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VINDICATING VULNERABLE VICTIMS: ILLINOIS'S EFFORTS TO PREVENT ELDER FINANCIAL EXPLOITATION

by ASHLEY JACONETTI

A 91-year-old woman residing at an assisted living facility in Illinois is now one of the latest victims of egregious long-term financial abuse – and at the hands of her two cousins.¹

After an employee at the assisted living facility noticed financial discrepancies and contacted police authorities,² investigators discovered that, from 2005 to 2011, the two individuals held the woman's power of attorney and allegedly stole \$462,686 from the victim.³ On Feb. 2, 2012, a Madison County grand

jury indicted the two on multiple counts of financial exploitation of an elderly person.⁴

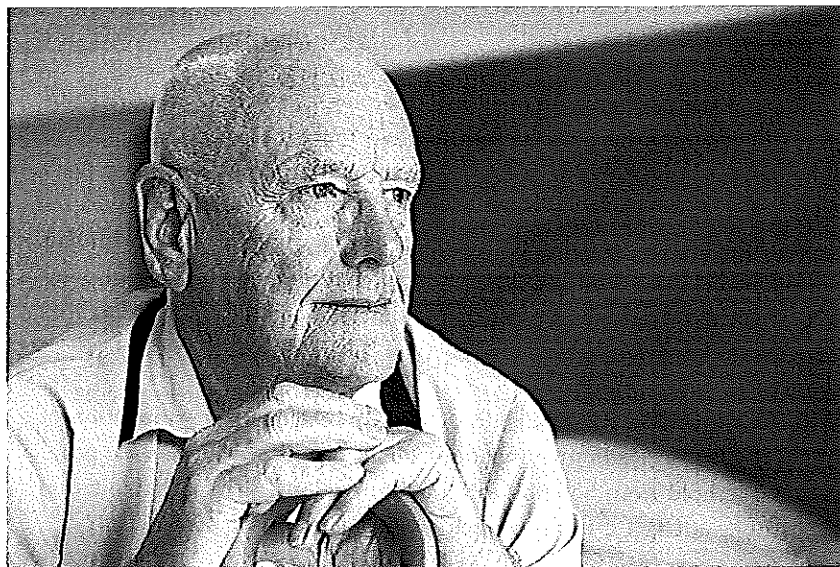
Unfortunately, this elderly woman's story is not unique. According to the Illinois Department on Aging, financial exploitation is the most common form of elder abuse reported in the state, constituting 58 percent of reported elder abuse cases.⁵ In 2010 alone, there were 5,953 reports of suspected elder financial abuse cases in Illinois,⁶ and each year financial exploitation costs victims an estimated \$2.6 billion nationally.⁷

The Department on Aging estimates that elder financial abuse incidents remain largely unreported,⁸ especially when the offenders are family members, friends or caregivers.⁹ AARP's Associate State Director of Advocacy and Outreach Ryan Gruenenfelder explained that elderly persons that are victimized by family or friends are often hesitant to report the financial abuse, whether out of love for the person committing the crime or dependence on him or her for care.¹⁰

ILLINOIS'S LEGISLATIVE INITIATIVES TO PROTECT THE ELDERLY

Illinois legislators and lobbyists have taken several steps in the past year to combat financial exploitation of the elderly, including amendments to the Illinois Power of Attorney Act¹¹ and revisions to the criminal statute for financial exploitation of the elderly.¹²

First, the Illinois Power of Attorney Act ("the Act") allows an individual to appoint a person as his or her agent to make property, financial, personal or healthcare decisions for the individual (or principal).¹³ Further, the execution of a power of attorney agreement forms an agency relationship, one in which the agent is bound by a legal duty to act in good faith, in accordance with the principal's expectations and in the principal's best interest.¹⁴



The Act's amended provisions, which took effect July 2011, provide additional requirements to prevent elder financial abuse.¹⁵ To ensure that both the principal and agent understand the terms of the agreement, the parties must sign a statutory short form cover sheet and notice to agent, which clearly list the principal and agent's respective rights and responsibilities under the power of attorney relationship.¹⁶

The Act's new liability provision provides that an agent that violates the Act can be held liable and face financial consequences to restore the value of the principal's property to the amount it would have been had the agent not violated the Act.¹⁷

Although the new provisions in the Illinois Power of Attorney Act are a step in the right direction, financial institutions, which are often named as agents for a principal in a business agreement, have raised concerns that the Act's requirements would adversely impact current contracts with their clients.¹⁸

To alleviate financial institutions' concerns and still provide protections against elder financial abuse, a newly revised amendment to the Act states that it does not apply to certain agreements¹⁹ where the financial institution²⁰ is named as an agent for a principal.²¹ However, if the agreement between the financial

institution and the person includes an ironclad power of attorney that remains in effect despite the principal's incapacity, then the Act's provisions apply to the financial institution that is acting as an agent under the agreement.²²

While the Act clarifies the liabilities under such an agreement, the amendment to the criminal statute regarding financial exploitation of the elderly imposes harsher penalties on a broader class of persons that commit financial crimes against an elderly person.²³

Prior to these revisions, most offenders charged with financial exploitation of an elderly person received only probation.²⁴ The amendment lowers the property value threshold from \$50,000 to \$5,000 for elderly financial exploitation that constitutes a Class 2 felony, which also carries a prison sentence.²⁵

Under this scheme, the two individuals who allegedly misused a power of attorney and stole money from their 91-year-old cousin face imprisonment because they are each charged with financial exploitation of the elderly, which is now a Class 1 felony, as the value stolen was over \$50,000.²⁶

COMMUNITY EFFORTS TO EMPOWER THE ELDERLY

The recently enacted laws help ensure offenders are held liable for financial elder exploitation, but community efforts can also be effective to prevent elder financial abuse. Most of the current community programs, including the Illinois State TRIAD and the Elderly Service Officer program, are focused on providing officials and community members with adequate training to recognize elder crimes.²⁷

TRIAD started as a national program sponsored by AARP, the International Association of Chiefs of Police and the National Sheriff's Association.²⁸ The Illinois Attorney General's office is also a founding member of Illinois TRIAD.²⁹ In Illinois communities, local TRIADs bring together law enforcement officials, senior citizen community activists and community members to create programs to protect the elderly from financial exploitation.³⁰ For example, the Knox County TRIAD program offers a class to teach elderly individuals how to recognize scams and frauds.³¹

Police departments can also choose to enroll officers in the Illinois Attorney General's Elderly Service Officer training program.³² Although these elective police training programs have proven effective in educating some authorities about elder abuse issues,³³ the next step is to make the police training mandatory.³⁴

On March 6, 2012, the Illinois General Assembly unanimously passed a bill that requires police training for recognition of elder financial abuse.³⁵ AARP's Gruenenfelder explained that this bill was created to address complaints from several victims' family members that financial exploitation was being treated by law enforcement as a civil issue rather than a crime, thus making it difficult for prosecutors to bring criminal charges against the offenders.³⁶

KNOWLEDGE IS POWER

Although there were more than 5,000 reported cases of elder financial abuse in Illinois in 2010,³⁷ recently enacted legislation and community-based groups hope to decrease this number. The Power of Attorney Act amendment seeks to clarify the agreement so that both the principal and agent are knowledgeable about their respective rights and responsibilities.

In addition, training programs teach police officers and citizen advocates how to recognize warning signs of elder financial exploitation so the offenders can be criminally charged. These initiatives demonstrate that adopting local training programs and disseminating information about the revised civil and criminal legislation is the key to preventing elder financial exploitation.

NOTES

1 Brandie Piper, *Romayne Pike, Diane Moore, and Marjorie Phelps charged with financially exploiting the elderly*, KSDK NEWS (Feb. 2, 2012), <http://www.ksdk.com/news/article/301237/3/Three-charged-with-financially-exploiting-the-elderly%5C>.

2 *Three indicted on elderly exploitation charges*, TELEGRAPH (Feb. 3, 2012), <http://www.the-telegraph.com/news/victim-65482-financial-exploitation.html>.

3 Piper, *supra* note 1.

4 *Three indicted on elderly exploitation charges*, *supra* note 2.

5 *Rules to Protect Seniors from Financial Exploitation Adopted During Elder Abuse Awareness Month*, ILL. DEP'T OF FIN. AND PROF'L REGULATION (July 28, 2011), <http://www.idfpr.com/News/Newsrsls/2011/072811RulesProtectSeniors.asp>.

6 *Id.*

7 Ali Durkin, *New law toughens penalties for senior fraud*, MEDILL NEWS SERV. (Jan. 22, 2012), <http://news.medill.northwestern.edu/chicago/news.aspx?id=198815>.

8 *Id.*

9 Telephone interview with Ryan Gruenenfelder, Assoc. State Dir. of Advocacy and Outreach, AARP (Mar. 16, 2012).

10 *Id.*

11 Robert Rodriguez, *New Law Shields Elderly Against Power of Attorney Abuse*, NBC News (July 1, 2011), <http://www.nbcchicago.com/news/business/elderly-power-attorney—124890799.html>; Civil Law – Power of Attorney, ILL. COMP. STAT. ANN. 755 § 45 (West 2010).

12 Mary Anne Meyers, *New law gets tough on elder abuse*, ILL. NEWS CONNECTION (Jan. 11, 2012), <http://www.myjournalcourier.com/articles/most-37559-better-law.html>; Criminal Law – Financial Exploitation Elderly, ILL. COMP. STAT. ANN. 720 § 5/17 56 (West 2010).

13 ILL. COMP. STAT. ANN. 755 § 45/2-1.

14 ILL. COMP. STAT. ANN. 755 § 45/2-7.

15 Rodriguez, *supra* note 11.

16 Gruenenfelder, *supra* note 9.

17 ILL. COMP. STAT. ANN. 755 § 45/2-7(f) (“An agent that violates this Act is liable to the principal or the principal’s successors in interest for the amount required (i) to restore the value of the principal’s property to what it would have been had the violation not occurred, and (ii) to reimburse the principal or the principal’s successors in interest for the attorney’s fees and costs paid on the agent’s behalf. This subsection does not limit any other applicable legal or equitable remedies.”).

18 Gruenenfelder, *supra* note 9.

19 S.B. 3204, 97th Gen. Assemb., 2d Reg. Sess. (Ill. 2011). The amendment describes eight agreements to which the Power of Attorney Act does not apply when the financial institution is named as an agent for the person:

“(1) a proxy or other delegation to exercise voting rights or management rights with respect to a corporation, partnership (general or limited), limited liability company, condominium, commercial entity, or association; (2) an agreement or contract given to a financial institution to facilitate a specific transfer or disposition of one or more identified stocks, bonds, or assets, whether real or personal, tangible or intangible; (3) an agreement or directive authorizing a financial institution to prepare, execute, deliver, submit, or file a document or instrument with a government or governmental subdivision, agency, or instrumentality, or other third party; (4) an agreement or contract authorizing a financial institution or an officer of a financial institution to take a specific action or actions in relation to an account in which the financial institution (i) holds cash, securities, commodities, or other financial assets on behalf of the principal or (ii) acts as an investment manager with a third party serving as the custodian of such cash, securities, commodities, or other financial assets on behalf of the principal; (5) an agreement or contract authorizing a financial institution to take specific actions with respect to collateral in connection with a loan or other secured credit transaction other than a mortgage; (6) an agreement or contract given to a financial institution by an individual who is, or is seeking to become, a director, officer, stockholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager, or agent of a corporation, a partnership (general or limited), a limited liability company, a condominium, a legal or commercial entity, or an association, in that individual’s capacity as such, including an agreement or directive contained in a subscription agreement; (7) an authorization contained in a certificate of incorporation,

bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium offering plan, or other agreement or instrument governing the internal affairs of an entity or association authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager, or other person to take lawful actions relating to such entity or association; or (8) an agreement authorizing the acceptance of the service of process on behalf of the person executing the agreement." *Id.*

20 *Id.* (defining financial institution as "a (i) bank, trust company, savings bank, savings and loan, or credit union holding a federal charter or a charter from any of the states that is subject to regulation by the Illinois Secretary of Financial and Professional Regulation or (ii) broker-dealer registered with the United States Securities and Exchange Commission.").

21 *Id.*

22 *Id.*

23 Meyers, *supra* note 12.

24 Gruenfelder, *supra* note 9.

25 *Id.* The statute now provides that: "(1) a Class 4 felony if the value of the property is \$300 or less, (2) a Class 3 felony if the value of the property is more than \$300 but less than \$5,000, (3) a Class 2 felony if the value of the property is \$5,000 or more but less than \$50,000, and (4) a Class 1 felony if the value of the property is \$50,000 or more or if the elderly person is over 70 years of age and the value of the property is \$15,000 or more or if the elderly person is 80 years of age or older and the value of the property is \$5,000 or more." Criminal Law – Financial Exploitation Elderly, ILL. COMP. STAT. ANN. 720 § 5/17 56 (b) (West 2010).

26 ILL. COMP. STAT. ANN. 720 § 5/17 56 (b).

27 TRIAD program, <http://illinoisattorneygeneral.gov/seniors/triad.html> (last visited Mar. 18, 2012); *see also* TRIAD, <http://www.aurora-il.org/policedepartment/triad.php> (last visited Apr. 27, 2012) ("The original choice of the word 'TRIAD', which means 'group of three', was chosen because it represents the National Sheriff's Association, the International Association of the Chiefs of Police, and the American Association of Retired Persons").

28 *Id.*

29 *Id.*

30 *Id.*

31 Jennifer Wheeler, *Senior Police Academy educates folks against crime*, REGISTER MAIL (Jan. 25, 2012), <http://www.galesburg.com/news/x767704416/Senior-Police-Academy-educates-folks-against-crime>.

32 Gruenfelder, *supra* note 9.

33 Elderly Service Officers Training, <http://illinoisattorneygeneral.gov/seniors/eso.html> (last visited Apr. 23, 2012) (stating that in Illinois, there are approximately 1,200 law enforcement officers and advocates who have completed the Elderly Service Officers Training program).

34 Gruenfelder, *supra* note 9.

35 *Id.*; H.B. 5098, 97th Gen. Assemb., 2nd Reg. Sess. (Ill. 2011).

36 Gruenfelder, *supra* note 9.

37 *Rules to Protect Seniors from Financial Exploitation Adopted During Elder Abuse Awareness Month*, *supra* note 5.