

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS- 2925

FILED
2018 NOV 26 P 4: 06
IREDELL CO., C.S.C.
COMPLAINT

DAVID M. BEAM, Jr, by and through)
his attorney-in-fact Donna B. Mayes;)
DONNA B. MAYES, as the Executrix)
of the Estate of DORIS P. BEAM; and)
DONNA B. MAYES, as the Trustee of the)
DAVID M. BEAM IRREVOCABLE)
TRUST dated September 12, 2001,)
Plaintiffs,)
vs.)
SUNSET FINANCIAL SERVICES, INC.,)
Defendant.)

NOW COME the Plaintiffs, by and through their counsel, and state the following:

PARTIES AND JURISDICTION

1. Plaintiff David M. Beam, Jr. is a citizen and resident of Catawba County, North Carolina.
2. Donna B. Mayes is the Executrix of the Estate of Doris P. Beam, and is a citizen and resident of Iredell County, North Carolina. Doris P. Beam (deceased) was the wife of Plaintiff David M. Beam, Jr., and was a citizen and resident of Catawba County, North Carolina prior to her death.
3. Donna B. Mayes, Mr. and Mrs. Beam's daughter, is the duly authorized attorney-in-fact of David M. Beam, Jr., and is a citizen and resident of Iredell County.
4. Donna B. Mayes is the Trustee of the David M. Beam, Jr. Irrevocable Trust dated September 12, 2001.

5. Defendant Sunset Financial Services, Inc. (hereinafter "Sunset" or "Defendant"), is a company duly organized and existing under the laws of the State of Washington, and registered to do business and doing business in the State of North Carolina. Said Defendant may be served through its registered agent, National Registered Agents, Inc., 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615. All allegations contained herein against said Defendant also refer to and include the actual and/or apparent, principles, agents, employees, and/or servants of said Defendant, either directly, or vicariously, under the principles of partnership, corporate liability, apparent or actual authority, agency, ostensible agency and/or respondeat superior.

FACTS

6. Mr. Beam is in his early eighties. Prior to he and his wife's involvement with Defendant, their wealth consisted primarily of real estate holdings and stock in Mr. Beam's former employer, Duke Energy.

7. Beginning in 2008, upon the advice of Jeffrey Lipscomb (hereinafter "Lipscomb"), an agent/employee of Defendant, Plaintiffs shifted their investments from conservative investments in real estate and Duke Energy stock, and consolidated their investments in high risk companies such as start-up energy companies and oil well drilling speculation companies.

8. On behalf of Defendant, Lipscomb cultivated a close personal relationship with Mr. and Mrs. Beam. He became very close with them personally, frequently visiting their home and becoming involved in virtually every aspect of their lives. He became their most trusted advisor.

9. Plaintiffs collectively invested approximately \$2,000,000.00 in such companies at the direction of Lipscomb.

10. The initial investments were made upon advice from Lipscomb while he was an employee and agent of Sunset.

11. Upon information and belief, Lipscomb was, at some point in 2010 or thereafter, terminated from his employment by Sunset, and went to work for Allstate Financial Services, LLC (hereinafter "Allstate").

12. Upon information and belief, Allstate had a company policy against the type of "alternative investments" into which Sunset had invested Plaintiffs' funds.

13. Sunset did not inform Plaintiffs of Lipscomb's termination, nor did it properly inform Plaintiffs with regard to the status and management of their accounts moving forward

14. The alternative investments into which Defendant invested Plaintiffs' funds continued to be managed by Defendant for several years after the termination of Lipscomb's employment with Defendant.

15. Defendant failed to properly inform Plaintiffs of the status of their investments, failed to inform Plaintiffs of their options with regard to these investments, and failed to advise Plaintiffs to exit these investments in favor of more reasonable ones.

16. Upon information and belief, Defendant allowed Lipscomb to remain involved in Plaintiffs' investments (obtained and managed through Defendant) after the termination of Lipscomb's employment.

17. Despite his termination from Defendant, Lipscomb continued to have frequent contact with Plaintiffs, to give them advice and alleged updates with regard to their investments, and to purport to manage their accounts.

18. As recently as December of 2016, Lipscomb contacted Plaintiffs to provide advice and management to Plaintiffs as to their investment accounts.

19. Throughout the entire time period of his involvement, including during and after his employment with Defendant, Lipscomb gave Plaintiffs assurances about their investments, including that said investments eventually would be successful and would result in substantial earnings for Plaintiffs.

20. Plaintiffs no longer receive statements on most of their investments from Defendant.

21. As a result of the actions of Defendant, Plaintiffs are not fully aware of the status of their investments at this time, or even what party is the actual manager of these investments.

22. During 2016, it finally came to Plaintiffs' attention that some of their investments had failed, and that their life savings/nest egg was gone, or at least substantially depleted.

23. Upon information and belief, the vast majority of the sums invested by Plaintiffs have been lost.

24. The investments in question were completely unsuitable for investors of the Beams' age, financial situation, sophistication, and investment goals.

25. It was improper for Defendant to invest the Beams in these kinds of investments, and to maintain them in these investments once they were made.

26. Throughout this period of several years, Defendant made false and /or misleading statements to the Beams, including but not limited to the following:

- a. That said investments were suitable for the Beams;
- b. That said investments would be substantially profitable;
- c. That the risks involved with said investments were suitable for the Beams;
- d. That the investments were doing well (when they were not);
- e. That the investments would do well over time and would recover from any difficulties;

- f. That the Beams should keep their money in said investments; and
- g. Other statements to be proven at trial.

27. Throughout this period of several years, Defendant concealed material facts from the Beams about their investments, including but not limited to the following:

- a. That said investments were unsuitable for the Beams;
- b. That said investments were unlikely to be substantially profitable;
- c. That the risks involved with said investments were unsuitable for the Beams;
- d. That the investments were doing poorly and their value was declining;
- e. That the investments were unlikely to recover from difficulties;
- f. That the Beams should divest from said investments;
- g. That some of the companies in which the Beams had invested were facing significant financial difficulty;
- h. Lipscomb's employment status and the reasons for his employment status;
- i. Who was truly managing or otherwise in charge of the Beam's investments;
- j. The status of the Beams investments, and where they could obtain information about their investments; and
- k. Other omissions to be proven at trial.

COUNT ONE
(Breach of Fiduciary Duty)

28. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

29. At all times material, Defendant possessed a relationship of trust and confidence rising to the level of a fiduciary relationship with Plaintiffs, due to the broker/customer

relationship, FINRA and NASD standards and regulations and the close personal relationship Lipscomb cultivated and maintained with the Beams on behalf of Defendant. Defendant was entrusted with Plaintiffs' funds, was entrusted to make investments in their interest, to handle funds in their interest, and to provide investment and financial advice to Plaintiffs.

30. Plaintiffs placed trust and confidence in Defendant, and Defendant was vested with confidence and authority which gave rise to a fiduciary duty.

31. These fiduciary relationships of trust and confidence led up to and surrounded the transactions complained of herein.

32. These relationships required Defendant to act in good faith and with due regard for the best interests of Plaintiffs.

33. By and through the actions complained of herein and listed above, Defendant breached its fiduciary duties in a way that damaged Plaintiffs.

34. As a direct and proximate result of Defendant's actions, Plaintiffs have been damaged in an amount in excess of \$25,000.00.

COUNT TWO
(Constructive Fraud)

35. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

36. At all times material, Defendant possessed a relationship of trust and confidence rising to the level of a fiduciary relationship with Plaintiffs, due to the broker/customer relationship, FINRA and NASD standards and regulations and the close personal relationship Lipscomb cultivated and maintained with the Beams on behalf of Defendant.

37. Plaintiffs placed trust and confidence in Defendant, and Defendant was vested with confidence and authority which gave rise to a fiduciary duty.

38. These fiduciary relationships of trust and confidence led up to and surrounded the transactions complained of herein.

39. These relationships required Defendant to act in good faith and with due regard for the best interests of Plaintiffs.

40. By and through the actions complained of herein, Defendant abused its relationship with Plaintiffs, breached its fiduciary duties, and in doing so took advantage of its relationship in a way that was intended to, and in fact did, injure Plaintiffs and benefit the Defendant.

41. As a direct and proximate result of Defendant's actions, Plaintiffs have been damaged in an amount in excess of \$25,000.00.

COUNT THREE
(Fraud and Misrepresentation)

42. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

43. By and through the actions described in Paragraphs 26 and 27, Defendant committed fraud against Plaintiffs. Defendant's statements were all intended to obtain and maintain control of Plaintiffs' money, invest Plaintiffs' money in unsuitable investments, keep the Plaintiffs in the dark about their accounts, conceal the unreasonable risks of said investments, and delay Plaintiffs' knowledge of the loss of their life savings/nest egg. These misrepresentations/omissions, all of which pertained to material facts, began in 2008 and continued systematically and continuously through 2016.

44. The material misrepresentations/omissions made by Defendant were false when made, were reasonably calculated and intended to deceive, and actually did deceive Plaintiffs.

As a direct and proximate result of Defendant' actions, Plaintiffs have been damaged in an amount in excess of \$25,000.00.

45. In the alternative, the representations/omissions made by Defendant were made in the course of Defendant' businesses, by parties with a duty to exercise reasonable care to Plaintiffs, with the reasonable expectation they would be relied upon by Plaintiffs. Plaintiffs reasonably relied upon said representations/omissions and have been damaged thereby in an amount in excess of \$25,000.00. Thus, said Plaintiffs are entitled to recovery of said damages for negligent misrepresentation.

COUNT FOUR
(Unfair and Deceptive Trade Practices)

46. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

47. Defendant's acts of fraud, misrepresentation, constructive fraud and breaches of fiduciary duty described above were all undertaken in the course of Defendant's business, in commerce, and constitute unfair and deceptive trade practices as defined in Chapter 75 of the North Carolina General Statutes.

48. Said unfair and deceptive trade practices proximately caused damages to Plaintiffs in an amount in excess of \$25,000.00. Thus, Plaintiffs are entitled to recovery of said damages, along with trebled damages and attorney's fees.

COUNT FIVE
(North Carolina Securities Act)

49. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

50. Defendant's acts of fraud, misrepresentation, constructive fraud and breaches of fiduciary duty described above constitute unlawful sales of securities pursuant to N.C.G.S. § 78A-8, and are actionable pursuant to N.C.G.S. § 78A-56.

51. Said unlawful sales of securities proximately caused damages to Plaintiffs in an amount in excess of \$25,000.00. Thus, Plaintiffs are entitled to recovery of said damages, plus interest and attorney's fees.

COUNT SIX

(Negligence, Including Negligent Hiring, Supervision and Retention)

52. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

53. Defendant was negligent before, during and after its employment of Lipscomb in that it:

- a. failed to adequately investigate Lipscomb's background and credentials prior to hiring him;
- b. hired and retained Lipscomb when it knew or should have known that he was unfit for the purposes for which he was hired;
- c. allowed Lipscomb to work in an environment which it knew or should have known would subject customers to unreasonable risk of harm;
- d. failed to adequately supervise Lipscomb;
- e. failed to adequately investigate Lipscomb's background;
- f. failed to exercise reasonable care in the hiring of Lipscomb;
- g. failed to provide a thorough vetting of agents, servants and/or employees;
- h. failed to provide proper oversight;
- i. allowed Lipscomb to continue working on Plaintiffs' accounts after his termination;

- j. failed to notify Plaintiffs' of Lipscomb's termination, and to provide Plaintiffs with information and access to their accounts;
- k. failed to exercise reasonable care in the hiring, supervision and retention of its employees, whom Defendant knew or should have known were not properly qualified to handle Plaintiffs' finances.
- l. failed to establish and/or follow its own internally set guidelines and procedures;
- m. failed to properly monitor and manage Plaintiffs' investments;
- n. failed to keep Plaintiffs informed about the status of their investments;
- o. failed to properly advise Plaintiffs with regard to their investments, including failure to advise them of the unsuitability of said investments, the poor likelihood of success of these investments, the actual decline of said investments, and the Plaintiffs' need to divest from these investments and invest in more suitable investments;
- p. failed to review Plaintiffs' investment portfolio and advise the Plaintiffs accordingly on a reasonably timely and appropriate basis;
- q. failed to engage in meaningful management of Plaintiffs' investments after the termination of Lipscomb's employment; and
- r. was otherwise careless, reckless and negligent.

54. Defendant's negligence was willful, wanton and reckless, and constitutes gross negligence under North Carolina law.

55. Said negligence caused damages to Plaintiffs in an amount in excess of \$25,000.00.

COUNT SEVEN
(Breach of Contract)

56. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

57. Defendant agreed to hold, invest and safeguard Plaintiffs' funds, and to do so with due caution, in its best interests, and to protect and secure their funds.

58. This agreement included, as do all agreements in North Carolina, a covenant of good faith and fair dealing.

59. By and through the actions complained of herein and listed above, Defendant breached its agreements with Plaintiffs, including but not limited to the covenant of good faith and fair dealing.

60. As a direct and proximate result of Defendant' actions, Plaintiffs have been damaged in an amount in excess of \$25,000.00.

COUNT EIGHT
(Punitive Damages)

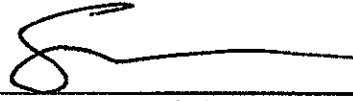
61. Plaintiffs re-allege and incorporate the previous Paragraphs of this Complaint as if fully set forth herein.

62. The actions of Defendant complained of herein were intentional, fraudulent, willful, wanton, reckless, and showed total and complete disregard for the rights, well-being and investments of Plaintiffs. Therefore, Defendant is liable for punitive damages.

NOW THEREFORE, Plaintiffs pray this Court for relief as follows:

1. For judgment in an amount in excess of twenty-five thousand dollars (\$25,000.00).
2. Disgorgement of all fees and charges on Plaintiffs' accounts.
3. For pre-judgment and post-judgment interest at the legal rate.
4. For treble damages, costs and attorney's fees.
5. For punitive damages.
6. For such other and further relief as the Court may deem just and proper.

This the 21st day of November, 2018.



Sam McGee, NC Bar No. 25343
Tin, Fulton, Walker & Owen, PLLC
301 East Park Avenue
Charlotte, North Carolina 28203
Telephone: (704) 338-1220
Facsimile: (704) 338-1312
Email: smcgee@tinfulton.com