

Beat: News

Goldman Sachs vindicated but bruised in court battle with Libyan fund

WORLD NEWS

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USPA NEWS - The outcome of a two-and-a-half-year legal battle between Goldman Sachs and Libya's \$67 billion (53.88 billion pounds) sovereign fund is a triumph for the Wall Street giant, which was vindicated despite embarrassing revelations about how some of its bankers conducted business.

The London High Court found in favour of Goldman Sachs on Friday, with Judge Vivien Rose dismissing the fund's arguments, made over the course of a bruising seven-week trial.

While the Libyan Investment Authority (LIA) is likely to appeal, according to a source with knowledge of the matter, the lurid details spilling out of the case mesmerized observers because of the profile of the parties involved and the glimpse they offered into the secretive world of multi-billion-dollar sovereign wealth fund (SWF) investments.

The dispute centred on the \$1.2 billion the LIA paid to Goldman to invest in nine equity derivatives trades, all of which ultimately turned out to be worthless.

In the course of the trial, observers were treated to tales of lavish hospitality involving soccer matches, nightclubs, London West End musicals, and in one instance prostitutes.

At stake was access to some of the \$35 billion that the LIA had available to invest as Libya emerged from political isolation. Not surprisingly, it quickly became a magnet for foreign banks and fund managers.

One witness appearing for the fund, Ali Baruni, who was acting as an adviser for the LIA at the time, described a July 2007 meeting with Goldman Sachs at which he was "inundated" by the potential investments presented to him.

But Goldman Sachs was not alone in courting the fund. In the first two years of its life, the LIA invested heavily in alternatives such as private equity, hedge funds and mezzanine debt, including structured derivatives, according to a report prepared by LIA's expert witness on suitability.

Judge Rose noted this in her ruling, saying that although the nine disputed trades may have been regarded as unsuitable for a SWF, they were no different in that regard from many other investments that the LIA made over the period.

She said LIA managers had been tasked with generating a much higher return than they could hope to make on plain vanilla trades - offering a potential explanation for their choice of speculative investments.

Goldman had also asserted in its court filings that the LIA was under political and internal pressure to make large investments in order to generate returns quickly. It argued that "an unforeseen financial depression" caused the losses, not any wrongdoing by the bank, and it was simply a case of "buyer's remorse".

BONE OF CONTENTION

A key bone of contention at trial was whether the fund's employees actually understood what they were investing in. Although lawyers for the LIA argued that Goldman Sachs had taken advantage of the fund's lack of sophistication, Judge Rose said the LIA had greatly exaggerated the naivety of its staff.

The LIA made much of the fact that Goldman had wined and dined its employees, plying them with gifts such as iPods, as well as offering a prestigious internship to Haitem Zarti, the younger brother of Mustafa Zarti, a key decision-maker at the fund.

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The provision of such highly sought-after internships has come under scrutiny by U.S. regulators since 2008 as part of broader moves to shine a light on how banks go about business in less emerging markets.

But Judge Rose said she did not think the internship had a material influence on Mustafa Zarti's decision to enter into trades with Goldman Sachs. She also ruled that the main motivation behind the offer was the bank's belief Haitem might be chosen to lead the LIA's new office in London

Even the salacious details relating to how former Goldman Sachs sales executive Youssef Kabbaj went about building a close relationship with the LIA were given short shrift by the judge.

The LIA had alleged that Kabbaj flew Haitem Zarti from Morocco to Dubai at Goldman Sachs' expense, paid for accommodation at a five-star hotel and arranged for two prostitutes to spend the evening with them at a cost of \$600.

Kabbaj, who did not appear a witness, and remains bound by a strict confidentiality agreement with Goldman, paying for "improper entertainment".

Judge Rose said that whilst the extent of the entertainment offered by Kabbaj to Haitem was "inappropriate, and in flagrant breach of Goldman Sachs' policy on entertaining clients"

GOING THE EXTRA MILE

The LIA argued that the trades were secured through "undue influence" and "unconscionable bargaining". This meant the LIA had to show it had only entered into the trades because it was shorn of the ability to make free and independent decisions, and that the terms of the transactions were "overreaching and oppressive".

To this end, lawyers argued that Goldman had "crossed the line" and abused its position as a trusted adviser to the fund.

Goldman contended that it was always clear the two were dealing with each other as commercial counterparties, and that it had maintained an arm's length relationship with its client.

Once again, Judge Rose found in favour of Goldman: "The fact that Goldman Sachs were prepared to go an extra mile when competing for this business by installing Mr Kabbaj in Tripoli to help the LIA does not mean that they were in a different relationship from the relationship that existed between the LIA and its other counterparties," she said.

The relationship came to a head at a stormy meeting at the LIA's offices on July 23, 2008, in which Mustafa Zarti, the fund's then deputy chief, swore at Goldman's representatives and threatened to "come after their families", a witness, Catherine McDougall, told the court.

According to a witness statement by McDougall, a former Allen & Overy lawyer who was seconded to the LIA in July 2008: "His curses were along the lines of 'fuck your mother, fuck you and get out of my country'."

Zarti's explosive rage was corroborated by Kabbaj's report of the same meeting, as related in a letter seen by the court.

Kabbaj said Zarti had called Goldman Sachs "a bank of Mafiosi", that Goldman had lied to him, and that when someone behaved like a bandit with him, he could "become himself a bandit".

But Judge Rose said there was something "stage managed" about this stormy meeting. "The meeting seems to have been conducted so as to have maximum impact by turning on a dime from 'chit chat' to explosive and frightening abuse," she said.

Goldman described Friday's ruling as "a comprehensive judgment in our favour", while the LIA expressed its disappointment and said all options were being considered.

The fund is potentially an important source of finance for rebuilding Libya after years of war and chaos, but some of its assets have been under U.N. sanctions since the overthrow of ruler Muammar Gaddafi in 2011. A power struggle over the fund is still raging.

The LIA is also pursuing French investment bank Societe Generale (SOGN.PA) for some \$2.1 billion in relation to trades entered into between 2007 and 2009. SocGen is contesting the case, which is only expected to come to trial in April 2017.

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