
FORUM SELECTION - NEW YORK

Goldman, Sachs & Co. v. North Carolina Mun. Power Agency No. One

United States District Court, S.D. New York - December 9, 2013 - Slip Copy - 2013 WL 6409348

This case involved a dispute over what forum is appropriate to resolve an underlying dispute concerning the issuance by Defendant North Carolina Municipal Power Agency Number One ("NCMPAI") of $149.7 million in auction rate securities ("ARS") in which Goldman, Sachs & Co. ("Goldman") acted as the underwriter and broker-dealer for the issuance.

Goldman argued that the District Court had exclusive jurisdiction under an applicable forum selection clause in the broker-dealer agreements. NCMPAI argued that arbitration before the Financial Industry Regulatory Authority ("FINRA") was the appropriate forum to settle the parties' dispute.

On December 12, 2012, NCMPAI initiated an arbitration in North Carolina against Goldman before FINRA to settle disputes arising from the issuance. On February 27, 2013, Goldman filed a complaint against NCMPAI in this Court seeking a declaration that the FINRA arbitration was an inappropriate forum for the dispute and an enjoinment of the arbitration.

Goldman's brought a motion for a preliminary injunction and NCMPAI moved to dismiss the complaint or, alternatively, to transfer for improper venue.

Goldman and NCMPAI signed an underwriter agreement (the "Underwriter Agreement") which did not contain an arbitration clause and provided that North Carolina law governed its validity, interpretation, and performance.

Contemporaneously, the parties also signed a broker-dealer agreement (the "Broker–Dealer Agreement") that provided that New York law would govern, waived jury trial, and specified the United States District Court in the County of New York as the appropriate forum. The Broker–Dealer Agreement also contained a merger clause.

The Court began its analysis by holding that it had the authority to enjoin the FINRA Arbitration, if Goldman established that the Forum Selection Clause waived NCMPAI's right to arbitration and that the present dispute fell within the scope of that clause.

The Court concluded that the Broker–Dealer Agreement precluded arbitration under FINRA Rule 12200 and granted Goldman's motion to enjoin arbitration.

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