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Dale v. NFP Corp.

United States District Court, N.D. Illinois, Eastern Division - March 1, 2023 - Slip Copy - 2023 WL 2306825

Board of Trustees of a pension plan (Plaintiff) brought an action under ERISA on behalf of the Plan and its participants. Plaintiffs alleged that Defendants, the Plan's administrators and investment advisors, breached their fiduciary duties by structuring investments to generate excessive direct and indirect compensation for themselves; failing to disclose to Plaintiffs all compensation received from investment of Plan assets; providing false or inadequate reports on investment performance; providing inadequate or misleading investment advice; and investing Plan assets in imprudent and illiquid investments.

Defendants moved to dismiss.

With regard to Plaintiffs' claims regarding Defendants' treatment of bonds in the portfolio, the District Court held that:

- Plaintiffs' stated a claim that Defendants' had engaged in churning of the bonds based on an excessive volume of trades, not the value of the commission on each trade; and
- The churning claim did not require that the Plaintiffs' supply every trading metric necessary for proving the churning claim at the motion to dismiss stage.

"Defendants contend that Plaintiffs' claim should be dismissed because there is 'no meaningful data establishing a purported reasonable commission on bond trades….' If Plaintiff's claim was premised solely on the value of the mark-ups—in other words, whether a 1.0-2.5% mark-up on bond trades was excessive, Defendants would have a viable argument. But Plaintiffs' 'churning' claim is based on an excessive volume of trades, not the value of the commission on each trade. To the extent Defendants traded bonds excessively to generate commissions for themselves, not to maximize the Plan's financial performance, Defendants failed to 'discharged their duties with respect to a plan solely in the interest of the participants.'"

"Defendants also argue that Plaintiffs fail to provide 'a metric for bond laddering.' Bond laddering is an investment strategy that involves buying bonds with different maturity dates to protect against 'interest rate risk, the risk that interest rates will change over the life of a bond.' In other words, laddering helps diversify a bond portfolio. Defendants say bond laddering explains the selling of bonds before maturity. That may be so. But at the motion to dismiss stage, Plaintiff is not required to supply every trading metric necessary for proving the churning claim. Metrics relevant to churning, such as the 'applicable turnover ratio or percentage of the account value paid in commissions,' will be calculated after discovery. Accordingly, Plaintiffs have pleaded sufficient facts to establish a churning claim. Defendants motion to dismiss Count III is denied."

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