Judd v Madison Advisory Servs., Inc.
2018 NY Slip Op 32298(U)
September 6, 2018
Supreme Court, New York County
Docket Number: 152895/2017
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
--x
JONATHAN JUDD and DEBORAH JUDD,

Plaintiffs,

-against-

Index No.
152895/2017
Decision and Order

MADISON ADVISORY SERVICES, INC.,
and JON E. SCHLUETER,

Defendants.
--x
FRANK P. NERVO, J:

Defendants Madison Advisory Services, Inc. (Madison) and Jon E. Schlueter (Schlueter) move for an order, pursuant to CPLR 3211 (a) (1), (5), and (7), dismissing the complaint.

This is an action for breach of fiduciary duty, constructive fraud, professional negligence, and breach of contract against an investment advisory firm, Madison, and its investment adviser representative, Schlueter, by their clients, plaintiffs Jonathan Judd (Jonathan) and Deborah Judd (Deborah) regarding financial planning and investment advice given by defendants over the course of two years. Defendants contend that the essence of plaintiffs' claim are that they bought two life insurance policies through defendants acting as insurance brokers, and that defendants failed to disclose two features of the policies. They urge that the provisions were clearly written in the policies, and plaintiffs cannot establish reasonable reliance. Defendants further urge that they did not owe any fiduciary duty to plaintiffs, because they acted solely as insurance brokers. They also contend that plaintiffs fail to identify a contract between them, or any breached provision, and their breach of fiduciary duty and professional negligence claims are untimely.

The motion is granted only to the extent of dismissing the contract and professional malpractice claims.

BACKGROUND

Plaintiffs Jonathan and Deborah (the Judds) are married and live and work in Manhattan. Defendant Madison is a New York corporation, registered with the Securities and Exchange Commission (SEC) as a "Registered Investment Adviser" (exhibit 1to affidavit of Jon E. Schlueter, dated June 14, 2017 [Schlueter aff], complaint, ¶ 2). Defendant Schlueter was employed by, and a principal of, Madison, and was registered with the SEC as an Investment Adviser Representative (*id.*, ¶ 3). Madison provides advisory services including financial planning services, and portfolio management for individuals and small businesses.

In early 2013, Schlueter contacted Jonathan, explaining that he had many clients that worked for Jonathan's employer, and that he would offer Jonathan and his family comprehensive financial advisory services at no fee (affidavit of Jonathan Judd, dated July 19, 2017 [J Judd aff], ¶¶ 3-4). In May 2013, the Judds met with Schlueter, and during that meeting he held himself out as a seasoned financial planner adept at giving comprehensive financial advice regarding retirement income, savings and investment strategies (*id.*, ¶¶ 5-7). At the meeting, Schlueter gathered comprehensive financial information from them, and offered some preliminary insight on managing their income and expenses. In June 2013, he presented them with a document that contained all his findings, entitled "Core Data Gathering Tool" (*id.*, ¶¶ 5-9).

In July 2013, Schlueter presented the Judds with a detailed, comprehensive financial plan (compl, ¶¶ 10-13; J Judd aff, ¶ 11). He offered the Judds asset allocation advice. He also recommended the purchase of a Pacific Life Flexible Premium Adjustable Life Insurance Policy in Deborah's name, as a financial planning tool designed to provide a steady income stream in retirement, which policy required premiums of $250,000 each year for four years, and which Schlueter represented would produce $100,000 of tax free income per year when she turned 65 (compl, ¶ 15; affidavit of Deborah Judd, dated July 19, 2017 [D Judd aff], ¶ 6). He showed them illustrations that demonstrated such performance. Schlueter solicited Jonathan to purchase a Pacific Life insurance policy which required payments of $41,188 yearly for 10 years (both policies referred to a Pacific IUL Policies) (compl, ¶ 16). When Schlueter recommended the purchase of these policies, he was aware that both Jonathan and Deborah each held 20-year term life insurance policies, purchased in 2001, providing death benefits of $1.5 million under each policy (compl, ¶ 9). In fact, he acknowledged that they did not need additional life insurance, but that Deborah's new Pacific Life policy was an important component of the overall financial plan structured to allow the Judds to accumulate less in retirement savings (D Judd aff, ¶¶ 6-7; J Judd aff, ¶¶ 12-13).

After the initial meeting and submission of the financial plan, Schlueter met with the Judds on multiple occasions, in their home, in September, November, and December 2013, as well as meetings in July and September 2014, and in May 2015, providing financial and retirement planning advice (compl, ¶ 14). Over the course of this time, Schlueter discussed implementing the financial plan one step at a time, with the end goal of defendants managing the Judds' entire investments (J Judd aff, ¶¶ 13-14; D Judd, ¶ 7).

In addition to the Pacific IUL Policies, Schlueter recommended and sold other financial products to the Judds. In June 2014, he recommended that Jonathan invest IRA monies he inherited from his late father, and sold him a variable annuity from Royal Alliance. Schlueter is a registered representative of that brokerage firm. Schlueter further recommended long-term care insurance, which only Deborah purchased, as a rider to her Pacific Life insurance policy, in September 2014 (J Judd aff, ¶ 17; D Judd aff, ¶ 8). In May 2015, Schlueter recommended that Deborah purchase two annuities totaling $500,000 through Royal Alliance. The Judds, however, became concerned about Schlueter's investment recommendations, and retained another financial advisor in June 21015, Paul Cobuzzi of Alliance Bernstein (D Judd aff, ¶¶ 9-10; J Judd aff, ¶ 19).

After consulting with an insurance broker, Cobuzzi informed the Judds that Deborah's Pacific Life insurance policy was unsuitable for them, because it was written to maximize commissions to the selling broker, and had a low chance of succeeding (D Judd aff, ¶ 11). Her policy was capped so that even if the underlying investment portfolio returned more than the given percentage positive return, Deborah's returns would be limited to a percentage "cap" (compl, ¶ 21). While Schlueter represented that the Pacific IUL Polices could not earn less than 0% return, he failed to disclose in his oral sales presentation that policy expenses could increase at Pacific Life's discretion, nor did Schlueter disclose that the maximum "cap" on returns could decrease from 12% to 3% (compl, ¶¶ 21-22).

By letter dated October 21, 2015, Schlueter acknowledged his advisory role to the Judds, and that he provided them with a financial and retirement plans (*see* D Judd aff, ¶ 13 and exhibit 3 annexed thereto).

After consulting with other financial professionals, the Judds decided that the strategies and financial products recommended by Schlueter were unsuitable and inappropriate for their needs. For instance, the variable annuity Jonathan purchased on Schlueter's recommendation was not appropriate because it had a high expense ratio, and the IRA held by his late father was already tax-deferred so he could have just rolled it over into a beneficiary IRA (J Judd aff, ¶ 18). The Judds assert that Schlueter recommended certain financial products not on their suitability to his financial planning clients, but because they carried high commissions and fees, earned by Schlueter and Madison (*see* D Judd aff, ¶ 14). In September 2016, the Judds decided to surrender their Pacific IUL Policies, incurring net losses of $180,094.48 (compl, ¶¶ 25-26).

On March 28, 2017, plaintiffs commenced this action asserting four claims: constructive fraud based on defendants' misrepresentations and omissions in violation of their fiduciary duties to plaintiffs; breach of fiduciary duty as plaintiffs' investment advisors; professional negligence as professional investment advisors; and breach of contract based on defendants' agreement to provide them with investment advice (compl, ¶¶ 27-48).

Defendants move to dismiss the complaint based on documentary evidence and for failure to state a claim. They urge that the documentary evidence, specifically the Pacific IUL Policies, refute the allegations in the complaint, because they define the guaranteed maximum growth cap for each index under the policies, and disclose that the policy expenses may be increased by Pacific Life. They argue that the claims fail to state a claim, because plaintiffs fail to allege how defendants intended for plaintiffs rely, how plaintiffs relied, and that their reliance was reasonable. Defendants further argue that they owed no fiduciary duty to plaintiffs, because they acted solely as insurance brokers in procuring the policies for plaintiffs, and as such they cannot be liable as "professionals." Defendants contend that plaintiffs fail to allege a contract, or any terms that were breached. Finally, they maintain that the second and third claims (breach of fiduciary duty and professional negligence) are untimely.

DISCUSSION

The motion to dismiss is granted only to the extent of dismissing the third and fourth claims for professional negligence and breach of contract, and is otherwise denied.

On a motion to dismiss based on documentary evidence (CPLR 3211 [a] [1]), the documentary evidence submitted must resolve all factual issues, definitively disposing of the plaintiff's claims (*see 511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002]; *Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]). It is "granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *McCully v Jersey Partners, Inc.*, 60 AD3d 562, 562 [1st Dept 2009]). The facts as alleged in the complaint are accepted as true, and the plaintiff is afforded the benefit of every favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Plaintiffs affidavits may be considered to supplement the pleadings. Bare legal conclusions and factual claims flatly contradicted by the documentary evidence are not entitled to such considerations (*see Nisari v Ramjohn*, 85 AD3d 987, 989 [2d Dept 2011]). Defendant's factual affidavits do not constitute documentary evidence within the meaning of CPLR 3211 (a) (1) (*see Art & Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d at 438).

On a motion to dismiss for failure to state a claim (CPLR 3211[a] [7]), again, the complaint allegations, and any submissions in opposition to the dismissal motion, are accepted as true, the plaintiff is afforded the benefit of favorable inferences, and the court need only determine whether the facts fit within a cognizable legal theory (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Guggenheimer v Ginzberg*, 43 NY2d 268, 275 [1977]).

Breach of Contract

To state a claim for breach of contract, the plaintiff must allege that: (1) the parties entered into a contract; (2) the plaintiff performed its obligation; (3) the defendant breached; and (4) the plaintiff suffered damages caused by that breach (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]; *see Nevco Contr. Inc. v R.P. Brennan Gen. Contrs. & Bldrs., Inc.*, 139 AD3d 515, 515 [1st Dept 2016]). Here, while plaintiffs allege that they orally engaged defendants as professional financial advisors, for no fee, they fail to define any of the terms of that contract, and which terms defendants breached. These allegations are too vague to support such a claim, and are dismissed (*see Maldonado v Olympia Mech. Piping & Heating Corp.*, 8 AD3d 348, 350 [2d Dept 2004] [complaint must allege the provisions of the contract breached]; *Lynch v Upper Crust*, 294 AD2d 237, 238 [1st Dept 2002]).

Professional Negligence

The third cause of action for professional negligence is dismissed. Plaintiffs completely fail to address this claim. A claim for professional negligence requires the plaintiff to allege that the defendant departed from the accepted standards of practice in the profession, and that departure proximately caused injury to the plaintiff (*see D.D. Hamilton Textiles v Estate of Mate*, 269 AD2d 214, 215 [1st Dept 2000]). Defendants are not professionals as required for a claim for professional malpractice (*see Chase Scientific Research v NIA Group*, 96 NY2d 20, 28 [2001]; *Starr v Fuoco Group LLP*, 137 AD3d 634, 634 [1st Dept 2016]; *Leather v United States Trust Co. of N.Y.*, 279 AD2d 311, 312 [1st Dept 2001]). According to the Court of Appeals in *Chase Scientific Research v NIA Group*, a professional is one who has extensive formal training, is licensed and regulated, must follow a code of conduct imposing standards greater than those in the marketplace, and there are disciplinary actions for violations (96 NY2d at 28). "While [insurance] agents and brokers must be licensed, they are not required to engage in extensive specialized education and training" (*id.* at 30). Similarly, financial planners are not professionals under the malpractice law (*Starr v Fuoco Group LLP*, 137 AD3d at 634 [a financial advisor is not a "professional"]; *Leather v U.S. Trust Co. of N.Y.*, 279 AD2d at 312 [same]). Accordingly, the third cause of action is dismissed.

Breach of Fiduciary Duty

Plaintiffs' breach of fiduciary duty claim, however, is sufficiently stated and not flatly contradicted by the documents submitted. Contrary to defendants arguments, plaintiffs' claim is not that the Pacific Life policies, and Schlueter as the broker, failed to disclose the policy expenses and growth cap changes. Rather, it is based on allegations that defendants' were acting as plaintiffs' fiduciary as their investment advisors, setting up an entire investment plan, with specific retirement goals, and, as such, owed a fiduciary duty to plaintiffs that was breached when defendants recommended unsuitable, high-cost financial products, that earned defendants' commissions and fees, but that damaged plaintiffs.

To assert a claim for breach of fiduciary duty, the plaintiff must allege a fiduciary relationship, misconduct by the fiduciary, and resulting damages (*Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014]).

A fiduciary relationship may exist between parties "when one of them is under a duty to act for or give advice for the benefit of another upon matters within the scope of the relation" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005], quoting Restatement [Second] of Torts, § 874, Comment a), and "confidence is reposed on one side and there is resulting superiority and influence on the other" (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 561 [2009], quoting *AG Capital Funding Partners, LP v State St. Bank & Trust Co.*, 11 NY3d 146, 158 [2008]). Thus, liability for a breach of this fiduciary duty does not depend solely upon a contract, but, rather, upon the relation (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d at 20, quoting Restatement [Second] of Torts, § 874, Comment b); *see Tonzi v Nichols*, 24 Misc 3d 1249[A] [Sup Ct, Wayne County 2009], *affd* 77 AD3d 1450 [4th Dept 2010] [fiduciary duty of insurance agent acting as financial advisor]). The relationship, "necessarily fact-specific, is grounded in a higher level of trust than normally present in the marketplace between those involved in arm's length business transactions" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d at 19).

While generally there is no fiduciary relationship between an insurance agent and the client, the insurance agent may be found to have assumed additional duties of care when acting as a financial advisor (*see Bullmore v Ernst & Young Cayman Is.*, 45 AD3d 461, 463 [1st Dept 2007]; *Lynch v McQueen*, 309 AD2d 790, 791-792 [2d Dept 2003]; *Fortino v Hersh*, 307 AD2d 899, 899-900[1st Dept 2003]; *Rasmussen v A.C.T. Envtl. Servs.*, 292 AD2d 710, 712 [3d Dept 2002]; *Davis v CCF Capital Corp.*, 277 AD2d 342, 343 [2d Dept 2000]). In addition, where an insured relies on the expertise of the insurance agent, "or there was a course of dealing over an extended period of time which would have put objectively reasonable insurance agents on notice that their advice was being sought and specially relied on, the agent could be found to have a duty to advise because of a special relationship with the insured" (*South Bay Cardiovascular Assocs., P.C. v SCS Agency, Inc.*, 105 AD3d 939, 941–42 [2d Dept 2013], citing *Murphy v Kuhn*, 90 NY2d 266, 272-273 [1997]; *see also Nunez v Mohamed*, 104 AD3d 921, 922 [2d Dept 2013];

Fortino v Hersh, 307 AD2d at 900 [broker as investment advisor]).

"Investment advisors who manage funds belonging to others are a classic example of fiduciaries who owe the highest duty of loyalty to those on whose behalf they act. Both New York law and the federal Investment Advisors Act recognize this status and obligation" (*Beacon Hill CBO II, Ltd. v Beacon Hill Asset Mgt. LLC*, 249 F Supp 2d 268, 273 [SD NY 2003], *affd on other grounds* 89 Fed Appx 749 [2d Cir 2004]; *see Lowenbraun v L.F. Rothschild, Unterberg, Towbin*, 685 F Supp 336, 343 [SD NY1988] [applying New York law]; *Transamerica Mtge. Advisors, Inc. v Lewis*, 444 US 11, 17 [1979] [federal law]; *Securities Exch. Commn. v Capital Gains Research Bureau, Inc.*, 375 US 180, 191–94 [1963] [federal law]). These investment advisors are professionals who "'may be subject to tort liability for failure to exercise reasonable care, irrespective of their contractual duties,' since in 'these instances, it is policy, not the parties' contract, that gives rise to a duty of due care'" (*Bullmore v Ernst & Young Cayman Is.*, 45 AD3d at 463, quoting *Sommer v Federal Signal Corp.*, 79 NY2d 540, 551-552 [1992]; *see also Assured Guar. [UK] Ltd. v J.P. Morgan Inv. Mgt. Inc.*, 80 AD3d 293, 306 [1st Dept 2010] [investment advisor is considered professional, and may be liable for gross negligence or breach of fiduciary duty], *affd* 18 NY3d 341 [2011]; *Fortino v Hersh*, 307 AD2d at 900).

Contrary to defendants' contentions on this motion, they were not simply acting as an insurance agent or broker. Rather, they were investment advisors to plaintiffs. Schlueter approached Jonathan offering financial advice, and held himself and Madison out as seasoned financial planners adept at rendering comprehensive financial advice, regarding investment strategies, retirement savings and income, and savings (J Judd ¶¶ 5-7; D Judd ¶¶ 3-5). Schlueter took a complete 32-page financial history from plaintiffs and developed a detailed financial plan, regarding their retirement income needs, assets and investments; recommended reallocation of their investment assets; and recommended a plan to fund the Judds' children's education (exhibit 2 to J Judd aff). Schlueter provided advice to the Judds to purchase not only the Pacific IUL Polices, but other variable annuities as well. He met with them over a two-year period, from May 2013 to June 2015, encouraging them to implement the financial plan he proposed for them one step at a time (J Judd ¶¶ 13-14; D Judd, ¶ 7). In addition, Madison is a Registered Investment Advisor, and Schlueter is a registered Investment Advisor Representative. This proof is sufficient to establish a fiduciary relation that clearly goes beyond the insurance broker/customer relationship upon which defendants seek dismissal (*see Fortino v Hersh*, 307 AD2d at 900 [evidence sufficient to raise fact issue as to whether broker assumed role of investment advisor]; *see also Wiener v Lazard Freres & Co.*, 241 AD2d 114, 122-123 [1st Dept 1998]).

As fiduciaries, defendants owed duties of "undivided and undiluted loyalty" to plaintiffs. This rule of fidelity, bars self-dealing and the "avoidance of situations in which the fiduciary's personal interest possibly conflicts with the interest of those owed a fiduciary duty" (*Birnbaum v Birnbaum*, 73 NY2d 461, 466 [1989]).

With respect to reliance, plaintiffs have alleged that they "relied on the Defendants' expertise," and that defendants' breached their fiduciary duties by recommending unsuitable, high-cost financial products, and that plaintiffs were actually damaged by their conduct (compl, ¶¶ 28, 35-36). Whether plaintiffs' reliance was reasonable cannot be determined at this early stage of this action based on the documents submitted (*see Perella Weinberg Partners LLC v Kramer*, 153 AD3d 443, 449 [1st Dept 2017] [justifiable reliance is fact issue that "cannot properly be resolved at this prediscovery motion stage of the proceedings"]; *Global Icons, LLC v Silverman*, 45 AD3d 457, 457 [1st Dept 2007]). Therefore, the breach of fiduciary duty claim (second cause of action) withstands this motion to dismiss.

Constructive Fraud Claim

Similarly, plaintiffs' constructive fraud claim (first cause of action) is sufficient to state a claim. Constructive fraud is the breach of a duty which, irrespective of intent, is considered fraudulent "because of its tendency to deceive, to violate a confidence or to injure public or private interests which the law deems worthy of special attention" (*Brown v Lockwood*, 76 AD2d 721 [2d Dept 1980]). To state a claim for constructive fraud, the plaintiffs must allege "(1) a confidential or fiduciary relationship exists, or alternatively that one party has superior knowledge not available to the other; (2) a representation of fact which is false; (3) justifiable reliance on such false representation; and (4) detriment as a result of such reliance" (*Allen v Westpoint–Pepperell, Inc.*, 11 F Supp 2d 277, 283–284 [SD NY 1997] [footnote and citations omitted], *affd on other grounds* 143 F3d 71 [2d Cir 1998]; *see People by Schneiderman v Credit Suisse Sec. (USA) LLC*, __ NY3d __, 2018 NY Slip Op 04272, *9 n 4 [2018]; *Roni LLC v Arfa*, 74 AD3d 442, 444-445 [1st Dept 2010], *affd* 18 NY3d 846 [2011]; *Del Vecchio v Nassau County*, 118 AD2d 615, 617–618 [2d Dept 1986]). The elements are the same as those for actual fraud, with the crucial exception that the element of intent is replaced with a requirement of the existence of a fiduciary relationship (*People by Schneiderman v Credit Suisse Sec. (USA) LLC*, __ NY3d __, 2018 NY Slip Op 04272, *9 n 4).

Here, plaintiffs allege a fiduciary relationship, and they allege that Schlueter omitted to tell them of the risk of higher expenses and a lower growth cap, and omitted to tell them that he personally benefitted through high fees and commissions if they purchased such products. That satisfies, at this early pleading stage, the first two elements. As discussed above, whether plaintiffs' reliance was reasonable cannot be resolved on this prediscovery motion to dismiss. Plaintiffs also have alleged damages as a result of defendants' omissions. Therefore, this claim is sufficient.

Statute of Limitations

Defendants also seek dismissal of the breach of fiduciary duty claim as untimely, asserting that the claim is subject to a three-year limitations period (CPLR 214 [4]), because plaintiffs seek money damages. This argument is rejected. Whether the three-year limitations period in CPLR 214 (4) or the six-year period in CPLR 213 (1) applies, the claim is timely.

The CPLR does not provide any single limitations period for breach of fiduciary duty claims (*see Kaufman v Cohen*, 307 AD2d 113, 118 [1st Dept 2003]). Rather, the applicable period depends on the substantive remedy sought (*id.*). Where the claim seeks only money damages, alleging injury to property, the three-year limitations period in CPLR 214 (4) applies. "Where the relief sought is equitable in nature, the six-year limitations period of CPLR 213 (1) applies" (*id.*). However, a claim for breach of fiduciary duty which is based on allegations of fraud is subject to the six-year period, unless the fraud allegations are only incidental to the claim asserted (*id.*; *Cusimano v Schnurr*, 137 AD3d 527, 529 [1st Dept 2016]). Moreover, the statute of limitations for a breach of fiduciary duty claim "does not begin to run until the fiduciary has openly repudiated his or her obligation or the relationship has been otherwise terminated" (*Loeuis v Grushin*, 126 AD3d 761, 764 [2d Dept 2015]). "The fiduciary must demonstrate complete repudiation of its duties as a fiduciary" (*Incorporated Vill. of Muttontown v Ryba*, 121

AD3d 757, 759 [2d Dept 2014]).

Here, there was no open or complete repudiation of the parties' fiduciary relationship by defendants until after May 2015, and the relationship was terminated by plaintiffs around that time (*see Weight v Day*, 134 AD3d 806, 808 [2d Dept 2015] [claim accrued when trustee resigned]; *Robinson v Day*, 103 AD3d 584, 586 [1st Dept 2013] [claim accrued when fiduciary relinquished her power of attorney over plaintiff's bank accounts]). Thus, this claim was timely commenced in March 2017, whether the three-year or the six-year limitations period applies. Even if the claim accrued when defendants first sold the Pacific IUL Policies to plaintiffs, in September/October 2013, the breach of fiduciary duty claim is based on fraud, warranting the application of the six-year limitations period, and is timely. Contrary to defendants' argument, the fact that plaintiffs' claim is based on constructive, rather than actual, fraud does not result in a different statute of limitations.

Accordingly, it is

ORDERED that the motion to dismiss is granted only to the extent that the third and fourth causes of action are dismissed and is otherwise denied; and it is further

ORDERED that defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 327 at 80 Centre Street, on November 2, 2018, at 10 am.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT

Dated: September 6 , 2018

ENTER:

J.S.C.

HON. FRANK P. NERVO
J.S.C.