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Brokers Could Face New Penalties in Future for Misleading Clients

By JESSICA PAPINI

NEW YORK -- The indictment of former broker David McFadden for allegedly conspiring to defraud elderly investors out of their retirement money represents new legal terrain for financial advisers, some lawyers say.

In the past, brokers have been indicted for stealing clients' money or for running Ponzi schemes. The McFadden case is one of the first that lawyers can recall in which a broker faces jail time for allegedly making false allegations regarding clients' investments and making false claims about professional licenses.

'Unusual Case'

"This is a very unusual case," said Joseph Fogel of Fogel & Associates, who isn't involved in the case. In prior cases where brokers were charged with placing their clients in unsuitable investments or misrepresenting returns, firms paid the investors' money back and were fined.

Last month, a U.S. attorney charged Mr. McFadden, a former Securities America Inc. broker, with a felony. Mr. McFadden pleaded not guilty. According to a court filing from the U.S. Attorney for the Eastern District of Louisiana, Mr. McFadden "put himself in the position to sell high-commission variable annuities and mutual funds to clients, made material misrepresentations and omissions related to his qualifications, the diversification of stocks, and the investment returns he would achieve."

Mr. McFadden told clients he was a certified public accountant, even though he hadn't been a licensed CPA since 1987, according to the U.S. Attorney's bill of information charging Mr. McFadden.

Mr. McFadden's lawyer didn't return calls seeking comment.

Lawyers representing investors argue that the indictment could dissuade some brokers from misleading clients.

"This prosecution provides a warning to all brokers that, in egregious cases of customer fraud, sanctions may not end with Finra's barring the broker from the securities industry, but may, instead, end up with jail time," said James Eccleston, head of the securities group at Shaheen, Novoselsky, Staat, Filipowski & Eccleston PC.

Restitution

In September 2006, Securities America, a unit of [Ameriprise Financial Inc.](#), agreed to pay a \$2.5 million fine to settle charges by the NASD, the predecessor of the Financial Industry Regulatory Authority, or Finra, that it failed to adequately supervise Mr. McFadden. It also paid \$13.8 million in restitution to Exxon Mobil Corp. retirees who were

Mr. McFadden's clients. Mr. McFadden was barred from the securities industry in late 2006.

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