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SECURITIES FRAUD - PUERTO RICO

Fernandez v. UBS AG

United States District Court, S.D. New York - December 7, 2016 - F.Supp.3d - 2016 WL 7163823

Investors in Puerto Rico tax-free closed-end mutual funds brought putative class action against broker-dealers, investment advisors, administrator of funds, and officers of one of the broker-dealers, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract.

Defendants filed motions to dismiss for lack of subject matter jurisdiction and failure to state a claim.

The District Court held that:

- Investors had Article III standing to assert claims on behalf of putative class;
- Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against same broker-dealer;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against different broker-dealer;
- Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied to claims alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing;
- PRUSA's two-year statute of repose did not apply to claims alleging breach of an express contractual provision imposing an obligation to conduct a suitability analysis;
- Claims alleging breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty, failed to plead fraud with sufficient particularity; and
- Only those investors whose contracts contained a provision obligating defendants to perform a suitability analysis sufficiently stated a claim for breach of contract.

Investors in Puerto Rico tax-free closed-end mutual funds had Article III standing to assert breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims against broker-dealers, investment advisors, and fund administrator, on behalf of putative class of investors in Puerto Rico tax-free closed-end mutual funds administered by same party. While not all investors had invested in same funds, the underlying allegations regarding defendants' misconduct applied to all of the funds, and the funds were all alleged to be structured the same way and to hold the same types of assets by the same defendants.

Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims, in putative class action alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims, regardless of whether the claims sounded in fraud, because no misrepresentations were alleged to have been made in connection with the purchase or sale of covered securities.

Investors discovered or reasonably should have discovered broker-dealers' alleged breach of their

fiduciary duty, triggering Puerto Rico's one-year limitations period for tort claims, when reports of lawsuits and administrative proceedings against broker-dealer, which were probative of alleged breach of fiduciary duty, were publicized.

Publicized reports of lawsuits and administrative proceedings against broker-dealer, and accompanying media coverage, did not put investors on notice of their breach of fiduciary duty claims against a second broker-dealer, as would trigger Puerto Rico's one-year limitations period for tort claims, where second broker-dealer was not explicitly named in reports or media coverage.

Investors' claims against broker-dealer, alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, sounded in fraud, rather than mere negligence, and thus Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied, where the main thrust of the claims was that broker-dealer misrepresented the risks involved in investing in Puerto Rico tax-free closed-end mutual funds and pushed investor to invest in the funds in order "to line their own pockets," without disclosing all of their conflicts of interest and without assessing the suitability of the investments for their clients, when broker-dealer knew or should have known how risky the funds were because it helped underwrite the bonds that comprised the bulk of the funds.

Investors' breach of contract claims against broker-dealers, which were premised on an alleged breach of an express provision imposing an obligation to conduct a suitability analysis, were not subject to Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose, as such breach of contract claims did not rely on allegations of fraudulent conduct.

General allegations that broker-dealer pushed investors to invest in Puerto Rico tax-free closed-end mutual funds, by representing that they were safe when they were actually risky, did not plead fraud with sufficient particularity, as required to state claims of breach of fiduciary duty and breach of implied covenant of good faith; allegations did not include the required who/what/where/why/when of the alleged misrepresentations or omissions.

Blanket allegations that broker-dealer and fund manager breached implied covenant of good faith and fair dealing, based on misrepresentations and omissions, did not satisfy rule requiring fraud be pled with particularity; investors failed to attribute the purported misrepresentations and omissions to any particular defendant, and it was unclear as to when, where, or by whom the alleged misrepresentations or omissions were purportedly made.

Under Puerto Rico law, investor whose contract did not contain a provision obligating broker-dealer to perform a suitability analysis failed to state a claim for breach of contract based on broker-dealer's failure to conduct such analysis.

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