

Atlanta Investment Advisers Battling SEC Sue New York Law Firm for Malpractice

An Atlanta investment advisory firm under investigation by federal authorities for its work on behalf of a number of Georgia-based public pension plans is suing a New York law firm for \$12 million over claims of legal malpractice.

On May 5, Gray Financial Group and its principals, Laurence Gray and Robert Hubbard IV, sued New York firm Seward & Kissel in federal court in Atlanta. They claim legal advice from the firm precipitated the investment consulting group's ongoing legal battle with the U.S. Securities and Exchange Commission. The suit claims Seward & Kissel's counsel in connection with an investment fund marketed by Gray Financial to its Georgia public pension clients was "disastrous" and cost Gray and its principals "significant revenue" and placed their professional careers at risk.

On Thursday, Seward & Kissel managing partner Jim Cofer called allegations in the complaint "meritless and sanctionable."

"We intend to vigorously defend the case, and we are confident we will prevail in court," Cofer added.

Cofer returned the Daily Report's call to Robert Van Grover, co-head of Seward's investment management group who, while not a defendant, signed the firm's engagement letter with Gray.

Richard Robbins of Atlanta's **Robbins Ross Alloy Bellinfante Littlefield**—who is representing the plaintiffs in the malpractice suit but not in the underlying SEC proceedings—told the Daily Report on Thursday that his clients strongly maintain that they complied with federal and state law. "However, to the extent there were any violations of law, the company and its officers believed that Seward & Kissel provided negligent advice and that they relied in good faith on such advice," he said.

Robbins said his legal team suggested a tolling agreement with Seward & Kissel until the SEC investigation is resolved, but the law firm rejected it. "Nor did Seward & Kissel engage in any constructive dialogue, which was unfortunate," he said. "To preserve our clients' rights, we need to go ahead and file suit."

Gray Financial has provided investment consulting services to public pension plans with assets that at one time totaled an estimated \$10 billion, among them pension plans for Atlanta firefighters, Atlanta police, other city workers, and MARTA. It retained Seward & Kissel in 2011 for legal help in organizing private investment funds, preparing private offerings and navigating regulatory matters, according to the suit and the engagement letter attached to the complaint. Gray claims it turned to the law firm because it did not have in-house counsel, and Seward & Kissel held itself out as having expertise in financial services, corporate finance, capital markets and regulatory and compliance matters.

In 2011, Gray was specifically interested in creating an investment fund composed of other hedge funds and private equity funds in which the pension funds and retirement systems that were its clients could invest, according to the suit.

The suit said the firm knew that Gray Financial was based in Georgia and would be marketing the new fund to Georgia-based pension plans. Lawyers at the firm "expressively advised" Gray Financial on both federal and Georgia law, according to the suit. But, it contends, "Unbeknownst to [the] plaintiffs, Seward & Kissel gave the Georgia public pension law little or no attention."

Instead, according to the suit, Seward partner 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."

The suit also claims that Seward & Kissel dropped the ball "presumably because Seward & Kissel believed that Gray Financial was a relatively insignificant client for an international law firm with large institutional clients."

Gray subsequently retained a second law firm in addition to Seward & Kissel but never ended its relationship with Seward & Kissel. Trusting Seward & Kissel's advice, the suit claims Gray Financial "reasonably believed that it did not need to direct the new law firm to undertake the expense and effort of revisiting the opinions and advice previously provided by Seward & Kissel."

In August 2013, the SEC notified Gray Financial that it was under investigation because a fund, which the suit contends was set up with Seward & Kissel's help, didn't comply with Georgia's pension investment laws, which had changed in 2012.

"The SEC's allegations related to the very same legal issues which Gray Financial, Mr. Gray and Mr. Hubbard relied upon Seward & Kissel to address," the suit said. Once news of the investigation became public, Gray began bleeding clients and, as of this month, had lost an estimated \$6 billion in assets that had been under its advisement, representing millions in lost fees and business, according to the suit.

The ongoing SEC investigation has "permanently damaged" the professional reputations of Gray's principals, according to the suit.

Last year, the SEC notified Gray that was instituting administrative cease-and-desist proceedings to determine whether Gray and its principals "knew or were reckless in not knowing" that investments sold to four Georgia pension funds failed to comply with Georgia law, despite assurances that they were in compliance, and whether remedial actions or fines were warranted. The administrative order also alleged that Gray Financial and Gray "made specific material misrepresentations" concerning the number and identity of four plans that had allegedly invested in the fund that is under scrutiny. The SEC's move occurred three months after Gray had sued the agency, challenging as unconstitutional its intent to have an administrative law judge conduct the enforcement proceedings. U.S. District Judge Leigh Martin May subsequently granted Gray Financial's motion for a preliminary injunction declaring the

SEC's appointment of administrative law judges unconstitutional and halting the agency from conducting administrative proceedings against Gray, saying Gray "had shown a likelihood of success." The SEC has appealed the ruling to the U.S. Court of Appeals for the Eleventh Circuit in Atlanta.