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Eversheds Sutherland Must Pay Some Fees In Securities Suit

By *Rose Krebs* | July 26, 2021, 4:18 PM EDT

A Delaware magistrate judge has ruled Eversheds Sutherland LLP and two investors they represented in a federal securities' lawsuit against technology company Vantage Corporation and two of its directors must pay attorney fees for one of the defendants as claims against him lacked "legal support."

In a 34-page memorandum opinion issued on Sunday, U.S. Magistrate Judge Mary Pat Thyng ruled that attorney fees incurred by former Vanguard director and executive Gerald Finegold in his defense of the suit must be paid by plaintiffs Wilson Carter and Tara Scott, as well as Eversheds and one of its partners that represented them.

The other defendant, Brian Askew, another former Vanguard director, is not entitled to having his attorney fees covered, the judge ruled. In Askew's case, the judge ruled he is not entitled to fees as claims against him were not substantially frivolous under provisions of the Private Securities Litigation Reform Act of 1995.

"Thus, the PSLRA's presumption of attorneys' fees and expenses is not triggered for the claims against Askew," the opinion said.

However, claims against Finegold were a different matter, the judge ruled.

"In light of the lack of factual or legal support for all of plaintiffs' federal securities claims against Finegold at the time they filed their complaint, the court finds plaintiffs and their counsel substantially violated Rule 11 [which deals with frivolous claims under the PSLRA] with respect to the claims against Finegold," the judge said.

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"My client is obviously happy with the results, he never thought he should have been a part of this case," Finegold's attorney Eric C. Lang of The Lang Legal Group LLC told Law360 Pulse on Monday.

Although the decision didn't indicate the amount of fees to be awarded, Finegold's counsel estimated he would seek about \$1 million, according to a court filing.

In the 2017 lawsuit, Scott and Carter accused Askew, Finegold and the company of securities fraud and other securities violations, asserting Askew had misrepresented Vanguard's financial status and business prospects to induce them into making investments in the company.

Vantage and affiliates filed for Chapter 11 in May 2018, which automatically stayed claims lodged in the lawsuit against those entities, the opinion said. Finegold won summary judgment on all the claims lodged against him and Askew also scored a summary judgment victory on federal securities claims against him, according to the opinion.

Some remaining claims against Askew went to a jury in 2019 and no damages were awarded to the investors on those claims, which related to Askew's role in the securities transactions at issue in the suit.

In light of those proceedings, Finegold and Askew asked the court to review procedural rules related to frivolous securities claim filings to determine if the plaintiffs should have to cover their legal costs, according to the opinion.

They sought to have Carter, Scott, Eversheds' partner S. Lawrence Polk and his firm pay attorney fees "incurred by them, and by Vantage Corporation on their behalf, in this action," arguing the suit was filed for an improper purpose and was simply an attempt to coerce a settlement, according to court filings.

The defendants did not seek to have Morris James LLP, the investors' local counsel in the litigation, reimburse their attorney fees, according to court filings.

In a court filing, plaintiffs' counsel disputed that claim, saying the suit was not filed for the purpose of coercing a settlement.

"At the time of filing the complaint, plaintiffs and their counsel reasonably believed legally and factually supported causes of action existed that warranted the return of plaintiffs' investment, among other damages," the filing said.

Counsel for the investors and Askew did not immediately reply to a request for comment on Monday.

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