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SEC Judge Dismisses Commission's Securities Fraud Suit Against UBS Executives.

The Securities and Exchange Commission's chief administrative law judge has dismissed securities fraud charges the commission filed against two UBS Financial Services, Inc. of Puerto Rico executives for allegedly misleading mutual fund investors.

Brenda P. Murray ruled in an initial decision Tuesday that the SEC failed to adequately prove its case against Miguel Ferrer, chairman of the firm, and Carlos Ortiz, head of its capital markets trading desk.

The pair was charged in May 2012, along with their firm, with concealing a liquidity crisis and masking UBS' control of the secondary market for 23 proprietary closed-end mutual funds. UBS previously agreed to settle the SEC charges for \$26.6 million.

The SEC alleged that the firm knew about a significant "supply and demand imbalance" and discussed the "weak secondary market" internally, but made misleading statements to investors and increased its own holdings to keep prices up and maintain the appearance of a stable market.

"This case is unusual, Murray wrote in her initial decision. "The facts are undisputed and the witnesses were for the most part forthcoming and credible. The issue is a serious difference of opinion about the level of information required to be provided to investors about a policy decision by the parent company and whether Ferrer's and Ortiz's actions in response to that policy decision violated the antifraud provisions of the securities statutes."

The SEC complaint rested heavily on whether Murray found that UBS concealed that it was reducing fund prices to sell inventory, and whether Ferrer and Ortiz's communications with UBS financial advisors claiming that the fund shares were priced according to market forces represented a violation of federal securities laws.

Murray also considered allegedly misleading statements and prices published in a Puerto Rican newspaper and statements Ferrer and Ortiz made at investor conferences. The SEC would have to show that the pair made untrue statements with the intent to deceive or with negligence. Murray concluded that the SEC did not meet that standard.

"There is not one bit of evidence that UBS PR, Ferrer, and Ortiz engaged in a course of conduct to mislead or a scheme to mislead investors by hiding or disguising the fact that UBS PR was in a period when it was not buying fund shares and was reducing fund share prices," Murray wrote. "The trading desk did not, and could not, keep its activities secret. FAs knew what the trading desk was doing through the inventory sheets, in phone conversations with the trading desk, in weekly sales meetings held in the branches, and communicated this information to customers."

Murray said she found the SEC's charge that Ferrer's and Ortiz's communications with FAs were fraudulent "unpersuasive."

“The fund situation was odd compared to other securities in other markets, but the preponderance of the evidence is that in 2008-2009, there was a solid factual basis which showed the pricing of fund shares to be proper and legitimate,” she wrote. “For these reasons, I do not find that the preponderance of the evidence supports the division’s allegation that UBS PR, Ferrer, and Ortiz engaged in a fraudulent course of conduct or a scheme to mislead customers and FAs when they represented the funds as profitable, safe, and stable investments and that supply and demand were responsible for fund prices.”

Melvin A. Brosterman, with Stroock, Stroock & Levan in New York, which is representing Ferrer, said, “We are delighted by the decisionIt was thorough and thoughtful and [Murray] she was very careful to review all of the evidence.”

Ortiz’s lawyers could not immediately comment.

The trial was three weeks. The SEC staff has 21 days to appeal the decision to the full commission. If they don’t appeal, Murray’s initial decision becomes final and binding.

Two law firms have filed arbitration cases with the Financial Industry Regulatory Authority claiming \$500 million in losses on their UBS PR Investments, and UBS has also done an internal investigation.

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BY KYLE GLAZIER