

## Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— 2ndCir: Plaintiffs Sufficiently Pleaded that Group of Defendants Was Involved in Alleged Conspiracy, (May 8, 2013)

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*Securities (Federal) > News & Current Awareness > Securities Regulation Daily > Securities Regulation Daily Wrap Up > 2013 > May 2013 > May 8, 2013 > FRAUD AND MANIPULATION—2ndCir: Plaintiffs Sufficiently Pleaded that Group of Defendants Was Involved in Alleged Conspiracy, (May 8, 2013)*

By Rodney F. Tonkovic, J.D.

In a summary order without precedential effect, a Second Circuit panel affirmed in part a district court judgment dismissing an action for failure to state a claim. Claims against one group of defendants were vacated, and the action was remanded to the district court (*Fezzani v. Bear, Stearns & Co. Inc.*, May 7, 2013, Per Curiam).

In early 1999, the plaintiffs filed this suit against more than fifty corporate and individual defendants. The action was brought against a now-defunct broker-dealer, A.R. Baron & Co., and asserted claims involving securities fraud, market manipulation, RICO, aiding and abetting breach of fiduciary duty, and common law fraud. According to the complaint, the defendants assisted A.R. Baron & Co. in its manipulation of the share prices of a few small companies that it helped to take public.

In 2008, the district court dismissed the action as to all defendants, save one group, the "Apollo" defendants. Later, after the action had been dormant for nearly a year, the court dismissed the entire action *sua sponte*. The plaintiffs appealed both orders. The court accepted the district court's reasoning and affirmed the dismissal of the claims concerning the "Bear Stearns" defendants and Fahnestock & Co. for failure to state a claim. This left only the claims against the "Wolfson" and "Apollo" defendants.

**Wolfson defendants.** According to the court, the Wolfson defendants are three related investors who allegedly facilitated A.R. Baron & Co.'s fraud through manipulative wash sales and stock parking in exchange for "sweetheart" stock-purchasing opportunities. No federal claims were at issue on appeal, leaving only civil conspiracy to defraud and aiding and abetting fraud. The court concluded that the plaintiffs pleaded the involvement of the Wolfson defendants in the alleged conspiracy with sufficient particularity to survive a motion to dismiss. The district court's judgment dismissing the state law claims against the Wolfson defendants was vacated.

**Apollo defendants.** The panel found no error in the district court's decision to dismiss for failure to prosecute the claims against the Apollo defendants. The panel noted that the district court's order was given without notice and was not accompanied by any meaningful justification or explanation. However, the panel explained, the matter had been pending since early 1999, and the plaintiffs offered no compelling justification or explanation for their delay.

The case is No. 09-4414-cv.

Attorneys: Max Folkenflik (Folkenflik & McGerity) for Mohammed Fezzani, Cirenaca Foundation, Dr. Victoria Blank, Lester Blank, James Bailey, Jane Bailey, Baydell Ltd., Margaret Burgess, Patrick Burgess, Bootlesville Trust and Adam Cung. Kerry A. Dziubek (Arnold & Porter LLP) for Bear, Stearns & Co. Inc. and Bear Stearns Securities Corp. Howard Wilson (Proskauer Rose LLP) for Richard Harriton. Donald A Corbett (Lowenstein Sandler PC) for Morris Wolfson, Arielle Wolfson, Aaron Wolfson, Abraham Wolfson, Tovie Wolfson, Anderer Associates, Boston Partners, Wolfson Equities, Turner Scharer, ChanSasha Foundation and United Congregation Meserah. Donald N. Cohen (Greenberg Traurig, LLP) for Isaac R. Dweck, Individually and as Custodian for Nathan Dweck, Barbara Dweck, Morris I. Dweck, Ralph I. Dweck and Jack Dweck.

Companies: Anderer Associates.; Baydell Ltd.; Bear, Stearns & Co. Inc.; Bear Stearns Securities Corp.;

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