

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERIC E. HOYLE

Plaintiff

Index No. 08-cv-00347-JTC

vs.

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

Defendants

**RICO CASE STATEMENT
(RESPECTING AMENDED COMPLAINT)**

CHAMBERLAIN D'AMANDA
OPPENHEIMER & GREENFIELD LLP
K. Wade Eaton, Esq.
Wynn L. Bowman, Esq.
Attorneys for Plaintiff
1600 Crossroads Building
Two State Street
Rochester, New York 14614

Plaintiff in this action, by his attorneys, Chamberlain D' Amanda Oppenheimer & Greenfield LLP, provides the following RICO Case Statement respecting the Amended Complaint and for such would respectfully show the Court as follows:¹

1. Plaintiff alleges that the RICO defendants have engaged in violations of 18 U.S.C. §§1962(c) and (d).

2. The RICO defendants in this action are Frederick Dimond and Robert Dimond.

Each of the RICO defendants has, while employed by or associated with Most Holy Family Monastery (“MHFM”), knowingly participated in directing the operation and management of MHFM through a pattern of racketeering activity, as defined by 18 U.S.C. §1961(5), i.e., by engaging in continuous acts of racketeering activity within ten years, in violation of 18 U.S.C. §1962(c).

Each of the RICO defendants has committed acts constituting indictable offenses of mail fraud under 18 U.S.C. §1341, bank fraud under 18 U.S.C. §1344, and wire fraud under 18 U.S.C. §1343. The RICO defendants devised a scheme to defraud the general public, including the plaintiff, by making false representations through the MHFM website and to specific individuals through the sale and distribution, using the United State Postal Service, or 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 funds received from 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.

The RICO defendants have committed mail fraud, wire fraud, and bank fraud, as set forth above, by making false representations to the general public, through the MHFM

¹ Terms used herein shall have the same meaning as set forth in the Amended Complaint.

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.

The RICO defendants have committed mail fraud, wire fraud and bank fraud, as set forth above, by 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 funds received from said individuals, in one or more depository or investment accounts held in the name of MHFM.

The misconduct and basis of liability of the RICO defendants consists of their joint and concerted actions resulting in use of the mails, banks or interstate wire transmissions in the commission or furtherance of their false representations in violation of the federal mail, bank and wire fraud statutes, 18 U.S.C. §1341, §1344 and §1343.

3. Other than the defendants listed above, there are no other persons alleged to have violated 18 U.S.C. §1962.

4. Plaintiff, Eric E. Hoyle (“Hoyle” or “plaintiff”), is the victim in this case. Hoyle has been injured in his property by reason of the RICO defendants’ violation 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 RICO defendants that they were members of the Order of St. Benedict and that MHFM was a Benedictine community.

5. (A) The RICO defendants have committed 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.

(B) The RICO defendants have committed mail fraud, wire fraud and bank fraud, as set forth above, by making false representations to the general public, through the MHFM website, and to specific individuals through the 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 funds received from 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.

The RICO defendants have committed mail fraud, wire fraud and bank fraud, as set forth above, by 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.

The RICO defendants have committed mail fraud, wire fraud and bank fraud, as set forth above, by 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; their demand for and receipt of the personal property of said individuals; and their deposit of financial assets, including checks issued by said individuals, in one or more depository or investment accounts held in the name of MHFM.

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

The RICO defendants have continuously engaged in the predicate acts which constitute a pattern of racketeering activity beginning no later than the summer of 2002 and continue to do so to the present day.

(C) The misrepresentations which form the basis of defendants' wire fraud, bank fraud and mail fraud have been continuously made from the summer of 2002 and continue to the present day. The misrepresentations are made on the defendants' website www.mostholymonastery.com and in various publications mailed from U. S. Postal Service locations near the defendants' place of business. The misrepresentations consist of statements that the RICO defendants were and are members of the Order of St. Benedict and that MHFM was a Benedictine community. These misrepresentations were made to the plaintiff, to purchasers of items sold by the defendants, and to the English speaking inhabitants of the World who have direct or indirect access to the Internet.

(D) Plaintiff is not aware of any of the defendants having been convicted in a criminal proceeding related to the predicate acts alleged herein.

(E) Plaintiff is not aware of any civil judgments having been entered with regard to the predicate acts alleged herein.

(F) The RICO defendants have continuously engaged in the predicate acts beginning no later than the summer of 2002 and continue to do so to the present day. There is a continuing threat that the criminal conduct of the RICO defendants will continue into the future.

(G) The RICO defendants' common plan involved falsely portraying themselves as members of the Order of St. Benedict to establish credibility and trust in the minds of individuals from whom they solicited contributions and to whom they sold various publications. Each of the predicate acts was in furtherance of that plan.

6. (A) The name of the entity which constitutes the enterprise is Most Holy Family Monastery, a New York not-for-profit corporation.

(B) The enterprise is a not-for-profit corporation whose Certificate of Incorporation states its purposes as follows: "The practice of religion; for the praise, prayer and worship of Almighty God". Its current publications assert that its purposes are "to defend and spread the Catholic Faith, as taught and defined by the authoritative teachings of the popes throughout history" and "to expose in great detail the post-Vatican II pseudo-'Church' and the New Mass which purport to be Catholic, but are not." It functions primarily through the distribution and sale of print and digital publications, radio appearances and telephone conversations with various individuals.

(C) Defendant Frederick Dimond purports to be the sole member and President of Most Holy Family Monastery. Upon information and belief, defendant Robert

Dimond is the Vice-President of Most Holy Family Monastery. Whether they are employees or directors of Most Holy Family Monastery is yet to be determined.

(D) The RICO defendants are associated with the enterprise.

(E) The RICO defendants are individuals separate from the enterprise and also members of the enterprise.

(F) The RICO defendants are perpetrators of the racketeering activity.

7. Plaintiff alleges that the pattern of racketeering activity and the enterprise are separate. The enterprise is a not-for-profit corporation organized under the laws of the State of New York. The RICO defendants have engaged in a pattern of racketeering activity through their operation and management of the enterprise.

8. The activities of the enterprise consist in the main of the racketeering activity alleged herein. Other activities are unknown and believed to be ancillary to the racketeering activity alleged herein.

9. The enterprise receives funds from the contributions from, and sales of materials to, various individuals and investment income.

10. The activities of the enterprise affect interstate and foreign commerce to the extent that individuals in various states and countries view the content of its website and engage in financial/commercial transactions with the enterprise, largely involving the purchase of materials published by the enterprise.

11. The complaint does not allege any violation of 18 U.S.C. §1962(a).

12. The complaint does not allege any violation of 18 U.S.C. §1962(b).

13. (A) The RICO defendants are either employed by or associated with the enterprise.

(B) Most Holy Family Monastery is not a liable person under §1962(c).

14. The RICO defendants agreed to engage in the predicate acts of mail fraud, wire fraud and bank fraud and have each engaged in conduct intended to achieve the conspiracy's objectives.

15. Plaintiff Hoyle has been injured in his property in that he transferred over \$1.6 million in assets to the defendants based on misrepresentations constituting mail fraud, wire fraud and bank fraud.

16. The RICO defendants' misrepresentations as to their status as members of the Order of St. Benedict and the Most Holy Family Monastery as a Benedictine community caused the plaintiff to transfer assets in excess of \$1.6 million to the defendants. These misrepresentations were made through conduct which constituted a continuing pattern of racketeering activity, to wit: mail fraud, wire fraud and bank fraud.

17. The damages sustained by plaintiff Hoyle consist of \$1,606,789 transferred to the defendants and the costs of this litigation, including attorney's fees.

18. There are no other federal causes of action alleged in plaintiff's Amended Complaint.

19. Plaintiff's pendent state claims include fraud, negligent misrepresentation, unjust enrichment, mandatory accounting, money had and received, deceptive trade practices and false advertising.

20. Plaintiff does not submit any further information at this time.

Dated: June 25, 2010

CHAMBERLAIN D'AMANDA
OPPENHEIMER & GREENFIELD LLP

/s/ K. Wade Eaton

K. Wade Eaton, Esq.
Wynn L. Bowman, Esq.
Attorneys for Plaintiff
1600 Crossroads Building
Two State Street
Rochester, New York 14614

TO: DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP
Charles C. Ritter, Jr.
Attorneys for Defendants
1800 Main Place Tower
350 Main Street
Buffalo, New York 14202