08-586 JONES V. HARRIS ASSOCIATES

DECISION BELOW:527 F.3d 627

LOWER COURT CASE NUMBER: 07-1624

QUESTIONS PRESENTED:
Congress enacted the Investment Company Act of 1940 to mitigate the conflicts of interest inherent in the relationship between investment advisers and the mutual funds they create and manage. See Daily Income Fund, Inc. v. Fox, 464 U.S. 523, 536 (1984). Section 36(b) of that Act imposes on investment advisers "a fiduciary duty with respect to the receipt of compensation for services" and authorizes fund shareholders to bring a claim for "breach of [that] fiduciary duty." 15 U.S.C. § 80a-35(b). The Act further provides that, in such an action, "approval by the board of directors" of the fund is not conclusive, but "shall be given such consideration by the court as is deemed appropriate under all the circumstances." Id. § 80a-35(b)(2). The question presented is:

Whether the court below erroneously held, in conflict with the decisions of three other circuits, that a shareholder's claim that the fund's investment adviser charged an excessive fee - more than twice the fee it charged to funds with which it was not affiliated - is not cognizable under §36(b), unless the shareholder can show that the adviser misled the fund's directors who approved the fee.

CERT. GRANTED 3/9/2009