

IN THE CIRCUIT COURT OF ST. CLAIR COUNTY ILLINOIS
TWENTIETH JUDICIAL CIRCUIT

JAMES C. MCKAY and EILEEN L. MCKAY, on behalf of themselves and others similarly situated,

Plaintiffs,

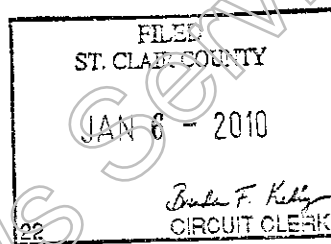
v.

LAVERN HUELSMANN d/b/a SENIOR RETIREMENT SERVICES and FCB NEW BADEN BANK, GERMANTOWN TRUST AND SAVINGS BANK, TEMPO BANK, CENTRUE BANK and SCOTTRADE, INC.

Defendants

Case No:

10-L-04



COMPLAINT

COME NOW the Plaintiffs, JAMES C. MCKAY and EILEEN L. MCKAY, by and through their attorneys, Bernard J. Ysursa and Michael S. Williams, and hereby state as follows:

FACTS COMMON TO ALL COUNTS

1. JAMES C. MCKAY and EILEEN L. MCKAY, husband and wife, are residents and citizens of Caseyville, County of St. Clair, state of Illinois.
2. The Defendant, LAVERN HUELSMANN d/b/a SENIOR RETIREMENT SERVICES, is a citizen and a resident of County of Clinton, state of Illinois.
3. The Defendant, FCB NEW BADEN BANK, is a financial institution and a citizen and resident of New Baden, County of Clinton, State of Illinois; the defendant, GERMANTOWN TRUST AND SAVINGS BANK is a financial institution and a citizen and resident of Germantown, County of Clinton and State of Illinois; the defendant,

Tempo Bank, is a financial institution and a citizen and resident of Trenton, County of Clinton and State of Illinois; the defendant, Centru Bank, is a financial institution and a citizen and resident of Aviston, County of Clinton, State of Illinois; and Scottrade, Inc., is a financial institution, doing business in the State of Illinois.

4. At all times mentioned herein, the Defendant, Lavern Huelsmann, was operating under the assumed business name of SENIOR RETIREMENT SERVICES at 25 West Broadway, Trenton, Illinois.

5. Venue is proper in St. Clair County in that in all times herein mentioned, Lavern Huelsmann d/b/a Senior Retirement Services came to the home of James and Eileen McKay in Caseyville and solicited the \$139,000.00 for his "Cash Management Account" at Senior Retirement Services and picked up said check (see Exhibit "A") from James McKay at his home knowing that he, Huelsmann, was going to defraud James and Eileen McKay of said funds and convert same for his own personal use.

6. In approximately 2000, Lavern Huelsmann was licensed as a life insurance agent for the sale of life insurance annuities with the Midland National Life Insurance Company located at 4601 Westown Parkway, Suite 300, West Des Moines, Iowa.

7. That other members of the purported class had their funds deposited in not only FCB New Baden Bank, but at defendants, Germantown Trust and Savings Bank, Tempo Bank, Centru Bank and Scottrade, Inc. From approximately November 2006 to the present, Defendant, Lavern Huelsmann, in addition to selling life insurance annuity products with Midland National, began encouraging elderly residents of St. Clair County, and other Illinois counties, in particular the Plaintiffs, and others, into investing in his

fraudulent and false promissory notes and cash management account in banks located at FCB New Baden Bank and at other small banks that do business in Clinton and St. Clair county.

8. On or about August 17, 2009, Huelsmann solicited the Plaintiffs, James and Eileen McKay, at their home in Caseyville, into investing \$139,000.00 in the Senior Retirement Services which maintained a financial account at FCB New Baden Bank (See Exhibit "A") knowing that he, Huelsmann, would commingle the Plaintiff's funds with other funds he intended to embezzle from them and use the funds for his own personal use. FCB New Baden Bank also failed to properly investigate the corporate or business papers or business documents of the fictitious business of Senior Retirement Services.

9. At all times herein mentioned, FCB New Baden Bank knew or should have known that Senior Retirement Services was a fictitious and assumed business name, and that Huelsmann was not a qualified corporate trustee and knew or should have known that Huelsmann d/b/a Senior Retirement Services was withdrawing funds, which were the property of the Plaintiffs and others, for his own personal use.

10. At no time did FCB New Baden Bank, Germantown Trust and Savings Bank, Tempo Bank, Centru Bank or Scottrade, Inc., ever prepare a "Suspicious Activity Report" (FinCEN Form 109) for the questionable activities of Lavern Huelsmann d/b/a Senior Retirement Services. (See exhibit "B")

11. At all times Huelsmann d/b/a Senior Retirement Services represented to the Plaintiffs that his "Cash Management Account" with Senior Retirement Services was safe, government insured and was guaranteed to provide at least twelve percent (12%) in

annual interest. However, the Plaintiffs were told that they would not be able to withdraw any money for the first three to four (3-4) years.

12. FCB New Baden Bank, Germantown Trust and Savings Bank, Tempo Bank, Centru Bank and/or Scottrade, Inc., never investigated whether either Lavern Huelsmann or Senior Retirement Services was ever licensed by any Federal or state of Illinois entity to offer or sell securities such as the money kept in a constructive trust at its bank.

13. Huelsmann deposited the funds of the plaintiffs and other members of the purported class at FCB New Baden Bank, Germantown Trust and Savings Bank, Centru Bank, Tempo Bank and Scottrade, Inc., on August 18, 2009, and commingled these funds in an unauthorized "trust account" for the benefit of his own personal use.

14. At no time did FCB New Baden Bank, Germantown Trust and Savings Bank, Tempo Bank, Centru Bank or Scottrade, Inc., ever prepare a "Suspicious Activity Report" nor did they ever contact James or Eileen McKay personally, or other members of the purported class regarding any suspicious activity with respect to their deposits. As direct and approximate result of the conduct of Lavern Huelsmann d/b/a Senior Retirement Services and FCB New Baden Bank, and others not yet identified, James and Eileen McKay have suffered the loss of \$139,000.00 plus any interest they should have realized on said funds.

COUNT I

**VIOLATION OF THE ILLINOIS CONSUMER FRAUD ACT
(Against Lavern Huelsmann d/b/a Senior Retirement Services and
FCB New Baden Bank)**

Comes now the Plaintiffs and for this Court I of this Complaint, states as follows:

15. Plaintiffs restate and re-allege and incorporate by reference Paragraphs 1 through 14 of this Complaint as if fully pleaded herein.

16. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2(2004), provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commissions Act.

17. The conduct of Defendants was deceptive, fraudulent, misrepresentative, concealing and an omission of material facts with regard to the Plaintiffs and was in all respects a trade practice deception.

18. The Defendant Lavern Huelsmann d/b/a Senior Retirement Services offered for sale and distribution and advertised its "Cash Management Account" in "trade" or "commerce" as defined by the Illinois Consumer Fraud Act.

19. The false and deceptive nature of the "Cash Management Account" of Lavern Huelsmann d/b/a Senior Retirement Services and FCB New Baden Bank, as described herein, constitutes a violation of the Illinois Consumer Fraud Act with regard to James McKay and Eileen McKay as to the risks of the "Cash Management Account" and

other fraudulent conduct, in that it was intended by the parties to commingle the trust funds and allow the funds of the Plaintiffs to be used for an improper, personal use.

20. The Plaintiffs, James and Eileen McKay were "Consumers" as defined by the Illinois Consumer Fraud Act.

21. The Defendants, Laverne Huelsmann d/b/a Senior Retirement Services and FCB New Baden Bank, are "persons" as defined by the Illinois Consumer Fraud Act.

22. As a direct and proximate result of the violation of the Illinois Consumer Fraud Act by Lavern Huelsmann d/b/a Senior Retirement Services and FCB New Baden Bank: (a) Plaintiffs were never adequately informed of the intent and purpose of the "Cash Management Account"; (b) Plaintiffs would not have invested their money in the "Cash Management Account" at the FCB New Baden Bank had they known that Lavern Huelsmann and the bank were not proper corporate trustees; (c) Plaintiffs would not have incurred the loss of \$139,000.00 had they known that the "Cash Management Account" was not federally insured, (d) that the Plaintiffs would not have lost \$139,000.00 had FCB New Baden Bank notified the federal government by way of the "Suspicious Activity Report"; (e) that the Plaintiffs would not have suffered the loss of \$139,000.00 had FCB New Baden Bank contacted the Plaintiffs regarding the suspicious commingling of their funds with the funds of Lavern Huelsmann d/b/a Senior Retirement Services , (f) that Plaintiffs have incurred the loss of at least \$139,000.00 plus interest that would have been obtained (g) that the Plaintiffs are entitled to their attorneys fees and treble damages under the Consumer Fraud Act.

23. That the conduct of Lavern Huelsmann and FCB New Baden Bank as described above, personally, and through their management and employees, was willful

and wanton and proximately caused the damages to Plaintiff; and punitive damages are permitted for violations of the Illinois Consumer Fraud Act, at the discretion of the court.

24. The public good requires that in addition to the Plaintiff's other damages, the Plaintiffs are entitled to an award in an amount which will serve to punish the Defendants and to deter the Defendants and others from similar conduct.

WHEREFORE, Plaintiff prays for judgment against Lavern Huelsmann d/b/a Senior Retirement Services and FCB New Baden Bank in an amount which is fair and just for compensable damages in excess of \$50,000.00; treble damages by statute; for their attorney's fees; and for interest and other such relief such as court costs as this Court may deem proper.

COUNT II
Negligence
(Against FCB New Baden Bank)

COMES NOW the Plaintiffs, in pleading Count II of this Complaint, and hereby state in the alternative:

25. Plaintiffs restate and incorporate by reference paragraphs 1 through 24 as if full pleaded herein.

26. On August 18, 2009 this defendant FCB New Baden Bank, accepted for deposit a check for \$139,000 from the plaintiff's made payable to Senior Retirement Services.

27. The Defendant FCB New Baden Bank knew or should have known that Lavern Huelsmann d/b/a Senior Retirement Services was not a trustee or corporate trustee and that he was commingling the trust funds of the Plaintiffs with his own.

28. That the Defendant, FCB New Baden Bank was negligent in one or more of the following respects:

A. That all banks are required to fill out and file a "Suspicious Activity Report" which is a form generated by the federal government, in which activities such as those described above should be prepared and recorded on said form and forwarded to the federal government in a timely fashion;

B. Failed to advise the plaintiffs of said transfers and withdrawals for the personal use of the trust funds by Lavern Huelsmann d/b/a Senior Retirement Services;

C. Breached their fiduciary duty to James and Eileen McKay;

D. Allowed Lavern Huelsmann d/b/a Senior Retirement Services to withdraw and transfer funds for his own personal use which FCB New Baden Bank held in constructive trust for the benefit of the Plaintiffs.

29. The Defendant FCB New Baden Bank failed to timely prepare a "Suspicious Activity Report" for this transaction and at a minimum failed to contact the Plaintiffs to inform them of the commingling of the funds. As a result of the negligence of this Defendant FCB New Baden Bank, James and Eileen McKay have suffered the loss of \$139,000.00 plus interest.

30. That the aforementioned actions on the part of FCB New Baden Bank done at the request of Lavern Huelsmann and Senior Retirement Services entity, gave substantial assistance to Lavern Huelsmann and the Senior Retirement Services entity in allowing them ultimately to gain unfettered access to James and Eileen McKay's funds, which enabled him to steal/convert same for his own personal use.

31. As a direct and proximate result of Defendant's negligence, Plaintiffs have suffered damages of \$139,000.00 plus interest.

WHEREFORE, Plaintiffs pray this court for money damages in excess of \$50,000 and the costs of this suit against FCB New Baden Bank.

COUNT III

ACTING IN CONCERT WITH LAVERN HUELSMANN D/B/A SENIOR RETIREMENT SERVICES TO CONVERT PLAINTIFF'S FUNDS AGAINST DEFENDANT, FCB NEW BADEN BANK

Now come the Plaintiffs, James McKay and Eileen McKay, and for Count III of their Complaint against the defendant, FCB New Baden Bank, respectfully represent unto the Court as follows:

32. Plaintiffs restate and incorporate by reference paragraphs 1 through 31 as if full pleaded herein.

33. That FCB New Baden Bank's actions in its handling of the accounts of Lavern Huelsmann d/b/a Senior Retirement Services, gave substantial assistance to Huelsmann d/b/a Senior Retirement Services, in allowing him to embezzle and steal the Plaintiffs money.

34. That at all times relevant hereto, the Defendant, FCB New Baden Bank, had knowledge that Huelsmann was withdrawing funds for his own purposes even though said funds were pledged to fund the alleged "Cash Management Account" of Senior Retirement Services at FCB New Baden Bank, which was allegedly a government insured fund.

WHEREFORE, Plaintiffs pray this court for money damages in excess of \$50,000.00 and the costs of this suit.

COUNT IV

FOR CLASS ACTION STATUS AGAINST LAVERN HUELSMANN D/B/A SENIOR RETIREMENT SERVICES AND FCB NEW BADEN BANK, GERMANTOWN TRUST AND SAVINGS BANK, TEMPO BANK, CENTRUE BANK AND SCOTTRADE, INC., AND ALL OTHER RESPONSIBLE PARTIES

COMES NOW the plaintiffs by and through their attorneys and states as follows:

35. Plaintiffs restate and incorporate by reference paragraphs 1 through 34 as if full pleaded herein.

36. Plaintiff has filed his original complaint for three counts for various violations of the Illinois statutes as well as the Illinois common law including but not limited to as follows:

- a) violation of the consumer fraud act
- b) negligence
- c) breach of fiduciary duty
- d) acting in concert

37. The claim of the representative party James and Eileen McKay is a typical claim as a member of said class; Plaintiffs entered into an agreement whereby elderly citizens of the State of Illinois entered into agreements with various banks and financial institutions with Lavern Huelsmann d/b/a Senior Retirement Services which were fraudulent and deceptive.

38. The Plaintiff seeks to have a class of parties, "class" defined and certified as follows:

A. James and Eileen McKay and all persons whether an individual, or representative or in an agency capacity, or an heir, legatee, devisee or assignee, nominee or beneficial owner, who entered into agreements to place their monies in a fraudulent "cash management account" at the following banking institutions; FCB New Baden Bank, Germantown Trust and Savings Bank, Tempo Bank, Centruue Bank, and Scottrade, Inc.

B. The class that Plaintiffs seek to represent is numerous enough that individual lawsuits by all members is impractical. Plaintiffs and their attorneys believe that at least 40-100 persons, entities, or estates are missing over \$2,000,000.00 in investment monies. Additionally, the class that Plaintiffs seek to represent is geographically diverse enough so that class action status is the only practical way to handle these claims.

C. The representative party Plaintiffs and their counsel will fairly and adequately represent the class. The interest of the representative party does not conflict with the interests of the class in any regard. Plaintiff's class counsel are competent, experienced, and will vigorously represent the class.

D. There are questions of law and fact common to the class. specifically, the common questions of fact include, in part, (a) the existence and the scheme to defraud elderly persons of their funds which were placed at several Illinois banks; (b) the existence of similar if not identical fraudulent statements, misrepresentations and the omissions of materials fact by the defendants, including the failing to disclose to plaintiff

and other members of the class of the fact that Lavern Huelsmann d/b/a Senior Retirement Services is not and was not a competent trustee or corporate trustee, and not qualified to invest money in securities products or to serve in any trust fund capacity.

E. The common questions of law include, in part, whether the actions complained of violated the Illinois Consumer Fraud Act; whether the defendants colluded in a fraudulent endeavor; whether Huelsmann, individually, breached his fiduciary duty, breached their contracts, written and/oral; or whether the defendants were negligent in withholding the above information from the plaintiff or class members; the failure of the banks to investigate the business credentials of a fictitious company (Senior Retirement Services) and the failure of the banks to file "Suspicious Activity Reports."

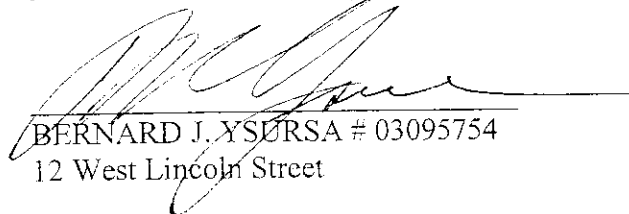
39. The questions of law and fact common to the members of the class predominate over questions of individual members.

A. The class action is an appropriate method for the fair and efficient adjudication of this controversy and is superior to other methods for the adjudication of this controversy.

B. The standard for the certification of a class action is by "a preponderance of the evidence".

Wherefore, plaintiff and their counsel pray this Court make and enter its order granting class certification pursuant to 735 ILCS 5/2-801 et.seq.

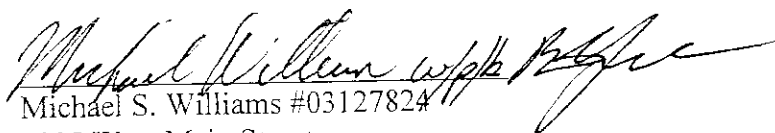
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