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Lord Abbett Municipal Income Fund, Inc. v. Asami

United States District Court, N.D. California - July 11, 2014 - Not Reported in F.Supp.2d - 2014 WL 3417941

In 2007 and 2010, Lord Abbett Municipal Income Fund, Inc. purchased a total of $9.5 million of tax-exempt municipal bonds issued by the California Statewide Communities Development Authority ("CSCDA") on behalf of Windrush School, a private K–8 school in El Cerrito, California. In 2011, after failing to make an interest payment on the bonds, Windrush filed for bankruptcy and the school closed in 2012.

In this litigation, Lord Abbett sued the individuals who were members of the Windrush Board of Trustees when CSCDA issued the bonds for negligent misrepresentations allegedly made by them in the Preliminary Limited Offering Memorandum ("PLOM") for the bonds.

Lord Abbett also filed a lawsuit in New Jersey against broker-dealer Stone & Youngberg LLC (broker) for negligent misrepresentation and violation of California and New Jersey securities laws in connection with the bond issuance. Both suits were consolidated. Both defendants moved for summary judgment.

At the core of this lawsuit was the fact that the PLOM contained no mention of a private foundation supporting low-income students, that was to be a major source of students and tuition, but subsequently opted to open its own charter school.

The District Court held that:

- Lord Abbett failed to show that the individual board members authorized, directed, or actively participated in an alleged misrepresentation;
- No duty to disclose arose on the part of the individual board members, as they did not vote on, ratify, sign, or endorse the PLOM;
- The board members were not individual parties to Windrush's Continuing Disclosure Agreement with the trustee, Wells Fargo, and thus could not be held liable for any duties created in that agreement;
- New Jersey law governs Lord Abbett's negligent misrepresentation claim against broker;
- Lord Abbett's could not, under the circumstances, justifiably rely on the 2007 PLOM in making the 2010 bond purchases; and
- Privity did not exist between broker and Lord Abbett – as required by California and New Jersey securities law – because broker acted as a placement agent for the bonds and not as a seller or underwriter.

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