

THE SECOND FRAUD

SYNOPSIS

THE SECOND FRAUD is a motion picture documentary that exposes the aftermath immediately following the arrest of Twin Cities businessman Tom Petters. Petters was the brilliant mastermind behind the first multi-billion dollar “Ponzi Scheme” ever discovered. Our exposé dives into to the initial Petters controversy, exploring how he was able to keep his lucrative scheme going for over a decade. A deeper look shows that Petters could have been stopped many times along the way! The courts, the District Attorney’s Office, and even the FBI appeared to avert their eyes from the dealings of this up and coming, very popular businessman.

On September 24th, armed with a search warrant based on wired conversations and testimony from insider Deanna Coleman, the FBI led a surprise attack on the Petters’ offices. The FBI affidavit only made mention of one side of the Petters empire in relation to the “alleged” fraud machine – Petters Company Inc. (PCI).

While victims of the fraud at PCI were losing every penny they had left, creditors in Petters Group Worldwide (PGW) were afraid of the same fate. These investors represented larger pools of individuals who could find themselves in the same situation. Something had to be done. Financial consultant Billy Procida was brought in on behalf of these creditors with the agreement of Petters (before his arrest). Procida had overseen more than a billion dollars of turnarounds in his career and was well placed for this position.

Back in the Petters camp, the legal staff had quit and Petters was left in a very vulnerable position. He quickly retained the services of local criminal defense attorneys Jon Hopeman as his personal lawyer and Doug Kelley as his corporate representation.

On October 3, 2008, Petters was arrested. It must be noted, however, that this business titan’s reputation was not built solely on the product of his Ponzi Scheme, which according to the FBI was contained in PCI. Indeed his main entity, PGW, was an umbrella company for over twenty legitimate companies that were independently run and operated. This was a broad and diverse portfolio, but the largest and most valuable asset was the American icon POLAROID.

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With nobody at the helm of PGW and with PCI under investigation, a Receiver (someone who represents the creditors' interests) needed to step and take control. By a majority vote of the senior creditors, Billy Procida was chosen for the position. But Petters' lawyer made sure he was roadblocked at every turn.

In an ex parte communication (emergency meeting with a judge representing only one party) Doug Kelley, Jon Hopeman, and the US Attorney's office presented to Judge Anne Montgomery that irreparable harm would occur if a receiver was not immediately appointed. Montgomery quickly agreed to appoint Kelley himself as the Official Court Appointed Receiver of PCI and PGW.

This decision disregarded all the facts: there was already a Receiver in place appointed by the courts and supported by the creditors, there were three temporary restraining orders (TRO's) protecting the assets, that Kelley's own law partner, Stephen Wolter, was already Petters' irrevocable proxy, and Petters himself was sitting in jail. In other words, there was no pretense for Ex Parte relief in this situation—yet Kelley went from the position of criminal defense attorney on behalf of Petters' corporate interests to representing the creditors who had already made their decision on their representation. In this case, an outsider would not do. Kelley, a true insider, was in a place of complete control. Ultimately he secured not only the Receivership, but judicial immunity and was named Trustee over the assets of the bankruptcy estates (bankruptcy was one of the first actions of his increasingly dubious agenda).

The controversy continues as we see how Doug Kelley and his growing army of lawyers and other professionals are paid. The government does not pay them for their work, instead it comes out of the same fund meant to repay and the victims. Part of Kelley's job is to recover money lost in the Ponzi Scheme. The problem was, that besides a few houses and cars, there was no real money to be found in PCI. All the real financial resources were in PGW—but the money here belonged to legitimate creditors and other third parties. In order to collect on the monetary resources of PGW, a connection with PCI would need to be found — or created!

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Mary Jeffries was President and Chief Operating Officer (COO) at PGW when Petters was arrested. It is also documented that she had been COO of PCI, the fraud machine, as far back as 2005. It was clear that she had been operating as Petters' right hand and had apparent knowledge of all sides of his business operations. With a background in accounting and auditing, it seems she should have been one of the first to know about the scheme taking place behind the scenes. Yet when Petters was arrested, instead of any investigation, Jeffries was allowed to stay with PGW as the Chief Executive Officer (CEO) of Polaroid, Petters' most valuable asset.

When Kelley allowed for Polaroid to fall into bankruptcy, a disturbing series of events began to unfold. First, the auction process was opened and a local group, Houlihan Lokey, was hired to run it. The secured creditors claimed that an auction should not be taking place as their liens (secured rights to various parts of this asset – in some cases upwards of a quarter billion dollars) were in default and they were the ones who should rightfully control the future and direction of Polaroid.

But next the unthinkable happened. None other than Polaroid disputed the creditors' liens, the very company they had made the deal with in the first place. At the helm: Mary Jeffries, working closely with Doug Kelley. The argument in simple terms was that the creditors' money went not to PGW but to PCI, and Polaroid received no benefit from transactions made that resulted in such liens. Shocked, the creditors found themselves blocked from their collateral.

Instead, an insider 'sweetheart' deal was attempted with one of Petters' friends and business associates totalling \$42 million dollars (Petters bought Polaroid for \$426 million only five years prior). Even though bankruptcy law requires such conflicts be disclosed, it was the creditors who cried foul. The auction was re-opened to a new set of bidders.

The creditors continued to plead their case that Polaroid should not be sold. The economy was in a bad place, and Polaroid should be restructured. In fact, one creditor was willing to restructure Polaroid, bolster its value and sell it in better economy. They also proposed to immediately set aside \$25 million dollars to go to the unsecured creditors, who would most likely not see any return on their investment under the current state of affairs. Again, these senior creditors were turned down, and the

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bankruptcy judge made the unconscionable decision to move forward on the auction process without first figuring out the lien dispute. Everything seemed to playing into Kelley's hands.

Ultimately, by disputing the liens of the senior creditors, Mary Jeffries allowed for Polaroid to be sold free and clear of any liens, while creating a potential link between PCI and PGW. Though these claims remain unfounded and unresolved, Polaroid was auctioned in a "fire sale" for \$88 million dollars by the company that had valued their global licensing potential at over a billion dollars only five months before.

To date, Doug Kelley and his army of lawyers and other professionals have filed fee requests for upwards of \$35 million dollars, money that is coming from the creditors and the victims fund. Break it down and they are charging about three million dollars per month. With Petters' largest asset already gone in a fire sale, one has to wonder how the victims and creditors of both PCI and PGW can expect to see any return from their investments. Kelley has reported the process could take years complete. Does this mean that all will be finished when the money is gone and the Victims and Creditors fund is empty?

THE SECOND FRAUD brings to the table hard questions that demand real answers. The local Twin Cities media may have followed the Petters scandal as it happened, but as an outsider, as an independent filmmaker, I bring to the table a different flavor, one that is credible but digs below the surface.

We bought time on every major network Affiliate to broadcast our film on Sunday, December 13, 2009 and Monday, December 14, 2009. When they saw the content we were dealing with, however, each network independently rejected us.

As a filmmaker, I am not disappointed by what some might call "censorship" in this situation. Others may even say this is disregard of first amendment rights. What fascinates me is what looks like a massive cover up of a continuing fraud taking place behind the scenes of a fraud that in the public view has been stopped in its tracks. So why isn't anybody getting their money back? I go back to my point from in the beginning: Tom Petters could have been discovered multiple times leading up to his eventual arrest and incarceration. Should the very government who knowingly or

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unknowingly allowed this original fraud to perpetuate in the first place be left in charge with cleaning it up?

I say, give my documentary a chance. Let the questions be asked. Let the answers be heard. Do not let precedent be created by a system that may be too corrupt to change once it has gone too far.

Sincerely,

Ryan James Frost

Producer/Writer/Director