

2011 WL 11797641 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah
Multnomah County

Patricia N. GIBSON, in her capacity as successor Trustee to the Veryl G. Gibson Trust, Plaintiff,

v.

Sharon BANKOFIER, an individual, Duane Bankofier, an individual, Oregon Realty Company, an Oregon corporation, Chicago Title Insurance Company of Oregon, an Oregon corporation and Equity Advantage, Inc., an Oregon corporation, Defendants.

No. 110201781.
June 3, 2011.

(Violation of **Elderly** Persons and Persons with Disabilities **Abuse** Prevention Act; Breach of Good Faith & Fair Dealing; Breach of Fiduciary Duty; Negligence; Unlawful Trade Practices; Fraud; Sales of Unregistered Securities; Securities Fraud; Sale of Securities by Unlicensed Broker-Dealer or Salesperson)

Prayer Amount: \$6 million

Not Subject to Mandatory Arbitration

First Amended Complaint

Slinde Nelson LLC, Nicholas J. Slinde, OSB No. 003900, [Darian A. Stanford](#), OSB No. 994491, for plaintiff.

BACKGROUND

This case involves Defendants Sharon Bankofier, Duane Bankofier and Oregon Realty Company ("Oregon Realty")'s representation of the Veryl G. Gibson Trust (the "Trust") and Veryl G. Gibson, a then 81-year old widower with protracted dementia and memory loss, in the sale of certain real property located in Multnomah County and the subsequent ill advised reinvestment of said proceeds into four Tenants in Common ("TIC") investments.

PARTIES

1.

Patricia N. Gibson is an Oregon resident and the daughter of Veryl Gibson. Patricia Gibson brings this action in her capacity as the successor trustee for the Trust. Patricia Gibson replaced Veryl Gibson as the successor trustee for the Trust on or about July 22, 2010, after it was determined that Veryl Gibson was unable to manage the interests of the Trust due to progressive dementia and memory loss.

2.

Defendant Sharon Bankofier was at all relevant times an Oregon resident and a licensed realtor with Oregon Realty.

3.

Defendant Duane Bankofier was at all relevant times Sharon Bankofier's husband who, although not formally affiliated with Oregon Realty, nonetheless participated in providing Veryl Gibson and the Trust with financial and investment advice.

4.

Chicago Title Insurance Company of Oregon (“Chicago Title”) was at all relevant times an Oregon corporation in the business of facilitating the buying and selling of real estate.

5.

Equity Advantage, Inc. (“Equity Advantage”) was at all relevant times an Oregon corporation in the business of facilitating 1031 tax deferred exchanges.

FACTS

6.

The Trust was created on or about January 17, 2006 by and for the benefit of Veryl Gibson at the direction of Sharon Bankofier and Oregon Realty.

7.

From 1974-2010, Veryl Gibson's only income derived from her activities as an Avon representative. After her husband's death in December 1991, Veryl Gibson was left with minimal assets that consisted of a home, car and other retirement related investments. Veryl Gibson was not a sophisticated investor, and at the time of the transaction giving rise to this complaint, she relied on a combination of social security and retirement income to cover her personal expenses.

8.

Over time, Sharon Bankofier and Duane Bankofier ingratiated themselves as advisors for Veryl Gibson's financial and other affairs. Veryl Gibson relied on Sharon Bankofier and Duane Bankofier for real estate investment and financial advice to the exclusion of Veryl Gibson's familial relations.

9.

On or about May 16, 2007, Sharon Bankofier and Oregon Realty were retained to represent Veryl Gibson and the Trust in the sale of real property owned by the Trust located at 7800 SE 162nd Avenue, Portland, Oregon 97236 (the “Property”). The Property was sold to Scott and Sandy Campbell for \$1,250,000. \$250,000 of the sales price was allocated to a house located on the Property and \$1,000,000 to a neighboring pasture property. As part of the transaction, Veryl Gibson retained a life estate in a home located on the Property.

10.

During the negotiation of the sale of the Property, Sharon Bankofier and Duane Bankofier convinced Veryl Gibson to invest \$1,000,000 of the proceeds from the sale of the Property (the “Trust Money”) via a 1031 exchange into four separate TIC investments. A TIC is a highly risky and illiquid investment which pools money from investors to own a single property. As a

TIC owner, an investor has an individual fractional interest in the relevant property and shares in the associated liabilities and obligations. Sharon Bankofier and Duane Bankofier promised that Veryl Gibson would not lose her principal investment and would enjoy returns of 7.5%-15% per annum.

11.

On June 29, 2007, the transaction closed. Sharon Bankofier and Oregon Realty were paid a \$31,250 commission.

12.

At the instructions of Sharon Bankofier and Duane Bankofier, acting as agents (Sharon Bankofier) or de facto agents (Duane Bankofier) of Oregon Realty, Veryl Gibson selected Chicago Title to close the transaction and Equity Advantage to facilitate the 1031 exchange of the Trust Money into the TICs.

13.

Based on the advice and counsel of Sharon Bankofier, Duane Bankofier and Oregon Realty, Veryl Gibson on behalf of the Trust placed the Trust Money into the TICs. This advice was given without regard to whether 1) Veryl Gibson met the necessary accredited investor criteria and/or 2) the investment was suitable for Veryl Gibson's needs as a then 81-year old woman living on social security and retirement income. This advice was also given despite the fact that Sharon Bankofier and Oregon Realty knew that at least one of the TIC investments was already embroiled in litigation.

14.

But for the advice and counsel of Sharon Bankofier, Duane Bankofier and Oregon Realty regarding the suitability of the investment and facilitation of the same, Veryl Gibson would not have put the Trust Money into the TICs. Sharon Bankofier and Duane Bankofier had been given notice by Veryl Gibson's daughters (including Patricia Gibson) that Veryl Gibson was experiencing dementia and memory loss and that her continued care was critical to any reinvestment strategy.

15.

Chicago Title and Equity Advantage knew or should have known that Veryl Gibson was a vulnerable person and should have taken steps to determine her capacity to close the transaction and reinvest the Trust Money in the TIC's.

16.

The Trust Money is now invested in four separate TICs. This investment is not yielding the monthly income that Sharon Bankofier, Duane Bankofier and Oregon Realty represented would be sufficient to cover Veryl Gibson's monthly expenses. The Trust is unable to sell its interest and has been asked to subsidize current operating losses of the TIC. Most if not all of these TIC investments are involved in various stages of litigation and there is little chance the Trust will ever be able to recover monies invested.

17

On or about July 22, 2010, Patricia Gibson replaced Veryl Gibson as successor trustee for the Trust after it was determined that Veryl Gibson was unable to manage the interests of the Trust due to progressive dementia and memory loss.

FIRST CLAIM FOR RELIEF

(Violation of **Elderly** Persons and Persons With Disabilities **Abuse** Prevention Act (the “**Elder Abuse** Act”))

Count 1

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

18.

Plaintiff realleges paragraphs 1 through 17.

19.

At all material times, Veryl Gibson was a person 65 years or older and a “vulnerable person” as defined under the **Elder Abuse** Act.

20.

Pursuant to [ORS 124.100](#), Veryl Gibson is a vulnerable person who suffered injury by reason of financial **abuse** based on the actions outlined above.

21.

Pursuant to [ORS 124.100\(3\)\(b\) and \(d\)](#), Patricia Gibson, as successor Trustee and attorney in fact for Veryl Gibson, has standing to bring these claims.

22.

As a result of the **Elder Abuse** Act violations of Sharon Bankofier, Duane Bankofier and Oregon Realty, through causing financial **abuse** and/or permitting another to cause financial **abuse**, Plaintiff is entitled to \$3,000,000 in economic damages and noneconomic damages in an amount determined reasonable by a jury currently estimated to be \$3,000,000. [ORS 124.100](#).

23.

Plaintiff is entitled to attorney fees pursuant to [ORS 124.100\(2\)\(c\)](#).

24.

Plaintiff seeks an order pursuant to [ORS 124.120\(3\)](#) divesting Sharon Bankofier, Duane Bankofier and Oregon Realty from any further contact with Veryl Gibson.

Count 2

Against Oregon Realty, Chicago Title and Equity Advantage

25.

Plaintiff realleges paragraphs 1 through 24.

26.

Veryl Gibson was a person 65 years or older and a “vulnerable person” as defined under the **Elder Abuse** Act.

27.

Pursuant to [ORS 124.100](#), Veryl Gibson is a vulnerable person who suffered injury by reason of financial **abuse** based on the actions outlined above.

28.

Pursuant to [ORS 124.100\(3\)\(b\) and \(d\)](#), Patricia Gibson, as successor Trustee and attorney in fact for Veryl Gibson, has standing to bring these claims.

29.

As a result of the **Elder Abuse** Act violations by Oregon Realty, Chicago Title and Equity Advantage, through causing financial **abuse** and/or permitting another to cause financial **abuse**, Plaintiff is entitled to \$3,000,000 in economic damages and noneconomic damages in an amount determined reasonable by a jury currently estimated to be \$3,000,000. [ORS 124.100](#).

30.

Plaintiff is entitled to attorney fees pursuant to [ORS 124.100\(2\)\(c\)](#).

31.

Plaintiff seeks an order pursuant to [ORS 124.120\(3\)](#) divesting Oregon Realty, Chicago Title and Equity Advantage from any further contact with Veryl Gibson.

SECOND CLAIM FOR RELIEF

(Breach of Good Faith and Fair Dealing, [ORS 696.805](#))

Against Sharon Bankoffier, Duane Bankoffier and Oregon Realty

32.

Plaintiff realleges paragraphs 1 through 31.

33.

Veryl Gibson and the Trust entered into an exclusive Agency agreement whereby Sharon Bankofier, Duane Bankofier and Oregon Realty agreed to list and sell the Property with a right to receive a commission. The actions of Sharon Bankofier, Duane Bankofier and Oregon Realty were governed by [ORS 696.805](#).

34.

As part of that agency relationship, Sharon Bankofier, Duane Bankofier and Oregon Realty advised Veryl Gibson and the Trust to reinvest the Trust Money via 1031 tax deferred exchange into the TICs without regard to Veryl Gibson's personal financial needs and/or objectives.

35.

Sharon Bankofier and Oregon Realty were paid a commission of \$31,250 for the above representation and advice and other amounts not yet known for reinvestment of the Trust Money into other real estate investments.

36.

All other terms and conditions have been performed by Veryl Gibson and Plaintiff.

37.

By advising Veryl Gibson to place the Trust Money into TICs without regard for her suitability for the investment and personal expenses, Sharon Bankofier, Duane Bankofier and Oregon Realty breached their obligations under [ORS 696.805](#). Specifically, Sharon Bankofier, Duane Bankofier and Oregon Realty failed to: a) deal honestly and in good faith; b) disclose material facts relating to the reinvestment of proceeds in TICs; c) exercise reasonable care and diligence; and d) be loyal to the seller by not taking any action that is adverse or detrimental to the seller's interest in the transaction.

38.

As a result of the actions of Sharon Bankofier, Duane Bankofier and Oregon Realty, Plaintiff has been damaged in an amount expected to exceed \$1 million plus costs and attorneys fees.

THIRD CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

Against Sharon Bankofier and Oregon Realty

39.

Plaintiff realleges paragraphs 1 through 38.

40.

By the conduct alleged above, Sharon Bankofier and Oregon Realty breached their fiduciary duties of loyalty, honesty and the care owed Plaintiff and are liable for the damages outlined above.

41.

As a result of the actions of Sharon Bankofier and Oregon Realty, Plaintiff has been damaged in an amount expected to exceed \$1 million plus costs and attorneys fees.

FOURTH CLAIM FOR RELIEF

(Negligence)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

42.

Plaintiff realleges paragraphs 1 through 41.

43.

Pursuant to [ORS 696.810](#), Sharon Bankofier, Duane Bankofier and Oregon Realty owed the Trust the duty to deal honestly and in good faith and to disclose material facts known to them and not apparent or readily ascertainable by Veryl Gibson, the Trust or Plaintiff.

44.

Plaintiff relied on advice and counsel provided by Sharon Bankofier, Duane Bankofier and Oregon Realty that reinvesting the Trust Money into the TICs was appropriate. Plaintiff trusted and/or relied on Sharon Bankofier, Duane Bankofier and Oregon Realty based on their role as agents and/or trusted advisors and based on their special relationship with Veryl Gibson and Plaintiff.

45.

Sharon Bankofier, Duane Bankofier and Oregon Realty were negligent in failing to accurately explain the risks of the TICs and by advising Plaintiff to invest in the same.

46.

As a result of the aforementioned negligence, Veryl Gibson and the Trust invested \$1 million (the Trust Money) into the aforementioned TICs. Veryl Gibson needed the Trust Money to cover personal expenses.

47.

As a result of the negligence of Sharon Bankofier, Duane Bankofier and Oregon Realty, Plaintiff has been damaged in an amount equal to \$1 million in costs and attorneys fees. Plaintiff reserves the right to amend the claim to seek an award of punitive damages.

FIFTH CLAIM FOR RELIEF

(Unlawful Trade Practices)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

48.

Plaintiff realleges paragraphs 1 through 47.

49.

In violation of [ORS 646.608](#), Sharon Bankofier, Duane Bankofier and Oregon Realty willfully represented to Veryl Gibson and the Trust that the TICs had characteristics, benefits and qualities that it did not have, made false or misleading representations concerning the value of the investment and failed to disclose the true nature of the investment.

50.

As a result of these Unlawful Trade Practices, Plaintiff has been damaged in an amount equal to \$1 million plus costs and attorney fees.

SIXTH CLAIM FOR RELIEF

(Fraud)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

51.

Plaintiff realleges paragraphs 1 through 50.

52.

Sharon Bankofier, Duane Bankofier and Oregon Realty made material misrepresentations that the TICs were appropriate for Veryl Gibson and the Trust and would produce monthly income sufficient to cover Veryl Gibson's monthly expenses.

53.

Sharon Bankofier, Duane Bankofier and Oregon Realty made said representations with the intent that Veryl Gibson and the Trust rely upon the same.

54.

The Trust and Plaintiff had the right to rely and in fact relied on these representations.

55.

As a result of this fraud, Plaintiff has been damaged in an amount equal to \$1 million plus costs and attorney fees. Plaintiff reserves the right to amend to seek punitive damages.

SEVENTH CLAIM FOR RELIEF

(Sales of Unregistered Securities)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

56.

Plaintiff realleges paragraphs 1 through 55.

57.

The TICs constitute a security under [ORS 59.015\(19\)\(a\)](#).

58.

At all material times, the securities were not registered as required by [ORS 59.055](#).

59.

Plaintiff was sold unregistered securities in violation of [ORS 59.115](#). Sharon Bankofier, Duane Bankofier and Oregon Realty are liable to Plaintiff as participants and/or aiders and abettors in the sale of unregistered securities pursuant to [ORS 59.115](#).

60.

Plaintiff is entitled to an award of damages in an amount of its respective investments plus prejudgment interest and attorney fees pursuant to [ORS 59.115\(10\)](#).

EIGHTH CLAIM FOR RELIEF

(Securities Fraud)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

61.

Plaintiff realleges paragraphs 1 through 60.

62.

Plaintiff was sold securities by means of misrepresentations and omissions of material facts in order to induce them to make their investments, including but not limited to failing to disclose the risk factors involved with the investment and the means by which the investment would supposedly return principal yield profits.

63.

Plaintiff was sold securities in violation of [ORS 59.115](#) and [59.135](#) by Sharon Bankofier, Duane Bankofier and Oregon Realty. Sharon Bankofier, Duane Bankofier and Oregon Realty are liable to Plaintiff as participants or aiders and abettors in the fraudulent sale of securities pursuant to [ORS 59.115](#).

64.

Plaintiff is entitled to an award of damages in the amount of its respective investments plus prejudgment interest and their attorney fees pursuant to [ORS 59.115\(10\)](#).

NINTH CLAIM FOR RELIEF

(Sale of Securities by Unlicensed Broker-Dealer or Salesperson)

Against Sharon Bankofier, Duane Bankofier and Oregon Realty

65.

Plaintiff realleges paragraphs 1 through 64.

66.

At all material times, Sharon Bankofier, Duane Bankofier and Oregon Realty were not licensed broker-dealers, investment advisors or salespeople as required by [ORS 59.165](#).

67.

Plaintiff was sold securities by a person(s) without a license in violation of [ORS 59.115](#) and [ORS 59.165](#). Sharon Bankofier, Duane Bankofier and Oregon Realty are liable to Plaintiff as participants or aiders and abettors in the sale of securities by unlicensed persons pursuant to [ORS 59.115](#).

68.

Plaintiff is entitled to an award of damages in the amount of its investment plus prejudgment interest and their attorney fees pursuant to [ORS 59.115\(10\)](#).

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. Awarding Plaintiff judgment against Defendants on its First Claim for Relief for \$3,000,000 in economic damages and what is estimated to be at least \$3,000,000 in noneconomic damages.
2. Awarding Plaintiff judgment against Defendants on all other claims for \$1,000,000, the exact amount as deemed reasonable by the Court, together with prejudgment interest thereon at the legal rate of interest; and
3. Awarding Plaintiff their attorney fees, costs and disbursements incurred therein and such other and further relief as the Court may deem just.

DATED this 3 day of June, 2011.

SLINDE NELSON LLC

By

Nicholas J. Slinde, OSB No. 003900

Darian A. Stanford, OSB No. 994491

Of Attorneys for Plaintiff

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