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Enthusiastic investors hit ING with money laundering

Is ING liable because it overlooked investment fraud? With the settlement in the money laundering case, the victims want to get their rights.



In the IB Capital case, suspects sent 25 million euros to Hungary.

Jasper Juinen / Bloomberg 

When the 32-year-old Emad E. from Haarlem arrives at ING in early 2012 to open two extra business bank accounts, ING notes that he runs a "consultancy" for people around the world who want to trade in currencies. His paper New Zealand company IB Capital has, according to E., "the knowledge and expertise" to do such advisory work "safely and well".

ING does a short additional investigation. It even asks the Haarlemmer in writing what internal measures he takes "not to get involved in fraud or money laundering". E.'s answers reassure ING, "adequate", the bank describes them. For example, E. says it only accepts customers who identify themselves by means of *passport copy*. ING assesses IB Capital as a customer with 'normal risk'.

Around the same period, around 50 million dollars of 1,850 investors worldwide will enter the new ING accounts in the same period. The investors - many Americans - think they have stepped into *foreign exchange* with the money. But in reality Emad E. and his companion Michael G. are stealing the money to put in their own pocket, according to hundreds of pages of American judicial documents, including internal ING documents. In June 2012, for example, they transfer 25 million dollars to Hungary, after which it disappears from sight. Certainly, according to the judiciary, with the disappeared investor money, among other things, real estate in Morocco has been purchased.

The American trustee in the IB Capital case started an 'article 12 procedure' with the Court of The Hague in order to enforce criminal prosecution of ING. This is confirmed by lawyer Geertjan van Oosten, who initiated the proceedings. It puts the victims that the record settlement of 775 million euros in the treasury ends up and their damage (at least 35 million dollars) is not reimbursed.

In the meantime, at least three Article 12 proceedings against the ING settlement have been pending. The settlement agreement with ING states that this will lapse if the Public Prosecution Service has to proceed with prosecution through an Article 12 procedure. The state must then repay ING 775 million euros.

Both the American and Dutch authorities are behind E. and G.. Supervisor CFTC started in 2015 against E., G. and IB Capital. And the Fiscal Intelligence and Investigation Service (FIOD) conducts criminal investigation 'Cayenne' to the practices of E. and G.,

who were in custody for more than a year. (G. states not to recognize the fraud picture outlined through his lawyer, E. does not comment.)

Very significant damage

New is that from the United States now also the focus is on ING. US court documents that have recently become public show that ING was held liable by American victims in October. That is also confirmed by Jurjen de Korte and Geertjan van Oosten, the Dutch lawyers acting on behalf of the victims.

The American judge has appointed a 'receiver', a sort of curator who has to recover money for the victims. This *receiver* has hired legal assistance in Morocco and the Netherlands (De Korte and Van Oosten).

In October, one month after ING concluded a record settlement of € 775 million with the lawyer because criminal customers could make use of the bank 'almost undisturbed', De Korte wrote on behalf of the American victims a letter of nine pages to Brechje van der Velden of Allen & Overy, the lawyer of ING. In the letter, the violations of the Money Laundering and Terrorist Financing Act (Wwft) - which led to the record settlement - are closely related to the way in which ING acted at IB Capital in 2012.

ING did not properly investigate customers, monitor transactions poorly, and incorrectly estimated risks that put customers in the wrong categories and did not keep a close eye on them, as De Korte summarizes parts of the justice case. "It is clear that our clients have suffered very significant damages as a result of ING's practice."



Also read this background article about
what was wrong at ING

The Americans have the ING file regarding IB Capital. This shows what ING employees have left behind. "The ING file contains no credible explanation why a resident of Haarlem, without apparent education or experience with currency trading [...], can attract tens of millions of thousands of investors from all over the world in a very short period of time", writes De Korte. . Let alone that ING discovered that E. and G. had previously been involved in comparable investment fraud. This can be found in the World Check database, which should normally be consulted when hiring such customers.

At ING, too, there was apparently no warning when suddenly \$ 25 million was being diverted to Hungary in a single transaction.

Use of the settlement

The liability claim is interesting. In 2017, when ING was also contacted on behalf of the American victims, the bank denied "categorically" that it would have dropped. "ING has acted in accordance with the applicable legislation and regulations at all times." On 4 September, ING bought 775 million euros in prosecution for the structural violation of the Wwft in the period from 2010 to 2016. The bank recognized plots "Serious shortcomings" in the prevention of financial crime.



Also read

this interview about why the Public Prosecution Service went for a settlement

In previous settlements with fraudulent companies such as Rabobank (Libor interest rate manipulation and SBM Offshore), the judiciary received a lot of criticism of the intransparent settlement practice, which the Public Prosecution Service criticized, and the ING settlement is the first major settlement involving both an extensive research results if the settlement agreement has been made public.

And those documents come in handy for parties that want to hold ING accountable. "The criminal law side of the ING affair can certainly still be followed by a civil law claim in the form of a liability claim and the claim for compensation", explains Eddy Bauw, professor of private law at Utrecht University. "The data that is public can be supportive in the proof of civil liability."

ING states in a reaction that the policy is not to go into content on individual matters and that it is "regularly involved in legal proceedings in the context of global business operations". At the same time, the bank recognizes that alleged victims are now using the settlement. "Some parties also try to relate their case to current events, such as the settlement with the public prosecution service."