

Fictitious FINRA Arbitration Statement of Claim Excerpt No. 1

by Jeremy A. Hillpot

On May 17, 2006, Claimant John Example attended a complimentary breakfast hosted by Respondent. At the breakfast, Respondent's representative, Mr. Bell, provided an investment presentation that introduced Claimant to the Respondent's proprietary mutual fund, the OppenPlus Bond Fund.

Mr. Bell's presentation described OppenPlus as a fund that provided monthly or periodic income. Mr. Bell stated that the fund contained high-grade and moderate-yield bonds. He also touted the safety and security of the OppenPlus Bond Fund. Mr. Bell told Claimant that the OppenPlus fund did not contain any large concentrations in any one type of investment or sector; that it was highly diversified across all economic sectors; and that it was an excellent alternative to money market funds.

During the complimentary breakfast, Respondent provided Claimant with investment literature that described the OppenPlus fund as a "safe alternative to CD's and/or money market funds." The literature further stated, "OppenPlus is safer than cash," and provided graphs, charts, and statistics detailing how this was possible (Exhibit A).

Several days after the breakfast, Respondent's agent contacted Claimant and solicited him to liquidate all of his money market fund holdings in order to purchase shares of the OppenPlus Bond Fund. Based on the aforementioned representations made by Respondent and its agents, Claimant agreed to invest in the OppenPlus fund believing that it was a safe alternative to CD's and money market funds.

On May 29, 2006 Respondent liquidated all of Claimant's money market shares and invested \$446,000 of Trust Account #000-0001 into OppenPlus shares. Upon Mr. Bell's recommendation, Claimant made further investments in the fund via dividend re-investments from May 2006 through April 2008. Claimant's total investment in the OppenPlus fund was approximately **\$501,500**.

Unfortunately for Claimant and contrary to Respondent's assurances of safety and security, The Respondent's descriptions of the OppenPlus Bond Fund could not have been further from the truth. The OppenPlus fund was not a "safe alternative to CD's

and/or money market funds” nor was it “safer than cash.” In fact, it had extensive exposure to mortgage backed instruments, which caused it to be highly vulnerable to the rise and fall of the volatile real estate markets. Neither Mr. Bell nor Respondent’s investment literature had disclosed that more than 80% of the fund was invested into real estate and mortgage related investments. Nor did Respondent disclose the risks associated with such highly concentrated positions. These facts were material to Mr. Example’s consideration to purchase OppenPlus. Indeed, he would not have invested in the fund had the Respondent disclosed them.

In late 2007, when the real estate sector of the economy changed for the worse, the value of Claimant’s OppenPlus shares precipitously declined. As described in further detail below, the Respondent was remiss in not alerting Claimant when his shares began to decline, and Respondent failed to advise Claimant to sell his shares, even after Claimant had suffered hundreds of thousands of dollars in losses.

As of December 2007, Claimant’s OppenPlus shares had lost approximately 10% of their value. Surprised by the losses, on December 28, 2007, Mr. Example contacted Mr. Bell to ask about the status of the fund and whether or not he should sell his shares. Here, Mr. Bell blamed the declines on factors external to the fund, and assured Claimant that the losses were only temporary. Respondent advised Claimant not to sell his shares, and Claimant followed the Respondent’s advice. Unfortunately, Mr. Example’s OppenPlus losses continued and by May 31, 2008, Claimant had lost more than \$200,000. On June 1, 2008, Mr. Example contacted the Respondent again. Here, the Respondent finally admitted that the fund had been heavily concentrated into real estate and mortgage related investments. Claimant immediately instructed Mr. Bell to liquidate his OppenPlus shares to mitigate the risk of losing more. He received approximately \$300,200 in proceeds from the sale.

As a direct result of the Respondents’ actions (and failures), Claimant has lost approximately **\$201,300**. Claimant lost 40% of his investment basis on a bond fund that was supposed to be the most conservative portion of his portfolio. Why did Respondent misrepresent this high-risk fund to Claimant? Why did Respondent fail to advise Claimant to liquidate his shares before it was too late?

As an NASD registered broker-dealer, the Respondent held a fiduciary obligation to Mr. Example to recommend suitable investments, and to place Mr. Example's best interests above its own. In this case, the Respondent offered and sold the OppenPlus Bond Fund to Claimant while omitting and misrepresenting material facts that pertained to the fund. Had Claimant known about the risks involved with this fund, he would not have purchased it. Had Claimant known about the OppenPlus fund's heavily weighted position in the real estate and mortgage markets, he would not have purchased it. In misrepresenting and omitting material facts; in recommending unsuitable investments; and in favoring its interests above those of its client, the Respondent breached its fiduciary obligation to Mr. Example. Indeed, the Respondent intentionally placed Mr. Example at risk for the greater good of the Respondent's retail business and for the fees, commissions, profits, and bonuses the Respondent derived from selling this proprietary investment product to Claimant.

In light of the obvious and egregious supervisory and compliance failures, the Claimant respectfully submits to the Panel that an award of punitive damages against the Respondent is entirely merited.

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