

The pitch: Retire early. The catch: Brokers want your cash



By Sean Gardner for USA TODAY

Ray Lirette, with wife Cheryl and granddaughter Kallie, says they lost much of their nest egg after trusting a broker who promised big stock returns.

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By Kathy Chu, USA TODAY

HOUMA, La. — After 30 years of toiling in oil fields, Ray Lirette was told in 1997 that he could retire at 52 and buy a camper so he and his wife could travel across the USA.

Lirette says he trusted the advice because it came from an investment broker used by other Chevron workers. That's why he turned over his retirement savings — \$335,000 — to the broker to manage, bought a camper and truck, then borrowed against a nearly paid-off mortgage to pay off credit card bills and auto loans.

"He showed me this projection that I'd have \$1.3 million in 10 years," Lirette, 63, said as the sun glistened off the 28-foot camper parked on his lawn. "I thought, 'I guess we can retire.' "

Retirement didn't last long. Lirette says his nest egg shrank to \$43,000 over eight years as his portfolio — concentrated in fairly risky stocks — plunged. The broker, he says, still guaranteed returns of 15% and

said the market would rebound. About five years ago, Lirette and his wife were forced back to work, into jobs paying a fraction of what they used to earn.

It's a nightmarish lesson in investing that regulators say will become increasingly common as 79 million baby boomers inch toward retirement. Across America, a growing number of financial advisers are targeting the portfolios of the swelling number of want-to-be early retirees through their employers. Advisers are crashing company retirement parties, holding seminars in the workplace — sometimes with little oversight by employers — and persuading employees to pass along their co-workers' contact information.

From one case to the next, the pitches are similar: Employees are urged to retire early by brokers who claim they can earn them more money in retirement than they could make if they continued working. The employees are told they can withdraw up to 9% of their nest eggs a year in retirement because their portfolios — often invested in high-cost, high-commission products — will gain 15% or more a year. In many cases, they're persuaded to do so because some co-workers have done the same.

"It's like *Groundhog Day*— different broker but the same exact case," says Joe Peiffer, a New Orleans lawyer who's represented early retirees in dozens of arbitration complaints against brokers and financial firms. "This is an irresistible source of income to brokers. If they can get into a big company where everybody has a lot of money, they can make a lot of money."

Regulators are starting to pay closer attention. The Financial Industry Regulatory Authority (FINRA), a self-policing body for brokers, has begun a "sweep" of 16 brokerage houses' sales materials and seminars related to early retirement. During the past year, it's ordered two firms to pay more than \$30 million in fines and restitution for allegedly letting their brokers entice telecom and oil company employees to retire early with promises of exaggerated investment returns.

As advisers have become more aggressive about targeting retiring workers, some employers have begun to raise questions about their duty to protect workers — and their potential liability if they don't.

"How money will be managed after employees retire is an emerging topic of conversation in the employer community," says David Wray, president of the Profit Sharing/401(k) Council of America, which represents companies that offer 401(k) plans. "If there's an employer endorsement and it's in the context of a (retirement) plan, there could be some liability. Employers who are thinking about this are being very careful."

Many of the brokers' pitches hinge on a tax rule that lets investors avoid the 10% penalty imposed on retirement-plan withdrawals made before they turn 59½. Under this rule, early withdrawals incur no penalty as long as investors take "substantially equal periodic" payments. This rule can benefit those with sizable assets who retire early. But it's risky when your retirement years can exceed your working years.

Many baby boomers — those born from 1946 through 1964 — are approaching retirement with hundreds of thousands — even millions — of dollars built up in their retirement accounts. Those assets make them alluring targets for financial advisers, some of whom pitch inappropriate, and sometimes non-existent, investments.

In need of advice

Rusty Gilardi, a 24-year Chevron veteran, says he had "no savvy when it came to investments." That's why he sought investment advice in the mid-1990s for the \$1 million in 401(k) and pension assets he'd built up.

Through co-workers, Gilardi was introduced to Dominick Musso, a broker at Morgan Stanley. He says the broker won his trust by playing golf with him, asking about his wife and daughters and talking about his own family. Then, Gilardi says, "Dominick told me flat out, 'I can make you at least 15% (return a year); you'll never touch your principal for the rest of your life. You're set.' "

Gilardi says Musso also told him to cash out his pension because he could earn more in the stock market than from the guaranteed stream of pension income. The lure of spending more time with his family in retirement led Gilardi, then 51, to take Musso's advice. He began withdrawing \$85,000 a year, about 8.5% of his portfolio value.

After the tech bubble burst and the roaring stock market tanked in 2000, Musso urged him to stay in the market, according to Gilardi, saying, "You've got to be in position for when the market comes up."

As his portfolio shrank to about one-third of its original value, Gilardi took what remained of his money to another adviser. Now, at 60, he's working full time as a helicopter pilot for a sheriff's office in Jefferson Parish, La.

"I don't know if I'll get another retirement back," says Gilardi, who, along with Lirette and dozens of other Chevron workers, has arbitration claims pending against Morgan Stanley. "I might be working for the rest of my life now."

Through Morgan Stanley, Musso, who retired from the firm in 2005, declined to comment.

But the firm, in response to Gilardi's arbitration claim, says Gilardi was provided with mutual fund prospectuses that explained the "characteristics, potential risks and expenses associated with the investments," which were made with Gilardi's "approval and consent and were fully consistent with (his) investment objectives." He also received monthly account statements detailing the investments' performance, Morgan Stanley said.

Gilardi "suffered losses of the same type and extent as the losses experienced by millions of investors during the historic market downturn that began in March 2000," the firm said.

No guarantee on returns

Morgan Stanley spokeswoman Christy Pollak says the company can't discuss individual arbitration cases because of client-confidentiality policies. However, in a written statement, she said, "None of these clients were improperly induced to retire early, nor is there any evidence that they were guaranteed a specific rate of return."

Yet a 1999 note obtained by USA TODAY, containing handwritten notes from colleagues and acquaintances — including what appears to be a message from Dominick Musso — congratulates an oil company worker on his retirement. The note includes this phrase at the top: "20% Guaranteed ...! Dom."

USA TODAY couldn't independently confirm the authenticity of the note. But when asked about it, Pollak said the firm "has seen this. It's a retirement card. It's a joke. This in no way represents any guarantee about investment returns."

Alexander Yelland, a spokesman for Chevron, which isn't a party to the arbitration claim, says, "Periodically, it comes to Chevron's attention that financial advisers are soliciting Chevron employees through advertisements or mailings." Chevron is concerned about this practice, but "There is little it can do to stop advertisements and mailings not on Chevron premises."

Early-retirement pitches to employees — especially those with scant investment experience — are likely to surge as baby boomers age. With companies cutting back on traditional pensions, workers are shouldering greater responsibility for their own retirement savings. Hungry for advice, they're drawing the attention of legitimate advisers as well as scamsters.

Two well-known firms were among the first to face regulatory action. FINRA has fined Citigroup and Ameriprise Financial's Securities America, saying the firms inadequately supervised brokers who urged employees to retire early with promises of unrealistic investment gains.

Citi says it's "working on all fronts to prevent a similar situation from occurring again." Securities America says it has "significantly enhanced our compliance policies, procedures and oversight."

In a few early-retirement cases, regulators have managed to recover investors' money. But in many others, investors don't have the documents, time or resources to prove their case. Some don't bother reporting their losses because of the shame of being defrauded.

Even when violations of the law can be proved, advisers may have no money left for investors to recover. In such cases, retirees must start all over again.

"I have people who are working at Home Depot now because they lost their money," says Diane Nygaard, a Kansas City lawyer who represents investors who retired early at the behest of financial advisers. "I have people whose wives have had to go back to work."

In North Carolina, Joseph Lionel Jones pleaded guilty this year to 41 counts of securities violations and five counts of obtaining property by false pretenses from investors, mostly former employees of Abbott Laboratories.

State officials say his victims lost \$8.6 million when, in a Ponzi scheme, Jones used money from earlier investors to pay later ones. But they couldn't get investors' money back; the adviser had frittered much of it away. Jones is serving 20 to 26 years in prison.

To try to recover money, the investors, most of whom retired from 55 to 60, have filed arbitration claims against various financial firms that had employed Jones. They've also sued Abbott Laboratories, accusing the company of letting the adviser "regularly attend retirement parties" and solicit business at a plant that wasn't open to the public. And they've sued the retirement-plan provider, Putnam Fiduciary Trust; they argue it failed to make "minimal effort to see that the retirement funds were being rolled over to a legitimate financial institution."

"We're in the process of investigating these allegations," says Scott Stoffel, a spokesman for Abbott.

Putnam, calling the claims "without merit," says it "plan(s) to defend against them vigorously."

Putnam and Abbott have yet to file formal responses to the lawsuit.

With so many baby boomers nearing retirement age, regulators fear that companies aren't paying enough attention to the investment pitches made to employees. William Galvin, secretary of the commonwealth of Massachusetts, says that as companies downsize, too often their focus is "getting workers off the payroll ... not (on) what's happening to them afterward."

This year, Missouri Secretary of State Robin Carnahan recovered more than \$150,000 for investors. Most of them are retirees from the Hallmark greeting-card company. Some had been persuaded by a financial adviser to shift money in and out of high-cost variable annuities. In doing so, they incurred fees and penalties. Such investments are unsuitable for those who need ongoing access to their money.

Soliciting Hallmark employees

The adviser had solicited Hallmark employees, according to the secretary of State's office, through seminars, referrals and a company newsletter. Jim Overman, assistant general counsel at Hallmark, says that in the past, a retirees' club newsletter listed financial advisers, but there "was never an official company endorsement" of any.

"We have had occasions where financial planners write to Hallmark employees, and we immediately contact them and say it's not appropriate," Overman says.

In the mid-1990s, broker Kent Barber held a seminar at a Hallmark office and later persuaded at least one employee to retire early, an arbitration complaint says.

In general, Barber told employees they had enough assets to retire, sometimes guaranteeing a return of at least 10% to cover distributions from the account, according to the complaint. Barber, who told investors he was a "good Christian," then invested the proceeds in high-cost products, the complaint says. Hallmark wasn't named in the arbitration, which was settled two years ago among investors, Barber's firm, SII Investments and Nationwide. Details weren't disclosed.

SII, which still employs Barber, says, "While this is an unfortunate situation, SII stands behind Mr. Barber and has settled the case to the satisfaction of all parties." Nationwide says its "minimal role was one of product provider."

Linda Odell, a Hallmark spokeswoman, says the company "can find no record that Kent Barber ever presented a seminar at Hallmark."

Patricia Struck, past president of the North American Securities Administrators Association, says while "there's nothing wrong with a company coming in the workplace and offering education," employers should know that firms may try to sell products and services to employees at the seminars or during follow-up appointments.

In all cases of "educational" seminars held outside the workplace, "eventually there would be a sales pitch," says Struck, who adds that it's unlikely that seminars in the workplace would be any different.

"I think companies frankly should avoid setting up seminars on site," Secretary Galvin says. "The guise that it's convenient for employees is overcome by the fact that it could be something that's not good."

Under the Employee Retirement Income Security Act, which governs retirement-plan assets, employers could be held responsible if they "endorsed" or "selected" a financial provider, knowing it wanted to give advice related to a retirement plan, says Robert J. Doyle, director of regulations and interpretations at the Labor Department's Employee Benefits Security Administration. But if an employer made clear it didn't endorse that provider, Doyle says, the employer would likely not be responsible under ERISA.

The law is unclear, though, about what constitutes an endorsement. Does it include advertising a financial seminar on company property or including an adviser in a company newsletter?

"There's no case law that addresses" whether employers can be held liable in early-retirement cases where advisers solicited workers on company property, says Doug Hinson, a partner at Alston & Bird law firm in Atlanta.

Even when advisers have no official tie with employers, their ability to tout their knowledge of the company or their relationship with workers can lend them credibility. In one investigation Massachusetts is conducting, a broker obtained a list of workers who had been offered early retirement, Secretary Galvin says; it's unclear how the adviser got the list.

In New Orleans, Brian Hyver, 61, says he decided to entrust Musso, the Morgan Stanley broker, with his money after Musso showed him a list of two pages of Chevron employees to persuade him to invest, according to Hyver. "It helped sway me to go with him," he says.

Back in Houma, a tight-knit community of oil-field workers an hour's drive from New Orleans, Ray and Cheryl Lirette's misfortunes have rippled through to their colleagues, relatives and friends.

In the first few years after Ray handed over his nest egg to Morgan Stanley, his portfolio soared as the market boomed. That's when he referred Chevron co-worker Roy Oncale and his wife's brother and sister-in-law, Wade and Jerylyn Bergeron, to Morgan Stanley.

Like the Lirettes, Oncale eventually had to return to work. The Bergerons say they're living day to day because Musso lost much of their \$90,000 — which came from a settlement check Wade received after a motorcycle crash partially paralyzed him — in risky investments.

"It makes you feel sick," Ray Lirette says. "At our age, we should be sitting back. But ... we're fighting to pay bills."



By Sean Gardner for USA TODAY

Former Chevron employee Roy Oncale says he lost his retirement savings after co-worker Ray Lirette recommended a broker he'd met through other co-workers.

HERE'S THE PITCH

Some of the claims made by brokers and the reality behind them:

Pitch: Everyone can retire early.

Reality: Not everyone has the resources to do so. Early retirement is particularly risky for workers who haven't saved enough for decades of retirement and who have limited opportunities for other employment. Don't forget about unexpected health care costs, which can deplete your nest egg if you don't plan carefully.

Pitch: You could make as much money in retirement as you can by continuing to work.

Reality: Such promises usually hinge on unrealistically high returns on investments and unsustainably large annual withdrawals.

Pitch: You can expect annual returns of 12% or more.

Reality: Any return over 10.4% exceeds historical long-term returns for the stock market (assuming all dividends were reinvested) and far exceeds average long-term returns of less than 6% for more conservative investments such as bonds.

Pitch: You can withdraw 9% or more of your money each year and never run out.

Reality: Unless you have substantial retirement assets, withdrawing that much can quickly deplete your principal and cause you to outlive your retirement assets. Financial planners generally suggest withdrawing 3% to 5% a year to make sure your money lasts as long as you do.

Sources: Financial Industry Regulatory Authority, USA TODAY research