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Watkins Development, LLC v. Hosemann

Court of Appeals of Mississippi - June 28, 2016 - So.3d - 2016 WL 3512479

In April 2012, Watkins Development LLC defaulted on the payment of a loan of taxable revenue bond proceeds issued to Retro Metro LLC by the Mississippi Business Finance Corporation ("MBFC").

Pursuant to its statutory authority to enforce and regulate the Mississippi Securities Act and the sale of securities in Mississippi, the Secretary of State issued a Notice of Intent to Impose Administrative Penalty and Order Restitution and Disgorgement of Profit ("Notice of Intent") to Watkins.

Watkins requested an administrative hearing in response to the Notice of Intent, and the administrative hearing was held on October 29-30, 2013. The hearing officer ultimately found that Watkins engaged in four violations of the Mississippi Securities Act.

The Secretary of State adopted the findings and conclusions of the hearing officer and the Secretary of State then issued a Final Order setting forth Watkins's violations of the Mississippi Securities Act and the penalties and remedies thus imposed.

Watkins appealed to the chancery court for judicial review. The chancellor affirmed in part the Secretary of State's Final Order, by affirming only three of the findings of violations of the Mississippi Securities Act. The chancellor set aside the Secretary of State's finding that Watkins violated the Mississippi Securities Act by failing to disclose in the Private Placement Memorandum ("PPM"), Loan Agreement, and bond documents the February 21, 2011 Development Agreement ("Development Agreement"), which contained Retro Metro's financial obligation to Watkins Development. The chancellor held that this finding exceeded the authority of the Secretary of State.

The Court of Appeals upheld the chancery court's finding of three violations, and reinstated the violation of the Mississippi Securities Act. The court found that the Secretary of State possessed statutory authority to render these findings and to impose the respective remedies.