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Despite no direct evidence, lawyers secure $4.8M verdict

Man's nephew, advisor sued over diverted funds

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A Providence Superior Court jury recently returned a $4.8 million verdict in an action against a financial advisor and the nephew of a now-deceased elderly man, concluding that the decedent's investment funds were secretly diverted through a change in beneficiary designations.

The executor of the estates of siblings Armando "Mandy" Damiani and Lillian Estrella brought the complaint in *Estrella v. Damiani, et al.*, against several defendants: the nephew, Steven Damiani; investment advisor Richard A. Ranone; and Ranone's employer, the financial services firm Janney Montgomery Scott.

After a five-day trial with Judge Brian P. Stern presiding, the jury returned a verdict on March 12 favoring the estates on all counts, which included conversion, tortious interference with inheritance, exploitation of an elder, obtaining money by false pretenses, breach of fiduciary duty, and civil conspiracy. Deliberating for two and a half hours, the jury awarded approximately $2.4 million for the underlying claims and an additional $2.4 million in punitive damages.

Representing the executor was Nicholas B. Carter and Matthew S. Furman of Boston's Todd & Weld, with Thomas L. Mirza of East Providence as local co-counsel.

Change of beneficiary

As spelled out in the pleadings, Ranone was the financial advisor to both Armando "Mandy" Damiani and Steven Damiani. When Ranone took a new position with Janney in January 2016, he presented Armando with paperwork to move his investments that Ranone had managed for years at Wells Fargo to a new Janney account.

The complaint said that the "onboarding paperwork" was unreasonably favorable to Janney and that Ranone did not provide Armando with a meaningful choice in entering the new relationship.

"Ranone was in a hurry to transfer many of his Wells Fargo clients to his new firm, Janney, and rushed Mandy to execute this paperwork," the complaint continued.

The documents were described as having small print and complicated language of a legal nature, "even though Mandy was 92 years old, effectively illiterate and unsophisticated in legal matters and … lacked independent counsel or a reasonable opportunity to review the paperwork, which he needed."

The complaint continued on to say that later, when Armando was gravely ill in the intensive care unit of Rhode Island Hospital, Steven Damiani conspired with Ranone to change Armando's transfer-on-death instructions to strip Lillian, who had been his beneficiary, of any interest in Armando's substantial investment assets held with Janney.

Ranone first effectuated the change by having Armando sign a blank TOD form. A few days later, Ranone wrote Steven's personal information onto the document by hand and had a Janney employee notarize and backdate the notarization. The complaint characterized that action as a violation of Janney's policy that the notary authenticate the signature and verify that the form was signed knowingly and voluntarily.

Although Ranone maintained that Armando had stated his wishes to make Steven the beneficiary, the plaintiff executor countered that such an assertion was "severely undermined" by Armando's will. It remained unchanged and designated Lillian as the heir to his estate, which exceeded $2 million in assets exclusive of the Janney funds.

"Mandy made no effort to change his estate plan and the substantial bequest to Lillian that he knew he was making to her," the complaint averred.

The pleadings then explain how Ranone later obtained a signature from Armando on a second TOD form that had Steven's information typed on it. But there were no witnesses and the notary clause was once again backdated.

At the time, Armando had been in the hospital for 10 days, was in the intensive care unit, had undergone two major surgical procedures, suffered from a major infection, and was on drugs known to cause side effects such as confusion, dizziness and memory problems.

"Mandy's [second] purported signature … was an illegible scrawl bearing no resemblance to his normal signature and further demonstrating that he was in a totally compromised condition and not competent to make this substantial financial and legal decision," the plaintiff stated.

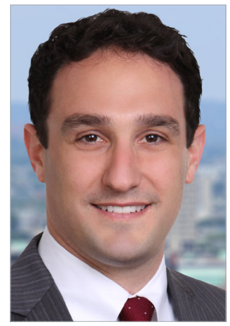
Through the TOD change, Steven became the sole beneficiary of the $1.5 million Janney account. Armando died in March 2016, and Lillian died a few months later.

'Sending a message'

There was evidence that Ranone also stood to gain personally from the wrongful transfer of the assets by keeping them under his management.

Carter said there was testimony at trial that brokers work hard to take along their "book of business" when changing companies. Armando's investments were among Ranone's top 10 percent of accounts as measured by asset value, he said.

CARTER



FURMAN

MIRZA

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— Nicholas B. Carter, co-counsel for plaintiff

But a weak element in the plaintiff's case was the lack of witnesses to the conversations between Ranone and Armando.

"A strong point for the defense was that they had the only witness who communicated with Armando. So we had the burden of showing that [Ranone] was not credible, was not telling the truth, and that there was in fact a conspiracy," Carter said.

Although the lack of direct evidence made the case "legally challenging," Carter said the plaintiff was able to rely on circumstantial evidence of the actions that transpired between Ranone and Steven.

The law allows conspiracy to be proven through circumstantial evidence, and Carter was confident that once a conspiracy was shown, punitive damages would follow.

"We knew the jury would be very upset by the facts of all this, and I was not surprised by the punitive damages award in light of the wrongdoing here," he said.

Nor was he surprised by the short time that the jurors deliberated.

Based on the timing of a question from the jury, Carter deduced that the panel spent only about 40 minutes in deciding liability before dedicating more time to the issue of punitive damages.

"I thought they would decide one way or the other in less than three hours, and clearly we persuaded them of the strength of our case," Carter said.

With almost two years of legal wrangling, he credited the family for continuing the fight on behalf of their uncle, Armando, and their mother, Lillian, at the risk of incurring substantial legal fees.

But beyond the significance of the verdict to Lillian Estrella's heirs, in Carter's view the outcome has a broader importance for the community.

"This is a case involving the exploitation of an elder. The defendants went into the ICU and had a 92-year-old man sign very complicated financial documents. You just don't do that, and certainly not without a witness," he said. "The jury is sending a message that taking advantage of a client, particularly an elderly client, is not acceptable."

Mirza, Carter's co-counsel, said that at the end of the day, Armando Damiani intended for his estate to go to his sister, Lillian.

"We feel good about the verdict because it's what he wanted from the beginning," Mirza said.

At press time, final judgment had not entered, as Stern had yet to rule on the attorneys' fees petition under the Rhode Island Deceptive Trade Practices Act.

The attorneys for the individual defendants, Michael S. Marino of Providence, David L. Ward of Boston, and Paul D. Ragosta of Providence, did not respond to a request for comments.

In a statement, William Smith, deputy general counsel for Janney, said his client intended to appeal the judgment but declined to comment further.