

Bond Case Briefs

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ARS - NEW YORK

People ex rel. Cuomo v. Charles Schwab & Co., Inc.

Supreme Court, Appellate Division, First Department, New York - August 27, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 05722

Attorney General brought enforcement action against registered securities broker-dealer, alleging broker-dealer engaged in fraudulent and deceptive conduct in the sale of auction rate securities (ARS) to the investing public. Broker-dealer moved to dismiss for failure to state a claim. The Supreme Court granted motion. Attorney General appealed.

The Supreme Court, Appellate Division, held that:

- Attorney General sufficiently stated a claim under Martin Act, and
- Attorney General sufficiently pled a nexus with New York, as required to state claims under Martin Act.

Attorney General's allegation, in enforcement action, that brokers, employees and managers of registered securities broker-dealer misled customers by variously representing ARS as "safe, low risk, highly liquid investments, or cash management alternatives, or similar to money market funds" without disclosing that the liquidity of these instruments was dependent on the successful operation of the Dutch auctions, was sufficient to state claims under Martin Act.

Attorney General's allegation, in enforcement action, that ARS sold by registered securities broker-dealer to its customers were underwritten and/or managed by New York-based financial institutions, that broker-dealer transmitted its customers' buy, sell and hold orders to the trading desks of financial institutions located in New York and that the substantial majority of the auctions of the ARS were held in New York, sufficiently pled a nexus with New York, as required to state claims under the Martin Act, regardless of some of the customers were not residents of New York.