

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Sue Ellen Benson,

Plaintiff,

vs.

Ameriprise Financial Services, LLC.,

Defendant.

Civil Action No: 2023-CP-__-_____

SUMMONS
(Jury Trial Demanded)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 2110 N. Beltline Blvd., Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Jeremy C. Hodges

Robert G. Rikard (SC Bar 12340)
Jeremy C. Hodges (SC Bar 71123)
2110 N. Beltline Blvd.
Columbia, SC 29204
Post Office Box 5640 (29250)
PH: (803) 978-6111
FAX: (803) 978-6112
EMAIL: rgr@rplegalgroup.com
jhodges@rplegalgroup.com

Attorneys for Plaintiff

February 20, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	FOR THE SECOND JUDICIAL CIRCUIT
Sue Ellen Benson, Plaintiff,	Civil Action No: 2023-CP-__ - ____
vs.	COMPLAINT (Jury Trial Demanded)
Ameriprise Financial Services, LLC., Defendant.	

Plaintiff Sue Ellen Benson brings this Complaint against Defendant Ameriprise Financial Services, Inc. and hereby alleges as follows:

THE PARTIES

1. Sue Ellen Benson is a citizen and resident of Aiken County South Carolina.
2. Ameriprise Financial Services, LLC. (“Ameriprise”) (CRD# 6363) is a diversified US financial services company that specializes in providing financial planning, products, and services, including wealth management, asset management, insurance, annuities and banking.
3. Ameriprise maintains its headquarters in Minneapolis, Minnesota. Ameriprise does business in South Carolina via multiple brokers and offices, including a branch office in Columbia, South Carolina, and an office in Martinez, Georgia that services South Carolina residents, including Plaintiff.
4. John Douglas Engler, Sr. (CRD# 835827) was the registered representative who handled Plaintiff’s accounts (hereinafter “Agent Engler”). Agent Engler is currently employed by Ameriprise and maintains an office in Martinez, Georgia.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over Plaintiff's claims for relief as the actions and omissions occurred in this County. The Defendant conducts business here in South Carolina and utilized agents in South Carolina to promote its business including the advisory services and investment products described herein.

6. Venue of this case is proper in Aiken County.

FACTUAL BACKGROUND

7. Sue Ellen Benson is 72 years old. Ms. Benson has a bachelor's degree in Art History from Ohio University and a master's degree in elementary education from Duquesne University. After graduating, Ms. Benson taught in Pennsylvania, Ohio, and Florida.

8. In the 1980's, Ms. Benson gave up her professional career and moved to South Carolina to be closer to her parents and eventually to help run a horse farm that her father had recently purchased in Aiken, South Carolina.

9. Despite not having any prior experience with horses or farms, Ms. Benson successfully managed the farm with her parents for many years. She also cared for her parents as they aged. Both her parents were quite ill for many years before they passed.

10. Ms. Benson's father died in 2003. Following his death, Ms. Benson's mother met with several financial advisors in and around Aiken, South Carolina and ultimately choose Agent Engler to manage her finances. At the time, Agent Engler was affiliated with another financial institution.

11. Not long afterwards, Ms. Benson's mother was diagnosed with Parkinson's Disease. Ms. Benson became a full-time caregiver for her mother, in addition to her responsibilities on the farm. Ms. Benson's mother passed in 2006, and Ms. Benson

inherited the bulk of her estate, including the farm, which was eventually sold.

12. Ms. Benson's inheritance, which was entrusted to Agent Engler, should have been sufficient to provide her with financial security for the rest of her life, especially considering Ms. Benson's needs, which are modest.

13. After the family farm was sold, Ms. Benson and her mother moved into a in a double-wide trailer in Windsor, South Carolina, where Ms. Benson still lives today.

14. Ms. Benson does not care for travel, or luxury goods and has always lived well within her means. Today, however, she lives in near poverty, surviving on social security, what meager savings she has left after the mismanagement by Agent Engler as described herein, and the kindness of others in the community.

15. At the beginning of their relationship, Agent Engler met with Ms. Benson in person on a regular basis to discuss her accounts and Agent Engler's recommended investment strategy. During those meetings, Ms. Benson emphasized that she was very conservative and trusted Agent Engler to protect her savings, conserve it, and where possible (and with as little risk as possible), grow it such that it would provide her with financial security for the rest of her life.

16. Agent Engler never told Ms. Benson her account was set up to trade on margin, never explained the concept of buying and selling securities on margin, or the risks and potential benefits of a margin trading strategy or any of the securities he bought and sold on her behalf as part of that strategy.

17. Ms. Benson never saw or approved of the elections made by Agent Engler on the Ameriprise Financial account application. Had she seen those elections and had the risks and potential benefits of them been adequately explained to Ms. Benson, she

would have rejected them.

18. Instead, Agent Engler never presented Ms. Benson with the entire account opening application or any information related to it, other than the signature page, which he urged her to sign.

19. Agent Engler always assured Ms. Benson that her investment strategy carried no significant risk and would allow her to receive the best returns possible.

20. Ms. Benson did not read her account statements and did not possess enough knowledge to understand them if she had read them. Instead, she exclusively relied on Agent Engler for information regarding her investments and account.

21. Over time, however, Agent Engler stopped meeting with Ms. Benson on a regular basis. Initially, Agent Engler would cancel scheduled meetings citing personal health issues, out of town travel, or some other excuse for the cancellation. Eventually, he stopped scheduling meetings with Ms. Benson altogether.

22. Instead, Agent Engler would call Ms. Benson without warning, often after hours, to ask her to sign documents or other paperwork, which Agent Engler did not explain to Ms. Benson.

23. At times, Agent Engler's conduct during these calls and meetings was not appropriate and suggested that he may be under the influence of alcohol or other intoxicants. During one call, Agent Engler asked if he could come to Ms. Benson's home and engage in sexual intercourse, which Ms. Benson refused.

24. In the fall of 2021, Agent Engler called Ms. Benson and asked her what she was going to do. During the call, Agent Engler also told Ms. Benson that she didn't have any more money and would likely have to go on welfare to support herself. This

was the last time that Ms. Benson spoke to Agent Engler.

25. This call also marked the first time Ms. Benson had reason to be concerned with Agent Engler's investment strategy and handline of her account. Ms. Benson was obviously troubled by these statements and immediately began investigating the situation further, discussing it with friends and trusted advisers, and enlisted their help in obtaining documents related to her account, including the Ameriprise account opening application, which Ms. Benson saw for the first time in late November 2021.

26. Despite Ms. Benson's relatively simple and straightforward individual investment objectives and needs, Agent Engler implemented an aggressive margin investment strategy in which a significant amount of capital was borrowed from Ameriprise to purchase securities and financial instruments that were held in Ms. Benson's brokerage account as collateral for the margin loans. The leverage conferred by this margin investment strategy tends to amplify both gains and losses and subjects the investor to the risk of margin calls where securities are liquidated without prior notice or consent.

27. Agent Engler also utilized aggressive short term, market timing strategies and moved money within Ms. Benson's investment account in and out of markets or between securities based on predictions of when the market would go up or down. This strategy resulted in large quantities of securities being purchased and sold in quick succession, often days. Market timing is the opposite of a buy-and-hold strategy where securities are purchased and held for a long period, regardless of market volatility.

28. Ms. Benson's brokerage account was not allocated across traditional industry sectors and did not adhere to other well-accepted principles of asset allocation.

Instead, Agent Engler's aggressive trading strategies created concentrated and risky positions that subjected Ms. Benson to unsuitable and inappropriate risks, which were not explained to Ms. Benson.

29. Despite overwhelming research from academics, regulators, and even Ameriprise itself, Agent Engler was permitted to engage in a futile margin market timing strategy for years. Unsurprisingly and just as the collective research suggests, Agent Engler's margin, market timing strategies exposed Ms. Benson to the very real and realized risk of actual devastating financial loss.

30. Additionally, Agent Engler failed engage with Ms. Benson in a fair and balanced discussion of the risks associated with his recommended strategies, margin, the securities he selected, and research used in developing these strategies and constructing Ms. Benson's portfolio.

31. Similarly, Agent Engler did not obtain or attempt to obtain Ms. Benson's permission or authorization for trades he executed within her brokerage account.

FIRST CAUSE OF ACTION
(Negligence)

32. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

33. Agent Engler offered investment advice and recommendations to Plaintiff and thus owed a clear duty to exercise reasonable care, skill, diligence, and prudence.

34. Agent Engler breached that duty to Plaintiff and acted with negligence by recommending unsuitable and risky investment strategies and securities and failing to advise Plaintiff of the potential risks and rewards associated with both such that Plaintiff lacked such an understanding.

35. Agent Engler also breached that duty to Plaintiff and acted with negligence by failing to perform reasonable diligence to understand the nature of the securities and investment strategy he recommended to Plaintiff as well as the potential risks and rewards related to them such that he had a reasonable basis to believe his recommendations were suitable for at least some investors.

36. Agent Engler further breached that duty to Plaintiff and acted with negligence by failing to have a reasonable basis to believe that his recommendations were suitable for Ms. Benson based on Ms. Benson's investment profile, including but not limited to her age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and other information that Ms. Benson disclosed or could have disclosed to Agent Engler had he exercised reasonable diligence and inquired about those subjects.

37. Agent Engler represented to Plaintiff that the investment strategy and securities he recommended were safe, suitable, and appropriately tailored to her investment profile. This was a misrepresentation.

38. As a direct and proximate result of Agent Engler's negligence, Plaintiff has suffered substantial financial losses.

39. Agent Engler's acts and omissions constitute negligence and gross negligence because they constitute an extreme departure from what a reasonably careful person would do in the same situation.

40. Further, as the principal for Agent Engler, Ameriprise is directly responsible and answerable for Agent Engler's actions.

41. Ameriprise operates through their duly chosen representatives. Ameriprise is required to supervise the activities of its registered representatives, registered principal, and other associated persons and to implement and maintain a system that is reasonably designed to achieve compliance with applicable securities laws and regulations as well as industry rules. Final responsibility for proper supervision rests with Ameriprise.

42. Ameriprise exercises control over their registered representatives in several ways, including but not limited to approving products that their registered representatives may recommend and sell to customers, by requiring registered representatives to follow written procedures and guidelines to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations as well as industry rules.

43. Ameriprise is required to conduct a review, at least annually, of the activities of each office that includes periodic examination of customer accounts to detect and prevent irregularities or abuses.

44. Ameriprise had a heightened duty to supervise its off-site representatives, including Agent Engler, who conducted securities activities with minimal, if any, supervision from an off-site non-branch location with no on-site supervisors.

45. Upon information and believe, during the relevant period, Ameriprise's off-site registered representatives were subject to supervision by one or more groups or field supervisors that consisted of registered principals who reviewed individual

transactions by registered representatives, reviewed correspondence, and conducted periodic reviews of registered representatives and their accounts to ensure compliance with internal guidelines and applicable law and industry regulations.

46. Upon information and belief, as part of Ameriprise's supervision, these principals and field supervisors conducted reviews of the investment strategies and securities recommended and sold by Agent Engler, as well as reviewed certain customer accounts and various communications between Agent Engler and his customers.

47. If these principals or field supervisors had followed up on any of the red flags in these accounts, communications, and files, Agent Engler's improper conduct could have been detected.

48. Ameriprise failed to reasonably supervise Agent Engler.

49. Ameriprise also failed to conduct appropriate supervision and meaningful suitability determinations regarding the investment strategy and securities that Agent Engler recommended and sold to Ms. Benson. Ameriprise failed to determine and confirm Ms. Benson's investment profile and objectives and reconcile those with the investment strategy and securities recommended and sold by Agent Engler.

50. As the principal for its agents, the registered representatives and field supervisors, Ameriprise is directly responsible and answerable for their actions and omissions.

51. As a direct and proximate result of the above-described actions and omissions, Plaintiff has suffered severe economic and emotional harm related to the financial losses caused by the unsuitable investment strategy and securities described herein.

52. The injuries to Plaintiff were the direct and proximate result of the negligent and grossly negligent acts and omissions of the Defendant Ameriprise and its Agent Engler.

53. Plaintiff is therefore entitled to actual, compensatory, and punitive damages.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

54. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

55. Plaintiff reposed her trust and confidence in Ameriprise, through its Agent Engler, and relied on Ameriprise to advise her in selecting a suitable investment strategy and managing her investments.

56. Ameriprise therefore undertook a fiduciary duty to Plaintiff to act fairly and honestly, in good faith and loyalty, and in the sole best interest of Plaintiff under both common law principles of agency and industry rules.

57. The specific fiduciary responsibilities of a broker, even for a non-discretionary account, include:

- a. The duty to recommend an investment strategy and security only after studying it sufficiently to become informed of its nature, price and financial prognosis;
- b. The duty to carry out the customer's orders promptly and in a manner best suited to serve the customer's interests;
- c. The duty to inform the customer of the risks involved in adopting an investment strategy and in purchasing or selling a particular security;

d. The duty to transact business only after obtaining prior authorization from the customer.

58. A fiduciary owes duties of not only utmost good faith and honesty, but also that of competence, which requires more than ordinary care. A broker is judged against the standard of prudence and care expected of a financial professional.

59. In one or more particulars as set forth herein, Ameriprise breached its fiduciary duties by recommending Plaintiff adopt an unsuitable and inappropriate investment strategy and purchase unsuitable securities that, collectively and individually, were not in Plaintiff's best interests.

60. As a proximate result of the breaches of fiduciary duties by Ameriprise, and its Agent Engler, Plaintiff has suffered substantial financial losses and is entitled to recover actual, compensatory, and punitive damages for same.

THIRD CAUSE OF ACTION
(Violation of S.C. Uniform Securities Act)

61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

62. Ameriprise is in the business of providing Plaintiff and other customers directly and through publications as to the advisability of investing in, purchasing, and selling securities.

63. Ameriprise provides this advice for compensation and as a part of its regular business.

64. Agent Engler acted as a broker, and as an integral component of investment related advice provided through Ameriprise, he provided investment advice regarding securities for compensation.

65. Accordingly, Ameriprise is an “Investment Adviser” as that term is defined by S.C. Code Ann. § 35-1-102(15).

66. Agent Engler was employed by Ameriprise and in that capacity made recommendations and gave investment advice regarding securities and held himself out as providing investment advice regarding securities. Agent Engler received compensation in exchange for his investment advice regarding securities.

67. As such, Agent Engler is an “Investment Adviser Representative” as that term is defined by S.C. Code Ann. § 35-1-102(16).

68. Ameriprise and Agent Engler’s untrue material statements of fact and omissions of material facts regarding the investment strategy and securities told to Plaintiff were misleading and operated as a fraud or deceit on Plaintiff in violation of S.C. Code Ann. § 35-1-501 and 502.

69. Accordingly, Plaintiff brings this claim against Ameriprise and its Agent Engler pursuant to S.C. Code Ann. § 35-1-509(e) and (f).

70. Ameriprise possessed the power to control, directly and indirectly, the conduct of Agent Engler as it relates to the investment strategy and securities sold to Plaintiff.

71. As such, Ameriprise is subject to control person liability and is jointly and severally liable for violations of the S.C. Uniform Securities Act with and to the same extent as Agent Engler pursuant to S.C. Code Ann. § 35-1-509(g)(1) and Plaintiff brings this claim against Ameriprise for control person liability pursuant to that section.

72. Plaintiff is therefore entitled to and prays for (1) actual damages; (2) consequential damages; (3) consideration paid for the advice of Ameriprise and Agent

Engler; (4) interest at the legal rate or interest from the date of payment of that consideration; (5) costs; (6) reasonable attorneys' fees; and (7) such other relief as is just, equitable, and proper.

PRAYER FOR RELIEF

WHEREFORE, having set forth their claims, Plaintiff prays for a judgment against Defendant as follows:

- A. For actual damages;
- B. For consequential damages;
- C. For consideration paid for the advice of Ameriprise and Agent Engler pursuant to S.C. Code Ann. § 35-1-509(e), (f);
- D. Interest at the legal rate of interest from the date of payment of that consideration pursuant to S.C. Code Ann. § 35-1-509(e), (f);
- E. For punitive damages to be determined by the finder of fact;
- F. For prejudgment interest at the highest legal rate;
- G. For the costs of this action pursuant to S.C. Code Ann. § 35-1-509(e), (f) and common law;
- H. For reasonable attorneys' fees pursuant to S.C. Code Ann. § 35-1-509;
- I. For such other relief as is just, equitable and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

s/ Jeremy C. Hodges

Robert G. Rikard (SC Bar 12340)
Jeremy C. Hodges (SC Bar 71123)
2110 N. Beltline Blvd.
Columbia, SC 29204
Post Office Box 5640 (29250)
PH: (803) 978-6111
FAX: (803) 978-6112
EMAIL: rgr@rplegalgroup.com
jhodges@rplegalgroup.com

Attorneys for Plaintiff

February 20, 2023
Columbia, South Carolina