

Del. Court Trims Biotech Investors' Stock Transfer Suit

By **Emilie Ruscoe**

Law360 (May 18, 2023, 9:56 PM EDT) -- Biotech company Frequency Therapeutics Inc. can't beat an investor suit accusing it of failing to transfer certain company shares until trading prices for those shares plummeted, a Delaware state judge ruled Thursday, although he did trim some claims.

In a Thursday letter order, Delaware Superior Court Judge Paul R. Wallace dismissed claims of unjust enrichment and breach of statutory duty of care brought against Frequency and transfer agent Computershare Inc. by two trusts that had invested in Frequency before it went public.

But Judge Wallace left intact the suit's negligence claim as well as a conversion claim that is presented in the action as an alternative to the negligence and breach of duty claims.

The trusts that brought the action are controlled by trustees Gregory J. Parseghian and Christine M. Parseghian and held shares of Frequency before it went public and whose Series A preferred stock became common stock when the company listed, according to the complaint.

The Parseghian trusts claim that in February 2021, they decided to sell their Frequency shares while its stock was up and asked Computershare to move their Frequency shares to brokerage accounts at J.P. Morgan Securities LLC.

According to the trusts, Computershare then foiled their efforts to transfer their shares to the J.P. Morgan accounts for the next seven weeks.

Only after trading prices for Frequency shares fell significantly in March did Computershare finally approve the transfers, the trusts claim.

The trusts have accused Frequency and Computer share of colluding to keep Frequency shareholders from moving their shares to keep the markets from seeing increased sales activity that could signal a sell-off.

As a result, the trusts claim, trading prices for the company's shares were artificially high during the logistical lockup and the company's executives were able to earn more than they otherwise would have by selling their own shares.

In his Thursday order, Judge Wallace found that Computershare wasn't a securities intermediary, so the breach of statutory duty of care claim wasn't properly pled.

The judge also tossed the unjust enrichment claim, finding that "a temporary stock increase itself is not an enrichment."

But the judge described the negligence claim as well-pled and said that at this stage in the proceedings, the trust's claim that "Computershare intentionally delayed the transfer — which, in the trusts' belief, was done at Frequency's direction — is sufficient to survive this motion."

The trust's claims were **earlier** in Delaware's Chancery court, and on Thursday, Judge Wallace noted that Frequency's CEO David Lucchino, who was previously a party to the matter, is no longer named.

On Thursday, Adam C. Ford, an attorney for the Parseghian trusts, told Law360 in an emailed statement that "we are very pleased with the court's ruling which maintains the core of the allegations against both Computershare and Frequency, and clarifies the law regarding the duties of transfer agents."

Representatives for the other parties did not immediately respond to requests for comment Thursday.

The Parseghian trusts are represented by Samuel T. Hirzel and Kelly E. Rowe of Heyman Enerio Gattuso & Hirzel LLP and Adam C. Ford of Ford O'Brien Landy LLP.

Frequency is represented by Elena C. Norman, Mary F. Dugan and Skyler A. C. Speed of Young Conaway Stargatt & Taylor LLP and Deborah S. Birnbach, Jennifer Burns Luz and Matthew White of Goodwin Procter LLP.

Computershare and Computershare Trust Co. NA are represented by Kevin R. Shannon, Jaclyn C. Levy and Callan C. Levy of Potter Anderson & Corroon LLP and Seth Goldman and Jacob H. Hupart of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

The case is Gregory J. Parseghian v. Frequency Therapeutics Inc. et al., case number N22C-08-153, in the Superior Court of the State of Delaware, and the Chancery matter was Parseghian et al. v. Frequency Therapeutics Inc. et al., case number 2021-0551, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Jay Jackson Jr.