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Local residents allege elder-scam

By: EDMOND JACOBY - Staff Writer

An elderly Temecula woman said she lost her home because of bad investment advice she received from a man who sold her costly and inappropriate annuities while acting as an investment adviser for a local bank.

Lourdes Wright, 81, says in a lawsuit filed Wednesday that she was forced to sell her home to cover her investment costs after following the advice of Robert Frost, who was at the time an investment executive affiliated with California Bank & Trust.

Wright said she was persuaded by Frost to surrender annuities she already held to purchase a variety of other annuities with the promise of a "bonus" of \$44,000 as an incentive for switching from one company's product to another.

But, according to the suit, Frost failed to tell her that she would lose nearly \$54,000 as a surrender charge for terminating the first annuity early, and that she subsequently would lose the \$44,000 bonus as well when he advised her to switch products again.

Eventually, Wright said, Frost counseled her to cash out a \$690,000 policy and use the proceeds to purchase a rental property for cash. That transaction led to a \$126,000 surrender charge, essentially a fine imposed on Wright by Allianz for canceling the contract.

"He made me buy the house with cash, then he made me get the loan on the house and put the money back in the Allianz policy," she said.

"He assured me the house would pass to my children when I pass away," Wright said.

"Now I find out my children cannot get anything, even after I pass away," she said.

Wright was joined in the suit by Richard Petter, 72, of Valley Center. The two filed the suit against the country's biggest seller of deferred equity indexed annuities, claiming that the company's agents hoodwinked them to make unwise and unsuitable investments that cost them tens of thousands of dollars while the company and its agents enriched themselves.

Allianz Life Insurance Co. of North America, in a recent letter to Petter, agreed that the terms of the annuity sold to him had been misrepresented ---- but the company also said he should have discovered that more than a year ago if he wanted to do anything about it.

The company has been named as a defendant in several recent lawsuits alleging that it turned a blind eye to the sale by its agents of unsuitable investment products to senior citizens.

An Allianz spokesman, Charlie Fields, said he was surprised to learn that Petter had filed suit.

"We're still working with Mr. Petter to resolve the issues," he said.

Robert Phillips Jr., Allianz's California attorney, said in an e-mail that he was not authorized to comment on the lawsuit.



*Dick Petter, 72, of Valley Center, was a victim in an extreme case of elder financial abuse by an investment counselor
John Raifsnider/For The NCT*

"I am authorized to say that Allianz Life's practice is to investigate all consumer claims of misconduct or misrepresentation by a broker at the point of sale and to seek a fair resolution, prior to litigation if possible, of any claim or concern which appears to have merit," he wrote.

"While I am not yet familiar with this particular controversy and have not reviewed any file materials related to the annuity in question, it is my understanding that Allianz Life was attempting to resolve the policyholder's concerns when the lawsuit was filed," he wrote.

The suit also alleges that California Bank & Trust Inc. acted in concert with Allianz, IFS Agencies Inc. and Independent Financial Marketing Group Inc. and two local agents to steer elderly clients into investments that generated commissions and fees, but impoverished them in the process.

And Petter said that in spite of assurances to the contrary, he doesn't think he will see any of his money before he dies. A cancer patient, Petter said even his heirs won't be able to collect the money without paying exorbitant penalties.

Of particular concern to Petter is the dissolution of a family partnership with his children, which had been expected to put control of certain assets in their hands. The funds locked away in an Allianz annuity sold to him by Frost are one of the partnership assets, and canceling the annuity to complete the distribution will lead to a substantial penalty, he said.

"This is the worst case of financial elder abuse I have ever seen," said Ronald Marron, the San Diego attorney representing Wright and Petter. "Robert Frost victimized a lot of people; he floated around all these (California Bank & Trust) branches, mainly in North County and Southwest Riverside (County), and he sold these policies without mercy."

Frost, whose affiliation with the bank was terminated May 6 when Independent Financial Marketing Group's contract to operate Investment Services at California Bank & Trust was canceled, could not be reached for comment.

Calls to Independent Financial Marketing Group's general counsel, Bruce Ripepi, and to IFS Agencies President Catherine Filos, were not returned, but in an e-mail reply to voice mail messages, Connie Hickey, Independent Financial's senior vice president for corporate development, said that "the company's policy is to not comment on any existing or potential legal action."

The two businesses are affiliated, and share a headquarters address in Purchase, N.Y., with a common telephone number servicing both companies.

The lawsuit alleges that both Wright and Petter were introduced to Frost by California Bank and Trust, and that over time, he succeeded in persuading them to invest in deferred annuity products that are unsuitable for senior citizens.

"I thought any kind of complaint like these were resolved by (Independent Financial)," bank spokesman Jim Horton said.

Another bank spokesman, Chris Skillern, referred to Independent Financial as a "vendor" and said the company's contract had been canceled "for a variety of reasons." He would not elaborate on those reasons.

"In any case like this, we always try to resolve differences to the satisfaction of our customer before it gets to the point of litigation," Skillern said. He said the bank was unaware that there were any unresolved complaints remaining after Independent Financial's termination.

An annuity is an insurance product, much like life insurance, except that where life insurance is meant to provide money when someone dies before reaching a certain age, an annuity pays money to someone who lives beyond a certain age.

Annuities come in several types, but the most common are "immediate" and "deferred" annuities. The buyer of an immediate annuity pays a large lump-sum premium to the insurance company, and begins receiving payouts

immediately.

A deferred annuity buyer also pays in a lump sum, but it is a smaller amount, and no payment happens until a specified number of years has gone by.

Annuities can be valuable products for someone in later life who is concerned that he or she may outlive their assets ---- they may spend all of their savings before they die. An annuity will pay a monthly sum to someone as long as they live.

But there are striking differences among annuity products. When a deferred annuity is bought by a septuagenarian and requires waiting 12, 15 or 20 years before any payments will be made, the investment is considered unsuitable because the first payout is well beyond their life expectancy. Deferred annuities often require healthy penalties when an annuity is canceled early or cash is withdrawn, which can happen when an elderly person faces medical or other crises and has few other resources on which to fall back.

In Wright's case, the suit alleges that after she bought the rental property, Frost then convinced her to buy another annuity with \$164,000 leftover from the rental property purchase. Each of the transactions, according to attorney Marron, generated a commission for Frost.

Frost apparently split those commissions with a Murrieta man, Angel Ayala Jr., the suit says. According to Wright and Petter, they never met Ayala, but his name was listed on the Allianz policies they bought as the selling agent.

"I've never even seen his shadow," Wright said.

Repeated telephone calls to Shooting Star Insurance Services in Murrieta, Ayala's company, were not answered.

Eventually, Frost led Wright to mortgage her home and the rental property and to use the borrowed money to purchase additional Allianz deferred annuities, the Temecula woman's complaint says. Those mortgages, however, were negative amortization adjustable rate loans that left her paying hefty sums each month, only to see the debt on the houses increase.

"Every month, I have to pay the interest without any reduction in the principal," she said. "I don't know why he sold me into that thing."

The mortgage for her residence involved substantial origination and broker fees ---- \$9,000 ---- and the suit alleges that a portion of those fees became a kickback to Frost for steering Wright to the lender.

According to the suit, Wright's \$1 million investment in annuities was churned in and out of so many separate policies that it generated fees and commissions for Frost based on \$3 million of transactions, the suit says.

"I kept asking, 'In what investment do you have me to give me income?' " Wright said.

Petter said that he was duped by Frost into buying products that penalize him for early withdrawal of the funds, even though he told Frost repeatedly that he was only interested in an investment that would give him access to his money without penalty.

"I asked him, 'Can I take out 15 percent each year with no penalty to have money to live on?' " Petter said.

" 'Oh, yes, absolutely,' was his reply," he said.

Petter also asked whether his heirs could receive money from the annuity without penalty if he died, and he was assured that they could, he said.

Neither statement turned out to be true, Petter said.

Petter said he began a lively correspondence with Allianz in February, demanding that he be allowed to cancel the contracts without penalty and recover his invested funds because he had been hornswaggled.

In a final letter to Petter, dated April 28, Sue Scherer, an Allianz customer relations representative, seemingly agrees with Petter's premise.

After telling Petter that she has corresponded with both Frost and Ayala about Petter's complaints, Scherer concludes, "I have discovered that terms of your policies were misrepresented to you."

Scherer did not return telephone calls seeking comment.

Wright and Petter both said they are embarrassed to have been caught up in what they consider a flimflam that preyed on their gullibility.

"I thought I was smarter than I guess I really am," Petter said.

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Investing Tips

Investment goals change as investors age, and elderly investors, for whom wealth accumulation often is less important than income stream, need to be especially wary when buying investment products.

Here are some dos and don'ts from Carlsbad fee-only financial adviser Rick Mayes.

Look for a fee-based adviser. Such an adviser charges you for the advice he gives you, but he does not earn a commission on any product you buy, so he has no financial interest in what you decide to do.

Know the difference between a registered investment adviser, who has a fiduciary duty to his clients, and a registered representative, whose duty is limited to investigating the suitability of the investment products he sells. It is not necessarily safer to deal with one than with the other, but knowing the difference can help you shape the relationship you have with whichever one you pick.

If you are dealing with someone who earns a commission, demand ---- and be sure you get ---- complete disclosure, in writing, of all fees.

Don't be in a hurry. You have made it this far; another day or two won't matter. Think things over and get a second opinion, either from a friend you trust or, even better, from another financial adviser.

If you are in your 70s or 80s, be very suspicious of any recommendation that you buy a deferred annuity. These products probably are inappropriate for you.

If the investment product or plan seems too complicated, or if you have trouble understanding it, don't buy it.

Stay away from free-meal seminars that promise to show you a better financial plan.

In general, as part of an overall income plan, immediate annuities might make sense. They are a good way to have a guaranteed income level. But they must be looked at as part of a package including pensions, retirement accounts and Social Security.

If you somehow become convinced that you need a deferred annuity, look for one that offers no-load and no-surrender-charge features. There are such products.