positions. Cases referred for criminal prosecution fell from 27 in 2002 to none in 2004.

The department since 2005 has gradually been restoring its investigative unit, and officials say prosecution referrals have rebounded.

ity prison near San Luis Obispo, according to the state Department of Corrections.

Reach reporter Lou Hirsh at (951) 368-9559 or lhirsh@pe.com.

Copyright 2007 The Press-Enterprise