Eliot Ivan Bernstein

Subject: Emailing: Greenberg Traurig Hit with Suit Alleging Fraud, Breach of Fiduciary Duty.htm

http://amlawdaily.typepad.com/amlawdaily/2012/02/greenberg-traurig-hit-with-breach-of-fiduciary-duty-fraud-suit.html

February 2, 2012 3:57 PM
Greenberg Traurig Hit with Suit Alleging Fraud, Breach of Fiduciary Duty Posted by Claire Zillman An investor in a now-bankrupt California private mortgage broker and real estate loan provider claims in a potential class action brought against Greenberg Traurig that the firm, acting as the broker's counsel, helped hatch a fraudulent scheme that bilked the plaintiff and other investors out of some $700 million.
The complaint, filed Monday in California State Court in Alameda County by investor David Nolan, claims that broker RE Loans, LLCâ€”a secured lender to high-end residential and commercial real estate developersâ€”collected the $700 million in question as of early 2007. The problem, according to the complaint, is that RE Loans was struggling at the time to raise fresh capital in an effort to keep pace with its commitment and distributions as those loans sank into default and foreclosureâ€”a fact the company allegedly hid from the investors.
The complaint further alleges that since its inception in 2002, RE Loans broke the law by failing to register its securities offerings with the Securities and Exchange Commission. Acting as RE Loans's outside counsel, according to the complaint, Greenberg Traurig helped conceal both the companyâ€™s securities law violations and its liquidity problems so that investors wouldn't pull out.
Specifically, the complaint claims, Greenberg Traurig helped enlist Wells Fargoâ€”a firm client also named as a defendantâ€”to provide RE Loans a $50 million line of credit in June 2007 that the broker collateralized with its existing assets. Wells Fargo and Greenberg Traurig arranged the credit even though they knew RE Loans's agreement with its investors barred the broker from taking on third-party debt, the complaint alleges.
Later that year, RE Loans's managers, Greenberg Traurig, and Wells Fargo advanced the alleged cover-up by forming a new investment vehicle, the complaint claims. The defendants used that vehicle, the complaint alleges, to solicit new capital from existing investors in order to conceal the broker's cash-flow problems and the defendants' wrongdoing. Greenberg Traurig supported the new fund by preparing false and misleading solicitation materials, the complaint alleges.
The complaint specifies that its claims are based on the alleged scheme developed by RE Loans managers, Greenberg Traurig, and Wells Fargo to hide the broker's lack of liquidity and its continuing securities law violations. By advancing the scheme, the complaint states, the defendants "inflicted devastating harm" on investors by "stripping them of their ownership interests in and rights of control over RE Loans, and by devaluing their investments."
The complaintâ€”filed on behalf of Nolan and investors in similar straitsâ€—claims he lost about $665,000 through RE Loans's alleged fraud. He lists seven causes of action against Greenberg Traurig, including aiding and abetting breach of fiduciary duty, fraud by misrepresentation, fraud by concealment, and secondary liability for securities fraud. Nolan's complaint seeks unspecified monetary damages and attorneys' fees and expenses.
Contacted for comment, a Greenberg Traurig spokeswoman said via e-mail that "the firm did not become engaged by RE Loans until after the principal alleged wrongdoing occurred, and then to try to help the company deal with prior conduct. Anyone can allege virtually anything in a complaint. When the actual facts are developed and become clear, we believe that it will show that our firm acted properly and in no way wrongfully."
Wells Fargo did not immediately return a request for comment.
The complaint says that what it labels the "Ponzi-scheme relationship" between RE Loans and the new investment vehicle could only keep the broker afloat for so long. By March 2010, RE Loans had begun to default on its debt to Wells Fargo (a sum that by that point, according to the complaint, stood at $65 million).

Wells Fargo, which began exercising its rights as a secured creditor last August, is now in the process of liquidating RE Loans's underlying properties. RE Loans, its managers, and the new investment vehicle have all filed for bankruptcy or have been placed involuntarily into bankruptcy proceedings. Stephen Basser of San Diegoâ€“based Barrack, Rodos & Bacine is representing Nolan, the lead plaintiff in the suit. Basser did not return a call for comment. The complaint says the class in the case could potentially number in the thousands.