

FIDUCIARY BOARD

Meeting Agenda – Thursday, September 10, 2020

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 109

General Inquiries Call: 602-452-3378 (Certification and Licensing Division Line)

Members of the public may attend meeting in person.

For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

CALL TO ORDER.....Deborah Primock, Chair

1) REVIEW AND APPROVAL OF MINUTES.....Deborah Primock, Chair

1-A: *Review, discussion and possible action regarding the regular session minutes of the meeting held on May 7, 2020.*

2) PENDING COMPLAINTS.....Division Staff

2-A: *Review, discussion and possible action regarding complaint 19-0026 involving license holder Chelsea Brandes.*

2-B: *Review, discussion and possible action regarding complaint 19-0019 and 19-0020 involving license holders Mario Martinez and Fiduciary Solutions.*

3) INITIAL LICENSURE AND ELIGIBILITY.....Division Staff

3-A: *Review, discussion and possible action regarding the following applications for initial individual and business licensure:*

1. Veronica-Bneche-Temesio
2. Eva Yeager
3. Samantha Hamilton
4. Arizona Fiduciary and Estate Services, LLC
5. Tina Brooks
6. Cynthia Wahlin
7. Thomas Strasburg
8. Todd Bendell
9. Jonathan Elliott

4) ADMINISTRATIVE ISSUES.....Division Staff

4-A: *Discussion regarding Administrative Directive 2020-20 concerning in person Continuing Education.*

CALL TO THE PUBLIC.....Deborah Primock, Chair

ADJOURN.....Deborah Primock, Chair

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1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion and possible action regarding the regular session minutes of the meeting held on May 7, 2020.

Attached for the Board's review are the regular session minutes from the Board meeting of May 7, 2020.

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2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding complaint 19-0026 involving license holder Chelsea Brandes.

On November 29, 2019, Division received a complaint alleging Chelsea Brandes disposed of a wards' property without any authorization. The complainant is a ward under guardianship/conservatorship with the Maricopa County Public Fiduciary's office (MCPF) and upon his discharge from the hospital was subsequently placed into an assisted living facility. Upon placement into the facility, complainant discovered many of his belongings had been disposed of by the MCPF. Brandes explained that much of the complainants' belongings had been contaminated due to "hoarding" and any expenditures and efforts to recover those items far exceeded the complainants assets.

The matter was investigated and PC Evaluator Mike Baumstark ultimately determined that Probable Cause did not exist as to the allegations.

RECOMMENDATION:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Chelsea Brandes has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 19-0026.

It is further recommended that the Board dismiss complaint number 19-0026.

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2) PENDING COMPLAINTS

2-B: Review, discussion and possible action regarding complaint 19-0019 and 19-0020 involving license holders Mario Martinez and Fiduciary Solutions.

On August 14, 2019, Division received a complaint from a sibling involved in a trust dispute in which Fiduciary Solutions had been appointed as trustee. Fiduciary Solutions (FS) was serving as the “Trustee” of an irrevocable trust and “Trust Protector” of a revocable trust which had been established for the complainant’s elderly mother. Complainant alleges his brothers were mismanaging the trust and further alleges FS;

1. Was not adhering to special instructions via a Settlement Agreement reached after much disagreement over the trusts’ language
2. Was not providing financial statements to all parties

The matter was investigated and PC Evaluator Mike Baumstark ultimately determined that Probable Cause did not exist as to the allegations.

RECOMMENDATION:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Mario Martinez and Fiduciary Solutions have not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint numbers 19-0019 and 19-0020.

It is further recommended the Board dismiss complaint numbers 19-0019 and 19- 0020.

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3) INITIAL LICENSURE AND ELIGIBILITY

3-A: *Review, discussion and possible action regarding the following applications for initial individual and business licensure.*

The following applicants applied for initial individual licensure. They have submitted completed applications demonstrating they meet the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which would preclude licensure. The applicants have completed the required fiduciary professional training.

The Division recommends approval of initial individual entity fiduciary licensure for the following applicants:

1. Veronica-Bneche-Temesio
2. Eva Yeager
3. Samantha Hamilton
4. Arizona Fiduciary and Estate Services, LLC

5. Tina Brooks applied for initial individual fiduciary licensure and has met the minimum standards for licensure. Ms. Brooks disclosed several civil and criminal matters that she was involved in as a listed party. Ms. Brooks disclosed a 1991 theft that was deferred in lieu of community service and a 1997 DUI. Ms. Brooks also disclosed three debt cases that were filed in 1994, 1996, and 1997 in which she was listed as a defendant. Ms. Brooks disclosed a 2011 forcible detainer that resulted in her filing a 2011 bankruptcy that contained no adversarial proceedings.

Ms. Brooks also disclosed a 2010 work termination where she was serving as an Assistant Director in a position in which she helped provide services to adults with developmental disabilities and or mental illnesses. Ms. Brooks stated she was terminated because she suggested to colleagues that it was ok to transport a disabled individual into a van that later resulted in an injury.

The Division recommends approval of initial individual fiduciary licensure for Tina Brooks.

6. Cynthia Wahlin applied for initial individual fiduciary licensure and has met the minimum standards for licensure. Ms. Wahlin disclosed a 2007 dissolution of marriage and a 2009 bankruptcy case in which she was listed as a defendant in an adversarial proceeding. Allegations in the adversarial proceedings included that Ms. Wahlin had her ex-husband transfer her money during a bankruptcy. Ms. Wahlin stated that the cash in question was not property of the debtor (husband) and the transfers were made in the ordinary course of business. The adversarial proceedings were settled, and Ms. Wahlin was dismissed from the case without prejudice.

The Division recommends approval of initial individual fiduciary licensure for Cynthia Wahlin.

7. Thomas Strasburg applied for initial fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application. However, his application demonstrates that he does not meet the minimum eligibility requirements for licensure.

Based on Mr. Strasburg's educational background of attaining a bachelors degree, and pursuant to ACJA § 7-202(E)(1)(b)(2), he is required to demonstrate that he has a minimum of one, full-time equivalent work experience within the previous five years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship, or conservatorship in one or a combination of the following circumstances:

- (a) Under the supervision of a licensed fiduciary;
- (b) Under the supervision of a bank trust or trust company officer; or
- (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

Mr. Strasburg stated on his application that he is aware that he does not meet the above listed Code requirements and is asking the Board to waive the experience requirements pursuant to A.R.S. 14-5651(G). Mr. Strasburg states that he worked with two attorneys to help administer a trust as a co-trustee for a family for nine years. Mr. Strasburg stated that he never worked under the supervision of the attorneys but stated that the work was extensive and should be applicable.

Based on the foregoing, the Division recommends denial of initial individual fiduciary licensure for Thomas Strasburg, pursuant to ACJA § 7-201(E)(2)(c)(1), for failure to meet the qualifications and eligibility requirements as outlined in ACJA § 7-202(E)(1)(b)(2).

8. Todd Bendell

9. Jonathan Elliott

Todd Bendell and Jonathan Elliott applied for initial fiduciary licensure. They successfully passed the program examination and have submitted complete applications. However, their application demonstrates that they do not meet the minimum eligibility requirements for licensure.

Based on Mr. Bendell's and Mr. Elliott's educational background of at least attaining a bachelor's degree, and pursuant to the Arizona Code of Judicial Administration ("ACJA") § 7-202(E)(1)(b)(2), they are required to demonstrate that they have a minimum of one, full-time equivalent work experience within the previous five years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent's estate, guardianship, or conservatorship in one or a combination of the following circumstances:

- (a) Under the supervision of a licensed fiduciary;
- (b) Under the supervision of a bank trust or trust company officer; or
- (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

Mr. Bendell and Mr. Elliott stated that they meet the above listed criteria in (b) through their work as financial advisors working for Merrill Lynch. Both stated that they were unable to submit a completed Affidavit of Employer from a Bank Trust or Trust Company Officer to verify their experience due to being terminated from Merrill Lynch and leaving on bad terms. Mr. Bendell and Mr. Elliott were instructed by Division staff to submit additional information regarding their work experience to include duties, responsibilities and supervisor information, especially in relation to the Bank Trust or Trust Company Officer. Both complied and provided the additional information to include a list of three supervisors including a Bank Trust Officer

Division staff contacted all three supervisors to include the Bank Trust Officer. The Bank Trust Officer stated he did recall Mr. Bendell and Mr. Elliott when they worked as financial advisors for Merrill Lynch and stated that they would refer clients to him. The Bank Trust Officer confirmed his status as a Bank Trust Officer for Bank of America and that he did not supervise Mr. Bendell or Mr. Elliott. The Bank Trust Officer stated that as a Trustee he runs a fiduciary type platform and Mr. Bendell and Mr. Elliott would only refer clients to him and serve as the primary point of contact with Merrill Lynch. The Bank Trust Officer stated as a Trust Officer he would oversee clients as an estate administrator and that Mr. Elliott or Mr. Bendell would not have those responsibilities. The Bank Trust Officer stated that Mr. Elliott and Mr. Bendell worked indirectly for the bank since Merrill Lynch is a subdivision of Bank of America. The Bank Trust Officer did state that Mr. Elliott and Mr. Bendell would help to see how clients could meet their legacy and family goals. The Bank Trust Officer also stated that he was aware that Mr. Bendell and Mr. Elliott were no longer with Merrill Lynch but was unaware of the specifics but stated that he heard that they were asked to leave.

The two other listed supervisors currently work for Merrill Lynch and stated that they were never the direct supervisor/manager for both Mr. Bendell and Mr. Elliott. One of the listed supervisors stated that Mr. Bendell and Mr. Elliott offer advice to Trust Officers for proper investments but would not serve as a Trustee. The listed supervisor also stated that Mr. Bendell and Mr. Elliott would serve as a Merrill Lynch liaison for the Trust Department but would have no decision-making abilities since those responsibilities were with the Bank of America Trust Officer.

Mr. Bendell disclosed a 2009 battery conviction (Misdemeanor) and stated it was a result as to when he was a freshman in college and had he gotten into an altercation with another fraternity member who had made harassing remarks to him and his friends. Mr. Bendell failed to disclose a 2009 minor in possession/consumption (Misdemeanor) and a 2019 dissolution of marriage. Mr. Bendell stated that he was unaware that the dissolution was something he had to disclose and was not trying to hide it from the Board and apologized for the oversight. Both Mr. Bendell and Mr. Elliott were terminated by Merrill Lynch.

Mr. Bendell stated that he was terminated by Merrill Lynch in September 18, 2019 due to “conduct including solicitation of prospects inconsistent with Firm standards, and failure to fully cooperate during the course of the Firm's review.”

- Mr. Bendell stated that he had been in violation of some calling violations to include the Do Not Call List Policy by calling prospects for a period of two years.
- Mr. Bendell stated that he cooperated with the firm’s review aside from some text messages that he could not access due to losing his phone in a camping trip during the investigation.
- Mr. Bendell stated that he was terminated by Merrill Lynch even though he felt that he was cooperating. Mr. Bendell stated that the firm felt that he was being intentionally dishonest by not providing the text messages.

Mr. Elliott stated that he was terminated by Merrill Lynch in September 19, 2019 due to “conduct including solicitation of prospects inconsistent with Firm standards, and failure to fully cooperate during the course of the Firm's review.”

- Mr. Elliott stated that his firm had been in violation of some calling violations to include the Do Not Call List Policy.
- Mr. Elliott stated was the only issue he had encountered with Merrill Lynch and stated that he did cooperate with investigation. Mr. Elliott stated that he did delete the text messages that were requested from him as it was a normal practice of his to routinely delete older messages but provided the firm text messages from his backup from his computer.
- Mr. Elliott stated that he was terminated by Merrill Lynch even though he had made some suggestions to have his branch retrained and to maintain call logs.

Based on the foregoing, the Division recommends denial of both initial individual fiduciary licenses for Todd Bendell and Jonathan Elliott, pursuant to ACJA § 7-201(E)(2)(c)(1), for failure to meet the qualifications and eligibility requirements as outlined in ACJA § 7-202(E)(1)(b)(2) and ACJA § 7-201(E)(2)(c)(2)(b)(xiv) for making a false or misleading oral or written statement to Division staff or the Board by not providing their direct supervisor information in their application and due to their assertions that they worked directly under the supervision of a Bank Trust Officer.

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4) ADMINISTRATIVE ISSUES

4-A: Discussion regarding Administrative Directive 2020-20 concerning in person Continuing Education.

Staff will provide more information at the meeting.