

Bond Case Briefs

Municipal Finance Law Since 1971

How Ramapo, N.Y. and its Attorney Are Disputing SEC Fraud Charges.

WASHINGTON - The town of Ramapo, N.Y. and one of four individuals charged with securities fraud by the Securities and Exchange Commission for misleading muni bond investors are disputing the charges and urging a federal judge to dismiss the case.

They are asking for a jury trial if the judge fails to dismiss the SEC's complaint.

Ramapo and town attorney Michael Klein detailed their defenses in recently filed separate answers to the SEC's April 14 complaint filed in the U.S. District Court for the Southern District of New York in Manhattan.

They argue, among other things, that they relied on the advice of others. Ramapo relied on advice from accounting and auditor professionals as well as legal counsel while Klein relied on legal counsel and the advice of the town's finance department and independent auditors, their lawyers said.

They also argue that the charges should be dismissed because nobody has suffered any loss or damage as a result of the alleged actions.

The SEC alleges that Ramapo, the Ramapo Local Development Corp., and the four individuals fraudulently hid the town's financial troubles in bond documents for 16 muni securities offerings made between September 2010 and September 2015.

The town not only wanted the town's financial picture to look good, but was also trying to prevent further political fallout from a minor league baseball stadium project that did not have Ramapo citizens' support, according to the SEC.

Fourteen of the offerings were from the town and two others were from the RLDC but were guaranteed by the town and related to the baseball stadium. The commission charged the town and each of the individual defendants with either knowingly or negligently engaging in the fraud.

The town faced deficits ranging between \$250,000 and \$14 million between the town's fiscal years 2009 and 2014, the SEC alleges. But the defendants, through a series of fabricated receivables over that time period, were able to make it look like the fund actually had positive balances of between \$1.4 million and \$4.1 million, according to the commission.

The commission is charging the town and each of the individual defendants with either knowingly or negligently engaging in the fraud. Both the town and Klein are also charged with aiding and abetting violations by the bond-issuing RLDC.

The SEC is seeking an unspecified amount of civil penalties and has asked the court to bar each of the named individuals from the muni market.

The commission also has asked the court, through various undertakings and injunctions, to require Ramapo and the RLDC to retain for five years a court-appointed independent consultant, an independent auditing firm acceptable to the commission staff, and, if either want to issue munis, an independent disclosure counsel also acceptable to the staff.

Ramapo and Klein claim the SEC failed to state a claim or provide particular evidence of any material misstatements or omissions that would support the charges. Ramapo's lawyer argues that the SEC's allegations "are improperly vague, ambiguous ... confusing, and omit critical facts."

Their lawyers contend their clients acted within the bounds of federal and state laws and did so "in good faith and in a commercially reasonable manner."

Ramapo's lawyer also asserts the SEC's claims for injunctive relief should be barred because the "adverse effects of an injunction far outweigh any benefit from an injunction."

Klein contends no investor could have reasonably relied upon his alleged misrepresentations or omissions, if they exist. He also says that any amount that the SEC claims the defendants owe is attributable to the actions of the other defendants and not to him.

In addition, Klein's lawyer claims the court does not have personal jurisdiction over his client. Klein lives in Airmont, N.Y., approximately an hour away from the New York City.

Both defendants say the SEC should also be barred from bringing the charges by the statute of limitations, usually six years for fraud charges according to Klein's lawyer. They say they reserve their right to bring up future defenses as may be appropriate. Ramapo, through its lawyers, says it maintains the right to adopt and assert defenses used by co-defendants.

The town and Klein are the only defendants to have filed an answer to the SEC's charges. The three other individuals facing charges are: Christopher St. Lawrence, supervisor and director of finance for Ramapo; Aaron Troodler, the former executive director of the RLDC; and Nathan Oberman, the town's deputy finance director. Lawyers for the other defendants either could not be reached or did not have a set date by which an answer would be filed.

The U.S. District Attorney for the Southern District of New York, in a connected action, successfully indicted St. Lawrence and Troodler on 22 counts of wire fraud, securities fraud, and conspiracy to commit securities fraud.

The Bond Buyer

By Jack Casey

July 21, 2016