

2011 WL 3420463 (Del.Ch.) (Trial Pleading)
Chancery Court of Delaware.
New Castle County

ELIZABETH MAY SUTOR/DEAN A. BANKS, D.D on behalf of Ella Elizabeth Moffett, Plaintiff,

v.

David J. DURHAM, Defendant.

No. 6738.
August 2, 2011.

**Petition to Remove Financial Advisor/Executor from Estate due to Diminished Mental Capacity of Client,
Conflict of Interest Violations and Improper Representation and Notification of Representation by Defendant**

Procedural History- **Elder abuse** is prevalent in this country and this court has an opportunity here to send a clear message to con artists that they will be prosecuted to the fullest extent of the law for taking advantage of elderly people suffering from diminished mental capacity.

Whereby, we declare the following:

1.) This Petition is on behalf of Ella Elizabeth Moffett, age 95 (1/4/126), 308 Lrving Drive, Wilmington, DE 1 9802. I am Elizabeth M. Sutor and Ella Elizabeth Moffett is my aunt. I am currently hold her Power of Attorney and am acting in her best interests. Currently, my fiancé is the Executor of her estate.

2.) David J. Durham claims to be a “Financial Advisor”. He was employed by my late Uncle Ralph Moffett and when Ralph passed on, Ella retained him as her financial advisor. He has a business card with addresses in Greenville, DE and Weston, FL. His Greenville office address states: 4023 Kennett Pike, Suite 235, which is in fact, a UPS Store (David J. Durham told Ella Moffett it was his physical office) and 235 is a P.O. Box. A search of the address listed in Weston - 2771 Executive Park Drive Suite 4 shows “The Legal Group” with a different phone number than the one on David J. Durham's “business card”. Legal Group, when phoned, knows of .no such person working there. They told me they are actually at Suite 101 (the directory states “Suite 4”, though). The phone number is totally different. A search of David J. Durham's phone number reveals that it is a cell phone number, most likely out of Ft. Lauderdale, FL.

3) Ella Moffett told us that David J. Durham moves offices frequently and his business names change often. He has keys to her home at 308 Irving Drive, and stays overnight in her house at least once a month, usually from Thursday through Saturday, in order to “do business” in New Jersey and Pennsylvania. He is directly involved with a Dr. Frederik Drummond of the now-defunct “Church of Our Savior”, which apparently'defrauded several people, the cases being settled out of court. Dr. Drummond is a kingpin of Destiny Ministries, Incorporated in Ft. Lauderdale, Fl, and is directly tied to David J Durham, his brother Carl, and a Rick Price. All of these individuals 'have chief positions in Destiny Ministries Church as well as David J. Durham's businesses. David J. Durham has a company in Florida called Financial Retirement Solutions (formerly Durham Loyal Retirement Community)David J. Durham also has clients in several locations in New Jersey. There are numerous articles by Delaware County newspapers outlining the activities that went on there ([http:// www.cosnews.org/newspaper.htm](http://www.cosnews.org/newspaper.htm)).

4.) David J. Durham, in addition to being the “financial advisor”, put himself on her will as the beneficiary of her home and also became her Power of Attorney. He claims that she insisted that he did so. She denies this. He also took out an insurance policy on her against her will with himself as the agent. He forced her to open a trust account at WSFS After we requested a copy of the trust we discovered it has no signature page. WSFS is investigating. He has copies of her financial records, and keys to her home as I previously stated. He has been so removed as Power of Attorney, fired from being the financial advisor,

and taken off her will through a notarized document. I now have Power of Attorney and her new will is currently registered with the Register of Wills.

5.) David J. Durham was notified in writing by registered mail that he was discharged as her financial advisor, as Executor of her estate and as her Power of Attorney, and that he was to have no contact with Ella Moffett We have contacted the Attorney General of the State of Delaware, The FBI, The FTC, The Delaware Insurance Commissioner, The Wilmington Police Department, The IRS and the Office of Adult Protective Services where he is under investigation. After the repeated warnings, he returned to her home anyway. He then took her to his attorney's office, made himself Executor without any legal representation for her or notification to her Power of Attorney. She was not informed of the legal ramifications of her actions.

6.) We feel that she is of a diminished mental capacity because upon the discharge from the nursing home and the return to her home Ella Moffett has been disoriented and argumentative. She calls our home sometimes more than 9 times a day and berates us about things in her home. Soon after her accident she instructed us to change all of her financial documents because \$500,000 was missing from her bank account (her son Ralph Paul Moffett will corroborate this) that was in the control of David J. Durham. David J. Durham took her financial records from her home when she was in the hospital. He was informed that he was fired and to return her key as per her instructions (by registered mail), When he returned to her how he used the return of the financial records by him to coerce her into going to his attorney's office (Raymond Tomasetti) to make him the Executor of her will. She had her marriage certificate and other personal documents in the folder that he had stolen. She had previously told us both that she wanted him to be removed from her life and all of her legal documents due to the missing funds and the information that she had found out about him.

Request: We respectfully request a hearing due to Ella Moffett's diminished mental capacity and obvious emotional coercion by David J. Durham (see attached documentation).

Resolution sought: We respectfully request to this court that Ella Moffett be issued a No-Contact order against, David J Durhma all of her financial records and assets, and any and all copies of same, be returned to her by him, his name be removed from any and all documents attached to her including Execsutor status of her will and that he pay compensatory damages to her, her niece, and her niece's fiancé for time lost from work and expenses related to changing her legal documents and initiating litigation. We also request that Raymond Tomasetti be reported to the bar association and the Office of Disciplinary Council by this court for allowing Ella Moffett to sign documents under duress, without her legal representation present and not informing her of her need for legal representation.

Reasoning:

- Delaware Code, §2 580 §22581 2 § 2583 § 2584, TITLE 6, Commerce and Trade, SUBTITLE II, Other Laws Relating to Commerce and Trade, CHAPTER 25. PROHIBITED TRADE PRACTICES, Subchapter Viii. Enhanced Penalties When Elder or Disabled Person Targeted
- Delaware Code, CHAPTER 151, FORMERLY SENATE BILL NO. 222, AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO THE ELDERLY AND DISABLED.
- Delaware Code, Chapter 126 ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL STATUTES.
- Delaware Code, Chapter 29, § 5805 Prohibitions relating to conflicts of interest. Thank you for your most courteous consideration of this matter. Sincerely,

<<signature>>

Elizabeth M. Sutor

Date: 8-2-11

<<signature>>

Dean A. Bans, D.D.

Date: 8/2/11

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