Judge Finds That Transfer Agent's Failure To Remove Restrictive Legend May Be Actionable

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Transfer agents can find themselves in a difficult position when it comes to removing restrictive legends on stock certificates. On the one hand, the Securities and Exchange Commission may take enforcement action against transfer agents who facilitate unlawful trading. In a case announced last year, for example, the SEC charged that a transfer agent had relied on facially inaccurate and incomplete legal opinions. On the other hand, a transfer agent that fails or refuses to remove stock transfer legends may face liability to the stockholder.

This latter risk is illustrated by a recent ruling by U.S. District Judge Alvin K. Hellerstein in *Shaw v. Empire Stock Transfer Inc.*, 2019 U.S. Dist. LEXIS 87213, 2019 WL 2226761. The case involved a stockholder of a Nevada corporation who allegedly never received his share certificate despite submitting a Rule 144 opinion. Judge Hellerstein found that NRS 104.8401 confers a cause of action for failure by a transfer agent to remove a restrictive legend. In support, he cites the Nevada Supreme Court's opinion in *Guilfoyle v. Olde Monmouth Stock Transfer Co., 3*35 P.3d 190, 195 (Nev. 2014). I took issue with the holding in *Guilfoyle* in this post. Judge Hellerstein's decision was not all beer and skittles for the plaintiff, however. In fact, he dismissed the complaint with prejudice as to the plaintiff's unjust enrichment, constructive trust, and aiding and abetting claims while granting leave to amend and add a statutory claim to conversion claim.

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