

Bond Case Briefs

Municipal Finance Law Since 1971

BONDS - NORTH CAROLINA

U.S. v. Murphy

United States District Court, W.D. North Carolina, Charlotte Division - October 16, 2013 - Slip Copy - 2013 WL 5636710

Defendant was charged with participating in a bid-rigging scheme to control and manipulate the bidding process for municipal bond proceeds. In addition, the Indictment alleged that defendant and his co-conspirators agreed to make false entries in bank records by falsifying marketing profits on trade tickets.

Defendant moved to dismiss the indictment on the grounds that the charges were barred by the applicable statutes of limitations.

With respect the wire fraud charges, the issue was whether the applicable statute of limitations was the ten year period by 18 U.S.C. § 3293(2). This provision extends the statute of limitations from five years to ten “if the offense affects a financial institution.” The indictment alleged that a financial institution was affected in that Bank of America, one of the co-conspirators and defendant’s employer from 1998 to 2002, was made “susceptible to substantial risk of loss” as a result of the scheme and, in fact, the bank agreed to pay federal and state agencies over \$137 million in settlements “as compensation for the losses incurred by those agencies and victims.” Defendant contended that this allegation was insufficient to bring the charges under the ten year statute and requested that the court dismiss those charges as time barred.

Defendant’s principal argument was that exposure to risk of litigation expenses and settlement agreements did not constitute “affected,” for purposes of § 3293(2). According to defendant, wire fraud affected a financial institution only if the institution itself were victimized by the fraud. The court disagreed with defendant’s interpretation and agreed with the government that the indictment successfully alleged that a financial institution was “affected” as contemplated by § 3293(2).