Alert

January 21, 2020

COZEN O'CONNOR

Pension Factoring Continues to Create Problems

Pension factoring continues to leave investors looking for remedies beyond filing suit against defunct pension factoring companies, as witnessed by a recent filing in Johnson County, Kan., titled *Michele R. Lenderman v. Emil J. Wansa, Allianz Life Insurance Co. of North America and North American Co. for Life and Health Insurance*, 20-cv-00087 (District Court of Johnson County, Kan.).

In *Lenderman*, the plaintiff allegedly sought investment and retirement planning services from Emil J. Wansa, an alleged agent for Allianz and North American. According to the plaintiff, Wansa proposed a Life Insurance Retirement Strategy, recommending that plaintiff purchase Indexed Universal Life Insurance Policies from Allianz and North American for the purpose of providing a death benefit and also providing an accumulated value that would allow plaintiff to borrow against the policies. Wansa allegedly also advised plaintiff to purchase structured cash flows from Future Income Payments (FIP), a pension factoring company that purchased pension benefits for lump sums that it then resold to investors. Plaintiff claims that she paid approximately $180,000 to FIP in March 2018 in exchange for FIP's agreement to make monthly payments at a 7 percent return for four years. The monthly payments would then theoretically fund the IUL policies.

The complaint alleges that beginning in April 2018, payments from FIP stopped. Nevertheless, plaintiff was able to make her scheduled annual premium payments for 2019, but claims that she will not be able to continue making those payments in 2020.

As the complaint notes, the pension factoring industry has been subject to scrutiny by the Consumer Fraud Protection Bureau and the U.S. Government Accountability Office, for business practices that may violate consumer laws or unfair trade practices. Specifically, FIP was the focus of such scrutiny, and as part of that process, its transactions were determined to be unlawful loans because FIP was not a licensed lender, its effective interest rates charged to pensioners violated state usury law, and the loans did not include legally mandated disclosures. Following this, in April 2018, FIP ceased issuing new pension advances or collecting payments from pensioners.

The plaintiff claims breach of fiduciary duty, negligence, and negligent misrepresentation as to Wansa and failure to exercise due care in the supervision of Wansa as to Allianz and North American. An online search indicates that other suits have targeted insurers and their brokerages in connection with FIP's failure. Click here to read a copy of the *Lenderman* complaint.

Pension factoring has been of concern for years and often triggers, for institutions that manage and fund these pensions, significant tax issues, reputational risk, and administrative burdens and costs.

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