Elder Abuse and Consumer Fraud: Distinctions without Substantive Difference

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It is wise for assistant attorneys general to become familiar with the dynamics of person-to-person elder financial exploitation because such knowledge can assist efforts to protect elder victims of consumer fraud.

Picture the following scenario currently occurring across the United States with disturbing frequency.1 Someone assumes a coercive position of influence over an older person. The older person is vulnerable. The person assuming a position of influence begins to exploit the vulnerable older person’s finances by virtue of the relationship. The method of exploitation the influencer uses is to deceive the vulnerable older person about certain material facts, in order to obtain the older person’s money. Is the victim experiencing consumer fraud or elder abuse? The answer is not necessarily mutually exclusive.

Legalisms aside, there are many similarities between the basic elements of person-to-person elder financial exploitation2 and consumer fraud. One common element is the establishment of a relationship of trust between the older victim and exploiter. For example, a financial power of attorney might use his principal-agent relationship to the older victim, in combination with his family ties, to gain the victim’s trust and access the victim’s finances.3 So too do many entities gain a helpful position to part victims from their money by posing as purportedly legitimate

1 LAURIE ORLOV, TRUE LINK FIN., THE TRUE LINK REPORT ON ELDER FINANCIAL ABUSE 13-14, 25 (2015), available at http://documents.truelinkfinancial.com/True-Link-Report-On-Elder-Financial-Abuse-012815.pdf. (“Other studies have reported that the majority of fraud is perpetrated by family members or paid caregivers. At $6.67 billion dollars, the amount of money our study identifies as lost each year to caregiver abuse is even larger than the amount identified by prior research. Importantly, the amount lost due to family member or trusted party theft is on average larger than losses incurred through other types of abuse, . . . Criminal fraud, financial exploitation, and caregiver abuse cost older Americans more than $36 billion a year, and that doesn’t account for the profound emotional and physical costs to seniors and their families that we’re just beginning to quantify.”); N.Y.C. DEP’T ON AGING ET. AL., UNDER THE RADAR: SELF-REPORTED PREVALENCE AND DOCUMENTED CASE STUDIES 55 (2011), available at https://ocfs.ny.gov/main/reports/Under%20the%20Radar%2005%2012%2011%20final%20report.pdf. (“Overall the study [on elder abuse in New York state] found an elder abuse incidence rate that was nearly 24 times greater than the number of cases referred to social service, law enforcement or legal authorities who have the capacity as well as the responsibility to assist older adult victims.”)

2 Financial exploitation is one type of elder abuse, which can be independent of or co-occurring with other types of elder abuse including physical abuse, sexual abuse, psychological abuse, and/or neglect. Elder Abuse, AMERICAN PSYCHOLOGICAL ASS’N, http://www.apa.org/pi/prevent-violence/resources/elder-abuse.aspx (last visited June 13, 2018).

charitable operations certain older populations may be more likely to trust.\textsuperscript{4} The abuse of an existing relationship to coerce, trick, or overreach the victim into providing funds is another similarity. Whether a family member power of attorney withdraws the older victim’s cash for the exploiter’s own gain, or a coercive business threatens an older victim with illegal collections conduct to terrify the victim into compliance, this behavior is exploitative.\textsuperscript{5} Still another shared element is the vulnerability of certain older victims, which predisposes them to the deceptive and coercive behavior of a family member exploiter or a fraudulent entity that skirts consumer protection laws to collect ill-gotten gain.\textsuperscript{6} Understood in this manner, the primary difference between elder exploitation and consumer fraud is that consumer fraud occurs when a person or entity exploits \textit{multiple} older people, instead of just one at a time.

Consumer protection advocates should embrace the more expansive view that remediating “consumer fraud” can in many cases constitute remediating “elder abuse” as well. Of course, assistant attorneys general are empowered to enforce only certain “consumer”-oriented laws impacting the wider public.\textsuperscript{7} Consumer protection laws are not typically framed as laws concerning “elder abuse,” by which other laws addressing person-to-person exploitation are usually explicitly framed.\textsuperscript{8} Nonetheless, viewing certain fraudulent activities directed at vulnerable older populations through the additional prism of “elder abuse” may assist enforcement of consumer laws that guard against the same sort of nefarious conduct.

Understanding the dynamics of elder financial exploitation can benefit assistant attorneys general engaged in consumer protection work. Awareness of the dynamics of elder abuse exploitation may better inform the fact investigations attorneys general undertake while enforcing consumer protection laws. Approaching consumer fraud cases through a different, additional prism allows attorneys general to ask questions they might otherwise have neglected by strictly viewing every matter as a “consumer”-only issue.


\textsuperscript{7} 61 IAC 1.3(2)“b” (limiting authority of the Iowa Department of Justice Consumer Protection Division to complaints of violations of Iowa Consumer Fraud Act and Iowa Consumer Credit Code, as opposed to person-to-person financial exploitation addressed by other laws within the Iowa Code, other governmental entities like the Iowa Department of Human Services, and private rights of action).

\textsuperscript{8} In Iowa, there is an “Elder Abuse” law including a private right of action to remedy elder financial exploitation by family members, caretakers and others in a confidential relationship with the vulnerable older victim. See \textsc{Iowa Code} § 235F (2017). The Iowa Consumer Fraud Act, in combination with the Older Iowans law, also addresses exploitative behavior within the “consumer” context, without explicitly referring to similar behavior as “elder abuse.” See \textsc{Iowa Code} §714.16, 714.16A (2017). See also \textsc{Statutory Update – Consumer Protection Statutes}, STETSON UNIV. COLL. OF LAW ELDER CONSUMER PROTECTION PROGRAM, \url{http://www.stetson.edu/law/academics/elder/ecpp/statutory-update-consumer-protection-statutes.php} (last visited June 13, 2018); \textsc{Statutory Update – Adult Protection Statutes}, STETSON UNIV. COLL. OF LAW ELDER CONSUMER PROTECTION PROGRAM, \url{http://www.stetson.edu/law/academics/elder/ecpp/statutory-update-adult-protection-statutes.php} (last visited June 13, 2018).
There may be reasons older people fall victim to certain fraudulent practices that other people are better suited to avoid, which are ready for discovery given a broader investigatory approach borrowing from an awareness of elder abuse exploitation dynamics. Robust discovery of the underlying reasons for elder victim vulnerabilities to consumer fraud could aid assistant attorneys general. For example, the Iowa Code allows the Iowa Attorney General to seek an additional $5,000 penalty if the Attorney General can prove practices violating the Iowa Consumer Fraud Act are directed at people “substantially more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, than other persons.” Attorneys general who are investigating elder consumer fraud pursuant to similar state laws may inquire the average age of the fraud victims and whether tactics the scammers use prey upon vulnerabilities like dementia. However, much more may rest beneath the surface.

Older people often fall victim to elder abuse exploitation, and are unable to stop it, because of many other realities likewise instructive in elder consumer fraud matters. Elder abuse exploitation victims may be psychologically unable, or simply unwilling, to report a family member exploiter to law enforcement because of lonelines, depression, and allegiance to the exploiter. They may be unable to report elder abuse because they do not have access to transportation and live in a desolate rural area bereft of allies who can provide oversight, guidance, and assistance. They may be unable to obtain civil legal representation because of low, fixed incomes, or because the exploiter ransacked all of the victim’s funds and property needed to pay a private lawyer. These realities can be overlooked in a “consumer”-only elder fraud context, especially because they do not necessarily depend upon age alone, although they may be exacerbated by it. However, these factors also present in successful consumer fraud operations and may better explain the tactics certain consumer fraud scammers use to enrich themselves at the expense of the vulnerable. Attorneys general should delve deeper to discover whether consumer fraud actors prey upon identical vulnerabilities used by elder abuse exploiters to ensnare older victims.

Attorneys general could learn more about fraudulent practices and tactics impacting older Americans by fostering a greater awareness of elder exploitation and could accomplish more for older victims by embracing a broader perspective. Lessons from the phenomenon of elder financial exploitation could better inform consumer fraud investigations, the public, and ultimately judges tasked with evaluating the merits of elder consumer fraud cases.

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11 See Keren Patricia Dimah and Agher Dimah, Elder Abuse and Neglect Among Rural and Urban Women, J. ABUSE & NEGLECT ELDERLY, Vol. 15(1), 75-93 (2003) (finding that social and geographic isolation can add to potential for abuse while limiting the victims’ ability to access intervention services).

12 Elizabeth Olson, Financial Abuse of the Elderly: Sometimes Unnoticed, Always Predatory, N.Y. TIMES, Nov. 27, 2015 at B1. (“‘We see many cases where someone convinces an older person to give them the power of attorney, and then uses that authority to strip their bank accounts, or take the title of their home,’ said Amy Mix, a lawyer at the AARP Legal Counsel for the Elderly. . .”)

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