



Madoff Feeder Sues Own Auditors for Not Finding Fraud (Update2)

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By Thom Weidlich



Feb. 2 (Bloomberg) -- A **Maxam Capital Management LLC** fund that placed all of its \$280 million in holdings with alleged Ponzi-scheme mastermind **Bernard Madoff** sued its own auditors for not detecting the fraud at his New York investment firm.

Maxam Absolute Return Fund LP sued McGladrey & Pullen LLP and Goldstein Golub Kessler LLP for professional negligence on Jan. 30 in state court in Bridgeport, Connecticut.

While the auditors issued opinions that Maxam's financial statements conformed with general accounting principles, they "negligently relied solely on documents created by Madoff and sought no independent confirmation that trades had been executed or that assets existed," according to the complaint. "Assets were grossly overstated based on fraudulent trading tickets and fraudulent account statements provided by" Madoff.

Madoff, 70, was arrested Dec. 11, and charged with one count of securities fraud for allegedly using billions of dollars from new investors to pay off older ones. He told authorities that investors may have lost \$50 billion, U.S. prosecutors said. He hasn't formally responded to the charge.

Goldstein Golub, based in New York, did the Maxam fund's 2006 audit, according to the complaint. McGladrey & Pullen, based in Bloomington, Minnesota, did its 2007 audit after Goldstein Golub partners joined that firm.

McGladrey & Pullen General Counsel Richard Miller didn't immediately return a call for comment. Two phone numbers for Goldstein Golub in New York ring through to RSM McGladrey Inc., a professional-services firm that "operates in an alternative practice structure with McGladrey & Pullen," according to its [Web site](#). Goldstein Golub no longer conducts audits, according to the complaint.

'Don Quixote Strike'

"It looks like a preemptive, Don Quixote strike against the accounting firms to attempt to absolve the principals of liability," **Blair Fensterstock**, a commercial-litigation lawyer who has sued accountants, said in a phone interview today. "Normally, Maxam would first be sued by investors and then bring in McGladrey and Goldstein in an attempt to defer potential liability."

The town of Fairfield, Connecticut, has said it may have lost \$42 million of its pension assets investing with Madoff through Tremont Capital Management Inc. and then Maxam. **Sandra Manzke**, an investor in hedge funds for more than 20 years, started Darien, Connecticut-based Maxam in 2006 after she left Tremont Capital, which she founded in 1985.

The Maxam Absolute Return Fund started in July 2006 and opened an account with Madoff that year, according to the complaint.

'Red Flags'

The auditors should have been alarmed at "red flags" including that Madoff didn't have an independent custodian and they should have sought independent confirmation that Madoff bought U.S. Treasury bills at the end of each quarter as he said he did, according to the complaint.

They also should have questioned Madoff's use of auditor Friebling & Horowitz, which has only three employees and since 1993 has reported to the American Institute of Certified Public Accountants that it doesn't conduct audits, Maxam said in the complaint.

'Fault of Maxam'

"The fault of Maxam can only be laid off on the accounting firm if Maxam gave the accounting firm all the information that they needed to do their audit," said Fensterstock, of Fensterstock & Partners LLP in Manhattan. "McGladrey & Pullen presumably will take the position that they were defrauded by Maxam and so they weren't able to do their job completely."

Manzke and Maxam's lawyer, **Michael S. Kim** of Kobre & Kim LLP in New York, didn't immediately return calls seeking comment.

Hedge funds are private, largely unregulated pools of capital whose managers can buy or sell any assets, bet on falling as well as rising asset prices and participate substantially in profits from money invested.

The case is Maxam Absolute Return Fund LP v. McGladrey & Pullen LLP, Connecticut Superior Court (Bridgeport).

To contact the reporter on this story: **Thom Weidlich** in New York at tweidlich@bloomberg.net.

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