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ARBITRATION - NEVADA

BOKF, NA v. Estes

United States District Court, D. Nevada - March 2, 2018 - F.Supp.3d - 2018 WL 1145798

Bank brought action against holders of bonds for which its corporate trust department served as indenture trustee seeking injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration.

Bank moved for preliminary injunction, and bondholders cross-moved for preliminary injunction.

The District Court held that:

- Bank failed to show it was likely to succeed on the merits;
- Bank failed to show it would suffer irreparable harm absent preliminary injunction;
- Balance of equities did not weigh in bank's favor;
- Preliminary injunction for bank was not in public's interest; but
- District Court would also not grant bondholders a preliminary injunction.

Bank failed to show it was likely to succeed on the merits of its complaint, and thus was not entitled to preliminary injunction in action against holders of bonds for which its corporate trust department served as indenture trustee seeking injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration; bondholders were customers under FINRA arbitration rule allowing FINRA members' customers to request arbitration, and only evidence bank submitted in support of claim that it was not subject to FINRA arbitration was self-serving affidavit, while bondholders proffered significant contrary evidence including multitude of Securities and Exchange Commission (SEC) complains and consent orders.

Holders of bonds for which bank's corporate trust department served as indenture trustee had investment relationship with bank to qualify as customers under Financial Industry Regulatory Authority (FINRA) arbitration rule allowing FINRA members' customers to request arbitration, where bank was party responsible for paying bondholders on their investments and providing them information about their investments, bondholders were beneficiaries of the indenture contracts, bank as trustee owed fiduciary duties to administer bond proceeds on bondholders' behalf, and for its role as trustee bank was paid fees for its services from bondholder's investment proceeds.

Bank failed to show it would suffer irreparable harm absent preliminary injunction, and thus was not entitled to such injunction in action against holders of bonds for which its corporate trust department served as indenture trustee seeking injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration, even if bank would be forced to spend time, money, and resources to defend itself in arbitration absent injunction, where bank had not established that FINRA lacked jurisdiction over underlying dispute of bank and bondholders.

Balance of equities did not weigh in bank's favor, and thus bank was not entitled to preliminary injunction in action against holders of bonds for which its corporate trust department served as

indenture trustee seeking injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration, where bank had not established it was likely to succeed on the merits of its complaint; enjoining arbitration without any legal basis would unfairly and prejudicially impair bondholders from prosecuting their claims in their chosen forum.

Preliminary injunction was not in public's interest, and thus bank was not entitled to preliminary injunction in action against holders of bonds for which its corporate trust department served as indenture trustee seeking injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration, where bank had not sufficiently established that FINRA rules were inapplicable; in such a situation, public interest favored ensuring that investors were protected under federal securities regulations like those enacted by FINRA.

District Court would deny cross-motion for preliminary injunction of holders of bonds for which bank's corporate trust department served as indenture trustee in bank's action for injunctive relief and declaratory judgment that it was not subject to Financial Industry Regulatory Authority (FINRA) arbitration, where Court had denied bank's motion for preliminary injunction, and cross-motion requested affirmative relief that went beyond protecting status quo which Court found unnecessary to grant at that time.

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