

**In the Supreme Court of British Columbia**

Between:

Dennis Hall

Plaintiff

and:

Henry Alexander McCandless and Douglas Welder

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**STATEMENT OF CLAIM**

**THE REPRESENTATIVE PLAINTIFF AND THE DEFENDANTS**

1. Dennis Hall is a British Columbia resident with an address for delivery at 4th Floor, 555 West Georgia Street, Vancouver, BC.
2. The defendants Henry Alexander McCandless ("McCandless") and Douglas Welder ("Welder") are barristers and solicitors and practicing members of the Law Society of British Columbia and have been so at all material times.
3. During the Class Period, as defined below, Dennis Hall retained McCandless to provide legal services in relation to the Ponzi Scheme, as defined below. In relation to those legal services, Dennis Hall transferred \$112,367.25 into McCandless' trust account. The money was entrusted to and received by McCandless in his capacity as a barrister and solicitor. The Ponzi Scheme was a fraud and Dennis Hall lost most of his money.

## **THE CLASS AND THE CLASS PERIOD**

4. This action is brought on behalf of the plaintiff and other persons resident in British Columbia who retained the defendants to provide legal services in relation to the Ponzi Scheme, as defined below, and paid money that was entrusted to and received by the defendants in their capacity as barristers and solicitors in relation to those legal services (the "Class Members") from April of 2004 to the present (the "Class Period") or such other class definition or class period as the court may ultimately decide on the motion for certification.

## **DISHONEST APPROPRIATION, FRAUD, AND FRAUDULENT BREACH OF TRUST**

5. Since at least April 2004, Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, Preston David Pinkett II, and International Fiduciary Corp., S.C. (the "Non-Party Fraudsters"), along with the defendants, have participated in a pyramid type of scheme in which they invited the Class Members to participate in an investment program that purported to generate unusually high returns through sophisticated trading in debt obligations, including so called "1st Tier Medium-Term Bank Notes." In fact, the trading in these instruments did not exist and returns to Class Members, to the extent that there were any, came largely from their own initial investments (the "Ponzi Scheme").
6. Through the Ponzi Scheme, the defendants and Non-Party Fraudsters raised at least \$40 million (U.S.) from the Class Members.
7. The Non-Party Fraudsters directed the Class Members to the defendants to provide legal representation relating to the Ponzi Scheme. The Class Members retained the defendants to provide legal services in relation to the Ponzi Scheme.
8. The defendants billed the Class Members for their services in two ways. First, they charged legal fees in relation to the Class Members entry into the Ponzi Scheme and payment of the initial investments. Second, when money was returned to Class Members, purportedly as returns on the initial investments, it was first paid into the defendants' trust accounts and the defendants charged legal fees for each transaction whereby funds were paid to Class Members by way of holdbacks from those payments.

9. The Class Members entered into retainer agreements with the defendants which incorporated substantively identical contents relating to the Ponzi Scheme (the "Contracts").
10. The Contracts all had the following substantively identical terms:
  - (a) they purported to allow the Class Member to invest in an "asset growth program" that promised to trade in "1st Tier Medium-Term Bank Notes";
  - (b) they stated that the Class Members' money would be deposited into one of three banks, either United Bank, in Arlington, Virginia, Banco Bilbao Vizcaya Argentaria ("BBVA") or Great Florida Bank ("GFB"), both located in Miami, Florida; and
  - (c) they stated that that each Class Member's money would remain in a segregated account, controlled by the Class Members, and that said account would "remain in full equity value or greater than full equity value."
11. No market for trading in instruments such as "1st Tier Medium-Term Bank Notes" at rates of return promised by the defendants exists and the Class Members' money was not invested in such instruments.
12. The defendants and the Non-Party Fraudsters designed the Ponzi Scheme for fraudulent purposes. The defendants and Non-Party Fraudsters either knew, or were reckless in not knowing, that trading in instruments such as "1st Tier Medium-Term Bank Notes" did not exist and never took place, that the promised returns came from other Class Members' contributions and not from any trading, and that the Ponzi Scheme was a sham intended to defraud the Class Members of their investments.
13. Pursuant to the Contracts, the Class Members transferred money into the defendants' trust accounts. The money was entrusted to the defendants and received by them in their capacity as barristers and solicitors.
14. Instead of being transferred into segregated accounts under the Class Members' control, the Class Members' money was dishonestly appropriated by the defendants and Non-

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Party Fraudsters and diverted to parties not contemplated by the Contracts, or the conditions under which the money was paid into the defendants' trust accounts. Particulars of the dishonest appropriation and diversion include:

- (a) although the Contracts provided that the Class Members would be the sole signing authority over their accounts, the trust money was misdirected by the defendants into accounts in which the Class Members did not have signing authority;
- (b) the accounts were under the signing authority of one or more of the Non-Party Fraudsters;
- (c) from these accounts, the Non-Party Fraudsters wired money to banks and entities unrelated to the purported investment program. Specifically, Pinkett, Stevenson and Byer fraudulently transferred at least \$12 million of these investor funds to themselves and at least \$1.9 million to related parties; and
- (d) the Non-Party Fraudsters also used the funds for other fraudulent purposes including to pay other investors, finders and other individuals or entities with no involvement in any trading program.

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- 15. The acts alleged in paragraphs 5 to 14 of this statement of claim constitute fraud, fraudulent conspiracy, fraudulent breach of trust, and fraudulent breach of fiduciary duty by the defendants.
  - 16. As a result of the acts alleged in paragraphs 5 to 14 in this statement of claim the Class Members, and each of them, have lost some or all of the money that they placed into the defendants' trust accounts.

**IN THE ALTERNATIVE, NEGLIGENCE, BREACH OF CONTRACT AND BREACH OF FIDUCIARY DUTY**

- 17. In the alternative, the defendants were negligent in not detecting that the Ponzi Scheme was illegal and a fraud and not preventing the Class Members from participating in the Ponzi Scheme.

18. The defendants were in a solicitor client relationship with the Class Members. It was an implied standard term of each Class Member's retainer that the defendants would exercise the care and skill to be expected of a reasonably competent securities lawyer.
19. In addition, because of the solicitor client relationship and the proximity that it created, the defendants also had had a duty of care in tort and a fiduciary duty to exercise the care and skill to be expected of a reasonably competent securities lawyer.
20. The defendants breached the standard of care owed to Class Members that was required by the retainers, the duty of care in tort, and the fiduciary duty by:
  - (a) failing to discover that the Ponzi Scheme was illegal and a fraud; and
  - (b) placing the Class Members money into the Ponzi Scheme that the defendants ought to have known was illegal and a fraud.
21. As a result of the acts particularized in paragraphs 17 to 20 in this statement of claim the Class Members, and each of them, have lost some or all of the money that they invested in the Ponzi Scheme.

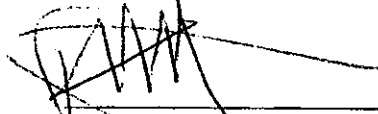
WHEREFORE the plaintiff, on its own behalf, and on behalf of the Class Members, claims against the defendants:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff;
- (b) damages for fraud, fraudulent conspiracy, fraudulent breach or trust and fraudulent breach of fiduciary duty;
- (c) in the alternative, damages for breach of contract, negligence and breach of fiduciary duty; and
- (d) prejudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and

(e) such further and other relief as to this Honourable Court may seem just.

DATED at Vancouver, British Columbia this 31<sup>st</sup> day of May, 2007.

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA

A handwritten signature in black ink, appearing to read "Reidar Moger", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Reidar Moger  
Camp Fiorante Matthews  
Counsel for the Plaintiff