

Jurisdiction and Procedure

## Ex-Major League Outfielder Closer to Ponzi Scheme Recovery

### BNA Snapshot

- Investment recruiter must fork over money he took from “con man” who borrowed cash from former MLB player Shannon Stewart
- Professional athletes particularly vulnerable to investment frauds, lawyer says



By Antoinette Gartrell

A self-proclaimed reformed con man may recover the \$2 million he borrowed from a retired Major League Baseball player and invested with a man who lost the money in a Ponzi scheme (*Coexist Found., Inc. v. Fehrenbacher*, 7th Cir., No. 16-3332, 8/2/17).

The ultimate goal is to return the funds to Shannon Stewart, former outfielder for the Toronto Blue Jays, Minnesota Twins and Oakland Athletics, the U.S. Court of Appeals for the Seventh Circuit affirmed. Stewart obtained a judgment against the con-man in a separate lawsuit, Judge

Ilana Rovner said.

“Even a con man can be conned,” New York lawyer Jacob Zamansky, Zamansky LLC told Bloomberg BNA. “If courts see wrongdoing, as it did in this case, they will enforce even a con man’s rights to recover from an investment scheme,” Zamansky, who has represented several professional athletes duped in investment scams, said. “Athletes are constantly being preyed upon by unscrupulous advisers because they make a lot of money in a short amount of time, making them particularly vulnerable.”

### Ponzi Problems

In 2009, Timothy Hubman and his company Coexist Foundation Inc. borrowed \$2 million from Stewart and gave it to Michael Fehrenbacher to invest. Fehrenbacher invested the money, along with some of his own cash, with Florida company Assured Capital, which turned out to be a Ponzi scheme. After recovering \$4.3 million of the invested funds, Fehrenbacher only gave \$1,494,250 back to Coexist. Coexist sued Fehrenbacher for the remainder of its investment.

The district court found in favor of Coexist holding that Fehrenbacher violated Florida law by selling unregistered securities. It ordered rescission in hopes that the baseball player could recoup his money from Coexist. Fehrenbacher appealed, arguing that Coexist had “unclean hands.”

Affirming, the appeals court said that the doctrine of unclean hands wasn't applicable in this case. The doctrine only applies when the plaintiff's conduct is directed at the party invoking the doctrine as a defense, the court recounted. Here, Fehrenbacher wasn't the victim of Hubman's conduct, but wanted the court to rely on Hubman's conduct toward Stewart as the reason for denying relief to Coexist, Rovner said.

To contact the reporter on this story: Antoinette Gartrell in Washington at [agartrell@bna.com](mailto:agartrell@bna.com)

To contact the editor responsible for this story: Phyllis Diamond at [pdiamond@bna.com](mailto:pdiamond@bna.com)

### For More Information

To view the opinion, visit: [http://www.bloomberglaw.com/public/document/Coexist\\_Found\\_Inc\\_v\\_Fehrenbacher\\_No\\_163332\\_2](http://www.bloomberglaw.com/public/document/Coexist_Found_Inc_v_Fehrenbacher_No_163332_2)