IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC Defendants.	:	Civil Action No. 1:12-CV-3261-WSD

EXHIBITS 8-10 TO
MEMORANDUM OF LAW IN SUPPORT OF
RECEIVER'S MOTION FOR APPROVAL OF
SETTLEMENT OF DISPUTED CLAIM AND SETTLEMENT
AGREEMENT, AND FOR ENTRY OF BAR ORDER

Exhibit 8

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FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Arbitration Between: STEPHANIE C. PFLASTER, Individually, as trustee of the STEPHANIE PFLASTER GENERATION SKIPPING TRUST UA 10/5/94, and as Trustee of the PFLASTER BYPASS TRUST UA 6/27/07, Claimant v. LANDMARK INVESTMENT GROUP, INC., JON COURTNEY, JR.; MARK DARREN MORROW; LUTHER LYNN SHELBY; and DOES I through XX, Inclusive, Respondents.	Case No.: STATEMENT OF CLAIM AND DEMAND FOR ARBITRATION ALL PUBLIC ARBITRATORS REQUESTED VENUE REQUESTED: LOS ANGELES, CALIFORNIA

INTRODUCTION

1. This is a claim about a private placement investment sold to unsuspecting clients. The investment ostensibly provided funding to a company which invested in cemeteries. It also provided funding to a nationwide Ponzi scheme, but that minor detail was withheld from disclosure. The individuals and firm named as Respondents all had a part in the creation and sale of the product to the Claimant.

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2. This arbitration claim is brought to hold the broker, the principal of the firm, its CEO, and the brokerage firm responsible for allowing the creation, issuance, and sale of the promissory notes on their watch.

3. The time period for this dispute runs from March 2012 when Respondents first solicited the investments at issue to the filing of this Statement of Claim and Demand for Arbitration.

PARTIES

4. Claimant STEPHANIE C. PFLASTER (hereinafter referred to as "STEPHANIE") brings her arbitration claim individually; as Trustee of the STEPHANIE PFLASTER GENERATION SKIPPING TRUST UA 10/5/94; and as Trustee of the PFLASTER BYPASS TRUST UA 6/27/07.

5. STEPHANIE currently resides at 2617 Prosser Ave., Los Angeles, California 90064.

6. Respondent LANDMARK INVESTMENT GROUP, INC., CRD 44602 (hereafter referred to as "LANDMARK") is now and was at all relevant times for this claim, a registered securities broker-dealer. LANDMARK is a member of FINRA and bound by its rules and regulations.[1]

7. At all times herein mentioned, Respondent JON W. COURTNEY, JR. CRD 4705452 (hereafter referred to as "COURTNEY"), was employed by LANDMARK as a registered representative (securities broker) and licensed to transact business in the State of California. COURTNEY'S registration with LANDMARK terminated in November 2012.[2] While working as a registered representative of LANDMARK, COURTNEY also operated some his business activities as an investment advisor with "SUMMIT WEALTH MANAGEMENT, INC." At all times herein mentioned, COURTNEY acted within the course and

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[1] Attached as Exhibit A is LANDMARK'S Brokercheck Report.
[2] Attached as Exhibit B is COURTNEY'S Brokercheck Report.

scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

8. Respondent SUMMIT WEALTH MANAGEMENT, INC. was a Registered Investment Advisory. On September 21, 2012, the Securities and Exchange Commission filed the case Securities and Exchange Commission v. Angelo Alleca, et al., Civil Action File No. 1:12-CV-3261-WSD (N.D. GA), alleging the firm was operating a Ponzi scheme. As part of the filing, the SEC obtained an order freezing SUMMIT WEALTH MANAGEMENT'S assets and appointing a Receiver.[3]

9. At all times herein mentioned, Respondent MARK DARREN MORROW, CRD 1708880 (hereafter referred to as "MORROW"), was employed by LANDMARK as its "Principal" and was one of LANDMARK'S control persons."[4] While simultaneously registered as a "Principal" of LANDMARK, MORROW was also a principal of DETROIT MEMORIAL PARTNERS. MORROW is also alleged by the Receiver to have managed at least one of the funds created by SUMMIT WEALTH MANAGEMENT.[5] At all times herein mentioned, MORROW acted within the course and scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him. On September 20, 2012, FINRA permanently barred MORROW from the securities industry.

10. DETROIT MEMORIAL PARTNERS LLC (hereinafter referred to as "DMP") was a company created by MORROW[6] as a part of the larger, overarching Ponzi scheme operated through SUMMIT WEALTH MANAGEMENT, INC. At all times herein mentioned, MORROW acted within the course and

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[3] Attached as Exhibit C is a copy of the SEC'S Complaint.
[4] Attached as Exhibit D is MORROW'S Brokercheck Report.
[5] See Page 9, Paragraph 34 of the RECEIVER'S FIRST INTERIM REPORT in Securities and Exchange Commission v. Angelo Alleca, et al., Civil Action File No. 1:12-CV-3261-WSD (N.D. GA).
[6] MORROW'S name appears in Exhibits G, H, and K as "manager" and/or "creator" of DMP.

scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

11. At all times herein mentioned, Respondent LUTHER LYNN SHELBY CRD 1066902 (hereafter referred to as "SHELBY"), was employed by LANDMARK as its "CEO/CFO" and was one of LANDMARK'S control persons.[7] At all times herein mentioned, SHELBY acted within the course and scope of his employment at LANDMARK. As a control person of LANDMARK, responsible for the supervision of COURTNEY and MORROW, SHELBY knew or should have known that the acts and omissions alleged herein were committed by his employees. At all times herein mentioned, SHELBY acted within the course and scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

12. MORROW; SHELBY; and LANDMARK; and others whose identities are not yet known, were individuals and entities who controlled LANDMARK. Moreover, they managed and supervised said broker dealer's registered representatives and other employees as well as established and implemented LANDMARK'S sales practices, procedures, supervisory systems, and policies of compliance. As Control Persons under the California Corporations Code and the attendant California Code of Regulations, each is liable for the acts and omissions committed by COURTNEY and MORROW.

13. DOE Respondents were individuals employed by LANDMARK who managed and supervised said broker-dealers' registered representatives and other employees as well as establishing and implementing sales practices, procedures, supervisory systems, and policies of compliance. Said Respondents were "control persons" within the meaning of Federal and State Securities laws. Claimant reserves the right to amend the Statement of Claim

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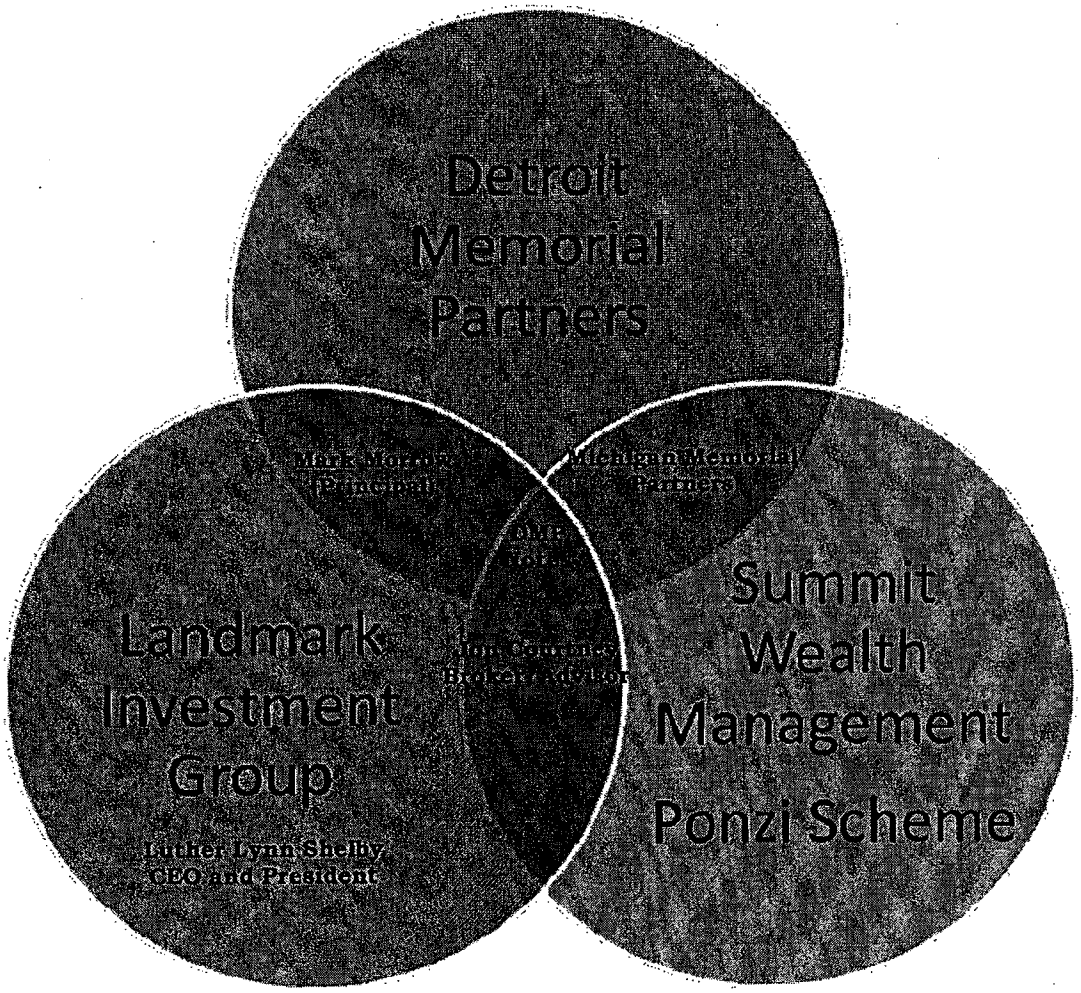
[7] Attached as Exhibit E is a copy of SHELBY'S Brokercheck report.

to add the names of DOE Respondents as they become known during the arbitration process.

14. Each of the Respondents employed by LANDMARK (COURTNEY, MORROW, and SHELBY) is responsible for the acts and omissions of the other Respondents employed by LANDMARK.

15. The Venn diagram below illustrates the currently known relationships between the named Respondents and their related companies.



16. STEPHANIE PFLASTER, in all her capacities as a Claimant in this arbitration, knowingly and voluntarily opts out of any and all class actions that

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are pending or may be brought against the Respondents which are the subject of this arbitration claim.

ACCOUNTS AT ISSUE

17. The two DMP investments COURTNEY solicited and purchased for STEPHANIE were held in Ameritrade accounts. The accounts at issue are as follows:

Ameritrade Account Name	Ameritrade Account Number	Detroit Memorial Partners, LLC Note Name	Amount of Note
STEPHANIE PFLASTER GENERATION SKIPPING TRUST UA 10/5/94	913-015423	STEPHANIE PFLASTER GENERATION SKIPPING TRUST UA 10/5/94	$50,000
PFLASTER BYPASS TRUST UA 6/27/07	913-015427	PFLASTER BYPASS TRUST UA 6/27/07	$25,000

WHO IS STEPHANIE PFLASTER?

18. STEPHANIE is a housewife, mother, attorney, and the 61-year old widow of James "Jimmy" Pflaster.

19. On the same day she was sworn to the bar in 1977, STEPHANIE learned she was pregnant with their first child. Rather than go into practice, STEPHANIE chose to stay home and raise the couple's three children while Jimmy ran his law practice specializing in representing Plaintiffs in personal injury and worker's compensation cases.

20. After all three children reached their teens; STEPHANIE joined her husband and practiced with him. In or about 1999, Jimmy was diagnosed with an illness which would lead to his passing. Undeterred, the two raised their children and maintained their law practice until Jimmy's passing on January 1, 2009.

21. During their time together, STEPHANIE and Jimmy scrimped and saved, and eventually bought a house in Santa Monica, California. During Jimmy's 10 year illness, they sold the house. Money from Jimmy's life insurance policy paid the tax bill, and the sale proceeds became a large part of their nest egg.

22. After Jimmy's death, STEPHANIE wound down the law practice and began preparing for her retirement.

WHAT TOOK PLACE

23. Soon after Jimmy's death, STEPHANIE'S brother recommended she see his investment advisor, Glen Janken.

24. In the spring of 2009, STEPHANIE met Glen Janken. They made an immediate connection. She liked his no-nonsense manner and conservative approach to investing. Following their meeting, became Glen Janken's client and transferred her savings, approximately $1.2 million consisting of the house sale proceeds and an inheritance she received from her side of the family, to Janken's Registered Investment Advisory.

25. STEPHANIE remained a client of Glen Janken until his retirement in mid-2010. When Janken retired, he sold his practice to SUMMIT WEALTH MANAGEMENT. JON COURTNEY, JR., Janken's employee since August 2008, took over as STEPHANIE'S investment advisor.

26. During the time STEPHANIE was the client of COURTNEY and SUMMIT WEALTH MANAGEMENT, her trust accounts were domiciled at Ameritrade.

27. In or about March 2012, COURTNEY recommended STEPHANIE purchase notes issued by a company called "Detroit Memorial Partners, LLC." From that conversation, STEPHANIE recalls his saying words to the effect "the bond market sucks, you are not getting any return. We want to put you in higher yielding stuff." Around the same time of that conversation, STEPHANIE

received the March 14, 2012 recommendation sheet showing that one of the higher yielding securities was Detroit Memorial Partners, LLC ("DMP")[8]

28. COURTNEY, in making his recommendation, never revealed the fact that DMP was part of a fraudulent investment scheme.

WHAT WAS DETROIT MEMORIAL PARTNERS LLC?

29. Detroit Memorial Partners, LLC was formed in Michigan in late 2007 for the purpose of holding an equity interest in another entity, Michigan Memorial Partners, LLC, which itself was created to purchase and hold 28 cemeteries being sold out of a Michigan state receivership.[9] DMP'S principal was MARK MORROW.

30. During late 2007 and early 2008, high-interest promissory notes issued in the name of "Detroit Memorial Partners LLC" began to be sold to Summit Wealth Management clients. More notes were sold in 2009 and 2010, and again in 2012. In all, more than $15,000,000 of DMP notes were sold to Summit clients.

STEPHANIE PURCHASES THE NOTES

31. On March 20, 2012, following COURTNEY'S recommendation, STEPHANIE signed a Letter of Authorization for each of her Ameritrade accounts to allow her accounts to purchase "non-publicly traded investments."[10] Notably, MORROW is listed as the contact name for Detroit Memorial Partners, LLC.

32. That same day, STEPHANIE signed two DMP subscription agreements. The first DMP subscription agreement, for 1 unit, was for her

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[8] Attached as Exhibit F is the March 14, 2012 recommendation sheet STEPHANIE received from COURTNEY.

[9] Attached as Exhibit G is the RECEIVER'S FIRST INTERIM REPORT filed in *SECURITIES AND EXCHANGE COMMISSION v. ANGELO A. ALLECA, et al.*, Case No. 1: 12-CV -3261-WSD, U.S. District Court Northern District of Georgia Atlanta Division dated March 28, 2013. This document contains, at the time it was written, a detailed summary of DETROIT MEMORIAL PARTNERS' history and background.

[10] Attached as Exhibit H are the Letters of Authorization executed by STEPHANIE.

Generation Skipping Trust ("GST") Account, and it consisted of a loan of $50,000 to DMP.[11] The second subscription agreement, for .5 units, was for her Bypass Trust account and consisted of a loan of $25,000 to DMP.[12]

CHART OF INVESTMENTS AT ISSUE

Date	Investment Name	Purchasing Account	Amount	Status
March 30, 2012	Detroit Memorial Partners, LLC	Stephanie Pflaster Generation Skipping Trust UA 10/5/94	$50,000	Lost
March 30, 2012	Detroit Memorial Partners, LLC	Pflaster Bypass Trust UA 6/27/07	$25,000	Lost
TOTAL INVESTMENT			**$75,000**	

TERMS OF THE DMP NOTES

33. The terms of the DMP notes, with the exception of their amounts, were identical.

34. The purpose of the offering was to repay prior DMP bonds which were set to mature in May 2012.

35. The notes were set to pay 8.25% per annum, payable in semi-annual installments. Interest payments were scheduled for each November and May. The term of the "bond offering" was 48 months with prepayment allowed 12 months after issue.

36. STEPHANIE'S Ameritrade statements for her Trust accounts reflected the purchase of the notes and their stated values from May through September 2012. Each month DMP'S closing price and market value showed $50,000 for the GST account, and $25,000 for the Bypass Trust account.

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[11] Attached as Exhibit J are the Term Sheet and Subscription Agreement for the $50,000 note purchased in STEPHANIE' GST account.

[12] Attached as Exhibit I are the Term Sheet and Subscription Agreement for the $25,000 note purchased in STEPHANIE' TRUST account.

DMP FAILS, TAKING STEPHANIE'S MONEY WITH IT

37. On September 18, 2012, the Securities and Exchange Commission filed its "EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, AND OTHER EQUITABLE RELIEF" against ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET CLASS DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC, ensnaring whatever existed and/or was left of DMP'S assets.

38. After the Securities and Exchange Commission shut down the Ponzi scheme, COURTNEY called STEPHANIE and revealed to her that there were "problems" with DMP. STEPHANIE instructed him to cash out the notes. COURTNEY informed her that he was unable to do so. To allay her fears, he promised STEPHANIE that he and Glen [Janken] were going to "get to the bottom of this." COURTNEY never did tell STEPHANIE that in fact, he was one of the factors at the bottom of the DMP notes.

39. Following the implementation of the Receivership, STEPHANIE'S October 2012 Ameritrade statements showed DMP'S closing price and market value as "$NP." In short, the DMP notes had no known price or value.

40. Not surprisingly, STEPHANIE did not receive the promised interest payment in November 2012.

41. Although there has been no finding the DMP notes themselves were a Ponzi scheme, the DMP notes were a part of the overall larger Ponzi scheme perpetrated by Summit Wealth Management selling phony investment funds. The Receiver's investigation into SUMMIT WEALTH MANAGEMENT and DMP revealed that money from other Summit Wealth Management "offerings" was deposited into bank accounts held DMP'S name. Similarly, money from

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DMP notes was deposited into the bank accounts of other Summit Wealth Management "investments.[13]

42. The DMP notes currently have no known value.

STEPHANIE'S SELLING AWAY CLAIM

43. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY may be held liable for failing to supervise both COURTNEY and MORROW under a theory of negligence per se.

44. California Evidence Code Section 669(s) provides the standard for negligence *per se:*

> [t]he failure of a person to exercise due care is presumed if:
>
> (1) He violated a statute, ordinance, or regulation of a public entity;
>
> (2) The violation proximately caused death or injury to person or property;
>
> (3) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and
>
> (4) The person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.

45. California Corporations Code § 25212(g) provides that the Commissioner of Corporations may discipline:

> ... a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any

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[13] Attached as Exhibit K is the RECEIVER'S SECOND INTERIM REPORT filed in *SECURITIES AND EXCHANGE COMMISSION v. ANGELO A. ALLECA, et al.*, Case No. 1: 12-CV -3261-WSD, U.S. District Court Northern District of Georgia Atlanta Division dated March 28, 2013. In one instance, the Receiver found that monies received from one of the phony hedge funds were used to pay the interest on some of the earliest DMP notes.

agent employed by the broker-dealer while so employed has done any of the following:

> (g) ...has *failed reasonably to supervise, with a view to preventing violations of those statutes, rules and regulations [listed in subsection (e)]*[14], another person who commits a violation, if the other person is subject to his or his supervision; for the purposes of this subdivision, no person shall be deemed to have failed reasonably to supervise any person if (1) there have been established procedures, and a system for applying those procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by the other person, and (2) that person has reasonably discharged the duties and obligations incumbent upon him or his by reason of those procedures and system without reasonable cause to believe that those procedures and system were not being complied with.

46. This statute is the thrust of Claimant's negligence and failure to supervise claim. Respondent violated California Corporations Code § 25212(g), a statute, by failing to *reasonably supervise* COURTNEY and MORROW. COURTNEY was the broker selling the DMP and MORROW, the principal of LANDMARK was also the individual responsible for the creation, management, and day-to-day operations of DMP. The violation of the statute by Respondents LANDMARK; MORROW; and SHELBY allowed COURTNEY to recommend and sell DMP to Claimant which resulted in the loss of $75,000 of her hard earned savings. Further, the violation of the statute by Respondents LANDMARK; MORROW; and SHELBY allowed MORROW to operate an company and sell investments designed to support a Ponzi scheme.

47. The purpose of California Corporations Code § 25212 is to put a layer of supervision over brokers, registered representatives, and investment to

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[14] Cal. Corp. Code § 25212(e) states: "Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5 (commencing with Section 29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor."

prevent violations of the California Securities Laws. The Commissioner of Corporations feels strongly about supervision, codifying in the California Code of Regulations at 10 CCR § 260.218.4(a). The regulation requires "[e]very broker-dealer shall exercise diligent supervision over the securities activities of all of its agents." Diligent supervision is necessary to detect and prevent a registered representative from making misrepresentations or omissions of material facts in connection with the sale of securities.[15] COURTNEY and MORROW'S misrepresentations to Claimant regarding the safety and security of DMP, and their failure to explain its purpose in supporting a massive Ponzi scheme are the very misrepresentations of material facts the statute was designed to prevent and the reason the California legislature implemented the statute requiring broker-dealers to supervise their registered representatives. Respondents' failure to supervise COURTNEY and MORROW'S sale of DMP was the proximate cause of STEPHANIE'S loss.

48. Lastly, the California Securities Laws are designed to protect investors, the buyers and sellers of securities, including individual investors such as STEPHANIE.

STEPHANIE'S FAILURE TO SUPERVISE CLAIM

49. In a failure to supervise claim, four elements must be shown:

1) There was an underlying securities law violation;

2) The violator was registered to conduct securities business through the defendant;

3) There was a requirement to supervise the violator; and

4) Failure of the broker-dealer and/or supervisory personnel to reasonably supervise the person who violated the securities laws, with the standard of "'reasonableness" being whether supervision was conducted with a view to preventing violations of the securities laws.

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[15] California Corporations Code § 25401.

1. There Were Underlying Securities Law Violations by COURTNEY and by MORROW

50. The underlying securities law violations are COURTNEY and MORROW'S use of misrepresentations and omissions of material facts to convince a senior citizen to allow COURTNEY and MORROW to invest his money in an unsupervised, high-risk promissory note. The making of misrepresentations or omissions of material facts is a violation of California Corporations Code § 25401[16]

51. COURTNEY and MORROW'S representations failed to disclose DMP was being used, at least in part, to finance the overarching Ponzi scheme operating by SUMMIT WEALTH MANAGEMENT. Furthermore, COURTNEY'S sales materials and MORROW'S term sheet and promissory notes promised STEPHANIE a return of 8.25% per annum, which was impossible to achieve based on the true operations of DMP. STEPHANIE believed COURTNEY'S and MORROW'S written representations and relied, reasonably so, on their representations in purchasing the investments. COURTNEY and MORROW knew STEPHANIE would believe their representations and it was their purpose to have him purchase DMP promissory notes.

52. COURTNEY and MORROW intentionally made the misrepresentations, in violation of Cal. Corp. Code § 25401, to obtain his money.

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[16] California Corporations Code § 25401 provides: "It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

2. COURTNEY and MORROW Were Registered to Conduct Securities Business Through LANDMARK.

53. COURTNEY was a registered representative of LANDMARK from September 2010 through November 2012.

54. MORROW as a registered representative and principal of LANDMARK from December 1998 through October 2012 when he was barred for life by FINRA.

3. Respondents LANDMARK, SHELBY, and MORRO Were Obligated to Supervise COURTNEY and MORROW.

55. As discussed, supervision is an inescapable requirement of the brokerage industry. FINRA Rule 3010, SEC Regulations, and California law put the responsibility of supervision of associated persons directly on the member firm.

56. FINRA requires its member firms to supervise the activities of their registered representatives. FINRA Rule 3010 states: "Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. **Final responsibility for proper supervision shall rest with the member.**" (Emphasis added).

57. FINRA has a large body of regulatory statements and "Notices to Members" dating back to the mid-1980s sounding the horn that member firms are responsible for the outside securities activities of their registered representatives.[17]

58. The SEC holds that a broker-dealer has an affirmative duty to be aware of its registered representatives' activities. The broker-dealer's ignorance of its registered representatives' activities is not an excuse.[18]

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[17] See, NASD Notices to Members 86-65, 89-34, 97-17, 98-38, and 99-45.
[18] *In re Conrad C. Lysiak*, Exchange Act Rel. No. 33,245, 1993.

59. In its 1997 hallmark supervision decision for independent contractor/brokers, In re Royal Alliance,[19] the SEC announced that independent broker-dealers had the same obligation to diligently and reasonably supervise their registered representatives as did the major wire-house brokerage firms.

60. California law sets the identical standard for supervision.[20] 10 CCR § 260.218.4(a) provides that "Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents." More specifically, 10 CCR § 260.210(b)(4) provides in part: **"A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated** and the Form U5 has been filed with the CRD of FINRA." (Emphasis added).

61. In addition, California law places the same supervisory responsibility on Respondents *as well as* holding them liable for all the securities bought and sold by their registered representative.[21]

62. Respondents LANDMARK, SHELBY, and MORROW all had pre-existing duties to supervise both COURTNEY and MORROW, and under California law; they are responsible for every securities transaction entered into by COURTNEY and MORROW, including the sale of the DMP promissory notes to STEPHANIE.

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[19] *In re: Royal Alliance* (Securities Exchange Act of 1934 Release No. 38174, January 15, 1997).
[20] California Corporations Code § 25212(g).
[21] 10 CCR 260.210(b)(4).

4. Respondents LANDMARK, SHELBY, and MORROW Failed to Reasonably Supervise COURTNEY and MORROW.

63. Respondents LANDMARK, SHELBY, and MORROW failed to reasonably supervise their registered representative, COURTNEY, and LANDMARK'S principal, MORROW.

64. In Quest Capital Strategies, Inc., Release no. ID141, 69 SEC 1317 (1999) the SEC described the industry standard for measuring the adequacy/reasonableness of supervision:

> Supervisors have an obligation to respond vigorously and with the utmost vigilance to indications of irregularity. ...A supervisor cannot ignore or disregard 'red flags' and must 'act decisively to detect and prevent' improper activity. ...Indications of wrongdoing demand inquiry as well as adequate follow-up and review. (citations omitted).

65. There is no doubt that at all times MORROW knew there were terrible things wrong with the DMP notes since he was also the principal of DMP. He knew that the monies he received as DMP'S principals were being used to fund and operate and Ponzi scheme. Knowing those facts, he never should have allowed COURTNEY to sell the DMP notes.

66. SHELBY, the CEO and President of LANDMARK, had an obligation to supervise all of the activities of his firm's Associated Persons.

67. In 2004, the Securities and Exchange Commission published its SEC Division of Market Regulation, Staff Legal Bulletin No. 17 (Remote Office Supervision) listing some simple supervisory techniques:

- Reviews of a broker's banking records;
- Reviews of a broker's financial records for checks written to third parties or monies received from third parties;
- Interviews of a broker's staff;
- Interviews of a broker's clients; and
- Reviews of a broker's computer files.

68. In a 2011 disciplinary action, FINRA found that Merrill Lynch failed to supervise one of its registered representatives when he disclosed his outside business activity but *lied* about not engaging private securities transactions.[22] In the disciplinary matter, FINRA found that Merrill Lynch was responsible for the supervision of its representative in his dealing with both clients of the firm *as well as non-clients* sucked into the representative's outside investment scheme.

69. Lack of supervision is never reasonable. The firm and its supervisors must take affirmative steps to keep informed and stay ahead of its broker's activities. Just as FINRA found Merrill Lynch's reliance on their registered representatives to self-report their activities as unreasonable and lacking, so too will this Arbitration Panel find Respondents LANDMARK'S; MORROW'S; and SHELBY'S supervision of COURTNEY and MORROW lacking.

70. Worse than just an ordinary selling away case, MORROW himself, a supervisor of LANDMARK, knew at all times the notes were being sold by COURTNEY, he knew the notes were designed to fund a fraudulent scheme, and he knew at all times he was engaged in securities fraud.

71. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed to the extent described herein, which will be proved at the arbitration hearing. In addition, Claimant is entitled to punitive damages as a result of Respondents' misrepresentations, fraud, breach of their fiduciary duties, and for the breach of the implied covenant of good faith and fair dealing inherent in every contract entered into in the State of California.

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[22] In re: Merrill Lynch, FINRA Letter of Acceptance, Waiver and Consent NO-26080139905-02.

CLAIMANT'S ADDITIONAL CLAIMS

72. Respondents failed Claimant. MORROW, SHELBY, COURTNEY, and LANDMARK all knew that MORROW was the principal of DMP. Respondents all knew or should have known the DMP was part of the overarching Ponzi scheme of Summit Wealth Management. They all failed to protect STEPHANIE'S best interests and failed to take any action whatsoever to temper or minimize the risks inherent in COURTNEY'S recommendation and solicitation.

73. Claimant alleges that prior to and at the time of each of the transactions listed above, Respondent COURTNEY negligently and/or intentionally failed to disclose the material risks of the DMP investments.[23]

74. Claimant alleges that prior to and at the time of each of the transactions listed above, Respondent COURTNEY negligently and/or intentionally omitted material facts about the DMP investments.[24]

75. Claimant alleges that prior to and at the time of the two transactions listed above, Respondent COURTNEY negligently and/or intentionally stated that the principal of the DMP investments would be safe and such an investment was suitable for Claimant's needs.[25]

76. Claimant alleges that Respondents LANDMARK, MORROW; and SHELBY, as control persons of COURTNEY, are liable for his misrepresentations and omissions.[26]

77. Claimant alleges that Respondents COURTNEY; LANDMARK; MORROW; and SHELBY committed negligence in conducting due diligence of

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[23] Cal. Corp. Code § 25401.
[24] Id.
[25] Id.
[26] Cal. Corp. Code § 25504 provides for control person liability for COURTNEY'S misrepresentations and omissions of material facts in connection with the sale of the securities.

the DMP investments, failing to monitor the investments, and failing to recommend suitable investments.[27]

78. Claimant alleges that Respondent COURTNEY breached his fiduciary duties clients by soliciting, recommending, and executing the DMP investments for the purpose of furthering his own personal interests (e.g., commissions, bonuses, and undisclosed compensation) rather than for the benefit of his clients.[28]

79. Claimant further alleges that Respondents COURTNEY; breached his fiduciary duties by failing to disclose the actual risks attendant to the DMP investments.[29]

80. Respondents COURTNEY; LANDMARK; MORROW; and SHELBY failed to disclose the fact that the proceeds invested in DMP were used to finance a massive Ponzi scheme.

81. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY as owners, officers, supervisors, and control persons failed to supervise COURTNEY.[30]

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[27] In California, it is black letter law that suitability rules, when breached, constitute common law negligence. Mihara v. Dean Witter & Co., Inc., 619 F.2d 814 (9th Cir. 1980); Vucinich v. Paine, Webber, Jackson & Curtis, Inc., 803 F.2d 454, (9th Cir. 1986).

[28] It is settled as a matter of California law that the relationship between a stockbroker and a customer is always fiduciary in nature. Twomey v. Mitchum, Jones & Templeton, Inc., 262 Cal.App.2d 690 (1968), Duffy v. Cavalier, 215 Cal.App.3d 1517 (1989), Hobbs v. Bateman Eichler, Hill Richards, Inc. 164 Cal. App.3d 174, 210 Cal. Rptr. 387 (1985).

[29] As STEPHANIE'S fiduciaries, Respondents had an obligation to be honest in their dealings and fully disclose their activities and the attendant risks thereto. In California, this duty of disclosure is sacrosanct, irrespective of the sophistication of the investor, Duffy v. Cavalier, (1989) 215 Cal. App. 3d 1517, 1533. In Neel v. Magana, Olney, Levy, Cathcart & Gelfand, (1971) 6 Cal. 3d 176, 188-89, the California Supreme Court held that where there is a duty to disclose, the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud. It is also worth noting that COURTNEY was also acting as an investment advisor, thus was STEPHANIE' fiduciary under the Investment Advisers' Act of 1940 as well as California Corporations Code §25238 which requires California investment advisers to engage in only fair, equitable, and ethical practices.

[30] FINRA Rule 3010(a) provides: "Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member."

82. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY as owners, officers, supervisors, and control persons failed to supervise MORROW'S activities as the principal of DMP and MORROW'S activities related to the sale of DMP'S promissory notes.

83. Claimant alleges that all of the Respondents violated numerous FINRA (formerly NASD) rules including but not limited to Rules 2110; 2310; and 3010 in their professional dealings with him.

84. Claimant alleges that Respondents breached their contract with Claimant to act as his broker and advisor and to act in good faith and deal fairly with them.

CLAIMANT'S PRAYER FOR RELIEF

WHEREFORE, Claimant STEPHANIE PFLASTER prays for an award against Respondents as follows:

1. Compensatory damages in the amount of $50,000 for the losses related to the solicitation, purchase and sale of 1 unit of DMP notes to Claimant's Ameritrade GST Account.

2. Compensatory damages in the amount of $25,000 for the losses related to the solicitation, purchase and sale of the .5 units of DMP notes to Claimant's Ameritrade Bypass Trust Account.

3. Alternatively, Claimant requests an award of rescission and rescissionary damages for all investments at issue as provided in California Corporations Code § 25401, § 25501, and § 25504;

4. Disgorgement of commissions, fees and other forms of compensation paid to Respondents in an amount to be demonstrated and proved at Arbitration;

5. The lost opportunity or reasonable return on the sums invested by Claimant consistent with the rate of return on securities which the Arbitrators deem would have been suitable for the Claimant;

6. Interest calculated at the rate of 10% from the date Claimant paid the funds for any and all of the described investments at issue, until any arbitration award rendered herein is fully paid;

7. Punitive damages in an amount to justifiably and equitably punish Respondents for their fraudulent, malicious, and/or oppressive misconduct in selling the investments;

8. Cost of arbitration including expert witness fees, filing fees, and hearing costs; and

9. Reasonable attorney's fees.

DATED: May 21, 2013

JONATHAN W. EVANS, ESQ.
Attorney for Claimant
STEPHANIE C. PFLASTER, Individually, as trustee of the STEPHANIE PFLASTER GENERATION SKIPPING TRUST UA 10/5/94, and as Trustee of the PFLASTER BYPASS TRUST UA 6/27/07

Exhibit 9

FINRA ARBITRATION Submission Agreement

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Charles Elliott Family Gift Trust u/a 8-
Charles Elliott IRA
Charles Elliott

13-01340

Name(s) of Respondent(s)

Jon W. Courtney
Landmark Investment Group, Inc
Mark Darren Morrow
Luther Lynn Shelby

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.

2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.

3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.

4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

Jon W. Courtney Date
State Capacity if other than individual (e.g., executor, trustee, corporate officer)

LC43A: SUBMISSION AGREEMENT
idr: 02/09/2009

RECIPIENTS:

Jon W. Courtney
311 Calle Jazmin, Thousand Oaks, CA 91360

Mark Darren Morrow
8643 Twilight Tear Ln, Cincinnati, OH 45249

Luther Lynn Shelby, Prin, Landmark Investment Group, Inc
Landmark Investment Group, Inc, 3434 Poagville Road, Coldwater, MS 38618

Luther Lynn Shelby
3434 Poagville, Coldwater, MS 38618

FINRA

Financial Industry Regulatory Authority

VIA REGULAR MAIL

May 17, 2013

Jon W. Courtney
311 Calle Jazmin
Thousand Oaks, CA 91360

Subject: FINRA Dispute Resolution Arbitration Number 13-01340
Charles Elliott, Individually, et al. vs. Landmark Investment Group, Inc., Jon Courtney, Jr, Mark Darren Morrow, et al.

Dear Mr. Courtney:

FINRA sponsors a forum for securities dispute resolution. Our arbitration program administers claims involving customers of brokerage firms and disputes between brokerage firms and their employees. Arbitration is a method of having a dispute between two or more parties resolved by impartial persons. Any type of dispute, claim, or controversy arising out of business dealings with any FINRA firm or registered person can be resolved in arbitration.

You have been named as a party in this arbitration, which the claimant(s) filed on **May 1, 2013**. Enclosed is a copy of the Statement of Claim filed by the claimant(s). You are required by FINRA rules to arbitrate this dispute.

This office administers arbitration cases according to the FINRA Codes of Arbitration Procedure (Codes). The Codes are separated into three parts: the Customer Code, the Industry Code, and the Mediation Code. The most up-to-date version of the Codes can be accessed or downloaded from our Web site at www.finra.org. In addition, our Web site provides various resources for parties, including the *Party's Reference Guide* which includes important information about the arbitration process. In addition, there is a short video on FINRA's Web site showing what to expect during the FINRA arbitration process (go to www.finra.org, click on the link to *Arbitration and Mediation*, and then click *Resources for Parties*). If you do not have access to the Internet, you may call our office to request a copy of arbitration materials.

Filing a Statement of Answer

You are required, on or before **July 8, 2013**, to directly serve each party with a signed and dated submission agreement (form enclosed) and answer to the statement of claim specifying the relevant facts and available defenses to the statement of claim. At the same time that the answer to the statement of claim is served on the other parties, you must file with FINRA an original and three copies of the following: the submission agreement, the answer to the statement of claim, and any additional documents submitted with your answer. Please send these documents and all other subsequent correspondence to the attention of the undersigned. In your submission, you

should also establish proof of service on the other parties to this matter, which is a signed statement indicating the date, time, and manner of service.

Rule 12308 of the *Customer Code* and Rule 13308 of the *Industry Code* provide that, if you do not answer within the time period specified above, the panel may, upon motion, bar you from presenting any defenses or facts at the hearing, unless the time to answer was extended in accordance with the Codes. In addition, if you answer a claim that alleges specific facts and contentions with a general denial, or fail to include defenses or relevant facts in your answer that were known to you at the time the answer was filed, the panel may bar you from presenting the omitted defenses or facts at the hearing.

With the claimant's written consent, you may obtain extensions of time to answer. In accordance with Rule 12207 of the *Customer Code* and Rule 13207 of the *Industry Code*, FINRA staff will not grant you an extension of time to answer, except upon a showing of good cause. If the claimant agrees to extend your time to file your answer, please notify FINRA in writing of the new deadline for filing your answer. You should also send a copy of that notice to the claimant and all other parties.

If you receive an amended statement of claim you should review Rule 12310 of the *Customer Code* or Rule 13310 of the *Industry Code* to determine your time to file a response to the amendment.

CRD Reporting Obligations for Registered Representatives

Article V, Section 2(c) of the FINRA By-Laws provides that registered representatives must keep their CRD registration current. Therefore, you are advised to review the Form U4 to determine if disclosure of this matter is required. If so, your failure to update your registration application may result in the filing of a formal complaint based on any omission. Any questions regarding this disclosure requirement should be directed to the FINRA Member Services Phone Center at (301) 590-6500.

Filing Other Claims

The answer to the statement of claim may include any counterclaims against the claimant, cross claims against other respondents, or third party claims, specifying all relevant facts and remedies requested, as well as any additional documents supporting such claim. When serving a third party claim, you must provide each new respondent with copies of all documents previously served by any party, or sent to the parties by FINRA. If the answer to the statement of claim contains any counterclaims, cross claims or third party claims, you must pay all required filing fees at the time of filing. Parties may pay filing fees for counterclaims, cross claims or third party claims by check or money order payable to "FINRA Dispute Resolution" and should mail payments to the FINRA Dispute Resolution Regional Office administering the case. Please write the name of the counterclaimant, cross claimant or third party claimant and case number on the check or money order.

Hearing Location

For customer disputes, Rule 12213 of the *Customer Code* provides that FINRA will generally select the hearing location closest to the customer's residence at the time the dispute arose, unless the customer requests in his/her initial filing a hearing location in the customer's state of residence at the time the dispute arose.

For industry disputes, Rule 13213 of the *Industry Code* provides that FINRA will generally select the hearing location that is closest to the location where the associated person was employed at the time the dispute arose. In industry disputes involving FINRA firms only, unless the firms are located in the same city, FINRA will consider a number of factors when deciding the hearing location. These include the following:

- signed agreements to arbitrate;
- who initiated the transactions or business at issue; and
- location of essential witnesses and documents.

If all parties in any arbitration agree to a hearing location, FINRA ordinarily will select that hearing location.

FINRA has selected **Los Angeles, CA** as the hearing location for this case. FINRA will consider changing the hearing location upon motion of a party. After the panel is appointed, however, the panel will decide any motion relating to changing the hearing location.

Number of Arbitrators

Rule 12401 of the *Customer Code* and Rule 13401 of the *Industry Code* provide that one arbitrator will decide this case if the amount of the claim is $100,000 or less, exclusive of interest and expenses, unless all parties agree in writing to three arbitrators. If this claim is more than $100,000 or for an unspecified or non-monetary amount, a panel of three arbitrators will be selected to decide the case, unless all parties agree in writing to the appointment of a single arbitrator to decide the case.

There are several benefits to the appointment of a single arbitrator, including: 1) reduced hearing session fees because hearings sessions with one arbitrator cost substantially less than hearing sessions with three arbitrators ($450 per hearing session versus $1,200 per hearing session in cases with over $500,000 in damages), 2) reduced fees for other events such as initial pre-hearing conferences, other pre-hearings, and postponements, 3) reduced case processing times because single arbitrators do not need to coordinate their calendars with co-panelists to schedule a hearing, 4) reduced party effort in the arbitrator selection process because parties will receive one list of 10 names from which to choose their arbitrator, rather than three lists of 10 names each (i.e., parties will only need to research the disclosures and histories of 10 proposed arbitrators instead of 30), 5) reduced costs for photocopying pleadings and exhibits (by two-thirds), and 6) less likelihood of last minute changes in hearing dates because of arbitrator scheduling issues.

Representation of Parties

Rule 12208 of the *Customer Code* and Rule 13208 of the *Industry Code* provide that parties may represent themselves or may be represented by an attorney admitted to practice and in good standing in any jurisdiction. A party may be represented by a non-attorney, unless state law prohibits such representation, the person is currently suspended or barred from the securities industry in any capacity, or the person is currently suspended from the practice of law or disbarred.

Discovery

Rule 12505 of the *Customer Code* and Rule 13505 of the *Industry Code* provide that parties must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration. Parties in customer cases should carefully review the *FINRA Discovery Guide* and *Document Production Lists*, which can be downloaded from our Web site at www.finra.org. Upon request, FINRA will provide the parties with a copy of the *Discovery Guide* and *Document Production Lists*. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a firm or registered person. Parties should not file with FINRA copies of correspondence relating to the exchange of documents and information, except as provided below.

Motions

As explained in Rule 12503 of the *Customer Code* and Rule 13503 of the *Industry Code*, written motions are not required to be in any particular form. Motions may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Motions include all requests to the arbitrators or the Director of Arbitration, including challenges for cause and recusal requests. Any written request to the arbitrators or the Director of Arbitration will be treated as a motion even when it is not expressly labeled as a motion by a party. Written motions must be served directly on all other parties, at the same time and in the same manner. Written motions must also be filed with the FINRA staff member assigned to your case, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties. Responses to written motions must be served directly on each other party, at the same time and in the same manner. Responses to written motions must also be filed with the FINRA staff member assigned to your case, with an additional copy for the arbitrator, at the same time and in the same manner in which they are served on the parties.

Motion Response Deadlines

Generally. Under Rule 12503 of the *Customer Code* and Rule 13503 of the *Industry Code*, parties have 10 days from the receipt of a written motion to respond to the motion, unless the moving party agrees to an extension of time, or the panel decides otherwise. Parties have 5 days from the receipt of a response to a motion to reply to the response unless the responding party agrees to an extension of time, or the Director or the panel decides otherwise.

Subpoenas. Under Rule 12512 of the *Customer Code* and Rule 13512 of the *Industry Code*, parties have 10 calendar days from the receipt of a motion requesting that an arbitrator issue a subpoena to file a response, and moving parties have 10 calendar days from receipt of the response to submit a reply.

Motions to Dismiss. Motions to dismiss have different response deadlines. Parties should review Rules 12206(b) and 12504 of the *Customer Code* and Rules 13206(b) and 13504 of the *Industry Code* for the applicable response deadlines.

Motions to Dismiss

Rule 12504 of the *Customer Code* and Rule 13504 of the *Industry Code* limit significantly the filing of motions to dismiss in the arbitration forum and impose strict sanctions against parties who engage in abusive motion practices. These rules specify the following three limited

grounds on which a motion to dismiss may be granted before a claimant finishes presenting his/her case: 1) the non-moving party signed a settlement and release; 2) the moving party was not associated with the account, security, or conduct at issue; or 3) the claim does not meet the criteria of the eligibility rule (contained in *Customer Code* Rule 12206 and *Industry Code* Rule 13206).

Fees

Any time a fee is assessed to you during the case, you will receive an invoice that reflects the fee assessed. At the conclusion of the case, you will receive a Statement of Account that reflects the fees assessed and any outstanding balance or refund due. Fees are due and payable to FINRA Dispute Resolution upon receipt of an invoice and should be sent to the address specified on the invoice. All questions regarding the assessment of fees should be directed to the regional office administering your case. All questions regarding the payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

In the event multiple parties file a claim, and a single party pays the filing fees on behalf of the other filing parties, FINRA will credit the paying party the amount of the payment. In the event the parties' representative or non-party pays the filing fee on behalf of all the filing parties, FINRA will credit the first named party in the claim the amount of the payment.

At the conclusion of the case, FINRA will use the filing fee funds to pay fees owed by any of the parties that jointly filed the claim. FINRA will evenly distribute the funds to pay each party's fees. If any funds remain for any of the parties, FINRA will use those funds to pay the balance of fees owed by any other parties that filed the claim.

Expungement Requests

FINRA rules provide for strict standards and procedures for expungement of customer dispute information from the CRD system. This rule protects the ability of investors to obtain accurate and meaningful data about firms and brokers by permitting expungement only under appropriate circumstances. Under Rule 2080, an arbitrator may grant expungement only when the claim, allegation, or information in the customer dispute is factually impossible or clearly erroneous; the broker was not involved in the alleged misconduct; or the claim, allegation, or information is false. In addition, Rule 12805 of the *Customer Code* and Rule 13805 of the *Industry Code* require arbitrators considering an expungement request to hold a recorded hearing session by telephone or in person, provide a brief written explanation of the reasons for ordering expungement, and, in cases involving settlement, review the settlement documents to examine the amount paid to any party and any other terms and conditions of the settlement.

Explained Decisions

The arbitrators will provide an explained decision at the parties' joint request. An explained decision is a fact-based award stating the general reasons for the arbitrators' decision. FINRA rules require parties to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ David J. Newson

David J. Newson
Case Administrator Manager
Phone: 213-613-2680
Fax: 301-527-4766
David.Newson@finra.org

DJN:jch:LC39E
idr: 02/09/2012

Enclosures

CC:

Jonathan W. Evans, Esq., Charles Elliott Family Gift Trust u/a 8-
Jonathan W. Evans & Associates, 12711 Ventura Boulevard, Suite 440, Studio City, CA 91604

Jonathan W. Evans, Esq., Charles Elliott IRA
Jonathan W. Evans & Associates, 12711 Ventura Boulevard, Suite 440, Studio City, CA 91604

Jonathan W. Evans, Esq., Charles Elliott
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RECIPIENTS:

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Mark Darren Morrow
8643 Twilight Tear Ln, Cincinnati, OH 45249

Luther Lynn Shelby, Prin, Landmark Investment Group, Inc
Landmark Investment Group, Inc, 3434 Poagville Road, Coldwater, MS 38618

Luther Lynn Shelby
3434 Poagville, Coldwater, MS 38618

UNIFORM SUBMISSION AGREEMENT
FINRA ARBITRATION

In the Matter of the Arbitration Between
Name(s) of Claimant(s)

CHARLES ELLIOTT, Individually, as Owner and Beneficiary of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09

and

Name(s) of Respondent(s)

LANDMARK INVESTMENT GROUP, INC.; JON COURTNEY, JR; MARK DARREN MORROW; LUTHER LYNN SHELBY

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure.

2. The parties hereby state that they or their representative(s) have read the procedures and rules of FINRA relating to arbitration, and the parties agree to be bound by these procedures and rules.

3. The parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The parties further agree and understand that the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure.

4. The parties agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.

5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

CLAIMANT(S) SIGNATURE(S)

CHARLES ELLIOTT, Individually, as Owner and Beneficiary of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09

Charles Elliott
CHARLES ELLIOTT

4-22-13
DATE

JONATHAN W. EVANS, ESQ. - SBN 65735
MICHAEL S. EDMISTON, ESQ. - SBN 191874
JONATHAN W. EVANS & ASSOCIATES
12711 Ventura Boulevard – Suite 440
Studio City, California 91604-2456

Telephone: (818) 760-9880 – (213) 626-1881
Facsimile: (818) 760-9881

Attorneys for Claimant CHARLES ELLIOTT, Individually, as owner and beneficiary of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Arbitration Between: CHARLES ELLIOTT, Individually, as owner and beneficiary of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09, Claimant v. LANDMARK INVESTMENT GROUP, INC., JON COURTNEY, JR.; MARK DARREN MORROW; LUTHER LYNN SHELBY; and DOES I through XX, Inclusive, Respondents.	Case No.: STATEMENT OF CLAIM AND DEMAND FOR ARBITRATION ALL PUBLIC ARBITRATORS REQUESTED VENUE REQUESTED: LOS ANGELES, CALIFORNIA

INTRODUCTION

1. This is a claim about a private placement investment sold to unsuspecting clients. The investment ostensibly provided funding to a company which invested in cemeteries. It also provided funding to a nationwide Ponzi scheme, but that minor detail was withheld from disclosure. The individuals and firm named as Respondents all had a part in the creation and sale of the product to the Claimant.

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2. This arbitration claim is brought to hold the broker, the principal of the firm, its CEO, and the brokerage firm responsible for allowing the creation, issuance, and sale of the promissory notes on their watch.

3. The time period for this dispute runs from March 2012 when Respondents first solicited the investments at issue to the filing of this Statement of Claim and Demand for Arbitration.

PARTIES

4. Claimant CHARLES ELLIOTT (hereinafter referred to as "CHARLES") brings his arbitration claim individually; as the owner and beneficiary of the CHARLES ELLIOTT IRA; and as trustee of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09.

5. CHARLES currently resides at 2090 Mound St., Los Angeles, California 90068.

6. Respondent LANDMARK INVESTMENT GROUP, INC., CRD 44602 (hereafter referred to as "LANDMARK") is now and was at all relevant times for this claim, a registered securities broker-dealer. LANDMARK is a member of FINRA and bound by its rules and regulations.[1]

7. At all times herein mentioned, Respondent JON W. COURTNEY, JR. CRD 4705452 (hereafter referred to as "COURTNEY"), was employed by LANDMARK as a registered representative (securities broker) and licensed to transact business in the State of California. COURTNEY'S registration with LANDMARK terminated in November 2012.[2] While working as a registered representative of LANDMARK, COURTNEY also operated some his business activities as an investment advisor with "SUMMIT WEALTH MANAGEMENT, INC." At all times herein mentioned, COURTNEY acted within the course and

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[1] Attached as Exhibit A is LANDMARK'S Brokercheck Report.
[2] Attached as Exhibit B is COURTNEY'S Brokercheck Report.

scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

8. Respondent SUMMIT WEALTH MANAGEMENT, INC. was a Registered Investment Advisory. On September 21, 2012, the Securities and Exchange Commission filed the case Securities and Exchange Commission v. Angelo Alleca, et al., Civil Action File No. 1:12-CV-3261-WSD (N.D. GA), alleging the firm was operating a Ponzi scheme. As part of the filing, the SEC obtained an order freezing SUMMIT WEALTH MANAGEMENT'S assets and appointing a Receiver.[3]

9. At all times herein mentioned, Respondent MARK DARREN MORROW, CRD 1708880 (hereafter referred to as "MORROW"), was employed by LANDMARK as its "Principal" and was one of LANDMARK'S control persons."[4] While simultaneously registered as a "Principal" of LANDMARK, MORROW was also a principal of DETROIT MEMORIAL PARTNERS. MORROW is also alleged by the Receiver to have managed at least one of the funds created by SUMMIT WEALTH MANAGEMENT.[5] At all times herein mentioned, MORROW acted within the course and scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him. On September 20, 2012, FINRA permanently barred MORROW from the securities industry.

10. DETROIT MEMORIAL PARTNERS LLC (hereinafter referred to as "DMP") was a company created by MORROW[6] as a part of the larger, overarching Ponzi scheme operated through SUMMIT WEALTH MANAGEMENT, INC. At all times herein mentioned, MORROW acted within the course and

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[3] Attached as Exhibit C is a copy of the SEC'S Complaint.
[4] Attached as Exhibit D is MORROW'S Brokercheck Report.
[5] See Page 9, Paragraph 34 of the RECEIVER'S FIRST INTERIM REPORT in Securities and Exchange Commission v. Angelo Alleca, et al., Civil Action File No. 1:12-CV-3261-WSD (N.D. GA).
[6] MORROW'S name appears in Exhibits G, H, and K as "manager" and/or "creator" of DMP.

scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

11. At all times herein mentioned, Respondent LUTHER LYNN SHELBY CRD 1066902 (hereafter referred to as "SHELBY"), was employed by LANDMARK as its "CEO/CFO" and was one of LANDMARK'S control persons.[7] At all times herein mentioned, SHELBY acted within the course and scope of his employment at LANDMARK. As a control person of LANDMARK, responsible for the supervision of COURTNEY and MORROW, SHELBY knew or should have known that the acts and omissions alleged herein were committed by his employees. At all times herein mentioned, SHELBY acted within the course and scope of his employment at LANDMARK, which knew or should have known that the acts and omissions alleged herein were committed by him.

12. MORROW; SHELBY; and LANDMARK; and others whose identities are not yet known, were individuals and entities who controlled LANDMARK. Moreover, they managed and supervised said broker dealer's registered representatives and other employees as well as established and implemented LANDMARK'S sales practices, procedures, supervisory systems, and policies of compliance. As Control Persons under the California Corporations Code and the attendant California Code of Regulations, each is liable for the acts and omissions committed by COURTNEY and MORROW.

13. DOE Respondents were individuals employed by LANDMARK who managed and supervised said broker-dealers' registered representatives and other employees as well as establishing and implementing sales practices, procedures, supervisory systems, and policies of compliance. Said Respondents were "control persons" within the meaning of Federal and State Securities laws. Claimant reserves the right to amend the Statement of Claim

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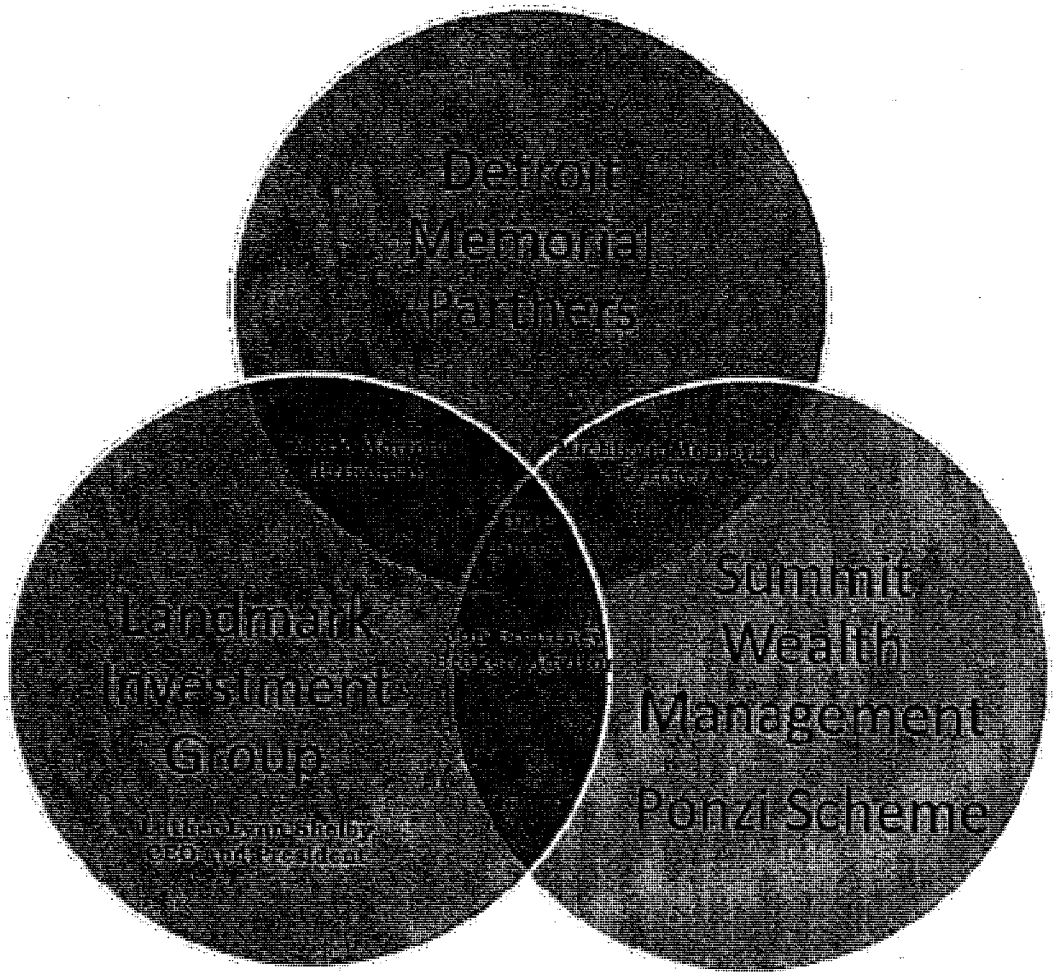
[7] Attached as Exhibit E is a copy of SHELBY'S Brokercheck report.

to add the names of DOE Respondents as they become known during the arbitration process.

14. Each of the Respondents employed by LANDMARK (COURTNEY, MORROW, and SHELBY) is responsible for the acts and omissions of the other Respondents employed by LANDMARK.

15. The following Venn diagram illustrates the currently known relationships between the named Respondents and their related companies.



16. CHARLES ELLIOTT, in all his capacities as a Claimant in this arbitration, knowingly and voluntarily opts out of any and all class actions that are pending or may be brought against the Respondents which are the subject of this arbitration claim.

ACCOUNTS AT ISSUE

17. The two DMP investments COURTNEY solicited and purchased for CHARLES were held in Ameritrade accounts. The accounts at issue are as follows:

Ameritrade Account Name	Ameritrade Account Number	Detroit Memorial Partners, LLC Note Name	Amount of Note
CHARLES ELLIOTT FAM GIFT TST US 8 28 09 CHARLES LAMAR ELLIO	913015395	CHARLES ELLIOTT FAMILY GIFT TRUST	$25,000
CHARLES ELLIOTT IRA	913919982	CHARLES ELLIOTT IRA	$325,000

WHO IS CHARLES ELLIOTT?

18. CHARLES is a 74 year-old cancer and stroke survivor. Following a cerebellar stroke in 2003, CHARLES retired from his 34 year pediatric medicine practice with Facey Medical Group. Not one to sit idle, CHARLES volunteers with AIDS Project Los Angeles, the Chris Brownlie Hospice, and the Breakfast Program for the Homeless.

19. At the time of his retirement in 2003, Facey Medical Group transferred CHARLES' pension funds to him. In turn, CHARLES hired a broker to manage his money.

WHAT TOOK PLACE

20. In or about August 2009, CHARLES was convinced to move his accounts to a Registered Investment Advisory firm owned and operated by Glen Janken. In mid-2010, Janken retired and sold his practice to SUMMIT WEALTH MANAGEMENT. JON COURTNEY, JR., Janken's employee since August 2008, took over as CHARLES' investment advisor.

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21. During the time CHARLES was the client of COURTNEY and SUMMIT WEALTH MANAGEMENT, his Trust and IRA accounts were domiciled at Ameritrade.

22. In or about March 2012, COURTNEY recommended CHARLES purchase notes issued by a company called "Detroit Memorial Partners, LLC."[8]

23. COURTNEY, in making his recommendation, never revealed the fact that DMP was part of a fraudulent investment scheme.

WHAT WAS DETROIT MEMORIAL PARTNERS LLC?

24. Detroit Memorial Partners LLC was formed in Michigan in late 2007 for the purpose of holding an equity interest in another entity, Michigan Memorial Partners, LLC, which itself was created to purchase and hold 28 cemeteries being sold out of a Michigan state receivership.[9] DMP'S principal was MARK MORROW.

25. During late 2007 and early 2008, high-interest promissory notes issued in the name of "Detroit Memorial Partners LLC" began to be sold to Summit Wealth Management clients. More notes were sold in 2009 and 2010, and again in 2012. In all, more than $15,000,000 of DMP notes were sold to Summit clients.

CHARLES PURCHASES THE NOTES

26. On March 26 2012, following COURTNEY'S recommendation, CHARLES signed a Letter of Authorization for each of his Ameritrade accounts to allow his account to purchase "non-publicly traded investments."[10] Notably, MORROW is listed as the contact name for Detroit Memorial Partners, LLC.

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[8] Attached as Exhibit F is the March 14, 2012 recommendation sheet CHARLES received from COURTNEY.

[9] Attached as Exhibit G is the RECEIVER'S FIRST INTERIM REPORT filed in *SECURITIES AND EXCHANGE COMMISSION v. ANGELO A. ALLECA, et al.*, Case No. 1: 12-CV -3261-WSD, U.S. District Court Northern District of Georgia Atlanta Division dated March 28, 2013. This document contains, at the time it was written, a detailed summary of DETROIT MEMORIAL PARTNERS' history and background.

[10] Attached as Exhibit H are the Letters of Authorization executed by CHARLES.

27. That same day, CHARLES signed two DMP subscription agreements. The first DMP subscription agreement, for .5 units, was for his Trust Account, and it consisted of a loan of $25,000 to DMP.[11] The second subscription agreement, for 6.5 units, was for his IRA account and consisted of a loan of $325,000 to DMP.[12]

CHART OF INVESTMENTS AT ISSUE

Date	Investment Name	Purchasing Account	Amount	Status
March 26, 2012	Detroit Memorial Partners, LLC	Trust Account	$25,000	Lost
March 26, 2012	Detroit Memorial Partners, LLC	IRA Account	$325,000	Lost
TOTAL INVESTMENT			**$350,000**	

TERMS OF THE DMP NOTES

28. The terms of the DMP notes, with the exception of their amounts, were identical.

29. The purpose of the offering was to repay prior DMP bonds which were set to mature in May 2012.

30. The notes were set to pay 8.25% per annum, payable in semi-annual installments. Interest payments were scheduled for each November and May. The term of the "bond offering" was 48 months with prepayment allowed 12 months after issue.

31. CHARLES' Ameritrade statements for his Trust account and his IRA account reflected the purchase of the notes and their stated values from May through September 2012. Each month DMP'S closing price and market value showed $25,000 for the Trust account, and $325,000 for the IRA account.

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[11] Attached as Exhibit I are the Term Sheet and Subscription Agreement for the $25,000 note purchased in CHARLES' TRUST account.

[12] Attached as Exhibit J are the Term Sheet and Subscription Agreement for the $25,000 note purchased in CHARLES' IRA account.

DMP FAILS, TAKING CHARLES' MONEY WITH IT

32. On September 18, 2012, the Securities and Exchange Commission filed its "EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER, ASSET FREEZE, AND OTHER EQUITABLE RELIEF" against ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET CLASS DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC, ensnaring whatever existed and/or was left of DMP'S assets.

33. Following the implementation of the Receivership, CHARLES' October 2012 Ameritrade statements showed DMP'S closing price and market value as "$NP." In short, the asset had no known price or value.

34. Not surprisingly, CHARLES did not receive the promised interest payment in November 2012.

35. Although there has been no finding the DMP notes themselves were a Ponzi scheme, the DMP notes were a part of the overall larger Ponzi scheme perpetrated by Summit Wealth Management selling phony investment funds. The Receiver's investigation into SUMMIT WEALTH MANAGEMENT and DMP revealed that money from other Summit Wealth Management "offerings" was deposited into bank accounts held DMP'S name. Similarly, money from DMP notes was deposited into the bank accounts of other Summit Wealth Management "investments.[13]

36. The DMP notes currently have no known value.

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[13] Attached as Exhibit K is the RECEIVER'S SECOND INTERIM REPORT filed in *SECURITIES AND EXCHANGE COMMISSION v. ANGELO A. ALLECA, et al.*, Case No. 1: 12-CV -3261-WSD, U.S. District Court Northern District of Georgia Atlanta Division dated March 28, 2013. In one instance, the Receiver found that monies received from one of the phony hedge funds were used to pay the interest on some of the earliest DMP notes.

CHARLES' SELLING AWAY CLAIM

37. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY may be held liable for failing to supervise both COURTNEY and MORROW under a theory of negligence per se.

38. California Evidence Code Section 669(s) provides the standard for negligence *per se:*

> [t]he failure of a person to exercise due care is presumed if:
>
> (1) He violated a statute, ordinance, or regulation of a public entity;
>
> (2) The violation proximately caused death or injury to person or property;
>
> (3) The death or injury resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent; and
>
> (4) The person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.

39. California Corporations Code § 25212(g) provides that the Commissioner of Corporations may discipline:

> ... a broker-dealer, or any partner, officer, director, or branch manager of the broker-dealer, whether prior or subsequent to becoming associated with the broker-dealer, or any person directly or indirectly controlling the broker-dealer, whether prior or subsequent to becoming such, or any agent employed by the broker-dealer while so employed has done any of the following:
>
> (g) ...has *failed reasonably to supervise, with a view to preventing violations of those statutes, rules and regulations [listed in subsection (e)]*[14],

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[14] Cal. Corp. Code § 25212(e) states: "Has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or Title 4 (commencing with Section 25000), including the Franchise Investment Law, Division 5 (commencing with Section 31000), or the California Commodity Law of 1990, Division 4.5 (commencing with Section

> another person who commits a violation, if the other person is subject to his or his supervision; for the purposes of this subdivision, no person shall be deemed to have failed reasonably to supervise any person if (1) there have been established procedures, and a system for applying those procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by the other person, and (2) that person has reasonably discharged the duties and obligations incumbent upon him or his by reason of those procedures and system without reasonable cause to believe that those procedures and system were not being complied with.

40. This statute is the thrust of Claimant's negligence and failure to supervise claim. Respondent violated California Corporations Code § 25212(g), a statute, by failing to *reasonably supervise* COURTNEY and MORROW. COURTNEY was the broker selling the DMP and MORROW, the principal of LANDMARK was also the individual responsible for the creation, management, and day-to-day operations of DMP. The violation of the statute by Respondents LANDMARK; MORROW; and SHELBY allowed COURTNEY to recommend and sell DMP to Claimant which resulted in the loss of $350,000 of his hard earned savings. Further, the violation of the statute by Respondents LANDMARK; MORROW; and SHELBY allowed MORROW to operate an company and sell investments designed to support a Ponzi scheme.

41. The purpose of California Corporations Code § 25212 is to put a layer of supervision over brokers, registered representatives, and investment to prevent violations of the California Securities Laws. The Commissioner of Corporations feels strongly about supervision, codifying in the California Code of Regulations at 10 CCR § 260.218.4(a). The regulation requires "[e]very broker-dealer shall exercise diligent supervision over the securities activities of all of its agents." Diligent supervision is necessary to detect and prevent a

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29500), or of any rule or regulation under any of those statutes, or any order of the commissioner which is or has been necessary for the protection of any investor."

registered representative from making misrepresentations or omissions of material facts in connection with the sale of securities.[15] COURTNEY and MORROW'S misrepresentations to Claimant regarding the safety and security of DMP, and their failure to explain its purpose in supporting a massive Ponzi scheme are the very misrepresentations of material facts the statute was designed to prevent and the reason the California legislature implemented the statute requiring broker-dealers to supervise their registered representatives. Respondents' failure to supervise COURTNEY and MORROW'S sale of DMP was the proximate cause of CHARLES' loss.

42. Lastly, the California Securities Laws are designed to protect investors, the buyers and sellers of securities, including individual investors such as CHARLES.

CHARLES' FAILURE TO SUPERVISE CLAIM

43. In a failure to supervise claim, four elements must be shown:

1) There was an underlying securities law violation;

2) The violator was registered to conduct securities business through the defendant;

3) There was a requirement to supervise the violator; and

4) Failure of the broker-dealer and/or supervisory personnel to reasonably supervise the person who violated the securities laws, with the standard of "'reasonableness" being whether supervision was conducted with a view to preventing violations of the securities laws.

1. There Were Underlying Securities Law Violations by COURTNEY and MORROW.

44. The underlying securities law violations are COURTNEY and MORROW'S use of misrepresentations and omissions of material facts to

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[15] California Corporations Code § 25401.

convince a senior citizen to allow COURTNEY and MORROW to invest his money in an unsupervised, high-risk promissory note. The making of misrepresentations or omissions of material facts is a violation of California Corporations Code § 25401[16]

45. COURTNEY and MORROW'S representations failed to disclose DMP was being used, at least in part, to finance the overarching Ponzi scheme operating by SUMMIT WEALTH MANAGEMENT. Furthermore, COURTNEY'S sales materials and MORROW'S term sheet and promissory notes promised CHARLES a return of 8.25% per annum, which was impossible to achieve based on the true operations of DMP. CHARLES believed COURTNEY'S and MORROW'S written representations and relied, reasonably so, on their representations in purchasing the investments. COURTNEY and MORROW knew CHARLES would believe their representations and it was their purpose to have him purchase DMP promissory notes.

46. COURTNEY and MORROW intentionally made the misrepresentations, in violation of Cal. Corp. Code § 25401, to obtain his money.

2. COURTNEY and MORROW Were Registered to Conduct Securities Business Through LANDMARK.

47. COURTNEY was a registered representative of LANDMARK from September 2010 through November 2012.

48. MORROW as a registered representative and principal of LANDMARK from December 1998 through October 2012 when he was barred for life by FINRA.

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[16] California Corporations Code § 25401 provides: "It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

3. Respondents LANDMARK, SHELBY, and MORRO Were Obligated to Supervise COURTNEY and MORROW.

49. As discussed, supervision is an inescapable requirement of the brokerage industry. FINRA Rule 3010, SEC Regulations, and California law put the responsibility of supervision of associated persons directly on the member firm.

50. FINRA requires its member firms to supervise the activities of their registered representatives. FINRA Rule 3010 states: "Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. **Final responsibility for proper supervision shall rest with the member.**" (Emphasis added).

51. FINRA has a large body of regulatory statements and "Notices to Members" dating back to the mid-1980s sounding the horn that member firms are responsible for the outside securities activities of their registered representatives.[17]

52. The SEC holds that a broker-dealer has an affirmative duty to be aware of its registered representatives' activities. The broker-dealer's ignorance of its registered representatives' activities is not an excuse.[18]

53. In its 1997 hallmark supervision decision for independent contractor/brokers, In re Royal Alliance,[19] the SEC announced that independent broker-dealers had the same obligation to diligently and reasonably supervise their registered representatives as did the major wire-house brokerage firms.

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[17] See, NASD Notices to Members 86-65, 89-34, 97-17, 98-38, and 99-45.
[18] *In re Conrad C. Lysiak*, Exchange Act Rel. No. 33,245, 1993.
[19] *In re: Royal Alliance* (Securities Exchange Act of 1934 Release No. 38174, January 15, 1997).

54. California law sets the identical standard for supervision.[20] 10 CCR § 260.218.4(a) provides that "Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents." More specifically, 10 CCR § 260.210(b)(4) provides in part: **"A broker-dealer shall be responsible for the acts, practices, and conduct of an agent in connection with the purchase or sale of securities until such time as they have been properly terminated** and the Form U5 has been filed with the CRD of FINRA." (Emphasis added).

55. In addition, California law places the same supervisory responsibility on Respondents *as well as* holding them liable for all the securities bought and sold by their registered representative.[21]

56. Respondents LANDMARK, SHELBY, and MORROW all had pre-existing duties to supervise both COURTNEY and MORROW, and under California law; they are responsible for every securities transaction entered into by COURTNEY and MORROW, including the sale of the DMP promissory notes to CHARLES.

4. Respondents LANDMARK, SHELBY, and MORROW Failed to Reasonably Supervise COURTNEY and MORROW.

57. Respondents LANDMARK, SHELBY, and MORROW failed to reasonably supervise their registered representative, COURTNEY, and LANDMARK'S principal, MORROW.

58. In Quest Capital Strategies, Inc., Release no. ID141, 69 SEC 1317 (1999) the SEC described the industry standard for measuring the adequacy/reasonableness of supervision:

> Supervisors have an obligation to respond vigorously and with the utmost vigilance to indications of irregularity. ...A supervisor cannot ignore or disregard

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[20] California Corporations Code § 25212(g).
[21] 10 CCR 260.210(b)(4).

> 'red flags' and must 'act decisively to detect and prevent' improper activity. ...Indications of wrongdoing demand inquiry as well as adequate follow-up and review. (citations omitted).

59. There is no doubt that at all times MORROW knew there were terrible things wrong with the DMP notes since he was also the principal of DMP. He knew that the monies he received as DMP'S principals were being used to fund and operate and Ponzi scheme. Knowing those facts, he never should have allowed COURTNEY to sell the DMP notes.

60. SHELBY, the CEO and President of LANDMARK, had an obligation to supervise all of the activities of his firm's Associated Persons.

61. In 2004, the Securities and Exchange Commission published its SEC Division of Market Regulation, Staff Legal Bulletin No. 17 (Remote Office Supervision) listing some simple supervisory techniques:

- Reviews of a broker's banking records;
- Reviews of a broker's financial records for checks written to third parties or monies received from third parties;
- Interviews of a broker's staff;
- Interviews of a broker's clients; and
- Reviews of a broker's computer files.

62. In a 2011 disciplinary action, FINRA found that Merrill Lynch failed to supervise one of its registered representatives when he disclosed his outside business activity but *lied* about not engaging private securities transactions.[22] In the disciplinary matter, FINRA found that Merrill Lynch was responsible for the supervision of its representative in his dealing with both clients of the firm *as well as non-clients* sucked into the representative's outside investment scheme.

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[22] In re: Merrill Lynch, FINRA Letter of Acceptance, Waiver and Consent NO-26080139905-02.

63. Lack of supervision is never reasonable. The firm and its supervisors must take affirmative steps to keep informed and stay ahead of its broker's activities. Just as FINRA found Merrill Lynch's reliance on their registered representatives to self-report their activities as unreasonable and lacking, so too will this Arbitration Panel find Respondents LANDMARK'S; MORROW'S; and SHELBY'S supervision of COURTNEY and MORROW lacking.

64. Worse than just an ordinary selling away case, MORROW himself, a supervisor of LANDMARK, knew at all times the notes were being sold by COURTNEY, he knew the notes were designed to fund a fraudulent scheme, and he knew at all times he was engaged in securities fraud.

65. As a result of the aforementioned acts of Respondents, Claimant was actually and proximately harmed to the extent described herein, which will be proved at the arbitration hearing. In addition, Claimant is entitled to punitive damages as a result of Respondents' misrepresentations, fraud, breach of their fiduciary duties, and for the breach of the implied covenant of good faith and fair dealing inherent in every contract entered into in the State of California.

CLAIMANT'S ADDITIONAL CLAIMS

66. Respondents failed Claimant. MORROW, SHELBY, COURTNEY, and LANDMARK all knew that MORROW was the principal of DMP. Respondents all knew or should have known the DMP was part of the overarching Ponzi scheme of Summit Wealth Management. They all failed to protect CHARLES' best interests and failed to take any action whatsoever to temper or minimize the risks inherent in COURTNEY'S recommendation and solicitation.

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67. Claimant alleges that prior to and at the time of each of the transactions listed above, Respondent COURTNEY negligently and/or intentionally failed to disclose the material risks of the DMP investments.[23]

68. Claimant alleges that prior to and at the time of each of the transactions listed above, Respondent COURTNEY negligently and/or intentionally omitted material facts about the DMP investments.[24]

69. Claimant alleges that prior to and at the time of the two transactions listed above, Respondent COURTNEY negligently and/or intentionally stated that the principal of the DMP investments would be safe and such an investment was suitable for Claimant's needs.[25]

70. Claimant alleges that Respondents LANDMARK, MORROW; and SHELBY, as control persons of COURTNEY, are liable for his misrepresentations and omissions.[26]

71. Claimant alleges that Respondents COURTNEY; LANDMARK; MORROW; and SHELBY committed negligence in conducting due diligence of the DMP investments, failing to monitor the investments, and failing to recommend suitable investments.[27]

72. Claimant alleges that Respondent COURTNEY breached his fiduciary duties clients by soliciting, recommending, and executing the DMP investments for the purpose of furthering his own personal interests (e.g.,

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[23] Cal. Corp. Code § 25401.
[24] Id.
[25] Id.
[26] Cal. Corp. Code § 25504 provides for control person liability for COURTNEY'S misrepresentations and omissions of material facts in connection with the sale of the securities.
[27] In California, it is black letter law that suitability rules, when breached, constitute common law negligence. Mihara v. Dean Witter & Co., Inc., 619 F.2d 814 (9th Cir. 1980); Vucinich v. Paine, Webber, Jackson & Curtis, Inc., 803 F.2d 454, (9th Cir. 1986).

commissions, bonuses, and undisclosed compensation) rather than for the benefit of his clients.[28]

73. Claimant further alleges that Respondents COURTNEY; breached his fiduciary duties by failing to disclose the actual risks attendant to the DMP investments.[29]

74. Respondents COURTNEY; LANDMARK; MORROW; and SHELBY failed to disclose the fact that the proceeds invested in DMP were used to finance a massive Ponzi scheme.

75. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY as owners, officers, supervisors, and control persons failed to supervise COURTNEY.[30]

76. Claimant alleges that Respondents LANDMARK; MORROW; and SHELBY as owners, officers, supervisors, and control persons failed to supervise MORROW'S activities as the principal of DMP and MORROW'S activities related to the sale of DMP'S promissory notes.

77. Claimant alleges that all of the Respondents violated numerous FINRA (formerly NASD) rules including but not limited to Rules 2110; 2310; and 3010 in their professional dealings with him.

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[28] It is settled as a matter of California law that the relationship between a stockbroker and a customer is always fiduciary in nature. Twomey v. Mitchum, Jones & Templeton, Inc., 262 Cal.App.2d 690 (1968), Duffy v. Cavalier, 215 Cal.App.3d 1517 (1989), Hobbs v. Bateman Eichler, Hill Richards, Inc. 164 Cal. App.3d 174, 210 Cal. Rptr. 387 (1985).

[29] As CHARLES'S fiduciaries, Respondents had an obligation to be honest in their dealings and fully disclose their activities and the attendant risks thereto. In California, this duty of disclosure is sacrosanct, irrespective of the sophistication of the investor, Duffy v. Cavalier, (1989) 215 Cal. App. 3d 1517, 1533. In Neel v. Magana, Olney, Levy, Cathcart & Gelfand, (1971) 6 Cal. 3d 176, 188-89, the California Supreme Court held that where there is a duty to disclose, the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud. It is also worth noting that COURTNEY was also acting as an investment advisor, thus was CHARLES' fiduciary under the Investment Advisers' Act of 1940 as well as California Corporations Code §25238 which requires California investment advisers to engage in only fair, equitable, and ethical practices.

[30] FINRA Rule 3010(a) provides: "Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member."

78. Claimant alleges that Respondents breached their contract with Claimant to act as his broker and advisor and to act in good faith and deal fairly with them.

CLAIMANT'S PRAYER FOR RELIEF

WHEREFORE, Claimant CHARLES ELLIOTT prays for an award against Respondents as follows:

1. Compensatory damages in the amount of $325,000 for the losses related to the solicitation, purchase and sale of 6.5 notes of DMP to Claimant's Ameritrade IRA Account.

2. Compensatory damages in the amount of $25,000 for the losses related to the solicitation, purchase and sale of the .5 notes of DMP to Claimant's Ameritrade Trust Account.

3. Alternatively, Claimant requests an award of rescission and rescissionary damages for all investments at issue as provided in California Corporations Code § 25401, § 25501, and § 25504;

4. Disgorgement of commissions, fees and other forms of compensation paid to Respondents in an amount to be demonstrated and proved at Arbitration;

5. The lost opportunity or reasonable return on the sums invested by Claimant consistent with the rate of return on securities which the Arbitrators deem would have been suitable for the Claimant;

6. Interest calculated at the rate of 10% from the date Claimant paid the funds for any and all of the described investments at issue, until any arbitration award rendered herein is fully paid;

7. Punitive damages in an amount to justifiably and equitably punish Respondents for their fraudulent, malicious, and/or oppressive misconduct in selling the investments;

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8. Cost of arbitration including expert witness fees, filing fees, and hearing costs; and

9. Reasonable attorney's fees.

DATED: April 30, 2013

JONATHAN W. EVANS, ESQ.
Attorney for Claimant
CHARLES ELLIOTT, Individually, as owner and beneficiary of the CHARLES ELLIOTT IRA, and as Trustee of the CHARLES ELLIOTT FAMILY GIFT TRUST U/A 8-26-09

Exhibit 10

Summit Wealth Management
www.summitwealthmanagement.com / 800-878-5065

From the Desk of:
Angelo Alleca
President / CEO

MARK,

I HAVE A ~~A~~ CONFESSION TO MAKE, OVER THE LAST 8 years THROUGH NUMEROUS VEHICLES, INCLUDING SUMMIT INVESTMENT FUND, ASSET CLASS DIVERSIFICATION FUND, PRIVATE CREDIT OPPORTUNITIES FUND & MOST IMPORTANTLY DETROIT MEMORIAL PARTNERS, I ~~REUSED~~ CLIENT FUNDS FOR PURCHASING OFFICES, STOCK TRADING, & CASUAL EXPENSES. I did NOT USE the money to spend ON MYSELF. Unfortunately, the stock market did NOT ~~COOPER~~ DO WHAT I expected and the money I LOST IN the market OR thru Bad acquisitions I was never able to recover!.

The worst OF all of this is I often used you name, forged your signature & represented myself as you. I am sorry and I hope all the bad that I have done does not directly affect you! Sorry. Please let the regulatory bodies know you were not involved.

DM