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Silent Victims of the Financial Decline

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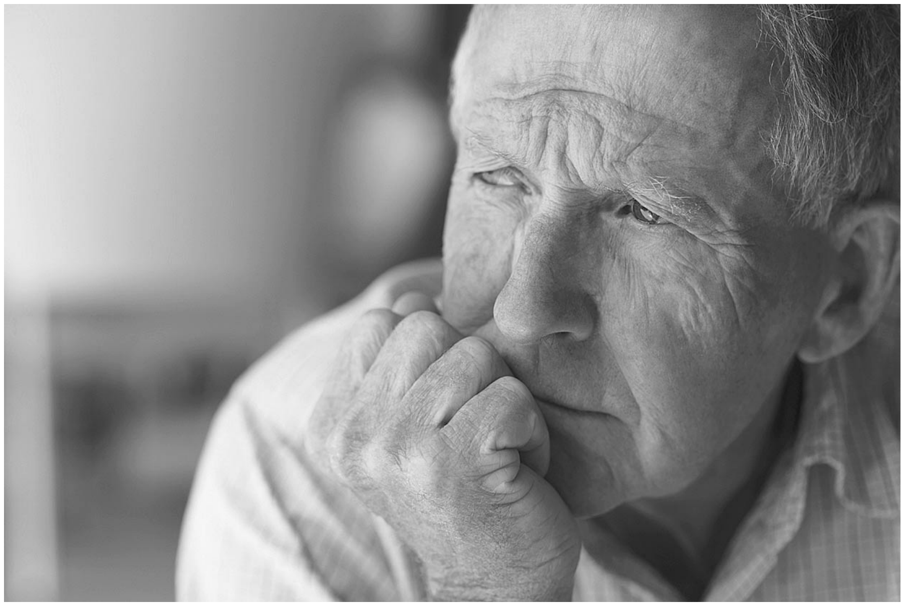
FEATURE

SILENT VICTIMS OF THE FINANCIAL DECLINE

by **Emily Hardy**

The scene is set: a rich elderly gentleman and a younger woman enter a church. It sounds like the start to a romantic comedy, but no marriage takes place; instead, the woman defrauds the elderly man of somewhere between $10,000 and $100,000.[1] The woman is Melissa Reilly, a 57 year-old resident of Wadsworth, Illinois. Reilly was accused of "borrowing" money, credit cards, and opening additional credit cards in the elderly man's name.[2] The two met at church and developed a relationship over the past six years—a relationship that has allowed her to take advantage of him financially.[3]



Elder financial abuse has increased during the nation's recent financial crisis.[4] The law recognizes financial exploitation as a form of elder abuse. Specifically, the exploitation of an adult's financial resources constitutes "abuse" under the Illinois Elder Abuse and Neglect Act.[5] Further, "exploitation" is defined in the Financial Exploitation of an Elderly Person or a Person with a Disability Act as the illegal taking, misuse or concealment of funds, property, or assets of a senior, a process which disadvantages the elderly person for someone else's benefit.[6]

Over 50% of all cases of elder abuse reported in Illinois involve financial exploitation.[7,8] A 2011 study by MetLife showed that financial abuse of the elderly had risen 12% in two years, from \$2.6 billion in 2008 to \$2.9 billion in 2010.[9] In the next twenty years, the percentage of the whole population that is 65 or older is expected to rise by over 7%, thus exposing an even larger percentage of the population to financial exploitation.[10]

Attractive Victims

Financial exploitation is most common among elderly victims who have diminished mental capacity, live in isolation, and still control great wealth.[11]

Elderly individuals with diminished capacity often fail to comprehend the true nature of certain relationships – making them susceptible to exploitation.[12] According to the Center for Retirement Research at Boston College, "between ages 71 and 79, one-fifth of individuals are impaired but that [percentage] rises to half of those between ages 80 and 89."[13]

Social isolation also leaves many elderly people prone to financial abuse, as they become either dependent on others or are left craving any social interaction.[14] In Reilly's case, she sought out and maintained a relationship with her victim from over a six-year period, becoming his friend after connecting with him at a social function.[15]

In addition, with over 70% of all funds deposited in financial institutions controlled by persons 65 years or older, the elderly's access to money makes them a particularly attractive victim.[16] Slick Willie Sutton, a famous bank robber in the early 1900's, is quoted as saying he robbed banks "because that's where the money is," and with so much of the nation's wealth in the hands of the elderly, they have become the modern bank.[17]

The abuser's belief that he is not going to be caught or charged further enables elder abuse.[18] Although it is unclear who ultimately reported Reilly's crime, no one reported the continuous abuse for six years prior to her arrest.[19] It is estimated that 4 to 5% of elderly people are subjected to some form of abuse, but only one in 13 of these cases is ever reported.[20] This low percentage of reporting evidences the fact that this crime remains undocumented and unpunished more often than not.

Personal Prevention Measures

With cases of financial abuse on the rise, families can put several preventative measures into place in order to discourage financial abuse of their elderly relatives. First, families should avoid isolating the elderly individual, both socially and within the family.[21] About one-third of financial abuse comes from a family member,[22] and this family member usually has sole contact with the elder relative.[23] Tom Wendt, Legal Director at the Chicago based Center for Disability and Elder Law ("CDEL"), said that the most common types of abuse seen in his office involve family members coercing seniors into signing over a title to the house, allowing access to bank accounts, or signing a Power of

Attorney that is later abused.[24] Thus, when the whole family is more involved with the elder relative, the potential for abuse diminishes.[25]

In addition, there are financial practices that can help protect the elder individual. For example, employing a "springing power of attorney" can help insure that the power of attorney does not come into effect until a person is judged to lose capacity.[26] Unlike a durable power of attorney, the springing power of attorney can specify that two doctors must adjudge the individual as incapacitated before it goes into effect.[27] This places the two doctors in a special position and creates assurance that the elderly person actually needs assistance.[28]

Furthermore, creating third party consent on bank transactions puts a check on all financial changes, which may limit outside exploitation.[29] If credit cards or spending is unusual, the family or individual with power of attorney will be alerted to these transactions.

While organizations like CDEL can provide free legal assistance at the investigative level and for litigation for elder abuse cases, Wendt said that CDEL's main goal is to stop harm before it gets to a stage where litigation occurs.[30] For many of their elderly clients, time is of the essence, and lengthy court cases do not provide the immediate relief that may be essential for the clients' well-being.[31] Rather, Wendt finds that the best way to prevent abuse is to increase awareness in the senior community and to empower seniors to make decisions that will protect them.[32] This is part of the reason that CDEL started their Senior Center Initiative ("SCI"), offering over 100 outreach presentations per year in which CDEL attorneys speak about concerns relating to Powers of Attorney and financial abuse.[33]

Legislative Measures

In addition to personal prevention measures, state legislatures have the ability to curb elder abuse through new legislation. *Stateline Midwest,* a publication that deals with policy issues and decisions made in the Midwest, has outlined key strategies for policy makers in preventing elder financial abuse, including harsher criminal penalties, mandated financial reporting, statewide agencies (hotlines), and education to the community and seniors on how to recognize abuse and get help.[34]

In Illinois, the B*SAFE program, organized by the Illinois Department of Aging,[35] targets bank personnel as the first line of defense. The program specifically teaches bank personnel to recognize and report elder financial abuse.[36] Originally only recommended, the B*SAFE became a mandatory program of instruction for financial institutions in 2010.[37] The program allows institutions either to certify their own employees to conduct the training or to bring in staff from the Department of Aging or elder abuse agencies to conduct the training.[38] Each institution is required to provide a 30-minute program for employees every three years on how to detect and prevent financial abuse.[39] Prior to the update in the law, financial institutions reported only 2% of cases; by making the program mandatory, legislatures hope that they will be able to spot financial abuse at an early stage, thus increasing financial institution reporting.[40]

While Illinois financial institutions are not mandatory reporters, they can serve as a great resource—as many elderly people physically go to the bank rather than using online banking resources.[41] Although reporting is only mandatory in Illinois for specific professional groups, other groups, such as home health care providers, mental health providers, law enforcement officers, and anyone in Illinois who has a good faith basis for reporting abuse, has legal immunity under the Elder Abuse and Neglect Act.[42] In fact, there is a 24-hour Elder Abuse Hotline set up in Illinois for reporting.[43]

The Illinois Department of Aging also enacted the "Be a Savvy Senior" initiative, which is a series of publications designed to raise adults' awareness of financial exploitation.[44] They offer brochures, posters, and flyers that give information on what financial abuse is, how to prevent it, and what to do if abuse is suspected.[45]

Moreover, the Illinois legislature has lowered the amount of money required to classify a financial abuse case as a Class I felony.[46] The minimum was previously $100,000, but House Bill ("HB") 1689/720 amended the Illinois Criminal Code and lowered the amount to $50,000.[47] In addition, Illinois enacted HB 5653 in January 2013, which allows prosecutors to freeze the assets of a defendant charged with financial abuse or exploitation of a senior citizen or disabled person.[48] Most of the laws that Illinois has enacted enhance the penalties for perpetrator of the abuse, which can provide additional relief to victims.[49]

Like Illinois, Michigan has also proposed and passed numerous bills in the past several years to address growing financial abuse concerns. Specifically, the Senate proposed and passed Senate Bill 463; this bill would create a training program similar to Illinois', requiring financial institutions to train employees to identify and report suspected financial exploitation of vulnerable adults.[50] Michigan implemented the same types of immunities for reporters of suspected abuse as in Illinois.[51]

New legislation in Michigan also requires institutions to alert joint account holders to the fact that the other account holder is an equal owner of the funds.[52] The statute also mandates that the institution inform joint account holders that if one dies, the other would continue to have full access to the account.[53] These recent bills strengthen banking institutions' notification and awareness duties to their clients.[54]

In addition to Illinois and Michigan, some of Minnesota's recent initiatives also focus on tougher criminalization of elder abuse. Just as Illinois lowered its financial requirements for a Class I felony in order to promote harsher penalties for abusers, Minnesota enacted House File 818 in 2009, creating a new type of felony specific to elder abuse.[55] This new felony covers financial exploitation of a vulnerable adult from $35,000 and up and carries a sentence of up to 20 years in jail.[56] This bill also increased the statute of limitations for such crimes from three years to five years.[57]

Minnesota's previous elder abuse statute required that the reporter call the area with jurisdiction to report abuse.[58] This led to confusion on whether to report the abuse where the abuser lived or where the victim lived.[59] Now, Minnesota is implementing a hotline similar to the hotline in Illinois that will allow people to report abuse from anywhere, cutting down on bureaucratic pitfalls to the reporting process.[60]

Conclusion

While some elderly individuals are particularly susceptible to financial exploitation, preventative measures and the recent legislation will help to curb this form of elder abuse. Making the community aware of the pervasiveness of elder financial exploitation and encouraging families to take precaution will help to ensure that Illinois and Midwest residents can remain financially secure during their twilight years.

Notes

1 Ruth Fuller, *Lake County Woman Accused of Defrauding Elderly Man,* Chicago Tribune, 27 Feb. 2013, *available at* http://articles.chicagotribune.com/2013-02-27/news/ct-met-church-friend-theft-20130228_1_lake-county-woman-credit-card-financial-exploitation.
2 *Id.*
3 *Id.*
4 Jill Schlesinger, *Financial Elder Abuse Increases in a Down Economy,* Chicago Tribune, 20 Jun 2012, *available at* http://www.chicagotribune.com/business/sns-201206201300—tms—retiresmctnrs-a20120620-20120620,0,2256410.story.
5 Elder and Abuse Neglect Act, 320 Ill. Comp. Stat. 20/2(A) (2012).
6 Financial Exploitation of an Elderly Person or a Person with a Disability, 720 Ill Comp. Stat. 5/17-56 (a) (2012); *The Elder Law Resource Guide: Elder Abuse and Financial Exploitation*, Illinois Legal Aid, last updated July 2010, *available at* http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=4235.
7 5/17-56(a).
8 Email interview with Tom Wendt Legal Director at the Center for Disability and Elder Law ("CDEL"), April 4, 2012 (in the past two years alone, CDEL has opened approximately 24 files for financial abuse, and often these cases are interrelated with other cases that do not initially appear to be financial abuse).
9 Schlesinger, *supra* note 4.
10 Kate Tourmey, *Crackdown on Elder Abuse*, Stateline Midwest, April 2012 at 1, *available at* http://www.csgmidwest.org/policyresearch/documents/0412slmw.pdf.
11 Thomas Hafemeister, *Financial Abuse of the Elderly in Domestic Setting*, NCBI Bookshelf, 2003 at 5, available at http://www.ncbi.nlm.nih.gov/books/NBK98784/.
12 *Id.*
13 Schlesinger, *supra* note 4.
14 *Id.*
15 Fuller, *supra* note 1.
16 Hafemeister, *supra* note 11, at 5.
17 *Famous Cases & Criminals: Willie Sutton*, last accessed 20 April 2013, *available at* http://www.fbi.gov/about-us/history/famous-cases/willie-sutton
18 Hafemeister, *supra* note 11, at 6.
19 Fuller, *supra* note 1.
20 *The Elder Law Resource Guide*, *supra* note 6.
21 Hafemeister, *supra* note 11, at 22.
22 Tourmey, *supra* note 10, at 1.
23 Hafemeister, *supra* note 11, at 22.
24 Wendt, *supra* note 8.
25 *Id.*
26 *Id.*
27 *Id.*
28 *Id.*

29 *Id.*

30 *Id.* (In 2011, CDEL assisted with one elder abuse case that obtained a $160,000 judgment.)

31 *Id.*

32 *Id.*

33 *Id.* (SCI workshops allow each senior to take action to protect himself/herself by executing a POA, and structuring the document as to best protect the senior.)

34 Tourmey, *supra* note 10, at 7.

35 *Preventing Financial Exploitation*, Illinois Dep't of aging, last accessed 12 Mar. 2013, *available at* http://www.state.il.us/aging/1abuselegal/abuse_financial.htm#eataskforce.

36 *Id.*

37 Tourmey, *supra* note 10, at 6.

38 *Id.*

39 *Id.*

40 *Id.* at 1.

41 *Preventing Financial Exploitation* , *supra* note 35.

42 Tourmey, *supra* note 10, at 6.

43 *Id.*

44 *Preventing Financial Exploitation* , *supra* note 35.

45 *Publications*, Illinois Dep't of aging, last accessed 12 Mar. 2013, *available at* http://www.state.il.us/aging/1news_pubs/onlinepubs2.htm#ss.

46 *Id.*

47 *Id.* Financial Exploitation of an Elderly Person or a Person with a Disability, 720 Ill. Comp. Stat. 5/17-56 (b)(2012).

48 Tourmey, *supra* note 10, at 6.

49 Wendt, *supra* note 8 (there are also several agencies that investigate allegations of abuse such as: City of Chicago Dep't of Aging, Suburban Cook County Townships Dep't of Aging and various other non-profit agencies).

50 Tourmey, *supra* note 10, at 6.

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

57 *Id.*

58 *Id.* at 7.

59 *Id.*

60 *Id.*