IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JO ANN HOWARD AND ASSOCIATES, ET AL,
PLAINTIFFS,

V. CASE NO. O9-CV-1252-ERW

J.DOUGLAS CASSITY, ET AL,
DEFENDANTS.

RESPONSE TO PLAINTIFFS' MOTION FOR FOR RULINGS AS A MATTER OF LAW AS TO BENEFICIARY STATUS UNDER PRENEED TRUSTS AND INDEPENDENCE OF INVESTMENT ADVISOR UNDER RSMO 436.031(2)

COMES NOW DEFENDANT DOUG CASSITY, PRO SE, and in response to plaintiffs' above styled Motion states as follows:

INTRODUCTION

In an unbelievable "slight of hand" the plaintiffs attempt to persuade this Court of the Missouri Legislature's intent with regard to the above stated matters by quoting from language in the preneed trust law that the Missouri Legislature passed in 1965 and repealed in 1982. The entire scope of this case is only covered by the 1982 Chapter 436, not the 1965 Chapter 436.

PLAINTIFFS' BENEFICIARY ARGUMENT IS ERRONEOUSLY BASED ON THE REPEALED 1965 PRENEED LAW

The Plaintiffs tell the Court on page 9 of their Memorandum that the 1965 Missouri Preneed Law required preneed contract payments to be made into trust "so that funds would be available to pay for the contracted merchandise and services regardless of the financial status or motivation of the seller." The 1965 law required an 80% deposit of preneed contract funds into trust 30 days after receipt by the seller.

If this lawsuit would have been brought in the 1960's or 1970's, then the plaintiffs' argument that the customers could be considered to be the beneficiary of the preneed trust may have had some merit. But the Plaintiffs failed to inform the Court that the Missouri Legislature repealed the 1965 Preneed Law in 1982.

A whole new law was passed in 1982. Unlike the 1965 law, the new 1982 law had NO provision for the deposit of 80% of funds into trust. The Legislature took an entirely different approach in the 1982 law. The 1982 Preneed Law, borrowing from the concept of "burial insurance" laws, repealed the fixed time and fixed percentage requirement for any cash deposit to be made into trust to be held to pay for a funeral.

Instead of the Preneed Trust holding funds "to pay for" a funeral, the 1982 law allowed the seller to charge a fee to cover the payment of the face amount of the funeral on a premature death of a customer. On a death before the contract had been paid in full over time, NPS had to pay the full amount for the funeral just like burial insurance. For example, if the customer died after paying 10 payments of $50)($500) on a $5000 funeral, the seller, from seller's own funds, had to come up with the $4500 balance to pay for the funeral. This is a burial insurance concept, there is no way a preneed trust can "pay for" a $5000 funeral with $500 in trust.

If anything had been deposited into trust related to the customer, the statute provided it could be "comingled" for investments purposes. The seller, after having paid for the funeral with the seller's own funds, could receive any money in trust deposited with relation to the customer. The Missouri Legislature intended and passed a "liability" concept wherein the seller actuarially made deposits in trust depending on liability exposure rather than a fixed percentage under the old 1965 trust concept and could withdraw the funds when the liability was discharged.

Plaintiffs concept of the customer being the beneficiary under the 1965 preneed law, where the funeral was to be paid from the funds required to be deposited in trust, as we said earlier, might have some merit if this lawsuit had been brought in the 1960s or 1970's, but under the 1982 "burial insurance" or seller liability concept where the seller from seller's own funds pays for the funeral without benefit of funds from the preneed trust, Plaintiffs' argument that the customer, not NPS, is the beneficiary, makes no sense.

Plaintiffs are relying on a repealed statute that has no relevance in this case for legislative intent, and, therefore its motion must be denied.

436.031.(2) DESCRIBES "A FEDERALLY REGISTERED OR MISSOURI-REGISTERED INDEPENDENT QUALIFIED INVESTMENT ADVISOR" NOT THE PLAINTIFFS' MAKE BELIEVE LANGUAGE "QUALIFIED INVESTMENT ADVISOR, INDEPENDENT OF SELLER."

Plaintiffs ask the Court to ignore the clear language of 436.031(2) which is, as follows:

> ...a federally registered or Missouri-registered independent qualified investment advisor designated by the seller.

and, instead change the to meaning to plaintiffs' desired language (page 18), which the legislature did not write and did not pass into law. Plaintiffs wish the language were written to read, as follows:

> a qualified investment advisor, independent of the seller

and urges this Court to adopt their change in language and meaning as a matter of law. No where in Chapter 436 does the statute say that the investment advisor shall be "independent of seller." There is no basis for the Plaintiffs' attempt to rewrite the statute.

The term independent investment advisor is a term common in the investment community and absolutely does not mean the investment advisor should be independent from his client. In fact, the connotation is just the opposite. The investment advisor owes his client loyalty and performance without the inherent conflicts which most sales brokers have...thus the need for a special state or federal license under which they register.

A normal broker who sells bonds, stocks, real estate or other investments to an investor (here the trust and/or NPS) derives his income from the seller of the bonds, stocks, real estate or other investments even though he many times presents himself as if he is working for the buyer. In reality, the normal broker is trying to get the highest price for the seller of the investment and owes his loyalty and duties to the seller, not the investor with whom he deals. The Missouri Legislature eliminated the normal broker from making investment decisions by requiring the appointment of a "registered independent investment advisor."

In everyday life, the real estate broker is a perfect example. Even though the real estate broker may pretend to be the buyer's best friend, his loyalty and duty is to the seller to get the highest price and to himself to get the highest commission...it is an inherent conflict and the poor buyer gets the short end of the stick.

In the investment community, that inherent conflict is solved by hiring an independent investment advisor whose loyalty is to the buyer of the investment. The investment advisor derives his income from the investor, not the seller. By federal and state statute, he can not take a payments or commissions from the seller. Hiring an independent investment advisor eliminates the inherent conflict of the broker receiving his income from the other side.

One only has to "Google" independent investment advisor or go around town and pick up 50 brochures from their offices to read the sales pitch that a investor is protected by hiring an registered independent investment advisor when investing.

If the Missouri Legislature would have wanted to say "qualified investment advisor, independent of seller," it could have done so. Instead, the legislature used language commonly used in the investment community for the selection of an independent investment advisor rather than a broker. Selecting a "federally registered or Missouri-registered independent investment advisor" assured that an independent investment advisor loyal to the investor (NPS or the trust), without the inherent conflict of a seller's broker, would make the investment decisions. That was what the legislature said very clearly and very plainly, regardless of what the Plaintiffs wish the legislature had said.

Again, the plaintiffs argument simply fails to follow the clear meaning of the statute and there is no way as a matter of law

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the plaintiffs' made up language can be the law and therefore their motion must be denied.

WHEREFORE, DEFENDANT DOUG CASSITY, PRO SE, prays the Court for the relief requested.

Dated Oct 22, 2014

J. Douglas Cassity, Defendant, Pro Se

CERTIFICATE OF SERVICE

Defendant requests the clerk serve all parties not on PACER as I am incarcerated and cannot do so.

Oct 22, 2014

J. Douglas Cassity, Defendant, Pro Se