

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 09-CIV-81092 – MARRA/JOHNSON

L.M.,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendants.

**EPSTEIN'S MOTION TO DISMISS COMPLAINT
AND INCORPORATED MEMORANDUM OF LAW**

Defendant, JEFFREY EPSTEIN ("Epstein") pursuant to Fed. R. Civ. P. 4(m), moves to dismiss the Complaint (DE #1) filed by Plaintiff, L.M. due to her failure to serve the Complaint on Epstein within the time specified in Rule 4(m), and states:

1. On July 24, 2009, L.M. filed a two hundred thirty-four (234) page, one hundred fifty-six (156) count Complaint (DE #1) against Epstein.
2. Each of the one hundred fifty-six (156) counts is a separate cause of action pursuant to 18 U.S.C. §2255.
3. The Complaint was filed by Bradley J. Edwards while he was employed by the now defunct Rothstein, Rosenfeldt & Adler firm.
4. However, this Complaint served no legal purpose whatsoever in that at the time the Complaint was filed LM had a pending state court action (which is still currently pending) seeking damages under theories other than the exclusive remedies in 18 U.S.C. §2255. See L.M. v. Jeffrey Epstein, Case No. 502008CA028051XXXXMB in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

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5. This Complaint was never served on Epstein within the time required by Fed. R. Civ. P. 4(m) and should therefore be dismissed. Epstein files this motion for the sole purpose of having the cause dismissed and not to subject himself to service. More importantly, the Complaint may have been used by Scott Rothstein and the criminal enterprise Rothstein, Rosenfeldt & Adler, P.A., (“RRA”) (so identified by the United States of America in U.S. v. Rothstein, Case No. 09-60331CR-Cohn, U.S. District Court, Southern District of Florida), in connection with his massive Ponzi scheme, which sold investments in fabricated settlements and cases (see infra).

BACKGROUND

6. The Complaint (DE #1) was filed on July 24, 2009, four months before RRA’s \$1.2 billion Ponzi scheme was exposed in November 2009 and the RRA firm imploded.

7. The U.S government brought an action for Racketeering Conspiracy, Money Laundering Conspiracy, Mail and Wire Fraud Conspiracy and Wire Fraud against its chairman and CEO, Scott W. Rothstein, for using RRA to run a Ponzi scheme. See Information (DE #1) filed in U.S. v. Rothstein, Case No. 09-60331CR-Cohn, U.S. District Court, Southern District of Florida.

8. The Information asserts that “RRA was utilized by [Rothstein] ... to unlawfully obtain approximately \$1.2 billion from investors by fraud in connection with an investment scheme commonly known as a ‘Ponzi’ scheme, in which new investors’ funds are utilized to pay previous investors in the absence of any underlying security, legitimate investment vehicle or other commodity.” The Information references Rothstein and other unidentified “co-conspirators”. See Information ¶6 (DE #1) in Case No. 09-60331CR-Cohn.

9. Rothstein conducted the Ponzi scheme “by fraudulently inducing investors through the use of false statements, documents, and computer records to ... invest funds based upon anticipated pay-outs from purported confidential settlement agreement which had been reached

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between and among certain individuals....” See Information ¶7A (DE #1) in Case No. 09-60331CR-Cohn.

10. Rothstein manufactured false and fraudulent Court opinions/orders including forging the signature of U.S. District Judge, Kenneth A. Marra and U.S. Circuit Court Judge, Susan H. Black, 11th Circuit in other cases (attached as **Exhibit 1** hereto).

11. At Rothstein’s June 9, 2010 sentencing hearing, Judge James Cohn departed upward from the government’s recommendation of 40 years and sentenced Rothstein to 50 years; the underlying basis for this upward departure was quoted to be:

He forged these court orders [referring to the Morse case] to perpetrate the Ponzi scheme. There can be no conduct more reviled than a lawyer perpetrating a fraud on the court.

12. Epstein sued Rothstein, Bradley Edwards and LM for their participation in the aforementioned Ponzi scheme in the case styled Epstein v. Rothstein, et al., Case No. 502009CA040800XXXXMBAG, in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

13. Specifically, Epstein alleged that Rothstein used the cases against Epstein (Jane Doe v. Epstein, Case No. 08-CIV-80893, U.S.D.C. S.D. Fla., L.M. v. Epstein, Case No. 502008CA028051XXXXMB AB in the Fifteenth Judicial Circuit; and E.W. v. Epstein, Case No. 502008CA028058XXXXMB AB in the Fifteenth Judicial Circuit) as “bait” to lure potential investors. See Complaint ¶20 in Epstein v. Rothstein, et al., Case No. 502009CA040800XXXXMBAG. In addition, Epstein alleged that “ROTHSTEIN attempted to lure the entity known as D3 Capital Club, LLC, (“D3”), by offering D3 ‘the opportunity’ to invest in a pre-suit \$30,000,000.00 court settlement against EPSTEIN; yet this supposed settlement never existed and was entirely fabricated.” Id. ¶28.

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14. Consistent with Rothstein's Ponzi scheme, the Complaint makes a number of false allegations and may have been shown to investors as part of the Ponzi scheme. These include:

- a. LM was identified as a victim by the FBI and U.S. Attorney's office in a criminal investigation against Epstein. See DE #1 ¶19. However, LM was not on the FBI's or U.S. Attorney's "list" referenced in paragraph 19 of the Complaint.
- b. Epstein "coerc[ed] or forc[ed] the then-minor L.M. to perform oral sex on him." See DE #1 ¶9. However, in her September 24, 2009 deposition LM testified under oath (at page 71), that she never had oral sex with Epstein.
- c. Epstein "knowingly transported L.M. and other minors in interstate commerce with the intent that the [sic] L.M. engage in prostitution..." See DE #1 ¶12. However, in her February 9, 2010 deposition LM testified under oath (at page 611) she never traveled with Epstein.

15. Counsel for L.M. also should know that this action does not and cannot benefit from the Non-Prosecution Agreement ("NPA") referenced in the Complaint. L.M. has not exclusively pursued 18 U.S.C. §2255 remedies against Epstein in that L.M. has other pending litigation where she seeks damages from various state court claims.

THE COURT SHOULD DISMISS THE COMPLAINT

16. Pursuant to Fed. R. Civ. P. 4(m), "[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – **must** dismiss the action without prejudice against that defendant or order that service be made within a specified time." (Emphasis added).

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17. Epstein requests that the Court dismiss the Complaint (DE #1) due to LM's failure to timely effect service pursuant to Fed. R. Civ. P. 4(m) and because the Complaint may have been used as part of the RRA Ponzi scheme and serves no other legitimate purpose.

WHEREFORE, Defendant, JEFFREY EPSTEIN, requests the Court enter an order dismissing the Complaint (DE #1) and grant any additional relief the Court deems just and proper.

Respectfully submitted,

By: /s/ Robert D. Critton
ROBERT D. CRITTON, ESQ.
Florida Bar # 224162

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the following Service List in the manner specified by CM/ECF on this 16th day of June 2010.

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