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Sanctions granted in securities suit

BY PATRICIA MANSON
Law Bulletin staff writer

A federal judge today sanctioned a Chicago lawyer and his client for trying to revive claims of securities fraud that had been dismissed.

In a written opinion, U.S. District Judge Robert M. Dow Jr. concluded that J. Kevin Benjamin of Benjamin Legal Services PLC violated Federal Rule of Civil Procedure 11 by filing a frivolous lawsuit on behalf of Super Pawn Jewelry & Loan LLC in far north suburban Round Lake Beach.

Super Pawn also ran afoul of Rule 11 by authorizing Benjamin to file the amended suit even though a previous version containing the same claims had just been dismissed, Dow wrote.

And citing the Private Securities Litigation Reform Act, he held he was required to impose sanctions in such a situation.

Those sanctions will be the reasonable attorney fees incurred by the defendants after the amended suit was filed on May 31, 2013, Dow wrote.

He directed the defendants to submit their requests for attorney fees by Oct. 6 and Super Pawn and Benjamin to make any objections by Oct. 20.

In a suit filed in 2011, Super Pawn alleged it owned 1 million shares of American Environmental Energy Inc. (AEEI) as a result of a merger. Super Pawn also alleged AEEI and others refused to turn those shares over to Super Pawn.

Benjamin filed the original complaint on behalf of Super Pawn but withdrew from the case less than two months later.

Attorneys who later entered the case filed and pursued a first-amended complaint.

After those attorneys withdrew, Benjamin re-entered the case and filed a second-amended complaint on behalf of Super Pawn.

He later attempted to file corrected versions of the complaint twice and then asked to file a third-amended complaint.

Defendants in the proposed third-amended complaint included current and former AEEI officers and directors.

Also named as defendants were AEEI attorney Christopher A. Wilson of Irvine, Calif., and his firm, Wilson & Oskam LLP. The firm previously was called Wilson, Haglund & Paulsen P.C.

Dow struck the corrected versions of the second-amended complaint and denied the motion to file a third-amended complaint.

He ordered the parties to proceed in claims that remained in the first-amended complaint.

Defendants in the suit sought sanctions against Super Pawn, Benjamin and three other attorneys.

In today's opinion, Dow declined to sanction the other attorneys.

But Benjamin violated Rule 11, he wrote, by advancing securities fraud and other claims "without making a good-faith attempt to cure the factual deficiencies" that led him to dismiss those claims from the first-amended complaint.

Dow also criticized Super Pawn's attempt to "completely distance itself from its own lawsuit."

Super Pawn's contention that it never read its own suit is "incredible," he wrote, and the "plain language" of Rule 11 and the PSLRA refute its argument that it cannot be held liable for sanctions.

The case is *Super Pawn Jewelry & Loan LLC v. American Environmental Energy Inc., et al.*, No. 11 C 8894.

Benjamin, who represented himself on the sanctions matter, declined to comment because he had not yet reviewed the opinion.

Verona M. Sandberg of Freeborn & Peters LLP filed the motion for sanctions on behalf of Weaver & Martin LLC, AEEI's accounting firm.

"We think this ruling will send a message to plaintiffs to proceed with caution in filing frivolous securities claims," she said, "due to the fact that the Private Securities Litigation Reform Act mandates sanctions when Rule 11 has been violated."

Wilson filed the motion for sanctions on behalf of himself, his law firm and the AEEI officers and directors.

"We were pleased with the ruling," he said. "We thought it was appropriate."

However, he continued, he was disappointed the attorneys who filed other versions of the suit were not sanctioned.