

Solon v. Meuer

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Case: Solon v. Meuer (1987)

Subject Category: Pyramid

Agency Involved: Private Civil Suit

Court: New York County Civil Court

Case Synopsis: The New York Civil Court was asked if a later investor in an airplane program could recover their losses from an earlier investor who did not make any net profits from their participation in the program.

Legal Issue: Can a later investor in an airplane program recover their losses from an earlier investor who did not make any net profits from their participation in the program?

Court Ruling: The New York County Court held that the later investor could recover their losses from the earlier investor despite the fact that the earlier investor did not make any net profits from their participation in the program. The defendant was deceived just as much as the plaintiff about the program's safety and effectiveness as an investment. The court ruled that the generally principles of New York's gambling laws prohibited someone from profiting from the operation of an illegal lottery, regardless of thier culpability or good faith.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Many people may be ultimately held liable for failed investment programs that fall under state gambling and lottery laws, not just the principle promoters.

Solon v. Meuer, 141 Misc.2d 993 (1987) : The New York County Court held that the later investor could recover their losses from the earlier investor despite the fact that the earlier investor did not make any net profits from their participation in the program. The defendant was deceived just as much as the plaintiff about the program's safety and effectiveness as an investment. The court ruled that the generally principles of New York's gambling laws prohibited someone from profiting from the operation of an illegal lottery, regardless of their culpability or good faith.

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141 Misc.2d 993, 539 N.Y.S.2d 241

Iris S. SOLON, Claimant,

v.

Mary MEUER, Defendant.

Civil Court of the City of New York, New York County.

Nov. 13, 1987.

MARSHALL C. BERGER, Judge:

Plaintiff is the victim of a variant of the old pyramid club which has surfaced under the guise of the "airplane game". For \$1500, paid to the "pilot", a person or group of persons could buy one of eight seats on an "airplane". Above the 8 "passengers" were 4 "crew members", 2 "co-pilots" and a "pilot." When all of the passenger seats were sold then the old airplane would split into two with the passengers becoming crew members, the crew members becoming co-pilots and the co-pilots becoming pilots. The original pilot would take the \$12,000 from the new passengers and "pilot out". The new pilots and crew would then try to sell the seats in their planes so the whole process could be repeated.

Here plaintiff contributed \$1,250 toward a seat in a plane *994 piloted by defendant and plaintiff now sues in small claims court to recover that money now that her plane has "crashed." The whole scheme is indisputably illegal under Section 359-fff of the General Business Law which prohibits chain distribution schemes defined as a "sales device, whereby a person upon condition he make an investment is granted a license or right to solicit or receive for profit or economic gain one or more additional persons, who are also granted such license or right upon condition of making an investment." Here the scheme appears well organized and so popular that the promoters were able to fill up a 700 seat meeting hall.

The testimony adduced at trial and the literature of the game marked as exhibits indicate the basic unfairness and illegality of the plan was sought to be camouflaged by using such MBA buzz words as seminar and workshop and a veneer of spirituality jargon. But the real motivating force appears to be a greed so overpowering that all four witnesses at trial testified that they played although they were apprehensive that the whole thing was illegal. Their avarice likewise blinded them to the mounting requirements of geometric progression which had to be satisfied if they were to successfully pilot out. Perhaps the best symbol of the real nature of the game is the reproduction in the game's newsletter of the phrase "In God We Trust" the way it appears in the most secular of documents, the one dollar bill.

Here the defendant appears to have been as duped as plaintiff. There is no evidence that she in any way organized or managed the scheme. Her only role at any of the meetings was to take a bow without saying anything when she piloted out.

[1] Similarly, although alleged by plaintiff, there is no proof that defendant committed fraud. Apparently she believed what she told plaintiff and everyone else on her "plane". Indeed, plaintiff testified that she made no money on the transaction, her winnings being eaten up by losses in a prior crash and by her subsequent purchase of a seat on a \$3,000 a seat plane. So there is certainly none of the clear and convincing proof of an intentional misrepresentation required to establish a fraud claim. *JoAnn Homes at Bellmore Inc. v. Dworetz*, 25 N.Y.2d 112, 302 N.Y.S.2d 799, 250 N.E.2d 214 (1969).

**243 Thus the question presented is whether a loser in an illegal pyramid scheme can recover the moneys she gave the apparently innocent beneficiary of her game. The one case in the *995 context of a commercial franchising scheme on civil consequences of such schemes, *Schaffer v. Talerico*, 118 Misc.2d 66, 459 N.Y.S.2d 716 (City Court Utica 1983) held that since they were against state public policy any right under them would be unenforceable.

[2] However, a more persuasive authority is Section 5-419 and 5-421 of the General Obligations Law which allows a gambling loser to recover his losses from the winner. They manifest a policy that someone who has been fortunate enough to have made money from a illegal gambling scheme must disgorge his winnings to the loser. Applying such policy here is more persuasive than in the more typical gambling case. There the winner presumably would have won because he was luckier or perhaps as in gambling games like poker or in bets on sporting events had more skill or foresight. Here defendant won because she came first; the first participant has an inherent and usually decisive edge over the latecomer. There is no reason to let defendant keep what she won in so inherently unfair a game.

[3] An analagous result was reached in *Valentin v. El Diario*, 103 Misc.2d 875, 427 N.Y.S.2d 185 (Civil Ct., Bronx 1980). There a newspaper ran a contest where it would award a prize to the child "voted" king of the infants by persons sending in coupons either clipped from their paper or purchased at 17 cents a coupon. Plaintiff was a proud parent who bought \$1,000 of such coupons to vote for her infant son. The court awarded her the \$1,000, holding the scheme an illegal lottery. Here putting aside the indisputably applicable language of General Obligations Law Section 359-fff, the airplane scheme is also illegal as a lottery since it meets the three requirements of a lottery-- consideration (the money paid for the seat); a

prize (the money received when the participant "pilots out") and chance (the uncertainty over whether the participants can find new participants, or, to put it bluntly, people even more foolish than they were in sufficient numbers to be able to pilot out). Even if the airplane game were not a lottery, allowing a lower to recover her loss would serve the purpose of Section 359--fff by discouraging schemes illegal under it the same way that General Obligations Law Section 5-419 and 5-421 discourage gambling enterprises. *Bamman v. Erickson*, 288 N.Y. 133, 41 N.E.2d 920 (1942).

[4] While as stated earlier, defendant's dissipation of her winnings in other airplane games is an indication of her good *996 faith, it is not a defense to plaintiff's recovery on the rationale set forth above just as any other improvident frittering away of defendant's gains, whether legally or illegally, would not constitute a defense.

The court is entering judgment for plaintiff and against defendant for \$1,250.00.

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