U.S. SECURITIES AND EXCHANGE COMMISSION

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SECURITIES AND EXCHANGE COMMISSION v. D.W. HEATH & ASSOCIATES, INC., PRIVATE CAPITAL MANAGEMENT, INC., PRIVATE COLLATERAL MANAGEMENT, INC., PCM FIXED INCOME FUND I, LLC, DANIEL WILLIAM HEATH, AND DENIS TIMOTHY O'BRIEN, **No. CV 04 - 02949JFW(Ex)(C.D. Cal.)**

PERMANENT RECEIVER APPOINTED IN $144 MILLION PONZI SCHEME TARGETED AT ELDERLY INVESTORS IN SOUTHERN CALIFORNIA

The Securities and Exchange Commission announced that on May 19, 2004, the United States District Court for the Central District of California appointed Robb Evans and Associates, LLC as the permanent receiver over four Southern California companies alleged to have perpetrated a $144 million Ponzi scheme targeting the elderly. In a federal court complaint filed on April 28, 2004, the Commission alleged that the four receivership entities, D.W. Heath & Associates, Inc., Private Capital Management, Inc. ("PCM"), Private Collateral Management, Inc., and PCM Fixed Income Fund I, LLC ("PCM Fund"), and two individuals, Daniel William Heath, 47, of Chino Hills, and Denis Timothy O'Brien, 49, of Yorba Linda, fraudulently induced at least 803 elderly investors to invest in "secured" notes that paid a "guaranteed" return of 5.5% to 8% per year, and raised at least $60 million. The defendants agreed to the entry of the order appointing the permanent receiver over the entities. In his first report to the court filed on May 14, 2004, the receiver stated that from July 1993 through March 31, 2004, approximately $144.8 million was raised from investors through PCM, and of that amount, approximately $39.6 million in principal and interest was returned to investors. According to the receiver's report, over the life of the company, PCM suffered a net loss of about $41.8 million and earned only $1 million in total income. The receiver concluded that the payments to investors could have only come from the money invested by other investors. Using funds from new investors to make principal and interest payments to existing investors without disclosing such a practice constitutes a Ponzi scheme.

The Commission's complaint alleged that the defendants fraudulently induced at least 803 elderly investors nationwide to invest in PCM notes that purportedly paid a "guaranteed" return of 5.5% to 8% per year. The defendants claimed that investor funds would be used to make secured loans to businesses. The defendants also represented that independent IRA administrators conducted "due diligence" on the PCM Notes and that either investors will be repaid their principal at maturity, or they may redeem all or part of their investment before maturity, subject to a 10% penalty. Finally, the defendants claimed that PCM and the PCM Fund are California entities.

According to the complaint, these representations are false. There is no evidence that there are any secured loans. The PCM Notes also are not liquid because the defendants have failed to promptly return investor funds. The complaint further alleges that some investors have had to threaten to file, or actually filed, lawsuits against the defendants to get back their money. Nor is it true that IRA administrators have conducted due diligence. Finally, there is no record that either PCM or the PCM Fund are California legal entities.

On May 6, 2004, the defendants consented to the entry of a preliminary injunction enjoining them from future violations of the registration and antifraud provisions of the federal securities laws, Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The defendants also consented to the entry of orders freezing their assets (except against O'Brien), prohibiting the destruction of documents, requiring accountings, and expediting discovery. The Commission also seeks permanent injunctions and other relief, including disgorgement and civil penalties, against all defendants.

http://www.sec.gov/litigation/litreleases/lr18724.htm