

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

In Re: PAUL JACOB DAVIS,

Bankruptcy Case No.: 04-32901

Debtor(s).

Adversary Case No.: _____

CLINTON BROWN,

Plaintiff,

vs.

PAUL JACOB DAVIS,

Defendant.

COMPLAINT TO DETERMINE DISCHARGEABILITY

Plaintiff, Clinton Brown, for his Complaint against the Defendant, Paul Jacob Davis, states and alleges as follows:

GENERAL ALLEGATIONS

1. This Complaint is filed under Bankruptcy Rule 7001. This action arises under 11 U.S.C. Section 523. The Petition commencing this Chapter 7 case was filed on May 13, 2004, and is now pending before the Court. The Court has jurisdiction over all issues arising hereunder pursuant to 28 U.S.C. Section 1334 and Section 157. This is a Core proceeding under 28 U.S.C. Section 157(b)(2)(I).
2. Defendant represented to Plaintiff that Defendant was an investment advisor and could guaranty at least a 50% return on investment.
3. In reliance on the Defendant's representations that he was an investment advisor and could guaranty at least a 50% return on investment, Plaintiff wire transferred \$295,000.00 to Defendant in several installments from May 2, 2001, through May 26, 2001, for the purpose of Defendant purchasing securities for the Plaintiff.
4. Defendant is not a licensed investment advisor in the State of Minnesota, as is required by Minnesota Statutes Section 80A.04.
5. Defendant did not invest Plaintiff's money for Plaintiff.
6. Defendant did not return Plaintiff's money upon Plaintiff's demand.
7. Plaintiff obtained a Default Judgment on February 21, 2003, Docketed March 24, 2003, against the Defendant in Dakota County District Court, State of Minnesota, Court File No. C4-03-6542, in the amount of \$590,404.50 representing a principal sum of \$295,000.00 and interest; costs, disbursements, and expenses in the amount of \$404.05; and attorney fees in the amount of \$147,500.00. A true and correct copy of said Findings of Fact, Conclusions of Law, and Order for Judgment, and Judgment is attached hereto, incorporated herein, and marked as Exhibit A.

8. A Notice of Filing Judgment was duly served upon the Defendant on March 3, 2003.
9. The Defendant did not timely appeal the Judgment, nor has the Defendant moved the Court to vacate the Judgment.

11 U.S.C. SECTION 523(a)(2)(A)
FALSE PRETENSES, FALSE REPRESENTATION, AND FRAUD

10. Plaintiff restates and realleges all allegations set forth in the foregoing paragraphs 1 through 9.
11. Defendant induced the Plaintiff to invest the sum of \$295,000.00 with him and obtained money from Plaintiff by false pretenses, false representations, or actual fraud, including representations that he was a licensed investment advisor, that he would invest Plaintiff's money, and that he would guaranty a 50% return on Plaintiff's investment.
12. The representations were false in that the Defendant is not and was not a licensed investment advisor in the State of Minnesota at the time he obtained money from Plaintiff; that he did not invest the Plaintiff's money; and that he did not return a 50% gain on Plaintiff's investment.
13. Plaintiff was induced to invest money with the Defendant as a result of the false representations of the Defendant.
14. The Plaintiff was damaged by the Defendant's false representations.
15. Defendant's indebtedness to Plaintiff is excepted from discharge pursuant to 11 U.S.C. Section 523(a)(2)(A) in the amount of \$590,404.05 plus additional interest as allowed by law.
16. The Plaintiff is entitled to recover his reasonable attorney fees and Court costs in bringing this action.

SECTION 523(a)(6)
WILLFUL INJURY TO ANOTHER ENTITY

17. Plaintiff restates and realleges all allegations set forth in the foregoing paragraphs 1 through 16.
18. Defendant actions, as set forth above, constitute willful and malicious injury by the Defendant to another entity and/or the property of another entity as set forth in 11 U.S.C. Section 523(a)(6).
19. Defendant's indebtedness to Plaintiff is excepted from discharge pursuant to 11 U.S.C. Section 523(a)(6) and Plaintiff is entitled to a Judgment against Defendant in the amount of \$590,404.05, plus interest as allowed by law, plus Plaintiff's reasonable attorney fees and costs in bringing this action.

COLLATERAL ESTOPPEL AND RES JUDICATA

20. Plaintiff restates and realleges all allegations set forth in the foregoing paragraphs 1 through 19.
21. The Dakota County Minnesota Judgment referred to in the previous paragraphs herein is a final judgment on the merits.
22. The Defendant is estopped from re-litigating the issues of misrepresentation and willful injury.

WHEREFORE, Plaintiff respectfully requests entry of Judgment against the Defendant as follows:

1. Determining that Plaintiff's claim against Defendant is excepted from discharge pursuant to 11 U.S.C. Sections 523(a)(2)(A) and 523(a)(6).
2. Determining that the Dakota County District Court Judgment, Court File No. 19-C4-03-006542, is excepted from discharge and remains in full force and effect against the Defendant.
3. Granting Plaintiff an additional money Judgment for his attorney's fees, costs and expenses incurred in bringing this action.
4. Granting Plaintiff such other and further relief as this Court may deem just and equitable under the circumstances.

Dated: _____

7/20/04

/e/ John F. Hedtke
John F. Hedtke
Attorney for Plaintiff
Attorney Reg. No. 167666
1217 East First Street
Duluth, Minnesota 55805
(218) 728-1993

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VERIFICATION

I, Clinton Brown, Plaintiff named in the foregoing Complaint, declare under penalty of perjury that the foregoing **Complaint** is true and correct to the best of my knowledge and belief.

Dated: 15 July 2004

Clinton Brown
Clinton Brown

7. Defendant Davis did not Answer Plaintiff's complaint.
8. Plaintiff has incurred \$198.55 in costs to date.
9. Plaintiff agreed to pay attorney's fees in the amount of one-third of the award to plaintiff to be split between his attorneys Melanie Ford and Robert Roningan.

CONCLUSIONS OF LAW

1. Defendant Davis was properly served with the summons and complaint in this matter and failed to answer the Plaintiff's complaint within the time allowed by law.
2. Davis fraudulently induced plaintiff to wire \$295,000 to him for Davis to purchase securities for plaintiff's account.
3. Davis breached his contract to invest plaintiff's money and return it with at least a 50% return on investment.
4. Davis breached his fiduciary duty to prudently invest and account for plaintiff's money.
5. Davis converted plaintiff's money.
6. Davis is unjustly enriched by refusing to return plaintiff's money.
7. Davis violated Minn. Stat. §§ 80A.01, 80.02, and 80.03 by fraudulently inducing plaintiff to purchase securities.
8. Davis violated Minn. Stat. § 80A.04 because he is unlicensed to purchase securities in Minnesota.
9. Plaintiff was damaged by Davis' actions.
10. For Davis' breach of contract, plaintiff is entitled to the loss of the bargain, or \$442,500.
11. For Davis' violation of Minn. Stat. Ch. 80A, plaintiff is entitled to interest on the money wired to Davis from the date of payment, costs, and attorney's fees.

ORDER FOR JUDGMENT

1. Defendant Davis shall pay to plaintiff \$442,500 plus interest from the date of judgment.

2. Defendant Davis shall pay plaintiff's attorneys fees of \$147,500.

3. Defendant Davis shall pay plaintiff's disbursements, expenses and statutory costs in the amount of \$ 404.05.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 21 day of Feb, 2003

BY THE COURT

Wann A. Spay
Judge of District Court
Karen Aspinog

JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER
CONSTITUTES THE JUDGEMENT OF THIS COURT.

VAN A. BROSTROM, COURT ADMINISTRATOR

BY: Sheila Baker
DEPUTY

DATED: Feb 21, 2003 (SEAL)