Bond Case Briefs

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In a First Federal Jury Trial, Miami, Boudreaux Found Guilty.

WASHINGTON – In a first-of-a-kind verdict, a Miami jury found on Wednesday that Miami and its former budget director, Michael Boudreaux, were guilty of securities fraud for faulty disclosures in connection with three 2009 municipal bond offerings.

The jury decision in the case that was pending in the U.S. District Court for the Southern District of Florida in Miami comes after a trial of just over two weeks where the Securities and Exchange Commission faced off with lawyers for Miami and Boudreaux over the fraud charges.

Andrew Ceresney, the SEC's enforcement director, said the commission is very pleased by the ruling.

"This was the first federal jury trial by the SEC against a municipality or one of its officers for violations of the federal securities laws," Ceresney said. "We will continue to hold municipalities and their officers accountable, including through trials, if they engage in financial fraud or other conduct that violates the federal securities laws."

Benedict Kuehne, Boudreaux's lawyer, said he expects to appeal the jury decision, according to the Miami Herald. Kuehne and the lawyers representing Miami could not be reached for comment at the time of publication.

The SEC will now have to file a motion seeking remedies from the case, including an injunction barring Miami and Boudreaux from future securities law violations and financial penalties. The SEC has also asked the judge for an order that would command Miami to comply with a prior cease-an--desist order from 2003 that resulted from an earlier securities fraud case.

"Based on the jury's findings, the SEC anticipates that the federal district court judge will also enter a finding that the city of Miami violated [the] prior SEC order, imposed after a fully litigated administrative trial, prohibiting it from engaging in fraudulent conduct," Ceresney said.

The jury began deliberating Wednesday morning and returned with a verdict only a few hours later. It found that Miami was guilty on all four counts that the SEC sought, which were based in fraud provisions contained in Section 17(a) of the Securities Exchange Act of 1933 and Section 10b-5 of the Securities and Exchange Act of 1934. Boudreaux was found guilty on all counts except for the first, which was based in Section 17(a)(1) and would have required the jury to find that Boudreaux "used a device, scheme, or artifice to defraud in connection with the offer to sell or sale of any securities."

Both Miami and Boudreaux had argued that they relied on auditors in connection with the alleged fraud and misrepresentations. The jury threw out that defense, finding that neither defendant completely disclosed the facts about the conduct at issue to the auditors, sought advice from the auditors about their specific course of action, received advice from the auditors about that course of action, or relied on and followed the advice in good faith.

The SEC first filed its complaint 2013 alleging that starting in 2008, Miami and Boudreaux misled investors about inter-fund transfers that were designed to cover up a growing general fund deficit in its fiscal years 2007 and 2008. The SEC said the misleading transfers were also meant to get more favorable bond ratings for offerings that occurred in May, July, and December 2009.

The alleged omissions and misrepresentations were made in: bond offering documents for the three offerings in 2009 that totaled $153.5 million; presentations to bond rating agencies; and the city's comprehensive annual financial reports (CAFRs) for fiscal years 2007 and 2008, according to the SEC.

The city disclosed the inter-fund transfers in each of their CAFRs and official statements, but, according to the SEC, the defendants said the transfers contained money that was not expended and was being returned to the general fund. In reality, that money had already been pledged to several ongoing capital projects and some of it was restricted by city law for designated purposes and not the general fund, the SEC said. Thus, the funds that were transferred should not have been considered unallocated, the commission said.

Lawyers for Miami and Boudreaux had argued that the commission could not base its claims on the city's 2007 CAFR, which identified a $13.1 million transfer from the capital projects fund, because it was not incorporated into any of the three 2009 bond offerings cited in the complaint. They also argued that the 2008 CAFR did not have any misrepresentations because it provided information about the purpose of each of the three inter-fund transfers that took place in 2008. Those three transfers amounted to roughly $34 million and were made from the city's capital projects fund and a special revenue fund to bolster the general fund.

Additionally, the lawyers argued that the SEC was trying to hold their clients, who they say followed Governmental Accounting Standards Board and other recognized requirements, to a higher standard that does not exist. They also argued the rating agencies that eventually made determinations based on the information the city provided took a deeper look at Miami's finances than just looking at the fund transfers.

The Bond Buyer

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