

Corporate & Financial Weekly Digest

Posted at 12:57 PM on August 13, 2010 by [Julie Pechersky](#)

Misrepresentation of Lehman Guaranty Supports Securities Claim

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An investment company's representation that certain energy bonds were backed by the State of Georgia—when they were in fact guaranteed by Lehman Brothers Holdings, Inc.—could subject the firm to liability for securities fraud.

Investor Paul Prager contacted FMS Bonds, Inc. in April 2008 to pursue conservative investment opportunities. An FMS advisor recommended that he purchase a recent issue of natural gas bonds, which the advisor described as municipal bonds that were backed by the State of Georgia. The bonds were actually guaranteed by Lehman, however, and Mr. Prager lost \$112,000 of his \$200,000 investment after the investment bank filed for bankruptcy.

Mr. Prager sued FMS for violations of Securities and Exchange Commission Rule 10b-5 and the Securities Exchange Act of 1934. FMS sought dismissal of the securities claims, arguing that Mr. Prager had not alleged particularized facts about how FMS had misled the plaintiff or about Mr. Prager's reliance on the misstatements. The U.S. District Court for the Southern District of Florida rejected these arguments, holding that the allegation that FMS described the bonds as "safe" investments backed by Georgia provided sufficient details about FMS's alleged deception and about the factual assertions that Mr. Prager relied upon. (*Prager v. FMS Bonds, Inc.*, 2010 WL 2950065 (S.D. Fla. July 26, 2010))

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