



Advisor has to demonstrate any disclosure of errors in leaflets - Capital market law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: The Higher Regional Court (OLG) of Stuttgart delivered an opinion in a ruling (Az.: 7 U 95/12) on the burden of proof in cases of inaccurate leaflets. Thus, advice on the part of the advisor is negligent if he makes use of contractual documents or leaflets during the investment consultation and these feature mistakes or information gaps. It is the use and presentation of these inaccurate documents that constitute the advisor's breach of duty, which can result in damages claims for the investor. According to the Court's view, the breach of duty is only inapplicable if the advisor informs the clients about the mistakes in the leaflet during the consultation discussion. However, the burden of proof for this purpose lies not with the investor but rather with the advisor.

At the basis of the OLG Stuttgart's decision is the claim of an insured person, who invested in the endowment policy type "Wealthmaster?• in connection with the investment model "EuroPlan?• of the British life insurer Clerical Medical Insurance after a consultation. He pled on the basis of erroneous advice on the part of the investment advisor. While he could not demonstrate inaccuracy in the oral advice, the Court nevertheless identified mistakes in the documents used. These were said to be missing notices concerning cross-subsidisation and the smoothing method, which represent important information for the decision to invest. The advisor was not able to show that he had disclosed this false and lacking information in the contractual documents during the consultation discussion.

Furthermore, the Court asserted that it did not depend on whether the instant case concerned an investment business, as the policyholder was in need of advice due to the complexity of the life insurance policy.

Problems frequently arose in the past in connection with endowment policies. Aggrieved investors fear that their invested money is lost and the investment made will not take its predicted course. In such cases, it is sensible to turn to a lawyer active in the field of capital market law who can examine the investor's possible claims, since in the case of false or inadequate advice the investors may be entitled to claims for performance or compensation.

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Anlage: Bild

