

Grant Thornton Shakes Mass. Retirees' \$25M Fraud Loss Suit

By **Jody Godoy**

Law360, New York (July 15, 2016, 1:18 PM ET) -- A Massachusetts appeals court on Thursday refused to revive claims that Grant Thornton LLP negligently failed to catch a fraud by Fletcher Asset Management that cost a state pension fund \$25 million, saying the auditor's work for a Cayman Islands-based fund doesn't land the dispute in a Bay State court.

The three-judge panel for the Massachusetts Appeals Court upheld a decision that Massachusetts Bay Transportation Authority Retirement Fund and Fletcher Fixed Income Alpha Fund Ltd. — where the pension fund lost its investment — can't sue the auditor in state court. The pension fund can't show that Grant Thornton had done business connected to Alpha in Massachusetts, the panel said.

"Other forum-related activities must be associated with the challenged transaction between the parties in order to be relevant to the analysis," the appellate justices wrote, citing an earlier decision in another case. "We understand 'associated' to mean something more than mere coexistence."

The dispute arises out of the retirement fund's 2007 investment in Alpha, then managed by New York-based Fletcher Asset Management. The pension fund claimed that Grant Thornton should have notified it after withdrawing audit opinions for two other Fletcher-managed funds. If the auditor had done so, the pension fund argued, it could have redeemed its investment before the Fletcher funds went belly-up.

A Massachusetts state court judge tossed the suit in February 2015, saying that the dispute didn't have adequate ties to the state. The lower court had also nixed the pension fund's claim against Alpha's fund administrator SS&C Technologies, saying that the pension fund had claimed Alpha was already insolvent by the time SS&C was brought on board in 2010.

The appellate panel agreed with those findings on Thursday, rejecting an argument by the pension fund that auditor's knowing that the pension fund would see its audit opinions was enough to root the case in the state. The lower court judge had been right to find that connection too tenuous to support jurisdiction, the appellate panel said.

Alphonse Fletcher Jr.'s Fletcher International, the master fund for Alpha and other funds, filed for Chapter 11 protection in June 2012. According to a subsequent trustee report, the fund did not make a single profitable investment after August 2007 and likely was insolvent as early as 2008.

The insolvency spawned a set of disputes with auditors and law firms, including one in which a Fletcher

fund manager has accused Morrison & Foerster LLP of joining the firm in an elaborate plot to seize control of his personal assets. A Florida federal court dismissed that suit in January.

Grant Thornton spokesman Jon Rucket said the auditor "is pleased with the court's decision and believe the matter was appropriately decided in our favor."

Rachel Fleishman, an attorney for the pension fund and Alpha, said the parties intend to ask the Massachusetts Supreme Judicial Court for leave to appeal the decision.

Massachusetts Associate Appellate Justices Elspeth B. Cypher, Andrew R. Grainger and William J. Meade heard the appeal.

The plaintiffs are represented by Rachel S. Fleishman of Reid Collins & Tsai LLP and Philip Y. Brown of Brown Counsel.

Grant Thornton is represented by Grant J. Esposito of Morrison & Foerster LLP. EisnerAmper is represented by William M. Connolly of Drinker Biddle & Reath LLP. SS&C Technologies is represented by Jonathan D. Cogan of Kobre & Kim LLP.

The case is Fletcher Fixed Income Alpha Fund Ltd. et al. v. Grant Thornton LLP et al., case number 15-P-830, in the Massachusetts Appeals Court.

-- Editing by Marjorie Backman.