

Long Island Business NEWS

Brothers' Basketball Payoff

by Claude Solnik

In one of more than 1,000 cases springing from the Madoff bankruptcy, trustee Irving Picard is seeking \$20 million from a family who made a fortune in sports, charging they withdrew more from the Ponzi scheme than they invested.

While this may sound familiar, it has nothing to do with the Wilpon or Katz families. The trustee filed suit against the Silna family and attorney Donald Schupak, who some see as having struck the best deal in basketball history.

The Silnas, who owned the ABA team the St. Louis Spirits, scored a major win in 1976 when they were being shut out of the NBA/ABA merger. The NBA agreed to absorb four of the six ABA teams: the Denver Nuggets, Indiana Pacers, San Antonio Spurs and New York Nets. The Kentucky Colonels took \$3.3 million to disband. The Silnas held out for \$2.2 million and one-seventh of the "visual media" rights for the four ABA teams "in perpetuity," which a Forbes magazine story valued at \$237 million.

"There is nothing to gloat about," Daniel Silna once told Sports Illustrated of the TV contract. "We had hoped to be part of the merger. During our two years with the Spirits, there was a lot of heartache, but also a lot of joy."

Although the Silnas, who declined to be interviewed for this article, didn't choose to be locked out of the merger, their gamble to secure future income paid off.

"Astonishingly, and in part because no one thought the TV money would be all that significant, the deal is in perpetuity," Sports Illustrated wrote in its description of the contract. "So as long as there is an NBA, the Silnas and their heirs will be

paid."

Their gamble with Madoff, observers said, shows how otherwise astute business people can get drawn into cons.

"I think it's what makes this an interesting, current story," said Bruce Haller, a law professor at Dowling College who teaches a course in sports law. "They made a great deal in the merger. And they made a poor deal deciding to invest with Madoff. No matter how smart you are, you might make a poor business decision."

Although this deal stands out due to its scale, others said business people often choose between getting cash upfront and earning compensation on a percentage basis.

"That is the assessment you have to make. Taking the money now is a sure thing," said **Bill Heberer**, a partner at Garden City-based **Moritt Hock & Hamroff**. "They didn't have a crystal ball to know how hugely popular the NBA would be or the size of TV revenues over then next 40 years. They could have ended up with something less than \$3 million. There was also the potential upside. It strikes me as they kind of won the lottery."

If the Silnas' contract shows how to win big off the court, some contracts granting rights in perpetuity at the expense of individual athletes have since been banned. The Muhammad Ali Boxing Reform Act of 2000 made it illegal to sign boxers to lifetime contracts, after managers locked fighters into deals at young ages.

"They would sign 50 boxers to lifetime contracts," Haller said. "If one of them became Sugar Ray Leonard or Mike Tyson, they hit the jackpot."

Athletes have been fighting in-perpetuity contracts, arguing they're pressured to sign. "The freedom to contract is a nice right," Haller said. "But especially when you're dealing with a young person, they need some level of protection from the government."

Basketball and football players are fighting against NCAA contracts that deprive them of the right to their image in perpetuity, images that are valuable for video games.

Edward Charles O'Bannon Jr., a retired UCLA basketball player; Sam Keller, a former Nebraska and Arizona State quarterback; and NBA legend Oscar Robertson are suing the NCAA over rights to their images.

"When you become a college athlete, you sign away the right to use your image to the NCAA in perpetuity," Haller said. "Video games use NCAA players. They only need the permission of the NCAA, not the players."

Although the Silnas brothers struck gold, Haller said it's unlikely anyone else will hit the jackpot this way. "Unless you get into a situation where someone is up against it and doesn't have the cash, I don't think you're going to see deals like this," he said. "It ends up being more of a cautionary tale."

Heberer, however, said ultimate fighting and professional lacrosse could generate bigger TV revenues than they do now. "If you could get a deal where you got a percentage of that TV revenue, it might not appear much now," he said. "But 25 years from now, it could be huge."