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Husch Blackwell Beats RICO Claims In \$625M Suit

By **Dani Meyer**

Law360, New York (January 13, 2016, 1:22 PM EST) -- A New York federal judge on Tuesday cut federal Racketeer Influenced and Corrupt Organizations Act claims from a \$625 million suit lodged against Husch Blackwell LLP for allegedly operating a scheme to aid a client's health sector fraud, saying that the claims are insufficient because they don't allege that the firm helped run the scheme.

U.S. District Judge Andrew L. Carter Jr. ruled that Gansett One LLC, SES Wealth Advisors LLC and other investors didn't plausibly allege a RICO scheme in their suit accusing the firm and partner Diane Carter of helping nonparty Kamran Nezami cover up a theft of their money.

"Nowhere do the investors assert that Carter or Husch had a role in the conception, creation or execution of the RICO enterprise, all attributed to Nezami. Instead, the complaint accuses Carter and Husch of standing by silently while knowingly observing Nezami engage in fraud. Such silence would be plausibly helpful to Nezami's RICO enterprise, but it does not amount to direction of it," Judge Carter said.

Judge Carter added that the allegations of Husch and Carter's active involvement in Nezami's RICO scheme are limited to standard actions taken in the course of representing their client, which doesn't allege RICO conduct.

"Because the investors insufficiently plead conduct or a pattern, their RICO claims are dismissed in their entirety," Judge Carter ruled.

The suit, **filed in April** and removed to federal court in May, asserts causes of action under RICO and for fraud and aiding and abetting fraud.

It claims that Husch Blackwell helped Nezami entice the plaintiffs to invest by saying that the money would go toward interests in pharmacy companies, even as Nezami was pocketing other funds.

Meanwhile, Carter devised a plan to cover up the embezzlement by suggesting that the alleged thefts should be characterized as legitimate loans, the suit adds. Carter allegedly received an "equity interest" from Nezami in exchange for her assistance.

In its **August motion to dismiss** the suit with prejudice, Husch Blackwell contended that the investors were wrong to target the firm instead of Nezami, saying it only has a "tenuous connection" to the factual allegations.

But the investors **fired back in October**, saying that the suit wasn't an attempt to hold Husch responsible for its client's crimes but instead unfolded in "painstaking detail" a fraudulent scheme that Carter participated in as a Husch Blackwell partner. Husch **responded later that month**, saying that the investors had no support for their claims.

Husch later urged the court to toss the plaintiffs' state law claims along with the federal RICO

claims, saying it would be **more efficient**.

But Judge Carter on Tuesday declined to exercise supplemental jurisdiction over the state claims, saying that federal courts are supposed to avoid needless decisions of state law and that remanding the case won't injure the parties.

"Principles of economy, convenience, fairness and comity thus undergird the court's discretionary decision to decline supplemental jurisdiction," Judge Carter said.

Elliot D. Ostrove of Epstein Arlen & Ostrove LLC, an attorney for the plaintiffs, told Law360 on Wednesday that he doesn't agree with the judge's decision and plans to consider all of his clients' options moving forward.

"I'm confident that the state court will see things our way and we'll be able to move forward from there," Ostrove said.

Representatives for Husch Blackwell didn't immediately respond to a request for comment on Wednesday.

The investor plaintiffs are represented by Elliot D. Ostrove of Epstein Arlen & Ostrove LLC.

Husch is represented by Carolyn J. Fairless and Christopher P. Montville of Wheeler Trigg O'Donnell LLP, and Howard I. Elman and Jeremy C. Bates of Matalon Shweky Elman PLLC.

The case is Gansett One LLC et al. v. Husch Blackwell LLP et al., case number 1:15-cv-03551, in the U.S. District Court for the Southern District of New York.

--Editing by Stephen Berg.

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