Ninth Circuit Rejects Elderly Couple's Claim to Find Bank Liable for Fraud by Third Party*

In 2021, William Bortz received an email from Amazon requesting him to call the number provided in the email to fix an issue regarding a $1,500 transaction. Mr. Bortz obliged and over the next few weeks, he had given away nearly $700,000. The email was in fact not from Amazon, but instead scammers targeting senior citizens.

On the call, the scammer was able to gain remote access to Mr. Bortz' computer and convinced him to wire money overseas on four separate occasions. Part of the scam required Mr. Bortz speaking with his bank, JPMorgan Chase, to wire the money overseas. It is alleged that not once during the scam did the bank question Mr. Bortz' desire to wire such large sums of monies.

Mr. and Mrs. Bortz sued JPMorgan for violating the California Financial Elder Abuse Law, which provides that financial abuse of an elder occurs when a person or entity "[t]akes, secretes, appropriates, obtains, or retains . . . property of an elder . . . for a wrongful use or with intent to defraud, or both." Cal. Welf. & Inst. Code Section 15610.30(a)(1). However, this past July, the Ninth Circuit sided with the bank. In *Bortz v. JPMorgan Chase*, No. 22-55582 (9th Cir. July 24, 2023), the Court held that Mr. Bortz failed to state a claim. That is, Mr. Bortz failed to show that the bank had actual knowledge that the bank was assisting or engaging in a crime, and the Ninth Circuit affirmed the lower court's dismissal.

The Ninth Circuit's holding largely mirrors the consensus across the United States, even though unauthorized payments make for sympathetic plaintiffs, banks are often unable to reasonably prevent or predict such fraudulently induced transactions. While JPMorgan was able to escape liability in this case, on the California legislature's docket is Senate Bill 278, which (if passed) would significantly expand the liability of financial institutions in instances of elder financial abuse.

For more information, contact Anne McEvilly at **AMcEvilly@ABLawyers.com**.

Copyright © 2023
Aldrich & Bonnefin, PLC*
All Rights Reserved

***Advertisement. This information is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. Contacting Aldrich & Bonnefin PLC does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established. Janet Bonnefin is retired from the practice of law with the firm.**

1920 Main Street, Suite 800, Irvine, California 92614
Phone: (800) 742-3600 • Fax: (949) 474-0617
Email: bcg@ablawyers.com • Website: www.bankerscompliancegroup.com