

20 Fla. J.V.R.A. 8:6, 2010 WL 9446048 (Fla.Cir.Ct.) (Verdict and Settlement Summary)

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Florida Circuit Court, Fifteenth Judicial Circuit, Palm Beach County.

JOYCE POGODA vs. RAFAEL GOLAN

2007ca0004760

DATE OF VERDICT/SETTLEMENT: February 10, 2010

TOPIC: Breach of fiduciary duty - Long term financial exploitation, fraud, negligence, and negligent misrepresentation - Financial adviser makes recommendations that cause the plaintiff to lose money and enrich the defendant via commissions.

SUMMARY:

Result: \$272,000 VERDICT

EXPERT WITNESSES:

Plaintiff's geriatric psychology expert: [Dr. Richard Greer](#).

Plaintiff's insurance and finance expert: [David Nye](#), PhD from FL.

ATTORNEY:

Plaintiff's: [Christina M. Pierson](#) of Hargrove Pierson & Brown, PA in FL.

JUDGE: N/A

RANGE AMOUNT: \$200,000-499,999

STATE: Florida

COUNTY: Palm Beach

INJURIES:

Breach of fiduciary duty - Long term financial exploitation, fraud, negligence, and negligent misrepresentation - Financial adviser makes recommendations that cause the plaintiff to lose money and enrich the defendant via commissions.

FACTS:

In this breach of fiduciary duty case, the plaintiff, a 78-year-old widow, sued the defendant, her financial adviser, for long time financial exploitation, fraud, breach of fiduciary duty, negligence, and negligent misrepresentation. The plaintiff contended that the defendant

entered into a series of transactions and gave her advice with regard to annuities sold to the plaintiff and her husband that caused the plaintiff significant loss of assets and unjustly enriched the defendant. Four weeks after the plaintiff's husband's death, the defendant counseled the plaintiff to liquidate her holdings and buy new annuities resulting in a \$32,000 forfeiture or loss to the plaintiff and a \$15,000 commission to the defendant. The defendant also advised the plaintiff to cancel her life insurance policy for \$300,000 and instead by a \$1 million policy that would have cost her much more in premiums. The plaintiff did not follow through on this transaction, but it was entered into evidence at trial to substantiate the type of advice the defendant was giving the plaintiff.

At trial, the plaintiff called an expert in insurance and finance who testified as to the defendant's breach of duty, the plaintiff's financial losses, and the ramifications of the defendant's advice and recommendations. The plaintiff's expert also opined as to annuities and life insurance generally and when a prudent consumer should or should not invest in certain financial products. The plaintiff's expert testified as to the suitability of the products recommended by the defendant. The plaintiff's expert stated that the defendant breached the standard of care in his dealings with the plaintiff. The plaintiff also called a geriatric psychologist who testified as to the physical and emotional vulnerabilities of the plaintiff and the emotional ordeal involved in this cause of action. The plaintiff's expert testified that her infirmities and age factored into her ability to protect herself from exploitation. The defendant argued that all the recommendations he made were good and were in the plaintiff's best interests. The defendant put forth that his motivation was to help the plaintiff and that he did not do anything to harm her. The defendant denied any breach fiduciary duty. The defendant asserted that the annuities he suggested represented good choices for the plaintiff. He maintained that the life insurance he recommended was held by a good, strong company. The defendant admitted that the plaintiff lost some money, but argued that she made profits in other products as is the nature of investing. The defendant also contended that the plaintiff was a knowing decision maker in the process.

The jury found for the plaintiff on all five counts and awarded damages of \$272,000 broken down as follows: \$32,000 in compensatory damages, \$55,000 for emotional distress and \$185,000 in punitive damages.

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