

## SUMMARY OF TYPICAL DEFENCE

The defendants submit that the relationship between the plaintiff and the defendants was not a fiduciary one. The client was a sophisticated investor who did not rely on the investment advice, if any, that was provided to him/her by the defendants. The defendants relied upon the statements contained on the trade confirmation slips and monthly account statements sent to the client that stated "Statements of your account will be considered accurate and complete as well as being in accordance to your investment instructions and objectives if not objected to within 45 days after mailing to you." The plaintiff is therefore estopped from proceeding with their claim. In any event, any alleged failure on the part of the IA to know his/her client was not the cause of the losses suffered by the client. The investments were suitable for the client, the client authorized and consented to the transactions in his/her account, and the client was aware of the risks associated with them. There was no actionable breach of duty by the defendants. If there was any breach of duty by the defendants, the plaintiff's recovery should be significantly reduced by reason of: (i) the plaintiff's contributory negligence, (ii) the client's failure to mitigate damages, and (iii) recognition that the defendant's damages, if any, were aggravated by an intervening act not related to general market risks and not reasonably foreseeable or in the contemplation of the parties at the time the investment was made. In addition and in the alternative, the defendant had full knowledge of the material circumstances surrounding the investments and ratified the actions of the defendants by failing to repudiate the trades in the client's account.