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Attorney protects Ponzi victim from 'relentless' adversary

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Levine Kellogg Lehman Schneider + Grossman

Although it had been years since Nine West shoe chain co-founder Jerome Fisher was duped by the $194 million KL Group Ponzi scheme, the nightmare returned in 2008 — in the form of a fellow scorned investor.

Dr. Salomon Melgen, a West Palm Beach ophthalmologist, lost money along with Fisher in the fraud. But the doctor tried to hold Fisher responsible for his losses.

It was the start of a rapid-fire series of lawsuits in federal and state courts. Miami attorneys Jeffrey C. Schneider and Patrick J. Rengstl shielded their client from each one.

"It's about as bad a case of forum shopping as I have ever seen," said Schneider, who was with Rengstl at Tew Cardenas at the time. Both are now at Levine Kellogg Lehman Schneider + Grossman in Miami.

J. ALBERT DIAZ

Jeffrey C. Schneider

The team protected Fisher by convincing U.S. District Judge Kenneth L. Ryskamp that the doctor was simply dissatisfied with his share of the $10 million recovered by court-appointed receiver Guy Lewis of Lewis Tein and was seeking to augment it by suing other victims.

Jon Kim, Won Lee and Yung Bae Kim ran a hedge fund offering annual returns of 125 percent to 150 percent until the Securities and Exchange Commission shut down the West Palm Beach-based KL Financial in 2005 and charged it with defrauding investors.

Yung Bae Kim stole millions of dollars from Melgen by accessing his accounts at the brokerage Banc of America Securities before the scheme was uncovered.

With West Palm Beach attorney Jack Scarola and Boynton Beach lawyer Larry Duffy at his side in federal court, Melgen fought with the fraudsters, wrestled with the receiver and battled the brokerage — to no avail.

When Ryskamp dismissed claims against the brokerage, Melgen moved to state court. His attorneys claimed they discovered Fisher was involved in Melgen's loss. Schneider, however, called it a legal maneuver used by the doctor's lawyers to avoid the federal judge.

Schneider said Melgen dragged a fellow Floridian into the mess — Fisher — to justify a state court filing last year.

Melgen accused former friend Fisher of negligently inducing him into the sham investments. The case was moved to federal court, and wound up before Ryskamp again.

"What makes this case special is that Jack Scarola … just put us through the hoops. He tried every maneuver possible," Schneider said.

Duffy asserted that he and Scarola did nothing improper and were simply seeking to pursue the case in the correct venue.

Fisher's team argued the doctor's lawyers were misusing the courts. Meanwhile, the doctor claimed Fisher played an active role in the massive fraud conspiracy.

"He was trying to make winning his case for us so expensive, time-consuming and annoying in order to obtain settlement value for a case that was meritless," Schneider said. "It was all about principle. [Fisher] was not going to be extorted."

Fisher's attorneys cited the U.S. Supreme Court decision last year in Ashcroft v. Iqbal, which raised the pleading standard for cases to survive dismissal. They asked the court to assess the doctor's lawsuit by drawing "on its judicial experience and common sense."

The judge concluded the doctor's claims were implausible. Had Fisher truly taken part in the scheme, his role would have been uncovered by the SEC investigation or any of the subsequent reviews by the receiver and others, the judge ruled.

Schneider said the ruling set a precedent for future cases involving investors who turn on one another after Ponzi schemes are exposed.

"What made it difficult was the litigation misconduct. It was nonstop, relentless and more aggressive than anything I'd seen in any other case," Schneider contended..

The case is now on appeal.