

FINANCIAL EXPLOITATION of the Elderly

MUCH ATTENTION has been given to physical abuse and neglect of the elderly. But, the elderly are also victims of a more insidious and pervasive type of abuse – financial exploitation. Because they are often lonely and isolated and may suffer gradual losses of memory, senior citizens are prime targets for this type of abuse. As a result, they can fall prey to salespersons, service providers, in-home care providers, as well as family and friends.

No accurate national statistics of the extent of elderly financial abuse are available, but a few studies do point to the seriousness of the problem. The director of the National Aging Resource Center on Elder Abuse has stated that at least 20% of the 2 million elder abuse cases reported annually involve financial exploitation. Yet, this is likely to be a gross underestimation of the problem. Reportable cases often do not include investment scams or “rip-offs” by salespersons.

Another reason for underestimation of cases of financial exploitation of the elderly is that many elderly don’t report these cases of abuse – they are too embarrassed to let others know that they have been victimized. Some are even afraid to tell their children. They fear that their children might take away their checkbook or worse – put them in a home.

Between 1978 and 1982, the Select Committee on Aging of the United States House of Representatives conducted a dozen hearings on various frauds perpetrated against the elderly. The committee learned that while the elderly make up approximately 12% of the population they account for more than 30% of the victims of crime – this includes both white collar and violent crime. Fraud is the most significant category of non-violent crime and appears to account for a substantial amount of the crime against the elderly.

Most of the statistics on financial abuse come from state elder abuse reporting laws. As of 1990, 42 states and the District of Columbia had enacted mandatory reporting of elder abuse. There is great variation in these state laws, however, as to what constitutes elder abuse and who must report it. Not all of the laws, for example, include financial abuse. Also, in many jurisdictions it seems that the reportable abuse is limited to abuse by domestic caretakers.

In Maryland, although the adult protective services statute, *Family Law Article §14-302*, includes exploitation as a reportable crime, the law requires reporting of

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abuse only of vulnerable adults. Vulnerable adults are those who lack the physical or mental capacity to provide for their daily needs. This definition misses a much larger group of elderly who, because they are generally more trusting and have a desire to be financially independent are more apt to be taken in by get rich quick schemes or low cost services or products.

Health Care Fraud

According to a Select Committee on Aging Report on Quackery, health care fraud is the single most important kind of fraud perpetrated against the elderly. Because they have very real health care problems, senior citizens are particularly vulnerable to health frauds. They are sick three times as often and three times as long as the younger population and their per capita medical bills are three times as high.

A significant health problem for seniors is hearing loss. At least eight million adults over age 65 live with hearing loss. In part because hearing aids have been oversold in the past and the elderly fear high pressure sales tactics, too few older people seek assistance or work with a professional to get help. For the average consumer, hearing aids and batteries can be expensive. Some hearing aids cost as much as \$1,500. As a result, senior citizens are interested in any bargains they might receive on these devices and may be "swindled" by mail order offers or door-to-door sales persons who claim to be selling the latest in hearing aids for only a fraction of the retail cost.

Another health related product which elder citizens sometimes purchase at their peril is long term care insurance. A June 1991 report on Abuses in the Sale of Long Term Care Insurance to the Elderly, prepared by two Congressional committees, indicated that many of the "policies which seniors purchase are worthless because of the limitations and restrictions inherent in the plans." The report also found an increasing number of complaints received by state departments of insurance related to the conduct of agents. For example, agents often apply high pressure tactics and misrepresent benefits of the policies. The report concluded that abuses in the sale of long term care

insurance to the elderly have been serious and widespread and that seniors had wasted \$3.5 of the \$6 billion they spent in one year on these policies.

Investment Fraud

In addition to health care fraud, the Select Committee on Aging found that senior citizens are increasingly victimized by phony business and investment schemes. Types of business frauds perpetrated against the elderly and identified by a number of federal and state agencies include: (1) work at home schemes; (2) securities frauds; (3) phony franchises; (4) distributorship frauds; and (5) commodities frauds.

A November 1991 story in the *Los Angeles Times* recounted a classic case of investment fraud perpetrated on an elderly Leisure World resident. According to the article, the victim, Wilma Rigo settled in Leisure World, a retirement community in the Los Angeles area, "where 250 security officers patrol the grounds around the clock." She planned to live on her \$600 monthly Social Security check and set aside \$61,000 that she had saved to buy a new car and to see the world.

At Leisure World, Rigo was contacted by an "entrepreneur" who persuaded her to invest money to drill for gas near the Salton Sea. Rigo became good friends with the man, who took her out regularly to lunch. She relished the attention that he was paying her. She gave the \$61,000 to the businessman - without receiving adequate investment documents in return. Subsequently, the calls and visits stopped. The district attorney's office told her that, because Rigo's investment could be construed as a loan, it would be difficult to prosecute the case. She was advised to seek redress by filing a civil suit against the businessman.

According to the *Times* article, "Leisure residents are often prime targets for con artists seeking their investment in various ventures because they have recently sold their homes or businesses before moving there and are flush with cash." The article also recounted the story of Leslie Gall, known as the "Sweetheart Swindler." Gall courted and conned elderly women he had met at seniors' dances in California and Florida. When Gall was arrested he was carrying a map with senior centers in the greater Los Angeles area highlighted with colored ink. Gall was sentenced to three years in jail for stealing \$54,000 in stock certificates

from an elderly woman he dated.

Similar cases have been documented in Maryland. For example, Helen Overington, a competent, retired schoolteacher and widow, was conned out of giving over \$700,000 to the Lyndon LaRouche organization. Overington, who had lived a very frugal life was surprised, when her husband died, that he had left her a small fortune. According to Mrs. Overington's daughter, through modern marketing techniques, an organization targeted Overington and a solicitor called her on the phone. He said he understood she was interested in making the world a better place and was concerned about the economy. He asked if he could meet her and tell her more about the organization. She agreed. The solicitor befriended Overington, gained her trust, and isolated her from her family. Over the course of a year, she contributed \$741,000 - all that remained of her inheritance - to various projects.

Sales and Services Fraud

In addition to investment fraud, senior citizens are at risk of losing their money to people who come into their home to provide services or to care for them. Some of the most common swindles suffered by seniors across the nation include the "Carpet Cleaner Con" and the "Home Inspection Deal." In the cases of carpet cleaning, a salesman offers the buyer a bargain price to clean her carpets. But on inspection, he says it is too soiled, and the price skyrockets. Sometimes, the salesman requests a deposit to begin work and then work crews never show up. In the home inspection deal, a contractor offers, for example, to upholster furniture, repaint the house, or exterminate pests. He takes a deposit and carts the furniture away but never returns it. Or, he charges for work that is unnecessary in the first place or for work that is never performed.

In Maryland, a 95 year old Bethesda man, with some memory loss, agreed to have his driveway repaved twice over a 6 month period at a cost of approximately \$2,000 each time. According to his daughter-in-law, the repaving was not necessary the first time, let alone the second.

The elderly are also victimized by in-home caregivers and aides. An October 1992 report by AARP based on a study of Adult Protective Service Programs' repeat elder abuse cases, found that "[m]ore so than in any other category of elder abuse, participants listed paid caregivers,

such as hired homemakers as the perpetrators of repeat cases of financial exploitation."

Financial Abuse By Family Members

Even more troubling than abuse by caregivers is exploitation by family members and friends – yet, it does not happen infrequently. In its 1985 report "Elder Abuse: A National Disgrace," the Select Committee on Aging developed "literally thousands of examples" which fell into the category of financial exploitation. According to the report: "One of the most heartbreaking series of examples involved the elderly who lived independently until an injury or illness necessitated a stay in the hospital. Upon discharge from the hospital, many older Americans learned to their chagrin that their families [had] sold their homes out from under them. Equally heartbreaking were cases where family members had their loved ones committed to a public institution as a means of obtaining their property." Often cases of family economic exploitation involve children who are substance abusers.

Some Applicable Laws

When financial exploitation occurs, a criminal act has probably been committed. The victim may choose to file a criminal complaint with the State's Attorney's office. If the evidence warrants it, the State's Attorney will file criminal charges against the exploiter and will attempt to recover the funds. Even when the cases are reported, however, they are not often prosecuted. According to some prosecutors, it is difficult to get an elderly person to testify in court against someone who victimized them. Sometimes the victim is unable to remember exactly what happened. This is especially problematic for prosecutors who must prove beyond a reasonable doubt that the elderly victim did not give permission for the alleged abuser to take their money. In cases where a senior is being exploited by a son or daughter, it is also very difficult to get the elder victim to press charges. According to Neal Dudovitz, deputy director of the National Senior Citizens Law Center in Los Angeles, "There is terrific ambivalence among older people regarding their children who steal from them. They're not interested in suing a child to get money back."

In certain situations the client may file

a civil complaint against the exploiter and attempt to recover damages equivalent to the funds taken. If the exploitation involved consumer fraud, the State's consumer protection laws may be used to seek damages. In either case, the client must, once again, agree to file the complaint either in court or with the state consumer protection division. In Maryland, in the area of consumer protection, there are a number of specific statutory provisions, some recently enacted, that lawyers working in this area should know about.

The Maryland Consumer Protection Act, Commercial Law Article §13-101, *et seq.*, is a statute with far-reaching powers and prohibits a broad spectrum of unfair or deceptive practices. The practices defined by the Act as being "unfair" and "deceptive" are as broad as any "false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers"; and as specific as a "knowingly false statement that a service, replacement, or repair is needed." Unfair or deceptive practices also include: representation that "consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not"; and "failure to state a material fact if the failure deceives or tends to deceive."

Consumers may initiate their own civil proceeding under the statute. Under Section 13-407 and 13-408 of the Act, a consumer can seek damages for injury or loss as well as attorney's fees. Under section 13-402, a consumer can file a complaint with the Consumer Protection Division of the Office of the Attorney General which has the authority to try and conciliate the case. If conciliation is unsuccessful, the Division may institute an administrative action seeking a cease and desist order and restitution or may file an action in Circuit Court seeking injunctive relief and restitution. The Division has been given the authority this year to issue *ex parte* cease and desist orders where there has been a violation of the Act. The Consumer Protection Division cannot seek compensatory damages on behalf of the consumer but can seek civil penalties of \$1,000 for the first offense and \$5,000 for each additional offense.

Under Maryland's Door to Door Sales Act, Commercial Law Article §14-301, a salesperson selling, leasing or renting,

products or services costing \$25 or more, "at a location other than the place of business of the seller," must: (1) identify him or herself as a salesperson for a specific product or service; (2) give the consumer a receipt or contract that shows the merchant's name and address and the date of sale; (3) inform the consumer that the consumer has the right to cancel the sale within three business days without forfeiting his or her deposit or paying a penalty; (4) give the consumer a printed form called the "Notice of Cancellation" which can be used to cancel the sale; (5) honor any valid notice of cancellation and, within 10 days of receiving the notice, refund all payments and return in good condition any goods or property traded in at the time of sale. Failure of the merchant to comply with the Act entitles the buyer to cancel the contract at any time and by any means. The seller is then responsible for proximate damages and for attorney fees the consumer incurred.

The usefulness of the law is limited somewhat by its restrictions. For example, it does *not* apply to sales that take place in the consumer's home at the request of the consumer, for repair or maintenance services, unless during the visit the seller sells the buyer additional consumer goods or services. The law would not protect a consumer who ordered, for example, a reclining chair believing that it would relieve back and leg pains only to discover, when the chair was delivered three weeks later, that it did not live up to the salesperson's promises.

Maryland also has a telemarketing law, the Telephone Solicitations Act, Commercial Law Article §14-2201. It has several key provisions. Covered under the Act are efforts by a merchant to sell or lease consumer goods, services, or realty to a consumer located in Maryland where the solicitation is made entirely by telephone, and where the call is initiated by the merchant. A telephone solicitation covered by the Act is not valid and enforceable unless: (1) it is reduced to writing and signed by the consumer; (2) it complies with all other applicable laws and regulations; (3) it contains the name, address and number of the seller, the total price of the contract, a detailed description of the goods or services being sold, and the description complies with that given in the telephone solicitation; (4) it contains the following statement in 12 pt. type: **you are not obligated to pay any money unless you sign this contract and return it to the seller.**

The Telephone Solicitation Act will be particularly helpful in removing a charge on one's credit card made as the result of the solicitation. Unless the credit card company can show that there is a signed contract with the consumer, the charge must be removed. A violation of the Act is an unfair and deceptive practice under the Consumer Protection Act, and, if the solicitation involved credit services, it is a violation of the Maryland Credit Services Businesses Act. The remedies under those statutes are applicable.

Section 14-2202(a) of the Telephone Solicitation Act lists a number of exemptions from coverage of the statute. Included among them are transactions made in accordance with prior negotiation; where the solicitor has made a previous sale to the consumer; where there is a pre-existing business relation; or where the consumer may obtain a full refund for the return of undamaged and unused goods to the seller within 7 days of receipt by the consumer.

Recently enacted in Maryland is the Door to Door Solicitation Act, Commercial Law Article §14-2601. The law became effective on October 1, 1992, and was passed at least in part as a response

to the case of Helen Overington. The Act covers single or multiple requests for money, other valuable consideration, or a pledge for subsequent money or other valuable consideration, made in person by the solicitor, where the request promotes the goals or programs of the organization upon whose behalf the solicitation is made and where the consumer's payment, pledge or promise is made at the consumer's home or residence. Any pledge or contribution of less than \$200 is *exempted* from the Act.

Among other things, the solicitor in a door to door solicitation must notify the consumer that the solicitor may not accept or receive any money or any other consideration, including a pledge, amounting to \$200 or more *at the time the door to door solicitation is made*. The solicitor must inform the consumer of the consumer's right to rescind the pledge within 20 days after the door to door solicitation. Any violation of the Act is an unfair and deceptive trade practice. Any payment pledge or promise made as a result of the illegal solicitation is voidable by the consumer. Although the Act may be helpful in some cases, it also has some serious limitations. For example, it does not cov-

er a solicitation which takes place at other than the consumer's home or residence. Nor does the statute provide for attorney's fees or criminal penalties.

Redress and Prevention

Due to the reluctance of the victim to sue and the limitations in the law, it may be very difficult for an attorney to obtain redress for an elderly client who is a victim of financial abuse. Occasionally, something very simple can be done, e.g., putting a ~~stop order on a check~~. But, if the check has been cashed or the consumer paid with cash, even if the client is willing to sue and has a good memory of what happened, the perpetrator is often judgment proof. As a result, prevention may be the best approach to helping clients in this area. In addition to educating clients about consumer protection laws, attorneys can reduce the incidence of financial exploitation of their clients, especially by family members or caretakers, by ensuring that when they draw up a durable power of attorney for financial matters the elderly client is truly capable of understanding the implications of the agency.