

Defendants Not Liable for Insurance Agent's Ponzi Scheme

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A California appellate court recently affirmed the dismissal of claims against multiple insurers made by victims of a Ponzi scheme that was orchestrated by an independent insurance agent. The court concluded that the complaint offered no legal basis for holding the insurers liable for the wrongful acts of the sales representative based on his separate business activity as a financial advisor.

Sunil Sharma was a sales representative appointed by multiple life insurance companies. In addition, Sharma operated an independent business as a financial advisor. Sharma convinced some of his clients to surrender their annuity policies and invest the proceeds in a company he had started called Gold Coast Holdings, LLC. Gold Coast ultimately turned out to be the vehicle for Sharma's Ponzi scheme, and investors allegedly lost millions of dollars.

A number of individuals who had surrendered annuities to invest in Gold Coast sued the issuing insurers. The plaintiffs asserted, under an array of theories and causes of action, that the insurers were liable for the loss of their investments in Gold Coast. After allowing the plaintiffs multiple opportunities to amend their complaint, the trial court sustained the defendant insurers' demurrer and dismissed the complaint with prejudice.

The California Court of Appeal affirmed the dismissal of the complaint in a thorough opinion in *Rode v. Allianz Life Insurance Co. of N. Am., et. al.* The court concluded that Sharma was not acting in the scope of his agency relationship with the insurers when he convinced the plaintiffs to surrender their annuities and invest in Gold Coast. Sharma's relationship with the insurers was limited to the purchase of annuities and related tasks, the court explained. But his conduct regarding non-insurance investments, like Gold Coast, was part of his own financial advising business. The court reiterated that this was true notwithstanding the plaintiffs' allegation that Sharma's position as an appointed agent for sales of annuities enabled Sharma to convince the plaintiffs to surrender their policies. The court also concluded that the insurers did not owe the plaintiffs a duty to guard against or warn of Sharma's fraud because, given the distinctly different business activity underlying the fraudulent behavior, the insurers could not foresee that the plaintiffs were investing in a Ponzi scheme.

Accordingly, the court found that the plaintiffs "failed to establish any viable theory of liability—whether vicarious or direct—against the insurance companies." The court of appeals declined a request by one of the defendants to publish the opinion.