



# 'Ponzi-proofing' means asking tough questions

[HAMISH MCNICOL](#) Last updated 05:00 11/01/2014

Ponzi scheme losses around the world amounted to more than \$25 billion last year but an American expert believes we have not seen the last of cases such as New Zealand's David Ross.

Kathy Bazoian Phelps, a lawyer in America with 22 years' experience in bankruptcy and fraud, recently released a book about "Ponzi-proofing" investments. She has previously been quoted by the Wall Street Journal and New York Times on the \$65b Bernie Madoff Ponzi scheme and writes a regular blog in which she has closely followed New Zealand's most high profile fraudster, David Ross.

Last year Ross, 63, was sentenced to 10 years and 10 months in prison for his fraud which stole \$115 million from at least 700 investors.

The Lower Hutt man must serve a minimum non-parole period of half this sentence but he has since appealed this on the grounds it is manifestly excessive or inappropriate.

His company, Ross Asset Management, had accounts which claimed to be worth \$449.6m but large portions of client portfolios were shown as invested through a non-existent broker, Bevis Marks.

This resulted in a \$380m overstatement of investment positions, the result of Ross falsifying more than 100,000 transactions - or one every hour of every day for more than 12 years.

The Ross scheme regularly featured on Phelps' blog and she said it had many "classic signs" of similar fraud.

"Ponzi schemers take full advantage in convincing investors that they don't need to ask any questions and that their money is 'safe' and returns are 'guaranteed'."

Many investors have spoken about how Ross would convince them to keep their investments in Ross Asset Management when they said they wanted to pull out.

A man who knew Ross for nearly 50 years, and lost \$1.6m to the fraud, had repeatedly attempted to withdraw money in the months leading up to the collapse.

But Ross had assured him his money was safe.

Phelps said a tell-tale sign of many fraudulent schemes was investors putting money in based on recommendations from friends and family, and relying on word of mouth. "We must always assume that fraud is a possibility and take the time to ask the hard questions. It's the same story again and again."

Her book was written as a guide for potential investors, detailing the likely promises which would be made by similar schemes, the traditional sales and marketing tactics they employed, as well as a list of questions and investigations which should be done. Phelps said these sorts of frauds typically happened when one person, such as Ross, was in charge of all facets of the investment.

"If the same person is making the trades, reporting the trades, administering the paperwork, and holding the money, who is to stop that person from creating fictitious trades and account statements and from stealing the money?"

Investors in American Ponzi schemes who lost money have generally been able to recover funds from investors who made money, she said.

The courts often found profits paid to those investors who made money were recoverable to redistribute to all investors.

Ross Asset Management liquidators PwC are currently exploring clawback test cases with three investors, for funds totalling \$3.8m, which it hopes will signal the possibility of any further claims.

Phelps said Ross was undoubtedly clever in convincing people to invest. But, with more than \$25b of losses reported in cases last year, she said the problem was one that was not going away.

- © Fairfax NZ News