

STATE OF WISCONSIN

IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST SARAH E.K. LAUX,
ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2014AP 974 -D

Complainant;

SARAH E.K. LAUX

Respondent.

RECEIVED

APR 30 2014

COMPLAINT

CLERK OF SUPREME COURT
OF WISCONSIN

NOW COMES the Wisconsin Supreme Court - Office of
Lawyer Regulation (OLR) by Assistant Litigation Counsel
Julie M. Spoke, and alleges as follows:

1. The OLR was established by the Wisconsin Supreme
Court and operates pursuant to Supreme Court Rules. This
Complaint is filed pursuant to SCR 22.11.

2. Sarah E.K. Laux (Laux) was admitted to the practice
of law in Wisconsin on May 17, 2004, State Bar No. 1045534.
The most recent address furnished by Laux to the State Bar
of Wisconsin is Laux Law, LLC, 11230 W. Rawson Avenue,
Franklin, Wisconsin 53132.

3. In 2012, Harold Franzen and Mary Ann Franzen retained Laux for estate planning. At the time, the Franzens held over \$2 million in investments in a Wells Fargo Advisor Account.

4. Laux recommended that the Franzens sell their investments and purchase a series of annuities from Phoenix Life Insurance Company (Phoenix) and American Equity (American).

5. In late 2012, following Laux's recommendation, Terrance Schmidt of SII Investments, Inc. (SII) became a broker for the Franzens. At that time, \$2,337,365.27 was transferred from the Franzens' Wells Fargo Advisor Account into a brokerage account at SII.

6. Laux subsequently created an entity called HMFF Investments, LLC, (HMFF) on behalf of the Franzens. Laux was the registered agent with a listed address of 8585 W. Forest Home Avenue, Suite 225, Greenfield, WI.

7. Laux informed the Franzens that HMFF would be the owner of the Phoenix and American annuities.

8. On January 3, 2013, Laux had the Franzens sign a third party check request for a cash withdrawal from their

SII account, in the amount of \$2,184,125.30, payable to HMFF Investments, LLC (HMFF).

9. In late January 2013, without the Franzens' knowledge or authorization, Laux deposited the \$2,184,125.30 into a U.S. Bank account. The sum of \$1,184,125.30 was deposited into a U.S. Bank checking account and the sum of \$1,000,000.00 was deposited into a U.S. Bank money market account, in the name of HMFF Investments, LLC, in which Laux was the sole signatory.

10. In February 2013, \$64,125.30 was withdrawn per the Franzens' request to make gifts to family members. Laux made the withdrawal from the US Bank accounts. After the withdrawal, \$2,120,000 remained in the U.S. Bank checking and money market accounts.

11. At some point, \$195,000 was withdrawn from the U.S. Bank account to pay taxes owed by the Franzens.

12. On February 6, 2013, Laux provided the Franzens with a Proposed Annuity Policy Memorandum which stated,

I am sending you this Memo to discuss the proposed annuity policies. We previously discussed that the annuities will be tiered, starting every month. There will be eight total and they will accrue interest until the official annuity start date... Please find the following eight (8) recommendations...

The list of annuities with Phoenix and American Equity, which were provided by Laux in her Memorandum actually consist of 9 annuities in the sum of \$2,120,000.

13. On March 5, 2013, Laux made two \$250,000 withdrawals from HMFF's U.S. Bank checking account in the form of cashier's checks. This money was used for Laux's own personal or business purposes.

14. On April 17, 2013, Harold Franzen passed away.

15. On June 7, 2013, Laux met with Ms. Franzen and her son, Mark Franzen, regarding the purchase of annuities listed in her February 6, 2013 Memorandum.

16. At the meeting, Laux made the following misrepresentations to Ms. Franzen and her son:

(A) Laux stated that she had purchased three \$250,000 annuity contracts for Ms. Franzen in March, April, and May 2013, totaling \$750,000 and that the contracts were locked in a safe in her office;

(B) Laux stated that after the stock portfolio was liquidated the funds from SII were transferred to two annuity companies, Phoenix and American, and the companies were holding the funds in a

bank account (about \$2,100,000) until the annuities were purchased as per the tiered structure in the Memorandum;

(C) Laux stated that the annuities would not kick in until twelve months after purchase and a lock or hold would be placed on the accounts during that time, so that they would not be available to Ms. Franzen; and

(D) Laux stated that Ms. Franzen would not be able to access her account until the lock or hold period was over.

17. At some point in time, Laux also falsely stated to the Franzens that the Phoenix Life policy she was recommending paid an 8% bonus.

18. After the meeting, Mark Franzen contacted Phoenix and American Equity. Both companies informed Mr. Franzen that they do not hold customer funds in an account or bank until the purchase of annuities and do not deny access to customers. Mr. Franzen subsequently called Laux and demanded to see the three annuity contracts.

19. On June 8, 2013, Laux met with Ms. Franzen and Mark Franzen. Laux again falsely informed them that she had

purchased annuities for Ms. Franzen. Laux provided Ms. Franzen with three false Contract Specification documents with Policy Numbers 992438, 993657, and 28170386. Laux also falsely informed the Franzens that the \$2,184,125.30 had been deposited into a U.S. Bank Account, in the name of Mary Ann and Harold Franzen under HMFF Investments, LLC, using the funds that came from the liquidation of the stock portfolio.

20. After the June 8 meeting, Mark Franzen learned that Policy Numbers 992438 and 993657 existed with American and Policy Number 281703686 existed with Phoenix. The policies were not in the name of Mary Ann and Harold Franzen or HMFF Investments, but Laux was the agent of record.

21. Mark Franzen also learned from U.S. Bank that Mary Ann and Harold Franzen did not hold any accounts with U.S. Bank and that Laux was the holder of the HMFF Investments account at U.S. Bank.

22. On June 11, 2013, Mark Franzen contacted Laux and informed her not to purchase any annuities in his mother's name until things were cleared up. Laux agreed to meet with the Franzens at Ms. Franzen's home.

23. At the June 11, 2013 meeting, Laux informed the Franzens of the following:

- (A) Laux, without Ms. Franzen's knowledge or permission, took hundreds of thousands of dollars from the HMFF Investment account at U.S. Bank which she used for her personal and business expenses;
- (B) Laux admitted that she began making withdrawals to herself from Harold and Mary Ann Franzen's account beginning in March 2013 and that she had committed fraud; and
- (C) Laux did not purchase \$750,000 in annuities for Ms. Franzen, contrary to her previous statements.

24. Also at the June 11 meeting, Laux provided Ms. Franzen with five U.S. Bank cashiers checks, all dated June 11, 2013, as follows: \$250,000 to Phoenix; \$250,000 to Phoenix, \$250,000 to American Equity; \$250,000 to American Equity; and \$90,827.21 to American Equity.

25. At the June 11 meeting, Laux also falsely informed Ms. Franzen that the purchase of a Phoenix annuity in the

amount of \$250,000 was already in progress and could not be stopped.

26. After the June 11 meeting, just prior to meeting the Franzens on the morning of June 12, 2013, Laux traveled to two U.S. Bank locations. At one location, Laux withdrew \$84,172.79 from the U.S. Bank checking account, and, at another location, Laux withdrew \$822.23 in cash from the U.S. Bank money market fund, zeroing out both accounts.

27. On June 12, 2013, the Franzens met with Laux at a U.S. Bank branch location and cancelled the five bank checks written out to Phoenix and American and had one \$1,090,827.21 cashier's check made out to the HMFF Transitional Trust and Mary Ann Franzen.

28. Around June 14, 2013, three days after meeting with the Franzens, Laux forwarded an application, with Ms. Franzen's signature, for a \$250,000 Phoenix annuity for Mary Ann Franzen. On June 18, 2013, a Phoenix Life Needs Assessment was faxed to Phoenix with changes to the assessment initialed "MF."

29. Ms. Franzen denies that her signature is on the application for the \$250,000 Phoenix Life annuity and that

she placed her initials on the Phoenix Life Needs Assessment.

30. Upon information and belief, Laux converted \$584,995.02 from Mary Ann and Harold Franzen for her own personal and business purposes.

31. Despite admitting to the conversion, Laux continued to recommend that Ms. Franzen purchase annuities from both Phoenix and American. Laux informed Ms. Franzen she would receive a \$50,000 commission which she would use to pay Ms. Franzen back a portion of her funds.

32. On June 12, 2013, Mark Franzen turned over evidence of alleged fraud and theft by Laux to the Milwaukee office of the Federal Bureau of Investigation for criminal prosecution. The federal investigation is pending.

33. On July 30, 2013, Mark Franzen filed a grievance on his mother's behalf against Laux with the Office of Lawyer Regulation. Laux asserted her Fifth Amendment privilege against self-incrimination in OLR's investigation.

34. On August 14, 2013, Mark Franzen filed a complaint against Laux on his mother's behalf with the Wisconsin Office of the Commissioner of Insurance (OCI). Laux, asserting her Fifth Amendment privilege against self-

incrimination, did not participate in the OCI proceedings. Laux's insurance license was revoked and Laux was ordered to pay restitution to Mary Ann Franzen in the amount of \$584,995.02, a forfeiture of \$32,000 to the State of Wisconsin, and an additional restitutionary forfeiture of \$600,000 to the State of Wisconsin.

35. To date, Laux has not provided restitution to Ms. Franzen.

COUNT ONE

36. By transferring \$2,184,125.03 of her client's money into the HMFF Investments account at U.S. Bank, an account over which she had sole control, without the client's consent or authorization, Laux violated SCR 20:1.15(j) (1)¹.

COUNT TWO

37. On March 5, 2013, by making two \$250,000 withdrawals of the clients' funds from an HMFF checking account to herself via cashier's checks, Laux violated SCR 20:1.15(j) (1) and SCR 20:8.4(c)².

¹ SCR 20:1.15(j)(1) provides: "A lawyer shall hold in trust, separate from the lawyer's own funds or property, those funds or that property of clients or 3rd parties that are in the lawyer's possession when acting in a fiduciary capacity that directly arises in the course of, or as a result of, a lawyer-client relationship or by appointment of a court."

² SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

COUNT THREE

38. On June 12, 2013, by appearing at a U.S. Bank branch in Greendale, Wisconsin and withdrawing for personal enrichment \$84,172.79 (via cashier's check) of the client's funds from an HMFF checking account, zeroing out the account, Laux violated SCR 20:1.15(j)(1) and SCR 20:8.4(c).

COUNT FOUR

39. On June 12, 2013, by making a cash withdrawal of \$822.23 of the client's funds for personal enrichment from an HMFF money market account at a U.S. Bank branch in Mequon, Wisconsin, zeroing out the account, Laux violated SCR 20:1.15(j)(1) and SCR 20:8.4(c).

COUNT FIVE

40. By making multiple representations to her client regarding her purchase of annuities on the client's behalf, when at the time no annuities had been purchased, Laux violated SCR 20:8.4(c).

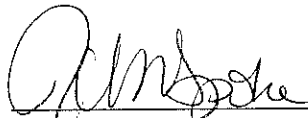
COUNT SIX

41. By submitting forged documents to purchase annuities on behalf of Ms. Franzen a few days after she confessed her fraud to the Franzens, Laux violated SCR 20:8.4(c).

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Sarah E.K. Laux be found in violation of the Supreme Court Rules as alleged in connection with Counts One through Six of this Complaint; that the Supreme Court of Wisconsin revoke Sarah E.K. Laux's Wisconsin law license; and that the Court order that Sarah E.K. Laux make restitution to Mary Ann Franzen in the amount of \$584,995.02; and that the Court order such other and further relief as may be just and equitable, including an award of costs.

Dated this 30 day of April, 2014.

OFFICE OF LAWYER REGULATION



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