

FINRA DISPUTE RESOLUTION ARBITRATION

IN THE MATTER OF THE
ARBITRATION BETWEEN:

JOHN DEFRAUDED

Claimant,

v.

BIG COMPANY

And

KEVIN FRAUD

Respondent.

FINRA ARB NO. ____

STATEMENT OF CLAIM

Claimant is a 67-year-old retiree who lives with his wife on a farm in southeast Missouri. Back in "Month Year" the Claimant began investing with John Doe, who was working at Company ABC. They started with a relatively small amount, about \$\$\$\$\$\$. Most of their retirement assets were in Claimant's retirement account with his employer.

Over the years, the Claimant developed a good relationship with Kevin Fraud. They liked and trusted him. So when Claimant retired in "Year," they rolled over Claimant's retirement account of about \$\$\$\$\$\$ into Company ABC. And when Kevin Fraud moved from Company ABC to Big Company in "Year," the Claimant transferred their money to Big Company. Along with previous contributions, it totaled about \$\$\$\$\$\$ at the time it was transferred to Big Company.

In "Month Year," Kevin Fraud asked for the Claimant to meet with him about their portfolio. He said it would be wise for these retirees to change their focus

from “income” to “growth” and recommended that they invest more money in the stock market. At this point, their portfolio had declined and was only worth a little more than \$\$\$\$\$\$. But Kevin Fraud told them that he could pick good stocks and would likely get their portfolio up to \$\$\$\$\$\$.

Kevin Fraud recommended that they start with a company called Pharmaceutical Drugs. Pharmaceutical Drugs is a company that researches and tries to develop cancer drugs. Kevin Fraud said great things about the company, and acted like it was a “sure thing.” Kevin Fraud did not talk to the Claimant about the risks of investing in Pharmaceutical Drugs. Kevin Fraud put \$\$\$\$\$\$, (far more than 10% of the Claimant retirement money), in this one stock.

The next day, Kevin Fraud called the Claimant and told them that he had forgotten to get their approval to classify their portfolio as “aggressive.” He said this was just an administrative change. Kevin Fraud assured the Claimant that this change in classification was nothing to worry about, and would not lead to any additional risks in their portfolio.

The Claimant had no way of knowing that Kevin Fraud would actually change their classification to “speculative” to justify trades in other risky stocks. And they had no way of knowing that after these trades went south, Big Company would try to justify their broker’s behavior by claiming that the Claimant had approved a speculative portfolio.

During “Year and Year,” Kevin Fraud continued to make bets on other small drug companies, including Drug Company ABC, Drug Company MNO, and Drug Company XYZ. These moves later surprised the Claimant, because the Claimant never wanted to take big risks with their money. But Kevin Fraud would assure them that “everything would be OK” and told them to “stop worrying.”

All of a sudden, in “Month Year,” Kevin Fraud called the Claimant and told them that he was leaving Big Company for Bigger Company. He told them that Big Company was a foreign-owned company involved in “shady practices,” and he didn’t want to be part of it anymore. He told them that Big Company would charge extremely high fees if the Claimant tried to move their money out, but that Bigger Company would compensate them for their losses.

This concerned the Claimant. Then when they looked up Kevin Fraud on the internet, they found that he had been fired by Big Company for compliance violations. Big Company fired Kevin Fraud because after Big Company had denied his application to include a particular company in the firm’s referral fee program, Kevin Fraud had paid client referral fees directly to that company outside the firm’s payment structure. The Claimant did not trust Kevin Fraud anymore and did not move their money with him to Bigger Company.

When a new Big Company broker was assigned to their account, the Claimant were informed that there were several problems with their account. On “Month, Date, Year,” the new Big Company broker told them in an email that Kevin Fraud had been milking them for extra fees, that he had classified their entire portfolio as “speculative”, and that he had put way too much of it into one position.

The email from the new Big Company broker stated:

1. Your Trust account has only a single security in it, yet it is a Strategic Advisor account. You are paying unnecessary fees. I can correct this with your permission.
2. The Trust account has your profile listed as “Aggressive/Speculative”. If this is not correct I can correct this for you.
3. Claimant’s IRA is also profile listed as “Aggressive/Speculative”. If this is not correct I can correct this for you. Also, ~9% of this

portfolio is in one position “DDD”. This concentration is potentially risky.

4. Claimant’s IRA has only a single security in it, yet it is a Strategic Advisor account. You are paying unnecessary fees. I can correct this with your permission. It is also profile listed as “Aggressive/Speculative.” If this is not correct I can correct this for you.
5. The Performance of your portfolios has been less than impressive: Year to date return thru “Month, Date, Year” is 0.77%. Since inception of “Month, Date, Year” thru “Month, Date, Year” your return has been only 3.99%.

Things then got even worse. Kevin Fraud called the Claimant the following week and told them he was going to sue Big Company. He asked them, as a “personal favor,” to tell him what Big Company had said about him. Scared off by the behavior of Kevin Fraud and Big Company, the Claimant moved their retirement funds back to Company ABC.

At this point, Claimant cannot be sure of his total losses because we do not know all the extra fees and commissions that Kevin Fraud and Big Company milked out of this account. We do not know if the referral fees that Kevin Fraud paid on this account were approved by Big Company or whether they were part of the pattern of misconduct that got him fired.

Since Claimant did not approve of most of Kevin Fraud’s large, speculative bets, we do not know how much of their portfolio was put into these small, risky drug companies. But we do know that these bets generally performed poorly, in some cases losing about 90% of their value. And we know that a prudent advisor would never recommend that this retired couple put 10% of their portfolio into any one individual drug company, given their age, risk tolerance, and portfolio size. A prudent advisor certainly wouldn’t have placed multiple such bets.

Although we do not yet know the total damages in this case, the losses from just a few of these companies, and the inappropriate fees and commissions that were “earned” by Kevin Fraud and Big Company will clearly exceed \$\$\$\$\$\$, and could be much higher. Discovery will help the Claimant learn more about his damages.

CLAIMS FOR RELIEF

The following causes of action would be appropriate under the laws of Missouri, which should guide the Panel’s decisions.

1. Breach of Fiduciary Duty

Big Company and Kevin Fraud owed a fiduciary duty to the Claimant. Big Company breached its fiduciary duty by failing to appropriately hire, train, and supervise its agent. Kevin Fraud breached his fiduciary duty by forcing the Claimant to pay unnecessary fees and commissions, by incorrectly classifying this as a speculative portfolio, by buying stocks without the Claimant permission, by putting too much money into speculative drug companies, by concentrating too much money into a few positions, and by not taking into account the Claimant age, risk tolerance, and portfolio size.

The Claimant was damaged due to Respondents’ breach of duty. Therefore, Big Company and Kevin Fraud are liable to Claimant for his losses and for punitive damages sufficient to punish Big Company and Kevin Fraud and deter other brokerage firms and brokers from engaging in this behavior.

2. Fraud

Big Company and Kevin Fraud are jointly and severally liable for fraudulent acts. We do not yet know the extent to which inappropriate referral fees were paid to outside companies in this case, but we intend to find that out. We do know that Kevin Fraud knowingly made material misrepresentations about the portfolio that

he intended to construct. Kevin Fraud promised to select safe, conservative investments, and he induced reliance upon those representations.

Kevin Fraud also knowingly classified this portfolio as “speculative,” when it should have never been classified as such. And he apparently did that in order to get around internal Big Company regulations. He wanted to buy risky stocks and had to classify the portfolio as “speculative” in order to do so. All of these actions constitute fraud and should be subject to compensatory and punitive damages.

3. Violations of the Missouri Uniform Securities Act

Big Company and Kevin Fraud are jointly and severally liable for violations of the Missouri Uniform Securities Act. Kevin Fraud is liable for untrue statements of material fact and for fraud.

Big Company directly or indirectly controlled Kevin Fraud and knew about or should have known about the existence of his unlawful conduct. Big Company completely failed to supervise its broker and is liable as a control person for his untrue statements and fraud. Big Company is liable for the unnecessary fees and commissions that it earned on this account. 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.

4. Violations of the Missouri Merchandising Practices Act

Big Company and Kevin Fraud were engaged in the sale of services to Claimant, which would place them under the purview of the Missouri Merchandising Practices Act. In the sale of those services, Big Company and Kevin Fraud 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 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 Kevin Fraud repeatedly engaged in illegitimate conduct and Big Company consistently failed to supervise him with this client and many others.

5. Breach of Contract and Violation of FINRA Rules

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

6. Negligence

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

7. 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 Big Company and Kevin Fraud as follows:

1. Recovery of all losses that Claimant suffered on the inappropriate investments that Kevin Fraud made;
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;
6. Such other relief as is deemed just and proper.

HEARING LOCATION

Claimant requests a hearing in Kansas City, Missouri.

Dated: "Month, Date, Year"

Respectfully submitted,

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