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The Not So Strange Case of Tangerine Investment Management and Axiom Legal Financing Fund

By L Burke Files, CDDP, President, Financial Examinations & Evaluations, Inc (01/04/2013)

I have been watching the story of Timothy (Tim) Paul Schools, Tangerine Investment Management (TIM) and Axiom Legal Financing (ALF) unwind since last August. David Marchant of Offshore Alert has been doggedly following this matter and sharing the fruits of his research, evidence and the battle that has erupted between the investigative reporter and the target.

The story has several layers that we can all learn from in art, craft and science of due diligence.

It begins for me on August 22nd in Offshore Alert...

“In a decision published on July 5, 2012, the Solicitors Disciplinary Tribunal concluded that Schools had "a case to answer" regarding eleven allegations referred to it by the SRA the previous August, including that Schools "failed to act with integrity", "failed to act in the best interests of his clients", "acted recklessly", "acted where there was a conflict of interests", "failed to maintain proper books of accounts and financial records", failed to disclose "material" information to his clients, and "behaved in a manner which was likely to diminish the trust the public places in him and/or the legal profession".

This is not a matter to be ignored; it is a serious matter for anyone who has allowed Tim, TIM or ALF to play with their money. In the US if a legal disciplinary matter is opened up - honestly, so what. It is hard to go through life in the US as an attorney and not tick off a client, or opposing counsel. Both can file complaints against you with the local bar and all can waste time as about 80 per cent of these process yields a ‘no grounds for complaint’ or similar finding. Not so in the UK, however, where the highly refined and I might even say clubbiness of the UK legal system makes such a complaint very rare and unsettling in its breadth. Tim is a fund manager and he is accused of failure in his duties to keep proper books and records, disclose material information, failed the best interests of his clients, etc... What other duties do you have as a fund manager?

I was doubly troubled when his counsel, David McIntosh, QC put forth some very strong statements with questions about the reporter’s motive. The idea that counsel has a secure feeling about his client means counsel is misremembering the facts already in writing or that he has yet to read the full background and is not yet suspicious of his client. Either way, the verbal defense, and redirect on reporter’s motives only serves as a poor attempt to cut off any inquiry and down play future allegations. When someone

expresses a strong forward looking opinion on anything that is as complicated as this appears to be, my apprehensions are not assuaged by this maneuver but reinforced.

So strong are the signals in this one story I would tell any investor, not in the fund, to wait, anyone in the fund to withdraw and or hedge with a short position - or what could be considered a short position, to guard against the return of capital - not just the return on capital.

Yet, even after this story - I am told Tim continued to raise money and act as if nothing were wrong. On one hand I understand that Tim has to carry on the business of TIM, but on the other hand why are professionals even considering Tim or TIM or ALF with those pending disciplinary charges?

It is a repeat of an old story of the laziness of the human condition and the utter

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incompetent behavior of many investment professionals as well investors. I know these are strong words, but quite rightly so. Much like medical doctors, our first rule as financial professionals should be to help, but at least to do no harm. The idea that medical doctors should prescribe untested or unknown medicines harkens back to turn of the century carnivals with snake oil and magic elixirs. The same is true for many financial advisors in that they extort their incantations on snake oil to turn it into Aqua Regia and think any sufficiently indecipherable explanation of an investment products backed up by audits and 'Proof Letters' allows them to substitute magic for actual due diligence.

People will commit frauds - that is what we do when we think no one is watching or we overestimate our abilities and do not wish to share our short comings. The behaviours of the accused in frauds are as a great an indicator of authenticity as anything else.

When David Marchant held his Offshore Alert conference in London this last November Tim threatened David with litigation. David was never served, but the hotel was threatened with litigation if they allowed Mr Marchant to continue or discuss the Axiom matter! Tim chose an attempt to disrupt the conference as oppose to argue facts in the open. It was a cheap tantrum that provided both the hotel and David a good laugh.

Here again is a lesson, of avoiding facts but attempting to cause collateral damage to those who have asked questions one wishes not to answer. It is the action of an angry, motivated, but ultimately weak adversary.

The last lesson comes with the fact that the check writers and the auditors - if there were any, never looked at the contracts between ALF and the potential law firms seeking funding from ALF. The terms were outrageous and one would have to ask oneself why anyone would even agree to these terms or how these agreements could be enforced.

One has to go beyond the offering documents and not only check the backgrounds of the principals but also look at the business of the business. Most often even the smallest of inquiry into proof documents, or the business of the business one finds tissue paper as opposed to solid wood. Several years ago a look into a company who claimed to export 100 cars a month to Africa yielded two people in a dilapidated office. The people in the office said they sold a few cars a week but nothing overseas. It was a sham business that raised a lot of money. Why makes such a small effort so likely to pay great dividends? It takes work to run a real business and it takes almost the same amount of work to put up a creditable fraud front. Fraudsters - are by definition - going to do the least amount of work possible to extort the greatest sums out of people who share the lazy gene, but in a different and attractively vulnerable way.

Case law is coming around to hold lazy and or incompetent fund managers and auditors to task. This is just as accepted standards for due diligence are being crafted and understood. The fund managers and auditors who fail either in the awareness of these standards or in their application are rightly leaving themselves open to extreme amounts of liability.

The story of Tim, TIM and ALF - just gets worse for those involved. But it is not any different than the so, so many others that have come before and we will see again.

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