

Securities Litigation

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Fredrikson attorneys represent investment advisors, broker-dealers, financial planners, money managers, investment companies, public companies and private companies, directors and officers, and other individuals in state and federal courts and in arbitration matters around the country. Our attorneys represent clients being examined, investigated and prosecuted by the U.S. Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA) and other federal and state regulators.

Our securities litigation practice includes claims ranging from securities fraud under state and federal statutes, misrepresentation, negligence, unsuitability, breach of fiduciary duty and churning to employment/independent contractor disputes, trade secret, non-compete/non-solicitation and raiding cases. We also represent clients on regulatory and compliance matters, including subpoenas, investigations, and formal complaints. Our attorneys have served as counsel for receivers appointed by the court in the aftermath of Ponzi schemes, including in the Minnesota Print Services, Inc./Gerard Cellette Jr. receivership.

Areas of Expertise

- Broker-dealer litigation/arbitration
- Closely held companies, representing minority and majority owner groups
- Director and officer liability
- Multiparty and class actions
- Publicly traded companies
- Regulatory enforcement proceedings (SEC, FINRA, etc.)
- Securities/financial industry employment litigation, including trade secret, non-compete/non-solicitation and raiding cases
- Securities fraud lawsuits
- Shareholder/corporate control disputes
- Shareholder derivative actions

Experience

Securities Fraud/Broker-Dealer Litigation

We represent broker-dealers, investment advisors, officers, directors and others in securities litigation/securities claims around the country. We regularly arbitrate cases before the Financial Industry Regulatory Authority (FINRA, formerly NASD), the New

York Stock Exchange (NYSE) and the American Arbitration Association (AAA). Our extensive experience and capabilities include litigating the numerous causes of action that are regularly alleged in securities fraud cases, including, violations of state and federal securities statutes, breach of fiduciary duties, unsuitability, failure to supervise, violations of industry rules, misappropriation of trade secrets and confidential information, breaches of non-competition and/or non-solicitation clauses, and other financial industry employment claims. We also have attorneys who sit as arbitrators appointed by the AAA and FINRA.

Representative Cases

- Representing broker-dealer against bankruptcy trustee in an action arising out of an alleged Ponzi scheme perpetrated by Provident Royalties and numerous related entities. The trustee asserted securities fraud under State and Federal securities laws, common law fraud, breach of fiduciary duty, negligence and fraudulent transfer. The U.S. District Court, Northern District of Texas granted our client's motion to compel arbitration of all securities-related claims. See *Provident Royalties, LLC*, No. 3:10-cv-01884-F, U.S. District Court, Northern District of Texas.
- Obtained FINRA arbitration victory on behalf of an energy company client. The client alleged the unauthorized trading of oil futures contracts in its account. The brokerage firm refused to acknowledge the trade and, instead, claimed that the client had authorized the trading, that the brokerage firm sent valid confirmations, and that the client failed to mitigate its losses. After a three-day hearing, the arbitration panel awarded our client the full amount of the claim plus interest (exceeding \$950,000). See *Northern Oil & Gas, Inc. v. UBS Financial Services, Inc.*, FINRA Case No. 08-04398, November 12, 2009.
- Currently representing clients in, among others, the following multiparty or class actions cases around the United States: *DBSI Inc., et al.*, No. 08-12687, United States Bankruptcy Court for the District of Delaware; *James R. Zazzali, as Trustee for the DBSI Private Actions Trust v. Advisory Group Equity Services, Inc., et al.*, U.S. District Court, District of Delaware; *Securities and Exchange Commission v. Millennium Bank, et al.*, No. 07:09-cv-050-0, U.S. District Court, Northern District of Texas.
- Successfully defended a broker-dealer, its president and one of its registered representatives in numerous FINRA arbitrations filed around the country by investors in various alternative investments, including real estate investment trusts (REITS) and limited partnerships. Currently representing broker-dealer in connection with multiple FINRA investigations arising out of the same circumstances.
- Obtained arbitration victory before the American Arbitration Association (AAA) on behalf of an investor and a trust. Clients alleged that the client's broker-dealer unlawfully recommended certain securities without performing adequate due diligence and via misrepresentations about the true nature of the investments. They alleged breach of fiduciary duties, negligence, and violation of the applicable securities laws. After a three-day trial, client was awarded nearly \$1,000,000 in

damages with joint and several liability against the brokerage firm and the individual broker. See *McClure v. Okoboji Financial, Inc.*, AAA case no., 65 148Y 00043 09, March 24, 2010.

- Defended chief executive officer and chief financial officer against claims of securities fraud, negligence, breach of fiduciary duty, and conspiracy brought by Post-Confirmation Trust arising out of Fleming Securities Class Action Litigation. Trustee asserted damages in excess of \$100 million. *Post-Confirmation Trust v. Digital Exchange Systems, Inc.*, Civil Action No. 5:05-cv-165 (E.D. TX 2005). The matter was successfully resolved with our clients paying nothing.
- Represented broker-dealer in a multiparty federal court lawsuit involving fraud on the market related to alleged sham securities lending practices. The claims included securities fraud under Sections 9, 10b (and Rule 10b-5 there under), 13 (d) and 20 of the Securities and Exchange Act of 1934, and Sections 11, 12a-1, 13, 15 of the Securities Act of 1933.

Financial Industry Breach of Contract/Non-Compete/Non-Solicitation Cases

We are often called upon to help clients needing assistance due to upcoming or past departures from a brokerage or investment advisory firm. Our attorneys understand the time-sensitive issues that such departures raise for both the “former” firm and the “new” firm. We understand the issues around the applicability of the Broker Protocol. We understand that movement of industry representatives, if not handled correctly, can lead to litigation involving claims of misappropriation of trade secrets and confidential information, breaches of non-competition and/or non-solicitation clauses, unfair competition, tortious interference with contract, and violations of Regulation S-P relating to confidential customer information, to name a few. Not only do we litigate such matters effectively on behalf of our clients but we also offer clients preventive solutions and advice aimed at avoiding litigation.

Representative Cases

- Represented Registered Investment Advisory (RIA) firm against departing shareholder who took electronically stored client files containing investment strategies, holdings, and personal data, which he used to start up a competitive firm. Obtained temporary restraining order against the departing shareholder after establishing likelihood of success on claims of breach of non-solicitation agreement, tortious interference with contract, misappropriation of confidential information, misappropriation of trade secrets, unfair competition and breach of fiduciary duty.
- Represented broker-dealer in breach of contract action arising out of client’s independent contractor agreement (ICA). Obtained award exceeding \$2.5 million for breach of contract for failure to pay amounts owed to broker-dealer following termination of the ICA and for breach of the ICA’s indemnification provisions. All of representative’s counterclaims, including discrimination, defamation, and interference with contract, were dismissed. See *SunAmerica Securities, Inc.*

Sherwin Brown, et al., NASD Award No. 02-05755.

- Obtained favorable settlements on behalf of broker-dealer against former employees in a series of cases brought following the closure of one of the broker-dealer's regional offices. Claims included breach of promissory note, breach of warranty, negligent misrepresentation, fraud, and intentional infliction of emotional distress.

Shareholder/Corporate Control Disputes/Proxy Litigation

We represent owners in corporate control disputes, including shareholder disputes/shareholder litigation, partner disputes, and disputes among owners of the other corporate forms. For closely held corporations, we represent control and minority owner groups, and the companies themselves in and out of court during control disputes and shareholder-employee fights.

We have assisted businesses and incumbent boards of publicly held corporations in determining whether shareholder resolutions must be considered at annual shareholder meetings and have taken the clients through the SEC letter opinion process and the court system as required by the situation. Our attorneys are familiar with the appropriate tactics to assist our clients through board control disputes in publicly held companies.

Representation Cases

- Represented a publicly held corporation when a shareholder group sought to place shareholder resolutions on the annual meeting agenda regarding the firm's poison pill. We advised the company regarding proxy regulations and novel questions of state law—taking the case to the Minnesota Supreme Court after a federal court certified questions of state law.
- Represented an employee/shareholder who was discharged in May 2009. At the time of his discharge, the company and its other shareholders agreed to buy our client's shares at a given price. When company and the other shareholders subsequently refused to make the purchase (claiming that the original agreement had been only an agreement to agree), our client sued for breach of contract. In November 2010, the Hennepin County District Court granted summary judgment to our client in the full amount of the originally agreed upon purchase price. See *Nelson v. Peters, et al.*, Henn. Cty Ct. File No. 27-CV-10-2875 (Henn. Cty. Dist. Ct. Nov. 22, 2010).
- Represented a shareholder/principal in 2009 who found out that the two other shareholders/principals were siphoning large amounts of money from the company. We brought suit on behalf of our client and quickly showed the defendants the evidence that we had gathered concerning their conduct. Within a month, the parties entered into a settlement agreement whereby the other two shareholder/principals agreed to walk away from the business and indemnify our client from any then-current liabilities of the business.

- Represented shareholder/registered investment advisor and its principal in winning dismissal of all claims against them by a former CEO/Board Chair who sued after waging an unsuccessful proxy contest and being removed from the board. Plaintiff had asserted breaches of fiduciary duty, interference with contract, and various statutory claims, all of which were dismissed by the Court. We also represented the client in successfully defending the appeal. See *Gerry Fisher v. Alebra Tech, Inc., et al.*, Henn. Cty. Ct. File No. 27-CV-06-13967 (Oct. 23, 2006), *aff'd.*, A07-0630 (Minn. App., April 8, 2008).

Regulatory Enforcement Proceedings

It is essential to obtain the assistance of counsel as early as possible when approached by regulators. We have found that clients frequently respond to seemingly innocuous “informal” regulatory inquiries and provide documents and other information. The clients often regret it later when it handicaps their defense. Fredrikson attorneys represent investment advisers, money managers, hedge funds, banks/financial institutions, broker-dealers before the SEC, Department of Justice (DOJ), Commodity Futures Trading Commission (CFTC), and FINRA. We counsel clients at all stages of enforcement proceedings, including informal inquiries, formal investigations, and administrative and district court actions.

Representative Cases

- Defended separate Registered Investment Advisers and principals in SEC regulatory investigations arising out of theft by rogue employees.
- Defended a brokerage firm’s chief compliance officer in connection with FINRA disciplinary hearing involving charges of alleged branch office sales violations and the failure to supervise.
- Defended Chief Executive Officer in an SEC investigation involving allegations of fraud and the sales of unregistered securities.
- Represented company officers in SEC enforcement actions alleging aiding and abetting securities fraud.
- Defended a company and its officers in an SEC injunction and civil money penalty suit alleging fraud and the sale of unregistered securities.
- Represented brokerage firm employees in a FINRA investigation involving insider trading.
- Represented registered investment advisors in FINRA investigation involving alleged outside.