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Banking

Fiserv Slapped With Madoff Suit

Victoria Barret, 04.03.09, 6:26 PM ET

BURLINGAME, CALIF. - Banking software firm Fiserv was slapped with a \$1 billion class action complaint on April 2. The lawsuit alleges that the \$4.7 billion (sales) Brookfield, Wis., company should share responsibility for the fate of securities and cash Bernard Madoff was supposedly managing. Fiserv was a custodian of what could be a total of 1,000 pension and self-directed individual retirement accounts (IRAs) invested with Madoff. The suit also suggests unflattering links to the \$65 billion Ponzi scheme.

In an e-mail to Forbes, a Fiserv spokeswoman asserted that the claims in the suit "have no merit whatsoever."

According to the complaint, filed in the U.S. District Court for the District of Colorado: "In truth, while Defendants [Fiserv] were the designated 'custodians' for their pension and IRA accounts, that designation was pure fiction. ... No securities were purchased for Plaintiffs and no assets of any kind were, in fact, held and invested in their pension and IRA accounts."

The suit goes on to say that Fiserv's custodial customers received monthly statements from the company detailing the phantom values of their holdings. For this, Fiserv allegedly earned at least \$25 million in annual fees.

Fiserv's spokeswoman notes that each of the self-directed accounts was opened by an individual investor "who knew up front that it was his or her sole responsibility to perform due diligence and to make his or her own investment choices within the account." Account owners acknowledged, in writing, that Fiserv did not "provide investment advice or investment management, rather we solely execute instructions as directed by the investor."

Plaintiff attorney Jacob H. Zamansky emphasizes in the complaint that Fiserv was Madoff's preferred custodial service. "If you wanted to have an IRA with Madoff, you had to use Fiserv," he said in a phone interview. That suggests, Zamansky adds, that the relationship between the two firms was tight.

This comes just as Fiserv has tried to distance itself from the world of investment account administration. The company sold its trust administration outfit to TD Ameritrade in May 2007. Fiserv chief executive Jeffery Yabuki told Forbes in March: "We did all that to focus our energy."

Yabuki has prioritized Fiserv's bank software business, which sells tools that manage consumer loans, debit card services and online checking and bill payment services for large and small banks. Currently, he's making investment in data analytics and risk assessment technology.

"This case has nothing to do with Fiserv advising clients to invest one way or another," says Zamansky. "It is about their fiduciary duty as custodian of these accounts."

Fiserv and other financial houses have been involved in similar class action suits. Fiserv settled a California suit involving self-directed IRA accounts bilked by a Ponzi scheme. A separate lawsuit brought by 40 investors in the same scam is ongoing.

In April, Massachusetts' top securities regulator sued Fairfield Greenwich Group, a "feeder fund" that funneled billions of its clients' money into the Ponzi scheme. That suit also involves verifying Madoff's holdings.

The recently filed suits are no doubt the first of many to fall out of Madoff's wrongdoings. The legal litmus test will be proving true negligence by the firms that did business with Madoff.

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