

JURISDICTION

1.

This Court has jurisdiction over this matter as the named parties are citizens of different states and the amount that plaintiffs are claiming exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, in accordance with 28 U.S.C. § 1332.

VENUE

2.

The majority of the events giving rise to this Complaint occurred in the Eastern District, State of Louisiana, and, as such, Venue is proper in the Eastern District of Louisiana under 28 U.S.C. 28 USC § 1391.

PARTIES

3.

At all times relevant hereto, Plaintiff, Jacqueline Lowe, was and continues to be a resident of Louisiana, with her current domicile being the Parish of St. Tammany, State of Louisiana. Jacqueline Lowe is named as a Plaintiff herein representing herself individually.

4.

Additionally, The Lowe Family Trust Beneficiary IRA (hereafter “the Trust”), is a Louisiana Living Trust, created and situated in Louisiana. The Trust is a named Plaintiff herein represented by the current Co-Trustee, Jacqueline Lowe.

5.

On information and belief, Wells Fargo & Company is a corporation incorporated in the State of Delaware with its corporate headquarters located in the State of California and is a named Defendant herein (hereafter “Wells Fargo”).

6.

On information and belief, Wells Fargo Advisors Financial Network LLC is a company and subsidiary of Wells Fargo & Company, with Wells Fargo Advisors Financial Network LLC being organized and headquartered in St. Louis, Missouri (hereafter “Wells Fargo Advisors”). Wells Fargo Advisors is a named Defendant herein.

7.

On information and belief, Wells Fargo Clearing Services, LLC is a company and subsidiary of Wells Fargo & Company, with Wells Fargo Clearing Services, LLC being organized and headquartered in St. Louis, Missouri (hereafter “WFCS”). WFCS is a named Defendant herein.

8.

On information and belief Defendant, ABC Insurance Company, (a fictitious company name to be amended and supplemented upon verification), is a foreign insurance company authorized to and doing business in the state of Louisiana, averred to be the Insurer of Wells Fargo & Company.

9.

On information and belief Defendant, DEF Insurance Company, (a fictitious company name to be amended and supplemented upon verification), is a foreign insurance company authorized to and doing business in the state of Louisiana, averred to be the Insurer of WFCS.

STATEMENT OF FACTS

10.

The Lowe Family Trust Beneficiary IRA (“Trust”) is a Louisiana Living Trust that was established by Settlor, George Edward Lowe (“Settlor”), on April 15, 1997.

11.

Carole Cukel Neff (“Neff”), is the attorney who helped Settlor draft and record the Trust.

12.

The Trust contains the Individual Retirement Account (“IRA”) of Settlor, George Edward Lowe.

13.

The sole income beneficiary of the Trust is Settler’s wife, Jacqueline Carron Lowe.

14.

The Successor Beneficiaries of the Trust are Settlor’s children: Dawn Lowe Sagaser, Sharon Lynn Lowe, George Otto Lowe and Shannon Erin Lowe.

15.

Wells Fargo Advisors is a brokerage firm that employs and utilizes financial advisors to advise and manage securities and assets for individuals.

16.

For years, and during all relevant times referenced herein, the Trust was a retail client of Wells Fargo Advisors, that was specifically supervised and managed by financial advisor, Blake Kymen (“Kymen”) at the Wells Fargo Advisors office located at 2 Sanctuary Blvd # 101, Mandeville, LA 70471.

17.

Sole Settlor of the Trust, George Edward Lowe, passed away on December 11, 2011.

18.

Sometime around the year 2019, Kymen, employee for Wells Fargo Advisors, passed away.

19.

Shortly after Kymen passed, the Trust was reassigned to Wells Fargo Advisors employee, Oscar Hernandez (“Hernandez”), who continued to manage and advise on matters related to the Trust.

20.

Sometime after this reassignment, Hernandez terminated his employment with Wells Fargo Advisors and was hired on at Morgan Stanley.

21.

It was around that time that the Co-Trustees decided to have the Trust transferred from Wells Fargo Advisors to Morgan Stanley so that Hernandez could continue managing it.

22.

Sometime in December of 2022, Co-Trustee, Ms. Lowe, was informed by Hernandez that the Trust’s Required Minimum Distribution (“RMD”) for the year 2022 was significantly higher than it had been in the previous years when the Trust was managed by Wells Fargo Advisors.

23.

Hernandez suggested that Ms. Lowe contact her certified public accountant (“CPA”), Joel Bruno (“Bruno”), to have him discover why there were significant differences in the RMDs.

24.

Ms. Lowe contacted Bruno who informed her that he discovered when the Trust was first set up at Wells Fargo Advisors in 2001, someone entered Ms. Lowe's date of birth into the system incorrectly as January 1, 2001, instead of her actual birthdate which is October 31, 1939. Bruno also informed Ms. Lowe that this error was never fixed which resulted in Wells Fargo Advisors taking less than the RMD as required by law, year after year, especially after Ms. Lowe turned 70 and ½ years old in May of 2010.

25.

Ms. Lowe then reached out to Neff, the attorney who helped her deceased husband create the Trust, to ascertain if this was her late husband's intentions which she denied.

26.

Utilizing Ms. Lowe's correct age, Bruno calculated that the Trust should have distributed approximately eight hundred and forty-two thousand seven hundred and sixty six dollars and sixty eight cents (\$842,766.68) as of 2021, but only approximately five hundred and seventy thousand four hundred and sixty one dollars and twelve cents (\$570,461.12) had been actually distributed.

27.

The IRS eventually contacted Ms. Lowe informing her that the Trust owed more than one hundred and thirty thousand dollars (\$130,000.00) in penalties for failing to distribute the correct RMD of the Trust each year after Ms. Lowe turned 70 and ½ years old.

28.

Due to the error committed by Wells Fargo Advisors in calculating the RMD for the Trust it managed, the Trust has been penalized and now owes over one hundred and thirty thousand dollars (\$130,000.00) to the IRS, has incurred unnecessary CPA and attorney's fees in having to investigate the matter, the higher lump sums received because of the lower than required RMDs placed Ms. Lowe into a higher tax bracket and also reduced her Social Security benefits.

NEGLIGENCE

29.

According to Louisiana statutes on negligence, "Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill."¹

30.

When Kymen started managing the Trust at Wells Fargo Advisors in 2001, he negligently entered the wrong January 1, 2001, birthdate for Ms. Lowe, instead of her correct birthdate of October 31, 1939.

31.

From the time Kymen started managing the Trust, while employed at Wells Fargo Advisors, until he passed away, he made the Trust's RMDs based off of the incorrect birthdate.

¹ La. Civ. Code Ann. art. 2316.

32.

Kymen continued making the RMDs based on the incorrect listed age of Ms. Lowe and continued the incorrect RMD even after May 1, 2010, when Jacqueline Lowe turned 70 and $\frac{1}{2}$ years old.

33.

In the year 2010, the IRS had requirements in place that required a larger IRA RMD once an individual reaches the age of 70 and $\frac{1}{2}$ years or old.

34.

Although Ms. Lowe turned 70 and $\frac{1}{2}$ years old on May 1, 2010, Kymen and/or Hernandez continued managing the Trust while employed at Wells Fargo Advisors and continued making RMDs less than required by the IRS for an individual who has reached the age of 70 and $\frac{1}{2}$ years old.

35.

Wells Fargo Advisors employees Kymen and/or Hernandez owed a duty to the Trust as advisors, to manage the Trust and to make the correct RMDs as required by law.

36.

This duty was breached due to the initial and continued errors of Wells Fargo Advisors employees Kymen and/or Hernandez in failing to make the correct RMD based on the correct age and the Trust has not made the correct RMDs from 2012 until December 2022, and, as a result, has been penalized by the IRS for more than one-hundred and thirty thousand dollars (\$130,000.00).

37.

Under the doctrine of respondent superior and the law of agency, the named Defendants are vicariously liable for all damages incurred due to the error of its employees, Kymen and Hernandez, which error they continued to allow while managing the Trust and all while during the course and scope of their employment with Wells Fargo, Wells Fargo Advisors, and WFCL.

BREACH OF FIDUCIARY DUTY

38.

A fiduciary relationship between the Trust and the advisors at Wells Fargo Advisors existed at all relevant times hereto. That fiduciary relationship obligates the advisors of Wells Fargo Advisors to act for the benefit of the Trust, protect the Trust's interests, and to act with honesty, integrity, and complete candor with regards to possession, control, or advisement of trust funds/assets.

39.

Wells Fargo Advisors, Kymen and Hernandez, breached their fiduciary duty to the Trust by committing their error and allowing it to continue for almost ten (10) years, resulting in the Trust being penalized over one-hundred and thirty thousand dollars (\$130,000.00) by the IRS for Kymen's and Hernandez's continued failure to make the appropriate RMDs year after year. In other words, the Wells Fargo employees did not act for the benefit of the Trust.

40.

Under the doctrine of respondent superior and the law of agency, the named Defendants remain vicariously liable for all damages incurred by the Trust due to the breach of fiduciary duty owed by advisors Kymen and Hernandez, during the course and scope of their employment with Wells Fargo and Wells Fargo Advisors.

CONCLUSION

41.

Blake Kymen and Oscar Hernandez owed a duty to the Trust as they were the Well Fargo Advisors' employees who managed and advised in matters related to the Trust.

42.

During their management, said defendants breached their duty when they initially committed the error of inputting the incorrect birthdate of Ms. Lowe and continued to breach such duty every single year after Jacqueline Lowe turned 70 and ½ years old on May 1, 2010, as they continued RMD that were far less than required for a person who has reached the age of 70 and ½ years old.

43.

They also breached their fiduciary duty to the Trust when they failed to act for the benefit of the Trust by allowing the birthdate error to remain and by making RMDs that were less than what is required by law.

44.

As a result of their breach of duties, more than one-hundred and thirty thousand dollars (\$130,000.00) has been levied against the Trust by the IRS and the Trust has incurred additional unnecessary CPA and attorney's fees in having to investigate the matter. Additionally, Ms. Lowe's tax bracket has been raised based on the high lump sums due to the incorrect RMD which have also reduced her Social Security benefits.

45.

As these breaches occurred while Blake Kymen and Oscar Hernandez were employed by Wells Fargo Advisors, all Defendants are all liable together for the acts of such employees under the doctrine of respondent superior.

WHEREFORE, based on the foregoing, Jacqueline Lowe, individually, and as Co-Trustee of The Lowe Family Trust Beneficiary IRA, respectfully requests that the Court grant all appropriate relief including but not limited to attorney's fees, costs, damages, and all further relief they may be justly entitled to.

RESPECTFULLY SUBMITTED,
STEPHENSON, CHAVARRI & DAWSON, L.L.C.,

/s/ DAVID J. PATIN, JR.

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