

Mutual Fund Advisers Win Again on Section 36(b) Claims

June 23, 2017

Following a four-day bench trial, New Jersey District Judge Renee Bumb granted judgment to defendant Hartford mutual fund advisers on "excessive fee" claims brought by fund shareholders under Section 36(b) of the Investment Company Act of 1940. The court's decision in Kasilag v. Hartford Investment Financial Services, LLC, is the second recent industry-favorable decision issued by the United States District Court for the District of New Jersey, the first being the August 2016 decision in Sivolella v. AXA Equitable Ins. Co. A number of similar Section 36(b) "excessive fee" cases remain pending in various courts. Section 36(b) imposes a fiduciary duty on investment advisers regarding the compensation they receive from mutual funds. The Supreme Court's 2009 Jones v. Harris decision adopted the Gartenberg standard to assess an investment adviser's Section 36(b) fiduciary liability. To succeed on a Section 36(b) claim, a plaintiff must establish that an investment adviser's fee is "so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." Courts look to six factors under Gartenberg: (1) the nature and quality of the adviser's services; (2) adviser profitability; (3) "fall out" benefits to the adviser; (4) economies of scale realized by the adviser; (5) other funds' fee structures in comparison; and (6) the independence and conscientiousness of the fund's board in approving the adviser's fee. The court decided the issue of the board's conscientiousness in favor of Hartford on summary judgment, but held that triable issues remained on other *Gartenberg* factors. In a 70-page order, reflecting the heavy burden plaintiffs face, the court rejected plaintiffs' theory that an investment adviser and sub-adviser provide the same services. It also refused to accept plaintiffs' "retained fee" theory, which would have calculated defendants' profitability without accounting for sub-adviser fees.

Related Practices

Financial Services Regulatory
Securities Litigation and Enforcement

Related Industries

Life, Annuity, and Retirement Solutions

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.