FINRA DISPUTE RESOLUTION ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN: SALLY G. DEFRAUDED Claimant, v. BIG COMPANY Respondent.	FINRA ARB NO. ____ **STATEMENT OF CLAIM**

Claimant was the only child and only heir of John Defrauded, who died on "Month, Date, Year." Sally Defrauded was only 10 years old at the time of her father's death and so a Conservatorship was set up with her mother, Jane Defrauded, as the Conservator. It took about a year and a half to settle John Defrauded's estate, but once that occurred, the estate sent the Conservatorship a check for $$$$$$.

Jane Defrauded entrusted those funds to a man named Kevin Fraud on "Month, Date, Year." Kevin Fraud was an agent with Respondent. The Conservatorship funds were supposed to be available for Sally Defrauded's college expenses a few years later. But before that happened, the portfolio lost about half of its value because Kevin Fraud ignored Jane Defrauded's instructions, ignored Sally Defrauded's needs, and placed the funds in imprudent, inappropriate investments.

In "Month Year," Kevin Fraud was sentenced to 18 months in jail for defrauding clients out of more than $$$$$$ and using the funds to support a gambling addiction. At this time, Claimant cannot be sure whether Kevin Fraud illegally siphoned funds out of her account, but what is certain is that Respondent failed to adequately supervise him and failed to fulfill its fiduciary obligations to Claimant.

FACTUAL ALLEGATIONS

Kevin Fraud came to Jane and Sally Defrauded's home in "Month Year" to convince them that he should be allowed to handle the Conservatorship funds. Jane Defrauded explained that Sally Defrauded would need the money for her college education. Jane Defrauded asked Kevin Fraud to put at least some of the money into a 529 Plan. He agreed that this was a good idea. In "Month Year," a 529 Plan was established for Sally Defrauded's use. But Kevin Fraud never put any money into the 529 Plan and it was automatically closed in "Year" for lack of funding. Kevin Fraud simply ignored Jane Defrauded's instructions without explanation.

Jane Defrauded also told Kevin Fraud that the funds should be placed in safe investments. Jane Defrauded was not a sophisticated investor, but she knew that this was Sally Defrauded's inheritance and her best chance at being able to afford college, so the money needed to be invested conservatively. Kevin Fraud promised her that he would create a safe portfolio. But Kevin Fraud did not do this. Even though large portions of the money would be needed in just four to five years, Kevin Fraud did not put any money into safe, conservative investments, such as U.S. Treasuries.

Instead, the portfolio Kevin Fraud created tilted towards stocks rather than bonds. And the bonds he did choose were exclusively corporate bonds. Even worse, he chose to bet $$$$$$ on one company's bonds – Lemming Brothers Inc. When he did that, he was placing more than 10% of Sally Defrauded's portfolio into one company's bonds. Instead of using his bond choices to balance out the risks of his stock-heavy allocation, Kevin Fraud placed a large bet on one company and left far too much risk in this portfolio. Kevin Fraud may have done this because Respondent was an underwriter for Lemming Brothers Inc. bonds.

Although Kevin Fraud owed a fiduciary duty to keep his client's best interests in mind, he chose to invest in mutual funds that charged high up-front fees. And he appears to have staggered his purchases and the investments that he made in order to avoid certain breakpoints and maximize his commissions.

Not surprisingly, Claimant's portfolio performed disastrously. Respondents will undoubtedly point out that nearly every investor's portfolio suffered during the stock market's decline from "Year to Year." But had Kevin Fraud followed instructions and watched out for Sally Defrauded's best interests, this portfolio would have been invested much more conservatively and would not have done nearly as poorly. By "Month and Year" this account had dropped in value from $$$$$$ to $$$$$$.

LEGAL ISSUES

Respondent Kevin Fraud is liable for his wrongful conduct. He showed a pattern of fraudulent behavior that Respondent should have discovered long ago. The Missouri Secretary of State's Office eventually barred Kevin Fraud from registering as an agent or an investment advisor in the State of Missouri, for, among other things, failing to follow customer instructions, engaging in dishonest and unethical practices, failing to follow Respondent policies and procedures, misappropriating client funds, and using misappropriated funds for his personal benefit. And in "Month and Year," the U.S. District Court for the Western District of Missouri sentenced in to 18 months in jail and three years of probation.

Missouri law makes it clear that stockbrokers and their firms owe customers a fiduciary duty, which includes several obligations. "This fiduciary duty includes at least these obligations: to manage the account as dictated by the customer's needs and objectives, to inform of risks in particular investments, to refrain from self-dealing, to follow order instructions, to disclose any self-interest, to stay abreast of market changes, and to explain strategies."[1] In this case, Respondent and Kevin Fraud obviously failed to fulfill these obligations and thereby breached their fiduciary duty to Claimant.

Respondent is responsible for its agent's wrongful actions. It either knew Kevin Fraud was creating an unsuitable, risky portfolio, and breaking firm rules to enrich himself, or it failed supervise him sufficiently to prevent him from doing so. As a FINRA-registered broker and a FINRA-registered brokerage firm, Respondents owed Claimant a fiduciary obligation to recommend suitable investments that were in line with her best interests and needs. She needed a very conservative portfolio and Kevin Fraud knew that. So he should never have bet so heavily on stocks, he should not have placed the entire bond allocation into corporate bonds while excluding U.S. Treasuries and other safer bonds, he should not have bet more than 10% of the portfolio on Lemming Brothers Inc. bonds, and he should have put some of the money into a 529 Plan as promised.

CLAIMS FOR RELIEF

The following causes of action would be appropriate under the laws of Missouri:

1. Violations of the Missouri Uniform Securities Act

Respondent is jointly and severally liable with and to the same extent as its agent for violations of the Missouri Uniform Securities Act because it directly or indirectly controlled him and knew about or in the exercise of reasonable care would have known about the existence of his unlawful conduct. Respondent completely failed to supervise its broker and is liable as a control person for untrue statements of material fact and fraud perpetrated by its broker. Claimant should be awarded damages available under the Act, including interest at the rate of eight percent per year from the date of purchase, the costs of this arbitration, and attorneys' fees.

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[1] *State ex rel. PaineWebber, Inc. v. Voorhees*, 891 S.W.2d 126, 129-30 (Mo. Banc 1995) (citing *Vogul v. A.G. Edwards & Sons, Inc.* 801 S.W.2d 746, 751-52 (Mo. App. 1990)).

2. Violations of the Missouri Merchandising Practices Act

Respondent and its agents were engaged in the sale of services to Claimant and Sally Defrauded, which would place them under the purview of the Missouri Merchandising Practices Act. In the sale of those services, Respondent and its agents used deception, fraud, false pretense, false promises, misrepresentations, unfair practices, and concealed, suppressed, and omitted material facts and thereby violated the Missouri Merchandising Practices Act. Claimant should be awarded of all damages available under the Act, including actual damages plus interest from the date of purchase, punitive damages, and attorneys' fees. Punitive damages are appropriate, given that Respondent has consistently failed to supervise Kevin Fraud with this client and many others, and given Respondent and Kevin Fraud's intentional efforts to enrich themselves by selling expensive, illiquid securities to vulnerable clients.

3. Breach of Fiduciary Duty

Respondent owed a fiduciary duty to Claimant. Respondent breached its fiduciary duty by failing to appropriately hire, train, and supervise its agent. Claimant was damaged due to Respondent's breach of duty. Therefore Respondent is liable to Claimant for its losses and for punitive damages sufficient to punish Respondent and deter other brokerage firms from similar behavior.

4. Breach of Contract and Violation of FINRA Rules

Respondent received consideration for the services it offered Claimant. Respondent was obligated to provide her and her agents with competent and professional services in accordance with applicable industry rules, regulations, and practices. Respondent breached its implied and/or written contracts with Claimant by the wrongful acts described above. Claimant incurred damage as a result of Respondent's breach of contract, and should be awarded actual damages plus interest from the date of purchase.

5. Negligence

Respondent owed Claimant a duty to use reasonable care and diligence in hiring, training, and supervising Kevin Fraud to act as its actual or apparent agent. Respondent also owed Claimant a duty to use reasonable care and diligence in managing his account. Respondent breached these duties and Claimant sustained damages as a result. Claimant should be awarded compensatory damages, plus interest from the date of purchase.

6. Unjust Enrichment

Claimant conferred a benefit upon Respondent, at the expense of the Claimant, in the form of fees, commissions, and other monies paid to Respondent. Respondent accepted and retained those monies. Under the circumstances, it would be unjust for Respondent to retain the benefits conferred upon it by Claimant. Therefore, the fees, commissions, and other monies paid by Claimant to Respondent should be returned to Claimant.

DAMAGES

Based on the foregoing, Claimant requests an award against Respondent as follows:

1. Recovery of all losses that Claimant suffered due to her investments in non-traded REITs;
2. Return of all amounts paid for financial plans, commissions, surrender fees, management fees, penalties, and other fees;
3. Interest on the funds invested, pursuant to Missouri law;
4. Fees and costs, including attorneys' fees, experts' fees and all arbitration-related costs;
5. Punitive damages in an amount to be determined in arbitration, because Respondent and Kevin Fraud took advantage of Claimant and her age, infirmity, and trust to enrich themselves at her expense in violation of their duties as her trusted fiduciaries;

6. Such other relief as is deemed just and proper.

HEARING LOCATION

Claimant requests a hearing in Kansas City, Missouri.

Dated: “Month, Date, and Year”

Respectfully submitted,

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