Bond Case Briefs

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Court Affirms SEC Win Against Muni Adviser in Fee-Splitting Case: Norton Rose Fulbright

A unanimous Ninth Circuit panel affirmed summary judgment and all remedies against a municipal advisory firm and its principal for entering a prohibited fee-splitting arrangement with a bond underwriter in violation of MSRB rules.

A Ninth Circuit three-judge panel affirmed a lower court's holding that the muni advisor's agreement with the underwriter – splitting the underwriter's fee for each referred client – constituted an illegal fee-splitting arrangement under MSRB Rule G-42 ("Duties of Non-Solicitor Municipal Advisors"). Under Rule G-42(a)(ii), a municipal advisor is bound by a fiduciary duty to its client. In addition, Rule G-42(b)(i)(B) requires the advisor to disclose all material conflicts of interest, including any payments made to secure or maintain an engagement to provide municipal advisory services to that client. The panel held that Rule G-42(e)(1)(D) broadly prohibits any fee-splitting arrangement between a municipal advisor and an underwriter regardless of payment structure. The arrangement created a self-interested incentive to steer clients toward a particular underwriter – precisely the conflict the rule targets.

The panel upheld disgorgement of fees received for unregistered advisory services.

Norton Rose Fulbright US LLP

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