Panel rejects BernCo claim against broker

By Martin Salazar / Journal Staff Writer

Published: Monday, August 14th, 2017 at 12:05am
Updated: Monday, August 14th, 2017 at 12:18pm

Editor's note: This story was edited to reflect the correct relationship between BOSC and Bank of Albuquerque.

A panel of arbitrators has rejected a claim by Bernalillo County against one of the securities brokerage firms it had accused of breaching its duties and contributing to the county's 2014 investment meltdown.

And the county has been ordered to pay BOSC, parent company of Bank of Albuquerque, and one of its former brokers, Thomas Wayne Hayes, nearly $360,000 for their attorney fees and costs. In justifying the award, the arbitrators cited a state Supreme Court case that allows a court to order a government entity to pay opposing counsel's legal fees and costs when it has engaged in "bad-faith" litigation.

BOSC, which changed its name to BOK Financial Securities last year, said Friday in a statement that it "is pleased that its actions have been vindicated by a panel of experts and that this matter is now resolved."

But County Attorney Ken Martinez and Clinton Marrs, the contract attorney who represented the county in the case, said they are looking into whether an appeal might be an option.

"We haven't made a decision yet," Martinez said. He said the county has spent about $220,000 on the investment litigation.

Marrs disputed that the case the county filed was frivolous.

"The fundamental issue here from the county's perspective is when the county engages the retail securities industry to provide service to a government agency, what is the standard of conduct?" Marrs said. "We argued that the bar is at least high enough to require the brokerage firm to notify the county if and when the county agent started to do things that the brokerage firm saw as wrongful."

The panel declined to hold the brokerage firm to that standard, he added.

The arbitration award was entered on July 27, following 10 days of testimony and arguments.

The Financial Industry Regulatory Authority's office of dispute resolution oversaw the arbitration proceedings. FINRA bills itself as the leading nongovernmental regulator for all securities firms doing business with the U.S. public.

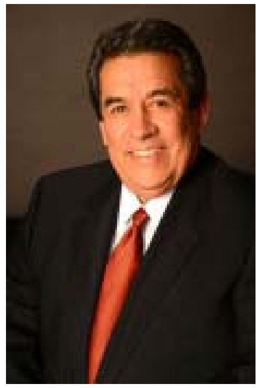
Risky investments

The county had sought to recover $3.2 million from BOSC for investment losses that it alleged it suffered due to the company's negligence. It was also seeking interest on those losses of between $964,000 and $1.6 million.

That's only a fraction of the total loss the county experienced. It ended up selling investments at a $17 million loss in 2014 to restructure its portfolio to minimize risk and provide liquidity.

The county also pursued a case against Oppenheimer & Co. Inc. and one of its brokers, alleging identical complaints, but that case was settled in July. Oppenheimer agreed to pay $500,000 to the county, according to a "confidential settlement agreement and release" the county provided to the Journal earlier last week.

The investment scandal began in 2013. Too much of the county's money was invested in long-term bonds, county officials said at the time. That left it with insufficient money to pay the bills and put the value of investments at risk, as interest rates rose.



Former Bernalillo
County Treasurer
Manny Ortiz

Then-County Treasurer Manny Ortiz and his investment officer at the time, former Treasurer Patrick Padilla, faced intense criticism from commissioners and top county executives over their investment strategy.

Marrs told the Journal that the portfolio was restructured primarily to protect the county against what officials at the time were being advised could be a $40 million loss.

Self-inflicted wound?

The county's case against BOSC centered on the contention that the investment firm knew that the Treasurer's Office was engaging in risky investments and that it failed to warn commissioners or the county manager about what was happening. Among the claims made by the county against the firm were that it engaged in misleading securities sales practices, breach of fiduciary duty and negligent misrepresentation.

The county also argued that neither the Treasurer's Office nor other county officials, including its investment committee, were up to the task of understanding the risks of the investments.

Paul DeMuro, the Oklahoma attorney representing BOSC, and Hayes argued that the county was more than capable of managing its own portfolio and that if county officials had listened to Padilla, they wouldn't have experienced the $17 million loss.

"This case is about a self-inflicted wound by an institutional client who, for whatever reason, maybe politics because these are elected officials, internal bureaucratic reasons are unwilling to accept responsibility for the decision-making of their entire institutional structure," DeMuro said in his closing. He said BOSC had a reasonable belief that the county was capable of evaluating the risk.

"They ruined me, they ruined my reputation, and I'm upset," Padilla told the Journal. But he said he feels vindicated by the decision reached by the arbitrators.

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