

**BEFORE THE NATIONAL ASSOCIATION OF SECURITIES DEALERS
ARBITRATION**

Mrs. ABC ,)	
Claimant,)	
)	
v.)	Arbitration No. 0X-XXXXXX
)	
XYZ Brokerage Firm,)	
Respondent.)	

STATEMENT OF CLAIM

Claimant, Mrs. ABC ("Claimant") by and through her attorneys, hereby requests that XYZ Brokerage Firm ("Respondent") be called before an arbitration panel of the National Association of Securities Dealers ("NASD") in or near Claimant's hometown, and hereby requests that this matter be set for oral hearing as soon as possible before a duly qualified arbitration panel. Claimant submits this statement of claim against Respondent for violations of the National Association of Securities Dealer's ("NASD") Rules and Regulations, New York Stock Exchange ("NYSE") Rules and Regulations, State and Federal Securities laws, and her home state's common law. In support of her claims, she sets out the factual matters below.

NATURE OF CLAIMS

As described below, this is a case of negligence, misrepresentations, and Claimant's accounts.

The Investment Advisers Act of 1940 was the last in a series of Acts designed to eliminate certain abuses in the securities industry, abuses which were found to have contributed to the stock market crash of 1929 and the depression of the 1930's. It was preceded by the Securities Act of 1933, the Securities Exchange Act of 1934 and the

Investment Company Act of 1940. A fundamental purpose, common to these statutes, was to substitute a philosophy of full disclosure for the philosophy of caveat emptor, and thus, to achieve a high standard of business ethics in the securities industry. "It requires but little appreciation ... of what happened in this country during the 1920's and 1930's to realize how essential it is that the highest ethical standards prevail" in every facet of the securities industry. *Silver v. New York Stock Exchange*, 373 U.S. 341, 366, 83 S. Ct. 1246, 1262, 10 L. Ed. 2d 389, 405 (1963).

Upon information and belief, the Claimant was damaged by Respondent in excess of \$_____ plus costs, attorney's fees, and interest as allowed by law.

INTRODUCTION

Claimant was born in _____ on _____. She grew up in the _____ area and graduated from High School in _____. Although she wanted to go to college she could not afford to and began working for the _____ in _____.

She was married in _____ and her husband was in the armed services. Her husband and family transferred to _____ in _____.

Early in _____, Claimant worked at _____. Later, Claimant worked at _____ until she retired in _____.

It was through her work that Claimant met the broker. Claimant was encouraged to open several accounts. Remarkably, the broker selected Claimant's investment objective to be "aggressive growth", notwithstanding the fact she was nearly _____ years old and retired.

The purchases in the accounts resulted in Claimant being entirely invested in aggressive equities. This concentration in equities, imprudent asset allocation, and

overlapping equities exposed Claimant to unnecessary risk and volatility, making each and all of the investments unsuitable for a retired public customer of her age.

By December 2000, Claimant's accounts had gone down substantially. Throughout 2001, Claimant's accounts continued to decline. However, the Respondent took no action to stop the drastic losses. By the time Claimant closed her accounts, she had only a fraction of what she had initially invested.

During the entire time, the broker was her trusted financial advisor, from January of 2000 until the end of 2004. XYZ Brokerage Firm, its management, supervision and compliance safeguards, if any, failed miserably to detect the unsuitable investments that Claimant was invested in and failed to take any action whatsoever to alleviate the problem by demanding prudent allocation and diversification of her assets to reduce the unnecessary risks and volatility to which her portfolios were exposed.

CAUSES OF ACTION

AGAINST RESPONDENTS FOR VIOLATIONS OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10(B)(5)

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. Respondent employed devices, schemes and artifices to defraud Claimant; made unaccredited statements of material facts, and/or failed to state material facts necessary to avoid misleading Claimant; and engaged in acts, practices and a course of conduct which operated as a fraud and deceit upon her in violation of Section 10(b) of the Exchange Act and Rule 10(b)(5).

As a direct and proximate result of Respondent's unlawful conduct, she suffered damages in connection with the purchases of the investments contained in her account.

BREACH OF FIDUCIARY DUTY

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. A professional and fiduciary relationship exists whenever confidence on one side results in superiority and influence on the other side or whose a special confidence is repose in one whom, in equity and good consciousness, is bound to act in good faith.

Pursuant to Claimant's home state's law, a fiduciary relationship may be found when: (1) one party has superior knowledge, and (2) that party uses that superior knowledge to induce reliance by the party to whom a duty is owed.

Claimant reasonably relied on Respondent's representations, that the broker was an experienced and competent investment professional who would carefully invest her funds in a manner consistent with her goals and financial circumstances. She reasonably relied on him when she entrusted her money to XYZ Brokerage Firm. Therefore, Respondent willingly assumed the role of fiduciary when they took control over her money and they are liable to her for breach of their fiduciary duties, responsibilities and the resulting damages.

Respondent cannot deny they clearly understood that they had a duty to preserve and protect the principal balance of her life savings. The loss of principal is something that can be easily managed by brokerage firm like Respondent.

Respondent's breach of their fiduciary responsibilities and duties to Clamant to act in her best interest with respect to providing proper and correct securities investment advice resulted in substantial losses which are their responsibility.

BREACH OF CONTRACT

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. Claimant signed contracts for investment counseling services from Respondent and she paid them for the investment counseling services rendered. Respondent did not give appropriate advice to her concerning one or more of the following: asset allocation, diversifying her account, Mutual Funds, Class B Mutual Funds, and inherent risks associated with the purchase of same. This failure through omission or commission constituted a breach of Respondent's duty to prudently manage Claimant's account. As a direct and proximate result of Respondent's breach of contract or implied contract, Claimant suffered monetary losses.

UNSUITABILITY

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. The suitability doctrine requires that a broker-dealer who makes recommendations to a customer recommend only those securities that he reasonably believes are suitable for the customer. *Erdos v. SEC*, 742 F. 2d 507 (9th Cir. 1984).

While having the responsibility to know their customer, XYZ Brokerage Firm failed to know Claimant's background and needs, evaluating her understanding of the risks, educating her about alternative investments and imprudently placed her money in unsuitable investments.

It was their duty and responsibility to know their Customer by inquiring into her background before recommending investments that were unsuitable for her financial situation, needs and investment objectives.

FAILURE TO DIVERSIFY

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. Respondent failed to properly diversify Claimant's account exposing her to unnecessary risk and volatility causing her to lose money.

FAILURE TO SUPERVISE

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein. Respondent could have and should have prevented the losses occurring in Claimant's account by properly supervising the Broker, however they did nothing and failed to prevent the purchase of unsuitable investments and the damages resulting therefrom.

VIOLATIONS OF THE SECURITIES LAWS

SECURITIES REGULATORY RULES

As described above, XYZ Brokerage Firm violated the rules and regulations of the Securities Exchange Commission, which they are required to follow, for example, the rules of the NASD, the NYSE, and other self-regulatory bodies. Specifically, the Broker and XYZ Brokerage Firm violated the NASD Rules of Fair Practice, Article III and Claimant seeks relief for acts by Respondent of making misrepresentations, failing to properly exercise supervising authority, failing to maintain proper supervisory procedures, failing to keep informed of the activities of their agents and employees, and other violations of the NASD Rules of Fair Practice and just and equitable principles of trade, resulting in damages to her.

THE SECURITIES ACT OF WASHINGTON

Section 21.20.020 of The Securities Act of Claimant's home state states that it is unlawful for any person, in connection with the offer, sale or purchase of any security,

directly or indirectly, to employ a device, artifice or scheme to defraud; to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to render the statements made, given the circumstances, not misleading.

Proof of intent, scienter or mental state is not required in an action for fraud or misrepresentation under The Securities Act of Claimant's home state.

XYZ Brokerage Firm violated The Securities Act, making them liable to Claimant and she requests that she be awarded the relief provided for under Section 21.20.430: damages, interest at the rate of 8% from the date of payment, costs, and reasonable attorney fees.

CONSUMER PROTECTION ACT

The Consumer Protection Act provides that "unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

The courts have applied the Consumer Protection Act to securities fraud. *Reeves v. Teuscher*, 881 F.2d 1495 (9th Cir. 1989). *See also, Ikuno v. Yip*, 912 F.2d 306 (9th Cir. 1990).

XYZ Brokerage Firm violated the Consumer Protection Act, making them liable to Claimant and she requests that she be awarded the relief provided for under the law of her home state: damages, treble damages, costs and reasonable attorney fees.

COMMON LAW CLAIMS

Claimant repeats and re-alleges all prior paragraphs as if set forth fully herein.

Respondent is liable for the intentional and negligent misrepresentation of material facts upon which Claimant relied thereby causing her damages, including, loss of assets, lost opportunities and consequential damages.

PRAYER FOR RELIEF

Claimant prays that the arbitration panel order Respondent, XYZ Brokerage Firm, to reimburse her for:

All of the account's losses;

All charges to the account;

The lost earnings on the account;

Pre-judgment interest at the maximum statutory rate;

The cost of these proceedings, including a reasonable attorney fee and punitive damages to be assessed by the arbitration panel to ensure the investing public that in the future, Respondent and their financial consultants, will conduct their affairs to the highest integrity required of financial advisors; and,

That Claimant is granted all other and further relief to which she may be entitled.

Dated: _____

Respectfully submitted,

WOSKA & HAYES, L.L.C.
1235 North Loop West, Suite 510

Houston, TX 77008
Telephone: (713) 862-2152
Fax: (713) 861-7466

ATTORNEYS FOR CLAIMANT