

Peregrine Investors' Loss Suit Tossed As Time-Barred

By Rick Archer

Law360 (April 1, 2019, 11:20 PM EDT) -- A New York federal judge has dismissed as too late claims by a group of Peregrine Financial Group customers alleging banks, commodities exchanges and regulatory agencies were liable for the loss of their accounts with the defunct commodities broker.

In an order issued Friday, U.S. District Judge Vernon Broderick said the fact the five Peregrine customers waited until 2016 to file their federal claims against U.S. Bank National Association, JP Morgan Chase, the Chicago Mercantile Exchange, the National Futures Association and others for their alleged part in the criminal scheme that took down Peregrine was fatal to their case. The judge said their money was lost in 2008 and the scheme's alleged mastermind confessed in 2012.

"These facts would put 'a reasonable investor of ordinary intelligence' on inquiry notice that fraud might have been committed," he said.

Peregrine CEO Russell Wasendorf Sr. confessed to stealing nearly \$200 million from Peregrine's segregated customer accounts over 20 years in a note left when he attempted suicide in July 2012 during the course of an NFA audit. The company filed for bankruptcy later that month, and Wasendorf pled guilty to fraud and embezzlement charges that September. He was sentenced to 50 years in prison in January 2013.

Bruce Behrens and the other plaintiffs said they were the owners of Millennium Trust Co. IRA accounts that had been invested through Peregrine and had been wiped out in October 2008 by deliberately bad trades made by Wasendorf in an attempt to cover up the scheme.

They claimed banks, lawyers and others tied to Peregrine neglected their duties, committed fraud, and violated the Racketeer Influenced and Corrupt Organizations Act and the Commodity Exchange Act, among other laws. They specifically claimed U.S. Bank and JP Morgan approved unlawful loans and transfers, the Chicago Mercantile Exchange allowed trades in violation of its own rules, and the NFA wrongly dismissed their arbitral claims against Peregrine.

The suit also named Wasendorf, Peregrine employee Perry Comeau and Paul Thomas, an attorney who represented the plaintiffs in the NFA arbitration.

In his order, Judge Broderick found the statute of limitations had run out on the CEA and RICO claims, saying the statute began to run when the plaintiffs' losses occurred in 2008 and noting they hired counsel

to begin legal action over the losses in 2009. The statute of limitations was four years on the RICO claims and two years on the CEA claims.

“Thus, even assuming that plaintiffs were not on actual notice of their injuries as of October 2008, plaintiffs cannot rely on any lack of discovery to justify filing this case more than four years after Wasendorf Sr.’s admission to having stolen funds from customers’ accounts,” he said.

He moved the claims against Millennium into arbitration, finding that the arbitration clause in the contract between the plaintiffs and Millennium were valid, and dismissed the state common law claims as out of his jurisdiction.

"CME did not engage in any wrongdoing and is pleased with the outcome," Chicago Mercantile Exchange counsel Abby Rudzin said in a phone interview Monday.

Counsel and representatives of the remaining parties did not immediately respond to requests for comment Monday.

The plaintiffs are represented by Susan J. Levy.

U.S. Bank is represented by Eric R. Sherman and Dai Wai Chin Feman of Dorsey & Whitney LLP.

JP Morgan is represented by Christopher J. Houpt, Victoria Whitney, Thomas S. Kiriakos, Sean T. Scott and Tyler R. Ferguson of Mayer Brown LLP.

The Chicago Mercantile Exchange is represented by Abby F. Rudzin of O’Melveny & Myers LLP.

Wasendorf and Comeau are represented by Julie Negovan of Griesing Law LLC.

Thomas is represented by Lisa L. Shrewsberry of Traub Lieberman Straus & Shrewsberry LLP.

The NFA is represented by Gregory Boyle, Kevin Murphy and Adam Unikowsky of Jenner & Block LLP.

Millennium is represented by Nicholas A. Caputo of Caputo & Popovic PC and Louis V. Fasulo of Fasulo Braverman & DiMaggio LLP.

The case is Bruce Behrens et al. v. JP Morgan Chase Bank NA et al., case number 1:16-cv-05508, in the U.S. District Court for the Southern District of New York.

Additional reporting by Jack Newsham. Editing by Janice Carter Brown.