

PLAIN VANILLA MARKET LOSS CASE

CUSTOMER COMPLAINT LETTER

Dear Compliance Department:

This firm has been retained by John Smith to assert a claim against ABC Capital Firm, LLC ("ABC") with regard to investments recommended and sold by ABC to its customer, John Smith, in his Individual Account (No. 111-2222-3333) (the "Account").

I. Introduction

John Smith is a sixty-seven (67) year-old retired engineer, whose knowledge of investments is severely limited. His claims arise out of the misconduct of James Broker ("Mr. Broker"), a registered representative of ABC, who convinced Mr. Smith to entrust him with his life's savings. Unfortunately, Mr. Smith's trust in Mr. Broker was misplaced. Mr. Broker excessively traded the Account and purchased investments therein that were completely unsuitable in light of Mr. Smith's age, investment knowledge, financial circumstance and risk tolerance. Although we are without complete account records, it appears Mr. Smith's account suffered losses in an amount no less than \$600,000 over a six (6) month period. Moreover, while Mr. Smith's life savings was literally evaporating, Mr. Broker paid himself excessive commissions along the way. These losses were entirely due to Mr. Broker's excessive trading, lack of suitable investment recommendations, use of margin and failure to diversify, along with ABC's complete failure to supervise Mr. Broker.

II. Factual Background

In May of 2007, Mr. Smith received several cold calls from Mr. Broker who aggressively pitched Mr. Smith on his investment services. Specifically, Mr. Broker represented that his company, ABC Capital, "handled mostly million dollar accounts" but would make an "exception" for Mr. Smith since his liquid net worth was valued at approximately \$400,000. Mr. Smith explained that he was looking for a safe method to generate extra income in his retirement years. Mr. Broker promised Mr. Smith that it would be no problem generating additional cash flow because he had a "fool proof method" for selecting long-term stocks and covered options in order to produce a "better than reasonable" cash flow while remaining invested for long term gains. Mr. Broker requested that Mr. Smith promptly provide him with a summary of his current investment accounts so that he could review them.

Based on the foregoing representations, Mr. Smith agreed to transfer his retirement account to Mr. Broker at ABC. Within days of transferring his retirement assets to ABC, Mr. Smith received a telephone call from Mr. Broker, recommending that Mr. Smith purchase shares of Biocyclics ("BIO"). Specifically, Mr. Broker explained that BIO was coming out with a new drug called Biotron which would revolutionize cancer therapy. Mr. Broker told Mr. Smith that he "must purchase BIO right away" and that the stock was a "no brainer" and "slam dunk" because the FDA would approve the drug by the end of the year.

In addition to his recommendation to purchase BIO, Mr. Broker also recommended and purchased other speculative and unsuitable investments in unknown, high-risk, and small capitalization companies. To make matters worse, Mr. Broker recommended and utilized and "income generating" option trading and the use of margin in the Smith Account. Moreover, Mr. Broker purchased large concentrated positions for the Smith Account and sold those same positions within weeks in order to generate large commissions for himself.

By early November, Mr. Smith was in an extreme panic due to the trade confirmations and margin notices that were arriving at his home on an almost daily basis. When Mr. Smith expressed concern about Mr. Broker's stock purchases, Mr. Broker instructed Mr. Smith to research "bio fuel energy" on the internet so that he would understand what "serious investors" were buying.

A few days later, Mr. Broker called to inform Mr. Smith that he had "some bad news," because the FDA ruled that the drug, Biotron, did not meet FDA standards for approval. Mr. Broker assured Mr. Smith not to worry because BIO's CEO had already lodged a complaint with the FDA and that the decision was not final.

Meanwhile, Mr. Smith grew increasingly anxious as he continued to receive dozens of margin call notices. By November of 2007, the value of Mr. Smith's highly concentrated positions in BIO continued to decline, however, Mr. Smith was unable to determine the actual value of his accounts. Specifically, Mr. Smith grew increasingly suspicious of Mr. Broker's verbal representations of his Account values. On a few occasions, Mr. Smith attempted to verify Mr. Broker's representations regarding the Smith Account values against the account statements he received from ABC, however, the statement values appeared to be far below those provided by Mr. Broker. At that point, Mr. Smith called ABC and spoke with Jim Boss, an ABC Compliance Officer, to express his concerns and to determine the actual value of the Account. Mr. Boss provided account figures to Mr. Smith that were far below the figures provided by Mr. Broker. Nevertheless, Mr. Boss told Mr. Smith "not to worry so much" and promptly ended the call.

By late December of 2007, Mr. Smith stopped receiving calls from Mr. Broker and was unable to reach him by telephone over the next month. Finally, in early February of 2008, Mr. Smith received a telephone call from Mr. Broker who informed Mr. Smith that he had quit ABC, but assured him that the Smith Accounts were "valued around \$600,000." Mr. Broker then stated that he was with a great new firm where he "could make [him] boat loads of money." Mr. Broker requested that he be permitted to provide Mr. Smith with account transfer paper work. Mr. Broker also warned Mr. Smith that he may receive a call from Peter Manager, his former branch manager at ABC, who should be ignored because he was a "poor dumb slob."

Within days, Mr. Smith was contacted by Mr. Manager from ABC, who inquired whether Mr. Smith was aware of the level of activity and rapid decrease in value in his account and informed him that Mr. Broker was no longer with ABC and provided no further explanation. Prior to Mr. Manager, Mr. Smith had never been contacted by any Supervisors or Compliance Managers from ABC to discuss the high level of trading, concentrated positions and/or speculative stocks in the Smith Account. Since Mr. Manager claimed to be the branch office manager, and Mr. Smith was utterly

desperate and scared, he agreed to keep the Account with Mr. Manager at ABC. Over the next three (3) weeks, Mr. Smith received telephone calls and assurances from Mr. Manager that his accounts were improving, however, by early March 2008, the markets were in decline and Mr. Manager began to sound discouraged in his discussions with Mr. Smith. As a result, Mr. Smith began suffering from dizzy spells and panic attacks and did not know what to do. With no where else to turn, Mr. Smith contacted a friend, who informed Mr. Smith that his money was gone, he would not get it back, and instructed him to immediately close his accounts and cease doing business with ABC. Mr Smith immediately followed those instructions and, on or about March 15, 2008 instructed ABC to close Account.

III. Legal Analysis

The conduct complained of herein constitutes fraud under California's common law and statutory securities laws, and violated the rules promulgated by FINRA. Accordingly, Mr. Smith poses viable causes of action against ABC, including but not limited to, claims for fraud, negligence, breach of fiduciary duty, excessive trading, unauthorized trading, lack of suitability, failure to supervise, violations of the California Corporations Code and elder abuse.

IV. Conclusion

Mr. Smith is entitled to be made whole, and is prepared to file a customer arbitration claim with FINRA, in order to recover his losses discussed above. Since the conduct of ABC and Mr. Broker was fraudulent and oppressive, we strongly believe that an arbitration panel will award punitive and exemplary damages in an amount sufficient to punish the wrongdoers and to deter such conduct in the future. However, we also recognize and have advised our client with regard to the cost and expense of protracted litigation. As such, before a claim is filed with FINRA, Mr. Smith is prepared to explore a mutually acceptable resolution of this matter at this time. We therefore invite you to contact this office within ten (10) business days of the date of this letter. **Please be advised that this office has been directed to pursue legal action on our clients' behalf should an amicable resolution fail to be reached promptly, in which case we will seek actual and/or consequential damages in the amount no less than \$1,000,000, plus interest, costs, attorneys' fees and an award of punitive damages.**

SELLING AWAY CASE STUDY

Advisor Tim Shady is a registered representative of ABC Broker Dealer. Shady also maintains a registered investment advisory firm, which is registered with the Securities and Exchange Commission.

Shady has always been a top producer of the company. However, the past couple of years have been difficult for him and his production has declined dramatically. Toward the end of 2007, numerous clients complained to Shady regarding declines in their portfolios. Sensing some urgency, Shady remembers a salesman that stopped by his office one day to discuss the opportunity to sell general partnership interests in payphones which promised a 20 percent annual return, which would be paid out monthly. It also paid a commission of 15 percent. He was also told that the product was not a security.

Shady begins contacting clients about reallocating a portion of their portfolio into alternative investments. He explains the payphone investment as one of these alternatives. The clients are more than happy to change their portfolio to recover the diminution in value. Shady begins liquidating funds from those clients that are interested in the pay phone investments. Many of these liquidations are from IRA accounts of the clients. The transactions are not booked on any blotter of the firm, and Shady does not report any of these sales to his broker dealer.

For the next twelve months, the payphone investments paid the promised monthly income installments. However, toward the end of 2008, the payphone company began experiencing financial difficulties, and reported the same to Shady. Always an optimist, Shady believed the problems were short lived. He began making the monthly income payments to his clients from his personal bank account. When short on funds, Shady took new prospective clients' monies and using those funds to pay the monthly income payments. Many of the more recent investors never opened accounts at ABC.

In March 2009, an article was published in the Wall Street Journal stating that the SEC has shut down the issuer of the payphone business, alleging that it was a security and a Ponzi scheme. Clients begin calling Shady and expressing their concern with what they read. Overwhelmed with the stress of fielding customer complaints, Shady terminated his relationship with ABC and moved to Costa Rica.

In August 2009, ABC receives the first customer complaint, in the form of a demand letter from an attorney. He represents three former clients of Shady, two of which are customers of ABC. He demands that ABC compensate his clients for 100 percent of their principal investments and insists that the broker dealer respond within two weeks, or else he will file a Statement of Claim with FINRA.