

Order, plaintiffs' claims for negligence, including their claim for negligent misrepresentation, have been dismissed. (Dkt. No. 937.¹)

2. SCBI denies the allegations of paragraph 2.

3. SCBI admits that plaintiffs assert claims under Florida law for negligent misrepresentation, negligence, breach of fiduciary duty, and gross negligence.

Jurisdiction and Venue

4. SCBI admits the allegations of paragraph 4.

5. SCBI admits the allegations of paragraph 5.

The Parties

6. SCBI admits the allegations of paragraph 6.

7. SCBI admits the allegations of paragraph 7.

8. SCBI admits the allegations of paragraph 8.

9. SCBI admits the allegations of paragraph 9.

10. SCBI denies the allegations of paragraph 10, except admits that SCBI conducts business in the Southern District of Florida.

11. SCBI denies the allegations of paragraph 11, except admits: (i) SCBI is authorized to do business in Florida; (ii) SCBI offered private banking services to individuals outside of the United States; and (iii) on or about February 2008, American Express Bank Limited was acquired by Standard Chartered PLC.

12. SCBI denies the allegations of paragraph 12, except admits that plaintiffs purport to refer to predecessors, successors, parents, subsidiaries, affiliates and divisions of SCBI.

Plaintiffs' Purchases

¹ All citations to docket entries refer to the master docket, No. 09-118, unless otherwise noted.

13. SCBI denies the allegations of paragraph 13, except admits (i) plaintiff Saca opened an account with American Express Bank International (“AEBI”) in or around June 2001; and (ii) AEBI was renamed SCBI.

14. SCBI denies the allegations of paragraph 14, except admits that on or around April 8, 2005, plaintiff Lancaster opened an account with AEBI.

15. SCBI denies the allegations of paragraph 15, except admits that on or around August 14, 2002, plaintiff Deika opened an account with AEBI.

16. SCBI denies the allegations of paragraph 16, except admits that on or around March 11, 2004, plaintiff Saca authorized a \$250,000 investment in Fairfield Sentry Limited (“Sentry”).

17. SCBI denies the allegations of paragraph 17, except admits that plaintiff Saca authorized an additional \$250,000 investment in Sentry.

18. SCBI denies the allegations of paragraph 18, except admits that on or around June 29, 2007, plaintiff Saca authorized an investment of 405 Sentry shares for approximately \$506,821.05.

19. SCBI denies the allegations of paragraph 19, except admits that on or around February 20, 2004, plaintiff Deika authorized an investment of approximately \$150,000 in Sentry.

20. SCBI denies the allegations of paragraph 20, except admits that on or around July 29, 2008, plaintiff Lancaster authorized a \$100,000 investment in Sentry.

Factual Allegations

21. SCBI denies the allegations of paragraph 21, except admits that plaintiffs purchased shares in Sentry for approximately \$1.3 million.

22. SCBI denies the allegations of paragraph 22, except admits that William Solorzano was a relationship manager at AEBI who interacted with plaintiffs.

23. SCBI denies the allegations of paragraph 23.

24. SCBI denies the allegations of paragraph 24.

25. SCBI denies the allegations of paragraph 25.

26. SCBI denies the allegations of paragraph 26.

27. SCBI denies the allegations of paragraph 27, except admits that, at the time of plaintiffs' purchases of Sentry, Sentry shares had a history of steady returns and lower volatility and risk than certain other investments.

28. SCBI denies the allegations of paragraph 28, except admits: (i) SCBI, in the referenced investment proposal, informed plaintiff Saca of a range of available investment products; (ii) Sentry was included amongst the range of products from which plaintiff Saca—using his exclusive authority to invest for his account—could choose; and (iii) at the time of plaintiffs' purchases of Sentry, Sentry shares had a history of steady returns and lower volatility and risk than certain other investments.

29. SCBI denies the allegations of paragraph 29.

30. SCBI denies the allegations of paragraph 30.

31. SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 and therefore denies them, except admits: (i) SCBI sent plaintiffs account statements; and (ii) the Sentry valuations therein exceeded the value of the Sentry purchase price.

32. SCBI denies the allegations of paragraph 32, including by denying that plaintiffs suffered any damages as a result of conduct by SCBI.

33. SCBI denies the allegations of paragraph 33, except admits that on or around November 30, 2008, plaintiff's account statement dated November 30, 2008, valued Saca's shares at approximately \$1,135,568.40.

34. SCBI denies the allegations of paragraph 34, except admits: (i) investments in Sentry substantially declined in value as a result of the fraud perpetrated by Bernard L. Madoff and Bernard L. Madoff Investment Securities, LLC ("BLMIS"); and (ii) plaintiff Saca's account statement dated December 31, 2008 valued Saca's shares of Sentry at approximately \$8.41.

AS AND FOR A FIRST CLAIM
(Negligent Misrepresentation)

35. SCBI repeats and realleges its responses to paragraphs 1 through 34 as if fully set forth herein.

36. The allegations of paragraph 36 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012 (Dkt No. 937); therefore, no response is required. To the extent an answer is deemed required, SCBI denies the allegations of paragraph 36.

37. The allegations of paragraph 37 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent an answer is deemed required, SCBI denies the allegations of paragraph 37.

38. The allegations of paragraph 38 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent an answer is deemed required, SCBI denies the allegations of paragraph 38.

39. The allegations of paragraph 39 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent an answer is deemed required, SCBI denies the allegations of paragraph 39.

40. The allegations of paragraph 40 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent an answer is deemed required, SCBI denies the allegations of paragraph 40.

41. The allegations of paragraph 41 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent an answer is deemed required, SCBI denies or denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

AS AND FOR A SECOND CLAIM
(Negligence)

42. SCBI repeats and realleges its responses to paragraphs 1 through 41 as if fully set forth herein.

43. The allegations of paragraph 43 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012 (Dkt. No. 937); therefore, no response is required. To the extent a response is deemed required, SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 43.

44. The allegations of paragraph 44 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 44.

45. The allegations of paragraph 45 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45, and therefore denies them, except admits that (i) materials, including the May 2001 MAR/HEDGE and BARRON's articles referenced in paragraphs 45(A) and 45(B) of the Complaint were publicly available and respectfully refers the Court to those documents for a complete and accurate description of their contents; and (ii) in 2005 Harry Markopolos wrote a confidential letter to the SEC, the conclusions of which were rejected. SCBI denies that it did not conduct reasonable due diligence on Sentry. SCBI avers that the SEC conducted investigations of Madoff and BLMIS and did not conclude that Madoff was committing fraud. SCBI therefore denies that reasonable due diligence would have led SCBI to draw the same conclusions that were drawn by Markopolos.

46. The allegations of paragraph 46 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 46.

47. The allegations of paragraph 47 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 47.

AS AND FOR A THIRD CLAIM
(Breach of Fiduciary Duty)

48. SCBI repeats and realleges its responses to paragraphs 1 through 47 as if fully set forth herein.

49. SCBI denies the allegations of paragraph 49.

50. SCBI denies the allegations of paragraph 50.

51. SCBI denies the allegations of paragraph 51.

52. Paragraph 52 contains legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 52.

53. Paragraph 53 contains legal conclusions to which no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 53.

54. SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 54.

AS AND FOR A FOURTH CLAIM
(Gross Negligence)

55. SCBI repeats and realleges its responses to paragraphs 1 through 54 as if fully set forth herein.

56. The allegations of paragraph 56 contain a legal conclusion and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012 (Dkt. No. 937); therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 56.

57. The allegations of paragraph 57 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 57.

58. The allegations in paragraph 58 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 58.

59. The allegations of paragraph 59 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 59.

60. The allegations of paragraph 60 contain legal conclusions and relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 60.

61. The allegations of paragraph 61 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies the allegations of paragraph 61.

62. The allegations of paragraph 62 relate to plaintiffs' claims for negligence, which the Court dismissed on September 12, 2012; therefore, no response is required. To the extent a response is deemed required, SCBI denies that plaintiffs suffered any damages as a result of conduct by SCBI and therefore denies the allegations of paragraph 62.

Denial of Prayer for Relief

SCBI denies that plaintiffs are entitled to any of the relief prayed for on pages 22 and 23 of the Complaint.

Jury Trial Demand

Plaintiffs' demand for a trial by jury is subject to their account agreement(s) with SCBI.

II. DEFENSES

First Defense

Plaintiffs fail to state a claim upon which relief can be granted.

Second Defense

Any damages allegedly suffered by plaintiffs were caused by the intervening act(s) or omission(s) of persons or entities other than SCBI, and said act(s) or omission(s) superseded any act or omission by SCBI for which it might be considered liable.

Third Defense

Plaintiffs' claims are barred, in whole or in part, because SCBI's alleged conduct was not the cause of plaintiffs' injuries.

Fourth Defense

The claims asserted in the Complaint are barred by the equitable doctrines of laches, waiver, estoppel, unclean hands, and other equitable defenses that may appear upon further discovery and investigation.

Fifth Defense

SCBI has not engaged in any conduct that would entitle plaintiffs to an award of punitive damages.

Sixth Defense

Plaintiffs' claims are barred, in whole or in part, because plaintiffs knowingly and voluntarily assumed the risks inherent in the investments at issue.

Seventh Defense

Plaintiffs were contributorily and/or comparatively negligent.

Eighth Defense

Plaintiffs' claims are barred, in whole or in part, by the economic loss doctrine.

Ninth Defense

Plaintiffs' claims are barred, in whole or in part, because they are preempted by the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1).

Tenth Defense

Plaintiffs did not justifiably or reasonably rely on any alleged representations, acts or omissions by SCBI.

Eleventh Defense

Plaintiffs' claims are barred, in whole or in part, because SCBI, or any person or entity acting or purporting to act on SCBI's behalf, acted in good faith and with due care and diligence.

Twelfth Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of their account agreement(s) with SCBI.

Thirteenth Defense

Plaintiffs' claims are barred, in whole or in part, by virtue of disclosures in the subscription agreement(s) and the private purchase memoranda applicable to plaintiffs' purchase(s) of shares of Sentry.

Fourteenth Defense

SCBI was entitled to and did, reasonably and in good faith, rely on the acts and representations of other third parties with respect to the transactions and events that are the subject of plaintiffs' claims.

Fifteenth Defense

Any damages recoverable by plaintiffs from SCBI are limited to the percentage of fault attributable to SCBI, and thus would not include the percentage of fault attributable to at-fault third parties, including but not limited to the defendants named in the Second Consolidated Amended Complaint in *Anwar v. Fairfield Greenwich Limited*, No. 09-CV-0118.

Sixteenth Defense

Any recovery by plaintiffs against SCBI is to be offset, in whole or in part, by any and all other recoveries (including, where applicable, redemptions) by plaintiffs with respect to their investments in Sentry.

Seventeenth Defense

SCBI is entitled to recover indemnity and/or contribution from others for any liability they incur to plaintiffs.

Eighteenth Defense

Any recovery by plaintiffs against SCBI is to be offset by any and all debts, liabilities or obligations owed by plaintiffs to SCBI.

WHEREFORE, SCBI respectfully demands judgment dismissing this action with prejudice together with its costs and disbursements.

Respectfully submitted,

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