

CASE NO. A06-1403

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State of Minnesota  
In Court of Appeals

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ARNOLD M. JOHNSON,

*Appellant,*

vs.

SHANNON PETERSON,

*Defendant,*

BANKERS LIFE AND CASUALTY COMPANY AND RICHARD GROOM,

*Respondents.*

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APPELLANT'S BRIEF AND APPENDIX

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## STATEMENT OF FACTS

Shannon Peterson was hired by Bankers Life. It was her first job as an insurance agent. She was assigned to Richard Groom who was another agent for Bankers Life. (Peterson deposition pg 6). Ms. Peterson answered a newspaper ad for the position. Ms. Peterson took the license test about a week later, and was hired the following week. She was licensed first in Minnesota and later in North Dakota. (Peterson deposition pg 7). Arnold Johnson had been identified by cold calling. (Peterson deposition pg 9, lines 2-18). Commissions were split 50/50 with Groom. (Peterson deposition pg. 9). Rick Groom accompanied Peterson on the calls (Peterson deposition pg. 11, lines 22-25 and continuing on and through pg. 14). Eventually Peterson obtained a loan from Arnold Johnson as well as most of his life insurance business. The loan was for \$10,000.00. Later additional money was obtained from Mr. Johnson which totaled \$109,000.00. (Peterson deposition pg 16, lines 1-2). When Ms. Peterson was “trained” by Banker’s Life, her trainer was Richard Groom who was present during the meetings with Mr. Johnson leading up to the loans. In fact, Ms. Peterson states in her deposition: “I was not trained at all. I was a follower of Rick Groom. . . . I was with Rick Groom, I believe, three weeks to a month training, and I was on my own.” (Peterson deposition pg 31). Shannon Peterson was prosecuted and pleaded guilty. About \$55,000.00 of the money taken by Shannon Peterson was recovered. The balance has not been recovered, although, while on probation, Shannon Peterson has made some smaller payments in the

nature of restitution to Arnold Johnson.

Equally important to the facts which are before the Court are the facts which are not before the Court. There are no documents in evidence which show the relationship between Shannon Peterson and Banker's Life. No employment contracts executed before the events involving Mr. Johnson have been placed in evidence and there is no clarification about whether Ms Peterson was an agent or an employee. Likewise no testimony has been forthcoming from Banker's Life or Mr. Groom in the form of affidavits. In fact the only affidavit filed by the Defendants Banker's Life and Groom is the deposition of counsel attaching several cases.

The pleadings of the Plaintiff in this case make allegation of physical injuries including anxiety disorders and heart problems to Mr. Peterson arising from the stress of the situation, the loss of \$55,000.00, and the loss of his dignity as a retired police officer.

**1. Standard of Review.**

Motions for summary judgment shall only “. . . be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. “Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993) (citing Minn. R. Civ. P. 56.03).

Summary Judgment, simply stated is only appropriate if there is no genuine issue of material fact and the moving party is entitled to Judgment as a matter of law. The

moving party bears the burden of demonstrating to the court that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

The Court must view the evidence in the most favorable light to the non-moving party according the non-moving party all reasonable inferences in a light most favorable to them. Ludwig v. Anderson, 54 F.3d 465 (8<sup>th</sup> Cir.1995).

### ARGUMENT

SUMMARY JUDGMENT IN THIS CASE FAILS BECAUSE THERE IS NOTHING BEFORE THE COURT TO SUPPORT THE MOTION AND THE ALLEGATION OF PHYSICAL INJURY IS NOT CONTROVERTED BY ANYTHING FILED BY DEFENDANTS BANKERS LIFE AND RICHARD GROOM.

In this case, there are no pleadings, depositions, answers to interrogatories or requests for admissions on file or even any supporting affidavits which show even any question about the averments of Plaintiff. In fact, Banker's Life and Richard Groom have not even filed an answer denying any of the allegations in Plaintiff's Complaint. Therefore this entire case must be decided on the law in Minnesota as it applies to the Complaint of Plaintiff and the support deposition of Shannon Peterson filed with the Court.

Questions of law may be resolved via summary judgment. Rooney v. Dayton-Hudson Corp., 246 N.W.2d 170 (Minn. 1976). The construction of a statute presents a question of law. Hibbing Education Ass'n v. Public Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985). That application of a statute to undisputed facts also is a question of law. O'Malley v. Ulland Bros., 549 N.W.2d 889, 892 (Minn. 1996). Finally,

the interpretation of prior case law applicable to the Plaintiff's Complaint may also be decided as a matter of law. No statutes were relied upon by Defendants Banker's Life and Richard Groom. Rather, in this case, Defendant's entire motion was predicated on case law as that case law applies to the facts as alleged and uncontested by Defendants.

In this case, the claims levied against Bankers Life and Casualty Company and Richard Groom satisfy the requirements prior case holdings in Minnesota. Specifically, Johnson's claims of negligence against Banker's Life and Richard Groom require the District Court to determine those fact issues by trial.

Further it must be noted, that all factual allegations must be accepted as true and every reasonable inference which supports the claims of the complainant must be accepted as true. Willis v. Centennial Mortgage & Funding, Inc., 2004 WL 229076 (D.Minn). In this case, none of the facts alleged by Plaintiff Johnson are even denied by Banker's Life. While the non-moving party may not rely entirely on the existence of specific facts, when those allegations are unchallenged, there is no basis for a trial court to conclude anything other than they are provable allegations. Richard Groom filed a separate answer an essentially did not deny most claims made by Plaintiff. Groom did deny he was assigned the responsibility for the training and supervision of Shannon Peterson, however, he did not deny the allegations of physical injury suffered by Mr. Johnson and "puts Plaintiff to his strict burden of proof thereof" (answer attached). Banker's Life filed no answer. Both Banker's Life and Groom jointly make the motion

for summary judgment.

For negligent hiring and supervision to exist there must be proof of actual physical or bodily injury. Bruchas v. Preventive Care, Inc., 553 N.W.2d 440 (Minn.Ct.App.1996). What is established in the record thus far is that Banker's Life ran ads for agents. They hired Shannon Peterson who had absolutely no experience and had her supervised by Richard Groom for a very short period of time. We also know that Richard Groom came with Shannon Peterson on some of the visits with Arnold Johnson, although it is uncertain whether he was present when the fraudulent transfer of money to Ms. Peterson took place. There was absolutely no screening of Shannon Peterson, nor is any alleged. Frankly, nothing is before the Court which indicates that Shannon Peterson even completed an interview with Banker's Life or filled out a job application. There is nothing to suggest that Banker's Life even knew if she was licensed or whether or not she had a troubled psychological history. These fact allegations are not the obligation of Plaintiff to present to the Court, absent a denial of negligence by the Defendants, something which Bankers has not even filed. Negligent hiring and retention imposes direct liability on an employer for an employee's intentional tort if the employer "knew or should have known" of the employee's propensities." Yunker v. Honeywell, Inc., 496 N.W.2d 419 (Minn.App.1993).

While no discovery has yet taken place, the time line on the loans to Mr. Johnson suggest that the first loan to Ms. Peterson became known to Groom before the larger

remaining loans changed hands and Bankers therefore may have known or had reason to know that unusual non-business like transactions were taking place between Mr. Johnson and Ms. Peterson.

The most difficult problem to address in this argument is the lack of any reasoned Order by the Court. The District Court made absolutely no Findings, nor did the Court even attempt to explain the reasoning behind the decision with an attached memorandum. This, coupled with the lack of any real argument submitted by Defendants or anything that even supported the bald assertions of fact which are the only basis for the motion, leave the Appellant with a need to respond to rather elusive motions and orders.

The argument made by Movants is predicated on the notion that there is not physical injury which occurred to Mr. Arnold Johnson and therefore no reason pursuant to case law which is well cited by Movants for this litigation to advance. Unfortunately that ignores the Complaint of the Plaintiff who alleges personal injury occurring as a result of the actions of Shannon Peterson during the time she was an agent for Bankers Life and Casualty Company. The complaint with the relevant language in it is even attached to Movants filings with this Court. Paragraph 9 states “. . .as a result of the stress and anxiety of these events Plaintiff has developed medical complications including heart problems and anxiety related disorders.” While there is no evidence before the Court, letters between Plaintiff’s Counsel and Corporate Counsel for Banker’s Life elaborated this problem. The relationship between the Plaintiff’s physical condition and

the events which underlie this lawsuit are also referenced in the Deposition of Shannon Peterson which was taken September 22, 2004, and which is being filed at the same time as this response. (Peterson deposition page 30 & page 45, lines 11 through 22).

Referenced at that same time is the statement that the grooming of Mr. Johnson would have continued except that Bankers Life became concerned at some point and Dan Patterson with that firm told her she was not to have any further contact with Mr. Johnson. (Peterson deposition. Page 30)

Damages are calculated based on the amount of money actually embezzled and the statutory claim of \$50,000.00 or more for personal injury.

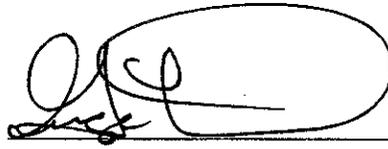
Mr. Groom accompanied Ms. Peterson to meetings with Mr. Johnson and was her sole source of “on the job training” according to the deposition testimony of Shannon Peterson. To what extent and when Mr. Groom became aware of the situation was not the subject of discovery at the time of the motion for summary judgment.

### **CONCLUSION**

The dismissal of Plaintiff's lawsuit is unsupported by any claimed facts by Defendants. To hold there has been no showing of physical injury is to replace a jury trial with conclusive thinking with speculation of possible facts by Defendants. Any dismissal of this claim at this time is both premature and contrary to law.

Dated: 8/22/06

DURANSKE LAW FIRM  
ATTORNEY FOR APPELLANT

A handwritten signature in black ink, appearing to read "George L. Duranske III", is written over a horizontal line. The signature is stylized and somewhat cursive.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).