

# **Bond Case Briefs**

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## **LITIGATION - AUCTION RATE SECURITIES - MARYLAND**

### **Mayor and City Council of Baltimore, Md. v. Citigroup, Inc.**

**United States Court of Appeals, Second Circuit - March 5, 2013 - F.3d - 2013 WL 791397**

*City fails to establish requisite elements of an antitrust conspiracy in connection with the collapse of the ARS market.*

City's mayor and council brought putative class action against banks and various financial institutions, alleging conspiracy to stop buying auction rate securities for their own proprietary accounts, in violation of the Sherman Act, which then triggered collapse of market for such securities. The United States District Court for the Southern District of New York granted defendants' motion to dismiss. Plaintiffs appealed.

The U.S. Court of Appeals held that:

- Plaintiffs pled only parallel conduct on part of defendants, with no common motive to conspire, and
- Plaintiffs failed to allege "high level" of inter-firm communications.

In the absence of "smoking gun" proving the existence of an antitrust conspiracy, the complaint may, in order to survive a motion to dismiss, present circumstantial facts supporting the inference of a conspiracy. This circumstantial evidence might include the existence of a horizontal agreement based on conscious parallelism. When such interdependent conduct is accompanied by circumstantial evidence and additional factors, including a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of inter-firm communications, will help a complaint survive a motion to dismiss.

City's mayor and council pled only parallel conduct on part of banks and various other financial institutions that had no common motive to conspire. Although defendants withdrew from the market "in a virtually simultaneous manner," plaintiffs' allegations were consistent with finding that market was already collapsing when defendants withdrew, so that defendants acted rationally and in anticipation of similar actions taken by competitors.