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New York Divorce and Family Law Blog

[Madoff Loss Jeopardizes Divorce Settlement](#)

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To the list of things Bernard L. Madoff has been blamed for ruining — retirements, lives, reputations — add another: a clean breakup.”

[The New York Times](#) is reporting that a husband (a lawyer), who, entered into a settlement agreement distributing marital assets, which included an investment in Madoff’s hedge fund, is seeking contribution from his ex wife for the post-divorce losses sustained in the Ponzi scheme.

Rather than splitting an investment in the Madoff hedge fund, the husband gave the wife \$2.7 million in cash and held onto the account. Of course, the account is now worthless. The husband wants his ex wife to share in his loss.

Good luck!

Had the wife participated with Madoff in the fraud or had knowledge of the wrong-doing, the husband might have a case. But, the husband simply made an unfortunate choice and, through no fault of the wife, lost his investment.

Had the account value gone up, it is doubtful that husband would have shared the profits with his ex-wife. Alternatively, had the wife poorly invested the cash she received from the husband, she would have no claim against the ex-husband for her loss. And what about all the people who bargained for the marital home, which is now worth substantially less than it was one year ago—should they look to have their former spouses share in the loss?

There is a practical reason why the husband cannot win this case—if the mere fact that some former marital asset lost value could subject a settlement agreement to attack, there would be no finality to divorce. Every agreement would be at risk for a post divorce attack. In order for there to be finality, in absence of fraud, duress or coercion etc, agreements must be enforced, without the benefit of hindsight.