

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

DENMARK PROPERTIES LIMITED,

CASE NO: 2019-xxxxxx-CA-01

Plaintiff,

JURY TRIAL DEMANDED

v.

GTA ADVISORS LLC, and
CARLOS R. WEISSENBERG,

Defendants.

COMPLAINT

Plaintiff, Denmark Properties Limited, by and through its attorneys, sues Defendants, GTA Advisors LLC and Carlos R. Weissenberg, and alleges:

PARTIES

1. Plaintiff, Denmark Properties Limited (“Plaintiff” or “Denmark”), is a Panamanian corporation conducting business in Miami-Dade County, Florida. Denmark, at all times relevant herein, Agustin Ubieto (“Mr. Ubieto”) was one of the main owners of Denmark.

2. Defendant, Carlos R. Weissenberg (“Weissenberg”), is a resident of Miami-Dade County, Florida. Weissenberg, at all times relevant herein, was an investment advisor.

3. Defendant, GTA Advisors LLC (“GTA”), is a Guatemalan corporation with its principal place of business at 701 Brickell Ave, 9th Floor, Miami, FL 33131. Weissenberg, at all times relevant herein, was a director of GTA.

4. Plaintiff has named both GTA and Weissenberg as Defendants because they are alter egos of each other, conceal assets for each other, and have benefited financially from the

unlawful acts alleged in this Complaint.

JURISDICTION AND VENUE

5. This court has subject matter jurisdiction over this case because it is an action for damages in excess of \$15,000.00, exclusive of interest, attorney's fees, and costs.

6. This court has personal jurisdiction over Defendants because they operate, conduct, engage in, or carry on a business or business venture in this state.

7. Venue is proper in Miami-Dade County, Florida because the conduct giving rise to the claims occurred in Miami-Dade County, Florida.

FACTS

Plaintiff Becomes Client of Weissenberg and GTA

8. On or about September 2015, Mr. Ubieto (through Denmark) entered into an agreement with GTA, signed by Weissenberg on behalf of GTA. Denmark is not currently in possession of this agreement and on information and belief, GTA and/or Weissenberg are in possession of a copy of this agreement which will be obtained in discovery.

9. On information and belief, GTA does not have a license to give investment advice.

10. On information and belief, Weissenberg does not have a license to act as an investment advisor.

11. At the time Mr. Ubieto (through Denmark) entered into the agreement with Defendants, he was approximately 75 years old. Defendants were aware that the funds being managed for Plaintiff were meant to provide Mr. Ubieto with support for his retirement.

12. At all times relevant, Mr. Ubieto had a conservative risk profile as an investor¹ and was relying on Defendants to place him in investments that were suitable for his goals and risk

¹ Before his dealings with Defendants, Mr. Ubieto only purchased certificates of deposit (CDs), which are virtually risk-free investments, unlike the leveraged ETFs purchased by Defendants with Plaintiff's funds.

tolerance.

13. In particular, Defendants were aware:
 - a. That the funds Plaintiff was contemplating to give to Defendants to manage were, at least in part, Mr. Ubieto's retirement funds;
 - b. That Mr. Ubieto would allow Defendants to manage his assets as long as Defendants followed a mandate to manage the funds with the investment objectives of safety of principal, conservative income, and no tolerance for risk;
 - c. That Mr. Ubieto's age was in excess of 70 years of age and that he did not believe he would ever have significant earnings in the future; and
 - d. That Mr. Ubieto had no experience investing in the stock or bond markets and would be relying entirely on Defendants to make all decisions in his portfolio consistent with safety of principal, conservative income, and no tolerance for risk.

14. On September 17, 2015, Defendants began investing Plaintiff's funds in highly complex investments known as leveraged and inverse exchange traded funds.

15. At no time did Defendants explain to Mr. Ubieto what leveraged and inverse exchange traded funds were, nor did they ask Mr. Ubieto if he was comfortable in investing his funds in leveraged and inverse exchange traded funds.

Leveraged and inverse Exchange Traded Funds

16. Exchange traded funds are commonly referred to as "ETFs" in the investment industry.

17. ETFs are typically investment companies that are classified as open-end mutual

funds or unit investment trusts (“UITs”), whose shares represent an interest in a portfolio of securities that track an underlying benchmark or index such as the S&P 500.

18. ETF shares are listed on a securities exchange.

19. Leveraged and inverse ETFs differ from a standard ETF and can be riskier than traditional ETFs.

20. Leveraged ETFs, sometimes labeled “ultra” or “2x,” seek to deliver multiples of the performance of the index that they track, typically on a daily basis. Some leveraged ETFs are inverse or short funds. An inverse ETF is designed to provide the opposite of the return of the underlying index it tracks, such as the S&P 500, and typically does so on a daily basis. Thus, in a leveraged inverse ETF, if the S&P goes down for the day, the ETF should go up in value.

21. Leveraged and inverse ETFs are typically short-term investments. They are used to hedge a portfolio.

22. Because leveraged and inverse ETFs achieve their stated objective only on a daily basis, their performance can differ significantly from the underlying index when held for periods longer than one day, particularly in volatile markets.

23. As a standard in the industry, leveraged and inverse ETFs are held for no more than two or three weeks at the most.

FINRA’s Repeated Warnings to Industry Professionals About Leveraged ETF Investments

24. The dangers and risks of leveraged and inverse ETFs are well known among investment industry professionals but are not well known or understood among the general investing public.

25. The Financial Industry Regulatory Authority (“FINRA”) is a regulatory body formed under the Securities Exchange Act of 1934 governing aspects of the securities industry.

FINRA has the power to create rules and regulations governing FINRA member firms and as a part of that rule-making authority, frequently issues Regulatory Notices to the investment industry concerning certain investment products.

26. As early as June 2009, FINRA began issuing Regulatory Notices warning industry professionals of the dangers of leveraged and inverse ETFs.

27. In Regulatory Notice 09-31, FINRA warned investment industry professionals that inverse and leveraged ETFs are typically unsuitable for investors, such as Mr. Ubieta, who plan to hold them for longer than one trading session. Due to the effect of compounding, their performance over longer periods of time can differ significantly from the performance of the underlying benchmark.

28. Regulatory Notice 09-31 further warned that, under investment industry standards, recommendations to invest in leveraged and inverse ETFs must be both suitable and based on a full understanding of the terms and features of the products.

29. Regulatory Notice 09-11 further notes that FINRA Rules require a firm to have a reasonable basis for believing that the transaction is suitable for the specific customer to whom the recommendation is made based on the investor's circumstances, including their financial status, tax status, investment objectives, and other information used or considered to be reasonable in making recommendations to the customer.

30. In January 2011, Regulatory Notice 11-02 informed that the SEC approved FINRA Rules governing "Know-Your-Customer" and "Suitability Obligations" for investments, which FINRA reminded are obligations that are critical to ensuring investor protection and promoting fair dealing with customers and ethical sales practices.

31. The know-your-customer obligation and suitability rules require a broker to have

an understanding of their customer's goals and needs and to make determinations on whether an investment that they recommend to that customer is suitable in light of their investor profile.

32. In January 2012, FINRA issued Regulatory Notice 12-03 concerning Complex Products, including leveraged and inverse ETFs. FINRA noted that the fact that a product is "complex" indicates that it presents an additional risk to investors. FINRA specifically listed leveraged and inverse ETFs as complex products with features that make them difficult for investors to understand their essential characteristics and risks.

33. In Regulatory Notice 12-03 on Complex Products, FINRA once again stated that the suitability rule requires a firm or registered representative to perform a reasonable basis suitability determination before recommending a transaction or investment strategy. Importantly, FINRA noted the industry standard of suitability must include an analysis of the investor's risk tolerance.

34. As recently as October 2017, FINRA issued Regulatory Notice 17-32 reminding firms of sales practice obligations for volatility linked ETFs set forth in Notice 12-03, noting that those ETFs are unsuitable for investors who plan to use them as traditional buy and hold investments.

35. In Regulatory Notice 17-32, FINRA reminded firms of the sales practice obligations for leveraged ETFs, including, without limitation, that recommendations to customers must be based on a full understanding of the terms, features and risks of the product recommended, the sales materials must be fair and accurate, and firms must have reasonable supervisory procedures in place to ensure these obligations are met.

36. Thus, from the time prior to Plaintiff opening accounts with Defendants, and up to the year that Defendants began investing the funds in leveraged ETFs, it was well known in the

investment industry that leveraged and inverse ETFs:

- a. Are highly complex investments that are not suitable for conservative investors;
- b. Impose significant risks to investors;
- c. Should not be recommended to investors unless the investment professional has determined that the investments are suitable for that investor in light of that investor's objectives, goals, financial status, and risk tolerance;
- d. Must be carefully explained to investors with full disclosures of the characteristics and risks of those investments; and,
- e. Should not be used for traditional long-term investment accounts.

Plaintiff's ETF Investments

37. Before investing Plaintiff's funds in leveraged ETFs, Defendants made no effort to:
 - a. Discuss the nature of those investments with Plaintiff;
 - b. Explain the characteristics of leveraged and inverse ETFs to Plaintiff;
 - c. Explain the risks associated with such investments;
 - d. Ask Plaintiff if it had an understanding of leveraged ETFs;
 - e. Determine if leveraged ETFs were suitable investments; or,
 - f. Ask Plaintiff if it even had any interest in investing in leveraged ETFs.
38. On September 17, 2015, Defendants embarked on a risky strategy with Plaintiff's funds, consisting of purchasing shares of the following ETFs (the "Leveraged ETFs"):
 - a. Direxion Daily Small Cap Bear 3X Shares (TZA)
 - b. ProShares UltraPro Short Dow30 (SDOW)
 - c. ProShares UltraPro Short QQQ (SQQQ)

d. ProShares UltraPro Short S&P500 (SPXU)

39. On January 2016, these shares were sold for a gain of approximately \$14,417.51.

40. On January 27, 2016, Defendants once again embarked on the same strategy, purchasing shares of all four of the Leveraged ETFs for \$157,299.56.

41. On July 1, 2016, Defendants once again embarked on the same strategy, purchasing even more shares of all four of the Leveraged ETFs for \$170,208.00.

42. Ultimately, Defendants sold all the Leveraged ETFs on February 11, 2019, for \$47,074.64.

43. The Leveraged ETFs were held for 1,476 or 1,321 days, even though they were designed to be held for less than one day.

44. Mr. Ubiето passed away on October 10, 2018.

45. Plaintiff's account has lost over \$175,802.47 in value due to Defendants' conduct.

COUNT I – NEGLIGENCE

46. Plaintiff, Denmark Properties Limited, incorporates and realleges paragraphs 1 through 45 above as if fully set forth herein.

47. Defendants owed duties of care to Plaintiff as its investment advisors, including the duty to exercise reasonable care and skill in investing the funds.

48. Defendants had a duty to follow reasonable industry standards to ensure that the investments in the Leveraged ETFs were suitable in light of Mr. Ubiето's investment goals and objectives, financial situation, needs, risk tolerance, investment experience, and other information known to Defendants.

49. Defendants' duties of care went beyond mere contractual duties of care. Defendants' duties were extracontractual in nature and are duties of care imposed upon all

investment advisors and investment advisory firms.

50. Plaintiff informed Defendants, and Defendants had knowledge of the fact that Plaintiff required conservative investments designed to achieve growth over a long term.

51. Defendants breached their duties of care by ignoring Plaintiff's investment goals and objectives, and by investing the funds in leveraged ETFs that were not suitable.

52. Plaintiff has suffered damages as a result of Defendants' breaches of their duties.

53. Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff, Denmark Properties Limited, demands judgment against Defendants, GTA Advisors LLC and Carlos R. Weissenberg, for: (a) damages, in an amount to be determined at trial; (b) costs, interest, and reasonable attorneys' fees; and (c) all other relief that the Court deems just and proper.

COUNT II – BREACH OF FIDUCIARY DUTY

54. Plaintiff, Denmark Properties Limited, incorporates and realleges paragraphs 1 through 45 above as if fully set forth herein.

55. At all times relevant, Weissenberg was acting as an agent of GTA.

56. Plaintiff reposed trust and confidence in Defendants to act in its best interests relative to its investments.

57. Weissenberg owed a fiduciary duty to Plaintiff as a financial advisor.

58. Defendants stood in a position of superior knowledge to Plaintiff relative to the investments, the features of those investments, and the risks attendant.

59. Defendants held themselves out to Plaintiff as fiduciaries and as experts in their given fields. As a result, Plaintiff reposed trust and confidence in Weissenberg and his company, GTA, in making decisions relative to the investments.

60. Defendants owed Plaintiff the fiduciary duties of due care, honesty, loyalty, and utmost candor.

61. Defendants breached these fiduciary duties to Plaintiff by making unsuitable leveraged ETF investments with the funds, that were not in Plaintiff's best interests, at Plaintiff's expense.

62. Defendants also breached these fiduciary duties when, once they bought the leveraged ETFs, they held them for an unreasonable amount of time.

63. Plaintiff has suffered harm as a direct and proximate result of Defendants' breaches of fiduciary duty.

64. Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff, Denmark Properties Limited, demands judgment against Defendants, GTA Advisors LLC and Carlos R. Weissenberg, for: (a) damages, in an amount to be determined at trial; (b) costs, interest, and reasonable attorneys' fees; and (c) all other relief that the Court deems just and proper.

COUNT III – ALTER EGO

65. Plaintiff, Denmark Properties Limited, incorporates and realleges paragraphs 1 through 45 above as if fully set forth herein.

66. At all times relevant, Weissenberg signed contracts on behalf of GTA, opened bank accounts for GTA, made banking transactions for GTA, traveled as a representative of GTA, and dominated and controlled GTA to such an extent that GTA's independent existence was in fact non-existent, and Weissenberg was in fact an alter ego of GTA.

67. Weissenberg did not have an investment advisor license in the United States, and instead used GTA as a corporate form to attract foreign investors.

68. Weissenberg used the corporate form of GTA for an improper purpose, namely, to induce Plaintiff into investing with him.

69. Weissenberg's improper and unlawful use of the corporate form of GTA caused Plaintiff to suffer damages.

WHEREFORE, Plaintiff, Denmark Properties Limited, demands judgment against Defendants, GTA Advisors LLC and Carlos R. Weissenberg: (a) piercing the corporate veil of GTA, (b) damages, in an amount to be determined at trial; (c) costs, interest, and reasonable attorneys' fees; and (d) all other relief that the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff, Denmark Properties Limited, demands trial by jury of all issues so triable.

Dated: September 18, 2019

Respectfully submitted,

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