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## Court Lets Advisers Off The Hook In Securities Case

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A state appellate court ruling Tuesday protects investment advisers from being sued for rescission when a venture doesn't pan out.

Only those who actually sold the securities can be forced to return investors' money under state Corporations Code section 25504, the 4th District Court of Appeal ruled. *Viturbi v. Wasserman*, 2011 DJDAR 539.

Thursday's decision was the first in California to address the issue.

The ruling bodes well for many types of securities fraud defendants, including attorneys, underwriters, accountants, promoters and corporate officers and directors, said Dan Lawton of the Lawton Law Firm in San Diego.

'Investors often seek to cast the net of liability as widely as they can.'

Dan Lawton

Lawton represents Geneva Wasserman, an attorney who analyzed biotech investments for Audrey Viterbi, a venture capitalist and daughter of Qualcomm Inc. co-founder Andrew Viterbi.

On Wasserman's recommendation, Viterbi and securities trader Dan Smargon invested \$200,000 in Economic Inventions, which held patents on "expirationless options," a type of derivative security.

Wasserman didn't tell the investors she had a financial interest in the company or that the stock was worthless since the patents were already licensed to a third party, the lawsuit alleged.

But San Diego County Superior Court Judge Linda B. Quinn found that Wasserman could not be held liable for rescission because she did not sell the investors the stock. The appellate court affirmed Tuesday.

"Rescission requires the contracting parties to be placed in the position they were in prior to contracting, and a non-seller, who did not receive any money from the purchaser, cannot return that money to the purchaser," wrote Justice Gilbert Nares. Justices Richard Huffman and Cynthia Aaron agreed.

Plaintiffs' lawyer Frank E. Rogozienski did not immediately return a call for comment.

Lawton was pleased with the ruling, which he said puts California law in line with the Federal Securities Act of 1933.

"Investors often seek to cast the net of liability as widely as they can," Lawton said. "This court is saying you cannot cast the net more widely than the Legislature intended."

Plaintiffs had also sued the company, its president and board members. Claims against the board members were dismissed for lack of jurisdiction, and claims against the company and its president were stayed due to bankruptcy filings.

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