

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

<p>DISTRICT OF COLUMBIA, a municipal corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>NICOLE FREEMAN SMITH,</p> <p>Defendant.</p>	<p>Case No. 2021 CA 003262 B Judge Robert Rigsby</p>
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**AMENDED COMPLAINT FOR VIOLATIONS OF THE
ABUSE, NEGLECT, AND FINANCIAL EXPLOITATION
OF VULNERABLE ADULTS AND THE ELDERLY ACT**

Introduction

The District of Columbia (the District) brings this civil action against Nicole Freeman Smith for financial exploitation of at least two elders, in violation of the District's Abuse, Neglect and Financial Exploitation of Vulnerable Adults and the Elderly Act (the Act), D.C. Code §§ 22-933.01 and 22-937. Defendant Smith abused her position of trust while working as a property manager for at least two senior residential buildings. She took more than \$75,000 from J.G.¹, a nearly blind, 97-year-old resident of one building, and more than \$38,000 from M.W.², an elderly and disabled former resident of another building.

Defendant used the elders' funds for her own benefit, including paying her own household bills, going on shopping sprees, and dining out. Defendant used some of J.G.'s funds to pay off Defendant's luxury car loan. The District seeks restitution, civil penalties, and injunctive relief.

¹ J.G. has been identified in a Praecipe filed under seal.

² M.W. will be identified in the District's Motion for Leave to File Second Praecipe Under Seal Identifying Victim.

The District alleges the following:

Jurisdiction

1. This Court has subject matter jurisdiction under D.C. Code § 11-921.
2. This Court has personal jurisdiction over Defendant under D.C. Code § 13-423.

The Parties

3. Plaintiff the District of Columbia is a municipal corporation empowered to sue and be sued and is the local government for the territory constituting the permanent seat of the federal government. The District brings this case through the Attorney General for the District of Columbia, who is the chief legal officer for the District. The Attorney General is responsible for upholding the public interest and is also specifically authorized to enforce the Act.

4. Defendant Nicole Freeman Smith is an individual whose last known address is 10909 Melwood Park Place, Upper Marlboro, MD 20772.

Factual Background

5. Since at least 2014, Defendant worked as a property manager at several senior apartment buildings in the Washington metropolitan area.

6. In her position as property manager, Defendant had regular access to residents' personal financial information, including bank account information on rent checks and financial information provided by tenants as part of any subsidy recertification process.

Defendant violated the Act when she took more than \$75,000 from J.G.

7. J.G. is a 98-year-old woman who lived at a senior apartment building in the District while Defendant worked as a property manager at the same building ("J.G.'s Building").³

8. J.G. is severely visually and cognitively impaired.

³ J.G. and J.G.'s Building have been identified in a Praecipe filed under seal.

9. Before Defendant was terminated in September 2021 from her position as manager at J.G.'s Building, J.G. relied on Defendant for help writing checks to pay bills. As a result, Defendant had access to J.G.'s checkbook and bank account information.

10. Defendant used her access to J.G.'s checkbook to write checks drawn from J.G.'s PNC bank account but not for J.G.'s benefit, including at least the following:

- a. Defendant wrote a \$100 check, payable to "Nicole Smith" and dated May 28, 2020. Defendant deposited the check into her own credit union account.
- b. Defendant wrote a \$2,063 check, payable to "Nicole Smith" and dated July 20, 2020. Defendant deposited the check into her own credit union account.
- c. Defendant wrote a \$1,439.93 check, payable to "Wells Fargo" and dated October 19, 2020. The check's memorandum line states, "pay off" and the funds were credited to Defendant's car loan for a 2011 Mercedes-Benz.
- d. Defendant wrote a \$3,500 check, payable to "Nicole Smith" and dated February 28, 2021. Defendant deposited the check into her own credit union account.
- e. Defendant wrote a \$7,500 check, payable to "Nicole Smith" and dated April 3, 2021. Defendant deposited the check into her own credit union account.
- f. Defendant wrote a \$25,000 check, payable to "Nicole Smith" and dated July 7, 2021. The check's memorandum line stated that the \$25,000 was a "donation" from J.G. to Defendant. Defendant deposited the check into her own credit union account. The funds left J.G.'s account briefly before the check was returned due to an "irregular signature."
- g. Defendant wrote a \$1,000 check, payable to "PEPCO" and dated August 2, 2021. The funds were credited to Defendant's PEPCO account for service at Defendant's home in Upper Marlboro, Maryland.
- h. Defendant wrote a \$4,000 check, payable to "Wells Fargo" and dated August 12, 2021. The funds were credited to Defendant's Wells Fargo credit card account.

11. The above checks were purportedly signed by J.G.
12. Defendant established online banking access to J.G.'s PNC accounts.
13. Defendant used the online access to take J.G.'s funds.
14. On July 22, 2021, Defendant used an electronic check to draw \$33,181.36 from J.G.'s bank account.
15. Those funds were credited to Defendant's loan for her 2015 Land Rover Range Rover Sport, paying Defendant's then-remaining loan balance in full.
16. Defendant also used J.G.'s funds to benefit individuals other than J.G., including but not limited to using J.G.'s funds to pay for Defendant's living expenses, entertainment, and other purchases.
17. When interviewed in August and September 2021, J.G. stated that she never authorized Defendant to take money from her account and that she would not have had any reason to do so.
18. J.G. stated that she never has given or loaned Defendant any money.
19. J.G. stated that Defendant has never asked her for money.
20. J.G. did not consent to Defendant using J.G.'s funds.
21. In the alternative, at all times relevant to this Complaint, J.G. would not have been able to give meaningful consent to the use of her funds for someone else's benefit.
22. Defendant took steps that made her financial exploitation of J.G. more difficult to detect.
23. For example, in December 2020, Defendant "helped" J.G. close accounts that J.G. held jointly with a long-time friend, and new accounts were opened in J.G.'s name alone.

24. When the bank called J.G. to follow-up on the transaction a week later, PNC noted that J.G. appeared puzzled and confused. She had no memory of closing the jointly held accounts or other transactions. She stated that she never wanted to remove her friend's name and even accused the bank of having called the wrong customer.

25. Upon information and belief, Defendant used her workplace computer and work phone at J.G.'s Building to access information about J.G.'s bank accounts.

26. Defendant also used her personal devices to access J.G.'s bank accounts.

27. Defendant impersonated J.G. on calls to PNC Bank.

28. On or around February 19, 2021, Defendant misrepresented herself as J.G. and asked the PNC representative for technical assistance in setting up online access to J.G.'s account.

29. On or around July 12, 2021, Defendant misrepresented herself as J.G. and stated that the July 2021 \$25,000 check was an authorized "donation" to her "granddaughter" to help pay for a car.

30. Defendant placed that July call from a desk phone at her workplace at the time, J.G.'s building.

31. In August 2021, Defendant took additional steps to gain unfettered access to J.G.'s PNC accounts and remaining funds:

- a. Defendant took J.G. to a local PNC branch and tried to add her own name to J.G.'s bank accounts.
- b. Defendant misrepresented herself to the bank representative as J.G.'s granddaughter, despite that Defendant has no relation to J.G.
- c. During the trip to the bank, Defendant disregarded J.G.'s toileting needs, to the point where J.G. defecated in her clothing. Rather than taking J.G. home, Defendant forced then-97-year-old J.G. to suffer the indignity of sitting in soiled clothing for the duration of the bank visit.

- d. Defendant asked the bank representative to add her name to J.G.'s account.
- e. When the teller asked J.G. which account to change, J.G. appeared confused and was unable to answer the teller's question.
- f. Defendant kept interrupting and would not let J.G. speak.
- g. The bank representative refused to add Defendant's name to the account during the visit and said the bank would require a power of attorney to make any change.

32. An Adult Protective Services (APS) social worker evaluated J.G. on August 30, 2021 and September 7, 2021 to assess J.G. and her safety. APS noted that J.G. had severe memory deficits and cognitive impairment.

33. J.G. was unable to answer basic questions about the current year or season. She did not know the name of her primary doctor or the amount or source of her income. J.G. stated that she has "a couple of friends," but she could not recall any of their names.

34. Because of her visual impairments, J.G. was unable to see the images of checks printed out for the interview, and she unable to identify basic objects shown to her.

35. In November 2021, the Probate Court found that J.G. was incapacitated and unable to take care of her own financial or other interest. The court appointed a guardian and conservator for J.G.

36. In September 2021, Defendant's misconduct came to the attention of Defendant's employer.

37. Defendant was terminated from her position at J.G.'s Building for violating company policies.

38. Upon information and belief, Defendant continues to seek employment as a property manager for residential communities.

Defendant violated the Act when she took more than \$38,000 from M.W.

39. M.W. is 71 years old; at all times relevant to this Complaint, M.W. was an elderly person and a vulnerable adult and used to reside at a District apartment building that housed adults age 55 and over (“M.W.’s Building”).⁴

40. Since 2017, M.W. has been a resident in a nursing care facility in the District.

41. At the time of her admission to the facility in 2017, M.W. was diagnosed with dementia and suffered from memory and hearing loss.

42. Under false pretenses, Defendant obtained two settlement checks—totaling over \$38,000—from a personal injury claim that were intended for M.W. and used the funds for herself or for the benefit of someone other than M.W.

43. Defendant worked as a property manager at M.W.’s Building from October 2014 to February 2016.

44. In 2015, M.W. was represented by a national law firm with offices in Alabama concerning a personal injury claim.

45. In early 2016, the law firm lost contact with M.W. but continued to try to reach her by mail.

46. In or around February 2019, the law firm received a notice that one of their letters sent to M.W.’s Building was forwarded to a new address, 10909 Melwood Park Place, Upper Marlboro, MD 20772. This is Defendant’s address.

47. Upon information, most or all of M.W.’s mail is being forwarded to Defendant’s address.

⁴ M.W.’s Building will be identified in the District’s Motion for Leave to File Second Praecipe Under Seal Identifying Victim.

48. Defendant has documents related to M.W.'s financial account information, including at least one PNC credit card account belonging to M.W.

49. In or around February 2019, Defendant called the law firm to inquire about the status of M.W.'s personal injury claim.

50. Defendant introduced herself as M.W.'s long-time friend and caretaker.

51. Defendant did not disclose to the law firm that she was a former property manager at M.W.'s Building.

52. Defendant told the law firm that M.W. had been evicted from M.W.'s Building and had moved to a nursing home.

53. Defendant said that she and her husband were saving money for an addition on their house so that M.W. could move in with them.

54. Defendant had ongoing communication with the law firm regarding M.W.'s personal injury case. She eventually had the firm send all future correspondence regarding the case to Defendant's address.

55. In December 2019 and March 2021, the law firm issued two settlement checks, payable to M.W., and sent the two checks to Defendant's home address in Upper Marlboro, Maryland.

56. Defendant deposited the two checks, totaling more than \$38,000, into her own credit union account.

57. The two settlement checks were purportedly endorsed by M.W.

58. After depositing the two settlement checks into her account, Defendant used the funds for her own benefit or for the benefit of someone other than M.W., including by making payments toward Defendant's own personal loans and credit accounts and making thousands of dollars in purchases at luxury retailers such as Gucci and Louis Vuitton.

59. In January 2020, M.W.'s dementia diagnosis remained. She was bed- and chair-bound, and she suffered from kidney disease among several other chronic ailments.

60. When interviewed in November 2021 at the nursing facility, M.W. had difficulty speaking in full sentences but appeared to recall receiving a settlement from a personal injury lawsuit.

61. M.W. indicated that she did not consent to Defendant taking the settlement proceeds.

62. In the alternative, at all times relevant to this Complaint, M.W. would not have been able to give meaningful consent to the use of her funds for someone else's benefit.

COUNT I: Financial Exploitation of J.G.

Violations of the Abuse, Neglect, and Financial Exploitation of Vulnerable Adults and the Elderly Act (D.C. Code §§ 22-933.01 and 22-937)

63. The District incorporates by reference all allegations in the preceding paragraphs as if fully set forth here.

64. A person violates the Act if she:

(a) (1) Uses deception, intimidation, or undue influence to obtain the property, including money, of a vulnerable adult or elderly person, with the intent to deprive the vulnerable adult or elderly person of the property or use it for the advantage of anyone other than the vulnerable adult or elderly person ... or (3) Violates any provision of law proscribing theft, extortion, forgery, fraud, or identity theft against the vulnerable adult or elderly person, so long as the offense was undertaken to obtain the property, including money, of a vulnerable adult or elderly person, or to cause the vulnerable adult or elderly person to assume a legal obligation on behalf of, or for the benefit of, anyone other than the vulnerable adult or elderly person.

D.C. Code § 22-933.01(a).

65. At all times relevant to this Complaint, J.G. was a vulnerable adult or an elderly person as defined by D.C. Code § 22-932(3), (5).

66. Defendant intentionally and knowingly used deception or undue influence with the intent to deprive J.G. of her money or property and to use J.G.'s money or property for the benefit of someone other than J.G., in violation of D.C. Code § 22-933.01(a)(1).

67. Defendant intentionally and knowingly committed theft or fraud with the intent to deprive J.G. of her money or property and to use J.G.'s money or property for the benefit of someone other than J.G. in violation of D.C. Code § 22-933.01(a)(3).

68. Defendant undertook these actions with the intent to deprive J.G. of money or property and to use the money or property for the benefit of someone other than J.G.

COUNT II: Financial Exploitation of M.W.

**Violations of the Abuse, Neglect, and Financial Exploitation
of Vulnerable Adults and the Elderly Act
(D.C. Code §§ 22-933.01 and 22-937)**

69. The District incorporates by reference all allegations in the preceding paragraphs as if fully set forth here.

70. At all times relevant to this Complaint, M.W. was a vulnerable adult or an elderly person as defined by D.C. Code § 22-932(3), (5).

71. Defendant intentionally and knowingly used deception or undue influence with the intent to deprive M.W. of her money or property and to use M.W.'s money or property for the benefit of someone other than M.W., in violation of D.C. Code § 22-933.01(a)(1).

72. Defendant intentionally and knowingly committed theft or fraud with the intent to deprive M.W. of her money or property and to use M.W.'s money or property for the benefit of someone other than M.W. in violation of D.C. Code § 22-933.01(a)(3).

73. Defendant undertook these actions with the intent to deprive M.W. of money or property and to use the money or property for the benefit of someone other than M.W.

Prayer for Relief

The District respectfully requests that judgment be entered in its favor and against Defendant on its claims, and that damages and penalties be imposed as follows:

- (1) Order Defendant to pay J.G. restitution for the money or property that Defendant took from J.G.;
- (2) Permanently enjoin Defendant from obtaining or using any money or property from J.G., including use of any bank check, online account, or accessing any account of J.G.'s in any way, including through any third party;
- (3) Permanently enjoin Defendant from conducting, or assisting with, any financial transactions on behalf of J.G.;
- (4) Order Defendant to pay M.W. restitution for the money or property that Defendant took from M.W.;
- (5) Permanently enjoin Defendant from obtaining or using any money or property from M.W., including use of any bank check, online account, or accessing any account of M.W.'s in any way, including through any third party;
- (6) Permanently enjoin Defendant from conducting, or assisting with, any financial transactions on behalf of M.W.;
- (7) Impose a constructive trust on any personal or real property that was paid for in whole or in part using funds taken from M.W. or J.G.;
- (8) Permanently enjoin Defendant from conducting, or assisting with, any financial transactions on behalf of any elderly person or vulnerable adult;
- (9) Permanently enjoin Defendant from any current or future employment that involves access to the financial information of elders or vulnerable adults;

- (10) Permanently enjoin the Defendant from acting as a fiduciary on behalf of any elderly person or vulnerable adult, and order Defendant to take any necessary steps to terminate any fiduciary role consistent with this provision;
- (11) Award the District civil penalties for each violation of the Act; and
- (12) Award the District any additional relief as the Court may deem just and proper.

Dated: December 8, 2021

Respectfully submitted,

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