

FILED  
CHARLOTTE, N.C.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:01CV205-MCK

SEP 30 PM 11:36  
U.S. DISTRICT COURT  
W. DIST. OF N.C.

GEORGE AND DOLORES ROLLAR, )  
Plaintiffs, )  
v. )  
U.S.A., ) ORDER  
Defendants )  
\_\_\_\_\_ )

THIS MATTER IS BEFORE THE COURT on Plaintiff Rollars' motion for attorney's fees and costs.

The Rollars invested approximately \$12.5 million in a fund which turned out to be a fraudulent Ponzi scheme. Luckily for the Rollars, the government seized some \$18 million in proceeds from this scheme before the perpetrators could move the funds out of this country. It is undisputed that had the government not made the seizure, the Rollars' funds would almost certainly have been lost forever. In the months following the seizure, the government began tracing the proceeds to identify victims. Eight months after the seizure, in the late summer of 2000, the government notified the Rollars that it believed that a substantial part of their funds could probably be traced to the proceeds. The Rollars then provided requested documentation to the government regarding their claim. The government indicated that, over the next few months, it intended to set up an interpleader action, a judicial proceeding whereby the seized funds could be returned to the Rollars and the other victims. The government intended to have the fund set up by the end of the year 2000.

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Several months later, in the Spring of 2001, the government's plan to set up the interpleader action stalled while the Securities and Exchange Commission determined whether it would open an investigation into the case and whether it even had jurisdiction over the matter. Not wishing to wait out the government's decision-making process, in May of 2001, the Rollars filed the instant lawsuit against the government seeking the return of their \$12.5 million, citing violations of Fed. R. Crim. Pro. 41(e) and due process. The government moved to dismiss and to stay.

The merits of the Rollars' legal position in filing this suit have not been examined because, shortly after filing, the parties asked this Court to stay proceedings and appoint a Receiver to trace the funds and return them to the victims. This Court did so. After the Receiver's appointment, the government worked closely with the Receiver to further prosecute and recover additional funds totaling approximately \$300,000. The Rollars have already received a large percentage of their share of the seized funds in disbursements from the account, as have the other victims.

Despite the fact that the government already indicated that it would set up the interpleader action whereby the Rollars' funds would be returned to them, the Rollars were not keen to wait for this process to occur as they were uncertain as to how lengthy it might be and thus, they filed this suit. They now ask this Court to use its equitable powers to reimburse them approximately \$148,000, out of the seized funds, for a large portion of the costs of

prosecuting this suit. The Rollars claim that their suit was the catalyst for the Receivership being set up. Without their suit, they claim that the other victims would not have been reimbursed, or not reimbursed as quickly. The government strenuously objects to the motion. The Receiver has not filed an objection given the objection filed by the government but wishes to be heard should the government's position not be considered.

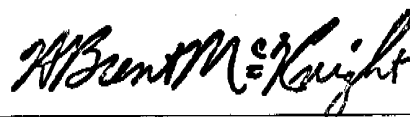
The Rollars' position is not well-taken. While the Rollars assert that waiting for the government would take a lengthy amount of time, there is no evidence that, had they waited a few more months for the SEC to make its determination, the interpleader fund would not have been promptly set up to reimburse them and the other victims. Indeed, by filing this suit, the Rollars could easily have further delayed reimbursement. For example, after the suit was filed, the government immediately tried to set up the Receivership. Yet the Receivership was delayed due to objections by, and negotiations with, the Rollars, who admittedly sought to claim a larger percentage of their loss than the other victims. While it is certainly understandable that the Rollars wanted their funds returned as soon as possible and fought ably to secure favorable conditions for their claims, it does not follow that by pursuing their interests, to the possible detriment of others, they benefitted the other victims. This is so because no one benefitted from the delay except the Rollars. Indeed, in the time it took to reach agreement with the Rollars on the Receivership, the

Interpleader action could well have been up and running and reimbursing all the victims. Subjecting the common fund to the prosecution of their own interests rather than allowing the funds to go into a neutral Interpleader action may well have started the ball rolling. However, the Rollars have not shown that, once rolling, that ball did not take longer to get down the alley than it would have without their lawsuit.

That said, there is no doubt that the Rollars' highly capable attorney has provided assistance to the Court, the Receiver, the government, and the other victims in prosecuting this litigation. This Court has that recognized that capable assistance as clearly benefitting the fund, and reimbursed the Rollars for those fees.

Here, it has simply not been shown that, but for the Rollars' lawsuit, the victims would not have been reimbursed, nor is there a showing that the lawsuit sufficiently hastened the reimbursement to justify this Court ordering the Rollars' legal fees to be paid out of the fund. Accordingly, **IT IS HEREBY ORDERED THAT** the motion for attorney's fees is **DENIED**. Given the lead taken in this case by the Rollars' counsel, this Order should in no way be construed to preclude a future motion for reimbursement of fees should further actions taken by the Rollars clearly benefit the fund.

**IT IS SO ORDERED**, this 30<sup>th</sup> day of September, 2004.



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H. BRENT MCKNIGHT  
UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
Western District of North Carolina  
October 1, 2004

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:01-cv-00205

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Date: 10-1-04

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