Before The
FINANCIAL INDUSTRY REGULATORY AUTHORITY

GRIGORY and ALEXANDRA KOGAN,

Claimants,

FINRA Case No.

-vs-

MADISON AVENUE SECURITIES, LLC.,
BANKERS LIFE SECURITIES, INC.,

Respondents.

STATEMENT OF CLAIM FOR ARBITRATION

Claimants Grigory and Alexandra Kogan ("the Kogans" "Claimants") seek damages in this arbitration from Madison Avenue Securities, LLC ("Madison Avenue") and Bankers Life Securities, Inc. ("Bankers Life") (collectively "Respondents"), based on the unsuitable investment advice from Respondents' registered representatives, Jeffrey Raymond Dixson ("Dixson") and Daniel Patrick Corey ("Corey"). The Kogans invested with Dixson and Madison Avenue from approximately 2011 to 2017. They then worked with Bankers Life and Corey from 2017 to 2019. Throughout both relationships, the Kogans were unreasonably advised to make numerous high commission, unsuitable investments.

The Kogans are immigrants who came to the United States from Russia in 1979. English is not their first language, making it particularly difficult for them to understand the complex products they were advised to purchase and invest in by Respondents. It is apparent that Respondents took advantage of their vulnerabilities, advising high commission, unsuitable products that benefitted Respondents rather than Claimants. Dixson advised the Kogans to

invest heavily in alternative investments and annuities. Bankers Life later advised the Kogans to invest in life insurance policies and to switch two of the annuities advised by Dixson into new annuities at Bankers Life. None of this advice was reasonable and has caused the Kogans substantial losses.

To make matters worse, Dixson unreasonably advised Claimants to purchase $50,000 in GPB Automotive Portfolio ("GPB Automotive"). As explained in greater detail below, GPB Capital Holdings ("GPB") has had numerous legal and regulatory issues. Claimants lost the vast majority of the money they used to purchase GPB Automotive. Dixson and Madison Avenue did not conduct adequate due diligence on GPB before advising it to the Kogans. If they had, they would have recognized that the product should not have been recommended to anyone, particularly individuals who did not have high risk tolerances, were planning for retirement, and did not understand the risks associated with illiquid, alternative investments.

Claimants believe that the alternative investments, annuities, and life insurance products recommended to them were clear commission grabs by Respondents. The recommendations do not make sense unless viewed with Dixson's and Corey's commissions in mind. Such conduct is in direct violation of the trust Claimants held in Respondents and the fiduciary obligations owed to them. 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, Claimants request that this arbitration hearing be in Portland, Oregon, because Portland 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 Claimants, Claimants request that FINRA grant this arbitration expedited status.

PARTIES

1. Claimants Grigory and Alexandra Kogan

The Kogans are a married couple who live in Portland, Oregon. Grigory is 70 years old and Alexandra is 69 years old. The couple immigrated to the United States from Russia in 1979. Grigory spent his career as an electrical engineer. Alexandra had a career as a Russian medical interpreter and retired approximately 10 years ago.

Grigory has suffered from three strokes, leaving him paralyzed on his right side. He had continued working as an electrical engineer until he was terminated from his employment for this disability early in 2019. Alexandra has also suffered a stroke. Due to the language barrier, and likely at times their medical issues, the Kogans did not adequately understand what they were being advised to invest in. They are devastated that they feel that they have been taken advantage of by their fiduciaries.

2. Respondent Madison Avenue Securities

Madison Avenue Securities (CRD# 23224) is a company registered in 53 states and territories, with its principal place of business located in San Diego, California. Madison Avenue is a securities broker-dealer firm and a member of FINRA. Madison Avenue has been previously subject to four regulatory events for inadequacies in its supervisory system. In 2018, Madison Avenue was required to pay $913,177 in a FINRA award in part for failure to supervise its registered representative.

3. Respondent Bankers Life Securities, Inc.

Bankers Life Securities, Inc. (CRD# 173962) is a company registered in 51 states and territories, with its principal place of business located in Chicago, Illinois. Bankers Life is a securities broker-dealer firm and a member of FINRA. Bankers Life has been previously subject to one regulatory event by the State of New Hampshire. Its insurance affiliate, Bankers Life & Casualty Co. has been subject to numerous regulatory and legal issues as well.

NON-PARTY FINANICAL ADVISORS

4. Non-Party Jeffrey Dixson

Jeffrey Raymond Dixson (CRD # 4166311) has been in the financial services industry since 2000 when he passed the Series 6 and Series 63 exams. He has also passed the Series 7, Series 26, Series 65, and SIE exams.

According to his CRD Report, Dixson was registered with WMA Securities from 2000 to 2001, United Securities Alliance, Inc. from 2001 to 2003, Intersecurities, Inc. from 2003 to 2004, and Pacific West Securities, Inc. from 2004 to 2007. Dixson became registered with Madison Avenue in 2007 and remains registered with it today.

Claimants are not the first customers to have concerns regarding their investments with Dixson. He has been the subject of 5 customer complaints regarding unsuitable investment advice. These complaints appear to be increasing in frequency and relate to alternative investments. In fact, this is the third customer complaint related to alternative investments (DPP & LP Interests) since July 2019. Additionally, in 2007, Dixson was subject to regulatory action by the State of Washington for failure to sell approved variable annuities.

The Kogans started working with Jeffrey Dixson in or around 2011. The Kogans learned of Dixson through his extensive marketing efforts. Over time, he advised them to invest in a

number of high commission products such as REITs and annuities. Among others, they were advised to invest in GPB Automotive Portfolio, American Realty Capital Healthcare, FS Energy and Power Fund, FS Global, American Finance Trust, Gemini Fund 5, Walton Land Fund 3, GC Essential Asset REIT, Hines Global REIT, Light Stone Value Plus III, BSP Realty Trust, Hospitality Investors Trust, and Healthcare Trust, Inc. The alternative investments totaled approximately $500,000. Dixson also advised the Kogans to invest in four sizable annuities.

This allocation was entirely unsuitable for the Kogans. Claimants were planning for retirement and had informed Dixson that they wanted minimum risk and access to liquidity. The Kogans were not properly advised with regard to the illiquidity of the investments and Alexandra recalls being told she would be able to get the money back anytime with 5 days' notice. She did not understand what the alternative investments were. Dixson also represented to Alexandra that he would not be charging the Kogans any commission, which she has since learned was not the case. The Kogans ultimately ended their relationship with Dixson in 2017.

These transactions were all approved and occurred through books and records of Respondent Madison Avenue.

5. Non-Party Daniel Corey

Daniel Patrick Corey (CRD# 6319568) has been in the financial services industry since 2014 when he passed the Series 6 and Series 63 exams. He has also passed the Series 7, Series 66, and SIE exams.

According to his CRD Report, Corey was registered with Proequities, Inc. from 2014 to 2016. He then became registered with Bankers Life and remains registered with it today. As evidenced on his CRD Report, Bankers Life should have been acutely aware that it should

supervise Corey's interactions with vulnerable adults such as Claimants due to his 2000 misdemeanor conviction for theft of property in the third degree.

The Kogans first became involved with Bankers Life when a representative came to the Kogans' household and discussed medical supplemental insurance with them. As the Kogans were becoming frustrated with the performance of their investments with Dixson and Madison Avenue, they also asked the Bankers Life representative whether Bankers Life could handle their investments. They were then introduced to Daniel Corey. Instead of advising Claimants that the prior advice given to them had been entirely unsuitable and attempting to mitigate Claimants' damages, Corey and Bankers Life apparently saw an opportunity to also make substantial commissions at the Kogans' expense.

Bankers Life advised the Kogans to purchase three life insurance policies with total face value of over $1,000,000. These policies were not suitable for the Kogans. Investing through life insurance policies is one of the most expensive ways to invest. Much of the expense is due to the selling commission that the life insurance company pays to the selling agent.

Bankers Life and Daniel Corey also advised the Kogans to take two of their existing annuities purchased through Dixson along with some other assets to purchase two Bankers Life annuities amounting to approximately $400,000. In order to surrender the two prior policies, they had to pay surrender charges of approximately $17,000. The Kogans believe that these transactions were done primarily for the commissions received by Daniel Corey and Bankers Life, as the transactions were not suitable or reasonable in consideration of the Kogans' financial objectives.

The Kogans have also noted inconsistencies in the information provided to them by

Bankers Life. Claimants are not confident they are fully aware of how all their assets have been handled. For example, they realized in the middle of 2019 that $1,000 per month was being withdrawn directly from one of their bank accounts for nearly a year without their authorization or knowledge to pay premium toward one of the life insurance policies. Bankers Life admitted the mistake and subsequently refunded over $11,000 into one of their policies. Claimants also feel it was not properly represented to them how the insurance policies were to be funded, and that they have been misled.

GPB

Dixson advised the Kogans to purchase $50,000 of GPB Automotive Portfolio ("GPB Automotive"), a private placement that invests in automobile dealerships. GPB Automotive is a high risk, high commission investment that is a product of GPB Capital Holdings ("GPB"). GPB 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; and
- 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."
- 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 Dixson's representations, Claimants believed that the GPB product was safe and fit within their investment objectives. Not only was the product unsuitable for the Kogans, but it appears that Dixson and Madison Avenue 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 Dixson from recommending it anyone, let alone Claimants.

JURISDICTION

This case is arbitrable pursuant to the Federal Arbitration Act and the Arbitration clauses contained in (a) the Licensing Agreement between Respondents and FINRA, (b) the NASD Code of Arbitration, including Rule 12200 of the Code, and (c) the client agreements between Claimants and Respondents. Moreover, all of the arbitrability requirements are satisfied in this case. Respondents are broker-dealers, FINRA members, and/or FINRA associated persons; Claimants were customers of Respondents; and this dispute arises in connection with Respondents' business activities. Therefore, Respondents are 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, Respondents recommended the overconcentration of alternative investments, annuities, and life insurance policies. Respondents did so with an eye on commissions, but not on the suitability of the underlying allocation that was being set up in Claimants' accounts. As a direct and proximate result of Respondents' conduct, Claimants have been damaged in an amount to be determined at the hearing of this case and are entitled to compensation.

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

Respondents violated FINRA Rule 2111 by recommending and selling securities to Claimants 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.

Respondents recommended unsuitable investments that would have been unsuitable for any investor let alone individuals preparing for retirement. Many of the investments in Claimants' portfolio should not have been recommended by Respondents to anyone, including GPB Automotive. Respondents' failure to conduct due diligence on these investments caused Claimants to suffer substantial losses.

Investing a significant portion of Claimants' portfolio in high commission alternative investments, annuities, and life insurance products was also unsuitable. The incredibly high expense load and fee structure created by the overconcentration of these investments made it very difficult for Claimants to take advantage of a great bull market. Claimants' 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 Respondents' conduct, Claimants have been damaged in an amount to be determined at the hearing of this case and are entitled to compensation.

C. NEGLIGENCE

Respondents were negligent in reviewing, agreeing to sell, recommending, and selling unsuitable and high commission alternative investments, annuities, and life insurance products to Claimants. Such negligence arose directly out of Respondents' failure to adequately investigate these securities prior to approving their sales to Claimants in breach of Respondents' due diligence duties towards their clients and vicariously out of the unlawful sales to Claimants by Dixson and Corey.

Respondents owed Claimants 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 Claimants. Respondents also had duties to act reasonably in reviewing, recommending, and selling other investment products to Claimants, and breached those duties when they continued to recommend and sell risky and high commission investment products. Respondents' supervision of Dixson and Corey in general was negligent as well as their supervision of specific transactions.

D. MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

Respondents made numerous misrepresentations and omissions of material fact to Claimants regarding alternative investments, annuities, and life insurance products 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).

Respondents served as Claimants' broker-dealers and investment advisors. Respondents understood and accepted the trust and reliance reposed in them by Claimants and specifically understood that they looked to Respondents to select suitable investments. Claimants justifiably followed advice stemming from Respondents' material omissions and negligent misrepresentations when Claimants purchased the investments suggested by Respondents.

As a direct and proximate result of his acceptance of Respondents' negligent misrepresentations in connection with the investment products, Claimants have been damaged in an amount to be demonstrated at the hearing.

E. BREACH OF FIDUCIARY DUTY

Respondents, who acted as Claimants' financial advisors, breached their fiduciary duties when they induced them to invest in the alternative investments, annuities, and life insurance 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."). Claimants' relationships with Respondents were those of fiduciaries based on contract, their relationships with Respondents, and the reliance they placed on Respondents to offer sound, unconflicted financial advice.

Respondents held the entire trust and confidence of Claimants on the subject of investments. Respondents failed to adequately investigate the alternative investments, annuities, and life insurance products, recklessly ignored a plethora of red flags and problems surrounding the offerings which Respondents had a duty to investigate, concealed from Claimants material information regarding the investments, and actively, unreasonably, and illegally induced Claimants to invest their money in a way that led to guaranteed and unearned profit for Respondents, but hindered Claimants' portfolio growth in a clear conflict of interest. As a direct and proximate result of Respondents' breaches of the fiduciary duties owed to Claimants in connection with its recommendations to invest in alternative investments, annuities, and life insurance products, Claimants have been damaged in an amount to be determined at the hearing.

F. VIOLATIONS OF OREGON SECURITIES LAW

Respondents violated the Oregon Securities Law. Respondents did so by making untrue statements of material facts and by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Respondents failed to properly inform Claimants of the risks and illiquidity associated with

REITs, variable annuities, alternative investments and life insurance policies. Respondents misled Claimants when telling them that the funds invested in the alternative investments would be able to be liquidated without issue. Respondents also misrepresented the level of risk associated with the REITs and alternative investments, like GPB. Claimants did not know, and could not have known with the exercise of reasonable care, of the misrepresentations and omissions.

Respondents participated in, solicited, profitted from, and materially aided and abetted these unlawful sales or securities. As a result, upon tender, Respondents are jointly and severally liable for the consideration paid for the securities, plus interest from the date of payment equal to the greater of the rate of interest provided in the security or 9%, less any amounts Claimants received from the securities. As a result of its breach of the Oregon Securities Law, Respondents should be required to pay Claimants' reasonable attorneys' fees.

G. ELDER ABUSE

Claimants are "elderly" as that term is defined in ORS 124.110 and were entitled to the protections of ORS 124. As described throughout, Respondents' conduct constituted financial abuse of the elderly Claimants. Respondents knowingly acted, or failed to act, in circumstances in which a reasonable person should have known that elder abuse was occurring. Respondents are therefore liable for an amount equal to three times all economic and noneconomic damages resulting from the financial abuse as well as Claimants' reasonable attorneys' fees.

RELIEF REQUESTED

As a result of the course of conduct outlined above, Respondents are liable as follows:

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

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

(3) for the loss of income that would have been received had Claimants' accounts been managed properly, as well as other losses, foreseeable or not, that Claimants 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 Claimants are entitled to at law or equity; and

(7) for punitive damages.

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