

Taking Stock: Madoff victim lacks resources for recourse

by Malcolm_Berko

Dear Mr. Berko: My parents lost all their retirement nest egg of \$1.8 million to Bernard Madoff's Ponzi scheme. But suing him would obviously be fruitless because he has no assets. I did read, however, that some investors are suing a bank that was custodian for much of Madoff's money called HSBC. (What do those initials stand for?) Even though HSBC was just a custodian, a lawyer we talked to said the bank failed to perform its "necessary due diligence." We spoke to an attorney in Palm Beach, Fla., who wants \$60,000 upfront to pursue a lawsuit against HSBC. That's too rich for us. Do you know of any class-action lawsuits we can join where the costs will be a lot less? Please help. â€” T.S. Boca Raton, Fla.

Dear T.S.: HSBC stands for The Hong Kong and Shanghai Banking Corp., which some believe is the largest bank in the world. HSBC (HBC-\$35.46) makes a fancy dollar acting in a custodial capacity for many financial businesses. In 2008, HSBC had custodial assets in excess of \$6 trillion â€” that's trillion with a "T."

I doubt the plaintiffs, who filed suit Jan. 27 in U.S. District Court, have a snowball's chance in hell of collecting a centime. But lawyers get paid to sue, so they don't want to appear as if they're standing around sucking their thumbs. Those plaintiffs had better have deep, deep pockets, because some of those legal leeches bill at \$1,000 an hour. They will probably claim "lack of scrutiny falling far short of the legal duties owed and representations made." What a farce. It's hard to believe that those \$1,000-an-hour lawyers are dumb enough to sue HSBC, whose only role in this affair is passive and administrative.

This problem's way above my pay grade and I don't know how to assist you. However, if you do find a compassionate attorney, I would advise him or her to sue the Securities and Exchange Commission and the Financial Industry Regulatory Authority, both of which are staffed by clowns and stumblebums who had plenty of opportunity and reason to investigate Bernard Madoff. According to star witness Harry Markopolos, who tried to blow the whistle years ago on Madoff, FINRA and the SEC didn't investigate for the following reasons:

â€” The people working at FINRA and the SEC do not have the intelligence necessary to understand what Madoff was doing.

â€” FINRA and the SEC were frightened of Madoff.

â€” Madoff had tremendous power and influence.

â€” FINRA and the SEC are corrupt.

According to two Wall Street "semi" big shots, FINRA and the SEC are a joke on the Street. Markopolos suspects FINRA and the SEC might be politically motivated, and that their enforcement activities are directed at the little guys in the business rather than Merrill Lynch, Prudential, Smith Barney, or even big shots like Madoff.

If you can find a compassionate attorney, have him read the transcript of Markopolos' Feb. 3 testimony before the U.S. House or Representatives Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. Your lawyer might not be able to sue the SEC, because it's a government organization. But he can sue FINRA, which is the largest nongovernmental regulator for all securities firms doing business in the United States.

FINRA's senior counsel is Clarence E. Sanders Jr., who I suspect needs something to keep him busy other than playing computer solitaire. Sadly, I think FEMA would have done a better policing job than the SEC or FINRA.

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