

MBF Clearing Corp. v JPMorgan Chase Bank, N.A.
2019 NY Slip Op 32032(U)
July 2, 2019
Supreme Court, New York County
Docket Number: 652820/2014
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY

PART

IAS MOTION 48EFM

Justice

-----X

INDEX NO. 652820/2014

MBF CLEARING CORP.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 005

- v -

JPMORGAN CHASE BANK, N.A., KEVIN MURPHY, and
J.P. MORGAN INVESTMENT MANAGEMENT, INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for DISMISS

In motion sequence number 005, defendants JPMorgan Chase Bank N.A. (JPMC Bank), J.P. Morgan Investment Management Inc. (JPMIM) and Kevin T. Murphy move to dismiss the Third Amended Complaint (TAC) pursuant to CPLR 3211 (a) (1) and (7).

Plaintiff MBF Clearing Corp. (MBF) was a self-claimed long-established and well-regarded commodities futures commission merchant (FCM) (NYSCEF Doc. No. [NYSCEF] 164, TAC, ¶ 1). As a registered FCM, MBF was subject to the Commodity Exchange Act (CEA) and regulated by the United States Commodities Futures Trading Commission (CFTC) (*id.*, ¶ 9). JPMC Bank is a national banking association (*id.*, ¶ 2). JPMIM is a registered investment advisor and a Delaware corporation (*id.*, ¶ 3). Murphy was an employee of JPMC Bank, and a specialist in the business of FCMs, acting as MBF's primary relationship manager (*id.*, ¶¶ 14-15). The court presumes familiarity with the facts of this 2014 case, and thus, gives a brief detail of the procedural history relevant to this decision.

MBF filed its first complaint on September 16, 2014 (NYSEF 1). MBF thereafter filed two more complaints, an amended complaint (NYSCEF 3) and the second amended complaint (SAC) (NYSEF 46). In the SAC, MBF alleged that the defendants fraudulently induced MBF to invest its customer segregated assets by opening a new segregated customer account (Account x2069) and invest those assets in the J.P. Morgan U.S. Government Money Market Fund (USG Fund). It also alleged that defendants fraudulently changed the title of Account x2069 to remove "commodity customer segregated bank account" in violation of the Federal Commodity Exchange Act (CEA) and rules and regulations of the United States Commodities Futures Trading Commission (CFTC). MBF alleged claims for fraudulent inducement to invest in USG Funds and open Account x2069, fraudulent misrepresentation as to the USG Fund, fraudulent misrepresentation as to Account x2069, fraud in changing the name on Account x2069, fraudulent concealment as to Account x2069, negligent misrepresentation as the USG Fund, negligent misrepresentation as to Account x2069, aiding and abetting in fraud, deceptive conduct, and contribution and indemnity (*id.*).

On January 28, 2016, this court (Justice Oing) granted defendants' motion to dismiss the SAC without prejudice (NYSEF 96, 97). Specifically, as to the fraud-based claims and negligence claims involving both the Account x2069 and the USG Fund, Justice Oing dismissed them on ground that MBF failed to sufficiently allege justifiable reliance (*id.*). Justice Oing found that the crux of the case was that MBF's investment in the USG Fund was not proper (*id.*). In regard to the fraud and negligence claims involving Account x2069, Justice Oing held that the damages in this case flow from the investment in the USG Fund and not whether Account x2069 was segregated or not

(NYSCEF 97, Tr. at 36:15-40:2; 57:19-61:17). He found that it was the investment that ran afoul of the rules and MBF did not do its due diligence (*id.* at 57:19-25; 61:2-10). He also found that “in terms of setting up the account and opening the account ... there is an acknowledgement ... by ...the CFO as well as the principles [sic] of plaintiff saying they read all the prospectus related to that opening of the account” (*id.* at 58:21-26).

Justice Oing also dismissed the claims for aiding and abetting, deceptive conduct, and contribution and indemnity.

On April 19, 2016, MBF filed a Notice of Appeal of this decision (NYSCEF 101), but later withdrew its appeal (NYSCEF 156). On August 2, 2016, MBF filed a motion to amend the complaint and caption (NYSCEF 106), which was denied by Justice Oing (NYSCEF 133). MBF then filed a motion to reargue the court’s decision denying amendment. The motion to reargue was granted (NYSCEF 150). The TAC was deemed served and the caption amended (*id.*).

The TAC omits all claims as to the USG Fund and focuses on Account x2069. MBF once again alleges several various fraud claims involving Account x2069, negligent misrepresentation claims involving Account x2069, aiding and abetting, and contribution and indemnity. At argument on this motion, MBF’s counsel concedes that there are really no changes to the causes of action from the SAC, just some additional facts (NYSCEF 187, Tr. at 38:14-21).

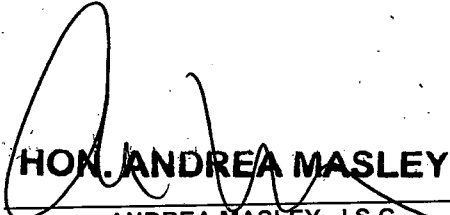
“The ‘law of the case’ doctrine is a rule of practice which provides that once an issue is judicially determined, either directly or by implication, it is not to be reconsidered by Judges or courts of co-ordinate jurisdiction in the course of the same litigation” (*Holloway v Cha Cha Laundry, Inc.*, 97 AD2d 385, 386 [1st Dept 1983] [citations

omitted)). The claims brought in the TAC are virtually identical to those Justice Oing dismissed. While MBF asserts that Justice Oing's decision was focused on the fraud and misrepresentation claims involving the USG Fund and not Account x2069, after careful re-review of Justice Oing's decision on the record (NYSCEF 97), the court disagrees. As detailed above, Justice Oing found that the damages sought flowed from the improper investment in the USG Fund and not Account x2069. Again, he also found that "in terms of setting up the account and opening the account ... there is an acknowledgement ... by ...the CFO as well as the principles [sic] of plaintiff saying they read all the prospectus related to that opening of the account" (*id.* at 58:21-26) and that MBF did not do its due diligence and failed to sufficiently allege justifiable reliance. This court is not the appellate division and will not review and reconsider Justice Oing's 2016 decision. MBF chose to withdraw its appeal.

Accordingly, it is

ORDERED that the defendants' motion to dismiss this action is granted and the Clerk is directed to enter judgment in favor of defendants JPMorgan Chase Bank N.A., J.P. Morgan Investment Management Inc. and Kevin T. Murphy dismissing this action with prejudice, together with costs and disbursements to said defendants, as taxed by the Clerk upon presentation of a bill of costs.

7/2/19
DATE


HON. ANDREA MASLEY
ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE