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Menace in the markets: Lawyers help clients to recover from stockbroker misconduct

Securities

By Carol Lundberg

In the securities business, one momentary lapse of knowledge, memory or ethics can create lasting damage to a client's financial health.

And a lapse in judgment, or even pressure to push clients into high-commissioned investments, can wipe out a customer's life savings.

That's the world in which West Bloomfield attorney Anthony V. Trogan works every day, helping investors sue their brokers and advisors when their actions are negligent — or nefarious.

"In almost every case, it comes down to whether brokers are fiduciaries. The SEC thinks all brokers are, when in fact, in most situations under the current regulations, they are not. The problem is that the public can't tell the difference."
— Attorney Anthony V. Trogan

Detroit-based lawyer Peter Rageas helps investors who have lost their money as a result of broker misconduct.

That world might get a little easier to work in, if the Securities and Exchange Commission (SEC) adopts new rules, which it has indicated it will, Trogan said.

The SEC approved new regulations early this year to curb the risks of some securities, the types that wreaked havoc on investors during the financial crisis, such as those backed by toxic mortgages.

The SEC also has indicated that it will call for a new uniform fiduciary standard for broker-dealers and advisors, Trogan added. Under current rules, brokers have dual roles — advising clients and selling products. New regulations would require them to always act in the best interest of clients by disclosing conflicts of interest, which can be created when brokers make commission on selling certain products.

That's at the heart of nearly every controversy, Trogan said.

"In almost every case, it comes down to whether brokers are fiduciaries," he said. "The SEC thinks all brokers are, when in fact, in most situations under the current regulations, they are not. The problem is that the public can't tell the difference."

Because of that, law changes, based on the SEC recommendations, are likely, Trogan said.

That misunderstanding by customers about what a broker's role gives way to one of the most common types of misconduct — the pressure to sell high-commission products like annuities, while the customer believes that a broker is acting in the customer's best interest.

"The most common misconduct is in the context of suitability," Trogan said. "The broker is charged with the responsibility of picking investments that are appropriate for their customers."

That can be a moving target, to match the investment with the investor.

"There are such tremendous incentives to sell annuities that it's hard to resist selling them. They do have a legitimate purpose for some people, but not for everyone," Trogan said. "And they're sold more often than they should be."

After the tech crash of 2000 and the economic meltdown of 2008-09, Detroit lawyer Peter C. Rageas has seen plenty of cases of unsuitable investments. But none was so obviously wrong as a 2009 case.

His client had an Individual Retirement Account with about $300,000 in it.

His broker put the entire IRA into auto industry bonds. About 80 percent was in General Motors Corp.

The client was just past retirement age.

"Just on the face of it, that was unsuitable," Rageas said. "The broker concentrated 80 percent of the investments in one company, which by 2006 most analysts agreed had serious problems."

The broker didn't necessarily mean to harm the client, Rageas said.

"He was very young and inexperienced. And he worked out of a local bank with no supervision," Rageas said. "All he had to do was spread it out and he would have been fine."

But he wasn't fine. The investments lost 75 percent of their value.

Rageas and his client went to Financial Industry Regulating Authority (FINRA) mediation and settled.

Rageas can't say what the case settled for, but he did say that "damages were substantially more than the settlement."

Often the misconduct is the result of a simple mistake, Trogan said.

"They write down the name of the stock wrong. Or a broker takes an order and goes to lunch and forgets," he said.

That's when he runs up against his biggest challenge: that many would-be clients are reluctant to sue their brokers.

"When you're dealing with a cheat, you can't defend yourself," he said. "But what's more common is that there are a lot of these cases out there, but the people don't know they have a case."

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