



Memory Gardens lawsuit seeks \$20M

Class action blames two financial firms for helping couple raid cemetery funds

Sat. February 09 - 2008

Louis Jones

IBJ staff

An Indianapolis law firm has filed a class-action suit seeking more than \$20 million from a pair of financial-services firms it says facilitated the transactions that allowed a New Jersey couple to plunder cemetery trust funds.

Cohen & Malad LLP filed the lawsuit late last month on behalf of thousands of customers of Indianapolis-based Memory Gardens Management Corp., which owns Forest Lawn Memory Gardens in Greenwood, Lincoln Memory Gardens in Boone County and other cemeteries. The defendants are the company, New York-based Smith Barney and a Noblesville bank formerly known as Community Trust & Investment Co.

The case is the latest fallout from a massive fraud investigators say was perpetrated by the New Jersey couple, Robert Nelms and Debora Johnson. Marion County prosecutors last month charged Nelms, 39, and Johnson, 48, with nine felony counts each. Investigators say the pair raided \$24 million in trust funds that were supposed to maintain cemetery grounds and cover prepaid burials and funerals.

The misconduct would not have been possible had a Smith Barney broker not conspired with the couple and encouraged them to find a new bank to serve as trustee that would permit the improper transactions, according to the 17-page suit filed in U.S. District Court in Indianapolis.

"[The case] is an example of how huge amounts of trust funds can be diverted if the people responsible for managing those funds don't pay attention to what's going on," said Cohen & Malad attorney Richard Shevitz. "It's particularly troubling because the funds are there to care for people in their time of need and even after they are gone."

Nelms and Johnson purchased Memory Gardens Management from the Meyer family in late 2004 for \$27 million. Before the purchase, the cemetery trusts had been held at Forethought Federal Savings Bank in Batesville.

According to the suit, Smith Barney advised the couple that Forethought would not go along "with the unlawful diversion of trust funds." That led to Community Trust's selection as trustee.

The Smith Barney broker Nelms and Johnson worked with was Mark Singer, a Philadelphia-area man who was charged last spring with theft, conspiracy and money-laundering in a similar cemetery trust fund scheme in Tennessee.

"We believe Smith Barney is responsible for the actions of Mr. Singer, particularly because he seems to have a pattern of this behavior," Shevitz said.

Representatives at Smith Barney said company policy did not allow them to comment on lawsuits.

Mishawaka-based MFB Corp. purchased some of the assets of Community Trust last fall. The rest, including the cemetery trust funds, were sold to Noblesville-based Nexus Fiduciary Trust Corp., said Jim Coleman, an executive vice president for MFB. Nexus officials did not return calls.

MFB is listed as a defendant in the suit, though Shevitz acknowledged that might not be correct.

"We're exploring whether there's confusion [regarding defendants]," he said. "If so, we'll take the steps to name the correct successor to Community Trust."

The only named plaintiff so far is William Fishback, a Marion County resident who put money into a trust fund in 1986. Shevitz wants the court to certify the case as a class action on behalf of all Hoosiers who put money into the trust funds.

Shevitz said the suit seeks \$22 million diverted from the funds, plus other damages.

The losses might not be as steep as Shevitz suggests, said Jim Knauer, the attorney for Lynette Gray, the court-appointed receiver for all of Memory Gardens Management's assets.

The plot thickens

Plaintiffs: Marion County resident William Fishback, on behalf of himself and thousands of others who contributed money to the Memory Gardens Perpetual Care Trust Fund.

Defendants: Memory Gardens Management Corp., based in Indianapolis; Noblesville-based Nexus Fiduciary Trust Corp. (formerly Community Trust and Investment Co. Inc.); and New York-based Smith Barney, a division of Citigroup Global Capital Markets Inc.

Allegation: Employees at Smith Barney and Community Trust advised Robert Nelms and Deborah Johnson in a conspiracy to purchase Memory Gardens cemetery company and divert \$22 million from a cemetery care trust fund to Smith Barney accounts.

Case filed: Jan. 24, in Marion Superior Court

Cemeteries involved:

- Forest Lawn Memory Gardens Cemetery, Greenwood
- Lincoln Memory Gardens Cemetery, Boone County
- Covington Memorial Gardens Cemetery, Fort Wayne
- Chapel Hill Funeral Home, Osceola
- Gardens of Memory Cemetery, Muncie
- Gill Cemetery, Washington

Source: court documents

"There are different trusts for every single cemetery, and all the money is not gone," Knauer said.

Knauer believes the suit has procedural errors. He said Fishback hasn't suffered a loss because no money is due him from a trust until his death. Further, Knauer said, Shevitz can't sue Memory Gardens Management without also suing the receiver.

Shevitz said he left the receiver off the suit because he has no claims against her.

Memory Gardens Management owns about a dozen cemeteries including six in Indiana. This isn't the only place Nelms has run into trouble. Two days before Christmas, the Michigan cemetery commissioner sued Nelms to block him from gaining further access to a trust fund for a Memory Gardens cemetery in Grand Rapids.

According to Shevitz's suit, Nelms and Johnson in 2004 agreed to acquire Memory Gardens by making a \$13 million down payment and promising to pay the remainder of the \$27 million purchase price over time. The suit says the couple came up with the down payment by taking out a short-term loan from a Smith Barney customer who was in on the scheme.

Nelms and Johnson then withdrew the trust fund money from Community Trust, transferring it to Smith Barney and Chase Bank, according to the lawsuit. In place of the money, Community Trust accepted worthless debentures—or IOUs—issued by Nelms' companies, the suit says.

"The transaction is complicated and will need to be unscrambled in this litigation," Shevitz said.

The Meyer family filed a lawsuit in Johnson County last month seeking to collect the \$8 million it says remains unpaid on the purchase. •



Share

 Add Comment

 Letter to Editor

 Email to Friend

 PDF Version

 Print

 RETURN