

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff,

vs.

FREDERICK DIMOND, ROBERT DIMOND,
and MOST HOLY FAMILY MONASTERY,
a New York Not-for-Profit Corporation

Defendants

**AMENDED
COMPLAINT**

Index No. 08-cv-00347-JTC

ERIC E. HOYLE, by his attorneys, Chamberlain D' Amanda Oppenheimer & Greenfield LLP, for his Amended Complaint against the defendants, alleges as follows:

INTRODUCTION

1. This is an action to recover damages and restitution from defendants, Frederick Dimond, Robert Dimond, and Most Holy Family Monastery. The plaintiff's claims are based on the defendants' operation of Most Holy Family Monastery and sound in fraud, constructive fraud, unjust enrichment, monies had and received, violation of the federal civil RICO statute, deceptive trade practice and false advertising.

PARTIES

2. Plaintiff, Eric E. Hoyle, resides in Winston-Salem, North Carolina and is a citizen of North Carolina.

3. Defendant Frederick Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym "Brother Michael Dimond."

4. Defendant Robert Dimond resides at 4425 Schneider Road, Fillmore, New York and is a citizen of New York. He uses the pseudonym “Brother Peter Dimond, O.S.B.”

5. Defendant Most Holy Family Monastery (“MHFM”) is a not-for-profit corporation formed pursuant to the New York Not-for-Profit Corporation Law and maintains its principal offices at 4425 Schneider Road, Fillmore, New York.

6. Upon information and belief, MHFM was formed on or about August 20, 1993 under the name Queen of Angels Corp. The original incorporators of Queen of Angels Corp. were Joseph A. Natale, Paul E. Wedekind, and Joseph J. Vennari, each residing at 261 Cross Keys Road, Berlin, New Jersey.

7. On February 27, 2001, a Certificate of Amendment to the Certificate of Incorporation to change the name of the corporation to Most Holy Family Monastery was filed with the New York Secretary of State.

8. Upon information and belief, said Certificate of Amendment was signed by Frederick Dimond using the pseudonym “Brother Michael Dimond, O.S.B.”

JURISDICTION AND VENUE

9. The Court has jurisdiction over this dispute pursuant to 28 USC §1332(a) (1). The plaintiff is a citizen of the State of North Carolina, and none of the defendants are citizens of the State of North Carolina. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

10. The Court also has subject matter jurisdiction over this dispute pursuant to 18 U.S.C. §1964.

11. Venue is properly laid in this judicial district pursuant to 28 USC §1391(a) (2) on the ground that a substantial part of the events or omissions giving rise to the claims occurred in

this district. Venue is also properly laid in this judicial district pursuant to 18 U.S.C. §1965 because the defendants are subject to personal jurisdiction in this judicial district and reside in this judicial district.

FACTS

Defendants' Ongoing Activities

12. On or before April 1, 2002, the Dimond defendants established a web site for MHFM with the internet address of "www.mostholymonastery.com" (hereinafter "the MHFM website"). They also established an e-mail address: "mhfm1@aol.com."

13. From that time forward, defendant Frederick Dimond has continuously identified himself on the MHFM website as "Brother Michael Dimond, O.S.B."

14. Since on or about June 1, 2002, defendant Robert Dimond has continuously identified himself on the MHFM website as "Brother Peter Dimond, O.S.B."

15. Since on or about September 29, 2002, the Dimond defendants have continuously offered for sale various video recordings and publications to the general public.

16. Since May 30, 2003, the Dimond defendants have continuously displayed a hyperlink on the MHFM website to a document entitled "Our Benedictine Community." This document purports to describe the history of MHFM as a Benedictine community and to further identify defendant Frederick Dimond as Brother Michael Dimond, O.S.B., a Benedictine monk.

17. Since on or about May 26, 2004, the Dimond defendants have continuously displayed on the MHFM website a solicitation for financial support.

18. Between the summer of 2004 and the date this action was commenced, hundreds of thousands of individuals from various locations in the United States and around the world have viewed the MHFM website. Thousands have either made financial contributions to MHFM

in response to the solicitation contained there and/or purchased items advertised for sale on the MHFM website.

19. Attached hereto as Exhibit A is a compilation of documents evidencing over 400 purchases or donations to MHFM between September 16, 2006 and December 4, 2008 in which payment was effected by electronic means.

The Order of St. Benedict

20. The Order of St. Benedict is widely recognized as a Roman Catholic religious order of monastic communities that observe the Rule of St. Benedict. Within the order, each individual community (which may be a monastery, abbey, or priory) maintains its own autonomy, while the organization as a whole exists to represent their mutual interests.

21. The terms "Order of St. Benedict" and "Benedictine Order" are also used frequently to refer to the total of the independent Roman Catholic Benedictine abbeys.

22. The Benedictine Confederation, which was established in 1883 by Pope Leo XIII, is the international governing body of the order. Members of the Order of St. Benedict are permitted to use the suffix "O.S.B." after their names.

23. New Benedictine monks and monasteries come into being by permission of and association with existing Benedictine monks and monasteries.

Eric Hoyle Learns of MHFM

24. In the fall of 2003, Eric E. Hoyle was 22 years old and was teaching chemistry at a public high school in Edgewater, Maryland.

25. A primary focus of his private activities at that time was the search for religious doctrines that were true and good.

26. In 2004, believing that the Catholic Church held and taught the religious doctrines he was looking for, the plaintiff gave up his teaching position to pursue entrance into a seminary to become a priest.

27. The plaintiff's experiences, research and conversations with various individuals eventually led him to set aside his pursuit of priestly training and to study the Catholic religion on his own for a time.

28. In early 2005, while living a solitary life of prayer and study, the plaintiff learned of the existence of a Benedictine monastery in upstate New York going by the name Most Holy Family Monastery.

29. The plaintiff sought information from the MHFM website, www.mostholymonastery.com, which stated that MHFM was a Benedictine monastery supervised by Brother Michael Dimond, O.S.B., a Benedictine monk.

30. The plaintiff contacted Frederick Dimond to learn more about MHFM and the procedures required for the plaintiff to become a Benedictine monk through MHFM.

31. Frederick Dimond told the plaintiff that MHFM's history dated to the 1960's when a Benedictine monk named Brother Joseph Natale ("Natale") was given permission by Archabbot Dennis Strittmatter of St. Vincent's Archabbey in Latrobe, Pennsylvania, to establish a Benedictine community and that such a community had been established by Natale in southern New Jersey.

32. Frederick Dimond further stated that someone had given land in upstate New York to Natale's Benedictine community in the early 1990's for the purpose of establishing a Benedictine monastery there.

33. Frederick Dimond also told the plaintiff that when Joseph Natale died in November 1995, Frederick Dimond had been elected Superior of MHFM and had supervised the move to its present location in 1997.

34. In reliance on information provided by Frederick Dimond, the plaintiff made a cash contribution of Seven Hundred (\$700.00) Dollars to MHFM on or about April 1, 2005. The transfer was made by delivery of check number 1014 from checking account number 218-2871-7 at USAA Federal Savings Bank.

35. The plaintiff made a further cash contribution to MHFM on May 2, 2005 in the amount of Sixty-Five Thousand (\$65,000.00) Dollars. The transfer was made by delivery of check number 1179 from checking account number 1087375695120 at Wachovia Bank, N.A.

36. The plaintiff made visits to MHFM in late June and again for several weeks beginning in mid-July 2005.

37. In reliance on his discussions with Frederick Dimond and his visits to MHFM, the plaintiff decided in September 2005 that he would seek to become a Benedictine monk under the auspices of Frederick Dimond and MHFM.

38. Frederick Dimond agreed to receive the plaintiff as a postulant and to undertake his training to become a Benedictine monk, conditioned upon the plaintiff's agreement to turn over most of his worldly possessions to MHFM.

39. Frederick Dimond conveyed to the plaintiff that the shedding of material possessions was a requirement of the Order of St. Benedict and MHFM. Frederick Dimond also told the plaintiff that the plaintiff must specify in writing what portion, if any, of money he would be transferring to MHFM must be returned to him should he leave MHFM.

40. Based on representations made by Frederick Dimond, the plaintiff took up residence at MHFM on September 27, 2005.

41. At that time, the plaintiff was the owner of approximately 1,350,000 shares of Guinor Gold Corporation.

42. On or about November 4, 2005, the plaintiff transferred 1,045,000 shares of Guinor Gold Corporation, valued at \$1,233,100.00 to MHFM. This transfer was made by wire from the plaintiff's account number 506-66358-1-3 at TD Waterhouse, Inc.

43. The plaintiff retained sufficient assets to pay his capital gains taxes for 2005.

44. In the late-spring/summer of 2006, Frederick Dimond renewed his request that the plaintiff specify in writing the amount of the plaintiff's transfers that must be returned to him if and when he left MHFM.

45. The plaintiff chose the amount of Seven Hundred Fifty Thousand (\$750,000.00) Dollars, executed a document stating how much would be returned to him on his departure from MHFM, and delivered it to Frederick Dimond.

46. On or about September 12, 2006, the plaintiff made an additional transfer to MHFM of 37,400 shares of Central Fund of Canada from his USAA Investment Management Company brokerage account number 11590502. These shares had an approximate value of \$307,989.00 on the date of transfer.

47. Subsequent to his move to MHFM and the transfer of his assets to MHFM, the plaintiff learned that, contrary to Frederick Dimond's representations, he was not a member of the Order of St. Benedict and that MHFM was neither founded nor operated in accordance with the requirements of the Order of St. Benedict.

48. This revelation also meant that the plaintiff could not achieve the status of a Benedictine monk through his association with the Dimond defendants or MHFM.

49. In the late fall of 2006, Michael Lipscomb took up residence at the MHFM location with the intention of becoming a Benedictine monk under the auspices and mentoring of the Dimond defendants.

50. In the summer of 2007, Joseph Myers took up residence at the MHFM location with the intention of becoming a Benedictine monk under the auspices and mentoring of the Dimond defendants.

51. On December 31, 2007, the plaintiff left MHFM.

52. On the same day, Lipscomb and Myers also left MHFM.

53. Subsequently, representatives of the plaintiff demanded the return of all property turned over to MHFM, including the \$1,606,789.00 previously “donated” to MHFM.

54. The defendants have refused to comply with the demand that all funds and personal property, or their monetary equivalent, previously transferred to the defendants be returned to the plaintiff.

55. Upon information and belief, Robert Dimond actively assisted and conspired with Frederick Dimond in misrepresenting to the plaintiff the facts regarding MHFM’s status as a Benedictine monastery and the status of himself and defendant Frederick Dimond as members of the Order of St. Benedict.

COUNT I

(Fraud)

56. Defendants Frederick Dimond and Robert Dimond intentionally made false representations to the plaintiff in an effort to persuade him to transfer all of his personal assets to them or to MHFM.

57. The plaintiff reasonably relied on the false representations made by defendants Frederick Dimond and Robert Dimond.

58. Based on his reasonable belief in the truth of the representations made by the Dimond defendants, the plaintiff transferred his personal assets, whose value exceeded \$1,606,789.00, to the defendants.

59. As a direct result of the defendants' fraudulent conduct, as hereinabove set forth, the plaintiff suffered damages exceeding \$1,606,789.00.

COUNT II

(Constructive Fraud/Negligent Misrepresentation)

60. As of September 27, 2005, the relationship between the plaintiff and the Dimond defendants had taken on the attributes of a fiduciary, confidential, or "special" relationship based on their superior knowledge of essential facts related to the plaintiff's desire to become a Benedictine monk.

61. By that time, the plaintiff had reasonably come to place his trust and confidence in the Dimond defendants and to rely on their good faith, sincerity, and knowledge in matters related to the plaintiff's desire to become a Benedictine monk.

62. The Dimond defendants possessed superior knowledge of essential facts related to the plaintiff's desire to become a Benedictine monk, to wit, that they were without authority or power to confer that status upon the plaintiff.

63. This information was not readily available to the plaintiff.

64. The Dimond defendants knew that the plaintiff was acting on the basis of the mistaken belief that Frederick Dimond possessed the authority to confer upon the plaintiff the status of a Benedictine monk.

65. The Dimond defendants were under a duty to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

66. The Dimond defendants failed to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

67. Had the Dimond defendants disclosed the fact that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk, the plaintiff would not have transferred assets of a value of \$1,541,089.00 to the defendants for this purpose.

68. The plaintiff suffered damage as the result of the failure of the Dimond defendants to disclose to the plaintiff that they were without authority or power to confer upon the plaintiff the status of a Benedictine monk.

COUNT III

(Unjust Enrichment/Constructive Trust)

69. During the summer of 2005, a relationship of trust and confidence arose between the plaintiff and the Dimond defendants, which resulted in the plaintiff's decision to take up residence at MHFM and to have defendants Frederick Dimond and Robert Dimond instruct him in the path to becoming a Benedictine monk.

70. Defendants Frederick Dimond and Robert Dimond led the plaintiff to believe that they would, indeed, instruct him in the path to becoming a Benedictine monk.

71. In reliance on these promises made by the defendants, the plaintiff turned over to the defendants personal assets with a value in excess of \$1,541,089.00.

72. Defendants Frederick Dimond and Robert Dimond thereafter failed and refused to instruct the plaintiff in the path to becoming a Benedictine monk.

73. Under the circumstances of this case, the defendants, including MHFM, may not in good conscience retain the assets turned over to them by the plaintiff.

74. The defendants, including MHFM, have thereby been unjustly enriched in an amount in excess of \$1,541,089.00.

75. In order to protect the assets of the plaintiff, a constructive trust must be imposed on the assets turned over to the defendants by the plaintiff and the defendants must be ordered to return them to the plaintiff.

COUNT IV

(Mandatory Accounting)

76. The plaintiff transferred substantial sums to MHFM at a time when there existed a fiduciary relationship between him and the Dimond defendants.

77. These transfers were based on the plaintiff's false belief that the Dimond defendants were Benedictine monks and that MHFM was a Benedictine community.

78. The plaintiff is therefore entitled to a full and accurate accounting of all sums transferred to the defendants between September 1, 2005 and the present.

COUNT V

(Money Had and Received)

79. When the plaintiff transferred his assets to the defendants, he did so in the mistaken belief that the Dimond defendants had the authority to instruct him in the disciplines which would enable him to become a Benedictine monk.

80. Because the plaintiff transferred his assets while entertaining the mistaken belief that the Dimond defendants had the authority to instruct him in the disciplines which would enable him to become a Benedictine monk, the defendants ought not, in equity and good conscience, retain possession of the money and personal property transferred to them by the plaintiff.

81. Based on the foregoing, the defendants should return to the plaintiff the personal property transferred to them, or its monetary value.

COUNT VI

(Violation of 18 U.S.C. §1962[c])

82. The plaintiff has been injured in his property by reason of the Dimond defendants' direct and indirect conduct of and participation in the affairs of an enterprise engaged in, or whose activities affect, interstate or foreign commerce through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

83. The Dimond defendants are persons within the meaning of 18 U.S.C. §1961(3).

84. The enterprise whose affairs were conducted by the Dimond defendants is defendant Most Holy Family Monastery, a New York not-for-profit corporation.

85. The pattern of racketeering activity engaged in by the Dimond defendants consists of mail fraud, a violation of 18 U.S.C. §1341; wire fraud, in violation of 18 U.S.C. §1343; and bank fraud, in violation of 18 U.S.C. §1344.

86. Conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, included making false representations to the general public, through the MHFM website, and to specific individuals through its sale and distribution, using the United States Postal Service, of publications and other media, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, and depositing the checks issued by purchasers in payment for publications and other media sold by MHFM into one or more depository or investment accounts held in the name of MHFM.

87. Additional conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, consisted of making false representations to the general public, through the MHFM website, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, in conjunction with their solicitation of donations to MHFM and their receipt and deposit of funds received as a result of those solicitations, by check or by wire transfer, from donors in one or more depository or investment accounts held in the name of MHFM.

88. Additional conduct of the Dimond defendants which constituted mail fraud, wire fraud and bank fraud, as set forth above, consisted of making false representations to specific individuals, including the plaintiff, that they are and have been members of the Order of St. Benedict and that MHFM was a Benedictine community, in conjunction with their inviting such individuals to join MHFM for the purpose of becoming members of the Order of St. Benedict, the demand for and receipt of the personal property of said individuals, and the deposit of

financial assets, including checks issued by said individuals, in one or more depository or investment accounts held in the name of MHFM.

89. These schemes to defraud are all related, in that they are founded on the Dimond defendants' misrepresentations that they are members of the Order of St. Benedict and that MHFM is a Benedictine community.

90. The Dimond defendants have engaged in this pattern of racketeering activity continuously since the summer of 2002 or before, continue to do so to the present day and, without judicial intervention, will continue to do so into the future.

91. The plaintiff has been injured in his property by reason of the Dimond defendants' violations of 18 U.S.C. §1962(c) in that he transferred personal property to the defendants of a value exceeding \$1,606,789.00 based on the fraudulent misrepresentations of the Dimond defendants that they were members of the Order of St. Benedict and that MHFM was a Benedictine community.

COUNT VII

(Violation of 18 U.S.C. §1962[d])

92. The Dimond defendants intentionally conspired and agreed to conduct and participate in the affairs of an enterprise engaged in, or whose activities affect, interstate or foreign commerce, through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).

93. The Dimond defendants are persons within the meaning of 18 U.S.C. §1961(3).

94. The enterprise whose affairs were conducted by the Dimond defendants is defendant Most Holy Family Monastery, a New York not-for-profit corporation.

95. The pattern of racketeering activity which the Dimond defendants conspired to engage in, as set forth above, consists of mail fraud, a violation of 18 U.S.C. §1341; wire fraud, in violation of 18 U.S.C. §1343; and bank fraud, in violation of 18 U.S.C. §1344.

96. The Dimond defendants knew that the predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes described above.

97. As a direct and proximate result of the Dimond defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violation of 18 U.S.C. §1962(c), the plaintiff has been injured in his property in that he transferred personal property to the defendants of a value exceeding \$1,606,789.00.

COUNT VIII

(Deceptive Trade Practice)

98. The conduct of the Dimond defendants heretofore alleged constitutes the engaging in a deceptive practice in violation of New York General Business Law §349.

99. The deceptive acts of the Dimond defendants have affected the public at large.

100. Plaintiff has been directly damaged by the Dimond defendants' deceptive practices, in that he transferred \$1,606,789.00 worth of personal assets to MHFM based on the false representation of the Dimond defendants that MHFM was a Benedictine monastery and that the Dimond defendants were Benedictine monks.

COUNT IX

(False Advertising)

101. The conduct of the Dimond defendants heretofore alleged constitutes the engaging in false advertising in violation of New York General Business Law §350.

102. The false advertising committed by the Dimond defendants has affected the public at large.

103. Plaintiff has been directly damaged by the Dimond defendants' false advertising, in that he transferred \$1,606,789.00 worth of personal assets to MHFM based on the false advertisement of the Dimond defendants that MHFM was a Benedictine monastery and that the Dimond defendants were Benedictine monks.

COUNT X

(Vicarious Liability of MHFM)

104. The Dimond defendants' conduct as related herein was undertaken as representatives, employees or agents of MHFM and resulted in the unlawful enrichment of MHFM.

105. MHFM is vicariously liable to the plaintiff for any and all damages assessed against the Dimond defendants.

DEMAND FOR RELIEF

WHEREFORE, the plaintiff Hoyle prays for judgment against the defendants, jointly and severally, as follows:

1. as to Count I, judgment in the amount to be proved at trial, but not less than \$1,606,789.00;
2. as to Count II, judgment in the amount to be proved at trial, but not less than \$1,541,089.00;
3. as to Count III, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

4. as to Count IV, requiring an accounting of all moneys and things of value transferred by the plaintiff to any of the defendants, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

5. as to Count V, imposition of a constructive trust on all monies and property transferred by the plaintiff to the defendants, including all proceeds attributable to said property, and directing restitution to the plaintiff of said property or its monetary value;

6. as to Count VI, actual damages, treble damages, attorney's fees and a permanent injunction prohibiting the Dimond defendants from engaging in conduct found to be unlawful;

7. as to Count VII, actual damages, treble damages, attorney's fees and a permanent injunction prohibiting the Dimond defendants from engaging in conduct found to be unlawful;

8. as to Count VIII, actual damages and attorney's fees;

9. as to Count IX, actual damages and attorney's fees;

10. as to Count X, actual damages, treble damages and attorney's fees; and

11. judgment for such other and further relief as the Court shall deem just and necessary, including interest, costs and attorney's fees.

Dated: March 10, 2009

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