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NY Appellate Court Rebukes Goldman in Toxic Securities Case

NEW YORK (Jan. 30) __ In a significant blow to Goldman Sachs, the Appellate Court for the state of New York said in one voice that the Wall Street powerhouse should stand trial for its role in the sale of so-called toxic securities, which played a major role in the 2008 financial crisis.

The 5-judge panel unanimously rejected Goldman's attempt to have the case, brought by Basis Yield Alpha Fund, dismissed based on fine print disclaimers in the security offering.

Eric Lewis, a partner at the international litigation firm Lewis Baach, and the lead attorney on the case, said this case was a "victory for every investor who has taken a financial hit as a result of the misrepresentations of Goldman Sachs."

"It is not surprising that the court found that Goldman did not have a license to lie to investors" Lewis said. "What is surprising is that Goldman argued that it did have such a license."

The case alleged that Goldman sold two collateralized debt securities (CDOs) to Basis in 2007, on the basis that they were well priced and sold at Goldman Sachs' own internal marks. Behind the scenes Goldman considered the securities to be subpar, and said in a cynical internal memo that the infamous Timberwolf security was "one shitty deal. " Goldman had undisclosed internal valuations that showed Timberwolf was worth a fraction of the sale price.

As a result, Basis lost more than $66 million in a matter of weeks.

Goldman initially tried to dismiss the case on grounds the claim should be arbitrated, and that Basis was not entitled to rely on these false representations because of disclaimers contained in documents that Goldman prepared. Justice Kornreich of the New York State Supreme Court rejected that challenge and the Appellate Division has now rejected it as well.

In a sharp rebuke to Goldman, the Appellate Division found there was no agreement to arbitrate, and that the fraud claim was properly pleaded. The court held that the complaint sufficiently alleged that "Goldman not only knew that it was selling toxic assets (based upon Goldman's internal valuation of the securities and its involvement in the underlying asset selection process) to its clients and failed to disclose those sales to investors, but that Goldman also sought to profit from its own actions."

The Court refused to allow "boilerplate statements regarding the speculative and risky nature of investing in mortgage-backed CDOs" to allow Goldman to avoid liability.

"There is a 'vast gap' between the speculative picture Goldman represented to investors and the events Goldman knew had already occurred," the Appellate Court said in its ruling.

The case is Basis High Yield Alpha Fund (master) v. Goldman Sachs Group, Index 652996/11

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