TESTIMONY FOR SB 702
CLAUDIA VESS, Kensington, MD February 20, 2020

Mr. Chairman and members of the Senate Judiciary Committee, my name is Claudia Vess, of Kensington, Maryland, and I welcome the opportunity to testify in favor of SB 702 in light of my uncle, Howard Vess of Accokeek, who was defrauded by his financial advisor. His story has similarities to that reported on in the Wall Street Journal of Addie Belle Jones last year that brought attention to this issue. The WSJ articles and a blog post about my case are included with my written testimony.

My uncle, Howard Vess, was a widower with no children. He had told his brother, nieces and nephew that various charities were the beneficiaries of his estate. The will was on file in the Prince Georges' courthouse and included accommodation for either spouse predeceasing the other. His financial advisor was named as personal representative.

Upon my uncle's death in 2011, his financial advisor produced from his office filing cabinet, a 'new' will, in which he was the PR and the sole beneficiary of my uncle's substantial estate. We discovered that he had urged my uncle to make a new will, 6 months after the death of his wife while he was still deeply depressed by her loss.

As his niece, I established standing to challenge this 'new' will in court. I was encouraged by the support of Howard's neighbors who also knew his intentions and his vulnerability following the death of his wife.

I was informed by my Counsel that under Maryland law, a lawyer who made himself the beneficiary of a client would be disbarred, however, there is no such prohibition for financial advisors. And, that there is little definition of the term 'undue influence' or case law clarifying such circumstances.

After over six years in court, finally a settlement that included donations to my Uncle's charities was reached. Sadly, by this time the percentage of the original funds available for the charities was small; much of the estate was spent for counsel defending the financial advisor, even after he was replaced as the Personal Representative by the court.

After settlement, I brought the matter to the attention of my state representatives. In this process, I discovered the work of the Borchard Foundation, which studied this issue in all states and developed a model legislative approach to define undue influence, which has now been enacted into law in California. That is the basis for the drafting of this bill.

I would like to thank Jeff Waldstreicher who introduced SB 702 and all the sponsors of HB 320 including Al Carr from whom I first sought help and Emily Shetty who introduced HB 320 with 18 co-sponsors in the House Judiciary Committee. I look forward to the day when this legislation revising the law on undue influence is passed.

DOW JONES, A NEWS CORP COMPANY

A State Investigator, the Financial-Adviser 'Heir' and an Elderly Client: How Lines Get Blurred in Insurance Regulation

The Wall Street Journal

By Gretchen Morgenson

April 6, 2019 7:00 am ET

A state investigator concluded a financial adviser acted unethically and violated Maryland insurance laws when he received a windfall from an elderly client's estate. An arbitration panel then blasted the adviser's firm for what it called seriously deficient supervision. The firm also wasn't qualified to operate in the state at the time.

What happened next? The investigator was fired. The adviser and firm faced no regulatory action.

Financial advisers who sell insurance products are policed primarily by state insurance regulators, but some are also overseen by federal regulators. This case highlights how questionable financial conduct can occur under that regulatory regime.

State insurance regulators are vastly outnumbered by the people and companies they must oversee. There was just one antifraud enforcement official for every 10,000 licensed insurance producers in 2017, compared with one for every 8,325

producers a decade ago, according to the National Association of Insurance Commissioners. And state regulatory budgets as a percentage of their revenues have fallen in that time to an average of 5.9% from 8.3%.

The financial adviser, Lawrence J. Mieras Jr., through his lawyer Mitchell Cobert, declined to comment. The firm he works for, American Portfolios Financial Services Inc., declined to comment on any aspect of the case.

Two years ago, Mr. Mieras received $500,000 from a deceased client, Addie Belle Jones, when two of her variable annuities paid him the money directly and outside of the estate process. Ms. Jones had made the bequest to Mr. Mieras in her will in 2014, and a few months before she died, she signed documents allowing him to receive the money without going through probate.

The bonanza drew scrutiny from an insurance investigator in Maryland, where Ms. Jones had lived, after lawyers for her estate filed a complaint with the Maryland Insurance Administration, which is overseen by Commissioner Alfred W. Redmer Jr. The lawyers had questioned the circumstances surrounding Ms. Jones's change to her bequest and why Mr. Mieras hadn't notified his employer about the gift when he learned of it, as firm rules required.

After months of inquiry, administration official Michael J. Stefanowitz concluded that Mr. Mieras violated state insurance laws and "engaged in unethical behavior," documents he drew up for his superiors following his investigation show. Mr. Cobert says his client did nothing wrong.

In January 2018, in internal correspondence between Mr. Stefanowitz and his superiors that was reviewed by The Wall Street Journal, Mr. Stefanowitz recommended the administration fine Mr. Mieras, now 72 years old, and revoke his insurance license in the state.

In April 2018, an arbitration panel convened by the Financial Industry Regulatory Authority to hear a complaint filed on behalf of Ms. Jones's estate criticized Mr. Mieras's conduct as well, disapproving of his failure to notify his firm of the

bequest and concluding that it "was not consistent with just and equitable principles of trade." The panel also blasted American Portfolios, a company that provides regulatory oversight for independent brokers and financial advisers working in 330 locations, for what the panel called seriously deficient supervision of Mr. Mieras, the arbitration award shows.

Neither was American Portfolios qualified under state rules to conduct business in Maryland for 3½ years before and after Ms. Jones's death, state records show, as the company had not filed annual reports for those years as required. Only last May did the firm requalify to do business in Maryland. American Portfolios is based in Holbrook, N.Y.

There are two main arms of Finra: an arbitration unit and an enforcement group. The Finra arbitrators, while critical of Mr. Mieras and his firm, didn't rule against them. Conduct failures by Mr. Mieras and his firm, the arbitrators said, "are regulatory issues not for the panel." Finra regulation didn't bring an enforcement case against American Portfolios or Mr. Mieras. The arbitrators also ruled that an estate question at the center of the case had to be heard by state court and was beyond the panel's purview.

The Maryland Insurance Administration overruled its investigator, saying in a June 2018 letter to lawyers for Ms. Jones's estate that there had been no violations in the case and that the investigation was being closed. In emails between Mr. Stefanowitz and two of his insurance-administration superiors reviewed by the Journal, one superior said the decision was made because of how a high-ranking official and Mr. Redmer "feels [sic] about the case." A spokeswoman for the Maryland Insurance Administration declined to comment.

Mr. Redmer, who before becoming commissioner ran two Maryland-based insurance companies, declined to discuss the specifics of the Jones investigation. "The decisions regarding producers are made by the career, subject-matter experts that we have in our agency. The bar is, did a producer violate the law or regulation. There are some actions that a producer will take that we may

personally view as inappropriate, but if it does not violate the law there is no action we can take," he said.

Mr. Mieras did not have to forfeit any of the $500,000, and he can continue to do business in Maryland.

Mr. Cobert, lawyer for Mr. Mieras and American Portfolios, said Mr. Mieras was a capable financial adviser to Ms. Jones for nearly 20 years. "No tribunal or investigative agency that has fully reviewed this matter, whether it be the Finra arbitration panel, Finra regulation, or the Maryland Insurance Administration, has held him accountable for any wrongdoing or made him return the bequest," he said in a statement. In an interview, he added that American Portfolios had investigated the matter and determined it was appropriate to allow the Jones bequest to be processed and received by Mr. Mieras.

Shortly after Mr. Stefanowitz recommended barring the financial adviser, he was fired, employment records show. A few days earlier, he had received a favorable employee review, which was reviewed by the Journal.

Mr. Stefanowitz joined the insurance administration in 2008 after 25 years with the Baltimore Police Department, many spent as a detective sergeant and supervisor, court documents from the federal lawsuit filed by Ms. Jones's estate show. In an interview, Mr. Stefanowitz said an insurance-administration official told him he was being fired because the enforcement unit was "going in a different direction." After 10 years of service, Mr. Stefanowitz received no severance and was escorted from the office immediately after he was terminated.

"Like every other state agency in every other state, we never, ever comment on personnel decisions," Mr. Redmer said.

Lawyers for Ms. Jones's estate sued Mr. Mieras in federal court to vacate the Finra arbitration. On March 28, the judge overseeing the case dismissed it, ruling that it had not been filed within an allotted time period. The lawyers said they will ask the court to reconsider. They have also appealed the decision by the Maryland

Insurance Administration not to pursue penalties against Mr. Mieras. The Administration has scheduled a hearing for May 14. The agency said it will make a final ruling after the appeal hearing.

Mr. Mieras told the Finra arbitration panel that he had $100 million in assets under management, more than 750 clients and had sold “a lot of annuities” over the years.

Ms. Jones was an unsophisticated investor, Mr. Stefanowitz said in a report he compiled that was filed with the court on behalf of the estate. By early 2016, Ms. Jones had $2 million in assets, mostly inherited from her parents. She was living in a nursing home and had trouble doing daily tasks, Mr. Stefanowitz’s report said. Her doctor, Preeti Yonker, said she tested positive for vascular dementia, records produced in the court case on behalf of the estate show.

On May 4, 2016, Mr. Mieras visited Ms. Jones in Maryland. He said he learned then that she had named him a beneficiary to one-quarter of her estate, identifying him as “a friend,” not her financial adviser, the arbitration documents and Ms. Jones’s will show.

At the meeting, Mr. Mieras advised her to move the annuities into an account that, upon her death, would direct their payments to her beneficiaries from the insurance companies and avoid probate court. He brought the necessary forms with him for Ms. Jones to sign, Finra documents show.

Lawyers for Ms. Jones’s estate contend in the federal lawsuit that she didn’t understand the transfer documents she signed. An October 2018 affidavit submitted to federal court by her doctor concluded: “It is highly doubtful on May 4, 2016, that Addie Belle Jones was competent to understand what Mr. Mieras was explaining or reading to her or asking her to sign.”

“Everything that Mr. Mieras did on May 4th was exactly what Ms. Jones wanted and was in accordance with her Will. It was also in accordance with best practices

in the securities and insurance industries," Mr. Mieras's lawyer said in a federal court document.

American Portfolios' code of ethics requires its brokers to report potential bequests over $100 and to receive prior approval for them. Mr. Mieras didn't call his superiors to alert them to the bequest, and they didn't learn about it until after Ms. Jones had died, Finra arbitration records show.

Mr. Mieras testified in the arbitration that he didn't hide Ms. Jones's bequest from his firm. But the Finra panel said Mr. Mieras should have alerted his superiors before Ms. Jones died so they could have "taken other actions."

Mr. Mieras said he kept her account after becoming her beneficiary because "there wasn't anyone that would be able to handle her investments the way that I did," a Finra arbitration transcript shows.

A Finra spokeswoman said Finra does not comment on enforcement actions or inactions.

—Elisa Cho contributed to this article.

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POLITICS

Lawmakers Seek to Bar Financial Advisers From Client Inheritances

Bipartisan group says such bequests are 'inherently problematic' and create conflicts of interest

Sens. Catherine Cortez Masto (D., Nev.), Mike Rounds (R., S.D.), Tina Smith (D., Minn.) and Chris Van Hollen (D., Md.) asked regulators to bar financial advisers from receiving bequests from clients. PHOTO: ZUMA PRESS; BLOOMBERG NEWS

By Gretchen Morgenson

Updated May 21, 2019 6:43 pm ET

A bipartisan group of four U.S. senators has asked financial regulators to create rules barring financial advisers from inheriting money or property from their clients.

In a letter to the Financial Industry Regulatory Authority, the lawmakers said such bequests are "inherently problematic" because of conflicts of interest between an adviser's professional obligations and personal interests.

The letter cited an April article in The Wall Street Journal that detailed a $500,000 inheritance received by a financial adviser from the estate of an elderly client who died in 2016 after suffering from vascular dementia, documents show.

A spokeswoman for Finra said its officials are "working to respond accordingly."

The request—from Catherine Cortez Masto (D., Nev.), Mike Rounds (R., S.D.), Tina Smith (D., Minn.) and Chris Van Hollen (D., Md.)—urged Finra to write guidelines ensuring that advisers

and firms accepting such gifts "should forfeit the bequests, pay large fines and/or be unable to serve as financial professionals in the future."

In a statement, Ms. Cortez Masto said: "We currently have a loophole that permits unscrupulous financial advisers and firms to take advantage of seniors and vulnerable adults."

The Journal article described how financial adviser Lawrence J. Mieras Jr., of American Portfolios Financial Services Inc., received the inheritance from client Addie Belle Jones. The firm's code of ethics requires its brokers to report potential bequests over $100 and to receive prior approval for them.

Mr. Mieras said he didn't know about the bequest until he visited Ms. Jones in a nursing home a few months before she died. While there, he had her sign documents changing her investments so they would pay out directly to beneficiaries, including himself, outside the scrutiny of probate court.

Mr. Mieras's superiors didn't learn about the bequest until after Ms. Jones's death, regulatory records show.

A lawyer for Mr. Mieras said his client was a capable financial adviser to Ms. Jones for nearly 20 years and that his firm had investigated the bequest and determined it was appropriate for him to receive it.

The Jones bequest involved annuities. An investigator from the Maryland Insurance Administration concluded Mr. Mieras acted unethically and should be fined and barred from selling insurance in the state. But the investigator, Michael J. Stefanowitz, was overruled and subsequently fired; his superiors in the Maryland insurance administration concluded there had been no violations in the case.

A Finra arbitration panel criticized the conduct of both Mr. Mieras and American Portfolios but declined to penalize either. Conduct failures by Mr. Mieras and his firm, the arbitrators said, "are regulatory issues not for the panel."

Finra's regulatory unit didn't bring an enforcement case against American Portfolios or Mr. Mieras. A Finra spokeswoman said it doesn't comment on enforcement actions or inactions.

Write to Gretchen Morgenson at gretchen.morgenson@wsj.com

Blog post: Jon Oberg, “Three Capitals”

Elder Abuse: "There Oughta Be a Law"

November, 2019

Washington -- Two years ago, on the death of George Garner, the Shepherd of Accokeek, I wrote that one of his regrets was not knowing how his years of legal work to protect the legacy of his rural Maryland neighbor, Howard Vess, actually turned out. George knew Howard had been a victim of financial fraud, perpetrated on the elderly man by an unscrupulous financial advisor.

The litigation is over. George Garner would be pleased that his work was not in vain. There was a successful settlement. The outcome would have been even better had several Maryland judges looked at fewer trees and more forest, figuratively speaking. And the whole case could have been avoided entirely if Maryland law had better guarded against financial advisors becoming their clients' beneficiaries, as do other states, but that's getting ahead of the story.

George's neighbor in Accokeek, Howard Vess, wanted to preserve his rural property after his death so that friends and neighbors could continue to use the trails through his woods for hiking and hunting. The property was also in the Mount Vernon viewshed from across the Potomac, which any elevated development could spoil.

Howard also wanted to leave the balance of his considerable estate to several favorite charities, as he had no survivors in his immediate family. He told this to his extended family, including his niece, Claudia Vess, who kept in touch with him from her home an hour away. All were pleased with the arrangements. Wills and codicils were on file with the county register of wills spelling this out, designating Robert Price, Howard's financial advisor, as personal representative to carry out his instructions. George also knew this from both Howard and Howard's niece.

I knew Howard, the Vess family, and George, and this was my understanding as well.

So it was a shock that preceding Howard's funeral service in 2011, Price described to gathering guests (of which I was one) the ins and outs of dividing up Howard's property for both housing and shopping development. Then, at the beginning of the service, Price announced that a charity of Howard's

would be supported by contributions left by guests in envelopes at the funeral home, puzzling those of us who thought Howard's own estate provided well for several charities. After the funeral, Price demurred when discussing next steps with Vess family and friends, explaining that he was taking his own family to Las Vegas, which naturally only raised more suspicions that Price was not carrying out Howard's wishes at all.

A few months later, Howard's niece discovered that there was a later will, superseding earlier arrangements, which Price had kept in his private office and filed quietly at the courthouse after Howard's death. *Instead of rural land preservation and money for charities, the last will made Price, his financial advisor and personal representative, the sole beneficiary.*

George Garner and other neighbors supported Howard's niece in an effort to challenge the surprise will on grounds that Price had taken advantage of his elderly client. She knew from last conversations with her uncle before his death that he had been confused about what Price was doing with the estate, but she had never guessed Price had audaciously made himself sole beneficiary.

So she challenged the will, hiring a local attorney to file *Vess v. Price*. George, Howard's closest neighbor whose off-farm business had been preparing legal briefs for cases at the U.S. Supreme Court, assisted without fee.

Price's lawyer spared no effort or expense in defending the will. The battle went on for years through three different Maryland courts. In the meantime, Price's administration of the will was obviously deficient on multiple grounds. A judge removed Price from his role as personal representative in favor of a new one, appointed by the court. Fortunately, the successor sold the Vess real property as two rural acreages, a victory for Howard's intention to prevent urban development.

Because of dozens of procedural motions in *Vess v. Price*, no court in six years ever got to the fundamental question: had Price through undue influence taken fraudulent advantage of a putative friendship and violated his fiduciary responsibility to his elderly client, Howard Vess? The case was a procedural standoff. More time was spent by Maryland courts looking at time stamps and courthouse drop boxes than on what the case was about. Although Price lost his appointment as personal representative, Vess counsel was reproved by an appeals court for not explaining the case well, despite George Garner's thorough research and legal prep sessions.

After George's untimely death in 2017, and after an appeals court defeat for Vess counsel, based on procedural rather than substantive issues, the case returned to

the original court of jurisdiction for a jury trial. Claudia Vess then replaced her original counsel with a lawyer who has a strong litigation practice. The new counsel immediately showed she meant business at the first depositions and serious settlement talks ensued.

In the final 2019 settlement, niece Claudia succeeded in obtaining several thousand dollars from the estate for four of six of her uncle's charities, plus returning to the family her uncle's Arlington Cemetery burial-ceremony flag (he had served in the Marine Corps). Although some of her legal bills were covered in settlement, her goal was not to become a beneficiary but to fight for her uncle's true intentions.

Unfortunately, the amounts for the charities were only about ten percent of what they would have been had Howard Vess's desires, as filed at the courthouse rather than as represented in a surprise will held privately by his financial advisor, been honored. Much of the estate proceeds were spent covering the huge legal expenses of financial advisor Price, even after his removal as personal representative.

Maryland law must be changed to guard against financial advisors becoming clients' beneficiaries. Lawyers would be disbarred if they attempted the same chicanery. Financial advisors are often positioned even better than lawyers to take advantage of their elderly clients.

Although in the *Vess v. Price* case a measure of justice was reached, it took many years of effort to achieve it. The State of Maryland needs to decide if elder abuse by financial advisors is going to be tolerated or stopped. It needs to decide if Maryland justice continues in the tradition of *Jarndyce v. Jarndyce*, Charles Dickens' tale of an estate that was entirely depleted by its legal bills.

Neighbors often do a good job of watching out for neighbors, and the story of George Garner and Howard Vess is illustrative, as it ends, if not entirely happily, at least with a silver lining. But nothing would be better in Maryland than an overdue statutory crackdown, following the lead of many other states that have better provisions to protect elders against abuse by financial advisors.