

IN THE SUPERIOR COURT OF COBB COUNTY
 STATE OF GEORGIA

Rebecca Keaton
 Rebecca Keaton, Clerk of Superior Court
 Cobb County, Georgia

JEFFERY B. ARNOLD and)
 KATHERINE T. ARNOLD,)
)
 Plaintiffs,)
)
 v.)
)
 FREDERICK G. ENGELS a/k/a)
 FRITZ ENGELS and d/b/a)
 ENGELS FINANCIAL GROUP a/k/a)
 THE ENGELS FINANCIAL GROUP;)
 F & J ENGELS REVOCABLE TRUST)
 BY AND THROUGH ITS TRUSTEES)
 FREDERICK ENGELS AND JIE L.)
 ENGELS, JOHN DOE, and DOE)
 COMPANY,)
)
 Defendants.)
 _____)

Civil Action
 File No.

COMPLAINT

Plaintiffs Jeffery B. Arnold and Katherine T. Arnold (jointly, “the Arnolds”) bring this Complaint against Defendants Frederick G. Engels (a/k/a Fritz Engels; d/b/a Engels Financial Group a/k/a The Engels Financial Group) (“Engels”), F & J Engels Revocable Trust (the “Trust”) by and through its Trustees Frederick G. Engels and Jie L. Engels, John Doe, and Doe Company as follows:

THE NATURE OF THIS ACTION

1.

The Arnolds seek \$169,706.76 in actual damages, plus interest, attorney’s fees, and punitive damages, from Engels as a result of his fraud, breach of fiduciary duties, unjust enrichment, quantum meruit, negligence, negligent misrepresentation and violations of the Georgia Securities Act. Engels held himself out to be something he was not and pushed

investments either knowing their flaws, or being ignorant as to their flaws. He induced the Arnolds to invest, and then lose, \$169,706.76.

2.

The Arnolds seek to undo a fraudulent conveyance of real property between and among the defendants. As the storm around him began to brew, Engels transferred ownership of his home to the Trust, which he created solely to hold the real property. Because that transfer was made after Engels knew of his exposure, it must be undone.

THE PARTIES, VENUE, AND JURISDICTION

3.

Plaintiff Jeffery B. Arnold is a citizen and resident of Cobb County, State of Georgia.

4.

Plaintiff Katherine T. Arnold is a citizen and resident of Cobb County, State of Georgia.

5.

Defendants Frederick G. Engels (a/k/a Fritz Engels; d/b/a Engels Financial Group a/k/a The Engels Financial Group) is a citizen and resident of Cobb County, State of Georgia.

6.

Engels may be served with process both for himself individually and as trustee for the F & J Engels Revocable Trust at his residence address of 4929 Day Lily Way NW, Acworth, Cobb County, Georgia 30102 or at his business address of 125 Town Park Drive, Suite 300, Kennesaw, Cobb County, Georgia 30144.

7.

F & J Engels Revocable Trust is the owner of the real property located at 4929 Day Lilly Way NW, Acworth, Cobb County, Georgia 30102. Its trustees are Engels and Jie L. Engels.

8.

Jie L. Engels is a resident of Cobb County and may be served with process as trustee for the F & J Engels Revocable Trust at her residence address of 4929 Day Lily Way NW, Acworth, Cobb County, Georgia 30102.

9.

John Doe and Doe Company are individual(s) and entity(ies) whose identities are at this time unknown to the Arnolds but who have acted along with the other Defendants in support of the allegations in this Complaint.

10.

Jurisdiction and venue are proper in this Court because all parties are residents of Cobb County, State of Georgia; and, the real property at issue is located in Cobb County, State of Georgia.

ALLEGATIONS COMMON TO ALL COUNTS

The Roles of the Parties

11.

Engels holds himself out as a financial or investment planner or advisor, claiming expertise in those areas.

12.

Engels does business as or through either Engels Financial Group or The Engels Financial Group. He holds himself out as “President” of either or both purported entities.

13.

The Arnolds (who are married to each other) are individuals who worked through Engels to make investments.

Engels’s Public Deceptive Statements and Practices

14.

Engels has gone to great lengths to create a public persona as a financial expert in order to induce people to hire him.

15.

Engels operates at least two “Engels Financial” websites. One can be found at www.engelsfinancialgroup.com (“Group Site”) and the other can be found at www.engelsfinancialgrp.com (“Grp Site”). Both websites appear to have been “live” at or around the time of the transactions at issue here.

16.

The Group Site appears to be the older of the two, dating back to at least 2010, and revised on multiple occasions between that time and the present.

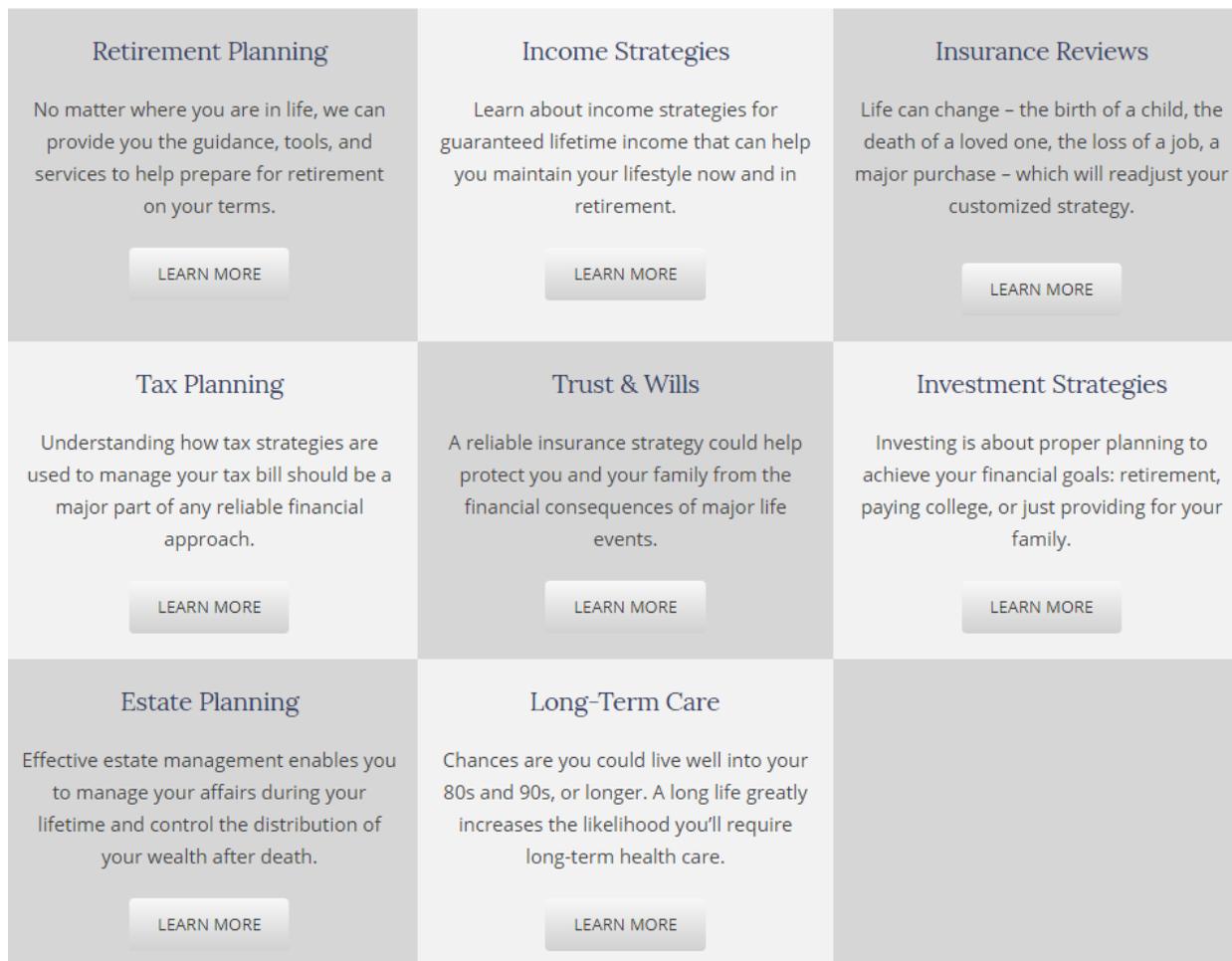
At or around the time of the transactions at issue here, the Group Site stated, among other things:

- THE ENGELS FINANCIAL GROUP Consist[s] of Financial Strategists, Lawyers, & CPA's. We are a **full Retirement planning services company**.
- Fritz has more than 30+ years of experience in the **financial services industry** and uses his expertise to educate his clients through detailed **financial analysis** and strategies. He is a strong advocate for the implementation and utilization of this trinity of coordinated services.
- This comprehensive approach of estate, **financial, income and tax planning** facilitates the distribution and preservation of your assets and the effectual transfer of your estate.
- “Complimentary consultation with an **experienced financial professional**.”

(Emphasis added; capitalization, punctuation and spelling in original.)

18.

The Grp site was launched in or about August 2016 and contains substantially similar language to the Group Site, as well as additional language touting Engels’s expertise in the following areas:



19.

Engels claims to have published a book entitled “The Soul of Success.”

20.

In a press release describing the book’s purported success, Engels stated “**Fritz is considered a veteran financial planner** & his present client base has been very happy with his work for over 30 years.” He also declared “He founded Engels Financial Group to provide

retirement and estate planning to retirees and those nearing retirement. As an independent **licensed financial planner** & wealth advisor, Fritz is able to do what is in the best interest of his clients and not a specific company.” (Emphasis added; punctuation, etc., in original.)

21.

Each “chapter” is followed by both a picture and biography of the chapter’s author.

22.

Engels’s biography states: “Fritz Engels is not only **a financial planner**, he is an asset conservationist and estate planner that understands IRA’s, taxes, tax laws, and the government systems that can affect us as we age.” (Emphasis added; punctuation, etc., in original.)

23.

Engels’s biography also states: “As an independent **licensed financial planner** and wealth advisor, Fritz is able to do what is in the best interest of his clients and not a specific company.” (Emphasis added; punctuation, etc., in original.)

24.

Another part of Engels’s self-promotion program involves “teaching” classes on financial planning and related subjects.

25.

These classes were little more than a device for Engels to search for and rope in potential clients.

26.

Among others, Engels teaches classes entitled Principles of Retirement Planning; Maximizing Social Security; Conservative Retirement Planning and Principles of Retirement Planning (for ages 50 and up).

27.

The materials for one current course state that “Fritz has more than 30 years of experience in the financial services industry and uses his expertise to educate his clients through detailed financial analysis and strategies.”

28.

Fritz Engels uses his chapter from *The Soul of Success*, entitled “The Perfect Financial Plan,” as part of his course materials, giving his students the chance to see his words – and his biography – in writing.

29.

Engels’s words (and his biography with them) were published in 2015 and he still uses them to this day with his students.

30.

Engels provides general and detailed guidance. His general guidance is quite simple: “the perfect plan comes from sitting down with a planner of great experience, education, and knowledge . . . **Get a great financial planner and take his advice.**” (Emphasis added; punctuation, etc., in original.)

31.

Engels provides a ten item checklist of items to consider when selecting a financial planner. At least two of those items have heightened relevance here:

- “The planner should be a fiduciary and a wealth advisor.”
- “The planner needs to do legal, tax & financial estate planning.”

32.

In his “ABC Retirement Planning” course syllabus, Engels states “Choosing and [sic] advisor who you like, trust and is competent is made easier to understand by asking the right questions. We provide you with over 20 questions to ask a potential advisor.”

Engels’s Deceptive Statements and Practices to and with The Arnolds

33.

Engels was successful in his use of the “teacher” gambit. His carefully created public persona enticed the Arnolds to take one of his classes. In order to learn more about retirement finances and planning, the Arnolds attended a multi-session course in the Fall of 2015 presented by Engels under the Adult Financial Education Services at Chattahoochee Technical College – Marietta Campus entitled “ABC Retirement Planning.”

34.

Thus, the Arnolds were exposed to all of the statements made by Engels in that class, both orally and in writing.

35.

As a result of what the Arnolds read and heard from Engels, they decided to pursue a relationship with him.

36.

Before entering into that relationship, the Arnolds asked Engels the questions he coached them to ask, and he gave them the answers he told them they wanted to hear.

37.

Importantly, Engels affirmed that he was a fiduciary and a financial planner both then and many times over the course of his relationship with the Arnolds.

38.

As part of Engels's effort to induce the Arnolds to do business with him, he sent them an email on October 25, 2015, stating in part: "I have been in business 30 years, I am a **total financial & estate planner** that covers taxes, legal & financial issues with several portfolio programs with my in office attorney & CPA. The planning is balanced & based on the fundamentals of ABC planning which is based on % of no risks to 100% Risk." (Emphasis added.)

39.

The email contained eight attachments, each of which made representations about Engels.

40.

The Engels chapter in Soul of Success was attached. As noted above, the chapter, including the biography at the end of that chapter, now delivered personally to the Arnolds, stated:

- "I am Fritz Engels. I have been doing **financial planning** and estate planning for over 30 years."
- "The **planner** should be a **fiduciary** and a wealth advisor."
- "The **planner** needs to do legal, tax & **financial** estate **planning**."

- “**Fritz Engels is not only a financial planner**, he is an asset conservationist and estate planner that understands IRA’s, taxes, tax laws, and the government systems that can affect us as we age.”
- “As an **independent licensed financial planner** and wealth advisor, Fritz is able to do what is in the best interest of his clients and not a specific company.”
- “Fritz offers **FULL financial planning**, including taxes, legal, investments, TRUSTS, fixed income, pension planning and tax-free income programs providing CPA and Lawyers from his staff.”
- “Fritz is considered a **veteran financial planner** and his present client base has been very happy with his work for over 30 years.”

(Emphasis added.)

41.

Engels also attached a document entitled “ENGELS FINANCIAL GROUP BIO 2013.”

That document stated, among other things:

- “He is a **licensed financial professional** and has B.S. degrees from both LSU & KSU.”
- “He utilizes his team of advisors and professionals to coordinate and ensure a completely customized plan for all of his client’s affairs: income, financial, legal and tax.”

(Emphasis added.)

42.

Engels also attached two different versions of the press release discussed above in Paragraph 20, thus representing directly to the Arnolds as follows:

- “**Mr. Engels is not only a financial planner**, he is an asset conservationist and estate planner that understands IRAs, taxes, tax laws, and the government systems that can affect us as we age.”
- “As an independent **licensed financial planner** and wealth advisor, Fritz is able to do what is in the best interest of his clients and not a specific company.”
- “He is considered a **veteran financial planner** and his present client base has been very happy with his work for over 30 years.”

(Emphasis added.)

43.

The Arnolds met with Engels multiple times between November 2015 and March 2016. During these meetings, Engels continued to hold himself out as a fiduciary and to repeat the various statements made above.

44.

During these meetings, Engels represented that he engaged in detailed investigations and vetting of all investment opportunities he promoted.

The Arnolds' Investments

45.

In or around March of 2016, having earned the Arnold's full confidence and trust, Engels began to promote the investments at issue in this action: Collins Asset Group LLC (“CAG”) and Xcel Bandwidth LLC (“Xcel”) (jointly, the “Investments”).

46.

Engels repeatedly stated that he had been vetting both of these companies and saw no issues with them.

47.

Each of these investments involved the Arnolds providing their money initially to an entity called Diversified Financial LLC (“Diversified”).

48.

Engels repeatedly stated that he had been vetting Diversified and saw no issues with Diversified.

49.

Daryl Bank was or is a member of and the manager of both Diversified and Xcel.

50.

Engels repeatedly stated that he had been vetting Daryl Bank and he saw no issues with him.

51.

Engels, as part of his attempt to persuade the Arnolds to invest, hosted a conference call with the Arnolds and a man purporting to be Daryl Bank.

52.

Engels provided written materials about Xcel. These materials stated, and Engels supported, that Xcel was engaged in the purchase and sale of telecommunications spectrum rights.

53.

Engels informed the Arnolds that the investment they would make would not be directly in Xcel, but rather would take place in a series of steps:

- The Arnolds would provide \$99,900 to a company called Diversified Financing, LLC (“Diversified”) in exchange for a promissory note of \$99,900.
- Xcel would exchange that note for a note from Xcel in the same amount, secured by an ownership interest in Xcel.

54.

The first half of the transaction was memorialized in a secured promissory note made effective and signed on April 8, 2016.

55.

The document was signed on behalf of Diversified by Daryl Bank as its Managing Member.

56.

The Xcel portion of the transaction was memorialized in a document entitled “Dom Business Brokers | Buyer Agreement” with an effective date of April 14, 2016, but actually signed on June 13, 2016 (“Xcel Exchange Agreement”).

57.

The Xcel Exchange Agreement was on stationary bearing the heading “DOM BUSINESS BROKERS” and also bearing the copyright legend “2016 © DOM BUSINESS BROKERS.”

58.

The Xcel Exchange Agreement was also signed on behalf of Dom Business Brokers LLC by its authorized agent *Fritz Engels*.

59.

The Xcel Exchange Agreement was signed on Xcel's behalf by Daryl Bank as authorized signatory.

60.

Xcel's note to the Arnolds was signed by Daryl Bank in his capacity as manager of Xcel.

61.

The Xcel Operating Agreement was signed by Daryl Bank as manager.

62.

In the documentation leading up to the Xcel investment, Engels signed in the capacity of "Financial Manager."

63.

Engels touted the CAG investment opportunity as follows:

Jeff & Katherine,

I also want to introduce another new CAG program that may be VERY beneficial to handle some of the \$200,000 in cash that you have chosen to keep in the bank. I know the issues are accessibility, liquidity, but low return:

Here is a 4 YEAR note program:

1. 25% liquid each year.
2. Earnings on 4 your money are:
 - A 4% year one
 - B 6% year two
 - C 8% year three
 - D 10% year four

* * *

You could take out \$25,000 + the 4% growth year one. If you don't want the \$29,000, it just rolls over to bucket #2 that is earning 6% and then at the end of year 2 you could still take 25% out etc.

* * *

This is a great liquid and great growth program! Way better than the bank.

64.

In addition to the four year program he endorsed in the above paragraph, Engels also strongly recommended a six year program with the following attributes: 8% income per year, starting the 5th quarter at 2% (paid during years 2-5) and 4% per quarter during the 6th year.

65.

Engels provided written materials about CAG and affirmed the depth of his vetting of CAG.

66.

CAG and Engels represented that CAG is in the business of purchasing and collecting or reselling distressed debt.

67.

The investment selected, researched and endorsed by Engels was not directly in CAG but instead was (again) to be filtered through Diversified.

68.

After Engels again assured them of his fiduciary status and the work he had done vetting the investment, Mr. Arnold¹ made the investment.

69.

Mr. Arnold chose the six year program over the four year program and invested approximately \$69,706.76.

¹ The Xcel investment was made with \$100,000 jointly by Mr. and Mrs. Arnold. The \$69,706.76 invested in CAG was invested solely by Mr. Arnold. Damages sought in each count are sought along those lines.

70.

The CAG investment was memorialized in a “Secured Promissory Note” dated May 25, 2016.

71.

The Secured Promissory Note was signed by Daryl Bank, as Managing Member of Diversified.

72.

Engels received commissions and compensation on all these investments.

73.

Information regarding these investments was sporadic, and income from them was virtually non-existent.

74.

There were occasional conference calls about Xcel, which assured the Arnolds that the Xcel investment was performing. These calls stopped in the spring of 2017.

75.

The only income from the Xcel investment was \$819.25, received in March of 2017.

76.

The only way to get information about the CAG investment was through Engels, who provided constant assurances that the investment was doing fine.

77.

The only income from the CAG investment was \$2,760 in 2017, well below the promised payments.

78.

The Arnolds eventually became uncomfortable with the lack of money and the lack of information, thus, starting in late 2017 the Arnolds constantly sought updates from Engels, who repeatedly assured them everything was fine.

79.

Despite the non-performance of the investments, Engels continued his effort to keep the Arnolds in a state of mental comfort. As late as May 2018, Engels was insisting that “You have 100% safety. You have a great plan. . . . Either way; you are set for life no matter what happens to your 2 Red Money products. THE ABC MODEL PROTECTED YOU.” Put in context, Engels was telling the Arnolds that they could afford to be defrauded.

80.

Spectacularly, in April of 2018, Engels asked the Arnolds to *write him a reference*:

“Will you please write me a reference ?

“To whom it may concern”

Please focus in on ;

1. Fritz taught us the ABC’s of Financial Planning.

2. He focused on Safety First and income planning= Columns A & B

3. Red money (C Column) is his last to be offered only if a client can afford to take risks and only after the A & B columns of safe money provide along with pension income and Social Security the 100% protection of all income needs first.

4. Please comment on my character of honesty and hard work and my love for my clients.

Anything else you can say from the bottom of your heart will be appreciated. I would love to have this on file when someone request what other clients think of me.

Thank You !

Fritz Engels

Certified Estate Planner”

The Truth Comes Out (Part One)

Engels Has No Company, No License, No Book, and No Classes

81.

The Arnolds, however, ultimately learned the truth both about Engels and the Investments.

82.

As a starting point, there is no such entity as The Engels Financial Group, or Engels Financial Group in Georgia. Although Engels managed an LLC called Engels Financial LLC, he terminated that entity in 2014. Engels is not listed as an officer or registered agent of any existing entity registered to do business in the State of Georgia.

83.

Engels's multiple statements that he is (or was) a financial or investment planner or advisor are false.

84.

Engels is *not* registered with the Securities and Exchange Commission as an investment advisor.

85.

Engels is *not* registered with the State of Georgia as an investment advisor.

86.

Engels is not registered with the Certified Financial Planner Board of Standards.

87.

Engels also did not write a book called "The Soul of Success." In fact "Soul of Success" is a collection of 60 diverse and very short "chapters" collected as one book, a book not even

wholly devoted to financial subjects. Other chapter titles include You Don't Look Like A Newborn Baby, You Look Like An Angel; Red Flags Your Pediatrician Doesn't Have Time To Catch - Six Practical Tactics Parents Need To Help Their Child Succeed; Eight Steps To Take Control Of Your Dental Health!; and 'Havening'— Instant Stress Relief – In Your Hands!.

88.

Soul of Success is published by an entity called "Celebrity Press," whose affiliated website declares: "Once you become a client of the Dicks + Nanton Celebrity Branding Agency, our singular goal in business is to help you become a Celebrity Expert® in your marketplace. The most effective way to do that is to become a published author and even better yet, a Best-Selling Author. As an agency client, you will be signed to a publishing contract with Celebrity Press Publishing to work on your own book, or join one of our anthology books with other Celebrity Experts®."

89.

It is reasonable to infer that Engels paid to be published.

90.

Just as Soul of Success is not really a book by Engels, the classes he teaches are similarly not his own. Rather, they are all developed by an organization called "Adult Financial Education Service," and the materials handed out by Engels in class appear on their website. The classes Engels passes off as his own are, in fact, taught by 165 different people who are all purportedly "licensed insurance and financial professionals who work as financial advisors, insurance and investment specialists, and a variety of other related financial professions."

The Truth Comes Out (Part Two): Daryl Bank's Well Documented Trail Of Fraud
Was Either Known To, Or Should Have Been Known To, Engels

91.

As noted above, a man named Daryl Bank was at the center of the Investments.

92.

At the time the Investments were solicited and made, the following facts about Daryl Bank were available to Engels:

- The Financial Industry Regulatory Authority, Inc. ("FINRA") is a private organization authorized by Congress to protect investors by making sure the broker-dealer industry operates in a fair and honest manner. On **February 5, 2010**, after an investigation, FINRA issued a final order concluding that Bank had, among other things, misappropriated funds, provided false information during FINRA interviews, and created inaccurate books and records. As a result, FINRA issued an order permanently barring Bank from professionally associating with any FINRA member in any capacity. For all practical purposes, the FINRA ban prevented Bank from associating with any FINRA-licensed broker/dealer authorized to sell securities.
- In or about late **April 2014**, the Securities and Exchange Commission ("SEC") subpoenaed Bank to appear for a deposition in connection with a federal securities investigation into Janus Spectrum.
- On or about **April 6, 2015**, the SEC filed a civil complaint against, among others, Bank, Janus Spectrum Group, Spectrum 100 and Prime Spectrum accusing the parties of running a multi-million dollar scheme to defraud investors arising from the sale of

unregistered securities. The complaint outlined the misrepresentations contained in, among others, the offering documents related to the spectrum investments.

93.

Indeed, Bank, among others, is the subject of a multi-count criminal indictment in the Eastern District of Virginia for Mail Fraud, Wire Fraud, Money Laundering and various securities law violations. U.S. v. Bank, No. 2:17crw26, E.D. Va.

94.

In June, the Arnolds received victims' rights notices with respect to Bank.

95.

When Mr. Arnold confronted Engels over at least one deficiency in the Investments that should have been known and disclosed at the time of the Investments, Engels responded: "I did not know about this incorporated situation. I surely did not know of any of this."

96.

After the truth came out, Engels acted as if he had nothing to do with the investments he said he investigated and vetted. He even disclaimed his role as planner and advisor: "Your investment advisor with whom you invested in Xcel Broadband Daryl Bank and his partner Raeann Gibson."

97.

Engels admitted that he was at least fooled in his diligence: "[I] felt that Daryl was the 'real thing'. Being that he was brilliant and savvy [sic]. He appeared as honest as you & me. This has been very shocking and a huge surprise. I never saw this coming. I guess he is a professional liar and was able to lie his way through everything"

98.

Engels had the unmitigated gall to play the victim: “It is so very unfortunate that this has happened. My heart is deeply saddened over this situation. I am just as dumbfounded as I am sure you are. You are a victimized investor and at the same time I also am a victimized affiliate/representative. My wildest imagination could never have led me to even thinking that Bank could be a potential white collar criminal.” Note, however, that Engels safely hid his own house in a trust; invested nothing; and got rich off of commissions.

99.

In the end, though, Engels encouraged the Arnolds to *do nothing about it*: “**Let’s pray for the best and be patient**” until the criminal process played itself out.

100.

Engels pushed the Investments even though he knew, or should have known, that the Investments were part of an ongoing scam that was under civil and criminal federal investigation.

Engels Transfers His Property To A Trust

101.

Engels was once the owner of his residence: the real property and improvements located at 4929 Day Lily Way NW, Acworth, Cobb County, Georgia 30102 (“4929 Day Lily”)

102.

On or about July 26, 2016, Engels transferred 4929 Day Lily to the F & J Engels Revocable Trust (the “Trust”) for \$10.00.

103.

The Trust was formed on or about May 10, 2016.

104.

At or around the time 4929 Day Lily was transferred to the Trust, the Cobb County Board of Tax Assessors stated that its market value was \$444,920.

105.

The Cobb County Board of Tax Assessors stated that the 2018 market value of 4929 Day Lily is \$456,510.

Engels Refuses To Repay The Arnolds

106.

Since they discovered the untruths told to them by Engels, the Arnolds have demanded that Engels repay them the value of their investment.

107.

In so doing, the Arnolds have tendered the promissory notes back to Engels.

108.

Engels has refused to, either affirmatively or by silence, repay the Arnolds.

109.

All conditions precedent to the bringing of this action have occurred; or have been waived or excused.

Count One: Fraud

110.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

111.

Engels made misrepresentations of facts to the Arnolds. These misrepresentations are identified with particularity in Paragraphs 17-23; 27-32; 36-44; 46-52; 63-68; 74; 76; 78-80; and 96.

112.

The allegations of this Complaint establish that Engels was a fiduciary, owing fiduciary duties to the Arnolds. One such duty is the duty to disclose material facts.

113.

Engels failed to disclose material facts to the Arnolds. These nondisclosed facts are identified with particularity in Paragraphs 92, 93 and 95.

114.

The misrepresented facts and the nondisclosed facts were material to the Arnolds.

115.

Engels knew that misrepresented facts and the nondisclosed facts were material to the Arnolds.

116.

The Arnolds actually, reasonably, and justifiably relied on the truth of the misrepresented facts and the absence of the nondisclosed facts.

117.

The Arnolds' reliance took the forms of doing business with Engels and purchasing investments from and through Engels.

118.

Engels intended that the Arnolds actually, reasonably, and justifiably relied on the truth of the misrepresented facts and the absence of the nondisclosed facts.

119.

The Arnolds' acts in reliance caused them damage in an amount to be proven at trial and allocated between damages suffered by the Arnolds jointly one investment, and Mr. Arnold solely on the other investment.

120.

As set forth below, the Arnolds are entitled to an award of their attorney's fees and expenses of litigation.

121.

As set forth below, the Arnolds are entitled to an award of punitive damages.

122.

In the alternative, the Arnolds are entitled to rescission of the transactions above. Because the Arnolds received virtually nothing, they need not plead that they have returned Engels to his pre-transaction state of affairs.

Count Two: Breach of Fiduciary Duty

123.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

124.

The allegations of this Complaint establish that Engels was a fiduciary, owing fiduciary duties to the Arnolds.

125.

In violation of his fiduciary duties, Engels made misrepresentations to the Arnolds.

126.

In violation of his fiduciary duties, Engels failed to disclose material facts to the Arnolds.

127.

In the alternative, in violation of his fiduciary duties, Engels failed to perform sufficient investigation or diligence regarding the investments he presented and sold to the Arnolds.

128.

These breaches of fiduciary duty damaged the Arnolds in an amount to be proven at trial and allocated between damages suffered by the Arnolds jointly on one investment, and Mr. Arnold solely on the other investment.

129.

Because of his breaches of fiduciary duty, Engels should be required to disgorge all funds paid to or through him by the Arnolds, or, in the alternative, all profits from such funds.

130.

As set forth below, the Arnolds are entitled to an award of their attorney's fees and expenses of litigation.

131.

As set forth below, the Arnolds are entitled to an award of punitive damages.

Count Three: Quantum Meruit / Unjust Enrichment

132.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

133.

These allegations establish that Engels received funds from the Arnolds, and commissions and other funds as a result of receiving funds from the Arnolds.

134.

Despite having had the benefit of these funds, Engels did not use them as intended by and promised to the Arnolds.

135.

It violates principles of equity and fairness to allow Engels to have received the benefit of these transactions.

136.

Engels should return to the Arnolds the amounts he should not be permitted to keep, be those amounts commissions or the total amount paid by the Arnolds.

Count Four: Negligence

137.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

138.

Engels owed to the Arnolds a duty of care.

139.

Engels breached that duty as set forth throughout this Complaint.

140.

Engels's breaches of duty caused damage to the Arnolds.

141.

The Arnolds were damaged in an amount to be proven at trial.

142.

As set forth below, the Arnolds are entitled to an award of attorney's fees and expenses of litigation.

Count Five: Negligent Misrepresentation

143.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

144.

Engels, in the course of his business and profession, and during transactions in which he had a pecuniary interest, supplied false information to the Arnolds.

145.

The false information is set forth in Paragraphs 17-23; 27-32; 36-44; 46-52; 63-68; 74; 76; 78-80; and 96.

146.

Engels provided this information for the guidance of the Arnolds in their business transactions.

147.

Engels did not exercise reasonable care or competence in obtaining or communicating the information.

148.

The Arnolds actually, reasonably and justifiably relied on the information.

149.

The Arnolds suffered pecuniary loss caused by their justifiable reliance upon the information in an amount to be proven at trial.

150.

As set forth below, the Arnolds are entitled to an award of their attorney's fees and expenses.

Count Six: Transfer Avoidance

151.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

152.

Engels transferred 4929 Day Lily to the Trust with the actual intent to hinder, delay or defraud creditors, including the Arnolds.

153.

Engels did not receive reasonably equivalent value, exchanging a \$440,000 house for \$10.

154.

At the time Engels transferred 4929 Day Lily, Daryl Bank had already been banned by FINRA and subpoenaed and sued by the SEC. Thus, Engels reasonably believed or should have believed that he was about to incur legal obligations beyond his ability to pay as they came due.

155.

The Trust was, as to Engels, an insider, in that the trustees are he and his wife.

156.

Engels maintained possession and control of 4929 Day Lily after it was transferred to the Trust.

157.

Accordingly, this Court should void the transfer of 4929 Day Lily from Engels to the Trust, and make that asset available to the Arnolds for collection.

Count Seven: Violation of Georgia Uniform Securities Act

158.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

159.

All of the investments entered into by the Arnolds through Engels constitute securities under O.C.G.A. § 10-5-2(31).

160.

By his own admissions and actions, Engels acted as an investment advisor, as that term is defined under O.C.G.A. § 10-5-2(17). Engels engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities. He also acted as a financial planner that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation.

161.

Engels's failure to register as an investment advisor with either the State of Georgia or the Securities and Exchange Commission places him in violation of O.C.G.A. § 10-5-32.

162.

By virtue of the allegations of paragraphs 17-23; 27-32; 36-44; 46-52; 63-68; 74; 76; 78-80; and 96, and 92, 93 and 95; Engels made untrue statements of material facts and omitted to state material facts necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; and engaged in acts, practices, or courses of business that operates or would operate as a fraud or deceit upon another person. Therefore, Engels has violated O.C.G.A. § 10-5-50 and § 10-5-51.

163.

Under O.C.G.A. § 10-5-58, the Arnolds may recover from Engels, as a result of his violations pleaded above, actual damages, costs, and reasonable attorney's fees.

164.

The Arnolds seek no relief, and make no allegation regarding, any possible or actual violation of O.C.G.A. § 10-5-20.

ATTORNEY'S FEES ALLEGATIONS

165.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

166.

Defendants have been stubbornly litigious, have caused the Arnolds unnecessary time, trouble and expense and have acted in bad faith in connection with the subject matter of this action, therefore entitling the Arnolds to recover their expenses of litigation, including reasonable attorneys' fees under O.C.G.A. §13-6-11.

PUNITIVE DAMAGES ALLEGATIONS

167.

The Arnolds incorporate by reference all preceding allegations of this Complaint as if they were fully set out in this paragraph.

168.

The actions of Defendants complained of in this Complaint show an intentional nonpayment which breach was deceitful, self-serving, and financially damaging.

169.

The actions of Defendants complained of in this Complaint reveal callous indifference to the financial well-being of the Arnolds.

170.

Defendants acted with the specific intent and knowledge that their decisions and conduct had a substantial likelihood of causing financial harm to the Arnolds by, among other things, depriving the Arnolds of payments of interest/income, and return of principal/investment.

171.

As a result of Defendants' willful and wanton conduct, the Arnolds are entitled to punitive damages to punish and penalize Defendants for their wrongful conduct and to deter Defendants from repeating the same wrongful conduct in the future, in an amount to be determined in the enlightened conscience of impartial jurors.

172.

An award of punitive damages in this action is warranted by the reprehensibility of Defendants conduct and is consistent with the kind of conduct that would subject Defendants to punishment and the severity of the penalty that might be imposed.

WHEREFORE, Plaintiffs pray for judgment, against Defendants as follows:

- A. Damages in an amount to be proven at trial, and depending upon any election of remedies, allocated to each Plaintiff based on the amount invested;
- B. Avoidance of the transfer of 4929 Day Lily;
- C. Punitive damages;
- D. Attorney's fees and expenses of litigation; and
- E. All other relief that the Court deems just, equitable and proper.

TRIAL BY JURY IS HEREBY DEMANDED.

Dated: July 5, 2018
Atlanta, Georgia



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