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Court Finds Martin Act Does Not Preempt Non-Fraud Tort Claims

Plaintiffs brought claim in New York federal court for common law fraud, negligent misrepresentation, and breach of fiduciary duty against Defendant ThinkStrategy Capital Management, LLC ("ThinkStrategy"), a "fund of funds" in which plaintiffs invested. Plaintiffs alleged that ThinkStrategy had represented that it would conduct adequate due diligence on its managers, but failed to do so when it placed assets with a manager that was later found to be engaged in fraud. ThinkStrategy moved for summary judgment on all of Schwarz's claims.

ThinkStrategy argued that Schwarz's non-fraud claims were preempted by the Martin Act, a provision of the New York General Business Law that empowers the New York Attorney General to prosecute financial fraud. The court held that, despite certain case law that supported ThinkStrategy's position, the Martin Act did not preempt common law tort claims that relied on the same facts as potential violations of the Act. The court was persuaded by recent state court opinions holding that the language, legislative history, and purpose of the Martin Act did not support a finding of preemption, and concluded that the New York Court of Appeals, if it were to address the issue, would find likewise. Accordingly, the court denied defendant's summary judgment motion.

Schwarz, et. al. v. ThinkStrategy Capital Management, LLC, No. 09 Civ. 9346 (LAK), 2011 WL 2732218 (S.D.N.Y. July 14, 2011).

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