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Robinhood's Trading Halt Hurt Retail Investors, 11th Circ. Told

By **David Minsky**

Law360 (March 23, 2023, 8:56 PM EDT) -- Robinhood investors told the Eleventh Circuit on Thursday that the company's trading app broke a fiduciary duty to protect individual investors when it prevented traders from purchasing stocks, creating a windfall for institutional clients that were trying to profit off short sales in a January 2021 trading showdown.

During oral arguments in Atlanta, Jesse Panuccio of Boies Schiller Flexner LLP, representing several investors, told a three-judge panel that Robinhood can't hide behind a contract allowing complete control of customer accounts while at the same time claiming to be a "non-discretionary" broker that allows investors to direct their own trades.

"One of the nation's largest, licensed stockbrokers imposed a multiday, one-sided trading restriction on its clients for the purpose of tanking the price and the value of dozens of stocks those clients had purchased and invested in," Panuccio said. "Robinhood's CEO admitted the company did this to protect the firm, even though it knew it was creating a bad outcome for its clients."

Kevin Orsini of Cravath Swaine & Moore LLP, representing Robinhood, cited a contract between his client and customers that "unambiguously" gives the company the right to "do exactly what it did in January 2021 in the face of unprecedented market conditions."

Several investors sued the company following an incident at the end of January 2021 in which hedge funds and certain institutional investors were short-selling stocks — or reaping gains off declining stock prices — while at the same time individual investors who used the Robinhood app were purchasing stocks in the same companies to keep prices from dropping, according to court documents.

The investors claimed that when their purchases caused stocks' prices to rise and forced sellers to dump their stocks at higher prices and lose money, Robinhood **shut down trading** for more than a dozen stocks and caused losses exceeding more than \$10 billion in value.

A district court in Florida ultimately granted Robinhood's motion to dismiss the case in January 2022, reasoning that courts in California and Florida were required to enforce valid contracts and that the terms of the contract allowed Robinhood to restrict stock purchases, according to court records.

"You're saying this is a breach of fiduciary duty, but can't they limit their duty by agreement?" said Judge Corey Maze of the U.S. District Court for the Northern District of Alabama, sitting on the panel by designation. "It's not a breach of a duty if by agreement, you've allowed them to do so."

Panuccio agreed that certain portions of the Robinhood contract allowed the company discretion to restrict trades; however, he said the entire contract must be considered.

"They ignore that the purpose of this contract is also to carry this security," Panuccio said. "Once the client purchases them, they are carrying that account, they are stuck in the account, the client can't do anything with those securities unless Robinhood executes."

Orsini argued that it was necessary to do what Robinhood did in order to meet collateral obligations.

"Where's the breach of contract claim?" Orsini said. "There is none. And the reason there is no

breach of contract claim is because they're trying to create liability in the tort, to negligence to fiduciary duty for conduct that not only doesn't breach the contract but is explicitly permitted by the contract."

U.S. Circuit Court Judges Jill Pryor and Britt Grant, and U.S. District Court Judge Corey Maze of the Northern District of Alabama sat on the panel for the Eleventh Circuit.

The appellants are represented by Jesse Panuccio and Carl E. Goldfarb of Boies Schiller Flexner LLP, and Natalia M. Salas, James L. Ferraro, James Ferraro Jr., Sean A. Burstyn, Angelica Novick and Daniel J. DiMatteo of the Ferraro Law Firm PA

Robinhood is represented by Kevin Orsini, Antony L. Ryan and Brittany L. Sukiennik of Cravath Swaine & Moore LLP, and Samuel A. Danon and Maria C. Alvarado of Hunton Andrews Kurth LLP.

The case is Andrea Juncadella, et al. v. Robinhood Financial LLC, et al., case number 22-10669, in the U.S. Circuit Court of Appeals for the Eleventh Circuit.

--Editing by Robert Rudinger.

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