Kenner Nygaard DeMarea Kendall LLC

TRIAL LAWYERS

July 15, 2015

SENT VIA E-MAIL

U.S. Department of Labor
Email: *e-ORI@dol.gov*

Re: RIN 1210-AB32
Stop Wall Street From Draining Americans' Retirement Savings

Dear U.S. Department of Labor:

The Department of Labor proposal on imposing fiduciary obligations on financial advisors managing retirement funds is long overdue. I write as an attorney who represents many older people who have relied upon financial advisors and stockbrokers who have misrepresented high commission, speculative products to them, resulting in the loss of their retirement savings, and the peace of mind that should attend that life-stage.

Most of my clients are in the Midwest, and here are examples of some of the recent cases I have handled where the stockbrokers, had they had to act as a fiduciary, could not have sold the securities to these older people:

1. Alzheimer's Unit Patient. A stockbroker went to a dementia facility, where he loaded up my elderly client in his car, took him to Best Buy, bought a computer, took him back and installed it--so the firm would no longer have to pay postage to send offering documents to him. The offering documents were required because the broker was selling him some speculative new issues. His daughter found out about the problem when she asked her Dad about the computer, and he told her he didn't know where it came from or what it was. All he could tell her is that the stockbroker bought it. When I reviewed her dad's statements, I saw that the broker had sold him several new issues over the time he had been in the Alzheimer's unit and before, in his retirement account. These paid the broker a higher commission than listed stocks. They also were not paying dividends, which the family needed to pay for their dad's care.

2. I recently represented a widow in Missouri. When her husband passed away, her broker came to the funeral and, two days afterward, convinced her to buy a variable annuity, despite the fact that her husband had left her a large portfolio of municipal bonds. He had her sell the bonds to buy the annuity--even though the income from them supported her and their adult son, who is developmentally delayed and lives in a Catholic care facility. The next year, at an "annual review", the broker had her switch from that annuity to yet another annuity, incurring for her a 7% surrender penalty AND generating yet another commission of 9% of her assets for him and the brokerage firm. This widow lost about a 20% of her money to unscrupulous stockbrokers who were simply using the family's retirement savings to sell her high commission, illiquid investments when she and her adult son needed the immediate tax-free income she had already.

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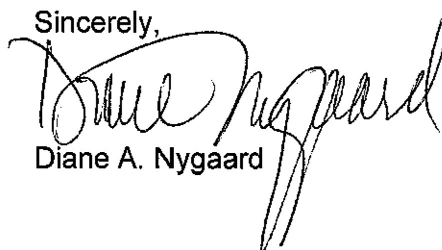
3. I have represented several Kansans with relatively small retirement accounts whose broker sold them speculative ETFs, and held them for several months. They lost so much of their retirement savings that one woman had her house foreclosed, and she and her grandson had to move to an apartment.

4. A man with ALS and other retirees, whose only liquid savings were in their retirement accounts, were sold promissory notes by a local brokerage firm to support a woman's attempted purchase of a large downtown building. When the purchase fell through and the earnest money was forfeited, they were not paid back their money. They lost their life savings. This exacerbated the ALS, the man rapidly deteriorated and was wheel chair bound within a few months. Another of the victims was not yet 59½. When she could not repay the IRA, a taxable gain was created. She could not pay the taxes, and, ironically, she worked for the IRS, which then put her on probation. Not only did she lose her savings, but she also had unpaid tax bills. Again, the brokerage firm received a higher-than-customary commission for selling these promissory notes, but no fiduciary could ever have justified recommending that someone raid their IRA in order to loan money to such a speculative bet.

These are simply the worst examples of what I have seen in the last three years in retirement accounts. Over the years, I have seen hundreds of annuity switches for no purpose other than to generate commissions (with IRA money--indefensible in itself in a tax-advantaged account), many loans against IRA's to buy variable universal life policies, and many private REIT purchases. These are high-commission, illiquid investments that generate a lot of commission money, but lead to large costs and losses for people in their retirement savings accounts. If this money were still in company-run ERISA programs, such investments would not occur. Given that such plans are now only available to a small percentage of the population, the same obligations should apply to financial advisors helping individuals manage their retirement plans. They are greatly in need of this protection!

I urge you to immediately implement this regulation so that the retirement savings of individual Americans are protected from the predatory behavior of some brokers and financial professionals. It is simply time that the law adapt to the new reality: pensions are becoming less common and many people are seeking disinterested advice for protecting their retirement savings, but are not protected from those advisors who seek their own gain at their clients' expense.

Sincerely,



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