SDNY Rejects Class Standing and Fiduciary Breach Claims In Connection With Alleged Double-Charging Scheme

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A New York federal district court concluded that a defined benefit plan participant lacked standing to seek relief on behalf of plans other than the one in which he was a participant. In this case, plaintiff claimed that defendants breached ERISA fiduciary duties and engaged in prohibited transactions by charging undisclosed markups for securities trades. The court concluded that plaintiff could pursue his claim only with respect to the plan in which he participated because the defendants' alleged improper charges for that plan would not resolve whether, when, and in what amount defendants charged undisclosed markups to other plans.

The court also dismissed the plaintiff's fiduciary breach claims, finding that he failed to plausibly allege that the defendants had discretion over the disposition of plan assets such that they could be deemed functional fiduciaries. In so ruling, the court rejected plaintiff's argument that the defendants became fiduciaries with respect to the markups by virtue of the discretion they exercised over their own compensation. The court concluded that the markups depended on a number of factors outside the defendants' control, such as the type of customer, time of day, the time and amount of securities being traded, and the market price. The case is *Fletcher v. Convergex Group LLC*, No. 13-cv-9150, 2019 WL 3242586 (S.D.N.Y. July 2, 2019).

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