

# Merkin charged with civil fraud in Madoff case

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By Martha Graybow

NEW YORK (Reuters) - New York's attorney general brought civil fraud charges against hedge fund manager Ezra Merkin on Monday, saying he secretly steered \$2.4 billion in client money into Bernard Madoff's Ponzi fraud.

Merkin, a well-known investor and former chairman of the GMAC LLC finance company, was not accused of knowing about Madoff's scheme. But New York Attorney General Andrew Cuomo said he ignored glaring red flags about Madoff's investments in an effort to reap \$470 million in fees from clients, including many charities and nonprofit groups.

Merkin and his Gabriel Capital Corp money management firm "betrayed hundreds of investors who entrusted him with their savings," the lawsuit filed in New York State Supreme Court said.

Merkin's lawyer, Andrew Levander, called the lawsuit "hasty and ill-conceived" and said his client would fight it.

"From the outset of the Attorney General's investigation, Mr. Merkin, Gabriel Capital Corporation and the funds they manage have provided their full cooperation, answering all questions and producing hundreds of thousands of documents," Levander said. "The evidence shows that this lawsuit is without merit."

Levander said Merkin performed extensive due diligence on Madoff, but he too was misled by Madoff's fraud just like other victims of the jailed swindler.

The charges are the latest trouble for so-called "feeder funds" that funneled client money to Madoff to manage. Fairfield Greenwich Group, which channeled billions of dollars to Madoff, was sued last week by Massachusetts' top securities regulator for misleading customers.

The lawsuit against Merkin contends that at least two of his trusted colleagues repeatedly told him Madoff's returns were too good to be true -- one warning that Madoff's money management business could be a Ponzi scheme, Cuomo said.

Madoff pleaded guilty last month to orchestrating Wall Street's biggest-ever fraud, a Ponzi scheme that involved as much as \$65 billion in funds over 20 years. A Ponzi scheme pays early investors with money invested by later clients.

The trustee liquidating Madoff's brokerage says there is no evidence the former Nasdaq chairman bought any securities for his investment clients for at least 13 years.

## WEB OF CONNECTIONS

Cuomo described Merkin, who ran three hedge funds known as Ascot, Gabriel and Ariel, as a Madoff middleman who used his social and charitable connections to raise huge amounts of money from investors, while misleading them about who was actually managing their money.

While Merkin held himself out as a skilled investor, he was instead a "master marketer" who turned almost all of his clients' money over to third-party money managers, including Madoff, to oversee, the complaint said.

Cuomo also said that Merkin should have picked up on multiple warning signs about Madoff, including repeated advice from a close associate that the consistency of Madoff's returns was suspicious and his business was too secretive.

The lawsuit also says Merkin was aware that Madoff's books were audited by a small storefront accounting firm in suburban New York City, Friebling & Horowitz. An accountant at that firm, David Friebling, was charged last month with fraud related to his work for Madoff, though he was not accused of knowing that Madoff operated a Ponzi scheme.

Merkin, a graduate of Harvard Law School, began running his own investment funds in 1989. He met Madoff in the late 1980s or 1990, according to Cuomo's complaint.

The lawsuit seeks payment of damages and disgorgement of fees that Merkin collected from clients.

Merkin resigned as chairman of GMAC, a General Motors Corp affiliate after the Madoff scandal hit, to allow the finance company to be eligible to receive U.S. taxpayer funds. Merkin had become a lightning rod for criticism at the company following the Madoff case.

Merkin faces numerous lawsuits brought by his investors, including one filed on Monday by real estate investor Mort Zuckerman over about \$40 million in losses sustained by a charitable trust Zuckerman runs.

New York University and other investors also have sued Merkin, saying he put their money with Madoff without their consent.

Jeff Marwil, a lawyer with law firm Proskauer Rose who represents investors in several Merkin funds, said the Cuomo lawsuit ultimately could help his clients.

"If it's an effort to investigate Merkin and protect his assets for the benefit of potential victims, I think it's a positive development," he said.

(Additional reporting by Emily Chasan; Editing by Brian Moss)