



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Serving all of  
California

## Ron's Corner

In issues 49 through 52 of *Forensic Accounting Today*, I addressed the matter of financial fault and no-fault divorce. Although I do not want to belabor this topic, I felt it worthy to present this case because it involved several obvious breaches of fiduciary duty, as well as major considerations surrounding investing in cryptocurrencies.

The outcome of this case, including the affirmation by the Appeals Court, came as no surprise. However, the issues concerning the lack of due diligence of husband in making several sizable Bitcoin transactions served to bolster the need (in my mind) for prudence and care when engaging in cryptocurrency transactions, as well as in choosing a broker.

Despite husband's breaches, negligence and mistakes, the community profited considerably from his investments. Whether he achieved his success through analysis and foresight regarding the future market for Bitcoin or it was due to sheer dumb luck serves as a matter for discussion. I welcome your comments and questions and will gladly respond.

Ron

## Do You Need a Financial Expert Speaker?

Ron J. Anfuso can address any Forensic Accounting topic, including Moore/Marsden; marital standard of living and support needs analysis; financial specialists and Collaborative Law; gross cash flow available for support; DissoMaster™; divorce tax issues; divorce—what to expect; and business valuation.

**To discuss your group's needs, call Ron today!**

## In re Marriage of Erica and Francis Desouza: Cryptocurrency and Fiduciary Duty

Presented by Ron J. Anfuso, CPA, ABV, CFF, CDFE, FABFA

### Background

Francis Desouza appealed a post-judgment order that found he breached his fiduciary duty to his former wife Erica. The trial court ordered Francis to transfer Bitcoins and other cryptocurrencies to Erica pursuant to the parties' judgment of dissolution and to pay Erica's attorney's fees and costs. Francis argued that he did not breach his fiduciary duty because information he withheld about his investments was not material, and there was no substantial evidence his breach impaired Erica's interest in their community property.

### Facts of the Case

Erica served Francis with a petition for dissolution of marriage in January 2013. This included an automatic temporary restraining order that prohibited Francis from "*transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or a court order, except in the usual course of business or for the necessities of life.*"

Francis initiated three Bitcoin-related transactions on April 9, 2013. He sent \$45,000 to Mt. Gox Company Limited to purchase Bitcoins. Francis never received the Bitcoins, nor recovered the funds. He also had his colleague Wences Casares purchase 558.32 Bitcoins from Mt. Gox for \$99,451 on his behalf on April 10. Wences completed the transaction and transferred the coins to Francis's digital wallet.

On April 12, Francis had his associate Khaled Hassounah purchase an additional 498.89 Bitcoins from Mt Gox for \$44,940 on his behalf. Khaled never completed the transfer and the Bitcoins remained with Mt. Gox.

Later in April 2013, federal agents seized millions of dollars from Mt. Gox for its alleged failures to comply with federal regulations. By early 2014, Mt. Gox had lost hundreds of thousands of Bitcoins to hacking, embezzlement or both. According to Dr. Charles Evans, a Bitcoin expert, "*anyone who was active on the Bitcoin discussion boards, knew that Mt. Gox was having trouble*

\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.  
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## How We Ensure We Leave No Assets Uncovered

Ron determines the actions needed based on the facts of the case. Then Ron:

- Carefully estimates how much time each required task will take
- Assigns tasks to correct personnel based on experience and expertise
- Provides each assigned staff with details of their scope of work
- Meets frequently with his team to ensure everything is uncovered and we meet the deadline.

### Actions may include all or some of the following:

Reviewing tax returns to uncover asset liquidations • Working with outside investigators to perform asset and bank account searches • Investigating credit reports to reveal undisclosed bank accounts • Performing expense reconstruction analyses to determine if expenses exceed reported income, and • Conducting bank account testing analyses to scrutinize deposits and bank accounts for income not reported correctly

**When you have a case in which full disclosure of assets is in question, call Ron J. Anfuso, CPA/ABV, An Accountancy Corporation.**

left, right and sideways. And my personal opinion at the time was only an idiot would leave his Bitcoins on Mt. Gox." Dr. Evans concluded that Francis was aware of the problems with Mt. Gox when he arranged his proxy purchases in 2013. Mt. Gox declared bankruptcy and Francis made no effort to recover the Ghaled Bitcoins or the initial \$45,000 investment.

Because of dividends Francis received, his preliminary schedule of assets and debts in the divorce action filed in July 2016 disclosed his ownership at 1,062.21 Bitcoins.

In September 2017, the court issued a final statement of decision. Wences and Khaled's Bitcoins were found as community property and ordered by the court to be divided evenly between the parties, along with any derivative cryptocurrency.

After the dissolution judgment on December 8, 2017, Erica sought her half of the community Bitcoins. Only then did Francis disclose that the Ghaled Bitcoins were tied up with the Mt. Gox bankruptcy. On December 18, the day after Bitcoins reached a high of \$19,783, Francis divulged that he possessed only 613.73 community Bitcoins. Francis also had not disclosed to Erica (prior to the judgment) that he used Wences and Khaled as proxies for his purchases. He also failed to disclose that Bitcoin and gold had been generated from the Bitcoin investments, and that he had transferred cryptocurrency between digital wallets. The value of his coins as of December 17 was approximately \$8 million.

Following Erica's move for an emergency order in January 2018, the court ordered Francis to immediately transfer to Erica half of the 613.53 Bitcoins, as well as associated gold and cash he had in his possession; to show cause why the court should not order the transfer of an additional 224.34 Bitcoins and proportional cryptocurrency; and to pay Erica's attorney's fees and costs pursuant to Family Code sections §721 and §1100.

On October 19, the court's final statement of decision found that Francis committed a series of transgressions surrounding his fiduciary duties. Without Erica's knowledge or agreement, he sent \$45,000 to Mt. Gox to buy Bitcoins, and committed additional community property funds that allowed Wences and Khaled to purchase Bitcoins on Francis's behalf. The court also found that while Francis possessed documentation of the proxy purchases since April 2013, he "not only refused to disclose, but affirmatively hid from Erica their involvement until February of 2018."

Francis's failure to inform Erica about the Mt. Gox bankruptcy further breached his fiduciary duty. He again breached his fiduciary duty when he failed to list the \$45,000 sent to Mt. Gox in either of the declarations he disclosed. Francis also failed to file a bankruptcy claim, withheld information about his Bitcoin investments, falsely denied having documentation related to the Bitcoins, and neglected to reveal cryptocurrency generated through dividends from Bitcoin holdings in the form of new currency, "Bitcoin cash" and "Bitcoin gold." As a result, the court ordered Francis to transfer \$22,500 in cash and 249.445 additional Bitcoins to Erica, along with the corresponding Bitcoin gold and Bitcoin cash, and ordered Francis to pay Erica's court fees.

Francis appealed the decision. However, The Appeals Court affirmed the trial court's orders.