

## Motion denied

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By LOU HIRSH / The Press-Enterprise

A judge Friday denied a defense motion to dismiss charges in the D.W. Heath & Associates investment fraud case, and also pushed back the start of the trial from May 21 to June 25.

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. The firm was shut down by a federal court in 2004, and the defendants remain in Riverside County Jail without bail.

The defendants are accused of bilking more than 1,600 investors, many of them seniors who turned over their life savings and retirement accounts. Investors put more than \$192 million into what prosecutors contend was a Ponzi scheme that used money from new investors to pay earlier ones.

The defendants were in court Friday but did not speak. Attorneys for all three have maintained their clients' innocence.

Defense attorneys asked in March for dismissal of several charges, on the grounds that the statute of limitations ran out three years after Heath was ordered by the California Department of Corporations to stop selling investments in 1998. Prosecutors said the motion was without merit.

Riverside County Superior Court Judge Elizabeth Sichel sided with prosecutors, saying the state's authority could not have been brought to bear on investments made well after the cease-and-desist order was issued, as Heath & Associates allegedly violated the state order.

Sichel also said she was not inclined to delay the trial further, noting previous delays. She pointed out the age and health problems of defendant John Heath, and also the ages of many investors.

But Barry O. Bernstein, attorney for Daniel Heath, asked for the trial to be switched to June because he has scheduling conflicts.

Bernstein said there were also issues with the release and verification of the prosecution's witness list. The judge set the new trial date after attorneys met late Friday to hammer out a timetable.

Prosecutors have lined up between 60 and 70 witnesses to testify at the trial, including investors, financial experts, government regulators and Heath & Associates employees, and proceedings could take several weeks.

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.

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

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