

Bond Case Briefs

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SEC Charges Rochester, NY, and City's Former Executives and Municipal Advisor with Misleading Investors.

City sold \$119 million of bonds to investors without disclosing financial distress

Washington D.C., June 14, 2022 — The Securities and Exchange Commission today charged the City of Rochester, New York, its former finance director Rosiland Brooks-Harris, and former Rochester City School District CFO Everton Sewell with misleading investors in a \$119 million bond offering. The SEC also charged Rochester's municipal advisor Capital Markets Advisors, LLC (CMA) and its principal Richard Ganci with misleading investors and breaching their fiduciary duty to Rochester. CMA, Ganci and CMA co-principal Richard Tortora were also charged with failing to disclose conflicts to municipal clients.

The SEC alleges that in 2019 the defendants misled investors with bond offering documents that included outdated financial statements for the Rochester City School District and did not indicate that the district was experiencing financial distress due to overspending on teacher salaries. Sewell was allegedly aware that the district was facing at least a \$25 million budget shortfall, but he misled a credit rating agency regarding the magnitude of the expected shortfall. The SEC alleges that Brooks-Harris and Ganci were also aware of the Rochester City School District's increased financial distress, including overspending on teacher salaries, yet they made no effort to inquire further about the District's financial condition prior to the bond offering, nor did they inform investors of the risks that the overspending posed to the district's finances. In September 2019, 42 days after the offering, the district's auditors revealed that the district had overspent its budget by nearly \$30 million, resulting in a downgrade of the city's debt rating and requiring the intervention of the state of New York.

The SEC's complaint also alleges that CMA, Ganci and Tortora failed to disclose to nearly 200 municipal clients that CMA had material conflicts of interest arising from its compensation arrangements. In many cases, CMA, Ganci and Tortora falsely stated that CMA had no undisclosed material conflicts of interest.

"We allege that the Rochester City School District's financial health was important to investors, who were counting on the district as the expected source of repayment," said LeeAnn Ghazil Gaunt, Chief of the Enforcement Division's Public Finance Abuse Unit. "As described in our complaint, these defendants failed to inform investors of the serious financial difficulties the district was experiencing at the time of the offering."

The SEC's complaint against the city, Brooks-Harris, CMA and Ganci, filed in the U.S. District Court for the Western District of New York, charges them with violating the antifraud provisions of the securities laws. The complaint also charges CMA, Ganci and Tortora with violating the municipal advisor fiduciary duty, deceptive practices, and fair dealing provisions of the federal securities laws. The Commission is seeking injunctive relief and financial remedies against all parties.

Sewell agreed to settle the SEC's charges by consenting, without admitting or denying any findings,

to a court order prohibiting him from future violations of the antifraud provisions and from participating in future municipal securities offerings, and to pay a \$25,000 penalty. The settlement is subject to court approval.

Cori Shepherd, Warren Greth, Laura Cunningham, Jon Wilcox, and Creighton Papier of the Enforcement Division's Public Finance Abuse Unit conducted the investigation under the supervision of Ivonia Slade and Rebecca Olsen. The SEC's litigation will be led by James Carlson and Eugene Hansen.