



# U.S. SECURITIES AND EXCHANGE COMMISSION

U.S. Securities and Exchange Commission

Litigation Release No. 18777 / July 9, 2004

## **TWO DEFENDANTS NAMED IN SEC ACTION ARRESTED BY RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE FOR SECURITIES FRAUD SCHEME TARGETING ELDERLY INVESTORS IN SOUTHERN CALIFORNIA**

***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.)***

The Securities and Exchange Commission ("Commission") announced that on July 1, the Riverside County District Attorney's Office ("Riverside DA") arrested four defendants in an ongoing multi-million dollar securities fraud scheme. Arrested were Daniel William Heath, 47, of Chino Hills, his father, John William Heath, 77, of Covina, Denis Timothy O'Brien, 50, of Yorba Linda, and Larre Jaye Schlarmann, 46, of Carlsbad. All four men have been charged by the Riverside DA with 233 felony counts, including selling unqualified securities, selling securities by misrepresentation, violating a court order to desist and refrain from selling securities, elder abuse, grand theft, burglary, and money laundering. All four men have been booked and are in custody. Bail is set at \$144 million for each individual. Two of the men arrested, Daniel Heath and O'Brien, were named in an emergency civil injunctive action filed by the Commission on April 28, 2004 in federal court in Los Angeles. The Commission's complaint alleges that Daniel Heath and O'Brien lured elderly victims to workshops with the promise of a free lunch and then bilked them out of their retirement money by purporting to sell them safe, guaranteed notes. According to the Riverside DA's criminal complaint, the men operated D.W. Heath & Associates, Inc., Private Capital Management, Inc. ("PCM"), Private Collateral Management, Inc., and the PCM Fixed Income Fund I, LLC ("PCM Fund"), as well as other investment entities with offices in Hemet, Brea, Pasadena, and Big Bear. The defendants raised at least \$144 million from hundreds of elderly investors. The Riverside County DA conducted the arrests and executed criminal search warrants at the homes of Schlarmann and John Heath. The Riverside DA had previously executed criminal search warrants at the offices of Heath & Associates offices and at Daniel Heath's home at the time the Commission filed its complaint, and shortly thereafter, at O'Brien's home. The Riverside County DA also sought asset freezes against defendants Schlarmann, John Heath, and O'Brien.

The Commission's complaint alleges that Daniel Heath, O'Brien, Heath & Associates, PCM, Private Collateral Management, Inc., and the PCM Fund fraudulently induced at least 803 elderly investors nationwide to invest in notes in PCM and the PCM Fund ("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 investors would be repaid their principal at maturity, or that they could redeem all or part of their investment before maturity, subject to a penalty. Finally, the defendants claimed that PCM and the PCM Fund were California entities. According to the Commission's complaint, these representations were false. The Complaint alleged that the loans were secured. Further, the PCM notes were not liquid because the defendants failed to promptly return investor funds. According to the SEC complaint, some investors had to threaten to file, or actually file, lawsuits against the defendants to get back their money. Nor was it true that IRA administrators conducted due diligence. Finally, there was no record that either PCM or the PCM Fund was a California legal entity. In its lawsuit, the Commission obtained an order freezing the assets of all defendants (except O'Brien), an accounting, an order preventing destruction of documents, an order expediting discovery, and an order temporarily enjoining all of the defendants from future violations of the securities 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. At a hearing on May 3, 2004, the court appointed Robb Evans and Associates as temporary receiver over Heath & Associates, PCM, Private Collateral Management, Inc., and the PCM Fund. On May 6, 2004, the court entered preliminary injunctions against all the defendants. On May 18, 2004, the court appointed Robb Evan and Associates as permanent receiver. In its action, the Commission is seeking permanent injunctions, and other relief, including disgorgement and civil penalties against all defendants. See also: L.R. 18689 / May 3, 2004

*<http://www.sec.gov/litigation/litreleases/lr18777.htm>*