

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Benjamin and Milea Sarap,
c/o Peiffer Wolf Carr & Kane
A Professional Law Corporation
1422 Euclid Avenue
Suite 1610
Cleveland, Ohio 44115

Plaintiffs,

v.

Ronald Joseph
6217 Lampton Pond Drive
Hilliard, Ohio 43026

American Equity Advisory Group, LLC
250 International Parkway
Suite 146
Lake Mary, Florida 32746

Defendants.

Civil Action No:

(Jury Trial Demanded)

Plaintiffs Benjamin and Milea Sarap complain of Defendants Ronald Joseph (“Joseph”) and American Equity Advisory Group, LLC (“American Equity”) (collectively referred to as “Defendants”) and respectfully allege as follows:

NATURE OF THE ACTION

1. This action seeks redress for Plaintiffs Benjamin and Milea Sarap (“Plaintiffs”), who are citizens and residents of the County of Delaware in the State of Ohio. Plaintiffs were harmed

by Defendants' recommendation and sale of life insurance policies to be funded through the use of "structured cash flows" sold by Future Income Payments, LLC, f/k/a Pensions, Annuities and Settlements, LLC and FIP, LLC ("FIP").

2. Defendants provided retirement planning and financial advice to Plaintiffs. Defendants advice mostly involved the sales of insurance products. With respect to Plaintiffs, Defendants recommended that they purchase a universal life insurance policy that would be funded at a target level. When fully funded, those policies would provide a death benefit and would have an accumulated value, supplemented by returns in the policy's investment component, that would allow policyholders to supplement their retirement income by borrowing against the policy.
3. Defendants further advised Plaintiffs that they should implement this strategy by using structured cash flows acquired through FIP. Policyholders would pay a lump sum to FIP to purchase a monthly income stream that represented the total amount paid to FIP plus a pre-determined rate of return, which depended on the term of the structured cash flow. For example, a policyholder might pay FIP \$100,000 to acquire a monthly income stream for a period of 3 years at a 5% rate of return. FIP paid higher returns for cash flows with longer terms.
4. Defendants recommended that Plaintiffs use FIP income streams to pay their life insurance premiums, as the rate of return that they received on the FIP product would allow them to fund their life insurance policies at a higher target amount than they otherwise could by paying a lump sum or utilizing other options (i.e., a money market account or CD) for the same purpose.

5. For its part, FIP funded the cash flows it sold to Plaintiffs by “purchasing” future income from individual pensioners, including retired teachers, police officers, and military personnel. FIP offered pensioners up-front, lump-sum payments in exchange for receiving a portion of their monthly pension payments over a specific term, often three to five years. FIP would purchase these pension payments at a “discount,” such that the total of the monthly payments made by the individual pensioners to FIP far exceeded the amount of the lump-sum he or she received, amounting to an effective interest rate of nearly 100% in some cases.
6. Even though FIP characterized these transactions with pensioners as “purchases,” numerous state and federal regulators have investigated and determined that the deals were, in fact, loans. Those loans were unlawful transactions, as they were made by an unlicensed lender (FIP) at effective interest rates that violated state usury laws, without legally mandated disclosures. These regulatory actions resulted in numerous orders requiring FIP to cease and desist its pension advance operations in various states and municipalities.
7. As a result of this mounting regulatory pressure, FIP ceased collecting payments from pensioners or making payments to income stream purchasers on or about April 2018.
8. The loss of the monthly income streams that Plaintiffs purchased from FIP has been devastating. Those payments were essential to funding their life insurance policies and avoiding lapse, surrender charges, or other penalties.
9. As such, Plaintiffs expected that the FIP income streams they purchased would be safe and secure. Defendants also clearly understood that the funds its customers paid to fund their life needed to be protected and could not be subject to unreasonable risk of loss.

10. Despite this fact, Defendants recommended the FIP funding strategy to its customers without doing adequate due diligence and in negligent disregard of the numerous risks associated with the FIP cash flow transactions. As the regulatory actions against FIP make clear, the FIP cash flow product was inherently flawed and subject to serious risks that should have prevented Defendants from recommending that Plaintiffs use it to fund their life insurance policies.
11. Defendants either knew or should have known that the FIP product was not safe enough to justify using it as part of the life insurance strategy recommended by Defendants. In addition to the issues raised in the various regulatory actions, numerous other risks made these FIP transactions wholly inappropriate for use of funding life insurance policies. Defendants violated their duties to Plaintiffs by recommending that they use FIP cash flows to fund their life insurance policies.

THE PARTIES

12. Plaintiffs Benjamin and Milea Sarap (“Plaintiffs”) are citizens and residents of the County of Delaware in the State of Ohio. Plaintiffs sought financial advice and strategy from Defendants start in or around August 2016.
13. Defendant Ronald Joseph (“Joseph”) is, upon information and belief, a citizen of the State of Ohio. Defendant is an agent of American Equity Advisory Group, LLC. Defendant offers his advising and financial services to the general public in addition to selling life insurance.
14. Defendant American Equity Advisory Group, LLC (“American Equity”) is a Florida limited liability company with its principal place of business in Lake Mary, Florida. American Equity provides advising and financial services to individuals across the country.

15. Defendant American Equity, through its agent Defendant Joseph, offered and sold to Plaintiffs two separate investments in FIP that were used to fund premiums of a life insurance policy sold to Plaintiffs by Defendants.

JURISDICTION AND VENUE

16. Venue is proper in this County by virtue of, among other things, the fact that substantial part of the events giving rise to this Complaint occurred in this County.
17. Jurisdiction is proper in Franklin County, Ohio as the acts and services complained of occurred in Franklin County.

THE FIP SCHEME

18. FIP promoted a dual strategy against the citizens of Ohio: it bought pensions under questionable terms and it sold those pension streams to investors without disclosing the risks.
19. On the front end, FIP made loans to Ohio residents secured by their future pension or payments, without being licensed as required by Ohio law.
20. FIP also turned around and sold those pension payments to its investors, often through intermediaries. The basic idea of pension related structured cash flow, the other side of the FIP coin, is this: an investor pays a lump sum in exchange for the right to collect another individual's pension, disability plan, or other benefit program. Provided that the pension holder lives long enough, the investor could see a return in excess of his initial investment. Unfortunately, there are hurdles faced by many who engage in these risky investments – the pensioner could pass away suddenly, or certain federal laws, such as the Employee Retirement Income Security Act of 1974 (“ERISA”) could disqualify the investor from receiving the benefits purchased with the upfront lump-sum payment.

21. A further unexplained risk would be if FIP ceased doing business as a result of ongoing and concluded regulatory investigations.
22. At least 11 states and the CFPB have found these arrangements problematic. As the CFPB found, “[i]n the past few years, the income stream market has come under sharp scrutiny for allegedly marketing loans at undisclosed, exorbitant interest rates to vulnerable populations, including veterans and the elderly.” *See John Doe Co. v. CFPB*, 849 F.3d 1129, 1130 (D.C. Cir. 2017); U.S. Gov’t Accountability Off., GAO-14-420, Pension Advance Transactions: Questionable Business Practices Identified (2014), <http://www.gao.gov/assets/670/663800.pdf>. In February of 2017, the City of Los Angeles also filed suit against Future Income Payments, alleging that the company charged usurious, hidden interest rates as high as ninety-six percent, prohibited early termination of the loans (thereby ensuring that consumers could not avoid the high interest rates), and employed abusive collection practices.
23. The states and their regulators have flagged these transactions as loans subject to lending and usury laws:
 - a. The State of Colorado determined that FIP Delaware and other Kohn entities were making loans without proper licensure. In a January 2015 assurance of discontinuance, FIP Delaware and other Kohn entities agreed not to enter into any transactions in Colorado without first obtaining a supervised lender’s license and not to charge interest on their existing agreements in Colorado.
 - b. In March of 2015, the State of California issued a desist and refrain order against FIP Delaware and other entities owned or controlled by Kohn, alleging that they were

engaged in the business of financial lending or brokerage without a license. In September of 2015, FIP Delaware and other Kohn entities agreed not to engage in transactions in California without obtaining a license.

- c. In March of 2016, FIP Delaware entered into an assurance of discontinuance with the Commonwealth of Massachusetts that it would not enter into any future agreements with Massachusetts residents and that it would not charge interest on its existing contracts with Massachusetts residents.
- d. In June of 2016, FIP Delaware entered into a settlement with the State of North Carolina whereby it agreed to reform its existing North Carolina transactions and to ensure that any future transactions with North Carolina residents would comply with the state's usury laws.
- e. FIP Delaware entered into a consent order with the State of New York in October of 2016, in which it agreed not to enter into any future transactions with New York residents and not to charge interest on its existing contracts with residents of New York.
- f. Under a December of 2016 consent order with the State of Washington, PAS agreed not to enter into any transactions with Washington residents without obtaining a license and not to charge interest on its existing contracts with Washington residents.
- g. Under an assurance of compliance reached with the State of Iowa in December of 2016, FIP Delaware agreed not to enter into any future transactions with Iowa consumers and not to charge interest on its existing contracts in Iowa.
- h. In February of 2017, as noted above, the Los Angeles City Attorney filed suit against Kohn, FIP Delaware, and other Kohn entities for, *inter alia*, failing to obtain a license

to lend, making usurious loans, failing to disclose the terms of the loans, falsely threatening defaulting borrowers with criminal liability if they failed to make their monthly payments, and making illegal and harassing phone calls to collect on defaulted loan payments.

- i. In May of 2017, the Commonwealth of Pennsylvania issued a cease and desist order against FIP Delaware, Kohn, and all other persons and companies under their control for engaging in the business of making loans without a license and charging usurious rates of interest.
- j. In August of 2017, the State of Minnesota asked the court to find that FIP's actions violated Minnesota law, and enjoin it from continuing in those violations; to declare all FIP loans to be void and releasing Minnesota residents from any obligations incurred under those agreements; to force FIP to make restitution to any residents harmed by its practices; and to require FIP to pay civil penalties.
- k. In January of 2018, the State of Oregon launched an investigation of FIP's practices.
- l. In February of 2018, the Illinois Department of Financial and Professional Regulation issued a cease and desist order, providing that FIP cease making loans to Illinois residents, stop collecting on loans previously made to Illinois residents, and produce all documents in its possession containing all information pertinent to past and present contracts with Illinois residents.
- m. In March of 2018, the Commonwealth of Virginia sued FIP, alleging that it targeted elderly veterans and retired civil servants in a scheme that masquerades high-interest predatory loans as "pension sales."

- n. In April of 2018, the State of Illinois asked the court to void FIP's deceptive contracts and sought restitution for Illinois residents who had contracted with FIP. The State also sought to prohibit FIP from marketing or offering loan services without being licensed in the state. Civil penalties were also requested.
 - o. In April of 2018, the State of Maryland ordered FIP to stop making new pension advances and other loans to Maryland consumers, and it also required that FIP stop collecting on any existing advances or other loans.
24. Balanced on top of this shaky framework, FIP also created an investment pyramid. Once the pensioners had sold the future rights to the monthly cash flows of their pensions in exchange for lump sum payments, FIP – and/or the financial institutions through which they made the purchase – turned around and sold the monthly cash flows to investors. The investments were advertised as sources of predictable monthly income with high yields, with benefits increasing based on extended investment terms, but they came with complex financial risks that were not disclosed to the investors.
25. Pension structured cash flows are illiquid, which means that they can be difficult to sell. These products are not usually registered with the U.S. Securities and Exchange Commission (“SEC”), so – when problems do arise – it can be difficult to resolve them. Further complicating this nebulous situation is that the investor's legal rights to the pension cash flow can be challenged since it is often illegal to purchase pension funds.
26. In spite of the obvious risks and the many regulatory actions taken against FIP, Defendants assured Plaintiff and his other clients that FIP was a safe investment – and many of the clients pulled substantial sums out of balanced mutual funds and other stable investments to

purchase a pension structured cash flow with FIP. These contracts generated monthly payments at favorable rates up until the point where the risks chased FIP out of business – and the investors were suddenly left with nothing to show for their investments.

PLAINTIFFS' FACTUAL BACKGROUND

27. Plaintiffs Benjamin and Milea Sarap are residents of Sunbury, Ohio. Plaintiffs had developed a relationship with Defendant Joseph as he was a pastor of their church. Defendant Joseph offered to counsel Plaintiffs on financial matters and Plaintiffs took Defendant Joseph up on the offer.
28. In August 2016, Defendant Joseph, while acting as an agent of American Equity, sold to Plaintiffs a universal life insurance policy. To pay for the first year's worth of premiums for the policy, Defendant Joseph advised Plaintiffs to refinance their home and use the proceeds from the transaction to cover the policy's premiums.
29. For Plaintiffs to meet future premium payments for the life insurance policy, Defendant Joseph recommended to Plaintiffs the FIP income stream funding mechanism. In or around November 2016, Plaintiffs invested \$65,933.35 in FIP to receive recurring payments deriving from the pensions purchased by FIP in order to fund the insurance policy premiums.
30. In or around December 2017, Defendant Joseph again sold Plaintiffs another FIP investment in the amount of \$65,000.
31. As a result of Defendants' recommendations and sales of the FIP investments, Plaintiffs have incurred significant losses and are in jeopardy of failing to make the large annual premium payment for their universal life insurance plan.

**FOR THE FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

(Against All Defendants)

32. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged fully as if set out herein.
33. Plaintiffs entered into contracts with Defendants.
34. Defendants contracted with Plaintiffs (“Agreement”) to provide sound financial advice.
35. The Agreement constituted a legal, valid and binding contract between Plaintiffs and Defendants.
36. Defendants breached those obligations by failing to conduct due diligence and by recommending the purchase of FIP products. For example, Defendants should have discovered that the FIP product was a fraud, was banned in multiple states, and that it was under intense investigation by other states.
37. As a direct and proximate result of Defendants’ breaches, Plaintiffs are entitled to recover the damages they have suffered including (1) actual damages, including the return of her principal and interest at the rate specified in the investment, (2) consequential damages, (3) costs, (4) prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable, and proper arising from the Defendant’s breaches.

**FOR THE SECOND CAUSE OF ACTION
Breach of Fiduciary Duty
(Against All Defendants)**

38. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

39. Defendants were a fiduciary to each investor, including Plaintiffs, to whom they gave investment advice, provided investment services, and/or solicited or sold financial products, including FIP.
40. Defendants owed Plaintiffs the utmost good faith and to act solely in the best interests of the Plaintiffs.
41. Defendants had the duty to ascertain the quality of the investment and to refrain from soliciting or entering into transactions that were illegal and/or improper.
42. Upon information and belief, Defendants violated their fiduciary obligations to Plaintiffs by failing to conduct appropriate due diligence as to FIP.
43. As result of Defendants' breach of fiduciary duty, Plaintiffs proximately suffered substantial injury and damage. Plaintiffs are entitled to (1) actual damages, (2) consequential damages, (3) punitive damages, and (4) such other relief as is just, equitable, and proper.

**FOR THE THIRD CAUSE OF ACTION
Common Law Negligence
(Against All Defendants)**

44. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.
45. Defendants offered investment advice to Plaintiffs and thus owed the Plaintiffs the clear duty to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Plaintiffs' unique situation and investment objectives.
46. Defendants breached their respective duties to Plaintiffs to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Plaintiffs to suffer damages.

47. Plaintiffs are therefore entitled to (1) actual damages, (2) consequential damages, (3) costs, (4) prejudgment interest, and (5) such other relief as is just, equitable and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- a. For actual damages;
- b. For consequential damages;
- c. For prejudgment interest at the highest legal rate;
- d. For the costs of this action;
- e. For reasonable attorneys' fees; and
- f. For such other and further relief as is just, equitable, and proper.

July 23, 2018

Respectfully submitted,

/s/ James P. Booker
James P. Booker (OBN 90803)
Lydia M. Floyd (OBN 88476)
Peiffer Wolf Carr & Kane
A Professional Law Corporation
1422 Euclid Avenue
Suite 1610
Phone: (216) 589-9280
Fax: 216-916-9220
Email: jbooker@pwcklegal.com
lfloyd@pwcklegal.com

Attorneys for Plaintiffs