

How a Huge Donation Can Turn Into Bad News

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A generous contribution: How can that be anything but great news?

If the money came from a well-known financier who turned out to be a world-class swindler, it can become very bad news long after the ink has dried on the donor's check.

Innocent Victims All Around

Among the latest charity victims struggling in a tug-of-war between infamous Ponzi scheme operators and their hapless defrauded investors are the Tigers Woods Foundation and the Tiger Woods Charity Event Corp.

They received a \$500,000 donation from the infamous Allen Stanford, who was convicted in 2012 of a \$7-billion scam and sentenced to over 100 years in prison. This generous contribution, received – of course – before Stanford was caught by federal authorities, turned into bad news in 2014. That spring, the court-appointed receiver overseeing the recovery for Stanford's victims sued the Woods charities.

He asserted that the charitable contribution from Stanford was a "fraudulent transfer" under federal law. The receiver made a demand in the lawsuit that the contribution be rescinded (and the money returned) "because the funds used were of those of innocent, unwitting investors in the banks' fraudulent Ponzi scheme."

In mid-October 2014, a federal district judge in Texas denied the motion by the Tiger Woods charities to dismiss the lawsuit. That motion was made on the grounds that the receiver had delayed too long in filing a claim. But the judge decided that it was "perfectly reasonable to surmise that the generally complex and obfuscated nature of the Stanford financial records made these particular transfers difficult to discover."

Stanford left a broad swath of financial carnage. The receiver in the Stanford case is suing some 50 additional recipients, for-profit and nonprofit, including the University of Miami and Texas A&M University.

Many Unwilling Charities Affected

Similar difficulties have emerged in connection with other Ponzi schemes and other charitable-recipients of this type of tainted money.

For example, “[t]here were hundreds of charity groups hurt in the Madoff scandal, and ... the trustee charged with recovery of funds in that case said that he recovered \$80 million in settlements with ‘a number of charities and nonprofit organizations.’”

The method employed to recover the investors’ money is a federal lawsuit “commonly referred to as a “clawback.” It allows recovery (i.e., “clawback”) of certain transfers of corrupt funds made by a bankrupt debtor to some parties in order to repay other parties such as creditors and victims.

There are state clawback laws around the nation; they have many similarities but there are varying statutes of limitations. These laws generally apply to charitable or religious organizations as well as other recipients of these tainted funds. Some states want to modify these laws. In 2012, for example, Minnesota, passed an anti-clawback law, reducing the statute of limitations from six years to two years. In 2013, Florida passed a similar law.

But there are pros and cons about these anti-clawback statutes. The charities are good guys but the innocent investor-victims are good guys, too. “To complicate matters, Ponzi scheme organizers may often target and support charitable or religious organizations with contributions in order to gain standing in society, an enhanced reputation, and goodwill with current or prospective investors.”

Because tax exempt organization-recipients are required to spend the money on exempt purposes, that’s a factor that weighs in on the side of protecting charities from clawback laws. “Funds given for charitable purposes are done so with specific program goals in mind, and often tied to spending a specific time period.

Re-claiming those resources after the fact is unreasonable, and can put nonprofit organizations in a position of serious financial hardship,” argued a representative from Minnesota Council of Nonprofits, in support of the anti-clawback law debate when Minnesota was considering its legislation.

On the other hand, the victims of Ponzi schemes are not all wealthy people who can absorb the loss. “Lives have been ruined. Life savings of hard-working, decent men and women have been lost. The victims of this defendant’s criminal conduct are numerous and include the elderly, the infirm, and even the disabled,” stated a representative from the U.S. Attorney’s Office in Minnesota.

An added complication in the debate over clawback laws is that, in the case of funds donated to charitable organizations, “there is a high likelihood that the money will be spent fairly soon [after the donation] and would be difficult to recover many years after the fact.”

Conclusion

Tainted donations create many and varied levels of consequences to the recipients. In the Ponzi-scheme situations, there are competing groups of innocent victims.

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