

SUMMARY OF THE CASE

The facts in this case are the worst that I have seen for a broker/dealer and a stockbroker in the 28 years that I have been representing claimants in securities arbitration proceedings. Evan Schottenstein, while employed at JPMorgan Securities, LLC ("JPMS"), grossly financially abused his own grandmother for his own profit and for the profit of JPMS.

Evan Schottenstein's first financial abuse of his grandmother was the sale of 70 issues of autocallable structured notes to Mrs. Schottenstein between May 27, 2014, and May 5, 2015. The total notional amount of the autocallable structured notes sold by Evan Schottenstein to Mrs. Schottenstein was \$77,620,000. The purchase of autocallable structured notes constituted the vast majority of the purchase transactions during the above-referenced time period.

Autocallable structured notes are complicated alternative investment products that are structured as derivatives. The total notional amount of autocallable structured notes in this case was \$2,000,000. The interest rate on the note paid on an autocallable securities is usually an above market interest rate and can be a much above market interest rate. An investor may be sold some portion of the total notional amount or the total notional amount. In this case, Mrs. Schottenstein was often sold the entire notional amount of autocallable structured note issues, and more frequently was sold half of the total notional amount.

The operative terms for autocallable structured notes set forth in the private placement memorandum ("PPM") for the issue can vary. However, the autocallable structured notes sold to Mrs. Schottenstein generally operated in the following manner.

The derivative investment to which the autocallable structured notes were linked were publicly traded securities of corporations traded on the stock exchange. PPMs provide for quarterly review dates. If, on a quarterly review date, the price of the underlying stock is in excess

of the price of the stock when the autocallable security was sold to the investor, the note is called and the investor receives the total notional amount invested. So long as the price of the underlying security remains between 100% and 80% (sometimes 70%) of the price of the stock when the autocallable security was sold to the investor, the investor continues to receive interest payments. If, however, the price of the underlying security drops below 80% (sometimes 70%) of the price of the stock on the date of sale, then no interest payment is made. So long as the price of the stock on quarterly review dates remains below 80% (sometimes 70%) of the price of the stock upon sale of the autocallable security, the investor receives no interest payments. Upon maturity, if the price of the stock is between 100% and 80% (sometimes 70%) of the price of the stock upon sale, the investor receives the total notional amount invested. If, however, the price of the stock is below 80% (sometimes 70%) of the price of the stock upon sale of the autocallable security, then the investor does not receive a return of the invested principal, but, rather, receives the depreciated stock. To add insult to injury, the number of shares received by the investor is determined by dividing the price of the stock on the date of sale of the autocallable security – not the price of the depreciated stock upon the maturity of the autocallable security – into the total notional amount invested.

Autocallable securities are the securities industry's modification of reverse convertibles, as to which FINRA issued notices to members as early as February, 2010.

Evan Schottenstein did not attempt to explain to Mrs. Schottenstein how autocallable structured notes were structured or worked. Even if he had attempted to do so, it is not possible that Mrs. Schottenstein could have understood any explanation that Evan Schottenstein attempted to offer.

One of Mrs. Schottenstein's experts is a nationally recognized, highly regarded expert on structured products. He is of the opinion that autocallable structured notes are unsuitable for any investor, much less an 88 to 89 year old unsophisticated grandmother.

In early May, 2015, some JPMS supervisory or compliance representative must have directed Evan Schottenstein to cease buying autocallable structured notes for his then 88 and 89 year old grandmother because on May 5, 2015, the trading activity in the autocallable structured notes ceased. The sale of a single autocallable structured note to Mrs. Schottenstein was grossly unsuitable, much less the sale of 70 different autocallable structured note issues to Mrs. Schottenstein in the total notional amount of \$77,620,000. Evan Schottenstein was able to repeatedly sell to his grandmother \$77,620,000 of autocallable structured notes described above only as a result of an abject failure on the part of JPMS to supervise Evan Schottenstein.

Evan Schottenstein's second financial abuse of his grandmother was that all of the trading activity in Mrs. Schottenstein's trust account was completely unauthorized. When Mrs. Schottenstein attempted to discuss her account with Evan Schottenstein, he would tell her things like, "Your investments are doing well", "Your account is doing fine", or other such evasive responses. The only telephone logs produced by JPMS are for the year 2018. The telephone logs for that year make it clear that the trading activity in Mrs. Schottenstein's account was unauthorized.

Evan Schottenstein's third financial abuse of his grandmother was the shredding of her monthly statements, confirmation slips, and other documents that she received from JPMS between the opening of her trust account in April, 2014, and the fall of 2016. Evan Schottenstein periodically visited his grandmother and repeatedly told her that she did not need the documents that JPMS had sent to her because he had them in his office. To help her decrease the paperwork

and clutter in her condominium in Bal Harbour, Florida, Evan Schottenstein shredded her monthly statements, confirmation slips, and other documents from JPMS.

Evan Schottenstein's fourth financial abuse of his grandmother was his creation of a fictitious email address for her. Sometime prior to the opening of Mrs. Schottenstein's trust account with JPMS, Evan Schottenstein created a fictitious email address for his grandmother, "bevschottenstein@aol.com." Mrs. Schottenstein has never owned a computer. Mrs. Schottenstein has never operated a computer. Mrs. Schottenstein would not know how to turn a computer on if you sat her down in front of one.

Sometime in the fall of 2016, Evan Schottenstein directed JPMS to send all of Mrs. Schottenstein's monthly statements, confirmation slips, and other documents from JPMS to her electronically at the bevschottenstein@aol.com email address. As a result, between the fall of 2016 and January of 2019, when Mrs. Schottenstein had made a decision to move her trust account to Goldman Sachs, Mrs. Schottenstein did not receive a monthly statement, a confirmation slip, or any other documents concerning her trust account or the investments in her trust account from JPMS.

Evan Schottenstein's fifth financial abuse of his grandmother was the trading activity that occurred in her account in securities other than autocallable structured notes. After the autocallable structured note sales ceased, approximately 65% of Evan Schottenstein's purchase transactions in Mrs. Schottenstein's account were securities in which JPMS made a market or were initial or follow-on offerings of common stock, preferred stock, and debt issues. Evan Schottenstein engaged in those purchase transactions not for the benefit of Mrs. Schottenstein but to generate revenue for himself and JPMS on mark-ups, mark-downs, and selling concessions.

Evan Schottenstein attempted to cover his financial abuse of his grandmother. First, he kept her in the dark about what was going on in her account, shredded her monthly statements and confirmation slips, and, then, directed that her monthly statements and confirmation slips be sent to a fictitious email address. Second, he marked the majority of the transactions in Mrs. Schottenstein's trust account as unsolicited. Twenty-one of the first 24 sales of autocallable structured notes to Mrs. Schottenstein were marked as solicited. Thereafter, all of the remaining 70 transactions were marked as unsolicited. Therefore, of the 70 autocallable structured note purchase transactions, 70% were marked unsolicited. The notion that Mrs. Schottenstein requested the purchase of 70% of the autocallable structured notes sold to her is patently absurd. How would an 88 year old grandmother who did not own or know how to operate a computer possibly know of the availability of autocallable structured note issues?

With respect to the transactions in securities other than autocallable structured notes, between January 1, 2015, and December 31, 2018, there were 217 purchase transactions and 423 sales transactions. Evan Schottenstein marked 59% of the purchase transactions as unsolicited. Of the 423 sales transactions, Evan Schottenstein marked 422 of them as unsolicited. Thus, Evan Schottenstein marked virtually 100% of the sales transactions as unsolicited. Of the 640 transactions in securities other than autocallable structured notes, Evan Schottenstein marked 86% of them as unsolicited.

Included in the sales transactions marked as unsolicited were the sales of all of the Apple stock owned by Mrs. Schottenstein in her trust account on November 3, 2014. Rather than being unsolicited sales of all of Mrs. Schottenstein's shares of Apple stock, all of the sales of her Apple stock on November 3, 2014, were unauthorized. After the sale of the Apple stock, there was a

split of Apple stock. As a result of these unauthorized sales of Apple stock, Mrs. Schottenstein suffered a loss of \$5,069,310.

Evan Schottenstein's sixth financial abuse of his grandmother was his arranging for her to make a \$5 million commitment to a Cayman Islands private equity fund, known as Coatue Early Stage Fund Private Investors (Cayman), L.P., in December, 2018. Evan Schottenstein knew that the \$5 million commitment to fund a Cayman Islands private equity fund was a totally unsuitable investment for his 93 year old grandmother. Nevertheless, he did so, and he did so by forging his signatures on all of the subscription documents. To date, Mrs. Schottenstein has had to fund approximately \$1,225,707 in capital calls for the Coatue private equity investment.

In December, 2018, and early January, 2019, one of Mrs. Schottenstein's granddaughters made her aware of irregularities with respect to her trust account and the investments in it. Mrs. Schottenstein met with representatives of Goldman Sachs and made the decision to transfer her trust account to Goldman Sachs.

She sent a handwritten cease and desist letter to JPMS. The granddaughter who pointed out the irregularities in her trust account to her sent to JPMS a handwritten amendment made by Mrs. Schottenstein to her will and trust, in which Mrs. Schottenstein detailed the financial wrongdoing and other misconduct engaged in by Evan Schottenstein and Evan's father, Bobby Schottenstein.

The transmittal of the amendment to her will and trust to JPMS caused Bobby Schottenstein, Evan Schottenstein, and Avi Schottenstein to confront and harass Mrs. Schottenstein. Bobby Schottenstein ultimately demanded that his mother write a retraction letter in her own handwriting to JPMS. Bobby Schottenstein did not just demand that the letter be written. He physically forced his mother into a chair at her kitchen table and dictated to her a

retraction letter with respect to the assertions made in the handwritten amendment to Mrs. Schottenstein's will and trust.

Since early January, 2019, Bobby Schottenstein and his family, including his wife and Evan and Avi Schottenstein, have continually harassed Mrs. Schottenstein and have told friends, acquaintances, and neighbors of Mrs. Schottenstein that she has dementia and has lost her mind. However, nothing could be further from the truth.

JPMS undertook an investigation of the investment activity in Mrs. Schottenstein's account. That investigation resulted in the termination of Evan Schottenstein's employment with JPMS. The termination comment made by JPMS on Evan Schottenstein's Form U-5 that it submitted to FINRA states: "Concerns relating to trading activity for the account of a family member, and the accuracy of the records regarding same."

JPMS knows that Evan Schottenstein financially abused his grandmother and questions the accuracy of the records concerning the trading activity in Mrs. Schottenstein's trust account. JPMS is liable for the wrongdoing of its former employee, Evan Schottenstein. JPMS is also liable for its complete and utter failure to supervise Evan Schottenstein with respect to the handling of the investments in Mrs. Schottenstein's trust account, which has caused Mrs. Schottenstein to suffer millions of dollars in damages.

LIABILITY ANALYSIS AND DAMAGES SUMMARY

Based upon the facts set forth above in the summary of the case, the liability of JPMS to Mrs. Schottenstein is clear, unmistakable, and undeniable.

Mrs. Schottenstein is certain that JPMS will come to the mediation conference and seek to rely on the fact that Mrs. Schottenstein suffered no out of pocket losses in support of a position

that Mrs. Schottenstein has not suffered any damages. Although the gain in Mrs. Schottenstein's trust account over the five years that it was open at JPMS was \$8,377,020, that equates to an annualized return of 2.36% in one of the greatest bull markets in the history of the US securities markets.

Under both New York law and Florida law, Mrs. Schottenstein is entitled to recover well-managed portfolio/market adjusted damages. *See Algaier v. Peterson*, 2019 WL 7606045 at *5-6 (S.D. N.Y. Aug. 13, 2019), *adopted*, 2019 WL 5558194 (S.D. N.Y. Oct. 29, 2019); *Laney v. American Equity Investment Life Ins. Co.*, 243 F.Supp.2d 1347, 1353-56 (M.D. Fla. 2003); *Medical Associates of Hamburg v. Advest, Inc.*, 1989, WL 75142 at *2-3 (W.D. N.Y. July 5, 1989); *Scalp & Blade, Inc. v. Advest, Inc.*, 765 N.Y.S.2d 92, 101 (Sup. Ct., App. Div., 4th Dpt. 2003). Copies of these cases have been provided.

In her statement of claim, Mrs. Schottenstein has demanded the recovery of compensatory damages in an amount computed in accordance with applicable law, the disgorgement of all revenues received by JPMS as a result of the unauthorized trading activity in the trust account, and the rescission of her Coatue private equity fund investment or the assumption by JPMS of all of Mrs. Schottenstein's obligations with respect to that investment and damages for the two capital calls that Mrs. Schottenstein has been required to pay.

Under the authority cited above and applicable law pertaining to fiduciaries who engage in unauthorized transactions, Mrs. Schottenstein is entitled to recover either well-managed portfolio/market adjusted damages or the recovery of damages for all transactions in her trust account with respect to which she suffered losses without the offset of any gains resulting from transactions in her trust account.

At the end of this section, Mrs. Schottenstein has included three different three different well-managed portfolio/market adjusted damages summaries prepared by one of Mrs. Schottenstein's expert witnesses. The first such summary reflects the market adjusted damages suffered by Mrs. Schottenstein if her trust account had been 100% invested in the Standard & Poors 500 stock index with a 50 basis point fee being deducted from the performance. That summary states that Mrs. Schottenstein's market adjusted damages are \$34,383,442. The second market adjusted damages summary reflects an 80%/20% allocation between equity and bond indexes, with 80% of the portfolio invested in the S&P 500 index, with a deduction of a 50 basis point fee. That summary concludes that Mrs. Schottenstein's market adjusted damages are \$25,783,592. The third market adjusted damages summary reports Mrs. Schottenstein's damages assuming a 60% equity allocation to the S&P 500 index and a 40% allocation to bond indices, with a 50 basis point estimated fee. That market adjusted damages summary reflects damages suffered by Mrs. Schottenstein at \$18,264,844.

As an alternative to the market adjusted damages models, one of Mrs. Schottenstein's experts has prepared two summaries of securities transactions on which Mrs. Schottenstein suffered losses as a result of the unauthorized transactions in her trust account. The first summary reflects seven securities that were transferred in to the JPMS trust account of Mrs. Schottenstein, which Evan Schottenstein sold on an unauthorized basis. That summary, captioned "Standstill Damages Summary – Transferred Securities", reflects the damages that Mrs. Schottenstein suffered as a result of the unauthorized sales of those securities, rather than her holding those securities through the date of the transfer of the majority of the securities from her JPMS account to her Goldman Sachs account, March 13, 2019. That summary reflects \$10,103,685 in damages

suffered by Mrs. Schottenstein with respect to the unauthorized, premature sales of her transferred in securities holdings.

The second summary with respect to unauthorized transactions in Mrs. Schottenstein's trust account on which Mrs. Schottenstein suffered losses begins at page number 4 of the standstill damages summary and begins with the heading "Security Profit & Loss, Purchased Losers Only." That summary at pages 4 through 11 calculates the losses suffered by Mrs. Schottenstein on securities purchased at JPMS that were either sold while her JPMS trust account was open or that were transferred to Goldman Sachs. That summary reflects losses on those transactions of \$10,934,603.

Therefore, the alternative damages model for transactions on which Mrs. Schottenstein suffered damages total \$21,038,288.

The commission, selling concession, and mark-up and mark-down run produced by JPMS reflects total commissions, mark-ups and mark-downs, and selling concessions of \$3,510,084.

Mrs. Schottenstein has been required to pay two capital calls with respect to the Coatue private equity fund investment in the total amount of approximately \$1,225,707. She is entitled to have that investment rescinded or to have JPMS assume all responsibility for any further obligations with respect to that investment and to the award of damages for the capital calls that she has been required to pay.

Based on the foregoing, Mrs. Schottenstein's recoverable compensatory damages for her market adjusted damages or transactions in which she has suffered losses, plus the disgorgement of revenues received by JPMS, plus the capital calls she has been required to pay for the Coatue private equity fund range between \$23,000,635 and \$39,119,233.