

In re AXA Rosenberg Investor Litigation

COURT: United States District Court, Northern District of California
CASE NUMBER: 11-cv-00536
JUDGE: Jeffrey S. White
CLASS PERIOD: 01/01/2007 - 04/15/2010

This class action asserts claims for breach of fiduciary duty, negligence/gross negligence, and an accounting, as well as claims for violations of the Employee Retirement Income Security Act of 1974 ("ERISA"), against Defendants AXA Rosenberg Group LLC ("ARG"), AXA Rosenberg Investment Management, LLC ("ARIM"), Barr Rosenberg Research Center LLC ("BRRC"; ARG, ARIM, and BRRC collectively, "AXA Rosenberg"), and Barr Rosenberg arising out of a "coding error" in AXA Rosenberg's quantitative investment models between 2007 and 2009, and Defendants' response to the error upon its discovery. The error effectively eliminated information relating to over 54 common risk factors (risks associated with particular industries, countries, and stock fundamentals) in AXA Rosenberg's quantitative investment management process, and exposed client portfolios to excessive risk. The error caused nearly half of all AXA Rosenberg client portfolios to incur investment losses that they would not have incurred but for the error.

In November 2011, the parties executed a Stipulation of Settlement which provides for the payment of \$65 million into a settlement fund for benefit of the class. On December 6, 2011, the Court preliminarily approved the settlement, preliminarily certified the Class, authorized notice of the proposed settlement to be sent to potential members of the Class, and scheduled a Final Approval Hearing for March 30, 2012, at 9 a.m.

PROCEDURAL BACKGROUND

On February 3, 2011, plaintiff the Government of Guam Retirement Fund ("GGRF") filed a class action complaint for breach of fiduciary duty, negligence/gross negligence, and an accounting against defendants ARG, ARIM, and BRRC in the United States District Court for the Northern District of California. By Orders dated March 18, 2011, the Government of Guam action was consolidated with a subsequently-filed related action alleging ERISA claims on behalf of the National Elevator Industry Health Benefit Fund ("NEI") and a putative class against ARG, ARIM, BRRC and Barr Rosenberg. The NEI complaint alleged that the defendants breached fiduciary duties in connection with the computer error that defendants are liable for all losses resulting from the breach of ERISA duties and for the return of certain fees.

On April 15, 2011, Plaintiffs GGRF, NEI, Sacramento County Employees' Retirement System, and Trustees of the Pipefitters Local 636 Defined Benefit Plan filed the Consolidated Complaint ("Complaint") alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence/gross negligence, and an accounting, as well as breach of the duty of prudence, breach of the duty of loyalty, co-fiduciary liability, and prohibited transactions under ERISA seeking damages and return of fees.

On June 23, 2011, the Court deemed an additional action filed by the Trustees of the Carpenters Pension Fund of Illinois ("Carpenters"), also asserting claims for violations of ERISA on behalf of a purported class, related to the Guam action. By Order dated June 30, 2011, the Court consolidated the Carpenters Action with the Guam action and titled it *In re AXA Rosenberg Investor Litigation*, Master File No. CV 11-00536 JSW (N.D. Cal.). The Court appointed Bernstein Litowitz as interim co-lead plaintiffs' counsel in the consolidated action pursuant to Fed. R. Civ. P. 23(g).

On May 31, 2011, Defendants filed motions to dismiss the Complaint pursuant to Fed. R. Civ. P.12(b)(6) and a motion for a more definite statement pursuant to Rule 12(e). Plaintiffs filed their opposition to the motions to dismiss on July 15, 2011, and Defendants filed their reply briefs on August 12, 2011. The Court scheduled the hearing on the motions to dismiss for September 16, 2011, and a Case Management Conference for October 14, 2011.

SETTLEMENT

On September 12, 2011, the parties participated in a mediation session, and on November 1, 2011, the parties executed the Stipulation of Settlement, which provides, among other things, for the payment of \$65 million into a settlement fund for the benefit of the class. The Class consists of all persons and entities (whether consisting of a pooled investment fund or individually managed account) for which AXA Rosenberg Investment Management LLC or an Affiliated Adviser provided investment management or advisory services during the Class Period; and (i) for which a separate account (including sub-accounts) holding cash and/or securities was maintained with a custodian (or administrator or trustee) under that person's or entity's name (other than the pooled investment funds whose investors meet the definition of clause (ii)), or (ii) that signed subscription agreements (or similar documentation) to invest (and were invested) during the Class Period in a pooled investment fund that was sponsored by AXA Rosenberg Investment Management LLC, which did not have a board or other non-directed independent trustee(s) with independent fiduciary management responsibility ("Non-Independent Funds"). Excluded from the Class are Defendants and their subsidiaries, parents, affiliates, successors, predecessors, officers and directors, any entity in which any excluded person has a controlling interest, and the legal representatives, spouses, heirs, successors and assigns of any such excluded person, except that funds managed or advised by AXA Rosenberg or affiliates, any portion of which are for the benefit of non-affiliated third parties, are not excluded. Also excluded from the Class are any persons or entities who exclude themselves by submitting a request for exclusion.

On November 1, 2011, Plaintiffs filed a Motion for Preliminary Approval of the Settlement, which was unopposed. On December 6, 2011, the Court granted preliminary approval of the settlement. On February 24, 2012, Plaintiffs filed a Motion for Final Approval of the Settlement, which was also unopposed. On March 30, 2012, the Court held a hearing on the Motion for Final Approval of the Settlement, and granted the Motion. Orders reflecting the Judge's final approval of the settlement were entered on April 2, 2012.