

Bond Case Briefs

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SEC Charges Municipal Advisor with Breach of Fiduciary Duty.

The SEC [charged](#) a municipal advisor with breaching its fiduciary duty by failing to provide its promised services to a public library client.

According to the complaint, filed in the Northern District of Illinois, Comer Capital Group, LLC (“Comer”) did not provide its promised level of advisory services to its client, but instead effectively left all decisions regarding the sale and pricing of the client’s bonds to the underwriter. Allegedly, the underwriter did not have adequate experience to lead an underwriting for this type, and the SEC further stated that the underwriter made multiple mistakes at the client’s expense, including (i) making insufficient marketing efforts, (ii) failing to contact appropriate buyers for the bonds and (iii) mismanaging the order period for the sale of the bonds. These actions ultimately led to the bonds being sold at an unfair price that will require the issuer to pay at least \$500,000 in additional interest over the life of the bonds, according to the SEC.

The SEC is seeking (i) a Court determination of the alleged violations by the municipal adviser, (ii) permanent injunction from engaging in violations of Exchange Act Section 15B(c)(1), (iii) disgorgement of ill-gotten gains and (iv) civil money penalties.

In a related action, the underwriter [settled](#) SEC charges for violating the MSRB’s “fair dealing” rule (MSRB Rule G-17) and SEA Section 15B(c)(1) for marketing and selling failures pursuant to its role as the sole underwriter of the bond offering. The underwriter agreed to pay a civil penalty of \$50,000 to the SEC, of which \$12,500 will be transferred to the MSRB.

Commentary / Steven Lofchie

This is an interesting case, particularly in light of the SEC’s recent interpretation regarding the duties of an investment adviser to its client, as it is one of the few cases that turns upon the existence of a duty of care, in addition to a duty of loyalty (although both failures are alleged to be present in this case).

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