

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**JERRY MARTIN KOKOSHKA, Ph. D.**

CV

Write the full name of each plaintiff

(Include case number of one has been assigned)

- against -

**COMPLAINT**

Do you want a jury trial?

- Yes
- No

**FIDUCIARY WHO EXERCISES  
DISCRETIONARY CONTROL OVER  
RETIREMENT SAVINGS PLAN FOR  
OFFICERS OF COLUMBIA  
UNIVERSITY REPRESENTED BY  
ATTORNEY CORY HIRSCH,  
SAYFARTH SHAW, LLP**

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

19 CV 10670

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number of full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials' and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

**I. BASIS FOR JURISDICTION**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a Citizen of another State or nation, and the amount in controversy is more than 75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction in your case?

- Federal question**
- Diversity of Citizenship**

**A. If you checked Federal Question**

Which of your federal constitutional or federal statutory rights have been violated?

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Section 502(a) of ERISA

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**B. If you checked Diversity of Citizenship**

**1. Citizenship of the parties**

Of what State is each party a citizen?

The plaintiff, \_\_\_\_\_, is a citizen of the State of  
(Plaintiff's name)

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(State in which the person resides and intends to remain.)

Or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

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If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, \_\_\_\_\_, is a citizen of the State of

\_\_\_\_\_  
or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of  
the foreign state of

\_\_\_\_\_  
If the defendant is a corporation:

The defendant, \_\_\_\_\_, is incorporated under the laws of  
the State of \_\_\_\_\_

and has its principal place of business in the State of \_\_\_\_\_

or is incorporated under the laws of (foreign state) \_\_\_\_\_

and has its place of business in  
\_\_\_\_\_

If more than one defendant is named in the complaint, attach additional pages providing  
information for each additional defendant.

## II. PARTIES

### A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional  
pages if needed.

<b>Jerry</b>	<b>M.</b>	<b>Kokoshka</b>
_____ First Name	_____ Middle Initial	_____ Last Name

<b>1 Armstrong Road</b>
_____ Street Address

<b>Morris</b>	<b>Morristown</b>	<b>NJ</b>	<b>07960</b>
_____ County	_____ City	_____ State	_____ ZIP Code

**212 305 8884**  
\_\_\_\_\_

Telephone Number

Email Address (if available)

**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1: **Cory** **Hirsch**  
 First Name Last Name  
**Partner, Seyfarth Shaw, LLP; 233 S Wacker Drive,**  
**Ste.8000**  
 Current Job Title (or other identifying information)  
**Chicago** **IL** **60606-6448**  
 County, City State ZIP Code

Defendant 2:  
 First Name Last Name  
 Current Job Title (or other identifying information)  
 County, City State ZIP Code

Defendant 3:  
 First Name Last Name  
 Current Job Title (or other identifying information)  
 County, City State ZIP Code

Defendant 4:  
 First Name Last Name  
 Current Job Title (or other identifying information)

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County, City

State

ZIP Code

### III. STATEMENT OF CLAIM

Place of occurrence: **New York City**

Date(s) of occurrence: **March 27, 2019**

#### FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

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This case is about negligence and breach of fiduciary duty by the Fiduciary who exercises discretionary control over retirement savings plan for officers of Columbia University. The negligence and breach of fiduciary duty directly resulted in damage of \$23,803. Plaintiff attempted to resolve the issue directly with Fiduciary's office but this process failed. Fiduciary's office informed Plaintiff that all administrative remedies have been exhausted on May 29, 2019.

In January of 2017 Plaintiff had been concerned about the high leverage in equity markets. Consequently Plaintiff desired to invest his retirement savings in gold to preserve purchasing power of his savings and to avoid risk associated with market crash. Safety of Plaintiff's savings, rather than financial gain, was Plaintiff's primary motivation. Consequently Plaintiff called, on a recorded line, Fiduciary who told Plaintiff that they are not able to invest Plaintiff's retirement funds in gold but they highly recommended Vanguard Precious Metals and Mining fund (PMM). Consequently Plaintiff directed Fiduciary to acquire PMM and keep it in Plaintiff's portfolio until retirement or until Plaintiff instructs Fiduciary to sell. At later time the PMM fund became Global Capital Cycles (GCC) fund but still maintaining significant investment in gold. Because this was still the only fund invested in gold Plaintiff have been determined to hold onto it until retirement.

Plaintiff is still concerned, even today, about the leveraged equity markets and desires to hold his retirement in precious metals to preserve purchasing power. Plaintiff's wife and Plaintiff are taking medications that they will have to keep taking for the rest of their lives. They intend to

use their retirement savings to pay for these medications after Plaintiff retires. Consequently it is the most important for Plaintiff to preserve purchasing power of his savings.

**Harm - Negligence:**

**In March of 2019 Plaintiff noticed that his GCC position was liquidated by Fiduciary with \$23,803 loss. Plaintiff had not been consulted before the divestiture in spite of the fact that Plaintiff have given instruction to keep GCC in his savings until retirement or further instruction from Plaintiff. Fiduciary who ordered the divestiture caused more than 10% loss of Plaintiff's entire saving portfolio! Because during the first phone call with Fiduciary's office regarding the divestiture Fiduciary was not aware that divestiture resulted in said damage Plaintiff believes that the damage was unintended consequence of Fiduciary's decision. The fact that Fiduciary failed to realize ahead of time the significant loss that Fiduciary's action would inflict on Plaintiff's retirement savings points to negligence.** Records from quarterly investment review by Fiduciary and the minutes of the investment advisory committee special meeting, totaling over 50 pages of information that have **no mention whatsoever of the impact that Fiduciary's action would have on any individual saving account including Plaintiff's saving account.**

Shortly after Plaintiff had noticed Fiduciary's negligence that led to the substantial loss to Plaintiff, Plaintiff had suggested to Fiduciary to re-acquire the GCC shares before the price changes so that no party would suffer a loss. Fiduciary's office responded that under ERISA provisions Fiduciary is not responsible for any losses because Plaintiff is permitted to choose what fund to invest into. Well, Plaintiff had instructed Fiduciary to buy and hold the fund. **Fiduciary ignored Plaintiff's instruction to hold the fund, divested GCC against Plaintiff's wishes, not realizing that Fiduciary's action would result in a loss to Plaintiff of \$23,803. It was the divestiture, rather than the acquisition, that resulted in a loss.**

### Harm - Breach of Fiduciary Duty:

By definition a **Fiduciary** in a financial sector is an individual in whom another has placed the utmost trust and confidence to manage and **protect property or money**. The relationship wherein one person has an obligation to act for another's benefit.

Most of the time the interests of Columbia's officers are aligned with interests of Fiduciary because by maintaining mostly raising funds in the Columbia portfolio the Fiduciary maximizes growth of the retirement accounts and improves Fiduciary's track record as fund manager at the same time. However, in this case the Plaintiff's interest was not aligned with that of Fiduciary as Plaintiff was interested in preserving purchasing value of his savings while Fiduciary was focused on growth. In this very case Fiduciary had two choices, either keep the GCC fund in the Plaintiff's portfolio as instructed by Plaintiff or divest it. By keeping it Plaintiff would have preserved purchasing power of his saving invested in gold and Plaintiff would not have suffered the detrimental loss. But the Fiduciary's track record would be tarnished because at time of divestiture, on March 29, 2019, GCC was not a growing fund (See Figure 1). By divesting GCC Fiduciary would have the opportunity to replace GCC with a raising fund thus improve own track record. **Plaintiff's retirement savings became the casualty of Fiduciary's desire to improve own track record at the expense of Plaintiff's retirement savings in clear breach of fiduciary duty.**

Figure 1



Legend: Vanguard Global Capital Cycles Fund Investor Shares over 5 years period, source Google Finance



Under the ERISA rules Plaintiff needs to name the Fiduciary who exercises discretionary control over retirement savings plan that is subject to the present controversy. Plaintiff requested twice the name of Fiduciary but such request was denied both times. Not only is providing name of Fiduciary requirement under ERISA rules but Plaintiff has the right to know who the person is who caused him damage. If our judiciary system does not hold Fiduciary personally accountable Fiduciary is not motivated to take more care in the future to avoid causing unintended damage to clients.

In fact Fiduciary abdicated his fiduciary responsibility twice as Fiduciary had the opportunity to reacquire into Plaintiff's portfolio GCC shortly after the divestiture. Because the price of GCC did not change since the time of divestiture reacquisition would have restored full value in Plaintiff's portfolio at no cost to Fiduciary or anyone else. Fiduciary refused to do so. Further, Fiduciary has had the opportunity to compensate Plaintiff for the loss however Fiduciary opted to use discretionary funds to fight Plaintiff in court instead.

Plaintiff is deeply troubled that Fiduciary is convinced that he/she has the authority to cause damage to Plaintiff's saving portfolio and there is nothing that Plaintiff can do to prevent it. For this reason Plaintiff decided to file complaints under ERISA. As stated above Plaintiff will rely on his retirement savings to pay for living expenses and medication for self and his spouse after Plaintiff retires. It is deeply troubling to Plaintiff that Fiduciary clearly abdicated his/her fiduciary obligation, became an adversary in a law suit and yet Fiduciary is still managing Plaintiff's retirement account.

## INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

## IV. RELIEF:

State briefly what money damages or other relief you want the court to order.

Plaintiff hereby seeks compensation of \$23,803 for the unintended damage that Fiduciary caused him.

Further, Plaintiff requests that going forward the Fiduciary takes into consideration impact of Fiduciary's actions on individual accounts of Columbia officers.

**V. PLAINTIFF'S CERTIFICATION AND WARNINGS:**

By signing below, I certify to the best of my knowledge, information, and belief that; (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so indentified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach Additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit and IFP application.

Dated	11/7/19	Plaintiff's Signature	
<b>Jerry</b>	<b>M.</b>	<b>Kokoshka</b>	
First Name	Middle Initial	Last Name	
<b>1 Armstrong Road</b>			
Street Address			
<b>Morris</b>	<b>Morristown</b>	<b>New Jersey</b>	<b>07960</b>
County	City	State	ZIP Code
<b>(212) 305-8884</b>	<b>jmkokoshka@yahoo.com</b>		
Telephone Number	Email Address (if available)		

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically

Yes       No

Jerry Koboshka  
1 Armstrong Road  
Morristown, NJ 07960

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