



Angry investors sue over millions missing from Florida fund

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by Danielle Reed

A Florida-based investment fund has apparently collapsed, leaving investors bereft of as much as USD 40m, according to a fund investor and three separate lawsuits. Investors are alleging fraud and clamoring for explanations.

The Boca Raton fund, Phoenix Diversified Investment Corp., operated by Boca resident Michael A. Meisner, invested in index futures, according to a civil complaint filed in Palm Beach County on 29 April on behalf of investors claiming losses of USD 3m. One investor believes Phoenix was also dabbling in interest rate futures, which has been a volatile market in recent months, according to Ian Lyngen, an interest rate strategist with RBS Greenwich Capital.

Phoenix is now in a state court receivership filed in Florida. However a petition for involuntary bankruptcy was filed in Federal bankruptcy court 9 May. Phoenix has 20 days from the date of filing to respond or contest that petition. If there is no response, a bankruptcy trustee will be appointed, and the trustee will supersede the receiver, according to attorneys **John Bianco** and **Brady Cobb** of **Tripp Scott** in Fort Lauderdale, who represent Phoenix investors.

H. Scott Hecker, a Fort Lauderdale attorney representing Meisner, said in an email to Debtwire that, as of now, "Phoenix has been placed into involuntary Chapter 7 bankruptcy by its creditors. So under the automatic stay provisions of the bankruptcy code, all lawsuits are halted. Phoenix continues to be a viable company and hopefully will reorganize itself through this proceeding."

The total owed by Phoenix to investors at the time the fund stopped paying was in the range of USD 30m, according to a 22 April letter allegedly sent by Meisner to investors that has been filed with court documents. According to a second complaint filed in Palm Beach County on 2 May, on behalf of investors seeking the return of investments totaling USD 2.75m, the total owed by the fund to investors was in excess of USD 40m. The total number of investors is more than 140, according to this second complaint. Investors in the fund come from diverse locations, including New York, New Jersey, Pennsylvania, Connecticut, Florida, Peru and Israel, according to court documents and the fund investor.

According to the second complaint, Meisner "claimed that Phoenix was the owner of a very valuable proprietary software program that...would ensure success" in trading in various financial markets. Investors were given the option of splitting profits 50/50 with Phoenix, or of receiving a guaranteed 3% monthly return on their money, according to the complaint, which states that as of late March 2008 "there was no sign of trouble."

The investments were apparently structured as loans to Phoenix.

The fund appeared to use well known, established companies for its operations. Plaintiffs in the first complaint, for instance, said they opened an account in the name of Phoenix Diversified at MF Global Inc., formerly known as Man Financial, in 2004, for the purpose of trading index futures. "Defendants represented to Plaintiffs that the account...was required to be opened in the name of Phoenix Diversified Investment Corp. rather than in their own names," the complaint said. A spokesperson for MF Global said the firm does not comment on client relationships, including verifying the existence of accounts.

However, by April, Phoenix began to bounce checks to investors, the second complaint said. In response, on 21 April, "Meisner sent all investors a letter stating that 'It is with great regret that I must inform you that due to an unanticipated cash flow situation Phoenix will be ceasing its regular day-to-day business activities.'" This letter was followed by the 22 April letter in which Meisner indicated he was "attempting to market and sell the software program" for more than USD 60m to raise cash, the lawsuit said.

According to the second complaint, Meisner stated in the 22 April letter that his original intent in structuring the investments as loans was to avoid federal regulatory and registration requirements by being able to say Phoenix was trading its own funds, rather than investors' money. The complaint states that this revelation was "in complete contradiction to his representations to investors during his pitch."

"Meisner's effort to deceive the regulators and investors is not surprising because, as Plaintiffs have only recently discovered, he is not a licensed securities broker," the complaint said. Meisner's 22 April letter said he was a registered Series 3 and Series 30, which licenses to trade futures contracts and manage a futures contract brokerage. Neither the Financial Industry Regulatory Authority's broker search nor an employee in Florida's Office of Financial Regulation could confirm his registration.

In all three complaints, investors said they have demanded the return of their money with no success. In addition, the second complaint made particular note of various aspects of Meisner's "lavish lifestyle," including the alleged recent purchase of "two multi-million dollar condominiums in Boca Raton" as well as the planned 17 May wedding of Meisner's daughter at Donald Trump's Mar-a-Lago Club in Palm Beach. However, according to two investors, Meisner's daughter sent out an email to guests on 12 May stating that wedding plans had changed and the couple had opted to elope.

In a third complaint, filed in Broward County on 29 April against Meisner (not Phoenix), the plaintiffs said that in his 22 April letter to investors, Meisner addressed the issue of his flamboyant lifestyle by stating that, "I understand that one point of concern is the use of funds for my own lifestyle. I want to assure you that this will not continue as before." In fact, Meisner stated further in the letter, included in court documents, "I have run out of cash a while ago. My son literally took out a HELOC to help me finish paying for my daughter's wedding." Meisner offered in the letter to "plan a third party oversight of funds, until everyone is paid back."