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News

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After investment losses, retirees seek arbitration

By MIKE SOBczyk

The bulk of their retirement money lost in high-risk investments, nearly a score of retired Findlay Whirlpool Corp. employees are seeking some relief through arbitration.

A "statement of claim" was mailed Wednesday to the National Association of Securities Dealers (NASD), alleging broker misconduct by Omaha-based Securities America, an independent brokerage firm, and by Gil E. Tallman, a licensed broker with Securities America doing business as Premier Financial Group.

The case was sent to NASD's New York office by Columbus attorney David P. Meyer, who mainly represents investors against stockbrokers.

"We wanted to get the clock started," Meyer said of his decision to pursue arbitration through the NASD rather than a class-action lawsuit. He said an arbitration case is less costly and less time consuming to pursue.

Involved in the group arbitration filing are 19 Whirlpool retirees -- 18 who retired in either 1995 or 1997, and one who retired in 1989 -- who rolled over their pension and/or 401(k) accounts to Securities America upon retirement.

Retirement fund losses realized by these retirees will exceed \$3 million, according to Meyer. He explained that the individual accounts for these retirees, which ranged from \$200,000 to \$400,000 apiece, represented "the bulk of net worth for these people."

Because of what happened, Meyer said, "These people must now go back to work at low-paying jobs." He said many of these retirees, whose ages range from 60 to 73, put in 35 years of service at Whirlpool.

In the "statement of claim," which is akin to a complaint filed in a normal lawsuit, Meyer is alleging a number of inappropriate actions, including breach of fiduciary duty, negligence, and violations of state securities acts.

According to Meyer, Tallman, as a registered representative of Securities America, became involved with the claimants after learning that Whirlpool was offering retirement packages to a number of employees. By 1998, because of the number of clients who signed up with Securities America, Tallman opened his Premier Financial Group office in Findlay.

Meyer said all was fine with the retirees' accounts until mid-1999. Until then the savings of the retirees were essentially invested in a conservative portfolio which focused on income and some growth, which, according to Meyer, was appropriate given the retirees' "stage in life and modest size of retirement 'nest eggs.'"

However, the "brokers' investment philosophy changed drastically," according to Meyer, beginning about August 1999 when the "conservative, long-term approach" was abandoned.

At that point, Meyer alleges, unilateral decisions were made to liquidate most of the retirees' investments within their retirement portfolios without prior authorization.

Meyer said Y2K concerns may have been the reason for these portfolios being converted into nearly 100 percent cash or cash equivalents. During this period, Meyer noted, the equity market rose in value significantly.

Meyer said this attempt at "market-timing" was ill-conceived, but he explained that the real problem surfaced after the Y2K scare passed and Tallman reinvested -- not back into a "conservative, well-balanced portfolio" but rather into more speculative equities and mutual funds.

Also, Meyer alleges, a fraudulent attempt was then made "to paper the file" by sending so-called "updated account forms" to the retirees, which made mention of new "aggressive" and "maximum growth" investment objectives. The retirees were asked to sign these forms. Meyer said some signed the forms, and some didn't.

Meyer said the primary holding for the retirees' accounts beginning in 2000 was the Pro Ultra OTC Fund, described by Meyer as a "highly speculative index fund designed to be twice as aggressive (double the volatility) as the NASDAQ 100 Index."

Meyer noted that as this fund dropped in value, Tallman's strategy was to buy even more shares, which led to a further dwindling of the retirees' accounts. Meyer said the retirees lost the "vast majority" of their retirement savings from 2000-2002.

In his filing, Meyer claims Securities America did not look after "individual investors with individual needs," but rather employed a "one size-fits-all" investment strategy. He asserts that Securities America failed to monitor the retirees' progress and failed to make adjustments that would expose retirees to less market risk.

Attempts to reach Securities America's general counsel were not successful Wednesday. Also, phone messages seeking comment from Tallman, who now works out of Fort Wayne, Ind., were not returned Wednesday.

The Courier also made an attempt, through Meyer, to talk with some of the retirees involved in the case, but so far none has responded.

Once the NASD receives the "statement of claim," Meyer said, Securities America and Tallman will have 45 days to file an answer. After that, a three-member panel of arbitrators will be selected, and a hearing date will be scheduled. The hearing itself will be between the parties.

Arbitration cases are run through the NASD. Once a ruling is made, barring a settlement beforehand, Meyer said grounds for appeals are very narrow. Typically, it takes 12 months to 16 months to resolve an arbitration case.

Asked about investor responsibility in this case, Meyer said, "There's always a duty to look out for yourself, but professionals like stockbrokers have a higher duty, they have a fiduciary responsibility. When you are told one thing, there is no reason to disbelieve it. Why doubt it?"