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Attorneys for Petitioner First Capital Real Estate Investments, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

First Capital Real Estate Investments, LLC, a California Limited Liability Company	:	Civil Action No.: 18-cv-2013
Petitioner,	:	
v.	:	VERIFIED PETITION TO VACATE ARBITRATION AWARD
SDDCO Brokerage Advisors, LLC, Financial Industry Regulatory Authority	:	
Respondent.	:	

Preliminary Statement

1. Petitioner First Capital Real Estate Investments, LLC, (the "Petitioner,") by and through his undersigned counsel, submits this Verified Petition to Vacate Arbitration Award, and, based on the Memorandum of Law in Support of Verified Petition to Vacate Arbitration Award, filed contemporaneously, respectfully prays that the Court vacate the arbitration award, "the Award," dated February 2, 2018, and served on February 6, 2018.

Parties

2. Petitioner is a single-member Limited Liability Company formed under the laws of the State of California whose sole member, Suneet Singal, is a resident of Sacramento, California and is a customer pursuant to FINRA rules as it is not a member firm of FINRA or an associated person of a FINRA member.

3. Respondent SDDCO Brokerage Advisors, LLC (the "Respondent") is under information and belief a privately-owned New York limited liability company whose members are residents of New York and is a registered broker-dealer with the U.S. Securities and Exchange Commission and is a member firm of the Financial Industry Regulatory Authority ("FINRA").

4. Respondent FINRA is a private corporation that acts as a self-regulating organization that regulates brokerage firms and exchange markets and whose principal place of business is Washington, D.C.

Jurisdiction and Venue

5. This Court has jurisdiction based on the Parties diversity of citizenship.

6. Petitioner is a single-member Limited Liability Company formed under the laws of the State of California whose sole member, Suneet Singal, is a resident of Sacramento, California and is a customer pursuant to FINRA rules as it is not a member firm of FINRA or an associated person of a FINRA member.

7. Respondent SDDCO is, under information and belief, a privately-owned New York limited liability company whose members are residents of New York and is a registered broker-dealer with the U.S. Securities and Exchange Commission and is a member firm of FINRA.

8. Respondent FINRA is a private corporation that acts as a self-regulating organization that regulates brokerage firms and exchange markets and whose principal place of business is Washington, D.C.

9. The amount in controversy exceeds \$75,000 pursuant to the Award

10. Venue is proper, as, on information and belief, Respondent maintains an office in New York County, and the arbitration took place in New York County.

Background

11. Respondent SDDCO in this matter filed its Statement of Claim (the “SOC”) through FINRA on or about May 3, 2017.

12. Petitioner filed its Answer to the SOC on or about June 26, 2017.

13. An Amended SOC was filed on or about April 25, 2017.

14. An Amended Answer was filed on or about August 2, 2017.

15. The underlying arbitration was captioned *SDDCO Brokerage Advisors, LLC v. First Capital Real Estate Investments, LLC* and was assigned FINRA Case No.: 17-01140 (the “FINRA Arbitration”).

16. Pursuant to FINRA Rules, the parties to the FINRA Arbitration were served with a list of arbitrators to be used in the selection process, as evidenced by the June 26, 2017 correspondence from FINRA. See, Exhibit “C” to the Memorandum of Law.

17. Pursuant to the terms of that letter and FINRA Rules, the case proceeded “according to the three arbitrator intra-industry case provisions between associated persons or between or among firms and associated persons as described in Rule 13403 (b) (2).” See page 2 and 3 of Exhibit “C” to the Memorandum of Law.

18. Pursuant to the Rules of FINRA, the panel which heard the FINRA Arbitration was to be comprised of individuals that definitively fell within the categories as defined by FINRA Rules to be either “Public Arbitrators,” on the one hand, and “Non-public” arbitrators, on the other hand.

19. FINRA Rules require that the parties to the FINRA Arbitration select, strike and Rank 10 arbitrators from each of three categories as defined by FINRA Rules: (1) Public

Arbitrators, (2) Non-Public Arbitrators and (3) Public Arbitrators from the Chairman Roster. See page 3 of Exhibit "C" to the Memorandum of Law.

20. Pursuant to the selection process and the internal ranking and matching process internally conducted by FINRA, three arbitrators were initially appointed to hear the case, (1) Christopher Zitzmann who was listed as a Non-Public arbitrator, (2) Sandra Parker who listed as a Public Arbitrator, and (3) Keely Parr who was listed as a Public Arbitrator.

21. Ms. Parker served as the Chairperson on the Panel.

22. On or about January 10, 2018 the parties to the FINRA Arbitration received notice that Arbitrator Zitzmann had withdrawn from the matter, and that he was being replaced with non-public Arbitrator Tychelle Dephroneicia McLaurin. A copy of the January 10 letter is annexed hereto as Exhibit "D" to the Memorandum of Law.

23. A copy of the Arbitrator Disclosures reports for each of the Arbitrators who sat on the panel in the FINRA Arbitration are annexed hereto as Exhibit "E" to the Memorandum of Law.

24. The case was heard in the FINRA offices in New York City from January 16 through January 19, 2018 and on January 26, 2018.

25. The panel rendered an award against the Petitioner herein in the amount of \$200,000 plus interest, attorney fees in the amount of \$86,859, accessed forum fees in the amount of \$13,275, and awarded Sanctions against the Petitioner herein on the first day of the Hearing. Exhibit A to the Memorandum of Law.

Respondent's Claim

26. Respondent's Count I is Breach of Contract for alleged breach of the Placement Agreement dated June 23, 2016 attached hereto as Exhibit A. See Exhibit A, Paras. 54-61.

27. Respondent's Count II is for Fraudulent Inducement and Misrepresentation. See Exhibit A, Paras 62-69.

28. Respondent's Count III is for Unjust Enrichment. See Exhibit A, Para. 70.

The Arbitration Award

29. The case was heard in the FINRA offices in New York City from January 16 through January 19, 2018 and on January 26, 2018.

30. The panel rendered an award against the Petitioner herein in the amount of \$200,000 plus interest, attorney fees in the amount of \$86,859, accessed forum fees in the amount of \$13,275, and awarded Sanctions against the Petitioner herein on the first day of the Hearing. A copy of the Award is annexed hereto as Exhibit "E".

Reasons to Vacate the Award

31. The arbitrators exceeded their authority under the Placement Agreement and breached the FINRA Rules of Procedure by applying intra-industry rules to the arbitration when the panel should have applied customer rules to the arbitration. Therefore, the Award should be vacated.

32. The arbitration panel was not appointed in accordance with FINRA procedure as provided in the parties' agreement; therefore, the Court should vacate the award as the arbitrators "exceeded their powers" in reaching the award pursuant to the FAA.

33. The arbitrators exceeded their authority under the Placement Agreement and breached the FINRA Rules of Procedure by failing to follow FINRA Rule 13503; therefore, the award should be vacated.

Conclusion

34. In the instant case, FINRA failed to administer the FINRA Arbitration according to its own rules by applying the Rule 13000 series to improper parties as Petitioner was neither a Member or an Associated Person.

35. FINRA failed to administer the FINRA Arbitration according to its own rules by classifying Arbitrator Parker improperly.

36. FINRA failed to administer the FINRA Arbitration according to its own rules by the arbitrators exhibiting Manifest Disregard of the Law to the prejudice of the Petitioner in violation of filing a Motion under FINRA Rule 13503 without evidencing a good faith effort “to resolve the dispute before filing the Motion.”

37. FINRA failed to administer the FINRA Arbitration according to its own rules by handing down a Sanction during the hearing in violation of FINRA Rule 13503.

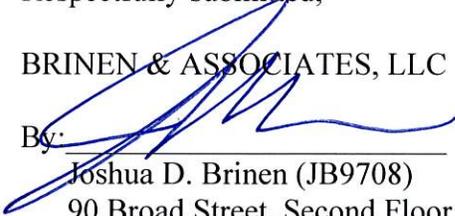
WHEREFORE, Petitioner seeks an Order as follows:

- a. vacating the Award, and
- b. granting such other relief as the Court deems just and proper.

Dated: New York, New York
March 6, 2018

Respectfully submitted,

BRINEN & ASSOCIATES, LLC

By: 

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90 Broad Street, Second Floor
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jbrinen@brinenlaw.com
Attorneys for Petitioner First Capital
Real Estate Investments, LLC

ATTORNEY VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

JOSHUA D. BRINEN, being duly sworn, states that he is the attorney for Petitioner First Capital Real Estate Investments, LLC and that the foregoing Petition is true to his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes the Petition to be true on the grounds of Respondent SDDCO Brokerage Advisors, LLC's Statement of Claim.

This Verification is not made by Petitioner, as the Petitioner does not reside in the county in which undersigned has his principal place of business.

[Handwritten signature of Joshua D. Brinen]
Joshua D. Brinen

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

On the 6th day of March 2018, before me, the undersigned, personally appeared Joshua D. Brinen, personally known to me, or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that, by his/her signature on the instrument, the individual or the person on whose behalf the individual acted, executed the instrument.

[Handwritten signature of Martha S. Thrush]
Notary Public

State of New York County of New York
Subscribed and sworn to (or affirmed) before me
this 6TH day of MARCH, 2018.
By JOSHUA D. BRINEN
Personally known X OR produced identification
Type of identification produced
[Handwritten signature of Martha S. Thrush]
MARTHA S. THRUSH, Notary Public #02TH6063030
My Commission Expires October 16, 2021

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Attorneys for Petitioner First Capital Real Estate Investments, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	:	
First Capital Real Estate Investments, LLC, a	:	
California Limited Liability Company	:	Civil Action No. 18-cv-2013
	:	
Petitioner,	:	
	:	
v.	:	NOTICE OF VERIFIED
	:	PETITION TO VACATE
	:	ARBITRATION AWARD
SDDCO Brokerage Advisors, LLC, Financial	:	
Industry Regulatory Authority	:	
	:	
Respondent.	:	
	:	

PLEASE TAKE NOTICE that Petitioner First Capital Real Estate Investments, LLC, “Petitioner,” will move this Court at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, on April 30, 2018, at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, for an Order vacating the FINRA Dispute Resolution Award, dated February 2, 2018, in favor of Respondent SDDCO Brokerage Advisors, LLC, “Respondent,” and against Petitioner, in the amount of \$200,000 plus interest, attorney fees in the amount of \$86,859, accessed forum fees in the amount of \$13,275, and awarded Sanctions against the Petitioner herein on the first day of the Hearing.

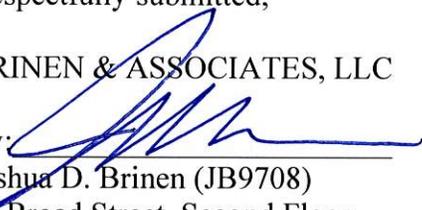
PLEASE TAKE FURTHER NOTICE that, in support thereof, Petitioner will

rely on this Notice of Motion, the Verified Petition to Vacate Arbitration Award, and the Memorandum of Law in Support of Verified Petition to Vacate Arbitration Award.

Dated: New York, New York
March 6, 2018

Respectfully submitted,

BRINEN & ASSOCIATES, LLC

By: 

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Exhibit A

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Email: kkoplín@bartonesq.com

Attorneys for Claimant

FINANCIAL INDUSTRY REGULATORY AUTHORITY

SDDCO BROKERAGE ADVISORS, LLC,

Claimant,

-against-

FIRST CAPITAL REAL ESTATE
INVESTMENTS, LLC,

Respondent.

AMENDED STATEMENT OF CLAIM

Claimant, SDDCO Brokerage Advisors, LLC (“**SDDCO**”), by and through its undersigned counsel, hereby files this Statement of Claim against Respondent, First Capital Real Estate Investments, LLC (“**First Capital**”). SDDCO asserts the following in support of the Amended Statement of Claim:

NATURE OF THE ACTION

1. This claim is brought by SDDCO, a boutique placement agent, against First Capital, a privately held commercial and residential real estate finance firm, for breach of contract relating to a written Placement Agreement (“**Placement Agreement**”) entered into by the parties for the purpose of SDDCO presenting First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital to certain investors from SDDCO’s existing client

base for consideration by them for an investment in First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

2. Pursuant to the Placement Agreement SDDCO is entitled to a “**Placement Fee**,” as defined in the Placement Agreement, upon an investment in First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital, by an “**Approved Investor**,” as defined in the Placement Agreement.

3. The Placement Agreement explicitly stated that investors who are introduced to First Capital, or any of its commonly controlled affiliates, by investors who themselves are introduced by any Approved Investors, are themselves deemed Approved Investors.

4. One of these Approved Investors was Silver Point Capital, L.P. (“**Silver Point**”).

5. Silver Point became an Approved Investor when First Capital consented to Silver Point being approached by SDDCO regarding a potential investment in First Capital. This consent was given by First Capital to SDDCO in an email dated June 1, 2016.

6. Blue River Capital Partners (“**Blue River**”) was also an Approved Investor and identified as such in the Placement Agreement that was executed by First Capital.

7. Blue River worked directly with Silver Point and 2520 Tilden Holdings, LLC (“**Silver Point Tilden**”), a special purpose vehicle (“**SPV**”) that was ultimately formed by Silver Point specifically for the transaction at issue.

8. As per the Placement Agreement, Silver Point Tilden was also an Approved Investor.

9. Less than two months after that initial introduction by SDDCO 2520 Tilden Fee, LLC (“**Tilden**”), a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital, entered into a \$20,000,000 debt security transaction with Silver Point Tilden.

10. In light of this transaction, SDDCO was entitled to a Placement Fee.

11. First Capital, as per the Placement Agreement, was obligated to pay SDDCO one percent (1%) of the aggregate gross proceeds that it (and/or a subsidiary, an affiliate, or a security-holder thereof) received in connection with the offering of debt securities pursuant to an investment by an Approved Investor if the transaction closed after 60 days from the execution of the Placement Agreement.

12. First Capital, without any justification and despite a written acknowledgement by its very own Chief Operating Officer that First Capital owes the Placement Fee – one percent of the \$20,000,000 – to SDDCO, First Capital has refused to pay SDDCO the \$200,000 that was supposed to be paid over six months ago.

THE PARTIES

13. Claimant, SDDCO, is a privately owned New York limited liability company having its place of business at 485 Madison Avenue, 15th Floor, New York, New York 10022, is a registered broker-dealer with the U.S. Securities and Exchange Commission, and is a member firm of the Financial Industry Regulatory Authority (“**FINRA**”).

14. Respondent, First Capital, is a California limited liability company having its place of business located at 60 Broad Street, 34th Floor, New York, New York 10004.

15. At all relevant times Suneet Singal (“**Singal**”) was a Managing Member of First Capital as well its Chief Executive Officer (“**CEO**”).

16. At all relevant times Singal was also the Chairman of the Board and the CEO of First Capital Real Estate Trust Incorporated (“**FCRETI**”).

17. At all relevant times, Tilden was a commonly controlled affiliate, affiliate, and/or subsidiary of FCRETI.

18. Tilden was in existence prior to the execution of the Placement Agreement, having been formed in or prior to March 2013.

19. In addition to First Capital and FCRETI having the same CEO, at all relevant times First Capital owned Sponsor Preferred Shares of FCRETI.

20. The maximum effect of a conversion of First Capital's Sponsor Preferred Shares based on FCRETI's net asset value per Common Share of \$12.51 as of May 5, 2015 and assuming that FCRETI sold all 100,000,000 Common Shares FCRETI previously offered (and/or is continuing to offer) with the maximum selling commissions and dealer manager fees and with no reinvestments of distributions, is that First Capital would own approximately 6.5% of the total number of Common Shares outstanding of FCRETI following the conversion pursuant to the conversion ratio applicable to the Sponsor Preferred Shares, in exchange for an aggregate payment of \$50,000.

21. During all relevant times the number of Common Shares outstanding of FCRETI was below 4,000,000.

22. As such, during all relevant times, if First Capital had converted all of its Sponsor Preferred Shares of FCRETI it would have received in excess of 4,000,000 Common Shares of FCRETI, thereby giving First Capital ownership of over 50% of the total number of Common Shares Outstanding of FCRETI following the conversion.

23. At all relevant times First Capital and FCRETI were both under "common control" because they shared a common CEO.

24. At all relevant times First Capital had the right to own shares of FCRETI to enable it to control FCRETI.

25. At all relevant times FCRETI was a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

JURISDICTION AND HEARING VENUE

26. Claimant has properly executed a Uniform Submission Agreement requesting and consenting to FINRA jurisdiction in this matter.

27. Claimant and Respondent executed the Placement Agreement, dated June 23, 2016 (a true and correct copy of which is attached hereto as Exhibit 1), which contains an arbitration clause providing, in pertinent part, as follows:

Any controversy or claim arising out of or relating to this Placement Agreement shall be resolved by arbitration in accordance with the provisions of the FINRA Code of Arbitration. . . .

Ex. 1 at § 12(d).

28. Claimant respectfully submits that FINRA New York is the appropriate jurisdiction and hearing venue for this matter because both Claimant and Respondent maintain primary business offices in New York, New York. The Placement Agreement also states that it is both governed by and construed in accordance with the laws of the State of New York. Ex. 1 at § 12(d).

STATEMENT OF FACTS

A. The Placement Agreement.

29. On or about June 23, 2016, First Capital and SDDCO entered into the written Placement Agreement whereby First Capital engaged SDDCO to present First Capital to certain investors from SDDCO's existing client base for consideration by them for an investment in First Capital.

30. The Placement Agreement was executed on behalf of First Capital by Singal.

31. The Placement Agreement states, in pertinent part, as follows:

First Capital Real Estate Investments, LLC.... together with its commonly controlled affiliates [shall be] referred to as “First Capital” or the “Company”...

Id. at opening paragraph (emphasis added).

... First Capital is willing to pay [SDDCO] a financial advisory and placement fee (“Placement Fee”) as hereinafter provided with respect to investments by those members of [SDDCO]’s client base:

i. Who are Approved Investors[;]

ii. Who make an investment in the Company by means of a limited partnership agreement, subscription agreement, or private placement memorandum (“Offering Documents”) provided by First Capital to Approved Investors; and

iii. Who has an offer of investment accepted by First Capital in writing.

Id. at § 1(c) (emphasis added).

Promptly following its receipt of Exhibit A, either as original or as amended, First Capital shall advise [SDDCO] in writing as to those investors on Exhibit A that First Capital consents to being approached by [SDDCO] regarding a potential investment in the Company (each such party being an “Approved Investor”)...

Id. at § 1(e) (emphasis added).

Investors which are introduced to the Company by an Approved Investor will be deemed Approved Investors for purposes of the Placement Agreement.

Id. at § 1(f) (emphasis added).

If an Approved Investor makes an investment in the Company, then [SDDCO] shall be entitled to compensation with respect to such investment in accordance with the terms of this Placement Agreement.

Id. at § 1(h) (emphasis added).

If First Capital shall consummate a private offering and/or enter into a definitive agreement with respect to any offering with an Approved Investor within eighteen (18) months of executing this agreement, then First Capital shall pay [SDDCO] the Placement Fee upon consummation of such offering and receipt of proceeds from such offering.

Id. at § 1(i) (emphasis added).

[T]he Company agrees to pay or cause to be paid to [SDDCO] a Placement Fee upon an investment by an Approved Investor...1% of the aggregate gross proceeds received by the Company (and/or a subsidiary, an affiliate or a security-holder thereof) in connection with the offering of debt securities pursuant to an investment in the Offering if the transaction closes after 60 days of execution of this document.

Id. at § 5(d) (emphasis added).

The fee shall be due and payable in U.S. dollars upon the closing of the Offering or each round thereof and receipt of the funds by the Company pursuant thereto.

Id. at § 5 (emphasis added).

32. Finally, the parties agreed that First Capital would indemnify SDDCO against any loss or liability, including “reasonable expenses (including, without limitation, attorney’s fees) actually incurred” by SDDCO as a result of First Capital’s failure to comply with the provisions of the Placement Agreement. *Id.* at § 6.

B. The Initial Investments and Placement Fee Payments.

33. With the Placement Agreement in place, SDDCO immediately went to work on the First Capital mandate.

34. SDDCO performed its obligations required under the Placement Agreement under the reasonable belief that the mandate identified in the Placement Agreement was for First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

35. SDDCO introduced one or more Approved Investors to First Capital, FCRETI, and/or other entities under the reasonable belief that those other entities were a commonly

controlled affiliate, affiliate, and/or subsidiary of First Capital, and that any investment by those Approved Investors was going to be made into First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

36. At no time during the mandate did First Capital inform SDDCO that the mandate was not going to be performed for or on behalf of a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

37. At no time during the mandate did First Capital inform SDDCO that the investment was not going to be made into a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

38. Once First Capital gave its written consent to Silver Point being approached by SDDCO regarding a potential investment in First Capital, thereby making Silver Point an Approved Investor, SDDCO arranged for Keith Spears (“**Spears**”), the Chief Operating Officer and President of Private Equity at First Capital, to speak with Thomas Evans (“**Evans**”) who was not only a consultant for Silver Point but was also the Managing Member of Blue River.

39. On June 2, 2016, Spears emailed directly to SDDCO a summary on First Capital that was an “update on First Capital Real Estate Investment.”

40. On June 30, 2016, Spears emailed directly to SDDCO the appraisals for property located at 2520 Tilden Avenue, Brooklyn, New York, as well as for another piece of property.

41. Spears wrote in this email to SDDCO: “Lets please chat about these two assets that could provide some collateral for a larger deal with Silver Point. I will send you some other loan documents as well. Thanks.”

42. At all relevant times, the property located at 2520 Tilden Avenue was owned by Tilden.

43. Over the course of two months Evans, in his simultaneous roles with Silver Point and Blue River, set up conference calls, conducted due diligence, and submitted a term sheet on Silver Point's behalf to First Capital, FCRETI, and/or commonly controlled affiliates, affiliates, and/or or subsidiaries of First Capital and/or FCRETI.

44. On September 13, 2016, Tilden, entered into an agreement with Silver Point Tilden, an Approved Investor, for the purpose of funding a debt security transaction.

45. Tilden was a commonly controlled affiliate, affiliate, and or subsidiary of FCRETI.

46. As per that Placement Agreement, Silver Point Tilden was an Approved Investor.

47. As per the funding agreement, Silver Point Tilden entered into a \$20,000,000 debt security transaction with Tilden.

48. The agreement for that transaction was executed on behalf of Silver Point Tilden by Michael Gatto, a partner at Silver Point.

49. Singal signed the agreement for that transaction on behalf of Tilden as the authorized signatory for Tilden.

50. In light of this debt security transaction between an Approved Investor and Tilden, an entity that was under common control with, an affiliate of, and/or a subsidiary of First Capital, SDDCO was entitled to a Placement Fee but First Capital refused to pay the \$200,000 due under the Placement Agreement.

51. SDDCO requested that First Capital pay it the \$200,000 that SDDCO had earned under the terms of the Placement Agreement – what amounted to one percent of the aggregate gross proceeds received by an affiliate of First Capital in connection with the offering of debt securities – but, inexplicably, First Capital refused.

52. Even the Chief Operating Officer of First Capital, Spears, acknowledged in an email to the Chief Executive Officer of First Capital that First Capital was obligated under the Placement Agreement to pay SDDCO its Placement Fee upon the funding of the transaction at issue.

53. Upon information and belief, the underlying property that was the collateral in this transaction had an existing loan that was about to mature and the \$20,000,000 debt security transaction that SDDCO arranged enabled FCRETI and/or a subsidiary and/or affiliate of FCRETI to refinance that loan and ultimately sell the property on its own schedule for a profit in excess of \$8,000,000.

FIRST CAUSE OF ACTION
(Breach of Contract)

54. SDDCO repeats and realleges each and every allegation contained in Paragraphs 1 through 53 as if set forth herein.

55. The Placement Agreement is a valid and enforceable contract, which gives rise to certain obligations on the part of First Capital with respect to SDDCO.

56. Under the Placement Agreement, SDDCO presented to First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital certain investors from SDDCO's existing client base for consideration by them for an investment in First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

57. First Capital breached the Placement Agreement by failing to pay SDDCO its Placement Fee related to its introduction of First Capital to Silver Point and the \$20,000,000 debt security transaction between Silver Point Tilden, an Approved Investor, and Tilden, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

58. First Capital's breaches are material and have been uncured for over six months.

59. SDDCO has fully performed its obligations under the Placement Agreement

60. First Capital's breaches have caused substantial damage to SDDCO, including without limitation the lack of working capital needed to run its business, causing it to significantly curtail its business development and marketing that ultimately led to missed revenue opportunities, all directly resulting from First Capital's failure to make timely the Placement Fee payment.

61. Under the Placement Agreement, and applicable law, SDDCO is thus entitled to damages in an amount to be determined at the arbitration hearing.

SECOND CAUSE OF ACTION
(Fraudulent Inducement and Misrepresentation)

62. SDDCO repeats and realleges each and every allegation contained in Paragraphs 1 through 61 as if set forth herein.

63. First Capital failed to inform and/or misrepresented to SDDCO that the mandate identified in the Placement Agreement was not for First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

64. First Capital also failed to inform and/or misrepresented to SDDCO that any investment by an Approved Investor was not going to be made into First Capital, a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

65. First Capital intentionally failed to inform SDDCO about these material facts and/or made these misrepresentations for the purpose of inducing SDDCO to perform its obligations under the terms of the Placement Agreement while knowing that it would not pay SDDCO any compensation even if SDDCO fulfilled all of its obligations under the Placement Agreement.

66. SDDCO was justified in relying upon the reasonable belief that First Capital would only have it introduce Approved Investors to a commonly controlled affiliate, affiliate, and/or subsidiary of First Capital.

67. SDDCO would not have performed its obligations under the terms of the Placement Agreement had it known about these material facts that First Capital withheld from and/or misrepresented to SDDCO.

68. SDDCO fully performed its obligations under the Placement Agreement.

69. Therefore, SDDCO, having performed its obligations under the terms of the Placement Agreement, is entitled to damages in an amount to be determined at the arbitration hearing.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

70. SDDCO repeats and realleges each and every allegation contained in Paragraphs 1 through 69 as if set forth herein.

By reason of the benefits conferred upon First Capital by SDDCO fulfilling its obligations under the Placement Agreement and First Capital refusing to pay compensation to SDDCO as per the Placement Agreement, SDDCO is entitled to relief for this unjust enrichment and in an amount to be determined at the arbitration hearing.

PRAYER FOR RELIEF

WHEREFORE, SDDCO prays for relief as follows:

A. For an award of damages against First Capital, in an amount to be proven at the arbitration hearing, but no less than \$200,000 arising from First Capital's willful breach of its contractual obligations under the Placement Agreement;

- B. For an award of SDDCO's reasonable attorneys' fees and costs in an amount to be determined at the arbitration hearing;
- C. For an award of prejudgment interest at the maximum legal rate;
- D. For punitive damages; and
- E. For such other and further relief the Arbitration Panel may deem just and proper.

Dated: New York, New York
July 14, 2017

BARTON LLP

By: _____



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Kevin S. Koplín

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SDDCO Brokerage Advisors, LLC*