



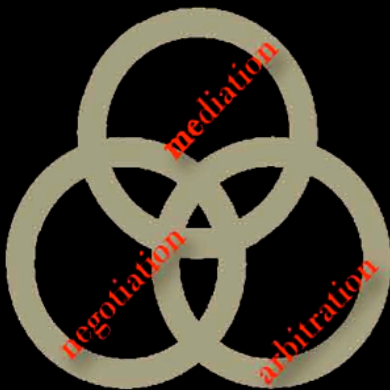
SCHOOL
OF LAW

and
The Financial Industry
Regulatory Authority



The Fourth Annual
**Securities
Dispute
Resolution
Triathlon**

A Three Skill Lawyering Event
Consisting of Competitions in



Saturday and Sunday
October 13 and 14, 2012
Manhattan Campus
101 Murray Street
New York, NY

ST. JOHN'S UNIVERSITY SCHOOL OF LAW and
THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

The Fourth Annual
SECURITIES DISPUTE RESOLUTION TRIATHLON PROBLEM -
2012

COLE VS. ROGERS*
Should you bank on it?
BACKGROUND FACTS

Investors, often with help from their brokers, decide whether or not to invest by first assessing the risk of the investment and then personally evaluating whether the risk of investing is worth the potential reward. However, assessing risk is often a guess and not an exact science. This was especially true during the turbulent financial times of much of 2008 and early 2009 when the financial markets and the real estate market were in turmoil. Which was the more prudent haven for an investor – to have put their money under their mattress, deposited it in a bank or invested in the market? In that state of economic flux, even the most widely-respected financial prognosticators offered divergent economic forecasts making it difficult for investors to assess the true risks of their investments.

Looking back at 2008, there was highly unusual instability in the financial sector, and the sustainability of our financial institutions was sharply questioned. In March 2008, JP Morgan Chase acquired a failing Bear Stearns. In June, Bank of America acquired a failing giant mortgage lender, Countrywide Financial. In September, Fannie Mae and Freddie Mac were placed in government conservatorship, Lehman Bros. filed for bankruptcy, Bank of America acquired a tottering Merrill Lynch, and AIG, a traditional financial powerhouse, was bailed out by the Federal Reserve. On October 3rd, Congress passed, and President Bush signed into law, the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), which established the \$700 billion Troubled Asset Relief Program (TARP). It is against this backdrop that our story unfolds.

Meet Nicky Cole, a retired, sixty-six year old public high school math teacher who lives in a one-bedroom co-op in Manhattan, which (s)he had purchased with (his)(her) spouse in 1995 for \$250,000. In 2007, after thirty-five years of teaching, Nicky decided to retire at age sixty one to care for (his)(her) sick spouse who was suffering from Alzheimer's disease. At that time, the co-op had gone up in value and was a welcome potential source of needed money. Nicky refinanced the co-op, taking out a larger 30 year, \$300,000 mortgage at 6% to assist in the funding of the anticipated health care Nicky's (his)(her) spouse was going to need. Despite Nicky's care and devotion, Nicky's spouse's health declined rapidly, and (s)he died in early 2008. Nicky was heartbroken and turned (his)(her) attention to providing for (his)(her) only remaining family, a daughter, Bryce and a four-year old grandson, Max.

The untimely death of (her)(his) spouse forced Nicky to re-evaluate (his)(her) life and revisit life decisions. First, Nicky decided it was important to remain in the one-bedroom co-op rather than to move. Nicky's daughter lived in the same neighborhood and relied on (her)(him) for regular babysitting and ongoing emotional support. Then, Nicky began to seriously consider what additional steps (s)he needed to take to ensure (his)(her) own economic wellbeing and to hopefully be able to provide some needed financial support to (his)(her) daughter and grandson. Although Nicky had a relatively comfortable lifestyle living in Manhattan, Nicky's income was insufficient to cover Nicky's monthly expenses and familial objectives.

In May 2008, Nicky was living on an annual income of approximately \$72,000 gross, part of which was from (his)(her) pension, part from (his)(her) social security, and part from (his)(her) investments in CDs. However, Nicky's monthly living expenses of \$6,500 exceeded (his)(her) monthly income. The total monthly carrying charges of the co-op, which was now worth \$400,000, were \$2,700, \$1,800 of which was the mortgage payment, and the remainder of which was maintenance charges. Most of Nicky's \$420,000 cash savings, amassed from (his)(her) spouses's life insurance and the additional funds from the new mortgage, was invested in short term CDs at annual interest rates averaging 3.0%. Each month Nicky dipped into savings to cover (his)(her) living expenses and also to provide some money to Bryce and Max. Nicky was afraid that (s)he was going to deplete (her)(his) savings, which would also reduce (her)(his) interest income.

By happenstance, while at a local charity fundraiser for Alzheimer's research in late May 2008, Nicky's good friend introduced Nicky to Morgan Rogers, the friend's trusted, long time broker at Champion Investment Services, Inc. (hereinafter "CIS") in New York City. Nicky began commiserating with Morgan about the devastation of Alzheimer's on their respective, beloved spouses. Nicky also confided about (his)(her) current, financial concerns. At Morgan's friendly suggestion, Nicky agreed to gather (her)(his) financial information and to meet with (her)(him) on June 17th.

On June 17th, Nicky met Morgan at the CIS office in Manhattan. (S)He provided all of the information set forth above, and emphasized (her)(his) strong need and desire to stay put in (her)(his) home and in (her)(his) neighborhood. Morgan told Nicky that CIS's affiliate, Champion Mortgage Service ("CMS"), made below market mortgage loans to CIS preferred customers. CMS's interest rate for a 30 year mortgage was 4.5%, which was 1.5% lower than Nicky's interest rate. This would lower Nicky's monthly mortgage payment to \$1,520, saving Nicky about \$280 per month. However, CMS would require that the \$300,000 mortgage be secured not only by the co-op, but by \$150,000 in a stock collateral account. Champion had concerns that the Manhattan residential real estate market was overinflated and required the stock collateral account to minimize its risk in the event of a housing market collapse.

At Morgan's suggestion, and after consulting with Bryce, Nicky decided to use CIS for (her)(his) investments and CMS for (her)(his) mortgage. Nicky would open two accounts. One account would be a regular investment account which Nicky would control, and the other would be the collateral account, securing Nicky's new mortgage, over which Morgan would have discretion. The two accounts would be linked; if the balance of the collateral account fell below \$150,000 as adjusted to reflect payments of principal, holdings would be sold automatically from the investment account and the proceeds transferred to the collateral account to make up the shortfall. Nicky would pay off the existing mortgage with the proceeds from the new mortgage.

On June 23rd, Nicky returned to Morgan's office and completed the necessary paperwork for the accounts and the mortgage. Nicky liquidated \$400,000 of the CDs, and deposited the money with CIS on July 1, 2008, half in the investment account, and half in the collateral account. The same four investments were purchased in both accounts. The first investment was a balanced mutual fund, which was invested in a mix of relatively conservative stocks and bonds. The mutual fund generated about 2.5% in interest income each year and had the potential to appreciate in value. The other three investments were preferred stocks of major banks. When Nicky asked Morgan about the preferred stocks, Morgan said they were "really like debt, and very stable." At that time, there were certainly respectable brokers and financial advisors who would have said the same thing. The stocks were paying dividends of 8% and, based on Nicky's investment, would generate about \$20,000 in income each year. This was significantly more income than the 3% average Nicky's former CDs had generated, and Nicky was happy with the decision.

By August and September of 2008, the mortgage crisis started to hit hard. Increasing mortgage defaults and foreclosure rates were accompanied by sharp drops in property values. Nicky saw a press conference on TV during which the government announced the takeovers of Fannie Mae and Freddie Mac. Shortly after that, there was the shocking Lehman bankruptcy, and the impending takeover and "bailout" of AIG. The banking sector was hit particularly hard, in part because of mortgage defaults and in part because of large holdings of mortgage backed securities. The banks were highly leveraged, which meant that their investment and other

losses would be greatly magnified—this was what had already happened at Lehman even though it was not a commercial bank. Morgan phoned Nicky in mid-August to inform (her)(him) that Morgan was watching the situation and recommending, for the time being, that Nicky hold tight.

Nicky was afraid to look at (her)(his) monthly statements, but, in late September, (s)he did phone Morgan who once again said (s)he should hold tight because “now was not the time to sell, and that the bank preferred stocks, even though the prices had dropped, were still paying the same amount of dividends so that the effective yield was now above ten percent.” Some would have agreed that bank preferreds had held up well in prior down markets. The Federal Reserve Chairman, Ben Bernanke and Treasury Secretary Henry Paulson had just addressed Congress, and there was talk of a bailout of the financial system. Morgan recommended hanging in because it looked like the banks were going to be okay. However, between October 1st and October 10th, the DOW fell for eight consecutive days, losing over 20% of its value. The market was up and the market was down over the subsequent weeks, depending on the news on any given day. Just one year prior, on October 9, 2007, the DOW had closed at its all-time high of 14,164.53. On November 20, 2008 the DOW closed at 7,552.

By the end of November, the value of the collateral account fell below \$150,000 for the first time. Shares of the mutual fund were sold from the investment account and the proceeds were transferred to the collateral account. In December, there was an upturn in the market and both accounts were up. However, January 2009 came and the market went down again. At the end of January, the collateral account had again dropped below the minimum required to secure the mortgage. More shares of the mutual fund were sold from the investment account, and the proceeds transferred to the collateral account.

In February, the market continued to decline. Faced with the prospect that the collateral account would soon be underfunded again, and concerned about an ever-dwindling balance in the investment account, Nicky, at (her)(his) child’s urging, liquidated the investments and closed the accounts. With the collateral account closed, Nicky needed to pay off the CMS

mortgage or provide new collateral. Nicky secured a new bank mortgage and used the proceeds, along with some of the cash from the accounts, to pay off the CMS mortgage.

Summary of the Account

With Morgan’s guidance, Nicky purchased the following in the investment account in July 2008:

Investment	Number of Shares	Price per Share	Total Investment
Champion Balanced Mutual Fund, Class A shares ¹	3,000	\$16.62	\$49,860
City Center Bank Preferred Stock	2,000	\$24.50	\$49,000
America Center Bank Preferred Stock	2,000	\$24.70	\$49,400
Fargo Financial Preferred Stock	2,000	\$23.70	\$47,400

Because the mutual fund shares were Class A shares, Nicky paid a 4.5% front-end sales load² on the investment in the Champion Balanced Fund, which came to \$2,350. Nicky also paid total commissions on the purchases of the preferred stocks in the amount of \$1,400. Each of the preferred stocks had a par value of \$25, and paid annual dividends of 8% of par value. The remainder of the \$200,000, \$590, was left in the account as cash.

Morgan invested the collateral account in varying amounts of the same investments:

Investment	Number of Shares	Price per Share	Total Investment
Champion Balanced Mutual Fund, Class A shares	6,000	\$16.62	\$99,720
City Center Bank Preferred Stock	1,250	\$24.50	\$30,625
America Center Bank Preferred Stock	1,250	\$24.70	\$30,875
Fargo Financial Preferred Stock	1,250	\$23.70	\$29,625

¹ Class A shares typically impose a front-end sales load, which is the amount you pay when you buy shares in a mutual fund. This fee typically goes to the brokers that sell the fund’s shares. Front-end sales loads reduce the amount of the investment. For example, if have \$1,000 and want to invest it in a mutual fund with a 5% front-end sales load, the \$50 sales load you must pay comes off the top, and the remaining \$950 will be invested in the fund.

² See, *Id.*

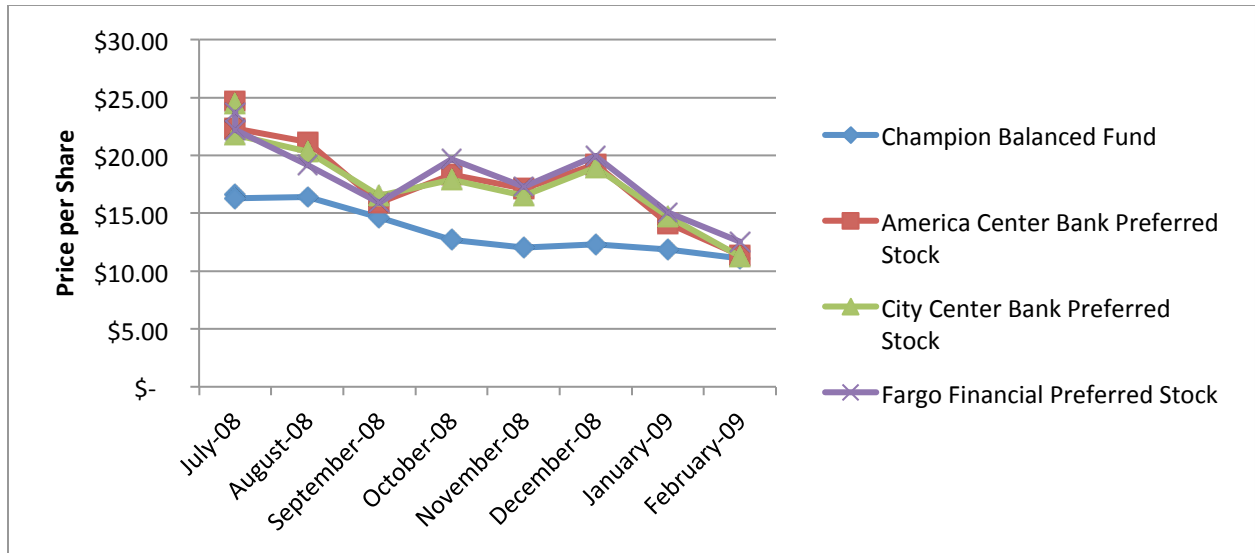
The front-end sales load³ on the Champion Balanced Fund was \$4,700, and the commissions on the stock purchases totaled \$950. The remainder of the \$200,000, \$3,505, was left in the account as cash.

In November 2008, \$10,000 of the Balanced Fund was sold from the investment account and transferred to the collateral account. At the end of January 2009, another \$10,000 of the Balanced Fund was sold from the investment account and transferred to the collateral account.

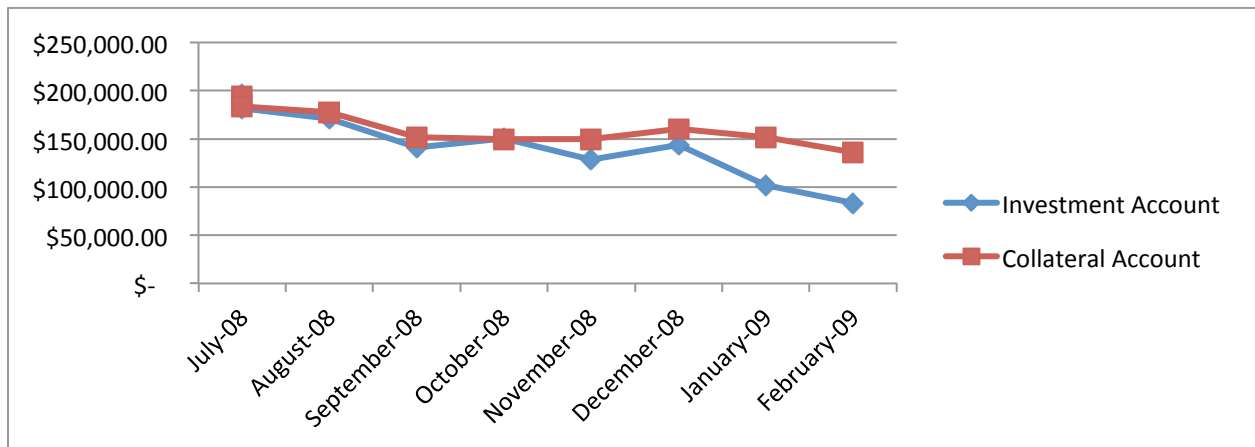
At the end of February 2009, Nicky liquidated the two accounts. Nicky paid a total of \$1,600 in commissions on the sales of the preferred stocks in the two accounts. There was no commission charge for the sale of the Champion Balanced Fund. In total, Nicky received back \$83,617 from the investment account and \$136,083 from the collateral account, a total loss of \$180,300 from the original \$400,000 invested while the accounts were open. Nicky had also received quarterly income from the preferred stocks and the Champion Balanced Fund - a total of \$11,478 from the investments in the individual account and \$7,580 from the collateral account. Nicky was only able to secure a new thirty year fixed bank mortgage for \$250,000 at 5% interest. Nicky used this money, as well as about \$40,000 in cash from the accounts to pay off the CMS mortgage. Nicky was hence left with about \$180,000 in cash from the accounts.

The following chart illustrates the changes in the prices of the investments over the relevant time period:

³ See, *Id.*



This chart illustrates the values of the two accounts over the relevant time period:



The Complaint

Nicky ultimately retained counsel, and has now filed a Statement of Claim with FINRA against Morgan in January 2012, electing the all public arbitration panel option. Champion is out of business and is judgment proof. Apparently Champion had invested its own money in mortgage backed securities, and wasn't able to survive the downturn in the market. The allegations in the Statement of Claim include unsuitability and "overconcentration" of the preferred stocks, breach of fiduciary duty, fraud and negligence. Nicky seeks the realized losses in the account of \$180,300, as well as interest, and all fees and costs including attorneys' fees. In early March 2012, Morgan filed a Statement of Answer with FINRA. In the Answer, Morgan

denies any liability to Nicky. Morgan states that the losses were due to market conditions, not inappropriate advice. Morgan alleges that if Nicky had continued to hold the investments, the preferred stocks would have fully regained their value by the time the Answer was filed, and the accounts would have continued to generate over \$20,000 in income each year.

Expectedly, Nicky and Morgan have very different ideas about how rational investing decisions are made and who is at fault for this debacle.

NEGOTIATION ROUND:

In this round, each team is to negotiate based on the background facts and the private facts of the client the team is representing. Nicky and Morgan shall be the parties present at the negotiation.

MEDIATION ROUND:

In this round, please assume that there was no agreement reached in the negotiation round because of Nicky's intense emotions about the losses in the account. Each team is to proceed based on the background facts and the private facts of the client the team is representing. Please disregard any additional information which may have been revealed in the previous round as well as any agreements that may have been reached. Nicky and Morgan shall be the parties present at the mediation.

ARBITRATION ROUND:

In this round, please assume that there was no agreement reached in the mediation round because of Morgan's insistence that the advice given was good based on the market conditions at the time. In this round, each team is to proceed based on the background facts and the private facts of the client the team is representing. Please disregard any additional information learned in the previous two rounds as well as any agreements that may have been reached.

There will be one witness for each side: Nicky for the Claimant and Morgan for the Respondent. The Statement of Claim is attached hereto as "Attachment 1". The Statement of Answer with exhibits is attached hereto as "Attachment 2". Nicky's Submission Agreement is "Attachment 3" and Morgan's Submission Agreement is "Attachment 4". The Statement of Claim and the Statement of Answer with exhibits will be Arbitrator's Exhibit One, and are therefore part of the record.

* This problem was created by the Triathlon Problem Committee: Ken Andrichik, Lisa Catalano, Elayne E. Greenberg, Paul F. Kirgis, Christine Lazaro, and Nicholas R. Weiskopf. A very, special thanks to Christine Lazaro and Nicholas Weiskopf for lifting the heavy oars and working hard to keep their efforts in synch.

Private Facts for Nicky:

For the past five years it seems as if your life has been like a roller coaster ride in hell. How could somebody like you be in a place like this? Before you decided to retire in 2007 to care for your ailing spouse, you were a respected educator for thirty-five years. You remained a devoted spouse throughout the time your spouse deteriorated from Alzheimer's disease. You are a loving and devoted parent to your only child Bryce and a doting grandparent to seven-year old Max. Bryce is a single parent who has an ongoing struggle balancing the daily demands of parenting with the competing demands of launching a high end pet store that specializes in gourmet dog food and dog training. Unfortunately, the pet store is not yet thriving. Of course, you believe it is your parental obligation to emotionally and financially support Bryce and Max. That's just what good parents do. And good grandparents make sure their grandson has a good life - sporting events, new computers, trips, shows, camp and a good education.

The untimely death of your spouse had forced you to re-evaluate your life and revisit life decisions. How you miss your spouse, and how you would like to make sure others don't go through the pain of losing a loved one to Alzheimer's.

In May 2008, you were living on an annual income of approximately \$72,000, part from pension, part from social security, and part from investments in CDs. Although your co-op appears to be the only good investment you have made in the long run, it is still costly. First you had your total monthly carrying charges on the co-op which were \$2,700, \$1,800 of which was the mortgage payment, and \$900 of which was maintenance charges. Sixty-five percent of the maintenance charges were deductible. Beyond the monthly maintenance, the co-op board has imposed several costly assessments to each co-op owner for co-op general repairs. You have had to pay \$5,000 for the roof in 2009, \$4,300 for window replacements in 2010, \$3,500 for a new heating system in 2011 and who knows what is next.

Before you met Morgan, the only professional financial guidance you had received was from your school's pension rep who had advised you several years back to put

your money in short term CDs. However, when you realized that the income your savings was generating was insufficient to bridge the gap between your annual income and estimated monthly living expenses, you understood that you now needed guidance from a professional with more investing savvy than the pension rep. That was the whole purpose of investing with Morgan.

Morgan was introduced to you as a well-respected broker who had helped your friend cultivate a sizeable nest egg. You thought Morgan would help you get a greater return on your money. You did not think you were taking any appreciable risks. Morgan had always reassured you that (s)he would guide you to invest wisely. You had read an article in USA Today in early May 2008, which said preferred stocks can give you income and appreciation. (The USA Today Article may be found at http://www.usatoday.com/money/perfi/columnist/krantz/2008-05-05-preferred-stock_N.htm?loc=interstitialskip#.) Morgan seemed to know what (s)he was doing when, a few weeks later, this is what (s)he was strongly recommending. With the benefit of hindsight, you would have been far better off if you had paid down the bank mortgage, and invested less money. How irresponsible of Morgan to recommend a collateral account for a new mortgage that was only 1.5% lower. The benefit definitely did not outweigh the risk, and Morgan should have known that.

Right after you spoke with Morgan in September 2008, you saw an article in the NY Times, which said the banks and financial firms were rallying in hopes of a bailout. (The NY Times Article may be found at http://www.nytimes.com/2008/10/01/business/01markets.html?_r=1.) You thought you were getting good advice from Morgan. When the market got bad, Morgan, who knew your situation, should have advised you to move your money out of your investments, especially the preferred stocks. In fact, you should not have had so much money concentrated in one particular type of security. It was Morgan's obligation as your broker to advise you better.

Instead, Morgan kept advising you to hold tight. By February, 2009 it was clear the market was crashing. You even saw a recipe in the NY Times in mid-February for a cocktail called “The Market Crash”. (The NY Times Recipe may be found at

<http://www.nytimes.com/2009/02/18/dining/183lrex.html>.) How could you leave your money with Morgan when it seemed like (s)he didn’t know what was going on any more? Besides, Bryce kept urging you to pull out. True, Bryce doesn’t have the greatest business acumen, but at least she is concerned about your financial security. Weren’t you right to follow the urgings of your beloved daughter who relies on your financial support rather than your disinterested broker?

Why didn’t Morgan have you sell sooner? Didn’t Morgan hear the same information you were hearing? Of course, you realize now had you not liquidated the preferred stocks, the accounts would, by today, have regained their value. Also, the significant rates of return on the preferred stock would have continued. But how could you take that chance? What if you had run out of funds? How were you to repay the CMS mortgage? Whose responsibility is it to ensure that retired teachers make good financial investments?

Private Facts For Morgan:

You have a long-held reputation of being a respected broker. In fact, Nicky's friend, a satisfied customer, introduced Nicky to you. You have built your career on satisfied clients. Your reputation is important to you. You cannot allow a customer who ignores your well-reasoned advice to impugn your reputation.

You know all too well that an occupational hazard of being a broker is that disgruntled customers who suffer the natural losses that are inherent in investing often try to make the broker the scapegoat. You understand that, and you're sorry when any customer has a loss, but you will not be a scapegoat. Preferred stocks have historically been very stable, and have yielded a high rate of return. Your recommendations were reasonable. Nicky came to you asking for high income from the investments.

Assuming Nicky provided you with accurate information, you based your recommendations on Nicky's economic realities and goals. According to Nicky, in May 2008, Nicky's annual income was \$72,000, part from pension, part from social security, and part from income from CDs. Nicky was the sole owner of the co-op, which was worth \$400,000. Nicky mentioned that a school's pension rep had advised (him)(her) to put (his)(her) money in short term CDs. Obviously, Nicky wanted more income than that. You knew the bank preferred stocks were paying about 8% interest every year, about 5% more than what Nicky's CDs were yielding. If \$250,000 was put in the preferred stocks, Nicky would receive almost \$20,000 in income each year. Plus, with the new mortgage interest rate, Nicky's costs would decrease by over \$3,000 a year.

Of course, with hindsight, it's easy to see that the market was crashing. But at the time, as an experienced broker, you believed you were doing what you thought was best. And, you kept in ongoing contact with Nicky to allay any concerns. On October 10, 2008, you saw an article in CNN Money about the volatility of the DOW. (The CNN Money Article may be found at http://money.cnn.com/2008/10/10/markets/markets_newyork/index.htm.) Even

the experts weren't sure what was going to happen – there was speculation that the market may have hit its low. On November 10, 2008, Forbes published an article about preferred stocks, reaffirming your advice to Nicky in September. (The Forbes Article may be found at <http://www.forbes.com/forbes/2008/1110/064.html>.) You were doing what you thought was best. You were sure the bank stocks would have to recover. It was clear Nicky needed income, and the account was still providing that. Moreover, experience has taught you that if you withstand the waves of the market, the market usually rebounds if you are able to stay in long enough. Even when Moody's downgraded fifteen major banks in the summer of 2012, more experienced people understood it was a political statement and that the banks would eventually rebound.

Your bad luck continues. You are having difficulty finding a new job because of your affiliation with Champion, the kiss of death. You have some savings, but will need to borrow money to pay for any claim over \$100,000. Why did it come to this? You have traditionally made a good living in the business, weathered the intermittent cycles in the market and still want to remain in the industry. You were with Champion for ten years, and were with The Rock Financial for fifteen years prior to that. Miraculously, you have never before had a complaint filed against you, because you have always done the right thing for your clients. You have a desire to avoid any adverse determination. Three "public arbitrators" will hear this case. Will they understand what happened? To make matters worse, you are the only one on the line left holding the bag. How unfair!

When it rains it pours, and the heavens have opened up. Your spouse has advanced Alzheimer's, and your spouse's condition has deteriorated to the point that round-the-clock care at home or a nursing facility is warranted. We all know that is a huge emotional and financial drain. How you would like to spare other families from dealing with the undignified ravages of Alzheimer's. You were pleased to find that a therapy dog seemed to improve the overall health of your spouse. The therapy dog has diminished your spouse's agitation, increased your spouse's mobility and enhanced your spouse's overall happiness. You would like to work with the

Alzheimer's foundation to expand the use of therapy dogs with more Alzheimer's patients.

Clients habitually blame their brokers for their own bad investing decisions. Nicky Cole needs to take responsibility for the financial debacle at issue. The preferred stocks you had recommended would have regained their value if (s)he followed your advice to hold tight. Nicky panicked and sold when the market was at its lowest. If Nicky had been patient, the losses (s)he suffered would have been erased. Of course, the significant rates of return on the preferred stock would have continued as well.

Nicky has to understand that it is not your fault that the market became so unstable. You want to understand what else you could have communicated to Nicky to allay (his)(her) concerns. What, if anything, could you have done to reassure Nicky and have Nicky follow your recommendations?

accounts declined in value. By the end of November 2008, the collateral account fell below \$150,000, and some of the mutual fund was sold from the investment account to make up the difference. At the end of January 2009, the value of the collateral account had dropped again, and more of the mutual fund was sold and the proceeds transferred to the collateral account. These two sales of the mutual fund led to a further overconcentration in the bank preferreds which were becoming increasingly volatile. By the end of February 2009, Cole was afraid of losing the rest of (his)(her) retirement savings. This was money Cole depended on to live. As Rogers also knew, Cole needed funds for (her)(his) daughter and grandchild. (S)He had already lost too much. Cole liquidated the investments in the two accounts and closed the accounts. As a result, Cole realized losses of \$180,300, 45% of the original investment. While, with time, the bank preferreds would eventually recover, this was an ongoing risk that, as Rogers knew, Cole simply could not afford to take.

Pursuant to FINRA Rule 2310, Rogers was required to have reasonable grounds for believing that the investments recommended were suitable for Cole. It was unsuitable for Rogers to recommend that Cole invest well over half of money in the two accounts in preferred securities from the banking sector. This concentration grew when part of the mutual fund was sold from the investment account to fund the collateral account. At the time of the recommendations in late June 2008, the banking sector was already suffering due to the mortgage crisis. Rogers knew or should have known that the investments were unduly risky for someone who was retired and required income from the accounts to meet living expenses. Not even the dividends on the preferred stock were guaranteed.

Moreover, Rogers had a duty to keep Cole informed about market conditions, but Rogers continually advised Cole to hold the investments, notwithstanding their significant decline. Accordingly, Cole chose the only prudent course at that point – to stop following Rogers’ advice.

Rogers had control over the collateral account, and therefore owed Cole a fiduciary duty. Rogers breached this duty, and acted either fraudulently or negligently

in failing to provide appropriate advice to Cole initially and throughout the duration of the relationship.

RELIEF REQUESTED

Based upon the foregoing, Cole requests an award against Respondent Rogers for compensatory damages in the amount of Cole's realized losses, \$180,300, interest, and all fees and costs including attorneys' fees for Rogers' misconduct.

10%. Had Claimant continued to hold the investments, as Rogers had recommended, Claimant would have continued to earn approximately \$20,000 in income each year. Additionally, the market values of the securities have fully recovered. Claimant would not have lost any money.

Moreover, in the short nine months that the accounts were open, the investments generated over \$19,000 in income for Claimant. It is disingenuous for Claimant to now claim that the investments were unsuitable simply because (s)he did not follow Rogers advise and chose to sell them when the market was at its lowest.

Claimant has failed to establish any actionable conduct on the part of Rogers. To the extent Rogers owed Claimant a fiduciary duty, it was only owed with respect to the collateral account. However, Rogers did not violate any duties owed to Claimant. The investments were appropriate for Claimant's stated investment objectives. The advice Rogers gave Claimant in the midst of unprecedented market turmoil was appropriate.

Accordingly, Rogers requests that the arbitration panel dismiss all claims, assess all fees against Claimant, and award Rogers attorneys fees.

NEW ACCOUNT APPLICATION



Champion Investment
Services, Inc.

Account Type: Individual Account Collateral Account Joint Account (more than one account holder)

Applicant Information

Nicky _____ Cole _____
First Name Middle Name Last Name

22 Fourth Avenue _____
Permanent Address

New York _____ NY _____ 10000 _____
City State ZIP Code

555-555-5555 _____ 555-999-9999 _____
Work Phone Home Phone

Are you:
 Single Married Domestic Partner Divorced Widowed Number of Dependents: _____ 0

Are you currently:
 Employed Self-Employed Not Employed Retired Student

Occupation _____

Household Financial Background

ANNUAL INCOME (from all sources)	NET WORTH (excluding residence)	LIQUID NET WORTH
<input type="checkbox"/> \$25,000 and under	<input type="checkbox"/> \$25,000 and under	<input type="checkbox"/> \$25,000 and under
<input type="checkbox"/> \$25,001-50,000	<input type="checkbox"/> \$25,001-50,000	<input type="checkbox"/> \$25,001-50,000
<input checked="" type="checkbox"/> \$50,001-100,000	<input type="checkbox"/> \$50,001-200,000	<input type="checkbox"/> \$50,001-200,000
<input type="checkbox"/> \$100,001-250,000	<input checked="" type="checkbox"/> \$200,001-500,000	<input checked="" type="checkbox"/> \$200,001-500,000
<input type="checkbox"/> \$250,001-500,000	<input type="checkbox"/> \$500,001-1,000,000	<input type="checkbox"/> \$500,001-1,000,000
<input type="checkbox"/> Over \$500,000	<input type="checkbox"/> \$1,000,001-3,000,000	<input type="checkbox"/> \$1,000,001-3,000,000
	<input type="checkbox"/> Over \$3,000,000	<input type="checkbox"/> Over \$3,000,000

Risk Tolerance

- Conservative.** I want to preserve my initial principal in this account, with minimal risk, even if that means this account does not generate significant income or returns and may not keep pace with inflation.
- Moderately Conservative.** I am willing to accept low risk to my initial principal, including low volatility, to seek a modest level of portfolio returns.
- Moderate.** I am willing to accept some risk to my initial principal and tolerate some volatility to seek higher returns, and understand I could lose a portion of the money invested.
- Moderately Aggressive.** I am willing to accept high risk to my initial principal, including high volatility, to seek high returns over time, and understand I could lose a substantial amount of the money invested.
- Significant Risk.** I am willing to accept maximum risk to my initial principal to aggressively seek maximum returns, and understand I could lose most, or all, of the money invested.



Investment Objective

- Income
 Growth
 Aggressive Growth
 Tax Deferral
 Growth & Income

Financial Investment Experience

Investment	Years experience	Investment	Years experience
Mutual Funds	<u>0</u>	Securities Futures	<u>0</u>
Individual Stocks	<u>0</u>	Annuities	<u>0</u>
Options	<u>0</u>	Margin	<u>0</u>
Bonds	<u>0</u>		

Agreement to Arbitrate

You agree to submit to arbitration any dispute between you and Champion Investment Services, Inc. and/or any of its officers, directors, employees or agents relating to your brokerage account(s). Any arbitration under this agreement will be conducted under the arbitration rules of FINRA Dispute Resolution. Arbitration may be initiated by either of us serving written notice on the other. The arbitrators' ruling will be final and judgment on it may be entered in any court of competent jurisdiction.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any predispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class action who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified, or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

- (A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.
- (B) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.
- (C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.
- (D) The arbitrators do not have to explain the reason(s) for their award.
- (E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.
- (F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.
- (G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

Signatures

Nicky Cole

Primary Applicant Name (please print)

Nicky Cole

Primary Applicant Signature

6/23/2008

Date



Investment Objective

- Income
 Growth
 Aggressive Growth
 Tax Deferral
 Growth & Income

Financial Investment Experience

Investment	Years experience	Investment	Years experience
Mutual Funds	<u>0</u>	Securities Futures	<u>0</u>
Individual Stocks	<u>0</u>	Annuities	<u>0</u>
Options	<u>0</u>	Margin	<u>0</u>
Bonds	<u>0</u>		

Agreement to Arbitrate

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- (G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

Signatures

Nicky Cole

Primary Applicant Name (please print)

Nicky Cole

Primary Applicant Signature

6/23/2008

Date

FINRA ARBITRATION Submission Agreement

Claimant(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Nicky Cole

and

Name(s) of Respondent(s)

Morgan Rogers

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.

Nicky Cole

Claimant Name (please print)

Nicky Cole

Claimant's Signature

January 16, 2012

Date

State capacity if other than individual (*e.g.*, executor, trustee or corporate officer)

FINRA ARBITRATION Submission Agreement

Respondent(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s)

Nicky Cole

and

Name(s) of Respondent(s)

Morgan Rogers

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.

Morgan Rogers

Respondent Name (please print)

Morgan Rogers

March 9, 2012

Respondent's Signature

Date

State capacity if other than individual (*e.g.*, executor, trustee or corporate officer)