

Bond Case Briefs

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BONDS - LOUISIANA

U. S. Securities & Exchange Commission v. Breland

United States District Court, W.D. Louisiana, Monroe Division. December 6, 2022 Slip Copy 2022 WL 17840413

SEC brought an action against former city mayor alleging that he had submitted false projections to the Louisiana State Bond Commission which resulted in the approval of a series of revenue bonds.

Defendant asserted a series of affirmative defenses.

The District Court held that:

- Defendant's affirmative defense that the SEC had failed to state a claim or cause of action because the Louisiana State Bond Commissioner was neither a purchaser or seller of a security as required under the federal securities law was immaterial because the SEC alleged that the investors who purchased the bonds were advised that the Bond Commission had approved the bonds - approval that was obtained via alleged fraudulent misrepresentations.
- Defendant's affirmative defense that the SEC had failed to state a claim or cause of action because to the extent that any alleged misrepresentation or omission in fact exists, the holder of the security has not suffered any damages was inapplicable because damages are not an element of an SEC. claim.
- Defendant's affirmative defense that he "is a person with no experience or expertise in bond issuances or securities law. Plaintiff relied solely upon the advice and expertise of legal counsel and the advisor retained by the City of Sterlington in preparing the projections, offering the bonds, and the legality of using the bond proceeds for the purposes the proceeds were used for. This Offering was a private placement. There is no[] requirement that an offering memorandum be prepared or that the information which is the subject of the claim of Plaintiff be included in an offering Memorandum. The purchasers of the securities were sophisticated parties and accredited investors." would not be struck, as the SEC had not established that the defense was insufficient as a matter of law.
- Defendant's affirmative defense that, "Plaintiff has failed to state a claim or cause of action because the disclosure of the actual expenditure of funds from the prior bond offerings by the City of Sterlington was not a material fact that would have in any way impacted purchasers' decision to purchase the bonds. Purchaser was given the audits of each of these years disclosing these issues prior to the time the bonds were purchased by the Purchaser" would be struck as redundant.
- Defendant's affirmative defense that "Plaintiff has failed to state a claim or cause of action because to the extent any misrepresentation exists as to the use of the funds, the proceeds from the bond issuance were always used for a[n] expenditure to operate the City of Sterlington, and no proceeds were misappropriated for any personal use by the Defendant" would not be struck, as neither side submitted case law to show whether the fact that Breland failed to misappropriate proceeds for personal use constitutes an affirmative defense.
- Defendant's assertion that his criminal indictment in this matter merits a stay would be struck, as a request to stay or dismiss a matter is not an affirmative defense. Defendant could bring a separate motion for a stay.

