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Masons Ask 2nd Circ. To Revive Madoff Feeder Fund Suit

By **Stewart Bishop**

Law360, New York (December 2, 2015, 4:03 PM ET) -- A Pennsylvania Masonic lodge on Wednesday asked the Second Circuit to revive its suit against Meridian Capital Partners Inc. over losses from Bernard Madoff's Ponzi scheme, saying the hedge fund's reckless actions should be reason enough.

The R.W. Grand Lodge of Free and Accepted Masons of Pennsylvania is appealing the dismissal of its claims that Meridian and director William Lawrence used fraud to secure the Grand Lodge's investments in a Meridian "fund of hedge funds" that invested in Madoff's funds. The suit was part of a multidistrict litigation against Meridian, and was consolidated with class action claims.

During oral arguments before a three-judge panel of the appeals court in a Manhattan courtroom, an attorney for Grand Lodge argued that the lower court's reasoning for nixing its securities fraud claims was erroneous, saying that Grand Lodge established scienter, or knowledge of wrongdoing, by properly alleging Meridian's recklessness with the Masons' investment.

Sidney Liebesman of Montgomery McCracken Walker & Rhoads LLP told the panel that Meridian perpetrated its own fraud — not merely neglecting to discover Madoff's scheme — noting that it lied to Grand Lodge about how its funds would be invested and the purported heightened level of due diligence which Meridian assured Grand Lodge it would provide.

Liebesman cited the standard for finding a strong inference of scienter laid out in the Second Circuit's 2000 ruling in Novak v. Kasaks.

"It's not intent; recklessness is sufficient," he said.

Libesman further argued that the scienter standard in Novak was met by Meridian's failure to properly monitor Grand Lodge's investment as promised, even after vowing to go to extraordinary lengths to protect it.

An attorney for Meridian countered that Grand Lodge failed to plead any facts in its complaint that rise to the level of scienter. The allegation that Meridian ignored red flags of Madoff's Ponzi scheme doesn't create a strong inference of scienter, according to Marshall Fishman of Freshfields Bruckhaus Deringer LLP.

Fishman further said there's no factual allegations to support Grand Lodge's claim that Meridian made false representations about its investment strategy.

“The district court correctly found that none of that was pled with the required specificity,” he said.

Fishman said multiple state law claims were also properly dismissed, since the Securities Litigation Uniform Standards Act of 1998 requires dismissal of all state law claims in a "covered class action" concerning deception in connection with securities sales.

“By pleading negligence and state law claims dependent upon fraud separate from Madoff ... it should all be barred by SLUSA,” he said.

U.S. District Judge Thomas Griesa dismissed the case in March, finding that the facts put forth simply did not support the conclusion that the defendants had knowledge of the fraud.

“To make out a federal securities claim, the complaint must contain facts supporting a strong inference that defendants knowingly or recklessly made these statements,” Judge Griesa said. "Instead — notwithstanding plaintiff's conclusory statements of defendants' scienter — the facts in the complaint suggest that defendants were genuinely deceived, like so many other Madoff investors.”

The Grand Lodge is represented by Sidney Liebesman of Montgomery McCracken Walker & Rhoads LLP.

Meridian is represented by Marshall Fishman of Freshfields Bruckhaus Deringer LLP.

The case is The R.W. Grand Lodge Of Free & Accepted Masons Of Pennsylvania v. Meridian Capital Partners Inc. et al., case number 15-1064 in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Cara Salvatore. Editing by Rebecca Flanagan.
