Finance

Case Law Update

Rosling King LLP

The Queen's Bench Division recently considered the extent of the duty placed on banks/advisors when advising customers on making investments. This case confirms that various duties are owed to customers and assists in illustrating the measures required in order to discharge those duties.

The Facts

In January 2007, Mr and Mrs Worthing (the "Claimants") invested £700,000 in an investment portfolio provided by Lloyds Bank Plc ("Lloyds"), following various consultations with Lloyds regarding the potential investment. The Claimants subsequently suffered a loss on their investment.

The Claimants issued proceedings against Lloyds on the basis that they had received negligent advice in breach of the statutory obligations imposed by s.150 of the Financial Services and Markets Act 2000 and the Conduct of Business Sourcebook Rules (the "COBS Rules") and in breach of the Defendant's contractual obligations.

The Decision

The Court dismissed the claim on the basis that Lloyds had fulfilled their obligations, insofar as they existed. In providing investment advice, the Court confirmed that Lloyds was performing a regulated activity under Part 1, Schedule 2 of FSMA, and therefore their conduct must be consistent with the COBS Rules. In taking various steps throughout the relationship with the Claimants, Lloyds was able to demonstrate that it had adequately complied with the COBS Rules: at the time of the initial investment, the Claimants had been made aware of and understood the level of risk involved.

With regard to contractual duties, the Court found that there was no contract in existence at the time of the initial advice. Therefore, the Claimants' argument that there was a continuing obligation under that contract failed. It was found that, at a later review of the investment decision, Lloyds was then under a contractual duty to conduct this review with reasonable care and skill. Once again, it was shown that the steps that Lloyds had taken (which were also in compliance with the COBS Rules) were sufficient to discharge this duty. Lloyds was not under an onerous obligation to carry out a fresh assessment of the Claimants' investment requirements; it was only necessary for Lloyds to take steps to ascertain whether there had been any material change.

Commentary

At trial, Lloyds was able to show through contemporaneous documents that it had complied with its duties under the COBS Rules and the contract with the Claimant, and these documents were heavily relied upon by the judge. This case serves as helpful guidance on how banks can protect their interests, in ensuring procedures are in place to satisfy the requirements set out in the COBS Rules and in implementing an effective record keeping system, which will assist banks in evidencing that they have complied with their duties.

For further information, please contact Georgina Squire or the Partner with whom you usually deal.