

IN THE DISTRICT COURT IN AND FOR WASHINGTON COUNTY
STATE OF OKLAHOMA

DENISE ROSSELOT,

Plaintiff,

vs.

MARYA GRAY,
HOMER FITZGERALD,
THE PROPERTY SHOPPE, INC.
BARTNET WIRELESS INTERNET, INC.
BARTNET, LLC,
FOCUS GROUP ADVISORS, LLC,
JON NETTLES,
DANIEL A. VISE,
LARRY JOE DEARMAN,

Defendants.

2013 FEB -8 P 4:55

JILL L. SPITZ,
COURT CLERK

Case No. CJ-2013-49

Jury Trial Demanded
Attorney's Lien Claimed

PETITION

COMES NOW the Plaintiff, Denise Rosselot, by and through her attorneys of record, Heskett & Heskett, and brings this action against the Defendants Marya Gray ("Gray"), Homer Fitzgerald ("Fitzgerald"), The Property Shoppe, Inc., (hereinafter "Property Shoppe") Bartnet Wireless Internet, Inc., (hereinafter "Bartnet Wireless"), Bartnet, LLC (hereinafter "Bartnet"), Focus Group Advisors, LLC, (hereinafter "Focus Group"), Jon Nettles ("Nettles"), Daniel A. Vise ("Vise"), and Larry Joe Dearman ("Dearman"), for fraud, securities fraud, misrepresentation, deceit, malpractice, breach of contract, unsuitable trading, breach of fiduciary duty, failure to supervise, conversion, constructive trust and civil conspiracy that has resulted in the complete loss of the Plaintiff's life savings account of approximately \$250,000.00.

PARTIES

1. The Plaintiff is a resident of Jacksonville, Florida.
2. The Defendant Marya Gray is a resident of Washington County, State of Oklahoma. At all times relevant to the petition, Defendant Gray

has exercised exclusive control over Defendants Bartnet, Bartnet Wireless, and Property Shoppe. In addition, the Defendant Gray has exercised dominion and control over Defendant Fitzgerald, through an alleged power of attorney document.

3. The Defendant Homer Fitzgerald is a resident of either Rogers County or Washington County. The said Defendant is the father of Marya Gray.

4. The Defendant Property Shoppe, is an Oklahoma corporation incorporated in March 2011, that purports to be in the business of buying and flipping real estate properties in the Washington County area. The Property Shoppe is owned and controlled by Defendant Gray.

5. The Defendant Bartnet Wireless, is an Oklahoma corporation, with its principal place of business in Washington County, State of Oklahoma. Bartnet Wireless purports to be engaged in the business of providing wireless internet services in northeast Oklahoma. Bartnet Wireless is not in good standing with the Secretary of State. Bartnet Wireless is controlled by Defendant Gray.

6. The Defendant Bartnet, purports to be an Oklahoma corporation, with its principal place of business unknown. Upon information and belief, Bartnet is owned and controlled by Defendant Gray.

7. The Defendant Focus Group, is an Oklahoma limited liability company, registered with the United States Securities and Exchange Commission and FINRA as an investment advisory firm. Focus Group's principal place of business is located in the City of Bartlesville, Washington County, State of Oklahoma.

8. The Defendant Jon Nettles, is a resident of Washington County, State of Oklahoma. At all times relevant to the facts contained within the Petition, Jon Nettles served as the President and oversight Partner of Focus Group Advisors, LLC.

9. The Defendant Daniel A. Vise, is a resident of Washington or Tulsa County, State of Oklahoma. At all times relevant to the facts contained within the Petition, Daniel A. Vise served as the Chief Compliance Officer of Focus Group Advisors.

10. The Defendant, Larry Joe Dearman, is currently a resident of Tulsa County, State of Oklahoma and at all time hereinafter mentioned, has acted as a Senior Investment Advisor on behalf of Focus Group Advisors, LLC.

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over the Defendants because all of the Defendants are either residents of Washington County or engaged in business activities that are subject to this suit in Washington County, State of Oklahoma.

FACTS

12. Upon information and belief, beginning in 2007, the Defendant Gray organized and controlled a massive ponzi scheme using various shell and alter ego companies that were controlled by Defendant Gray.

13. Upon information and belief, beginning in 2007, the Defendant Gray convinced the Defendant Dearman to utilize his clients from Defendant Focus Group to fund the illegal ponzi scheme. The ponzi scheme collapsed in 2012 after the Defendants Gray and Dearman were unable to locate new investors to make payments to existing investors.

14. Upon information and belief, the ponzi scheme started in 2007 when the Defendant Gray assured Defendant Dearman that she was going to inherit a large sum of cash and royalties from her father, Homer Fitzgerald. The Defendant Gray requested that the Defendant Dearman use his position of trust at Focus Group to lure investors to her companies. The Defendant Dearman was assured by Defendant Gray that the investments would be secured by her future inheritance from Homer Fitzgerald.

15. Upon information and belief, beginning in 2007, the Defendant Dearman began using his position as the Senior Investment Advisor for Defendant Focus Group to induce clients to divert their funds to the companies controlled by Defendant Gray.

16. Upon information and belief, the Defendants Gray and Dearman were able to take advantage of the fact that Defendant Focus Group failed to have an adequate policy or procedures in place to prevent this type of misconduct.

17. As proof that the Defendant Gray operated an illegal ponzi scheme, the Defendant Gray has been unable to make a single payment to any investor or shareholder (except for herself) since the ponzi scheme was halted in 2012. Upon information and belief, the reason the Defendant Gray is unable to make payments, is due to the simple fact that any payments made by Defendant Gray were actually from new investors/shareholders and not actual operations from any company.

18. Upon information and belief, the Defendant Gray comingled the checking accounts of the various business accounts that she managed and controlled. For example, although the Plaintiff invested \$200,000.00 with Homer Fitzgerald, on July 27, 2012 the same amount appeared in the Plaintiff's IRA account from Bartnet. Just three (3) days later, on August 1, 2012, the same funds were transferred out of the Plaintiff's checking account belonging to the Defendant Property Shoppe.

19. Upon information and belief, the Defendant Gray utilized the business checking accounts as her own personal bank account.

20. The Defendant Gray created the Property Shoppe in March 2011 for the sole purpose of using her real estate license to purchase and flip real estate property. All investors either received written assurances (Private Placement Memorandum) or oral assurances that the funds would be utilized for that sole purpose. Despite receiving the Plaintiff's \$200,000.00 cash, upon information and belief, the Defendant Gray did not purchase a single tract of real property under the name Property Shoppe.

21. Upon information and belief, by February 2012, the ponzi scheme became too complex and large for the Defendants Gray and Dearman to keep track as to which shell company owed which investor/shareholder. For example, although the Plaintiff invested \$200,000.00 with Defendant Homer Fitzgerald, the same amount was deposited into her account by Defendant Bartnet [not Fitzgerald], only to be immediately transferred to Defendant Property Shoppe. All three accounts are controlled by Defendant Gray.

22. At no point in time did Defendants Gray or Dearman disclose to the Plaintiff, or any other victim, that the proceeds from the Plaintiff's investment would be used to make payments on the old investments.

23. The Plaintiff retired in August 2009 after a long tenure at Citibank. At the time of her retirement she had in excess of \$250,000.00 in her 401k.

As of today's date, as a result of the misconduct on behalf of the Defendants, she has zero remaining in the account.

24. In early August 2009, the Plaintiff selected the Defendant Focus Group as her financial advisor.

25. Due to the large size of the Plaintiff's retirement account, the Defendant Dearman, on behalf of the Defendant Focus Group, personally flew to Jacksonville, Florida in September 2009, to induce the Plaintiff to select Focus Group as her financial advisory firm.

26. By October 2009, the Plaintiff transferred her entire life savings, in the form of her 401k from Citibank, in the amount of approximately \$260,000.00 to Defendant Focus Group.

27. On or around September 2009, the Plaintiff and Defendant Focus Group entered into a certain *Investment Advisory Agreement* (hereinafter "Agreement"), whereby the Plaintiff appointed Defendant Focus Group to have sole authority and discretion over the Plaintiff's investments, including but not limited to having the discretion to trade in securities and to execute transactions without any obligation to give notice to the Plaintiff.

28. Pursuant to the Agreement, Defendant Focus Group acknowledged that said Defendant would, at all times, act in a fiduciary capacity with respect to the Plaintiff's investments and account.

29. On or around September 2009, Defendant Focus Group provided representations to the Plaintiff that specifically declare that all individuals associated with Focus Group were appropriately licensed, qualified, and authorized to provide advisory services on behalf of Defendant Focus Group. The advisors are referred to by Focus Group as "Investment Advisors Representatives or "IARs"

30. On or about September 2009, Defendant Focus Group provided written representations and assurances that Defendant Daniel A. Vise would serve as the Chief Compliance Officer over the Plaintiff's account to monitor the actions of Defendant Dearman and to regularly review the Plaintiff's account.

31. On or about September 2009, Defendant Focus Group provided written representations to the Plaintiff that all of its agents, employees and investment advisory representatives would adhere to strict ethical and professional standards.
32. On or about September 2009, the Defendant Focus Group provided written representations to the Plaintiff that the investment recommendations would take into account the "client's long term goals, risk tolerance, time horizon, account profile, investment objectives, and/or financial situation."
33. In addition to the fiduciary duties created by the Agreement, the Defendant Focus Group had various fiduciary duties owed to the Plaintiff pursuant the Investment Advisers Act of 1940 (as amended.)
34. Defendant Focus Group had a fiduciary duty to prevent its investment advisors from overreaching or taking unfair advantage of a client's trust. The said fiduciary duty includes the obligation to disclose all relationships with third-parties that are involved in a respective transaction.
35. Defendant Focus Group had a fiduciary duty to ensure that its investment advisors disclosed all compensation from any third-parties for referring a client or recommending an investment.
36. As a registered investment advisory firm, Defendant Focus Group had a fiduciary duty to (a) adopt and implement written policies and procedures reasonably designed to prevent fiduciary breaches by an employee and its supervised persons; (b) review, at least annually, the adequacy of the policies and procedures and the effectiveness of their implementation; (c) designate an individual as the Chief Compliance Officer responsible for administering the policies and procedures of the Advisers Act.
37. Defendant Focus Group failed to create and/or implement any adequate policies or procedures necessary to prevent fraud or internal misconduct by its agents.
38. In the alternative, Defendant Focus Group failed to test its own internal policies and procedures to determine whether or not the policies and procedures were adequate to detect internal fraud or misconduct.
39. Defendant Focus Group's agents and employees had complete discretion over the investments selected on behalf of the Plaintiff.

40. As of September 2009, the Plaintiff informed Defendant Focus Group that she wanted a conservative investment strategy that took into account the fact that she was now retired and was dependent upon her 401k retirement for survival.

41. As the investment advisor over the Plaintiff's account, Defendant Dearman, had access and control over the Plaintiff's investment strategy, subject to the monitoring by Defendants Daniel Vise and Jon Nettles.

42. The Defendant Jon Nettles, had a fiduciary duty and obligation to oversee Defendants, Daniel A. Vise and Larry Dearman. Said obligation included regular monitoring of the clients of Dearman to ensure that he was following the Focus Group agenda and not investing client's funds outside the parameters set forth by Focus Group.

43. The Defendant Daniel A. Vise, had a fiduciary duty and obligation to oversee and monitor the Plaintiff's account on a regular basis. Upon information and belief, from September 2009 through August 2012, the Defendant Vise failed to monitor the Plaintiff's account.

44. Upon information and belief, the Defendants Vise and Nettles failed to monitor or oversee the actions of Defendant Dearman.

45. In September or October 2009, the Defendant Focus Group recommended to the Plaintiff that she invest \$42,000.00 to Bartnet Wireless. The \$42,000.00 remains outstanding.

46. The Defendant Focus Group prepared all of the paperwork on behalf of the Plaintiff to effect the investment in Bartnet Wireless.

47. Under no circumstances did the Defendants Focus Group or Dearman disclose to the Plaintiff that her investment was in the form of an unsecured loan to an affiliate of Dearman.

48. In February 6, 2012, the Defendant Focus Group contacted the Plaintiff and advised that he had a client named Homer Fitzgerald whom needed a "bridge loan" to purchase real estate in Bartlesville.

49. On or about the 9th day of February, 2012, the Plaintiff's account at Focus Group had an outgoing wire to Defendant Homer Fitzgerald.

50. In March 2012, the Defendant Focus Group advised the Plaintiff to invest in a separate company called Property Shoppe. The Plaintiff was advised that the Company buys and flips real estate properties around Bartlesville, Oklahoma.

51. On March 22, 2012, the Plaintiff signed a certain Subscription Agreement to purchase 200 shares of the Property Shoppe for \$200,000.00. The Subscription Agreement specifically states that the funds would not be used until her shares were delivered.

52. On July 26, 2012, the Plaintiff's IRA receives \$200,000.00 into her IRA account from Bartnet [not from Fitzgerald or Bartnet Wireless].

53. On August 1, 2012, the Plaintiff's IRA was liquidated for the entire \$200,000.00. However, under no circumstances did the Plaintiff authorize her IRA to be liquidated. Furthermore, under no circumstances did the Plaintiff grant Defendants Gray or Dearman to transfer the funds to Defendant Gray.

54. The March 22, 2012 Subscription Agreement was only binding if the "all necessary legal steps shall be taken as prescribed by law regarding the issuance of stock". The Defendant Gray failed to file a registration statement or any exemption with the United States Securities and Exchange Commission, the Oklahoma Securities Commission or the Florida Secretary of State.

55. At no point in time did the Property Shoppe ever issue any stock certificate to the Plaintiff.

56. Since early 2009, the Defendants Focus Group and Dearman knew or should have known that the conversion of the Plaintiff's 401k into investments dealing with Defendant Gray was not a suitable investment plan for any client, including the Plaintiff.

57. The Defendants Focus Group and Dearman had a fiduciary duty to disclose all material facts to the Plaintiff, including but not limited to the material fact that Dearman had an actual conflict of interest with Defendants Bartnet, Bartnet Wireless, Property Shoppe, Homer Fitzgerald and Marya Gray.

58. The Defendant Focus Group failed to disclose the material fact that none of the companies operated by Defendant Gray could survive, without additional funds being raised from new investors.

59. Under no circumstances did Defendant Focus Group disclose to the Plaintiff that there was a high degree of probability that Defendant Gray would default on the "loan".

60. Under no circumstances did Defendant Focus Group disclose the risk factors associated with the investment selections, including the severe tax consequences of the early withdraw from her 401k and IRA.

61. All documents were prepared by the employees and agents of Defendant Focus Group, [same and except the Private Placement Memorandum and Subscription Agreement] were delivered to the third parties by employees and agents of Defendant Focus Group.

62. Upon information and belief, the Defendant Dearman received an illegal kickback from Defendant Gray that he used to fuel his gambling addiction.

63. Upon information and belief, the Defendants Jon Nettles and Daniel A. Vise never monitored the Plaintiff's account. Upon information and belief, a simple inquire into her account would have discovered the fraud in a timely manner.

64. Upon information and belief, the Defendants Focus Group, Jon Nettles, and Daniel Vise became aware of Defendant Dearman's gambling addiction in 2009. Although the said Defendants became aware of the addiction, they took no measures or precautions to protect their clients from Defendant Dearman.

FIRST CLAIM FOR RELIEF
FRAUD

65. Upon information and belief, the Defendants Gray and Dearman's creation of a ponzi scheme was implemented and designed to lure innocent investors to invest in sham and shell companies that had no operations.

66. Between August 1, 2012 and August 7, 2012 the Defendant Gray, despite receiving \$200,000.00 from the Plaintiff to purchase real property, did not in fact purchase any property on behalf of the Property Shoppe.

67. On our February 9, 2012, the Defendants Gray and Dearman used the alias name of Homer Fitzgerald to induce the Plaintiff to wire funds to an account that was actually controlled by Defendants Gray or Dearman.

68. On July 26, 2012, the Defendant Gray attempted to hide her fraud by wiring \$200,000.00 from Defendant Fitzgerald to the Plaintiff. However, the paper trail discloses that the funds actually came from Defendant Bartnet. The Plaintiff has no investment with Defendant Bartnet.

69. On August 1, 2012, the Defendants Dearman and Gray transferred the same \$200,000.00 to the Defendant Property Shoppe.

70. Despite Defendant Gray receiving the Plaintiff's \$200,000.00 on or about August 1, 2012, the said Defendant never delivered the Plaintiff's stock certificate or registered the same with the United States and Securities and Exchange Commission.

71. The numerous representations provided by Defendants Focus Group and Dearman were false. The Plaintiff relied upon the representations as if they were true.

72. The Plaintiff was induced into transferring her assets due to the material misrepresentations of the Defendants Dearman and Focus Group.

73. As a result of the Defendants' misconduct, the Plaintiff has been damaged in the amount of \$250,000.00, plus attorney fees and court costs.

WHEREFORE, Plaintiff prays for judgment against Defendants Focus Group, Larry Dearman and Marya Gray for damages for fraud in the amount of \$250,000.00, punitive damages in the amount of \$250,000.00, and any such relief as the Court deems equitable and just.

SECOND CLAIM
CONSTRUCTIVE TRUST/FRAUD

74. Plaintiff incorporates as if realleged in Paragraphs 1-73.

75. Even if the Defendants false statements and omissions of material facts were not intentional, the Plaintiff is entitled to relief in the alternative for constructive fraud.

76. The Defendant Gray received the Plaintiff's \$200,000.00 for the specific purpose of purchasing real estate in the City of Bartlesville.

77. The Defendant Gray circulated a private placement memorandum to various investors/shareholders that specifically provided that the Property Shoppe would use the funds to purchase real estate.

78. On March 22, 2012, the Plaintiff was specifically informed by Defendant Dearman, whom the Defendant Gray relied upon to lure investors, disclosed the specific intent and purpose of the funds.

79. On or about August 1, 2012, the Defendant Gray received the Plaintiff's funds. The said funds were either embezzled or converted for some other purpose.

80. The Defendants had an affirmative duty to disclose all material facts regarding the transactions. The Defendants breached this duty by failing to disclose material facts to the Plaintiff.

81. The \$200,000.00 received by the Defendant Gray, should be determined to be held in constructive trust by Defendant Gray.

WHEREFORE, the Plaintiff prays for Judgment against Defendant Gray in the amount of \$200,000.00 for actual damages and \$200,000.00 in punitive damages, and any such relief as the Court deems equitable and just.

THIRD CLAIM MISREPRESENTATION

82. Plaintiff incorporates as if realleged in Paragraphs 1-81.

83. The Defendants Focus Group and Dearman provided numerous representations to the Plaintiff and failed to disclose material facts in which they had a duty to disclose.

84. The representations made to the Plaintiff were material to the Plaintiff entering into specific transactions with the Defendant Focus Group.

85. The Defendants Focus Group and Dearman omitted to disclose material facts surrounding the Plaintiff's investments.

86. The representations provided by Defendants Focus Group and Dearman were false or misrepresented the real truth.

87. The Plaintiff relied upon the representations and omissions in executing documents.

88. As a result of the misrepresentations and omissions provided by the Defendants Focus Group and Dearman, the Plaintiff has suffered actual damages in excess of \$250,000.00

WHEREFORE, the Plaintiff prays for Judgment against Defendants Focus Group and Dearman in the amount of \$250,000.00 for actual damages and \$250,000.00 in punitive damages, and any such relief as the Court deems equitable and just.

FOURTH CLAIM
DECEIT

89. Plaintiff incorporates as if realleged in Paragraphs 1-88.

90. The Defendants Focus Group, Dearman, Homer Fitzgerald, and Mary A Gray willfully deceived the Plaintiff with the intent of having the Plaintiff transfer in excess of \$250,000.00 to companies controlled exclusively by the Defendant Gray.

91. As a result of the Defendants willful deceit, the Plaintiff has suffered actual damages in the amount of \$250,000.00.

WHEREFORE, the Plaintiff prays for Judgment against Defendants, Focus Group, Larry Joe Dearman, Homer Fitzgerald and Marya Gray in the amount of \$250,000.00 for actual damages and \$250,000.00 in punitive damages, and any such relief as the Court deems equitable and just.

FIFTH CLAIM
BREACH OF FIDUCIARY DUTY OF LOYALTY

92. Plaintiff incorporates as if realleged in Paragraphs 1-91.

93. A fiduciary relationship existed between the Plaintiff and the Defendants Focus Group, Jon Nettles, Dan Vise and Larry Joe Dearman.

94. The Defendants, Focus Group and Larry Joe Dearman breached the fiduciary duty of loyalty owed to the Plaintiff.

95. The breach of the fiduciary duty of loyalty by Defendants was the direct cause of damages to the Plaintiff in the amount of \$250,000.00.

WHEREFORE, the Plaintiff prays for judgment against Defendants Focus Group Jon Nettles, Dan Vise and Larry Joe Dearman, in the amount of \$250,000.00 and for any other relief the Court finds equitable and just.

SIXTH CLAIM
BREACH OF FIDUCIARY DUTY TO SUPERVISE

96. Plaintiff incorporates paragraphs 1-95.
97. A fiduciary relationship existed between the Plaintiff and the Defendants Focus Group, Jon Nettles and Daniel Vise that created a fiduciary duty to supervise the Defendant Dearman on a regular basis to ensure that said Defendant Dearman did not violate any laws, regulations, or fiduciary duties owed to the Plaintiff.
98. The Defendants Jon Nettles and Daniel Vise had a duty to monitor the Plaintiff's account to ensure that the investment recommendations and selections made by any agent, on behalf of the Defendant Focus Group, met the investment objectives and risk tolerance of the Plaintiff.
99. Upon information and belief, the said Defendants failed to monitor the activity of the Defendant Dearman. A direct result of the Defendant Daniel Vise's failure to supervise Defendant Dearman, it allowed Dearman to perpetrate a massive fraud utilizing the funds from the clients of Focus Group.
100. Upon information and belief, had Defendants Daniel Vise and Jon Nettle performed their fiduciary duty, the misconduct of Defendant Dearman would have been discovered in a timely manner.
101. The Defendants Nettles and Vise, each had a duty to create and monitor rules and procedures to prevent a client's funds from being diverted, misused, or investment in a manner that violates the firm's policies and procedures.
102. The Defendant Focus Group, had an obligation to not only create rules, policies and procedures, but to also ensure that they were effectively implemented and enforced so as to diligently supervise the activities of the investment advisors.

103. Upon information and belief, the Defendant Daniel Vise, is charged with the duty and responsibility to create and enforce the policies and procedures of Defendant Focus Group, in order to protect the assets of a client from an employee or agent of the Defendant Focus Group.

104. Upon information and belief, the Defendant Jon Nettles, was further charged with the duty and responsibility to monitor the Plaintiff's account on a regular basis to ensure that the agents and employees of Defendant Focus Group, were selecting investments for the Plaintiff that matched his goals.

105. The Defendant Daniel Vise, breached the duty to supervise by failing to adequately monitor or supervise Defendant Dearman. In addition, the Defendant Focus Group, breached the duty by failing to have adequate policies and procedures and to adequately or effectively supervise the employees of the Defendant who serve in the roll as investment advisors.

106. As a direct result of the breach of the duty to supervise by Defendants Focus Group, Jon Nettles, and Daniel A. Vise the Plaintiff has suffered actual damages in the amount of \$250,000.00.

WHEREFORE, the Plaintiff prays for judgment against Defendants Focus Group Jon Nettles, and Daniel A. Vise in the amount of \$250,000.00, plus attorney fees, court costs, and any other relief that the Court deems equitable and just.

SEVENTH CLAIM
UNSUITABLE TRADING/INVESTMENTS

107. The Plaintiff incorporates paragraphs 1-106.

108. The Defendant Focus Group, had a duty to ensure that the Defendant's agents, employees, officers, managers, and investment advisors, made investment recommendations that were appropriate to each client's financial condition, level of sophistication, investment objectives and risk tolerance. This duty is commonly referred to as "the know your customer" rule.

109. The Defendant, Focus Group, knew or should have known that the Plaintiff requested a safe and conservative investment strategy with low risk.

110. The conversion of the Plaintiff's investments into investments with Defendant Gray was not suitable under any circumstances for the Plaintiff.

WHEREFORE, the Plaintiff prays for judgment against Defendant Focus Group, in the amount of \$250,000.00, plus reimbursement of the Plaintiff's reasonable attorney fees, court costs, and any other relief that the Court deems equitable and just.

EIGHTH CLAIM
NEGLIGENCE/MALPRACTICE

111. The Plaintiff incorporates paragraphs 1-110.

112. The Defendant Focus Group had an absolute duty of care owed to the Plaintiff to exercise with the upmost good faith and integrity when handling of the Plaintiff's account to ensure that its actions would not cause harm to the Plaintiff.

113. The Defendants Focus Group breached this duty to the Plaintiff by converting the Plaintiff's account into investments with Defendant Gray.

114. A reasonable prudent investment advisor in the same or similar circumstance would not have converted the Plaintiff's account into investments with Defendant Gray.

115. Defendant Focus Group's actions were in reckless disregard to the Plaintiff's investment objectives.

116. As a result of the Defendants breach of their duty owed, the Plaintiff has suffered damages in the amount of \$250,000.00.

WHEREFORE, the Plaintiff prays for judgment against Defendant Focus Group, in the amount of \$250,000.00, plus reimbursement of the Plaintiff's reasonable attorney fees, court costs, and any other relief that the Court deems equitable and just.

NINTH CLAIM
BREACH OF FIDUCIARY DUTY OF DISCLOSURE

117. The Plaintiff incorporates paragraphs 1-116.

118. The Defendant Focus Group and Plaintiff were in a confidential relationship from 2009 to August 25, 2012, in which the said Defendant served as the Plaintiff's investment advisory firm, engaged for the purpose of providing independent investment advice to the Plaintiff.

119. Focus Group's agent, while acting within the scope of employment never disclosed the material facts regarding the relationship with Homer Fitzgerald or Marya Gray.

120. Focus Group's agent, while acting within the scope of his employment of the said Defendant had actual knowledge of certain peculiarly facts in which the Plaintiff was not in a position to know of or to discover the truth.

121. Focus Group's agent had an absolute duty owed to the Plaintiff to disclose the material facts.

122. Focus Group breached its fiduciary duty of disclosure to the Plaintiff by failing to disclose the material facts to the Plaintiff.

123. As a result of the Defendant's breach of its duty to disclose, the Plaintiff was harmed in the amount of \$250,000.00.

WHEREFORE, the Plaintiff prays for judgment against Defendant Focus Group in the amount of \$250,000.00, plus reimbursement of the Plaintiff's reasonable attorney fees, court costs, and any other relief that the Court deems equitable and just.

TENTH CLAIM
CONVERSION

124. The Plaintiff realleges paragraphs 1-123.

125. On August 1, 2012, without any supporting documents, the Defendants Dearman and Gray transferred \$200,000 to the Defendant Gray.

126. In the event that the funds were part of a March 2012 Subscription Agreement, then the same was solely to purchase real property in Bartlesville, Oklahoma.

127. Upon information and belief, the Defendant Gray did not use the \$200,000.00 for the business and instead used the same as her own personal bank.

128. Upon information and belief, the said Defendants Dearman and Gray converted the funds labeled for use by Bartnet for their own personal benefit.

129. The conversion of the Plaintiff's entire IRA account occurred by Defendants Dearman and Gray by means of wire fraud, securities fraud, identity theft, and theft by trickery.

130. Upon information and belief, the Defendant Gray provided to the Defendant Dearman a secret kickback of the proceeds generated from the conversion.

131. The conversion of the Plaintiff's IRA account by the Defendants Gray and Dearman resulted in the Plaintiff losing \$200,000.00 in actual damages, plus attorney fees, and court costs.

WHEREFORE, Plaintiff demands judgment against the Defendants Larry Dearman and Marya Gray for conversion in the amount of \$200,000.00 and \$20,000.00 in punitive damages, plus interest accruing at the statutory rate, plus attorney fees and costs of this action.

ELEVENTH CLAIM
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

132. The Plaintiff incorporates paragraphs 1-131.

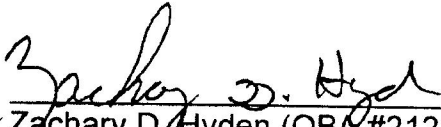
133. The actions of Defendants Focus Group, Dearman, Vise and Gray's actions of fraud, misrepresentation, breach of various fiduciary duties, conversion, deceit, and breach of contract were intentional and malicious towards the Plaintiff to the point where same should be found to be extreme and outrageous and have caused severe emotional and psychological distress to the Plaintiff.

134. The Defendants intentionally or recklessly caused severe emotional distress to the Plaintiff beyond which a reasonable person could be expected to endure.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for compensatory damages for his mental anguish, pain and suffering and other non-pecuniary losses; punitive damages for the intentional and knowing acts listed above committed by Defendant, Focus Group's agents, employees, officers and management, his attorney fees and costs and expenses of this action, and for any other such relief that the Court deems just and equitable.

Attorneys for Plaintiff
HESKETT & HESKETT

By:


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501 South Johnstone, Suite 501
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(918) 336-1773

VERIFICATION

STATE OF OKLAHOMA

COUNTY OF WASHINGTON

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) ss:
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Denise Rosselot, being duly sworn, says that she is the Plaintiff above named; that she has read the foregoing Petition and is familiar with the contents thereof and that the facts therein set forth are true and correct.

By: Denise Rosselot
Denise Rosselot