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Pension Funds Sue US Bank For \$25M Tribal Bond Fraud Loss

By **Jack Newsham**

Law360, New York (August 23, 2017, 7:39 PM EDT) -- Several public employee retirement funds that say they lost \$25 million in a sham tribal bond offering on Wednesday asked a South Dakota federal court to make US Bank NA pay up for failing to spot "red flags" that would have made any reasonably diligent bank ask questions.

The pension funds say their investment advisers were purchased by a group of fraudsters and invested their money in bonds issued in August 2014 and April 2015 by a Native American tribe. Despite inconsistencies in bond documents and payment instructions, US Bank went ahead and cut checks to entities controlled by the criminals, breaching its contracts and common law duties, the complaint charges.

"Rather than fulfilling even the most basic ministerial role in connection with the August 2014 offering, US Bank chose to bury its head in the sand and ignore obvious red flags pointing to something peculiar about where it was being told to send millions of the plaintiffs' dollars," the suit said.

This is the latest turn in the wake of **last year's charges** against Jason Galanis, a repeat fraudster who was sentenced to an extra five years in prison **earlier this month** for the tribal bond scheme. Galanis and other criminal defendants used a company affiliated with the Oglala Sioux Nation to issue bonds that were bought by investors whose accounts they controlled, and the proceeds flowed into their pockets, the civil suit claims.

US Bank was the indenture trustee for the offerings, meaning it held onto the bonds and handled the cash, according to the suit. But instead of adhering to its contracts, which called for the money raised to be paid out to a tribal corporation that would purchase a variable annuity to fund its bond payments and other outlays, the bank overlooked that it was asked to pay entities with different names from those in the indentures by people who lacked the authority to seek payment, the lawsuit alleges.

The bank's failure to sound the alarm violated "common sense," the suit said, or even the most basic familiarity with the transactions. The plaintiffs seek damages for breach of contract, breach of the implied covenant of good faith and fair dealing and negligence.

The case comes on the heels of a similar suit filed in South Carolina federal court against a litany of defendants by investors who say they lost \$8 million in the Galanis scam. US Bank was initially named as a party to that suit, but was voluntarily dismissed before it even came time to file a motion to dismiss.

The plaintiffs are the Water Works Board of the City of Birmingham, based in Alabama, which invested \$4.3 million; Washington Suburban Sanitary Commission Employees' Retirement Plan, a Maryland entity that invested \$4.1 million; and affiliates of the Omaha School Employees' Retirement System, of Nebraska, which invested \$16.2 million.

John Rich of Rich Intelisano & Katz LLP, a lawyer for the plaintiffs, said in an email on Wednesday that he and his clients "look forward to holding [US Bank] accountable for its actions in enabling the

fraud, and to obtaining redress for the workers who lost substantial retirement funds as a result.”

A representative for US Bank declined to comment on Wednesday, and its counsel information wasn't immediately available.

The plaintiffs are represented by Patrick Dougherty of Dougherty & Dougherty LLP, John G. Rich and Jessica Murzyn of Rich Intelisano & Katz LLP, and Clay Ragsdale of Ragsdale LLC.

The case is The Water Works Board of the City of Birmingham et al. v. US Bank NA, case number 4:17-cv-04113 in U.S. District Court for the District of South Dakota.

--Editing by Stephen Berg.

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