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AUCTION RATE SECURITIES - NEVADA

Richardson v. Oppenheimer & Co. Inc.

United States District Court, D. Nevada - May 10, 2013 - Slip Copy - Fed. Sec. L. Rep. P 97, 417

Investor brought 10b-5 action against Oppenheimer following the collapse of the ARS market.

Oppenheimer moved to dismiss, arguing that plaintiff failed to plead facts with sufficient particularity to satisfy the heightened pleading standards under Fed.R.Civ.P. 9(b) and the Private Securities Litigation Reform Act (PSLRA).

The court agreed that plaintiff's allegations lack the required specificity to put defendants on notice of the particular misconduct. First, taken in context, plaintiff's allegations that Oppenheimer marketed and represented ARS as safe, secure, like cash, or liquid appear to be the conclusions plaintiff drew from specific statements, rather than the statements themselves. Further, when plaintiff alleged that investment advisor and Oppenheimer "continued to represent" that ARS were safe it is unclear whether plaintiff was referencing affirmative statements, his continued understanding that ARS were safe based on defendants' past and current statements, the defendants' failure to correct past statements, or simply the fact that defendants continued to transact in ARS on plaintiff's behalf based on plaintiff's communicated desire for liquid investment. As specific statements are lacking, it was impossible for the court to analyze their alleged falsity. More importantly, the lack of specificity failed to meet the PSLRA's requirement to "specify each statement alleged to have been misleading."

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