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VERDICTS & SETTLEMENTS

Madoff investors at Miami brokerage firm get $7.8 million settlement

Case: Lorrene da Silva Ferreira et al v. EFG Capital International
Case No.:11-cv-00118
Description: Fiduciary negligence
Filing date: Jan. 22, 2010
Settlement: $7.8 million
Settlement approved: June 1, 2012
Judge: U.S. District Judge Victor Marrero
Plaintiff attorneys: Lawrence A. Kellogg, Jason Kellogg and Amanda Star Frazer, Levine Kellogg Lehman Schneider + Grossman, Miami; Kevin Kinne, Cohen Kinne Valicenti & Cook, Pittsfield, Massachusetts; Daniel Solin, Bonita Springs
Defense attorneys: Joseph Clay Coates III, Greenberg Traurig, West Palm Beach
Details: Bernard Madoff, a one-time Wall Street icon, is serving 150 years in prison for masterminding the largest and longest-running Ponzi scheme in U.S. history. Much of the estimated $20 billion that went up in smoke when Madoff's Ponzi scheme collapsed in 2008 came from feeder funds. The largest was New York-based Fairfield Sentry Ltd.

About $46 million funneled to Madoff through Fairfield came from 279 Latin American investors. They invested through EFG Capital International Corp., an investment arm of Switzerland's EFG Bank, which maintained a brokerage office in Miami.

Many of the investors were reluctant to sue in the United States because they invested through a Swiss bank partly because their financial records remain confidential, Kellogg said. Arlete da Silva Ferreira of Brazil and her daughter, Lorrene da Silva Ferreira of Uruguay, said they were willing to be name plaintiffs in a class action against the EFG entities.

Plaintiff case: The complaint claimed breach of fiduciary duty, gross negligence, unjust enrichment and violation of Florida's Deceptive and Unfair Trade Practices Act.

The investors claimed EFG should never have recommended Fairfield to the class and failed to perform due diligence. They alleged EFG ignored multiple warning signs that an investment in Fairfield destined for Madoff "was doomed to fail because of illegitimate business activities."

The lawsuit filed in Miami was assigned to U.S. District Judge Jose E. Martinez, who ordered discovery and dismissed the parent, EFG Bank, from the lawsuit.

Defense attorneys then requested the case be swept up in a large multidistrict litigation against Fairfield before U.S. District Judge Victor Marrero in New York. Martinez granted the motion in February.

But early discovery produced key documents and emails that showed EFG Bank in Switzerland and EFG Capital in Miami were not on the same page when it came to investments with Fairfield or Madoff. "You can see the divisions fighting each other," Lawrence A. Kellogg said.

Fairfield was EFG's Capital's largest and most lucrative hedge fund product, but it did not tell its investors that Fairfield delegated all of its investment decisions to Bernard Madoff Investment Securities. It also did not inform them that some EFG Bank divisions had refused to do business with Fairfield or Madoff. A memo by an EFG Bank employee summarizing a meeting with senior Fairfield executives stated it was well-known Madoff was "cheating" by ignoring "the Chinese wall" between his market making and advisory activities.

J. ALBERT DIAZ

Amanda Star Frazer, Jason Kellogg and Lawrence A. Kellogg were part of the team that helped Latin American clients of a Miami brokerage settle with a bank subsidiary that put money into a Bernard Madoff feeder fund.

"That was our smoking gun," Kellogg said. "The turning point was getting the discovery."

Plaintiffs challenged the contention that EFG and Fairfield were victimized by Madoff. They pointed to "retrocessions" received by EFG Capital from Fairfield for money invested in the hedge fund. "They call them retrocessions. We call them kickbacks."

Kellogg said EFG claimed it was not in a position to advise the clients, only to execute their investments in the hedge fund. "Their defense was that our job was not to advise you. Our job was to do just what you told us. You are the ones who are making the decisions," he said.

EFG decided to settle because "most of the class members are still customers of the bank, and they want to keep them," Kellogg said.

Defense case: "The case was settled for a very small fraction of the alleged losses to avoid further cost and accommodate our customers," Coates said. "EFG strongly denied all the allegations, and the court made no rulings on the plaintiffs' allegations."

Settlement: A settlement stipulation was filed Jan. 19. It was the first and only settlement so far in a Madoff-related lawsuit against Fairfield. Plaintiffs attorneys will receive one-third of the settlement — or about $2.5 million. Kellogg said there were no objections.

Quote: "If you think about it, Madoff could not have pulled this off without the help of Fairfield, EFG, had others done any real analysis of his operation," Kellogg said.

Post-settlement: Kellogg said members of the class should receive money in July. The bank will try to get more from the liquidation of Fairfield, which has filed for bankruptcy protection. "I call it a down payment — get some money now instead of 10 years from now."

— John Pacenti