
FORUM SELECTION - NEVADA

Goldman, Sachs & Co. v. City of Reno

United States District Court, D. Nevada - January 4, 2017 - Slip Copy - 2017 WL 58579

On February 10, 2012, the City of Reno filed a breach of fiduciary duty claim against Goldman Sachs with the Financial Industry Regulatory Authority (FINRA), alleging wrongdoing with respect to Auction Rate Securities (ARS).

Goldman then sued Reno in District Court, seeking a declaratory judgment that FINRA was an inappropriate forum for Reno's claims based on the mandatory forum selection clauses in the Broker–Dealer Agreements.

The District Court denied Goldman's motion for a preliminary injunction of the FINRA arbitration proceedings. Goldman appealed. The Court of Appeals reversed, holding that the forum selection clauses superseded Reno's right to FINRA arbitration.

On remand, Goldman asserted a counterclaim for contract damages based on Reno's alleged breach of the forum selection clauses in the Broker–Dealer Agreements.

The District Court dismissed Goldman's counterclaim, holding that:

- Reno's initiation of FINRA arbitration was a breach of the Broker–Dealer Agreements' forum selection clauses; and
- Allowing Goldman to claim attorneys' fees as contract damages would contravene the American Rule.

"Under the general rule, attorneys' fees and disbursements are incidents of litigation and the prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties or by statute or court rule."

"Allowing [a party] to collect attorney's fees as damages simply by characterizing them as damages based on a breach of contract would create an exception that would swallow the American Rule, as it is well-established that a party cannot recover attorney's fees from a contract-breaching opponent, even where the breach makes litigation eminently foreseeable."

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