

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES ex. rel. IRVING L.)
FAUGHT, ADMINISTRATOR;)

Plaintiffs,)

vs.)

BARRY POLLARD AND)
ROXANNE POLLARD,)

Defendants and Third Party)
Plaintiffs)

vs.)

AXA ADVISORS LLC, a Delaware)
Limited Liability Company; and AXA)
EQUITABLE LIFE INSURANCE)
COMPANY, f/k/a EQUITABLE LIFE)
ASSURANCE SOCIETY OF THE)
UNITED STATES; FARMERS &)
MERCHANTS BANK, an Oklahoma)
Banking Entity; FARMERS &)
MERCHANTS BANCSHARES, INC., an)
Oklahoma Corporation;)
JOHN V. ANDERSON, Individually, and)
as an officer and director of Farmers &)
Merchants Bank, and as a shareholder of)
Farmers & Merchants Bancshares, Inc.; and)
JOHN TOM ANDERSON, Individually, and)
as an Officer and Director of Farmers &)
Merchants Bank and as a shareholder of)
Farmers & Merchants Bancshares, Inc.,)

Third Party Defendants.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

APR - 9 2007

PATRICIA PRESLEY, COURT CLERK
by ~~_____~~
Presley

Case No.: CJ-2005-3799
Judge Vicki Robertson

AMENDED THIRD PARTY PETITION

COME NOW, the Third Party Plaintiffs, Barry and Roxanne Pollard hereinafter

“Pollards”, husband and wife, and for their Amended Third Party Petition against AXA Equitable Life Insurance Company, f/k/a Equitable Life Assurance Society of the United States (hereinafter referred to as “Equitable”), and Farmers & Merchants Bank, an Oklahoma Banking Entity; Farmers & Merchants Bancshares, Inc., an Oklahoma Corporation; John V. Anderson, individually, and as an Officer and Director of Farmers & Merchants Bank and as a shareholder of Farmers & Merchants Bancshares, Inc.; and John Tom Anderson, individually, and as an Officer and Director of Farmers & Merchants Bank and as a shareholder of Farmers & Merchants Bancshares, Inc., allege and state as follows:

CLAIMS AGAINST EQUITABLE

1. Third Party Defendant AXA Equitable Life Insurance Company, f/k/a The Equitable Life Assurance Society of the United States is a New York Corporation, conducting business in Oklahoma.
2. Marsha Schubert d/b/a/ Schubert & Associates (hereinafter “Schubert”) was licensed as a registered representative of Equitable licensed to sell insurance products for the time periods on or about May 1992 to April 2004.
3. During this time period, Schubert was an employee and disclosed agent of Equitable.
4. Equitable held Schubert out as a representative and an agent operating its Crescent, Oklahoma office, and Equitable had a duty to supervise Schubert’s activities. At all times relevant herein, Schubert was the actual and apparent agent for Equitable, and Equitable is responsible for the acts committed by their agent.
5. Pollards began doing business with, purchasing insurance products from and entering into insurance contracts with Equitable through Equitable’s agent

Schubert in approximately 1993.

6. All business the Pollards engaged in with Schubert was in Schubert's position as an employee, representative or agent of Equitable.
7. Pollards purchased variable life insurance policies from Equitable as follows:
 - a. Policy Nos. 43 238 937 and 43 257 265 in 1993;
 - b. Policy No. 44 230 443 in 1994;
 - c. Policy No. 48 253 032 in 1994.
8. Pollards paid monies to Schubert and Equitable for payment of premiums for life insurance, for investment pursuant to the terms of the insurance policies, and to purchase other products offered by Equitable.
9. All monies paid to Schubert by the Pollards were paid to her in her position as representative, employee or agent of Equitable.
10. The monies paid by the Pollards to Schubert and Equitable were for payment of premiums for life insurance, for investment pursuant to the terms of the insurance policies, and to purchase other products offered by Equitable.
11. Schubert, while acting as an agent for Equitable, made material representations relating to the value of the insurance policies, the performance and balance of investments made pursuant to the insurance policies, and the existence of annuities.
12. In a manner to further induce the Pollards to continue to pay premiums or other monies directly to Equitable and Schubert, Schubert represented to the Pollards that she was investing funds provided to her and to Equitable in Equitable insurance and related products.

13. Equitable benefited and profited from ongoing premium payments and other monies paid by the Pollards to Schubert and Equitable for over ten years to the detriment of the Pollards.
14. In a manner to further induce the Pollards to continue to pay premiums or other monies directly to Equitable and Schubert, Schubert represented to the Pollards that the insurance policies were in existence and increasing in value.
15. In a manner to further induce the Pollards to continue to pay premiums or other monies directly to Equitable and Schubert, Schubert represented to the Pollards that the policies were doing so well that the increase in value of the policies would pay for the premiums and allow for the Pollards to borrow money against the policies.
16. In a manner to further induce the Pollards to continue to pay premiums or other monies directly to Equitable and Schubert, Schubert made oral representations and furnished the Pollards with written statements indicating substantial increases in the values of the insurance policies and the investment of monies related to the insurance policies.
17. In a manner to further induce the Pollards to continue to pay premiums or other monies directly to Equitable and Schubert, Schubert represented to the Pollards that she used monies provided to her or increases in the value of the insurance policies to purchase annuities for the Pollard's benefit.
18. These representations were false at the time they were made. Schubert made these representations knowing they were false and with the intent that the Pollards should rely upon them.

19. In reliance upon and as a result of the fraudulent misrepresentations by Schubert, Pollards purchased and continued to maintain life insurance policies with Equitable and paid substantial premiums and monies to Schubert and Equitable from which Equitable received substantial monetary benefits and profits.
20. Pollards would not have purchased, maintained or invested in the policies, had it not been for the fraudulent misrepresentations of Schubert that were allowed to remain ongoing by Equitable.
21. As a direct and proximate result of the fraudulent misrepresentations of Schubert as an agent of Equitable, the Pollards have detrimentally relied upon these fraudulent representations and such reliance has caused the Pollards to suffer damages.
22. By virtue of the Petition filed herein by the Plaintiff Oklahoma Department of Securities ex. rel Irving L. Faught, Administrator, the Plaintiff seeks damages against the Pollards, Defendants/Third Party Plaintiffs, including but not limited to claims for fraud and unjust enrichment. These claims arise from the actions and activities of Schubert, including the operation of a "Ponzi" scheme, as set forth in Plaintiff's Petition filed herein.
23. During the course of its investigation, the Department of Securities discovered that Schubert had received well over Two Hundred Million Dollars (\$200,000,000.00) in customer's money that was improperly and illegally handled.
24. Notwithstanding the large and voluminous transfers of funds in and out and between various accounts, Equitable never noticed or questioned the bizarre

account activity in the small Crescent office run by Schubert.

25. Equitable knew or should have known of these irregularities long before the Department of Security's investigation.
26. Equitable did not conduct an investigation, contact any investors, or question any of the activities of the Crescent, Oklahoma office operated by Schubert.
27. Equitable did not contact the Pollards and disclose to them the improper and illegal activities of Schubert.
28. Equitable, as a licensed and regulated insurance company had a duty to supervise, monitor, be aware of, and control the sales of and investments in insurance products of its registered representative and agent Schubert.
29. Equitable had the duty to ascertain what products Schubert was selling, the manner of sale, the handling of the proceeds, the handling of premiums and other monies paid, the documentation (including advertisements, brochures, and private placement memoranda) used in connection with such products, the suitability of such investments for the intended investors, the management and maintenance of insurance products and whether Schubert was sponsoring, promoting, or engaging in any other illegal or inappropriate business activity.
30. Equitable owed such duty to supervise Schubert to those persons to whom Schubert was selling life insurance and other Equitable products, including the Pollards, and failed to meet its obligation to supervise Schubert in the Crescent, Oklahoma office, breaching its duty to do so.
31. If Equitable would have supervised the activities of Schubert the fraud and improper handling of customer and investor funds would have been easily

discovered.

32. The breach of said duty by Equitable was a direct and proximate cause of the losses sustained by the Pollards.
33. Equitable is liable for the wrongful conduct of Schubert under the doctrine of respondent superior.
34. Equitable owed a duty to the Pollards to fully disclose the wrongful actions and omissions of Schubert.
35. Equitable breached said duty by its concealment of all such wrongful acts and omissions.
36. Equitable owed a duty to the Pollards of good faith and fair dealing. Equitable breached said duty.
37. As a direct and proximate result of Equitable's wrongful actions and/or omissions, the Pollards have been damaged and are therefore entitled to actual and punitive damages.
38. The Pollards have suffered damages as direct and proximate result of Schubert's and Equitable's activities and omissions and are entitled to actual damages.
39. The actions of Equitable towards the Pollards were either intentional and with malice towards the Pollards or in reckless disregard to the rights of the Pollards entitling the Pollards to punitive and exemplary damages.
40. As a direct and proximate result of the wrongful acts of Schubert and the wrongful acts and omissions of Equitable, Pollards have been damaged and are therefore entitled to both actual and punitive damages.

COUNT I
ACTUAL FRAUD

Pollards reallege all relevant allegations contained herein above.

41. Schubert, while acting as an agent for Equitable, made material misrepresentations relating to the performance and value of balance of the Pollard's life insurance policies, and the availability of funds available to be borrowed, and the existence of annuities.
42. These representations were false at the time they were made. Schubert made these representations knowing they were false and with the intent that the Pollards should rely upon them.
43. As a result of the fraudulent misrepresentations by Schubert, Pollards purchased and continued to maintain life insurance policies with Equitable and paid substantial premiums of which Equitable received monetary benefits and profited. Pollards would not have purchased or maintained the policies, had it not been for the fraudulent misrepresentations of Schubert that were allowed to remain ongoing by Equitable.
44. As a direct and proximate result of the fraudulent misrepresentations of Schubert as an agent of Equitable, the Pollards have detrimentally relied upon these fraudulent representations that have caused them damages, both actual and punitive.

COUNT II
AGENCY

Pollards reallege all relevant allegations contained herein and above.

45. At all times relevant herein, Schubert was the actual and apparent agent for

Equitable, which entity is responsible for the wrongful acts committed by their agent.

46. At all times relevant herein Equitable knew, or should have known, of the wrongful acts of its agent Schubert.

47. Equitable had a duty to supervise its agent Schubert, and it breached its duty by allowing its agent to make false and misleading representations and to conduct illegal activities as herein above described.

48. As a direct and proximate result of the wrongful acts of Schubert and the wrongful acts and omissions of Equitable, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT III
NEGLIGENT SUPERVISION/RESPONDEANT SUPERIOR

Pollards reallege all relevant allegations contained herein and above.

49. Equitable, as a licensed and regulated insurance company, had a duty to supervise, monitor, be aware of, and control the sales of and investments in its products and the handling of its customers' monies by its registered representative and agent Schubert.

50. Equitable owed such duty to those persons to whom Schubert was selling life insurance and other Equitable products.

51. Equitable, for the time period during which Schubert was licensed with it as a registered representative, breached the aforesaid duty.

52. The breach of said duty by Equitable was a direct and proximate cause of the losses sustained by the Pollards.

53. Equitable is liable for the wrongful conduct of Schubert for the time period during which Schubert was registered with it as a registered representative under the doctrine of respondent superior.

54. Pollards have suffered damages as direct and proximate result of Schubert's and Equitable's activities and omissions and are entitled to actual and punitive damages.

COUNT IV
COUNSTRUCTIVE FRAUD

Pollards reallege all relevant allegations contained herein and above.

55. Equitable owed a duty to Pollards to fully disclose the wrongful actions and omissions of Schubert.

56. Equitable breached said duty by its concealment of all such wrongful acts and omissions.

57. Equitable profited by Schubert's actions and gained an advantage to the prejudice and detriment of the Pollards.

58. As a direct and proximate result of Equitable's wrongful actions and/or omissions, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT V
NEGLIGENCE

Pollards reallege all relevant allegations contained herein and above.

59. Equitable owed a duty to the Pollards to exercise at least ordinary care in the handling of the Pollard's insurance contracts with Equitable.

60. Equitable breached said duty by its concealment of all such wrongful acts and

omissions.

61. As a direct and proximate result of Equitable's wrongful actions and/or omissions, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT VI
BAD FAITH

Pollards reallege all relevant allegations contained herein and above.

62. Equitable owed a duty of good faith and fair dealing to the Pollards.
63. Equitable breached said duty by its concealment of all such wrongful acts and omissions.
64. As a direct and proximate result of Equitable's wrongful actions and/or omissions, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT VII
BREACH OF CONTRACT

Pollards reallege all relevant allegations contained herein and above.

65. Pollard's and Equitable entered into four variable life insurance policy contracts.
66. Equitable breached the terms of these contracts.
67. Pollards have been damaged and are therefore entitled to damages for Equitable's breach of the contracts.

COUNT VIII
UNJUST ENRICHMENT

Pollards reallege all relevant allegations contained herein and above.

68. Equitable gained an advantage and profit to the prejudice and detriment of the

Pollards as the result of the actions of Equitable's agent Schubert.

69. Equitable has been unjustly enriched at the expense of the Pollards. It would be inequitable for Equitable to retain the benefit of the money paid by the Pollards under the circumstances set forth herein.

70. Pollards have been damaged and are therefore entitled to recover damages from Equitable in the amount of the money paid to Equitable as the result of actions of its agent Schubert.

WHEREFORE, Pollards as Third Party Plaintiffs pray for judgment against Third Party Defendant Equitable in the amount of the actual damages suffered which continue to accrue by Pollards as Third Party Plaintiffs, as well as punitive damages, costs and reasonable attorney fees, and such other and further relief as the Court deems just and proper.

**CLAIMS AGAINST:
FARMERS & MERCHANTS BANK; FARMERS & MERCHANTS BANKSHARES,
INC.; JOHN V. ANDERSON; and JOHN TOM ANDERSON**

Pollards reallege all relevant allegations contained herein and above.

71. Defendant Farmers & Merchants Bank ("F&M Bank") is a state chartered bank located in Crescent, Oklahoma, which also maintains locations in Yukon, Guthrie, and Piedmont, Oklahoma.

72. Farmers & Merchants Bancshares, Inc. (Bancshares), an Oklahoma corporation, is the one-bank holding company of F&M Bank.

73. Defendant John V. Anderson, an individual, resides in or near Crescent, Oklahoma and is, and at all times material to this action was, Chairman of the Board of Directors of F&M Bank.

74. Defendant John Tom Anderson, an individual, resides in or near Crescent, Oklahoma

and is, and at all times material to this action was, President/CEO and a director of F&M Bank.

75. Marsha Schubert owned, operated and/or controlled several accounts at F&M Bank from on or about May 1992 to April 2004.

76. During the operation of Schubert's unlawful investment activities and in furtherance thereof, she utilized several accounts at F&M Bank through which Pollard funds flowed.

77. Significant amounts of money flowed through F&M Bank accounts daily as a result of Schubert's unlawful scheme.

78. F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson knew or should have been alerted to Schubert's unlawful activities by the multiple transactions of significant amounts of money that flowed through those F&M Bank accounts to which Schubert controlled or had access.

79. F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson materially aided, participated and perpetuated Schubert's fraudulent activities.

80. John V. Anderson and John Tom Anderson reviewed the transactions flowing through Schubert's accounts at F&M Bank, they had knowledge of Schubert's significant banking transactions, and yet, they failed to follow routine banking procedures and practices thus perpetuating Schubert's ongoing unlawful conduct.

81. Despite there being an estimated Two Hundred Sixty-Seven Million Dollars (\$267,000,000.00) flowing through Schubert's F&M Bank accounts over a five year period, F&M Bank allowed Schubert to operate on uncollected funds.

82. F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson allowed Schubert to operate her financial affairs through F&M Bank accounts by utilizing a scheme commonly referred to as a "float."

83. F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson regularly approved the payment of and honored checks drawn on uncollected funds.

84. The Defendants knew or should have known that Schubert's transactions were not legitimate investment activities.

85. The Defendants allowed Schubert to commingle funds.

COUNT I
AIDING AND ABETTING SECURITIES FRAUD

Pollards reallege all relevant allegations contained herein and above.

86. Schubert, in furtherance of her unlawful investment activities, made misrepresentations of material facts.

87. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson knew, or with the exercise of reasonable care could have known, that Schubert's investment activities and transactions flowing through F&M Bank involved unlawful conduct.

88. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson ignored the ongoing suspicious activities involving Schubert's accounts.

89. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson knew, or with the exercise of reasonable care could have known, that their failure to investigate or exercise reasonable care perpetuated Schubert's fraud as against the Pollards.

90. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's actions were willful and wanton or were made with gross and reckless disregard for the rights of the Pollards.

91. The Defendants, and each of them, benefited substantial profits through Schubert's unlawful financial transactions that flowed through F&M Bank.

92. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson are therefore jointly and severally liable for the fraud perpetrated against the Pollards.

93. Accordingly, the Pollards are entitled to an award for actual and punitive damages.

COUNT II
COUNSTRUCTIVE FRAUD

Pollards reallege all relevant allegations contained herein and above.

94. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's owed a duty to the Pollards to fully disclose their wrongful actions and omissions as well as those of Schubert.

95. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's owed a duty to Pollards to ensure that there was no improper use of their funds.

96. The Defendants breached said duty by thier involvement in and concealment of all such wrongful acts and omissions.

97. The Defendants profited by Schubert's actions and gained an advantage to the prejudice and detriment of the Pollards.

98. As a direct and proximate result of the Defendants' wrongful actions and/or omissions, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT III
NEGLIGENCE

Pollards reallege all relevant allegations contained herein and above.

99. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom

Anderson's had a duty to review, monitor, maintain, be aware of, and control the account activity on those accounts over which Schubert had access and control.

100. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's had a duty to apply standard banking practices and procedures and to exercise reasonable care to ensure that no improper conduct was involved in the financial flow of funds through the bank.

101. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's owed such a duty to Pollards.

102. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's breached the aforesaid duty.

103. The breach of said duty by the Defendants was a direct and proximate cause of the losses sustained by the Pollards.

104. The Defendants are liable for their wrongful conduct for the time period during which Schubert conducted her unlawful activities through the Defendant Bank.

105. Pollards have suffered damages as direct and proximate result of the Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's activities and omissions and are entitled to actual and punitive damages.

COUNT IV
NEGLIGENCE

Pollards reallege all relevant allegations contained herein and above.

106. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's owed a duty to Pollards to exercise at least ordinary care in the handling of the Pollard's funds.

107. The Defendants breached said duty by their concealment of all such wrongful acts and omissions.

108. As a direct and proximate result of the Defendants' wrongful actions and/or omissions, Pollards have been damaged and are therefore entitled to actual and punitive damages.

COUNT V
UNJUST ENRICHMENT

Pollards reallege all relevant allegations contained herein and above.

109. The Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson's gained an advantage and profit to the prejudice and detriment of the Pollards as the result of the actions of Schubert.

110. The Defendants have been unjustly enriched at the expense of the Pollards. It would be inequitable for the Defendants to retain the benefit received as a result of their inactions which resulted in the mistreatment and misuse of the Pollards' funds.

111. The Pollards have been damaged and are therefore entitled to recover damages from the Defendants as the result of actions of Schubert.

WHEREFORE, Pollards as Third Party Plaintiffs pray for judgment against Third Party Defendants F&M Bank, F&M Bancshares, John V. Anderson and John Tom Anderson in the amount of the actual damages suffered which continue to accrue by the Pollards as Third Party Plaintiffs, as well as punitive damages, costs and reasonable attorney fees, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in cursive script, reading "Carolie E. Rozell". The signature is written in black ink and is positioned above a horizontal line.

RICHARD E. PARRISH, OBA #6915

SHAWN D. FULKERSON, OBA # 14484

CAROLIE E. ROZELL, OBA #19679

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ATTORNEYS FOR DEFENDANTS
AND THIRD PARTY PLAINTIFFS
BARRY AND ROXANNE POLLARD

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of April, 2007, a true and correct copy of the above and foregoing Pleading was placed in the U. S. Mail, postage prepaid, and addressed to the following:

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CAROLIE E. ROZELL