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SECURITIES $9 million lost in stock plummet after IPO

Suits claim hedge fund lied to investors after Facebook fiasco

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Jeffrey Schneider, an attorney for the court-appointed corporate monitor, said the hedge fund lost a total of $9 million of the $14 million invested in it.

When Facebook Inc. announced its plan for an initial public offering in 2011, irrational exuberance for the stock of the social media website was an understatement.

Gignesh Movalia tapped into the consensus that Facebook's $16 billion stock offering—one of the largest IPOs ever—would be easy money and attracted more than 300 investors around the country to invest in his Tampa-based OM Global Investment Fund LLC, an unregistered hedge fund.

But lawsuits in Miami-Dade Circuit Court by an investor and in federal court by the Securities and Exchange Commission allege Movalia lied to investors.

A court-appointed monitor was named for OM Global Investment Fund in the state action, and clawback lawsuits are being filed that could set a precedent in the area of unjust enrichment, according to the attorneys for the monitor .

Miami attorneys Jeffrey Schneider and Patrick Rengstl, partners with Levine Kellogg Lehman Schneider + Grossman, represent the court-appointed corporate monitor, Jim Sallah, in the lawsuit against OM Global before Miami-Dade Circuit Judge Daryl Trawick.

Sallah is a partner with Sallah Astarita & Cox in Boca Raton.

"We found a bunch of things Movalia was doing badly. He was loaning investors' money to friends and affiliated companies," Rengstl said. "He told them he would own it in their name, control it in their

Patrick Rengstl said investors' money was loaned to friends and affiliated companies.

name and it would be separated from other investors. As it turned out, none of it was true."

The lawyers alleges OM Global was an affinity fraud since the victims were almost exclusively wealthy individuals of Asian descent, like Movalia and his director of investments, Edwin V. Gaw.

"Gignesh was basically looking to invest in a lot of tech companies, and the hot company in 2011 was Facebook," Schneider said. "He was very connected with Indian-Americans with high net worth, individuals who were doctors and bankers and well known."

Schneider and Rengstl charge OM Global Fund lost a total of $9 million of the $14 million invested in it.

'FREAKED OUT'

Facebook's IPO was dubbed a cultural touchstone by news media, and the company's valuation skyrocketed in anticipation. However, the IPO initially flopped, failing to meet the expectations of many investors and brokers.

The share price fell from $38 to $18 from May 25 to Oct. 31, 2012, before bouncing back last year. Ironically, Movalia would have gained if he'd held on. The stock traded Thursday afternoon at $57.85, down from a record high Wednesday of $58.96.

"Gignesh apparently freaked out and sold," Rengstl said. Movalia lost $7 million on Facebook stock and used the initial losses to lie to investors, Schneider and Rengstl said.

"He had one big investment, and everybody in the world knew about it, and he was using that as an excuse to disguise everything else," Schneider said. "He tried to cover everything up, telling investors they still had the Facebook stock, to ride it out, but he sold out of it in late 2012."

What makes the fraud unusual is that Movalia didn't profit from it except for some kickback counseling fees, Schneider said. Instead, Movalia used money to make loans or to pay off some investors even though the fund was losing more than half of its assets.

This created a new landscape for the court monitor to mine. Schneider and Rengstl say they think the state court case will end up setting precedent in unjust enrichment law, a relatively new area.

"It's kind of a new area of the law in fraudulent transfers," Rengstl said. "Usually, if you invest principal and get back less, then you don't have to give anything up."

EQUALIZING LOSSES

As a matter of course, Schneider said investors who receive proceeds from a fraud are sued in clawback litigation for their recent profits. In this case, some investors received money back that didn't make them whole, while others received less or nothing. The idea for the monitor is to recover as much money as possible to give the victims a fair disbursement, the first of which may come later this month.

"We are just trying to equalize the payments to all defrauded investors," Schneider said.

The attorneys also helped the SEC create a case against Movalia involving another of his companies, OM Investment Management LLC. The agency filed a complaint against him in September, charging he fraudulently raised money and made material misrepresentations and omissions.

The complaint was partly based on a finding by Sallah and his attorneys that Movalia was operating another fund and taking investors money while under investigation by the SEC.

In the state case, Sallah's team is busy with litigation. Schneider and Rengstl secured a $1 million default judgment Dec. 18 against two San Diego companies—Chhatrala Group LLC and Columbia Downtown LLC—that received loans from OM Global.

"Like all cases of this nature, it is very difficult on the victims," Sallah said. "But this case stings even more because some investors fared considerably better than others depending on when they requested returns. I hope to alleviate that sting by at least equalizing the losses across the board."

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