Banking and Finance Law Daily Wrap Up,TOP STORY—7th Cir.: Bank serving bankruptcy trustee did not require exclusive dealing arrangement,(Jan. 27, 2017)

By Richard A. Roth, J.D.

Contracts among a bank, bankruptcy trustee, and bankruptcy services provider did not establish an exclusive dealing arrangement that violated the Bank Holding Company Act ban on tying arrangements, according to the U.S. Court of Appeals for the Seventh Circuit. The arrangement related only to a single transaction—a single bankruptcy case—and did not prevent the trustee from using the services of a different bank in the future (*McGarry & McGarry, LLC, v. Rabobank, N.A.*, Jan. 26, 2017, Posner, R.).

Contractual relationships. As outlined in the opinion, the trustee hired Bankruptcy Management Services, Inc., to provide administrative, software, and banking services in the bankruptcy case of Integrated Genomics, Inc. This contract required the trustee to use the banking services of Rabobank, N.A. The trustee's contract with the bank required the trustee to use the bank's services in any bankruptcy estate in which he contracted with BMS. Also, under a separate contract, the trustee authorized the bank to pay itself a fee from the estate's funds that were on deposit. This fee arrangement might have resulted from an agreement between BMS and the bank, the court noted.

The law firm McGarry & McGarry was one of Integrated Genomic's creditors. At the end of the case, the firm received a distribution of $12,472.55. The distribution would have been $194.35 more if Rabobank had not deducted the fees, and perhaps higher still if Rabobank had not been excused from paying interest on the estate's deposits. The firm sued, claiming the agreements created a tying arrangement that violated 12 U.S.C. §1972.

Tying arrangement ban. The BHC Act generally says that a bank cannot condition providing its credit, products, or services on a customer's agreement not to obtain credit, property, or services from a competing banking organization (12 U.S.C. §1972(1)(E)). The law firm argued that requiring the trustee to secure banking services only from Rabobank amounted to conditioning the bank's services on the trustee's agreement not to obtain services elsewhere.

No violation. The problem, according to the court, was that the law firm "fails to distinguish between exclusive dealing and a single transaction." Had Rabobank provided its services only if the trustee agreed not to use a competitor in any bankruptcy case, an exclusive dealing arrangement would have been created, and that would have violated the BHC Act. However, the contracts related only to the Integrated Genomics bankruptcy and left the trustee free to use any bank he preferred in future cases.

The only contractual provision that affected banking services in the future would apply only if the trustee chose to again hire BMS, the court pointed out. However, he was free to use a different service provider, which would leave him free to use a different bank as well. There was no requirement that he use the services of either BMS or Rabobank in the future.

Value of services. The law firm's claim also was rejected because the firm offered no evidence that the $194.35 fee was exorbitant. There was no reason to believe that another bank would have charged less, the court observed.

The case is No. 16-3164.

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Companies: Bankruptcy Management Solutions, Inc.; Integrated Genomics, Inc.; McGarry & McGarry, LLC; Rabobank, N.A.

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