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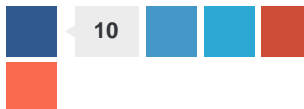
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April 06, 2015



## Florida Takes Aim At Professional Guardians

By John Pacenti, The Palm Beach Post, Fla. Tribune Content Agency



April 03--Glenda Martinez-Smith found the love of her life as a senior citizen.

Martinez-Smith, 68, said she felt like she hit the lottery when she met retired Army Col. J. Alan Smith of Boynton Beach through a senior dating website. "It was like a fairy tale," she recalls.

But the retired school teacher said their bliss was destroyed when a judge found her husband incapacitated after a car crash and appointed a professional guardian.

With the blessing of two Palm Beach County circuit court judges, the guardian put Smith, who had suffered a traumatic brain injury, in a nursing home, got Martinez-Smith banned from ever seeing him again and annulled the couple's marriage.

"That was the most horrible day of my life, the day my marriage was annulled," she said.

Besides annulling her marriage, one judge kicked her out of court and another threatened her with arrest. Still, Martinez-Smith persevered, winning appeal after appeal and wresting control back from the professional guardian.

Professional guardians are the subject of several bills moving through the Florida Legislature. Critics and lawmakers themselves say many are siphoning the assets of wards to pay for their exorbitant fees.

It is not unusual for a judge to give professional guardians access to a ward's property, finances, medical decisions and housing. It takes hundreds of hours of training and a modest background check to become a professional guardian and earn \$85 an hour.

The modus operandi of many professional guardians is to "litigate, isolate, medicate and take the estate," said Dr. Sam Sugar, an activist on the guardianship issue.

Not all wards are seniors. Some are younger adults found incapacitated, but with 3.7 million people over 65 in Florida -- the highest percentage in the United States -- the business prospects for professional guardians are very good. As a result, the ranks have swelled from 108 in 2003 to 456, according to the Florida Department of Elder Affairs.

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\$200,000 in legal fees

Business is also very good for the attorneys who flock around these guardians.



Every professional guardian employs at least one attorney to traverse the landscape of social services, nursing homes and liquidating assets. These lawyers come at a steep price, charging hundreds of dollars an hour in addition to the guardians' fees.

Martinez-Smith has spent a good part of her life savings -- \$200,000 and counting -- in legal fees fighting guardian John Cramer and orders by judges on his behalf. She got three rulings reversed on appeal and the annulment to her marriage is pending.

Smith's assets paid Cramer \$16,500 a month, said Martinez-Smith, who has not seen an accounting of how the money is spent. Cramer liquidated two of Smith's life insurance policies for \$145,000 recently, she said.

"According to anyone's observation, this is a legal form of grand theft and robbery. It's exploitation of the elderly," Martinez said. "These guardians have to be stopped."

The Florida Bar president, West Palm Beach attorney Greg Coleman, supports the legislation, saying there is a need to address the "bad actors," whether they be guardians or their attorneys.

"The population is aging and this is something that is going to be more and more of an issue. The more protection the better," he said.

In the meantime, the retired Army colonel's health deteriorated without the necessary physical therapy at the nursing home. Today, the 83-year-old is nearly completely paralyzed and cannot speak.

Before the guardian put him in the nursing home, he was walking and talking, Martinez-Smith said. "How could they do this to him?"

Cramer, the guardian, did not return a calls for comment and his attorney Ellen Morris of Boca Raton declined to comment.

Lawmaker: They're 'cockroaches'

It's stories like Martinez-Smith's that have caught the attention of lawmakers.

Rep. Kathleen C. Passidomo, R-Naples, a sponsor of one of the bills, told a Justice appropriations subcommittee in February that it is time to rein in professional guardians.

"There are billions of dollars in the state of Florida that are being maintained by guardians of incapacitated wards -- billions. Most of these incapacitated wards are vulnerable elder citizens," she said.

Sen. Nancy Detert, a Venice Republican sponsoring another bill, made headlines last month when she referred to professional guardians as "cockroaches" at a committee meeting.

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The impetus behind these bills is a ragtag group of family members who say they have seen professional guardians abuse their vast powers against their loved ones.

"The bottom line always bounces back to the fact that in a guardianship, one person -- a complete stranger with no attachment to the ward or their family -- is given the right to own another person like a piece of property and can do whatever they want without fear of reprisal," said Sugar, a retired physician from Aventura who is co-founder of Americans Against Abusive Probate Guardianships.

"Take that away and these acts of these nasty guardians are felonies and civil rights violations."

Professional guardians often come into play when there is family discord and financially comfortable or wealthy wards are involved.

Once in place, guardians and their attorneys can liquidate long-held stock, bonds, insurance policies and sell property, whether it be the family home or jewelry. Family members are often kept in the dark because payments to the guardian and his attorneys from the ward's assets are filed in court automatically under seal.

If a ward dies, the guardian then can seek to become the personal representative of the estate. Then the guardian and attorney, under state law, are entitled to 3 percent each of the estate if it's worth at least \$100,000.

'Geriatric head hunters'

Sugar's group says the professional guardian industry is teeming with abuse.

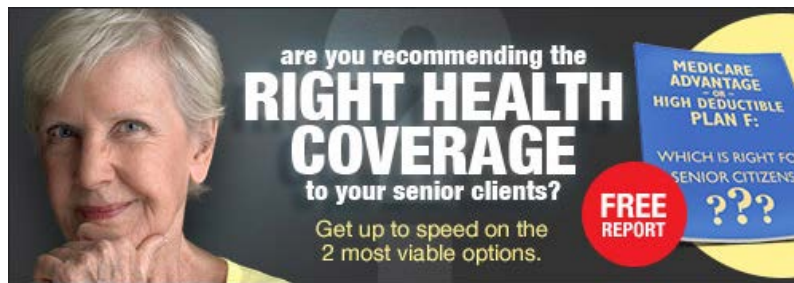
It has documented numerous cases in which estates were decimated by guardians and elder law attorneys through unnecessary legal filings. They claim evidence of straw sales of family homes so they could be sold at a profit by a third party.

The organization also says they know of "trolling" where for-profit guardians employ spotters to target the elderly at assisted living facilities or senior centers.

"Trolling can be accomplished most easily under the guise of a free seminar for financial planning for elders," Sugar said. "We were recently successful in aborting one of these seminars at a synagogue when we informed the leadership that the proposed speaker had been a key figure in several cases well known to us."

Licensed clinical social worker Wendi Cassand, with offices in Boca Raton and Daytona Beach, said she has seen the trolling. "I call them geriatric head hunters," she said. "They approach them while they are under duress to get their power of attorney."

After three years of lobbying, Sugar now has the attention of key lawmakers.



Proposed legislation -- such as HB5, SB1226 and SB318 -- aim to eliminate favoritism by judges with a random rotation of guardian appointments, a proposal recently adopted in Miami-Dade County. The bills also make it harder for temporary guardians to become permanent and for abusive guardians to be disciplined.

Jetta Getty, a professional guardian in Daytona Beach and president of the Florida Guardianship Association, characterized the majority of the proposals as well-intentioned but ultimately harmful to the ward. "It would be putting people who are less qualified in the mix and add an extra layer of cost," Getty said.

Some want to rid the landscape altogether of professional guardians, saying the system is far too incestuous.

"It cannot be fixed. Judges have been given too much power," said Robert Sarhan of Miami-Dade County, who claims his mother, Yvonne Sarhan, was killed by a professional guardian's mismanagement of her medication. "The judges in probate courts are doing a lot of favors for their friends. These judges get elected by these law firms and they allow them to get into these estates and suck them dry."

Sarhan is joined in his position by others such as Barbara Stone of Hollywood. She has been arrested twice fighting a professional guardian who put her mother, Helen Stone, in a nursing home. Stone said she was the one who sought a professional guardianship, fearing embezzlement of her mother's assets by her brother but is now barred from seeing her mom.

"I was warned if you put your mother in a guardianship, you will end up not being able to see her and they will steal all her money and when the money is gone she is going to die," she said.

\$850 birthday cake delivery

Many of these concerns about professional guardianships were raised years ago, in July 2004, by the Government Accountability Office in a special report. In one case cited, an estate of a New York ward was billed \$850 for legal services when the guardian brought a birthday cake to a nursing home. Another guardian in New York charged a ward \$300 for depositing her Social Security check. In Arizona, a guardian embezzled \$1.2 million.

Palm Beach County Clerk Sharon Bock got the reform rolling when she pushed through a legislative change that requires family -- not professional -- guardians to undergo a credit and background check and for the clerk to conduct audits of guardianships where needed.

She hired a full-time auditor and set up an abuse hotline. Her office has investigated more than 700 cases since 2011 and uncovered more than \$4.1 million in questionable expenditures from all types of guardians.

"This is an issue near and dear to our heart," Bock said. "Our role is to be looking at the financial exploitation of someone who has been made a ward of the court."

Sugar said it's important to note professional guardians are only part of the

problem.

Attorneys are huge beneficiaries, he said. If a family tries to fight a guardianship, there are numerous lawyers for numerous members of the family, the ward, the guardian and others. A simple 20-minute conference call between these parties easily cost the estate upwards of \$1,000.

"It's even worse when you have a deposition where for every one lawyer, two or three partners show up. You can have an estate drained of \$4,800 in an hour just to sit and talk about the case," Sugar said. "Some lawyers do this to just prolong the case to maximize billings."

Payments aren't public

Sugar said the estate of his late mother-in-law Idelle Stern was drained of at least \$5 million because of a professional guardianship. "We don't know the exact amount. We are not allowed to see what they are billing."

And some judges don't seem to want the public to know either.

Court documents show that Miami-Dade Judge Bernard Shapiro said at a hearing he didn't want the media to get wind of the fees being requested in a case because the public would be outraged. "This case potentially is going to blow up and cause us all problems. The fees are out of control," Shapiro said at a Jan. 8 hearing. The case is now in front of a different judge.

Jack Halpern, CEO of Elder Care in New York City, runs a company that offers an alternative to professional guardians by helping seniors navigate health care and the legal system. He says the problems are larger than just reining in the professional guardians, calling the proposed Florida legislation "a Band-Aid on an elephant."

"The problem involves judges, guardianship attorneys, adult protective services employees, and not-for-profit religious and secular agencies, who are profiting from these guardianship cases," he said.

Martinez-Smith doesn't want to talk about the judges in her case. But the appellate court has supported her three times so far by reversing Palm Beach County Circuit Judges Martin Colin and David French, who sit in the Delray Beach courthouse.

Smith had ended up in the clutches of a guardianship when the couple were still engaged. After the car accident in 2010, one of Smith's children petitioned a judge to find him incapacitated. Colin appointed Cramer as a temporary guardian and Martinez-Smith initially retained control of her husband's medical care.

But Cramer asked Colin to cut out Martinez-Smith altogether. At a hearing on the matter, Colin kicked Martinez-Smith out of the courtroom "on the basis of a perceived insult to him," according to a 4th District Court of Appeal opinion.

Colin told Martinez-Smith that her entire demeanor, including "her face, her voice, her sound, may be unpleasant to everyone else" but her husband. The appellate court told Colin to recuse himself, saying "that would lead any reasonably prudent person to fear that she would not receive a fair hearing before the judge."

But Martinez-Smith found little solace when the case was transferred to French.

Judge threatens arrest

Cramer had complained that Martinez-Smith was abusive to the staff over the lack of her husband's care at the nursing home. French removed her as a health-surrogate and banned her from seeing her husband. In the courtroom, French pointed his finger at Martinez-Smith and said he would have her arrested if she even went near her husband at the nursing home.

At a subsequent hearing, French also granted the guardian's request to annul the marriage. "I was crying in his courtroom," Martinez-Smith said.

Again, the appellate court reversed, ousting Cramer as guardian on March 18. It said French abused his discretion in not following Smith's wishes that his wife be in control of his medical care and assets.

"It's not surprising that someone strongly advocating for excellent care for their loved one would be at odds with staff which may be less than diligent in delivering such care," the opinion written by appellate court Judge Martha Warner stated.

Martinez-Smith's attorney, Jennifer Carroll of Palm Beach Gardens, said the recent opinion is precedent-setting because the court said the wishes of the ward are paramount.

"The most important thing about this is that each individual has a fundamental right to choose their guardian or medical caregiver," Carroll said.

Now that Cramer is out, Martinez-Smith is again her husband's health-care surrogate. On Wednesday, she had him transported to Holy Cross Hospital in Fort Lauderdale to be examined. He arrived in a wheelchair, alert but also unresponsive, dehydrated and with sores all over his body.

She comforted him, rubbing his chest in the wheelchair. "We are going to do everything we can to make you better," she told him.

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