Before The
FINANCIAL INDUSTRY REGULATORY AUTHORITY

MILLICENT R. BARASCH,

Claimant,

FINRA Case No.

-vs-

CRYSTAL BAY SECURITIES, INC.,

Respondent.

STATEMENT OF CLAIM FOR ARBITRATION

Claimant Millicent Barasch ("Millicent") through her sons, Jeffrey Barasch and Phillip Barasch in their capacities as powers of attorney and/or trustee of the Millicent Barasch Trust ("Claimant") seek damages in this arbitration from Crystal Bay Securities, Inc. ("Crystal Bay" "Respondent"), based on the unsuitable investment advice from Respondent's registered representative, Rafael Golan ("Golan"). She was unreasonably advised to make numerous high commission investments that were unsuitable for her. Those investments included high risk, illiquid REITs, expensive variable annuities and unnecessary life insurance policies.

Millicent Barasch is a 91-year-old widow who relied on Golan to take care of the funds with which she had to live for the rest of her life. It is apparent that Respondent took advantage of her vulnerabilities, advising illiquid, high commission, unsuitable products that benefitted Respondent rather than Claimant. This advice was entirely unreasonable. Not only has it caused difficulty for her to access the funds she needs for living expenses, but it has caused her substantial losses.

Golan advised Claimant to invest at least $650,000 in three GPB funds – GPB Holdings

II, LP, GPB Automotive and GPB Waste Management. As explained in greater detail below, GPB Capital Holdings ("GPB") has had numerous legal and regulatory issues. Millicent lost the vast majority of the money she used to purchase GPB. Crystal Bay did not conduct adequate due diligence on GPB before advising it to Millicent. If it had, they would have recognized that the product should not have been recommended to anyone, particularly an elderly, retired widow.

Claimant believes that the products recommended to her were clear commission grabs by Respondent. The recommendations do not make sense unless viewed with Golan's commissions in mind. Such conduct is in direct violation of the trust Claimant held in Respondent and the fiduciary obligations owed to her. This conduct is also in violation of FINRA's rules of suitability and rules requiring brokers and broker-dealers to conduct themselves with high standards of commercial honor.

Pursuant to FINRA Rule 12213, Claimant requests that this arbitration hearing be in Boca Raton, Florida, because Boca Raton is the hearing location "closest to the customer's residence at the time of the events giving rise to the dispute …"

Based on the age and health status of Claimant, Claimant requests that FINRA grant this arbitration expedited status.

PARTIES

1. Claimant Millicent Barasch

Millicent Barasch is an elderly widow. Jeffrey Barasch and Phillip Barasch are the sons of Millicent Barasch. They are her powers of attorney and/or trustees of her trust.

She relied on Golan to invest the assets with which she had to live for the rest of her life. She trusted Golan completely because she did not know of his numerous regulatory issues and

was not a savvy investor who was forced to trust him. Millicent trusted him so much and knew so little about Golan's regulatory issues that she paid him $7,500 for "financial coaching" just two weeks before FINRA suspended Golan.

2. Respondent Crystal Bay Securities, Inc.

Crystal Bay Securities, Inc. (CRD# 142339) is a previously registered brokerage firm. FINRA cancelled its license in February 2019. During its registration, its principal place of business was located in Delray Beach, Florida. Crystal Bay was a securities broker-dealer firm and a member of FINRA. Crystal Bay has been previously subject to three regulatory events. In 2018, Crystal Bay was subject to an arbitration award in part for failures in its supervisory system.

3. Non-Party Advisor Rafael Golan

Rafael Golan (CRD # 1074079) started in the financial services industry in 1983 when he passed the Series 22 exam. Since then, he passed the Series 3, Series 7, Series 22, Series 24, Series 63, Series 66, and SIE exams.

According to his CRD Report, Golan was registered with Crystal Bay Securities, Inc. from 2007 until January 2019. Golan was also the President and Chief Compliance Officer of Crystal Bay Securities, Inc.

Claimant is not the first customers to have concerns regarding their investments with Golan. He has been the subject of a staggering 8 customer complaints regarding his unsuitable investment advice and sales practice violations. He has also been the subject of 4 regulatory events, the final of which resulted in a bar from FINRA effective as of May 2019.

GPB

Golan advised Millicent purchase $650,000 of GPB products. GPB is a high risk, high commission investment which has faced significant legal and regulatory issues over the past few years.

In July 2017, GPB entered into litigation against a former business partner who had allegedly reneged on a sale of multiple car dealerships. GPB sought the return of $42 million it had paid to the business partner. As the lawsuit has proceeded, numerous other problems for GPB have surfaced, including:

- April 2018: GPB failed to produce audited financial statements;
- August 2018: GPB announced no new investor capital would be accepted;
- September 2018: Massachusetts Division of Securities launched an investigation;
- November 2018: GPB's auditor resigned, citing perceived risks;
- December 2018: FINRA and SEC launched investigations into broker-dealers that sold GPB;
- February 2019: The FBI and New York City Business Integrity Commission raided GPB offices in New York;
- July 2019: Class action lawsuit filed on behalf of investors against GPB Capital Holdings;
- August 2019: David Rosenberg, a principal of a private company and one of GPB's business partners, Prime Automotive Group in Massachusetts, is also accusing GPB in publicly-available court papers of financial misconduct and running a "Ponzi-like scheme;" and
- September 2019: GPB Capital was telling clients that it would deliver audited financial statements for its funds by the end of September, but now says it will blow past that deadline and won't complete the audits until the end of this year.

Based on Golan's representations, Claimant believed that the GPB product was safe and

fit within her investment objectives. Not only was the product unsuitable for Millicent, but it appears that Golan and Crystal Bay did not conduct adequate due diligence on the product. As the legal and regulatory actions involving GPB make clear, the product was inherently flawed and subject to serious risks that should have prevented Golan from recommending it anyone, let alone an elderly widow such as Claimant.

JURISDICTION

This case is arbitrable pursuant to the Federal Arbitration Act and the Arbitration clauses contained in (a) the Licensing Agreement between Respondent and FINRA, (b) the NASD Code of Arbitration, including Rule 12200 of the Code, and (c) the client agreements between Claimant and Respondent. Moreover, all of the arbitrability requirements are satisfied in this case. Respondent is a broker-dealer, FINRA member, and/or FINRA associated person; Claimant was a customer of Respondent's; and this dispute arises in connection with Respondent's business activities. Therefore, Respondent is bound by the FINRA Code to arbitrate this dispute.

IV. LEGAL BASES UPON WHICH RELIEF CAN BE GRANTED

A. VIOLATIONS OF FINRA RULE 2110.

Rule 2110 mandates that broker-dealers, in the conduct of their business, "observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110. FINRA has stated that broker-dealers:

> have an obligation of fair dealing in actions under the general anti-fraud provisions of the federal securities laws. The Commission bases this obligation on the principle that when a securities dealer opens his business he is, in effect, representing that he will deal fairly with the public… Usually, any breach of the obligation of fair dealing as determined by the Commission under the anti-fraud provisions of the securities laws could be considered a violation of the

Association's Rules.

IM-2310-2(d) (Fair Dealing with Customers).

Securities industry regulators have warned that violations by broker-dealers of SEC or NASD rules or regulations are inconsistent with the just and equitable principles of trade and have found that such violations also constitute violations of NASD Conduct Rule 2110. *See Alvin W. Gebhart*, Exch. Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (2006), *rev'd and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. 2007).

Ignoring FINRA and SEC rules, through their registered representatives, Respondent recommended the overconcentration of GPB. Respondent did so with an eye on commissions, but not on the suitability of the underlying allocation that was being set up in Claimant's accounts. As a direct and proximate result of Respondent's conduct, Claimant has been damaged in an amount to be determined at the hearing of this case and is entitled to compensation.

B. VIOLATIONS OF FINRA RULE 2111: RECOMMENDING AND SELLING SECURITIES WITHOUT ADEQUATE DUE DILIGENCE AND WITHOUT A REASONABLE BASIS.

Respondent violated FINRA Rule 2111 by recommending and selling securities to Claimant without first conducting adequate due diligence and gaining a reasonable basis to make such recommendations and sales. FINRA Rule 2111 mandates that securities broker dealers:

> must have a *reasonable basis* to believe that a recommended transaction … involving a security … is suitable for the customer, based on the information obtained through the *reasonable diligence* of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information

> the customer may disclose to the member or associated person in connection with such recommendation.

FINRA Rule 2111(a) (*emphasis supplied*).

FINRA has admonished its members that their suitability duties are comprised of "three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability." FINRA Rule 2111.05 (Supplementary Material). It explained the three obligations as follows:

> (a) The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.
>
> (b) The customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a).
>
> (c) Quantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

FINRA Rule 2111.05 (*emphasis in the original*).

Thus, FINRA Rule 2111.05 makes clear that the first prong of the suitability analysis –

before a product is even presented to a customer – requires a broker-dealer firm to conduct reasonable due diligence as to the product. *Id*. Only after the broker-dealer, following such reasonable due diligence, has acquired a reasonable basis to believe that the product "is suitable for at least *some* investors," id., is the broker-dealer allowed to present that opportunity to its customer and proceed with the other steps of the suitability analysis. In other words, the first step of the suitability analysis – which must occur before the broker-dealer determines whether or not to present the product to the customer – is *focused on the product, not the customer*. The second and third steps of the suitability analysis are focused on the customer – i.e. on his or her investment risk profile and the appropriate concentrations of various investments in the customer's portfolio.

Respondent recommended unsuitable investments that would have been unsuitable for any investor let alone an elderly widow. Many of the investments in Claimant's portfolio should not have been recommended by Respondent to anyone, including GPB. Respondent's failure to conduct due diligence on these investments caused Claimant to suffer substantial losses.

Investing a significant portion of Claimant's portfolio in high commission products like GPB was also unsuitable. The incredibly high expense load and fee structure created by the overconcentration of these investments made it very difficult for Claimant to take advantage of a great bull market. Claimant's objectives and goals were barely a consideration if they were considered at all. This conduct is a systemic violation of Rule 2111.

As a direct and proximate result of Respondent's conduct, Claimant has been damaged in an amount to be determined at the hearing of this case and is entitled to compensation.

C. NEGLIGENCE

Respondent was negligent in reviewing, agreeing to sell, recommending, and selling unsuitable and high commission GPB products to Claimant. Such negligence arose directly out of Respondent's failure to adequately investigate these securities prior to approving their sales to Claimant in breach of Respondent's due diligence duties towards their clients and vicariously out of the unlawful sales to Claimant by Golan.

Respondent owed Claimant duties to act as a reasonable broker-dealer would do under the same or similar circumstances, in connection with their review, recommendation, and sales of securities to Claimant. Respondent also had duties to act reasonably in reviewing, recommending, and selling other investment products to Claimant, and breached those duties when they continued to recommend and sell risky and high commission investment products. Respondent's supervision of Golan in general was negligent as well as their supervision of specific transactions.

D. MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

Respondent made numerous misrepresentations and omissions of material fact to Claimant regarding GPB investments without a reasonable basis to recommend such products.

The Restatement (Second) of Torts has described the claim of misrepresentation as follows:

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Restatement (Second) of Torts § 552(1), (2) (1977).

Respondent served as Claimant's broker-dealer and investment advisor. Respondent

understood and accepted the trust and reliance reposed in them by Claimant and specifically understood that they looked to Respondent to select suitable investments. Claimant justifiably followed advice stemming from Respondent's material omissions and negligent misrepresentations when Claimant purchased the investments suggested by Respondent.

As a direct and proximate result of her acceptance of Respondent's negligent misrepresentations in connection with the investment products, Claimant has been damaged in an amount to be demonstrated at the hearing.

E. BREACH OF FIDUCIARY DUTY

Respondent, who acted as Claimant's financial advisors, breached their fiduciary duties when they induced her to invest in the GPB products. Brokers who approach their customer and recommend that the customer purchase an investment have a fiduciary duty to independently investigate that investment before recommending it. *See SEC v. Glt Dain Rauscher, Inc.*, 254 F. 3d 852, 857-858 (9th Cir. 2001) (stating that a financial professional "had a duty to make an investigation that would provide him with a reasonable basis for a belief that the key representations in the statements provided to the investors were truthful and complete."). Claimant's relationship with Respondent was that of a fiduciary based on contract, her relationship with Respondent, and the reliance she placed on Respondent to offer sound, unconflicted financial advice.

Respondent held the entire trust and confidence of Claimant on the subject of investments. Respondent failed to adequately investigate the GPB products, recklessly ignored a plethora of red flags and problems surrounding the offerings which Respondent had a duty to investigate, concealed from Claimant material information regarding the investments, and

actively, unreasonably, and illegally induced Claimant to invest their money in a way that led to guaranteed and unearned profit for Respondent, but hindered Claimant's portfolio growth in a clear conflict of interest. As a direct and proximate result of Respondent's breaches of the fiduciary duties owed to Claimant in connection with its recommendations to invest in GPB products, Claimant has been damaged in an amount to be determined at the hearing.

RELIEF REQUESTED

As a result of the course of conduct outlined above, Respondent is liable as follows:

(1) for all losses of principal suffered by Claimant;

(2) for all interest, commissions and fees paid by Claimant;

(3) for the loss of income that would have been received had Claimant's accounts been managed properly, as well as other losses, foreseeable or not, that Claimant suffered, including non-pecuniary losses;

(4) for attorneys' fees, costs and other expenses;

(5) for interest, both pre-judgment and post-judgment;

(6) for all other sums Claimant is entitled to at law or equity; and

(7) for punitive damages.

Dated: September 18, 2019

PEIFFER WOLF CARR & KANE
A PROFFESIONAL LAW CORPORATION

By: /s/ Jason J. Kane
Jason J. Kane

PEIFFER WOLF CARR & KANE
1150-J Pittsford-Victor Road, 1st Floor
Pittsford, New York 14534
Telephone: (585) 310-5140
jkane@pwcklegal.com

Joseph C. Peiffer
PEIFFER WOLF CARR & KANE
201 St. Charles Ave., Suite 4314
New Orleans, LA 70170
Telephone: (504) 586-5259
jpeiffer@pwcklegal.com

David P. Meyer, Esq.
Courtney M. Werning, Esq.
Meyer Wilson Co., LPA
1320 Dublin Road, Suite 100
Columbus, Ohio 43215
T: 614-224-6000
F: 614-224-6066
dmeyer@meyerwilson.com
cwerning@meyerwilson.com

Counsel for Claimants