

LOS ANGELES

Daily Journal

MONDAY,
JULY 2, 2007

— SINCE 1888 —

OFFICIAL NEWSPAPER OF THE LOS ANGELES SUPERIOR COURT AND UNITED STATES SOUTHERN DISTRICT COURT

Duo Works to Protect Elderly From Financial Scams

By Gary Scott

Daily Journal Staff Writer

SACRAMENTO — As the population in California grows older and lives longer, the scams and the scoundrels who prey on the elderly multiply, as well.

For Ed Corey Jr. and Kelly Sutter, estate attorneys at the Sacramento firm of Weintraub Genshlea Chediak, this profound demographic shift has provided steady work for a decade, as the duo works to recover assets taken by unscrupulous salesmen, shady financial institutions or, as is more common, greedy family members too impatient to wait for an inheritance.

“There is a sense of entitlement to inheritance and wealth” on the part of the children, said Corey, who has practiced elder financial-abuse law since the early 1990s, when the state passed the landmark Elder Abuse and Dependent Adult Act.

His practice often has extended beyond the courtroom to the California Legislature, where he is called to testify on bills aimed at protecting the elderly and turning back emerging financial scams.

Most recently, Corey spoke in favor of SB 611, which would give courts more power to freeze assets that are the subject of a financial-abuse case, thus ensuring that they are not whittled away or hidden if the plaintiff prevails.

He and Sutter have supported successful legislation to mandate that financial institutions report possible elder financial abuse and to better safeguard seniors who opt for reverse mortgages. Often, his support comes over the vehement objections of banks, mortgage companies, credit unions and other lenders.

“Nobody likes further regulation,” said Jenefer Duane, executive director of the Elder Financial Protection Network in San Francisco. “But it is necessary when so many people are being ripped off.”

The elderly are a prime target largely because they can be vulnerable, needing



S. TODD ROGERS / for the Daily Journal

Estate attorneys Ed Corey Jr. and Kelly Sutter work to recover assets taken by unscrupulous salesmen, shady financial institutions or greedy family members from the elderly.

extra care and help if they get sick or injured. Another significant factor, Duane said, is that the personal wealth in the U.S. is disproportionately concentrated in the hands of older people, a population that is growing by leaps and bounds as baby boomers begin to retire.

Duane said he has read statistics that indicate 70 percent of the personal wealth in the United States is owned by people at least 65.

“They have been saving for 40 years and have equity in their homes,” Duane said.

Even though family members are more often the culprits of financial elder abuse, Corey and Sutter see a coming surge of rogue lenders using ill-advised reverse mortgages and bad annuities to shake loose the money many older people have tied up in their homes or long-term investments.

“We are only seeing the tip of the iceberg,” Corey said.

He noted that a first flurry of bills have either passed or been proposed by the California Legislature in recent years to deal

with just these issues, including a major overhaul of rules for conservators.

New regulations on reverse mortgages were signed into law in 2006. This year, Sen. Jack Scott, D-Pasadena, has proposed legislation, SB 620, which would require companies that sell annuities to establish suitability standards for elderly clients. Scott cited as an example a 90-year-old man who was sold an annuity that had a 10-year mature date. The man would have had to live until he was 100 to avoid the \$11,000 surrender charge, which his family ended up paying after he died.

Corey, who supports the Scott bill, said he has his own case in which a 92-year-old man was sold a \$280,000 annuity with a maturity date of 50 years.

“That should never have been sold. That should never have made it through the clients’ department of the insurance company,” Corey said.

Often, he said, an improper annuity sale goes hand in hand with an improper reverse mortgage.

Prime Targets: Protecting the Elderly From Financial Scams

“We are seeing a lot of predatory lending with these reverse mortgages,” Corey said.

He added that he would like to see even stiffer legislation than that passed in 2006.

He and Sutter have their own bill, which he is working on through a State Bar committee on trusts and estate planning, that would limit or eliminate the right of financial institutions accused of financial elder abuse to seek arbitration.

When the Legislature created the Elder Abuse and Dependent Adult Act in 1991, Corey and Sutter said, it allowed for a jury trial, recovery of attorney fees, damages and other “enhanced remedies” that are not available as a result of arbitration.

Financial institutions “would much rather bring that into the comfortable confines

of an arbitration panel,” Corey said.

Not only that, but the arbitration can be expensive, a deterrent to people who may have lost their savings.

In 2002, Sutter filed a successful motion in *Eugarty v. Washington Mutual* that allowed her client to take the bank to trial. The decision was not appealed, however, and so carries no legal authority.

“There is not an official citation, but I know other attorneys have used the same analysis” at the trial-court level “and have come to similar results,” Sutter said.

Before they take the measure to the Legislature, they want to vet it through the State Bar and win approval from the bar’s Board of Governors. He held off presenting the proposed bill this year after sensing some reluctance on the board’s part.

“I want to try to exhaust that first before we go to other avenues,” Corey said.

If and when the measure makes it to Sacramento, Corey has high hopes that it will pass in some version, based on the Legislature’s “senior-friendly” track record.

Though he has yet to see any language, Scott seemed amenable to the idea.

“I think arbitration is appropriate on some occasions, but I think there is no question that, if you have a right to sue, it makes the company more honest in how they deal with you,” Scott said.

Even with tougher rules and stronger tools, Corey, Sutter and Duane said the true scope of financial elder abuse is only beginning to be seen and will only get worse.

“There is a lot of bad on the horizon,” Corey said.