

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

ARNOLD COHN, RICHARD COHN and JEFFREY COHN, in their respective individual capacities and as co-trustees of the Trust created for the benefit of ARNOLD COHN under the Last Will and Testament of JOYCE COHN, deceased,

Plaintiffs,

- v -

INDEX NO. 601839/08

PHOENIX HOME LIFE MUTUAL INSURANCE COMPANY, PHOENIX LIFE INSURANCE COMPANY, PHL VARIABLE INSURANCE COMPANY, PHOENIX EQUITY PLANNING CORPORATION, ROSE & ASSOCIATES, LLP, ALBERT CREMER, BI-COUNTY BROKERAGE CORP., ROBERT F. KENT, WORLD GROUP SECURITIES, PAUL J. FOGELMAN, and WMA SECURITIES, INC.,

Defendants.

Administrative Order:

By letter dated September 8, 2008, counsel for defendant Paul J. Fogelman (Fogelman) requests that this action be transferred from I.A.S. Part 17 (Goodman, J.) into the Commercial Division pursuant to Uniform Rule 202.70(e). Plaintiffs have consented to the request.

Uniform Rule 202.70(b) provides that actions in which the principal claims are for “[b]reach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings . . .” should be heard in the Commercial Division, provided the \$100,000 monetary threshold is met or equitable or declaratory or equitable relief is sought. There is no question that this case meets the standards for assignment to the Commercial Division. Plaintiffs seek both equitable and declaratory relief in addition to at least \$450,000 in damages based on their claims of fraud, negligent misrepresentation and, inter alia, breach of fiduciary duty arising out of

the defendants' alleged improper and unauthorized investment of the issue premium for a variable universal life insurance policy in a risky and/or volatile investment vehicle causing the loss of the premium and termination of the policy.

It was Fogelman's counsel that filed the Request for Judicial Intervention (RJI) in this case in connection with a motion to compel plaintiffs to arbitrate their claims against Fogelman., and incorrectly designated the action as a special proceeding under CPLR Article 75. Uniform Rule 202.70(e) does not allow the party that filed the RJI and mistakenly did not designate the case as a commercial matter to apply for a transfer, that right is limited to "any other party." However, since plaintiffs affirmatively consent to the request and could have timely made their own application, it will be granted.

Accordingly, the request for a transfer to the Commercial Division is granted. The Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division, who is directly to address defendant Fogelman's pending Order to Show Cause as soon as possible.

Dated: September 6, 2008

ENTER: _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION