

VIA E-MAIL [awolf@pwcklegal.com, jkane@pwcklegal.com, and jpeiffer@pwcklegal.com] AND U.S.P.S.

Adam B. Wolf, Jason J. Kane, and Joseph C. Peiffer
Peiffer Wolf Carr & Kane
1150-J Pittsford-Victor Road, 1st Floor
Pittsford, New York 14534

Re: Request for Removal of False, Misleading, and Potentially Defamatory Statements

Dear Adam, Jason, and Joe:

Further to my discussion with Adam earlier this week, our firm represents AXA Advisors, LLC (“AXA Advisors”). We are writing to ask that you immediately cease and desist from making false and potentially defamatory statements regarding AXA Advisors. Your firm has published statements that are false at the following sites:

Peiffer Wolf Carr & Kane (“PWCK”) website

<https://prwlegal.com/pwck-law-firm-finra-arbitration-panel-awards-record-setting-3-million-to-rochester-area-egg-farming-family-victimized-by-convicted-axa-financial-advisor/>

<https://prwlegal.com/axa-to-pay-3-2-million-arbitration-award-to-elderly-poultry-farmers/>

<https://prwlegal.com/western-ny-chicken-farmers-awarded-3-2m-in-largest-upstate-securities-fraud-settlement/>

BrokerWatch

<https://brokerwatch.com/>

CLEVELAND

COLUMBUS

CINCINNATI

CHICAGO

BOCA RATON

ULMER.COM

Those statements have been republished at:

InvestmentNews	https://www.investmentnews.com/article/20190501/FREE/190509990/elderly-investors-win-3-2-million-finra-arbitration-award-against
Upstate New York	https://www.newyorkupstate.com/rochester/2019/05/western-ny-chicken-farmers-awarded-32m-in-largest-upstate-securities-fraud-settlement.html
Syracuse.com	https://www.syracuse.com/crime/2019/05/western-ny-chicken-farmers-awarded-32m-in-largest-upstate-securities-fraud-settlement.html
Associated Press	http://snip.ly/zgsiz2?utm_source=dlvr.it&utm_medium=twitter#https://apnews.com/Business%20Wire/58d275815d804d269a1011e5dc0fd728
Yahoo Finance	https://finance.yahoo.com/news/pwck-law-firm-finra-arbitration-184900396.html
Life Insurance Updater	https://www.lifeinsuranceupdater.com/axa-to-pay-three-2-million-arbitration-award-to-aged-poultry-farmers/
Wealth Management	https://www.wealthmanagement.com/regulation-compliance/axa-pay-32-million-arbitration-award-elderly-poultry-farmers
Think Advisor	https://www.thinkadvisor.com/2019/05/01/axa-to-pay-3-2m-finra-arb-award-to-elderly-couple/?slreturn=20190402134103
Rochester Business Journal	https://rbj.net/2019/05/01/3-2-million-awarded-to-whitesville-family-in-axa-arbitration/
WHAM News 13 (ABC)	https://13wham.com/news/local/convicted-broker-ordered-to-pay-23-million-accused-of-bilking-one-client-to-pay-another
Spectrum Local News	https://spectrumlocalnews.com/nys/rochester/news/2019/05/01/record-upstate-securities-settlement-reached
Rochester First (WROC News 8)	https://www.rochesterfirst.com/news/local-news/elderly-farmers-collect-millions-in-fraud-suit/1971205808

Syracuse Post	Redirects to https://www.syracuse.com/crime/2019/05/western-ny-chicken-farmers-awarded-32m-in-largest-upstate-securities-fraud-settlement.html
My Twin Tiers (WETM 18 NBC)	https://www.mytwintiers.com/news/elderly-upstate-farmers-collect-millions-in-fraud-suit/1973251456
The Daily Record	https://nydailyrecord.com/2019/05/02/3-2-million-awarded-to-whitesville-family-in-axa-arbitration/
Financial Advisor IQ	http://financialadvisoriq.com/c/2271623/278333
Life Annuity Specialist	https://lifeannuityspecialist.com/c/2271883/279553/with_finra_fine_rogue_advisor_churned_products?referrer_module=issueHeadline&module_order=1
Ignites	http://ignites.com/c/2271853/277813?referrer_module=SearchSubFromIG&highlight=AXA

Although presented as “facts,” many of your specific assertions are false and misleading. Individuals who have viewed your statements may have forwarded or republished these false statements.

The false, misleading, and potentially defamatory statements that you have made include:

- PWCK published a document that it misrepresents as a “Fact Sheet” titled “AXA: Only the Tip of the Iceberg Seen So Far in New York State Customer Complaints?”¹ PWCK’s “Fact Sheet” is light on facts and instead riddled with deceptive, damaging, and misleading assertions about my client, including:
 - “Not surprisingly, AXA’s emphasis on pushing VAs on unwary investors has triggered widespread concerns, including from New York regulators” The suggestion that AXA Advisors “push[es] VAs on unwary investors” and that “has triggered widespread concerns” is false. AXA Advisors takes great care to ensure that products are recommended to its clients only if they are suitable. AXA Advisors takes suitability analyses very seriously, and it implements and enforces strict guidelines and procedures regarding the sale of products.

¹ Available at https://brokerwatch.com/wp-content/uploads/2019/05/AXA-Fact-Sheet_4.30.19.pdf. The false statements contained in the “Fact Sheet” have also been re-published at <https://brokerwatch.com/axa> and <https://brokerwatch.com/axa/upstate-ny>.

- “In 2014, AXA was the subject of the largest fine ever levied by the New York State Department of Financial Services for failing to report changes in its variable annuity structure. The fine was \$20 million.” Those statements are misleading. The Department of Financial Services’ \$20 million fine – issued over five years ago – related only to a specific product design feature in variable annuities. That fine had nothing to do with questionable sales tactics.
- “In 2010, the New York State Department of Insurance fined AXA \$1.9 million for violations, including making inaccurate or incomplete disclosures to consumers buying replacement annuity contracts and life insurance policies.” That statement is misleading because it excludes the fact that the New York State Insurance Department itself stated that, in connection with the violations – which ended by June 30, 2006, **over 12 years ago** – it received “**no consumer complaints.**” PWCK’s statements unjustifiably highlight old regulatory matters and falsely imply that they somehow reflect the nature of the company’s operations in 2019.
- “AXA has consistently attracted the attention of the industry self-regulatory organization FINRA: ... July 2009: FINRA Permanently Bars Broker Operating Ponzi Scheme Involving Customers of Broker-Dealers” This is misleading. As stated in that nearly **10-year-old** News Release, a **former** registered representative was barred by FINRA for conducting a Ponzi scheme. As is clear from a review of the News Release that you mistakenly cite, FINRA focused entirely on the registered representative’s individual wrongdoing, noted that he “**conceal[ed]** the scheme from his employers,” and made no negative statements whatsoever regarding AXA Advisors’ supervisory system.
- “But it is two recent cases ... [that] point to serious problems in upstate New York that may only be the tip of the iceberg of AXA sales abuses related to annuities.” That statement is false and misleading. There is no evidence of “serious problems” at AXA Advisors, nor is there evidence of widespread sales practice violations in upstate New York, or elsewhere, related to annuities or other products. As you know, these issues relate to a single individual who is no longer associated with the firm.
- “Compounding the problem is that AXA has shown no hesitancy to employ or extend the employment of problem brokers with troubled backgrounds” That statement is false. AXA Advisors thoroughly investigates all individuals before they become employed or registered with AXA Advisors. Below its false statement, PWCK calls attention to two brokers and their “troubled backgrounds.” PWCK highlights, for example, that the brokers’ BrokerCheck reports reflect eight customer disputes without comment as to whether those customer disputes had any merit. Instead, its misleading statements suggest that simply because two brokers

(out of approximately 250 brokers in the area) have disclosures on their BrokerCheck report, AXA Advisors' hiring policies are somehow faulty.²

- “There is troubling additional evidence that consumers in the Buffalo/Rochester/Syracuse region are being exposed routinely by AXA to other brokers with backgrounds that raise multiple red flags.” That statement is false. AXA Advisors runs detailed background checks and conducts routine investigations on all individuals prior to, and during, their registration with AXA Advisors. AXA Advisors does not “expose” its clients to individuals with “multiple red flags,” and it promptly addresses any concerns related to its brokers. Its clients’ well-being is AXA Advisors’ top concern.
- PWCK published various false and misleading statements on at least two websites that it owns and/or controls – <https://prwlegal.com> and <https://brokerwatch.com>– including:
 - “AXA sent a felonious broker to serve unsophisticated and elderly clients and then completely abdicated its supervisory obligations.”³ PWCK also republished the same quote, with slight modifications: “AXA ... completely failed to perform its supervisory obligations.”⁴ Both of these statements are false. AXA Advisors had proper supervisory and compliance procedures in place at all times. Also, this suggests that Mr. Puccio had a criminal record before he began servicing the Fitzpatricks’ accounts, which is false.
 - In at least two publications, PWCK quotes Mrs. Sandra Fitzpatrick as follows: “I’m not happy at all about the way AXA treated us.”⁵ This statement is misleading and appears to suggest that AXA Advisors failed to heed some overture by Mrs. Fitzpatrick for assistance. In truth, however, Sandra Fitzpatrick and her husband, James Fitzpatrick, never lodged a customer complaint with AXA Advisors

² As to six of the eight customer complaints lodged against Ronald Hicks, AXA Advisors found no basis for the customers’ complaints. (See BrokerCheck report of Ronald Hick, available at https://files.brokercheck.finra.org/individual/individual_716765.pdf.) By merely stating that Mr. Hicks was the subject of eight customer complaints, PWCK mischaracterizes what occurred, failing to address whether the complaints were even meritorious.

³ Including <https://prwlegal.com/pwck-law-firm-finra-arbitration-panel-awards-record-setting-3-million-to-rochester-area-egg-farming-family-victimized-by-convicted-axa-financial-advisor> and <https://brokerwatch.com/axa/upstate-ny>.

⁴ See <https://brokerwatch.com/axa>.

⁵ Including <https://prwlegal.com/pwck-law-firm-finra-arbitration-panel-awards-record-setting-3-million-to-rochester-area-egg-farming-family-victimized-by-convicted-axa-financial-advisor> and <https://brokerwatch.com/axa/upstate-ny>.

regarding the suitability of their investments. Before filing the arbitration, the Fitzpatrick's only inquiry was about the whereabouts of loan proceeds on a policy, not about the suitability of their policies.

- In at least two publications, PWCK quotes Ms. Shirley Kerwin as follows: “When Puccio stole my money, I was shocked. I turned to AXA. When they refused to help, I was devastated.”⁶ This statement is false. AXA Advisors did not refuse to help Ms. Kerwin, nor could it have, as Ms. Kerwin never sought AXA Advisors’ assistance in recovering her money. According to AXA Advisors’ records, Ms. Kerwin called AXA Advisors in 2014 to request information related to her accounts, which AXA Advisors provided. Ms. Kerwin never lodged a customer complaint with AXA Advisors regarding Mr. Puccio.
- In an article on its website, PWCK states that “the case is part of a larger pattern of bad behavior at AXA.”⁷ This statement is misleading. Mr. Puccio’s conduct by no means reflects a “larger pattern of bad behavior” among AXA Advisors’ thousands of associates, nor is the Fitzpatrick's case part of any such alleged pattern. Jason has acknowledged that he “doesn’t know of any other victims” of Mr. Puccio.⁸
- In an article on its website, PWCK cites to its own misleading “fact sheet” as “evidence” of a purported “disturbing pattern of AXA problems throughout Rochester, Syracuse, Buffalo, and upstate New York.”⁹ This statement is misleading for the same reasons as the “larger pattern of bad behavior” statement quoted above. Even though Mr. Puccio, a broker who left AXA Advisors over five years ago, is alleged to have committed wrongdoing against the Fitzpatrick's and Ms. Kerwin, it is incorrect to suggest that other brokers affiliated with AXA Advisors have engaged in similar wrongdoing in Rochester or elsewhere.
- PWCK has made false and misleading statements on other websites and on TV.
 - At a WHAM News (ABC) press conference, your firm is quoted as saying: “[Mr. Puccio’s] company, AXA Advisors, shares the blame. When the Fitzpatrick's went

⁶ Including <https://prwlegal.com/pwck-law-firm-finra-arbitration-panel-awards-record-setting-3-million-to-rochester-area-egg-farming-family-victimized-by-convicted-axa-financial-advisor> and <https://brokerwatch.com/axa/upstate-ny>.

⁷ See <https://prwlegal.com/axa-to-pay-3-2-million-arbitration-award-to-elderly-poultry-farmers>.

⁸ See <https://www.rochesterfirst.com/news/local-news/elderly-farmers-collect-millions-in-fraud-suit/1971205808>.

⁹ See <https://prwlegal.com/pwck-law-firm-finra-arbitration-panel-awards-record-setting-3-million-to-rochester-area-egg-farming-family-victimized-by-convicted-axa-financial-advisor>. This statement has also been published at <https://brokerwatch.com/axa/upstate-ny>.

to the top with their concerns, the company denied their complaint.”¹⁰ As previously explained, this statement is false. AXA Advisors did not receive, much less deny, any formal complaint from the Fitzpatricks about their investments.

- In an article on InvestmentNews, Joseph Peiffer, your firm’s Managing Partner, accused my client of “sell[ing] [] crap that people don’t need and is too expensive, you have to pay them back for it. I don’t know how many whacks upside the head it will take for Axa to get its act straight, but we’ll keep swinging until they do.”¹¹ This misleading statement erroneously implies that AXA Advisors does not have proper suitability-related procedures in place and does not treat its customers properly. Nothing could be further from the truth.
- An article published by Life Annuity Specialist states, “Sandra’s policy was initially funded with more than \$2.7 million. Then, in 2015, money from the policy was used to acquire a Jackson National Life annuity for \$2 million. This was the second of two Jackson annuities that Puccio sold to Sandra Fitzpatrick ‘as a result of his desire to earn commissions,’ the document said.”¹² The suggestion that the Fitzpatricks purchased the Jackson National Life annuity while Mr. Puccio was affiliated with AXA Advisors is false. The Fitzpatricks purchased that annuity in 2015, after Mr. Puccio left AXA Advisors. Also, these statements suggest that Mrs. Fitzpatrick withdrew money from her IL Legacy policy in order to fund the Jackson National Life annuity, which is false.
- Numerous other websites republished the false and misleading statements quoted above.¹³

¹⁰ See <https://app.criticalmention.com/app/#/clip/public/69b6c65f-d311-4bcc-b4b1-a15f9ccfb9eb>.

¹¹ See <https://www.investmentnews.com/article/20190501/FREE/190509990/elderly-investors-win-3-2-million-finra-arbitration-award-against>.

¹² See https://lifeannuityspecialist.com/c/2271883/279553/with_finra_fine_rogue_advisor_churned_products?referrer_module=issueHeadline&module_order=1

¹³ See websites listed on pp. 2-3.

In light of the foregoing, we ask that your office immediately:

1. Delete the statements quoted above, as well as all other false, misleading, and/or defamatory statements, from your firm's website and from all other places where the statements have been published;
2. Cease and desist further publication of false, misleading, and/or defamatory statements about AXA Advisors; and
3. Confirm immediately that the foregoing has been done.

AXA Advisors expressly reserves its rights under applicable law to pursue all available remedies, including, but not limited to, injunctive relief, monetary damages, and costs.

Please let me know if you need additional information. I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Ungar", with a long horizontal flourish extending to the right.

Michael N. Ungar