

[J-102-2016]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

EUGENE R. YENCHI AND RUTH I. YENCHI, HUSBAND AND WIFE, Appellees	:	No. 8 WAP 2016 : : Appeal from the Order of the Superior : Court entered September 15, 2015 at : No. 753 WDA 2014, vacating the : Judgment of the Court of Common : Pleas of Allegheny County entered May : 5, 2014 at No. GD 01-006610, and : remanding.
v.		
AMERIPRISE FINANCIAL, INC., AMERIPRISE FINANCIAL SERVICES, INC., RIVERSOURCE LIFE INSURANCE COMPANY AND BRYAN GREGORY HOLLAND, Appellants	:	ARGUED: November 1, 2016 : : : : : : : : : :

OPINION

JUSTICE DONOHUE

DECIDED: JUNE 20, 2017

In this discretionary appeal, we must decide whether a fiduciary duty can arise in a consumer transaction for the purchase of a whole life insurance policy based upon the advice of a financial advisor where the consumer purchasing the policy does not cede decision-making control over the purchase to the financial advisor. We conclude that, consistent with our jurisprudence, no fiduciary duty arises in such a situation. Consequently, we reverse the Superior Court’s decision to the contrary.

In 1995, Bryan Holland (“Holland”), a financial advisor for IDS Life Insurance Corporation, made an unsolicited telephone contact, a “cold call,” to Eugene and Ruth Yenchi (the “Yenchis”) and asked to meet with them regarding their “financial stuff.” At

the initial meeting, Mr. Yenchi informed Holland that he had a long-term disability policy, and Holland asked him to bring it with him to their next meeting. At this second meeting, Holland reviewed the disability policy and advised the Yenchis to keep it, as it was a good policy and he could not offer them a comparable product.

At a subsequent meeting in December 1995, for a fee of \$350, Holland presented the Yenchis with a financial management proposal (the "Proposal"). The Proposal contained a notice that it had been prepared by "your American Express financial advisor" (Holland) and that "[a]t your request, your American Express financial advisor can recommend products distributed by American Express Financial Advisors and its affiliates as investment alternatives for existing securities." Complaint, 11/13/2003, Exhibit 1, at 3. The Proposal offered the Yenchis a number of general recommendations, including that they monitor monthly expenses, consolidate their debt, consider various savings plans, consolidate current life insurance policies into one policy, review long-term care coverage, keep accurate records for tax purposes (medical expenses and charitable contributions), transfer 401(k) funds into mutual funds, and continue estate planning with an attorney and their financial advisor. *Id.* at 7-8. The Yenchis implemented some of these recommendations, saving money in an investment certificate and opening an IRA account.

With respect to the consolidation of life insurance policies, the Yenchis provided Holland with relevant information regarding their current policies with Met Life (five held by Mr. Yenchi and two by Ms. Yenchi). In January 1996, Holland proposed a whole life insurance policy for Mr. Yenchi with an initial \$115,000 death benefit. In June 1996, he proposed a similar policy for Mr. Yenchi with an initial \$100,000 death benefit, plus a \$25,000 rider for Ms. Yenchi. Mr. Yenchi purchased the latter policy, cashing out his five Met Life policies to make the initial payment. Because Mr. Yenchi also purchased

the rider for Ms. Yenchi, she did not need to cash in her existing life insurance policies for a new one. Instead, in 1997 Ms. Yenchi used the proceeds from her two Met Life policies to purchase a deferred variable annuity. In 1998, Holland proposed that the Yenchis increase their life insurance coverage to \$300,000, but they rejected Holland's advice on this occasion, deciding that they had enough life insurance.

In 2000, the Yenchis had their portfolio independently reviewed. Through this process, they were advised that the 1996 whole life insurance policy Mr. Yenchi had purchased was underfunded, destined to lapse, and that additional premiums beyond those allegedly represented by Holland,¹ at substantially high rates increasing over time, would have to be paid. They also learned that Ms. Yenchi's 1997 deferred variable annuity would not mature until 2025, when she was eighty-four years old (rather than sixty-five, as had allegedly been represented by Holland).

In April 2001, the Yenchis initiated suit by writ of summons, naming as defendants American Express Financial Services Corporation, American Express

¹ In their complaint, the Yenchis admitted that Holland presented them with a "Life Protection Plus Illustration" (the "Illustration") that provided the essential terms of the whole life policy. Complaint, 11/13/2003, ¶ 147. These terms included: (1) an initial death benefit of \$100,000, decreasing to \$90,000 at age 70, and to \$80,000 at age 80; and (2) an initial payment of \$17,500, with monthly premium payments of \$240 in years one through eight, of \$2390.45 in year nine, \$784.65 in year ten, and \$2887 in year eleven. Motion for Summary Judgment, Exhibit 1, Deposition of Eugene Yenchi at 105 (Dep. Ex. 2). The Illustration included separate columns for interest at the current (5.85%) and guaranteed (4%) interest rates, and further indicated that there would be no surrender value at age 82. *Id.* In connection with the purchase of the policy, Mr. Yenchi signed a disclosure statement which indicated that current interest rates were not a prediction of future policy performance. *Id.* at 105-07.

At his deposition, Mr. Yenchi testified that Holland represented to him that the monthly premiums on the policy would be \$240 for eight years, at which time the policy would be paid off. *Id.* at 125-26. At trial, Mr. Yenchi testified that he understood that if he paid the \$240 monthly premium, the payout would be "guaranteed." N.T., 1/28/2014, at 720. The Illustration was introduced at trial as Exhibit 20. *Id.* at 705.

Financial Advisors Corporation, IDS Life Insurance Company,² and Holland (collectively, “Appellants”). The Yenchis’ complaint, filed in November 2003, asserted claims of negligence/willful disregard,³ fraudulent misrepresentation, violation of the Uniform Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. §§ 201-1-201-9.3, bad faith, negligent supervision, and breach of fiduciary duty.

By order dated March 21, 2013, the trial court granted summary judgment to Appellants on all claims relating to the 1997 purchase of the deferred variable annuity, and dismissed the claims for bad faith, negligent supervision and breach of fiduciary duty relating to the 1996 purchase of the whole life insurance policy. Of relevance here, with respect to the breach of fiduciary duty claim, the trial court held that no fiduciary relationship was established between the Yenchis and Holland because the Yenchis continued to make their own investment decisions. Trial Court Memorandum, 7/28/2014, at 3. The trial court cited to its own prior decision in *Ihnat v. Pover*, 146 P.L.J. 299, 303-10 (1999), in which it held that no fiduciary duty arises between an insurance agent and a policyholder unless the policyholder delegates decision-making

² American Express Financial Services Corporation is now known as Ameriprise Financial, Inc. American Express Financial Advisors Corporation is now known as Ameriprise Financial Services, Inc. IDS Life Insurance Company is now known as RiverSource Life Insurance Company.

³ The first count of the Yenchis’ complaint commingles allegations relating to both professional negligence (e.g., that Appellants breached a duty to exercise reasonable care, skill and diligence in advising and recommending an insurance program appropriate for the needs of the Yenchis), and negligent misrepresentation (e.g., that Appellants failed to disclose full, correct and material information regarding the products being offered). Complaint, 11/13/2003, ¶¶ 190-98. At oral argument on Appellants’ motion for summary judgment, counsel for the Yenchis identified this claim as one for negligent misrepresentation and advised the trial court that the Yenchis had not asserted a claim for professional malpractice. N.T., 3/27/2013, at 7. The trial court did not grant summary judgment on this claim. At some point prior to trial, however, the Yenchis either abandoned or voluntarily dismissed the claim, although the case docket does not so reflect. The Yenchis raised no issues with regard to this count on appeal.

control to the insurance agent. In applying its *Ihnat* decision, the trial court rejected the notion that there was any material difference between an insurance agent and a financial advisor. The trial court further indicated that the Yenchis “knew they were dealing with a representative of American Express who was recommending purchases of American Express investments.” Trial Court Memorandum, 7/28/2014, at 4. While the trial court noted that this fact may be relevant to the Yenchis’ fraudulent misrepresentation and UTPCPL claims, it did not provide support for a fiduciary duty claim, since “a breach of fiduciary duty claim requires a policyholder to give up control.” *Id.*

The case proceeded to trial on the Yenchis’ fraudulent misrepresentation and UTPCPL claims in connection with the purchase of the 1996 whole life insurance policy. At trial, the jury returned a verdict in favor of Appellants on the fraudulent misrepresentation claim and, based upon the same evidentiary record, the trial court found in Appellants’ favor on the UTPCPL claim.⁴

⁴ The Yenchis’ UTPCPL claim, like their claim for fraudulent misrepresentation, required proof of common law fraud. Their UTPCPL claim, which related to the 1996 whole life insurance policy, accrued on or around August 15, 1996, the date Mr. Yenchi purchased the policy. At that time, the catchall provision of the UTPCPL prohibited one from “engaging in any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding.” See *Prime Meats, Inc. v. Yochim*, 619 A.2d 769, 773 (Pa. Super. 1993) (quoting 73 P.S. § 201-2(4)(xvii)). On December 4, 1996, this provision was amended to prohibit one from “engaging in any other fraudulent **or deceptive** conduct which creates a likelihood of confusion or of misunderstanding.” 73 P.S. § 201-2(4)(xxi) (emphasis added). See *generally Walkup v. Santander Bank, N.A.*, 147 F.Supp.3d 349, 361 (E.D. Pa. 2015).

The Superior Court affirmed the trial court’s determination that the pre-amendment version of the UTPCPL applied to the Yenchis’ claim, thus requiring proof of fraudulent, as opposed to merely deceptive, conduct. *Yenchi*, 123 A.2d at 1083. The Yenchis did not seek review of that ruling by this Court.

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