

**ROBERT SMITH, Individually &
on Behalf of Mother D. Jones
123 Concerned Street
Baltimore MD 21222**

Plaintiff,

v.

**DEFENDANT DOE
Individually & as Attorney-in-Fact
for Mother D. Jones
1001 Sketchy Way
Baltimore MD 21222**

Defendant.

* * * * *

COMPLAINT

Plaintiff, Robert Smith, Individually & on behalf of Mother Jones, by Adam M. Spence, Elizabeth H. Johnson, and SPENCE | BRIERLEY, P.C., her attorneys, for his Complaint against Defendant, Defendant Doe, Individually and as Attorney-in-Fact for Mother D. Jones.

PARTIES

1. Plaintiff, Robert Smith (“Plaintiff”), is an adult resident of Baltimore County, Maryland. Robert is the son of Mother Jones (“Mother”), and the late Jack Jones (“Father”).

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* **IN THE**
* **CIRCUIT COURT FOR**
* **BALTIMORE COUNTY**
* **Case No.:**
*
* **JURY DEMANDED**
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2. Defendant, Defendant Doe (“Defendant”), is an adult resident of Baltimore County, Maryland. Defendant is the daughter of the Jones, and the brother of Mr. Smith.

FACTS COMMON TO ALL COUNTS

3. Mother turned 78 on January 1, 2017.

4. In the years leading up to 78th birthday, Mother suffered from age based cognitive decline.

5. At some point prior to her 78th birthday Mother was no longer able to manage her finances and keep up with bills. She often forgot to pay her bills or when she did pay them, she paid the wrong amounts or bounced checks when she did.

6. As a result, on January 1, 2017, Mother executed a Power of Attorney naming Defendant as her Attorney-in-Fact to allow Defendant to assist her with her finances.

7. Although Defendant was Mother’s Attorney-in-Fact, Mother lived with Plaintiff. Plaintiff provided Mother with considerable care.

8. After execution of the Power of Attorney, Defendant was added to Defendant’s account ending in ****2478 held at M&T Bank (the “Bank Account”) as a matter of convenience.

9. At the time Defendant was named as attorney-in-fact, Mother had ample assets for her long-term medical needs.

10. However, Defendant thereafter abused her fiduciary duty to Mother and failed to use the Bank Account monies for Mother. Indeed, Defendant heavily drew down upon the Bank Account for the apparent purpose of pursuing her own desire to

rehabilitate and rent houses.

11. Defendant also appears to have withdrawn substantial monies from the Bank Account for own personal use including gambling, traveling, and other assorted purposes.

12. Alongside the withdrawal of monies from the Bank Account, Defendant also forged checks out of one or more accounts and deposited them into her own personal account.

13. Moreover, Defendant also liquidated Mother's large life insurance policy with Life Insurance Company A and directed the proceeds to the Bank Account. Defendant immediately thereafter used those proceeds to purchase two separate rental properties in Defendant's own name.

14. While renting out those houses, Defendant has never accounted for and has failed to deposit substantial rental monies from those properties into the accounts held for Mother.

15. Meanwhile, Defendant applied with the Social Security Administration – unbeknownst to Plaintiff - to be appointed as the Representative Payee for Mother's Social Security checks. Despite her fiduciary duty to use those funds for Mother, Defendant has failed and continues to fail to use those funds for Mother's care and welfare.

16. In the meantime, Defendant has taken numerous vacations, gambled considerably, and paid off the mortgage on her house, presumably from monies unlawfully taken from Mother.

17. In November, Mother suffered several strokes and was also diagnosed

with dementia. Because of her strokes and increasing cognitive decline, Plaintiff was no longer able to care for Mother. Indeed, Mother had become so aggressive and difficult to manage that Plaintiff had no choice but to move her to an Assisted Living Facility for care.

18. At some point, Plaintiff received notice that his mother's invoices for the Assisted Living Facility were not being paid.

19. When Plaintiff called Defendant to ask why she wasn't paying for their Mother's care, Defendant stated that there were no longer any monies to pay for Mother's care.

20. Unaware of the monies taken by Defendant, Plaintiff believed that his Mother should had more than sufficient funds to pay for her long-term care for many years to come.

21. When Plaintiff confronted Defendant with this belief, Defendant became hostile and "informed" Plaintiff that he "does not understand anything, does not understand the finances, that he should not get involved, and that she, Defendant, is managing the funds."

22. Meanwhile, the assisted living facility in which Mother resides has threatened to discharge Mother for lack of payment, which necessitated this lawsuit.

COUNT I
(Accounting of Defendant's Use of the Power of Attorney)

23. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

24. Plaintiff is a "beneficiary" as contemplated by §17-103(6) of the Estates & Trust Article of the Maryland Code (the "E&T Code") and has standing to seek this

Court's review and accounting of Defendant's actions as Attorney-in-Fact for Mother.

25. Plaintiff seeks this Court's review of Defendants actions using the Power-of-Attorney and require a full accounting from her.

WHEREFORE, Plaintiff respectfully requests that this Court (a) enter an Order requiring Defendant, as Attorney-in-Fact for Mother, to fully and completely account to this Court for all financial transactions she has undertaken for Mother pursuant to the Power of Attorney; (b) review such transactions for their propriety and appropriateness; (c) enter judgment in favor of Plaintiff, on behalf of Mother, pursuant to § 17-103 for any damages arising from any self-dealing, waste or other fiduciary breaches by Defendant of her fiduciary duties as Attorney-in-Fact for Mother; (e) grant Plaintiff his legal fees and expenses incurred in prosecuting this matter; (f) remove Defendant as Attorney-in-Fact for Mother; and (g) grant such other and further relief as this Court deems proper.

COUNT II
(Financial Exploitation – The SAFE Act)

26. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

27. As a result of her age, Mother is an older adult, as contemplated by § 13-601(i) of the Statute Against Financial Exploitation in the Estates and Trust Art. (the "SAFE Act")

28. As a result of her cognitive condition and inability to manage her finances, Mother is a susceptible adult, as contemplated by § 13-601(k) of the "SAFE Act."

29. Plaintiff has standing to bring this action on behalf of his Mother under §13-605(2), (3), & (4) of the SAFE Act.

30. As Mother's attorney-in-fact, Defendant stood in a position of trust and

confidence as contemplated by § 13-601(e) of the SAFE Act.

31. Defendant knowingly obtained and used Mother's funds with the intent to deprive Mother of such funds temporarily or permanently.

32. This action is brought under the SAFE Act to recover those funds unlawfully taken by Defendant by her financial exploitation of Mother.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) grant judgment in favor of Plaintiff, on behalf of Mother for compensatory damages in an amount in excess of \$75,000; (b) grant Mother up to treble damages for Defendant's financial exploitation; (c) grant Mother her legal fees incurred in prosecuting this matter under the SAFE Act; and (d) grant such other and further relief as this Court deems proper.

COUNT IV

(Injunctive Relief – Injunction Against Further Financial Exploitation)

33. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

34. Defendant knowingly obtained and used Mother's funds with the intent to deprive Mother of such funds temporarily or permanently.

35. Defendant continues to maintain control over Mother's on-going social security payments.

36. Because Mother requires such funds to pay for her long-term care, any loss or misuse of those funds will cause irreparable harm to Mother.

37. Section 13-606 of the SAFE Act provides this Court with the ability to provide emergency or injunctive relief to preserve the assets of the susceptible adult or older adult, without bond.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) issue an emergency injunction enjoining Defendant from any use of Mother's funds (in her possession or to come into her possession) except for the care and well-being of Mother; (b) compelling Defendant to use such funds to pay for Mother's care and well-being as determined by her medical providers; (c) without the imposition of any bond; and (d) grant such other and further relief as this Court deems proper.

COUNT III
(Unjust Enrichment)

38. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

39. Defendant has taken monies not properly belonging to her.

40. Defendant has used those monies for her own benefit such as paying off the mortgage on her house.

41. The circumstances render it inequitable for Defendant to retain those monies.

42. Defendant, cannot, in good conscience, retain the beneficial interest of those monies without payment of their value back to Defendant.

WHEREFORE, Plaintiff respectfully request that this Honorable Court (a) grant judgment in favor of Plaintiff, on behalf of Mother; (b) grant judgment in favor of Plaintiff on behalf of Mother and against Defendant for the amount of monies she has taken unlawfully misappropriated, in an amount in excess of \$75,000; (c) require Defendant to deliver to Plaintiff such sum of the monies Defendant has taken in violation of her breach of fiduciary duty; (d) impose a constructive trust on any assets acquired through Defendant's unlawful use of Mother's assets; and (e) grant such other and further

relief as this Court deems proper.

COUNT IV
(Immediate Removal of Defendant as Attorney-in-Fact)

43. The foregoing allegations of this Complaint are hereby incorporated by reference additionally or in the alternative.

44. As Attorney-in-Fact, Defendant owed Mother a fiduciary duty.

45. By unlawfully misappropriating Mother's money, Defendant breached that fiduciary duty.

46. Section §15-112(1) of the Estates and Trusts Article states that "[a] court shall remove a fiduciary who has: . . . (iv) Breached [her] duty of good faith or loyalty in the management of property of the fiduciary estate."

47. Defendant deliberately and willfully withdrew and used Mother's funds for her own personal benefit and gain.

48. Defendant should be immediately removed by this Court and Plaintiff or guardian ad litem be substituted in her place.

WHEREFORE, Plaintiff, on behalf of Mother, respectfully request that this Honorable Court enter an Order (a) removing Defendant as Power-of-Attorney and as the Representative Payee of Mother's social security, (b) granting Plaintiff her attorney's fees incurred in prosecuting this action; and (c) granting such other and further relief as this Court deems proper.

Respectfully submitted,

Adam M. Spence, Esq. CPF# 9806240230
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Counsel for Plaintiff

JURY DEMAND

Plaintiff demands trial by jury as to all issues so triable.

Respectfully submitted,

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