

Malcolm A. Heinicke

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Heinicke handles litigation and counseling matters for clients including Fidelity Investments, Indeed Inc., Round Table Pizza Inc., Square Inc., Smart & Final Stores Inc., Wells Fargo & Co., Yelp Inc. and York Risk Services Group.



In what Heinicke termed "a groundbreaking decision," a federal judge rejected a bid for overtime pay and other classification benefits for financial advisors at Wells Fargo. The bank did not improperly deny the benefits despite the plaintiffs' claims of violations of the federal Fair Labor Standards Act. *Tsyn v. Wells Fargo Advisors LLC*, 14-civ-2525 (N.D. Cal., filed June 3, 2014)

"The issue of financial advisors' alleged misclassification has been the subject of litigation for many years," said Heinicke, who represented the bank. "We have seen some large settlements and some procedural rulings denying class certification in this area, but until now there has been no dispositive ruling on the administrative exception in California as it applies to financial advisors. We went after a merits ruling and demonstrated that these advisors are exempt because their job is to place the interest of their clients first."

The administrative exception to overtime benefits holds that employees who collect information and provide advice are exempt; salespeople are not. Heinicke's argument for the bank was that the advisors' primary tasks were gathering and analyzing clients' financial information, deciding what services and financial products fit their needs and advising them accordingly. The plaintiffs contended that although they did perform those duties, their chief job was selling financial products to customers.

Vlad Tsyn worked for the bank in its Wealth Brokerage Services unit from 2008 until 2012. He sued in 2014, seeking class status for his claims. Another plaintiff joined the case in 2015. "We used their deposition testimony, and that was persuasive," Heinicke said.

U.S. Magistrate Judge Laurel Beeler agreed in her February 2016 decision that the plaintiffs' own words undercut their case. "The plaintiffs' testimony establishes that they were mostly employed in tasks that governing regulations make exempt,"

Beeler held. She found the advisors "perform work 'directly related to...management or general business operations' and exercise 'discretion and independent judgment' on 'matters of significance'" Those quotes from Department of Labor regulations mean such employees are exempt, the judge wrote.

"They are seeking an appeal because they see this as a significant ruling that will change things as it is extended to all financial advisors," Heinicke said. "We are opposing the appeal."

— John Roemer

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