

DOROTHY G. PHINNEY,
By Her Legal Guardian,
SUPPORTIVE COMMUNITY SERVICES, INC.
1126 South 70th Street
Suite S-106
Milwaukee, WI 53214,

Plaintiff,

vs.

JEFFREY ELVERMAN
9028 400th Court
Genoa City, WI 53128;
and
QUARLES & BRADY LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202,

Defendants.

Case No. 09-CV-005843

AMENDED COMPLAINT

TYPE: Money Judgment
Code No. 30301

Money Judgment Requested
- Over \$5,000

AMENDED COMPLAINT

Plaintiff, by her attorney, McGranaghan & Stawski Ltd., alleges and shows to the Court as follows:

PARTIES

1. The plaintiff, Dorothy G. Phinney (hereinafter "Phinney"), by her legal guardian, Supportive Community Services, Inc. is an adult resident of the State of Wisconsin. The address and principal place of business for Supportive Community Services, Inc. is located at the address indicated in the caption of this amended complaint. Supportive Community Services, Inc. was appointed Phinney's temporary

guardian on or about October 22, 2008 and was appointed Phinney's permanent guardian on or about December 5, 2008.

2. The defendant, Jeffrey Elverman (hereinafter "Elverman"), is an adult resident of the State of Wisconsin and, upon information and belief, resides at the address indicated in the caption of this amended complaint. At all times relevant hereto, Elverman was a licensed attorney that was acting within the scope of his employment as an agent and/or employee of defendant, Quarles & Brady LLP.

3. The defendant, Quarles & Brady LLP (hereinafter "Q&B"), is a corporation organized and existing pursuant to the laws of the State of Wisconsin, and has its main office and principal place of business located at the address indicated in the caption of this amended complaint. At all times relevant hereto the defendant, Q&B, employed the defendant, Elverman, as an attorney at its Milwaukee law office.

FACTS

4. Phinney and Elverman first met in 2000. Shortly thereafter, Phinney hired Elverman and the law firm he worked for, Q&B, to handle various matters for her. In addition, on or about May 11, 2000, Elverman began to act as Attorney-In-Fact for Phinney pursuant to a Durable Financial Power of Attorney that Elverman had Phinney execute.

5. Elverman, in his capacity as an agent and/or employee of Q&B, performed services for Phinney between 2000 and 2004. Elverman continued to perform services for Phinney after he left the employment of Q&B.

6. Between December 12, 2001 and September 23, 2004, Elverman and/or Q&B received a total of at least \$604,980.00 from Phinney as payment for services that

Elverman, in his capacity as an agent and/or employee of Q&B, represented that he provided to Phinney.

7. Phinney reasonably relied upon and believed Elverman's representations that he performed services for her that entitled him and/or Q&B to receive the amount of \$604,980.00 as compensation for said services.

8. Upon information and belief, Elverman used his position as an agent and/or employee of Q&B to steal money from Phinney that he was not entitled to receive either personally or in his capacity as an agent and/or employee of Q&B.

9. Elverman's theft of funds from Phinney did not become known for certain until some time after November 6, 2008, the date on which Supportive Community Services Inc. filed a petition regarding Phinney in the Milwaukee County Circuit Court.

10. Upon information and belief, members of Q&B's management committee are currently aware of the fact that Elverman stole the above-referenced funds from Phinney in his capacity as an agent and/or employee of Q&B. Despite this knowledge, Q&B has refused, and continues to refuse, to reimburse Phinney for any of the \$604,980.00 that Elverman stole from her during the time period that he was acting as an agent and/or employee of Q&B.

11. That the plaintiff realleges all relevant portions of the above paragraphs and incorporates them into all of the subsequent claims for relief as if fully stated therein.

FIRST CLAIM FOR RELIEF AGAINST ELVERMAN INDIVIDUALLY
(Violation Of § 943.20, Stats.)

12. Elverman, by taking funds belonging to Phinney that he falsely represented were due him by virtue of work that he claimed to have performed for

Phinney in his capacity as an agent and/or employee of Q&B and to which he was not entitled to, committed theft in violation of Section 943.20, Stats.

13. By virtue of his violation the above-referenced statute, Elverman is liable to Phinney for treble damages as well as the costs of investigation and litigation.

SECOND CLAIM FOR RELIEF AGAINST ELVERMAN INDIVIDUALLY
(Conversion)

14. Elverman converted funds belonging to Phinney, without consent of Phinney, and intentionally interfered with Phinney's rights to funds that rightfully belonged to Phinney.

15. Elverman caused damage to Phinney in the amount of at least \$604,980.00 by converting said funds.

FIRST CLAIM FOR RELIEF AGAINST ELVERMAN AND Q&B
(Misrepresentation)

16. That, during the time period that he was working at Q&B and acting within the scope of his employment as Phinney's attorney, Elverman made representations of fact to Phinney and told her, among other things, that he was acting in her best interests, both financially and otherwise. That said representations of fact were false, as Elverman was acting to Phinney's detriment by stealing money from her at the time said statements were made. That Elverman made these representations with the knowledge that they were false and with the intent to deceive and induce Phinney to act on them to her detriment and damage. Phinney did, in fact, believe and rely upon Elverman's misrepresentations to her detriment and damage.

17. That as a direct and proximate result the misrepresentations that Elverman made to Phinney while acting as an agent and/or employee of Q&B, Phinney has sustained damages of at least \$604,980.00.

SECOND CLAIM FOR RELIEF AGAINST ELVERMAN AND Q&B
(Breach of Contract)

18. Phinney retained and agreed to pay Q&B for services performed for her by Elverman in his capacity as an agent and/or employee of Q&B.

19. Phinney paid for services pursuant to the agreement entered into by the parties. In many instances, neither Elverman nor Q&B were entitled to receive these payments, contrary to the terms of the parties' agreement.

20. As a direct and proximate result of Q&B's breach of contract and its continuing refusal to reimburse Phinney for any of the funds that its agent or employee, Elverman, stole from her, Phinney has been damaged in at least the amount of \$604,980.00.

THIRD CLAIM FOR RELIEF AGAINST ELVERMAN AND Q&B
(Breach of Fiduciary Duty)

21. Q&B and Elverman both had fiduciary duties to their client, Phinney, to act in good faith and to deal fairly with her and her finances in connection with the work that Elverman, in his capacity as an agent and/or employee of Q&B, claims that he performed for Phinney. Elverman also had additional fiduciary duties to Phinney in connection with Phinney's assets by virtue of the fact that he was, at all times relevant hereto, Phinney's Attorney-In-Fact pursuant to a Durable Financial Power of Attorney he had Phinney sign on or about May 11, 2000.

22. Upon information and belief, Q&B and its agent and/or employee, Elverman, both breached their fiduciary duties to Phinney by violating the rights of Phinney and causing harm to Phinney, among other ways, as follows:

- a. By illegally and fraudulently diverting Phinney's assets for the purpose of causing damage to her;
- b. By using their position of authority and trust to further their financial interests to the detriment of Phinney;
- c. By departing from applicable ethical standards for the purpose of causing damage to Phinney;
- d. By using Phinney's resources for purposes inconsistent with Phinney's best interests; and
- e. By acting contrary to the best interests of Phinney, without reasonable cause to believe that such actions were legal.

23. That as a direct and proximate result of both Elverman's and Q&B's breaches of their respective fiduciary duties to Phinney, as described herein, Phinney has sustained damages in at least the amount of \$604, 980.00.

FIRST CLAIM FOR RELIEF AGAINST Q&B INDIVIDUALLY

24. That the defendant, Q&B, was negligent in its supervision of Elverman in connection with the theft of funds alleged herein, in that: (a) Q&B had a duty of care owed to Phinney; (b) Q&B breached its duty of care to Phinney; (c) The numerous wrongful acts of an Elverman, as alleged herein, were a cause-in-fact of the Phinney's damages.

25. That Q&B's failure to adequately supervise Elverman's dealings with Phinney, among other acts and omissions, were a cause-in-fact of the wrongful acts of Elverman, as alleged herein.

26. That Phinney has been damaged as a result of Q&B's negligent supervision of Elverman.

WHEREFORE, Phinney seeks the following relief:

- a. Compensatory damages in an amount to be determined at trial;
- b. Punitive damages;
- c. Treble damages as authorized by Section 895.80, Stats.;
- d. All costs of litigation, including reasonable attorney fees; and,
- e. Such further relief as the Court deems just and equitable.

Dated at Milwaukee, Wisconsin, this 27th day of October, 2009.

THAT THE PLAINTIFF HEREIN DEMANDS A JURY TRIAL.

McGRANAGHAN & STAWSKI LTD.

By:

Christopher J. Stawski,
Attorney for Plaintiff
State Bar No. 1016435

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