

Seward & Kissel's Advice Got Financier In Hot Water, Suit Says

Law360, New York (May 6, 2016, 8:22 PM ET) — Seward & Kissel LLP was smacked Thursday with a \$12 million malpractice suit by Gray Financial Group Inc. alleging the law firm's "negligent role" in advising Gray's funds sale to a state pension left the investment consultant vulnerable to federal investigations.

In its Georgia federal complaint, Gray says it relied on Seward & Kissel's advice while developing and marketing the consultant's own investment products, including a "fund of funds" for Georgia-based public pensions. However, the result of the firm's work has been "disastrous," leading to serious revenue loss and an **"ongoing legal battle"** with the U.S. Securities and Exchange Commission over claims the fund violated state securities laws.

"Unbeknownst to plaintiffs, however, Seward & Kissel gave the Georgia public pension law little to no attention," the suit alleges. "Instead, Seward & Kissel's relationship partner for Gray Financial, Robert B. Van Grover, essentially turned this critical legal representation over to a far less experienced associate attorney, and then failed to supervise the associate and her advice, or keep Gray Financial apprised of necessary legal requirements."

Van Grover purportedly left associate Alexandra Segal unsupervised during the fund's development, despite "knowing of the serious consequences" Gray faced in the event of any faulty advice, according to the complaint.

The suit says that "the heart" of the SEC's 2013 investigation of the state fund and subsequent enforcement action relate directly to work the firm was hired to carry out, and that once the probe became public, Gray's business began to suffer.

"Gray Financial had numerous clients terminate their business relationships, new business opportunities vanished, and revenues declined," the complaint states. "The SEC's investigation and subsequent enforcement action has caused substantial harm to plaintiffs as a result."

At its peak in early 2014, Gray says, assets under its advisement totaled nearly \$10 billion, a number that has fallen to about \$4 billion today. Additionally, defense of the SEC action has purportedly cost the consultant hundreds of thousands of dollars.

"We believe the allegations in the complaint are meritless and sanctionable," a representative of Seward & Kissel told Law360. "We intend to vigorously defend this case and are confident that we will prevail in court."

The altered Georgia law at issue had taken effect in April 2012 and allowed, for the first time, public pension plans to legally invest in "alternative investments," like hedge funds and real estate.

Since a previous development of a fund with Seward & Kissel had proven successful, Gray turned to the firm after the Georgia law took effect to create Gray's own alternative investment fund, known as GrayCo Alternative Partners II LP or simply, Fund II, according to the suit.

Ultimately however, Seward & Kissel failed to include "Georgia specific" notices in Fund II, and after marketing of the fund began, the SEC found Gray was not compliant with the state law, the complaint says.

To rectify its claims of negligence and breach of fiduciary duty, Gray is seeking damages of \$12 million, along with unspecified punitive damages and attorneys' fees, according to the suit.

Gray is represented by **Richard L. Robbins, Vincent R. Russo** and **J. Matthew Brigman** of **Robbins Alloy Belinfante Littlefield LLC**.

Counsel information for Seward & Kissel was not immediately available.

The case is Gray Financial Group Inc. et al. v. Seward & Kissel LLP, case number 1:16-cv- 01467, in the U.S. District Court for the Northern District of Georgia.

-