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Massachusetts High Court Adopts Broad Reading of Commonwealth's Public Disclosure Bar.

In a May 2021 decision, the Massachusetts Supreme Judicial Court ("SJC") affirmed the dismissal of a Massachusetts False Claims Act ("MFCA") suit on the grounds that it was barred by the MFCA's public disclosure bar. The suit, brought by relator Johan Rosenberg ("Relator"), alleged that Defendant banks conspired to engage in fraud in connection with resetting interest rates for certain municipal bonds known as "variable rate debt obligations" or VRDOs.

Specifically, Relator alleged that Defendants inflated interest rates by falsely representing to municipal issuers in the Commonwealth of Massachusetts that they would actively and individually reset VRDO rates, but instead mechanically reset rates without considering the individual characteristics of the VRDOs. Relator further alleged that Defendants violated their obligations to municipal issuers in the Commonwealth by failing to market these VRDOs at the lowest possible rate and by collecting millions of dollars in fees as liquidity providers and for remarketing services that Defendants did not provide. Relator claimed that he had uncovered the Defendants' alleged "fraud" through a "forensic analysis" of interest rate data published on the Electronic Municipal Market Access ("EMMA") website. The Business Litigation Session of the Massachusetts Superior Court granted Defendants' motion to dismiss in 2019, Relator appealed, and the SJC transferred the case sua sponte from the Appeals Court.

In affirming Defendants' motion to dismiss, the SJC held that Relator's claims satisfied each prong of the MFCA's public disclosure bar. First, the critical elements of the purported fraudulent transactions were in the public domain because both the purported source of Defendants' duty and the data on which the Relator relied to identify the purported fraud were publicly disclosed. Second, the SJC found that the information was publicly disclosed through the MFCA's statutorily enumerated sources, namely Massachusetts "reports" and the "news media." Specifically, the claimed source of Defendants' duty to the Commonwealth was publicly available through remarketing agreements, which constitute Massachusetts "reports" under the MFCA. And EMMA, the financial website from which the Relator retrieved the data on which he conducted his analysis, constitutes "news media" under the MFCA. The SJC declined to adopt Relator's restrictive view of "news media," and found that the term "is broad enough to encompass the many ways in which people in the modern world obtain financial news, including from publicly available websites on the Internet." Finally, the SJC found the public disclosure included "substantially the same allegations or transactions as alleged" in the complaint.

The SJC declined to accept Relator's argument that he should qualify as an "original source," such that the MFCA's public disclosure bar would not apply. The SJC found that the original source exception is narrow and that in this case Relator's analysis depended on publicly available EMMA data and Relator did not "materially add" to the publicly disclosed information through his allegation that Defendants engaged in "robo-resetting."

Prior to this decision, there had been limited case law interpreting the MFCA's provisions, including its public disclosure bar and original source exception. The SJC's decision provides precedent for a

broad interpretation of “news media” under the MFCA’s public disclosure bar, and a limited scope of the MFCA’s original source exception.

A copy of the Court’s opinion can be found [here](#).

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