Bond Case Briefs

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SEC Hits MAs, Execs With $200,000 Fine in First of a Kind Case.

WASHINGTON – In a first of a kind case, two California-based municipal advisory firms and their executives agreed to pay a total of $200,000 to settle Securities and Exchange Commission charges that they used deceptive business practices in dealing with five school districts.

This is the first enforcement action the SEC has taken under the municipal advisor antifraud provisions of the Dodd-Frank Act.

School Business Consulting, Inc. (SBIC) was censured and fined a $30,000 while its president and sole employee Terrance Bradley was barred from acting as a municipal advisor and agreed to pay $20,000. The other MA firm, Keygent LLC, agreed to a censure and penalty of $100,000 and two of its managing directors, Anthony Hsieh and Chet Wang agreed to pay penalties of $30,000 and $20,000, respectively.

The SEC found that while School Business Consulting, through Bradley, was advising school districts about hiring financial professionals, it was simultaneously retained by Keygent LLC, which was seeking MA business from the school districts. During that relationship, Bradley improperly provided confidential information about the hiring processes of five school districts that were his clients to Keygent, Hsieh, and Wang, which may have led to the districts to hire Keygent as a municipal advisor.

The SEC found Bradley verbally disclosed his relationship with Keygent to the school district officials and Keygent's contracts with the school districts also disclosed that Bradley was on its advisory board, but the districts were not aware Bradley was sharing the confidential information.

The defendants settled the charges without admitting or denying the charges.

A spokesperson for Keygent said in a statement that Keygent "did not ask for this information, nor did [it] change [its] proposals or fees based on the information." However, the spokesperson said the firm acknowledges that mistakes were made and is taking responsibility.

"In addition to complying fully with the SEC's order, we have taken proactive steps to improve our compliance program and to ensure that all business practices are entirely in line with the SEC's regulations and best professional and ethical standards," the spokesperson said.

LeeAnn Gaunt, chief of the SEC enforcement division's public finance abuse unit, said municipal entities "should be able to trust that their selection of a municipal advisor is untainted by any breach of fiduciary duty."

The events leading up to the enforcement action began in September 2010, when Keygent retained SBCI to serve on its advisory board for $2,500 a month. Bradley had numerous contacts in school districts across California and, through the relationship, Keygent gained access to those contacts with the possibility of introductions to officials in districts that Hsieh and Wang had identified as having refinancing opportunities, the SEC found.

Many of the school districts that Bradley solicited on Keygent's behalf were SBCI's own clients, the SEC said in its documents.

Bradley drafted, and assisted in drafting, the request for qualification documents that the five school districts used in their hiring process. Each of the school districts directed candidates not to make contact with anyone other than specified officials in an effort to make sure the candidates were on an even footing, the SEC found.

Despite that direction, Bradley gave Keygent information like advanced copies of draft interview questions and details of competitors' proposals, sometimes including competitors' fees, the SEC said. He also had discussions with Keygent about how to answer interview questions and suggested topics to bring up during the interviews.

Although Bradley recused himself from four of the five school districts' interview processes, citing a conflict of interest, he never informed the districts he was sharing the information and continued to recommend Keygent to the districts, according to the SEC. The one process in which he participated was at the discretion of the district after Bradley informed the officials of his believed conflict of interest.

The SEC found that SBCI violated Section 15B(a)(1)(B) of the Securities and Exchange Act because it was soliciting for Keygent without being registered as a municipal advisor. The SEC said Bradley, as the firm's sole employee, caused the violation.

SBCI and Bradley also violated Section 15B(c)(1) of the Exchange Act because they did not act consistently with their fiduciary duty to its client. Additionally, they violated Municipal Securities Rulemaking Board Rule G-17 on fair dealing and Section 15B(a)(5), which prohibits MAs from engaging in any fraudulent, deceptive, or manipulative act or practice, while soliciting a municipal entity.

The SEC found Keygent and Hsieh also violated Section 15B(c)(1) and MSRB Rule G-17. The commission also said Keygent, Hsieh, and Wang were a cause of SBCI's and Bradley's violations of Sections 15B(c)(1), 15B(a)(5), and Rule G-17.

The Bond Buyer

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June 13, 2016