

Minn. College Dodges \$2M Petters Ponzi Scam Clawback Suit

By **Pete Brush**

Law360, New York (October 31, 2012, 4:44 PM ET) -- A federal judge on Friday dismissed a \$2 million clawback suit against a St. Joseph, Minn., liberal arts college brought by the receiver seeking recovery from the \$3.5 billion Thomas J. Petters Ponzi scheme, ruling the receiver lacked standing under federal law to go after the charitable donation.

Because court-appointed receiver Douglas Kelley represents the creditors of Petters — who is serving a 50-year prison sentence — and not the government, he lacks standing to bring suit against the College of Saint Benedict under the Federal Debt Collection Procedures Act, according to St. Paul federal Judge Richard H. Kyle.

"Only the United States can bring FDCPA claims, and Kelley cannot sue on the United States' behalf because the government is not in receivership and has not assigned its rights to him," Judge Kyle wrote.

The money was paid through the Thomas J. Petters Family Foundation as part of a \$3 million pledge in 2003 in return for the school's agreeing to name an auditorium after Petters' parents. The remaining \$1 million was never paid.

A more likely avenue for Kelley to have collected from the college, the Minnesota Fraudulent Transfer Act, was foreclosed to the receiver by Gov. Mark Dayton, who signed legislation in April retroactively trimming the statute of limitations for state law claims targeting charitable gifts.

Gov. Dayton had been concerned that "nonprofits, charities, religious organizations and the like would be unable to repay" money given to them by Petters when he signed the legislation in the wake of estimates that \$400 million in charitable contributions could be targeted by the Petters receiver, the decision noted.

That move forced Kelley to file an amended complaint targeting the \$2 million recovery under only the federal law, according to Judge Kyle.

Judge Kyle also rejected the receiver's parallel claim of unjust enrichment, ruling that not doing so would let the receiver "make an end-run around the recent amendments to the MFTA, which appear to have been designed to preclude precisely the types of claims brought in this case."

The college reacted to the decision with relief and said in a statement that it had spent the charitable money "in good faith."

In June, Kelley targeted a former EpsteinBeckerGreen and Dreier LLP partner, attorney Paul Traub, with a \$2.4 million clawback suit claiming he received the money while working as a paid consultant for Petters.

The receiver is represented by James A. Lodoen, Mark D. Larsen, Kirstin D. Kanski, Jeffrey D. Smith and Adam C. Ballinger of Lindquist & Vennum PLLP.

The college is represented by Jerome A. Miranowski, John B. Holland, Stephen M. Mertz and Megan S. Clinefelter of Faegre Baker Daniels LLP.

The case is Kelley v. College of St. Benedict, case number 0:12-cv-00822, in the U.S. District Court for the District of Minnesota.

--Editing by Rebecca Flanagan.

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