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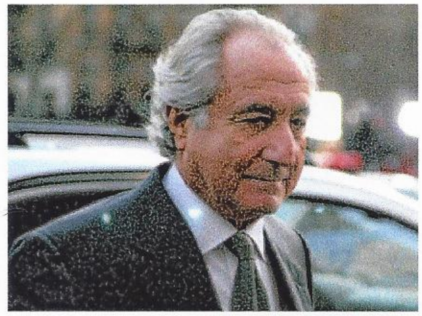
SEC Suit Ruling Jilts Justice For South Florida Madoff Investors

April 13, 2013



A federal appeals court ruled Wednesday that investors cannot hold the SEC responsible for failing to expose Bernard Madoff's epic Ponzi scheme. (Source: Getty Images)

NEW YORK (CBSMiami) – Several investors from South Florida were ensnared by Bernard Madoff's epic fraud. None of them (or those from any state) can hold the Securities and Exchange Commission responsible for failing to expose his Ponzi scheme, a federal appeals court said Wednesday.

The ruling by a three-judge panel of the 2nd U.S. Circuit Court of Appeals in Manhattan followed a similar decision by a San Francisco-based appeals court in January. Both rejected lawsuits by investors seeking to make the agency pay for failing to discover the fraud.

The "SEC's actions, along with its regrettable inaction," are shielded by rules protecting government employees from lawsuits when they act – or fail to act – based on judgment, rather than ignoring a statute or regulation, the court in New York wrote.

Investors argued that the SEC negligently failed to discover Madoff's fraudulent handling of roughly $20 billion despite receiving numerous complaints over 16 years. They said the agency repeatedly failed to alert branch offices of ongoing investigations and failed to properly review complaints and follow up on disputed facts elicited in interviews.

"The SEC missed many opportunities to uncover Madoff's multibillion-dollar fraud," the appeals court said. But it added that the law was clear that lawsuits against the SEC over the failures could not succeed.

Miami attorney Barton S. Sacher, the president and a founding director of Sacher, Zelman, Hartman, Paul, Beiley & Sacher, is the former chief of investigations and enforcement for the

SEC Southern Regional Office in Atlanta. He worries the ruling has broad implications for future cases of government negligence.

Sacher cites this example: "Suppose the Nuclear Regulatory Commission botched an audit/inspection of procedures at Turkey Point, or the Department of Energy botched a similar inspection of offshore oil rigs, resulting in massive economic damage, like we saw with BP in the Gulf, as well as potential massive loss of life. Under the broad ruling of this case, no one could sue any department or agency of the U.S. Government, even if its negligence and failure to act 'caused' the catastrophe, just like the SEC's failure to act on Madoff."

Lawyers for investors believed they were wronged both by Madoff and the SEC and their rights needed to be vindicated, Attorney Howard R. Elisofon said in a statement after the ruling.

Madoff pleaded guilty in 2009 to fraud and is serving a 150-year prison sentence.

Government lawyers declined through a spokeswoman to comment.

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