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ARTICLE

When Caretakers Empty the Coffers: A Look at Guardianship Fraud

By Brett Darken | Apr 13, 2022

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In nearly every state, guardians are considered fiduciaries. As such, they have a duty to act in their clients' best financial interests. Sadly, that's not always the case.

Anti-fraud professionals know that fraudsters often target victims when they're most vulnerable. When people are processing strong emotions — like dealing with the mental or physical decline of a family member — it's easy to ignore red flags that something's amiss. During these times courts may appoint a guardian with the idea that an impartial third-party is better equipped to handle the financial responsibilities involved with taking care of an incapacitated individual. Unfortunately, in some cases, this can open the door for fraudsters to commit fiduciary fraud.

Author:

Brett Darken

Researcher and trustee for those who have been targeted by financial predators

Guardianships

Guardianship can be ordered by a judge when they determine that a person is unable care for their own affairs. The judge orders an independent guardian, or conservator, to oversee and look out for the well-being of the person who can't care for themselves. Guardianships frequently involve the elderly, or adults who have some form of dementia or mental incapacitation, but as demonstrated in the recent Brittany Spears case that garnered worldwide media attention, a ruling for guardianship can be made for people of any age.

In nearly every state, guardians are considered fiduciaries. As such, they have a duty to act in their clients' best financial interests. Sadly, that's not always the case. In 2017, a federal jury awarded \$16.4 million (<https://www.palmbeachpost.com/story/news/2017/08/07/jury-hits-lawyers-with-16/7042676007/>) to Julian Bivins who sued two West Palm Beach attorneys, among others, for breaching their fiduciary duties. Bivins' suit alleged that his father was "held captive" by the guardianship so the attorneys could liquidate real estate assets.

A RICO Case in Ohio

One guardianship battle in Ohio that has been ongoing for nearly a decade now involves a RICO suit against the appointed guardians. The suit is more than 50 pages long, and names nearly a dozen defendants, but the heart of the complaint, originally filed in 2019 by attorney Charles Longo on behalf of Dr. Medhi Saghafi, is that Saghafi's then wife was trapped in a court ordered guardianship that was unneeded and unwanted. Saghafi asserted he and his family were qualified to provide the care his wife, a dementia patient, needed. However, the court denied the family's requests to provide that care, and instead gave the defendants her oversight. Once the court appointed

guardians, Saghafi alleged that the defendants forced the couple to divorce

(<https://www.pacermonitor.com/articles/2020/02/06/heirs-find-ally-in-6th-circuit-over-elder-guardianship-dispute/>).

Saghafi was then ordered to pay approximately \$3 million — not to his wife, but to the court-appointed guardian based upon a Qualified Domestic Relations Order (QDRO).

The Predicate Fraud

RICO cases are often large and complex because they involve multiple people who are involved in a criminal organization. The first, and perhaps central, challenge for plaintiffs in a RICO case is establishing the one or two predicate frauds or crimes. While there are more than one hundred specific details cited in the Saghafi RICO claim, nearly all of those details can be linked to a basic predicate fraud Saghafi alleges — billing fraud that is run inside a labor racket allowed to operate due to the current legal framework for guardianships. The suit claims the guardians acted as financial predators by creating a maze of legal and financial problems and then billing the victim for dealing with the problems that they had created.

While a trial date has yet to be set, the Saghafi case offers a detailed look into guardianship and fiduciary fraud cases. It holds a wealth of potential data to examine because it covers nearly ten years of medical, legal and financial events woven together. Thousands of pages of legal records are available for review.

Legislative Remedies

The Saghafi case only represents a sliver of the ongoing guardianship battles happening in courts currently. Due in part to increased public interest in adult guardianships,

politicians are stepping forward to introduce legislation seeking to reform the current legal guardianship framework.

These include:

- Senior Guardianship Social Security Protection Act of 2022 (<https://www.congress.gov/bill/117th-congress/house-bill/6358/text?r=2&s=1>)- increases information sharing between the Social Security Administration and each state
- Freedom and Right to Emancipate from Exploitation (FREE) Act (<https://www.congress.gov/bill/117th-congress/house-bill/4545/text?r=86&s=1>)- allows those under guardianship to petition to have their appointed guardian replaced
- Guardianship Accountability Act of 2021 (<https://www.congress.gov/bill/117th-congress/house-bill/5600/text?r=21&s=1>)- establishes a National Resource Center on Guardianship and increases oversight on appointed guardians

It's a bleak truth that the issue of a handful of unscrupulous individuals committing fiduciary fraud against those they are supposed to protect will likely remain an ongoing problem. However, the more attention anti-fraud professionals can bring to this issue, the more likely it is that systems can be put in place to shield victims and their families from fraud.

While new oversight tools work their way through the halls of government, ACFE members can help in these cases by clarifying the duties of a fiduciary and the "standards of care" that should be upheld.

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