

Bay County judge awards \$1.5M for trust conversion

Trustee asserted Fifth Amendment

By Douglas Levy

Douglas G. Chalgian said that in his nearly two decades of practicing probate litigation and elder law, he had never encountered an instance in which a trustee asserted his Fifth Amendment rights during a misappropriation lawsuit.

That all changed last year.

Within a six-month period, trustees in two cases Chalgian was handling took the Fifth.

This month, in Bay County Probate Court, Chalgian got summary disposition in one of those cases, where the trustee, a financial planner, was accused of converting more than \$513,000 from two sisters' trust.

The court in *In the Matter of Elizabeth N. Stafford Inter-Vivos Trust* granted judgment in plaintiff's favor. Judge Joseph K. Sheeran's \$1,539,635 award includes treble damages.

Chalgian, of East Lansing-based Chalgian & Tripp Law Offices PLLC, said he predicts a disturbing trend in which the Fifth Amendment will be used regularly in trust conversion suits.

"One of the things that's happening out there is police and prosecutors are becoming more sensitized to elder abuse and financial exploitation of vulnerable adults," he said. "It's become criminal at the same it's becoming a civil action. So more and more laws are being

passed and more and more training for police and prosecutors to deal with these things.

"So I think [defendant's] position was, 'Anything I say in this civil action could end up becoming a problem for me if police investigate this.' ... I see it as becoming more common as we go forward because police are becoming more active in this arena."

In the case, sisters Elizabeth and Frances Stafford had set up a trust. When Elizabeth died, her trust continued for the benefit of Frances, who later became physically and cognitively vulnerable.

The beneficiaries soon became aware of potential misappropriation and exploitation issues in the way the trustee handled the trust management.

"They contacted us, and the first thing we did was petition to remove [defendant] as the trustee and proclaim someone who we wanted to be the successor trustee," Chalgian said. "We picked a CPA ... because we realized the role would be largely investigation and forensic accounting. Then he hired us to handle the litigation."

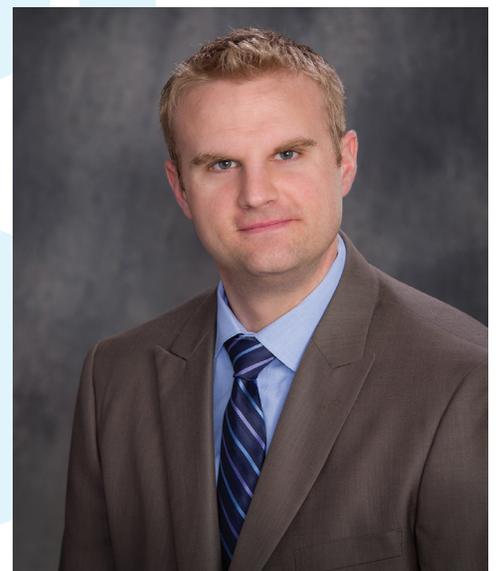
Chalgian said that the CPA "overwhelmed" plaintiff with financial evidence of conversion.

"The motion itself had 500 pages of financial records and the [successor] trustee did a forensic accounting and we put all of that in the motion," he said.

"Here are transactions over a



DOUG CHALGIAN



JOE WEILER, JR.

long period of time, moving money out of the trust into your personal accounts. You engaged it. That's clearly a breach and there can be no other conclusion other than you

converted funds to your personal use.' The vast majority of the documents were financial records."

But, Chalgian said, because the matter had the potential for criminal charges to be filed against the trustee, defendant's arguments "never developed in my opinion, because I think they were stuck in the mindset of, 'Any defense we raise opens the door. So if we say, "She gave it to me as a gift," well, OK, now we get into that; "Tell me where you were, tell me what she said, tell me what witnesses you have.'"

"They were largely boxed in by their own strategy of avoiding, I think, the criminal issue to respond to the civil allegation. ... Their response in summary disposition included arguments but no affidavits or anything."

Chalgian said that facing a defendant who asserts the Fifth Amendment can present challenges, such as defendant's preventing a request

to admit and the defense carefully framed argument.

But he added that the court has the ability to make an inference if someone pleads the Fifth.

"Unlike a criminal [action], in a civil action the court can assume that the response would have negative inference," Chalgian said. "In this case, the court ruled, 'With or without the inference, I'm granting summary disposition.'"

Chalgian said more cases like this could be on the rise, largely because people are living longer.

"At 80, 90, you begin to see a high frequency of cognitive impairments or vulnerable adults, people who become — even if they're not incompetent, they may be easily manipulated and exploited.

"And you have the dynamic of a society where a lot of times family members — in this case it wasn't a family member — will look at their parents or their family resources

as, 'If mom lives she'll spend all my money,' and they will push [the parents] to make bad decisions and overreach into their parents' or family members' resources."

Chalgian said he advises other probate litigators to move forward through discovery aggressively to demonstrate what occurred, and not get distracted by what the defense may or may not say.

"We said, 'You've got to give me a defense or I don't have any reason to stop this train,'" he said. "So in this case it was getting our facts together, not getting sidetracked and just getting our judgment. That was the approach we took."

Stephan M. Gaus, the Saginaw-based attorney who represented the defendant, declined to comment on the matter.

A Verdicts & Settlements report on *In the Matter of Elizabeth N. Stafford Inter-Vivos Trust* can be found on page 7.

Verdicts & Settlements

Plaintiff argued financial advisor stole from trust

Defendant asserted
Fifth Amendment rights
\$1,539,635

Elizabeth and Frances Stafford were elderly sisters in Bay City area. After Elizabeth died, her trust continued for the benefit of Frances.

Plaintiff trustee asserted that during a period in which Frances was physically and cognitively vulnerable, Frances' financial advisor, who was also appointed trustee of Elizabeth's trust, misappropriated more than \$500,000 from the trust for his

own benefit.

The defendant asserted his Fifth Amendment rights, to avoid self-incrimination.

Bay County Probate Court Judge Joseph K. Sheeran ordered that the judgment be granted in favor of plaintiff trustee in the amount of \$1,539,635, which includes MCL 600.2919a treble damages for conversion. In addition, Sheeran ordered that interest be paid from July 18, 2014, pursuant to MCL 600.6013.

Douglas G. Chalgian, counsel for plaintiff, provided case information.

See related story, page 1.

Type of action: Probate petition

Type of injuries: Misappropriation of trust property, exploitation of vulnerable adult

Name of case: *In the Matter of Elizabeth N. Stafford Inter-Vivos Trust*

Court/Case no./Date: Bay County Probate Court; 14-49595-TV-JS; Feb. 4, 2015

Tried before: Judge

Name of judge: Joseph K. Sheeran

Judgment amount: \$1,539,635

Special damages: MCL 600.2919a treble damages for conversion

Attorney for plaintiff: Douglas G. Chalgian

Attorney for defendant: Stephan M. Gaus

