They Were Able To Get Regions Bank To Settle For $13 Million

Adolfo Pesquera, Daily Business Review

May 21, 2014

Case: Laura Yelitza Cifuentes and Merle De Las Mercedes Silva Castro v. Regions Bank

Case no: 11-CV-23455

Description: Securities

Filing Date: Sept. 21, 2011

Judge: U.S. District Judge Federico Moreno, Miami

Plaintiffs attorneys: David Rothstein, Jeffrey Kaplan, Lorenz Pruss and Robert Linkin, Dimond Kaplan & Rothstein, Miami; James Sallah and Joshua Katz, Sallah Astarita & Cox, Boca Raton; Scott Silver and Adolfo Anzola, Silver Law Group, Coral Springs

Defense attorneys: Joshua Lerner and Dennis Nowak, Rumberger Kirk & Caldwell, Miami

Settlement amount: $13 million

Details: In the mid-1990s, U.S. Pension Trust Corp. solicited clients throughout Latin America to invest in mutual funds. The director of USPT never registered with the Securities and Exchange Commission or the state as a broker, dealer or investment adviser. Birmingham, Ala.-based Regions Bank worked with USPT from 2001 to 2010.

The SEC went after USPT, alleging sale of unregistered securities and inadequate disclosure of fees and costs, which were unusually high for the industry. On Sept. 30, 2010, U.S. District Judge Jose Martinez in Miami entered final judgment against USPT for violation of federal registration provisions.

A year earlier, the SEC sued Regions for allegedly aiding and abetting the sale of securities by an unregistered dealer. The bank settled the same day. Regions paid a $1 million civil penalty, which it described as a return of "account maintenance fees."

The SEC action put USPT out of business.

Plaintiffs case: Dimond Kaplan filed a class action suit against Regions, alleging the bank advised USPT on the design and content of marketing materials, had a role in drafting documents, participated in sales conventions and was paid as the trustee on USPT trust accounts.

Two Colombian women, Laura Yelitza Cifuentes and Merle De Las Mercedes Silva Castro, were named as class representatives, and Gerardo Carvajal of Venezuela was added later. A total of 5,468 Latin American investors were identified as class members.

The class action relied on a state law banning unlawful sales.

In addition to the evidence of marketing and trust documents, the class identified three Regions employees—Filipe Larcada, Angel Medina and Jorge Milanes—as having direct involvement in facilitating sales.

Larcada, an executive vice president, met regularly with USPT to review marketing and sales strategies, the complaint alleged. He attended sales conventions in Washington, San Francisco, Spain, Brazil, Colombia, Ecuador and Argentina to teach sales agents about the promotion of investment plans. Larcada allegedly became romantically involved with USPT president Iliana Maceiras.

Medina allegedly accompanied and aided Larcada at overseas sales conventions. Milanes allegedly attended a sales meeting in Peru in Larcada's place.

Plaintiffs claimed damages totaled $38 million.

Defense case: Regions claimed USPT did not sell securities as defined by Florida law and was not required to register the company with the state as a securities broker. The bank denied it sold securities and challenged the plaintiffs' model for damages.

In its affirmative defenses, Regions also claimed the court lacked subject matter jurisdiction under several theories. The bank insisted Cifuentes and Castro lacked standing because the actual investor was their late spouse and father, respectively.

Regions also said the claims were barred by the statute of limitations and challenged class certification.

Outcome: Moreno denied Regions' motion for dismissal. Regions appealed, which temporarily stayed the case. After the U.S. Court of Appeals for the Eleventh Circuit refused to hear the appeal, the plaintiffs moved last October to certify the class. The trial was set for December 2013.

On Nov. 20, the parties moved preliminary approval of a settlement. The court approved the $13 million settlement March 20.

Comments: "Under Florida's Blue Sky Law, whenever you have a security sold by an unregistered dealer, the purchaser may sue for rescission. They may sue not only the unregistered broker but 'all persons making the sale,' anyone who solicits for financial gain," David Rothstein said. "Regions received an annual fee equal to 1.5 percent of the value of the total assets held in trust."

Post-settlement: Moreno approved attorney fees of $3.9 million to be deducted from the settlement. In addition, he allowed an additional $523,749 in costs.