

DEALING WITH FINANCIAL CRIME

FINANCIAL CRIME IS A FAST-GROWING CONCERN NOWADAYS, FOR BOTH INDIVIDUALS AND COMPANIES. FINANCIAL AND INVESTMENT FIRMS, AS WELL AS THEIR DIRECTORS AND OFFICERS, MAY BE FOUND LIABLE FOR A CLIENT'S FINANCIAL LOSS DUE TO NEGLIGENCE OR FRAUDULENT WRONGDOING AND REGULATORY VIOLATIONS. EMILY A. GEORGIADES, ADVOCATE, COMMERCIAL, CORPORATE & FINANCE LAW AT A.G. PAPHITIS & CO. LLC EXPLAINS THE VARIOUS TYPES OF FINANCIAL CRIME AND THE WAYS IN WHICH FRAUD VICTIMS CAN FIGHT AGAINST IT.

By Artemis Constantinidou

What kind of people are victims of financial crime?
Emily A. Georgiades: Anyone can be a victim. However, trends show that, often, certain groups are targeted: people of a certain age group, gender group, financial wealth class, race, culture, educational level or even geographical location. For example, the elderly are often targeted for pension scheme fraud.

GOLD: What are the main types of fraud/financial crime?

E.A.G.: Some common types of financial crime include mortgage fraud, stealing identifying information, pension and trust fund fraud, advance-

fee schemes, credit-card theft, pyramid schemes and foreign-lottery schemes. Other types include Ponzi schemes (where one investor's investment is used to pay back another investor's investment with interest) and "pump-and-dump" schemes (a type of market manipulation in which the seller of shares buys enough shares to drive the price up and then when others start to buy them, the seller "dumps" or sells the shares causing the price to plummet). Fraud can also take place when recommending unsuitable trades or trading techniques to people who do not have a high-risk trading history (i.e. recommending margin trading to traders who never traded in such a way before and have a conservative trading history) or when obtaining investment in a project (such as a property development) and not using the money for the purpose intended in the prospectus.

THERE IS AN INHERENT RISK IN INVESTING AND SIMPLY LOSING MONEY DOES NOT AUTOMATICALLY ENTITLE YOU TO SUE FOR LOSSES

Emily A. Georgiades

GOLD: If a person/entity invests with a broker/dealer in Cyprus but lives in another jurisdiction, in which jurisdiction can the person/entity sue if they believe they are victims of a financial crime?

E.A.G.: Generally, there is a choice. The lawsuit may be brought in the jurisdiction in which (1) the alleged tort/crime occurred, (2) the plaintiff resides or (3) the defendant resides (or is headquartered if the party is a corporation).

However, if the parties stipulated a jurisdiction beforehand in a dispute resolution clause in their contract, then this clause governs.

GOLD: If someone has invested with a broker/dealer and lost money, can they sue?

E.G.: You may be able to sue for damages but this depends on whether there is a cause of action. There is an inherent risk in investing and simply losing money does not automatically entitle you to sue for losses. However, if there is some kind of foul play then, yes, you may have a case.

GOLD: Which 'red flags' can indicate that someone might be a victim of a financial crime?

E.G.: Investments are inherently risky. Typically, there are no guarantees in life and so any scheme that gives guaranteed returns (particularly higher returns than anyone else and consistent high returns, regardless of the financial market's volatility) is a red flag to look out for. Other red flags include creating a false sense of urgency by claiming a limited supply, leading you to believe that other "more experienced investors" have already invested, and promising to make you an "expert" investor within days or weeks so you can begin investing in high-risk financial products.

GOLD: What is the statute of limitation to sue if a financial crime has been committed against someone?

E.G.: Different jurisdictions have different statutes of limitation. In Cyprus, for example, the period of limitation does not begin to run until the claimant or his agent or any person whose actions bind him has discovered the fraud or mistake, or could, with reasonable diligence, have discovered it, and is typically six years therefrom. (Limitation of Conduct Rights Act 2012, 66 (I) / 2012, s. 6(1), s. 7(1) and s. 14(1)). There are also nuances in this legislation which may affect the start of the statute of limitations. In New York, for example, fraud begins to run on the date the plaintiff (the party bringing the lawsuit) is harmed by the fraudulent conduct. This is known as the accrual date. Under N.Y. CPLR 213, the plaintiff must file the lawsuit within six years of the accrual date. Alternatively, the plaintiff may file the lawsuit within two years from the time s/he discovered, or should have discovered, the fraud. (New York Consolidated Civil Practice Laws and Rules §213(8)). Because there are difference statutes of limitations, it is important to consult an attorney immediately to ensure you are not time-barred from suing.

GOLD: What should someone do if he/she has been a victim of financial crime?

E.G.: If you feel you have been a victim of a financial crime/fraud, you should contact an experienced securities lawyer to learn more about protecting your rights. At our law firm, we take a victim-centred approach and fight hard for our clients' rights. There is nothing to be embarrassed about if you are taken advantage of by criminals. Suing them to protect your rights sends a message that such behaviour towards the public is not tolerated under any circumstances. 