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Nokomis Financial Advisors Awarded \$1.5 Million for Negligent Compliance Advice

SARASOTA, FL – A Sarasota circuit judge has awarded nearly \$1.5 million to four Nokomis financial advisors following a three-week trial. The court found that Scott Aabel, Antonio Gomes, Gary Didonna and James Protigal were given negligent compliance advice which led to a regulatory investigation and subsequent bad press that cost them tens of millions of dollars in lost customer accounts and the revenues that those accounts would have generated.

The four financial advisors were represented by Securities Attorneys Drew Clayton and Worth Graham of Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.

In 2012, the Florida Office of Financial Regulation commenced a regulatory action, including a lawsuit in Sarasota County, which alleged that the financial advisors and their brokerage firm, Prime Capital Services and its related investment advisory firm, Asset & Financial Planning Inc. (AFP), violated Florida securities laws by the manner in which management fees were charged for actively managed variable annuities.

However, in his recent 62-page ruling, Judge Hunter Carroll laid the blame squarely at the feet of the brokerage firm, noting in part that, “The ‘feeing the annuity’ issue was, and always has been, a billing error. It was not done with the intent to deceive or injure any clients; after all, the fee itself was lawfully earned and lawfully charged. The problem was entirely within Prime and AFP’s control to fix, however, they did not do so for years.”

In 2012, local news stories announced the regulatory proceeding against Prime Capital and its investment advisory firm, as well as Aabel and Gomes, and they started to lose significant numbers of customers shortly thereafter. Judge Carroll noted that the regulatory proceeding was ultimately settled for a small fraction of the original claim. Moreover, he wrote, “The Court specifically finds – without hesitation – that the publishing of the *Sarasota Herald Tribune* article was the proximate cause of loss to Plaintiffs.”

In addition to awarding the advisors compensation for the loss of their business, the court also found the defendants liable for more than \$400,000 due to their unlawful withholding of the advisors’ revenues as the regulatory action was being settled with the state of Florida.

Following the ruling, Aabel stated, “We finally feel vindicated. For years, the negative news stories from 2012 have alarmed our clients and scared off prospective clients.” Advisor Gomes added, “Now that a judge

has listened to the entire story and seen the evidence, we hope that this will undo some of the damage we have suffered for more than eight years.”

In addition to the \$1.5 million award, the advisors expect to receive prejudgment interest which may increase the total award to more than \$2 million. They will also seek to recover a substantial portion of their costs.

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