

THESTREET.COM

October 31, 2008

Market Downturn Triggers Wave of Lawsuits

By Sonja Ryst

When Jacob Froess' certificate of deposit from AmTrust Bank matured, he went to a Florida branch of the Cleveland-based retail bank in October 2007 to put \$70,000 into another CD. But a teller suggested the 56-year-old auto mechanic in Plantation speak instead with a financial adviser from the brokerage AmTrust Investment Services Inc. The adviser allegedly said rates on CDs were low and that if Froess bought shares in a Mutual Series Mutual Discovery fund, he would make more money.

Froess soon agreed to pay \$3,157 in upfront fees to invest his \$70,000 in the stock mutual fund, and the adviser allegedly falsified Froess' risk profile in his brokerage account application to make it look like he qualified to assume the associated risk.

She filled in the form with details, saying he was retired rather than unemployed, had an income of at least \$25,000 and made an unsolicited order for the fund. Froess' investment lost value, and he sold it on July 30 at a loss of \$11,745. He filed a claim Oct. 17 with securities-firm watchdog the Financial Industry Regulatory Authority, or Finra, blaming AmTrust for steering him away from his original plan to buy a safer investment.

"We're not able to respond because we haven't yet received the detail on the case," said Donna Winfield, a spokeswoman for AmTrust. "We don't comment on specific customer inquiries based on privacy issues."

Froess isn't the only one who's upset these days about the financial advice he received before U.S. equity benchmarks plunged more than 40 percent this year.

"This is the beginning of a wave of new customer complaints similar to what we saw when the technology bubble burst in 2000," said Jacob Zamansky, a lawyer at Zamansky & Associates in New York.
"Falling markets expose risky portfolios."

Given that many Wall Street advisers require their customers to waive the right to go to court, disputes with brokers typically go into arbitration. From January through September, 3,469 new arbitration cases were filed, 46% more compared with the same period last year, according to Finra.

Some complaints are related to the recent auction-rate securities scandal. One retiree, who asked for anonymity after being contacted with the help of Thomas Martin, president of consumer-protection group Americas Watchdog, is still wondering if he'll get his money back after investing in the securities over the past few years. The retiree bought the auction-rate vehicles when an adviser at Oppenheimer & Co, who was the son of a friend, assured him they were safe. Then he couldn't sell them earlier this year, a problem he says Oppenheimer led him to believe was just a temporary blip. The retiree became increasingly upset and finally contacted Albert G. "Bud" Lowenthal to ask what would happen next. "It's

your problem, not mine," the retiree said he was told by the New York brokerage's CEO.

"Oppenheimer & Co. categorically denies that any member of its senior management has or would ever address a client as described by this unnamed source. We continue to explore all options available for Oppenheimer & Co. and other downstream brokers to help solve this extremely difficult situation for our firm and our clients," company spokesman Brian Maddox said in an email.

The retiree filed a complaint with the New York state attorney general in July and with Finra in September. He said he's lost hundreds of hours on angry phone calls and sleepless nights. He's had to cut back on spending. Oppenheimer "sold us something that isn't good, and isn't what they said, and they're still in business," he said. "I don't understand."

The auction-rate securities holders aren't the only ones who have been complaining. Some allege their advisers didn't do as asked. For example, an investor tried to sell shares through a trading account with Fidelity in recent months. (The Federal Trade Commission provided the investor's official complaint with the government agency when requested to do so under the Freedom of Information Act, but declined to provide the name or contact information.)

While the Boston-based mutual fund and financial services firm did sell the shares, it also allegedly bought more from the same place on the investor's behalf. Now the investor has lost \$16,000, according to the Aug. 22 complaint.

"While we can't discuss specific customer concerns, we have a formal trade dispute process for any customer concerned with any trade in his or her account," said Steve Austin, a spokesman at Fidelity. Once notified, Fidelity reviews each customer's situation to determine whether there's an issue and to decide how to resolve the matter "in a way that is fair and reasonable," Austin said.

In other cases, investors are unhappy about the way their advisers handled losses. For example, an undisclosed person who received an early retirement package on Sept. 27 planned to live on savings while job hunting. (The complaint was filed with the FTC in July, and

the agency supplied anonymous information after receiving an FOIA request.) According to the complaint, an adviser at Chase, the U.S. consumer and commercial banking arm of New York financial-services firm JPMorgan Chase, promised to invest the money properly, and that if stocks took a fall, he would contact his client about the matter. In January, the investor noticed a substantial amount of money in the account was gone. The person filed a complaint with the FTC alleging the adviser's negligence in matters such as failing to adequately profile his client's financial situation.

Tom Kelly, a spokesman for Chase Investment Services, said the brokerage sits down with its customers, understands their goals and risk tolerances, and provides them long-term investment advice. Chase customers also receive monthly statements and can talk to their advisers at any time. "I can't address the specifics of this case because we don't know who the customer is," Kelly adds.

What should you do if your broker might have misadvised you? Pat Huddleston, CEO of Investor's Watchdog in Atlanta, recommends calling the adviser first when you see a big decline in the value of your portfolio.

If that person gives you an explanation that doesn't ring true, get more information. You can find a securities-fraud attorney in your state who is a member of the Public Investors Arbitration Bar Association by searching the trade group's Web site. His firm aims to protect investors and provides broker background-check services.

Mark Tepper, a securities [fraud](#) attorney in Fort Lauderdale, Fla., said you have a greater chance of getting bad advice from a lawyer who works on investor complaints only part time. "The majority of regulators, at the least, are very sensitive to investor issues," he added. Tepper has served in regulatory roles, including a stint as assistant attorney general in New York. His practice concentrates on cases involving abusive sales in the securities industry.

If you're wondering how to contact your local regulator about a complaint, the North American Securities Administrators Association, a state securities agency group that aims to protect investors, has information.

Many experts said this is only the beginning of a tide of complaints, which can take several months or even a couple of years for people to generate.

"All the attention has gone to mortgages, but I think a lot of people have also suffered devastating losses in their retirement

accounts," said Steven Caruso, a partner in New York at Maddox Hargett and Caruso of Indianapolis. He's expecting the complaints to continue "at a hefty pace."