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Municipality of Bremanger v. Citigroup Global Markets Inc.

United States District Court, S.D. New York - March 28, 2013 - Slip Copy - 2013 WL 1294615

Court declines to hold Citigroup liable for losses sustained by Norwegian municipalities that invested in a Citi fund, finding that Norwegian broker neglected to convey risk disclosures provided by Citi.

The Citi Tender Option Bond Fund ("Fund") is a hedge fund managed by Citigroup. The Fund purports to engage in a municipal bond arbitrage strategy by investing in long-term municipal bonds using funds obtained from the issuance of short-term tender option bonds. The Fund purported to capture the profit, or "positive carry," generated by the difference between long-term municipal bond rates and short-term lending rates. The Fund also entered into LIBOR interest rate swaps purportedly in an attempt to hedge the risk of its investments against adverse changes in municipal bond values as a result of interest rate movements.

A Citi affiliate and a Norwegian securities firm ("Terra") entered into a distribution agreement under which Terra was authorized to sell fund-linked notes issued by Banque AIG that provided indirect exposure to the Fund (the "Notes"). Citi's presentations and marketing materials provided to Terra contained extensive disclosures regarding risk.

Seven Norwegian municipalities, acting through Terra, invested in the Notes. In August 2007, the Fund and the Notes all dropped in value, tripping certain redemption triggers.

The Norwegian Financial Supervisory Authority subsequently launched an investigation into Terra regarding its sale of securities, including the sale of the Notes to the Municipalities. Terra admitted full responsibility for the misinformation which was presented to the Municipalities. Terra's license was revoked and it went bankrupt.

Citi then began the process of unwinding and redeeming the Notes.

The Municipalities brought suit against Citi alleging fraud and negligent misrepresentation under New York common law.

The Court granted Citi summary judgment because the Municipalities could not set forth a theory of reliance supported by any facts. The Municipalities could not demonstrate direct reliance, because Citi did not directly communicate the alleged misrepresentations to them.

The Court also found that the Municipalities failed to set forth a theory of causation supported by any facts. The Municipalities could not demonstrate that Citi's alleged misrepresentations and omissions "were the direct and proximate cause of the losses claimed." Terra's decision to remove key risk disclosures contained in the Citi presentation and to make oral representations that contradicted certain of those risk disclosures constituted an "intervening act" that was not "a normal or foreseeable consequence of the situation created" by Citi's acts.

