

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID G. SONDEERS : CIVIL ACTION
v. :
PNC BANK, N.A. : NO. 01-3083

MEMORANDUM OF DECISION

THOMAS J. RUETER
United States Magistrate Judge

October 9, 2003

Presently before the court is plaintiff David G. Sonder's Motion for Reconsideration (Doc. No. 30), defendant PNC Bank's ("PNC") Opposition (Doc. No. 31), Plaintiff's Reply (Doc. No. 33), and PNC's Sur-Reply (Doc. No. 34). After oral argument on September 15, 2003, and for the reasons stated below, plaintiff's motion for reconsideration is **DENIED.**

I. BACKGROUND

In a Memorandum of Decision dated June 3, 2003 (the "June 3, 2003 Memorandum of Decision"), this court considered and granted PNC's motion for summary judgment. (Doc. No. 24.) In the underlying cause of action, plaintiff sought to recover from PNC for bad faith for allowing former United States Congressman Edward M. Mezvinsky to use a trust account maintained at PNC ("Account 0387") to perpetrate a fraud on plaintiff, and others, in which plaintiff lost \$500,000. Plaintiff claims that PNC should have been aware of Mr. Mezvinsky's misdeeds and taken steps to investigate and stop the fraudulent activity. In Count I of the Complaint, the only claim remaining, plaintiff contends that PNC acted in bad faith when it (1) permitted Mr. Mezvinsky, on his signature alone, to transfer and withdraw plaintiff's

monies from Account 0387, and (2) failed to investigate Mr. Mezvinsky's activities in light of the dual signature requirement and certain suspicious transactions. (Complaint ¶49.) Plaintiff also contends that PNC "had reason to question all the activity on the Account." Id. at ¶52.¹

In its motion for summary judgment, PNC argued that summary judgment should be granted on several grounds, including that plaintiff failed to present evidence showing that PNC acted in bad faith.

II. RECONSIDERATION STANDARD

A motion for reconsideration may be filed under Local Rule 7.1(g) and Fed. R. Civ. P. 59(e). The purpose of a motion for reconsideration is "to correct manifest errors of law or fact or to present newly discovered evidence." Blue Mountain Mushroom Co., Inc. v. Monterey Mushroom, Inc., 246 F. Supp.2d 394, 398 (E.D. Pa. 2002) (quoting Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985)). Generally, a motion for reconsideration will be granted only on one of three grounds: "(1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice." Id. (citations omitted). Motions for reconsideration should be granted only "sparingly." Reshard v. Main Line Hosp., Inc., 2003 WL 1889468, at *1 (E.D. Pa. April 16, 2003).

A motion for reconsideration is not properly grounded on a request that a court reconsider repetitive arguments that have been fully examined by the court. Blue Mountain Mushroom, 246 F. Supp.2d at 398 (quotation omitted). Moreover, where the evidence is not

¹ A detailed recitation of the facts and law is contained in the June 3, 2003 Memorandum of Decision and will not be repeated here.

newly discovered, a party may not submit that evidence in support of a motion for reconsideration. Harsco, 779 F.2d at 909. Motions for reconsideration may not be used to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided. However, reargument may be appropriate where “the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” Brambles USA, Inc. v. Blocker, 735 F. Supp. 1239, 1241 (D.Del. 1990) (quotation omitted).

III. DISCUSSION

1. Plaintiff Has Not Stated Grounds Entitling Him To Reconsideration

Plaintiff contends in his Motion for Reconsideration that the court granted summary judgment on a ground not raised by PNC in its motion for summary judgment. Specifically, plaintiff argues that PNC did not assert that “summary judgment should be granted because the evidence taken in the light most favorable to plaintiff failed to establish a genuine issue of material fact for the trier of fact to decide.” (Pl.’s Mem. Supp. Reconsid. at 2.) Plaintiff, citing to PNC’s memorandum of law in support of its motion for summary judgment, argues that PNC claimed it was entitled to summary judgment for two reasons only: (1) “there is no causation between [plaintiff’s] loss and PNC’s failure to recognize [Wesley] Sine as a second signatory;” and (2) Pennsylvania’s Adverse Claims Statute, 7 Pa. Cons. Stat. Ann. § 606, bars plaintiff’s claim. (Def.’s Mem. Supp. Summ. J. at 2-3.) Plaintiff asserts that he limited his response to these issues and therefore did not present all of his evidence in support of his claim under the Uniform Fiduciaries Act (“UFA”). The evidence plaintiff offered in his Complaint supporting the bad faith claim was PNC’s failure to file Currency Transaction Reports (“CTRs”)

and Suspicious Activity Reports (“SARs”) with respect to certain transactions in Account 0387 (Complaint ¶¶53-78), PNC’s failure to require a dual signature for withdrawals from Account 0387 or to investigate Mr. Mezvinsky’s activities, id. ¶¶ 40-52, and PNC’s alleged issuance of two fraudulent statements regarding the balance at different times in Account 0387, id. ¶¶79-87.²

Plaintiff’s reading of PNC’s motion for summary judgment is too narrow. For example, defendant clearly argued that the UFA does not create an affirmative cause of action. See Def.’s Mem. Supp. Summ. J. at 10-12. This was not one of the two grounds listed by PNC on pages two through three of its memorandum in support of summary judgment. Plaintiff does not, and cannot, dispute that that issue was raised even though it was not one of the two enumerated grounds identified by PNC in the beginning of its memorandum. In fact, plaintiff addressed this issue in its memorandum in opposition to summary judgment and identified it as PNC’s “primary argument.” See Pl.’s Mem. Opp. Summ. J. at 4-5.

Likewise, PNC argued in its motion for summary judgment that even if a cause of action existed under the UFA, summary judgment was appropriate because plaintiff could not establish causation based on the alleged dual signature requirement. (Def.’s Mem. Supp. Summ. J. at 12-13.) In a footnote, plaintiff also argued that plaintiff had conducted no discovery with respect to his allegations in the Complaint that PNC had acted in bad faith by failing to file CTRs and SARs. Id. at 13-14 n.3. In this footnote defendant cited Celotex Corp. v Catrett, 477 U.S. 317, 322-23 (1986) for the proposition that summary judgment is mandated, “after adequate time

² The evidence has shown that PNC did not prepare and issue the fraudulent statements but that Mr. Mezvinsky procured them from an individual in England in furtherance of his fraudulent scheme.

for discovery and upon motion, against a party who cannot offer any proof concerning an essential element of the party's case." Id.

In opposition to the motion for summary judgment, plaintiff identified "facts" allegedly known by PNC which amounted to bad faith under the UFA. (Pl.'s Mem. Opp. Summ. J. at 2-3, 5-7.) Plaintiff urged that PNC's causation argument must fail because "[u]nder the bad faith standard applied in Robinson and Manfredi, the key issue is the bank's knowledge, not [plaintiff's] knowledge." Id. at 6. Plaintiff contended that PNC knew that Wesley Sine, another victim of Mezvinsky's fraud, had met with Mezvinsky and Malveena White (a PNC employee) and signed a dual signature card.³ Plaintiff asserted that PNC knew that it regularly gave Mezvinsky blank signature cards, and that the escrow account was frequently not identified as a trust account. Plaintiff also argued that PNC was aware of the large number and dollar amount of withdrawals and transfers from Account 0387 yet failed to file CTRs and SARs. Id. at 2-3, 5-8. Plaintiff identified several transactions in detail, including date and amount, which he considered suspicious. Id.

In its Reply to plaintiff's opposition to summary judgment, PNC devoted numerous pages to the issue of bad faith under the UFA addressing in greater detail the CTRs and SARs issue, transactions involving Account 0387, and the law regarding bad faith under the UFA. (PNC's Reply Supp. Summ. J at 4-8.) Significantly, PNC attached a Declaration of Michael Kelsey, Corporate Anti-Money Laundering Compliance Office for PNC, in which Mr.

³ Wesley Sine originally stated that he gave Ms. White a copy of his Escrow Agreement with Mr. Mezvinsky. At oral argument, counsel for PNC offered to provide evidence that Mr. Sine erred in making this statement and that Mr. Sine acknowledged that he did not provide Ms. White with a copy of the Escrow Agreement. Counsel for plaintiff did not contest this representation.

Kelsey explained that PNC had filed a CTR for the one transaction identified by plaintiff which required a CTR, and that the other transactions did not require the filing of a CTR. (Def.'s Reply Mem. Supp. Summ. J., Kelsey Declaration.) Notably, plaintiff did not request permission to file a Sur-Reply contending that he had additional information supporting his bad faith claim, or that he had not realized that the sufficiency of the bad faith claim was at issue.

A review of the parties' summary judgment pleadings reveals that the sufficiency of plaintiff's evidence to prevail on a bad faith claim under the UFA was raised and placed at issue in the summary judgment proceeding. This court understood the pleadings to include such an issue. A review of the pleadings also reveals that the parties understood the motion to include the issue. Plaintiff devoted numerous pages to that issue in his opposition,⁴ and did not object or request permission to file a Sur-Reply after he received PNC's Reply which, in response to plaintiff's opposition to the motion for summary judgment, was devoted largely to the sufficiency of the evidence to support plaintiff's bad faith claim.

⁴ At oral argument on September 15, 2003, the court asked plaintiff's counsel why, in his opposition to PNC's motion for summary judgment, he submitted evidence and argued in support of his bad faith claim if he did not realize that this issue had been raised. Counsel stated that he could not remember. Counsel supplemented his response in a letter to the court dated September 17, 2003, in which he explained, *inter alia*, that he attached the signature cards signed by Mezvinsky and bank statements for Account 0387 to his opposition to summary judgment as part of the background of the case and as "illustrations of what PNC knew about the 0387 account." (Letter, 9/17/03, at 2.) However, as pointed out by plaintiff, PNC's knowledge is the crucial issue to the bad faith claim. *Id.* The court also received and considered PNC's response in a letter dated September 23, 2003.

Since plaintiff could have raised the evidence he now seeks to present in support of his bad faith claim in opposition to defendant's motion for summary judgment and in a Sur-Reply, but did not, plaintiff's motion for reconsideration must be denied.⁵

2. Evidence Offered By Plaintiff To Support His Bad Faith Claim

After the motion for reconsideration was filed, the court, in an abundance of caution and to ensure that justice was done, permitted plaintiff to file any "materials complying with Fed. R. Civ. P. 56 evidencing defendant's 'bad faith,' that heretofore were not submitted to the court." Sonders v. PNC Bank, N.A., No. 01-3083, Order (E.D. Pa. July 7, 2003) (Doc. No. 32). The court also granted plaintiff's request for oral argument. Sonders v. PNC Bank, N.A.,

⁵ The only evidence plaintiff characterizes as "new" evidence are documents reflecting PNC's internal procedures and policies. (Pl.'s Mem. Supp. Reconsid. at 15.) Early in the discovery period, PNC offered to produce relevant portions of its policy and procedures manuals subject to a confidentiality order. By letter dated January 3, 2002 to plaintiff's counsel David E. Edwards, PNC's counsel drafted and forwarded a proposed confidentiality order. (Def.'s Mem. Opp. Reconsid. Ex. C.) Mr. Edwards did not respond. Plaintiff's present counsel stated that he belatedly renewed the request shortly after assuming the file after prior counsel's departure. (Pl.'s Mem. Supp. Reconsid. at 16.) It should be noted that plaintiff's prior counsel and present counsel are from the same law firm. Also, the name of plaintiff's prior counsel, Mr. Edwards, continues to appear on plaintiff's pleadings filed with this court and he continues to be identified as plaintiff's counsel. See, e.g., Pl.'s Mot. for Reconsid. and Pl.'s Mem. Supp. Reconsid. at 17.

Plaintiff also made a tardy request that PNC produce Michael Kelsey, whose Affidavit was attached to PNC's Reply Brief, apparently for a deposition. (Pl.'s Mem. Supp. Reconsid. at 16 n.2.) PNC points out that plaintiff did not take a single deposition of PNC personnel, even though PNC's counsel, in a letter dated May 23, 2002, offered dates for depositions in response to a request from plaintiff's counsel. (Def.'s Mem. Opp. Reconsid. at 8 and Ex. D.)

Plaintiff's belated requests for discovery cannot be granted. The discovery deadline in this case has long passed, after being extended several times. (Doc. Nos. 14, 15, 19.) The discovery plaintiff seeks was offered to plaintiff in a timely manner and he did not pursue it. "[A] litigant who has not actively pursued discovery cannot be heard to complain that too little discovery was had." Thibeault v. Square D. Co., 960 F.2d 239, 242 (1st Cir. 1992). Plaintiff's requests for additional discovery are denied.

No. 01-3083, Order (E.D. Pa. August 12, 2003) (Doc. No. 35). This court finds that, after considering all of the evidence previously and now offered by plaintiff in support of his UFA claim and drawing all reasonable inferences therefrom in the light most favorable to plaintiff, such evidence does not state a genuine issue of material fact for the trier of fact to decide and PNC is entitled to summary judgment. Thus, on this alternative ground, plaintiff's motion for reconsideration must be denied.

A. Pattern of Activity in Account 0387

Plaintiff contends in his motion for reconsideration that the court "committed clear error of law in drawing inferences from the evidence unfavorable to Plaintiff in considering the pattern of activity in the '0387 account, whereas Fed. R. Civ. P. 56(c) requires that all reasonable inferences be drawn in favor of the non-moving party." (Pl.'s Mem. Supp. Reconsid. at 14 (emphasis in original).)⁶ Plaintiff complains that the court

discounted the significance of the withdrawals and transfers during that three month time period because it had no indication of prior patterns of activity. In other words, the court drew an inference that the activity was not sufficient to create notice because it might have been consistent with prior patterns of activity in the account That inference is not only wrong under the law, it is wrong factually. In fact, as Exhibits "A" and "B" reflect, the prior patterns of activity in the account dramatically show shifting patterns. That chart reveals that minimal activity occurred in 1997 and 1998, with two notable exceptions – \$600,000 in deposits in December 1997 that were virtually drained in two weeks; and \$1,500,000 in deposits [in January and February 1998] that were gone in little more than a month (although \$500,000 of Sine's money was returned to him). There were no further dramatic deposits until May 1999, when \$1,000,000 was deposited, and virtually drained within nine (9) days. Then on June 23, 1999,

⁶ In the June 3, 2003 Memorandum of Decision, the court considered all of the evidence and drew all reasonable inferences therefrom in the light most favorable to plaintiff. June 3, 2003 Memorandum of Decision at 14-15. The court specifically assumed that "PNC was aware of the frequency and amount of withdrawals and transfers from the Account." Id. at 23 n.8.

Sonders' \$250,000 was wired into the account, and half of that amount was withdrawn by Mezvinsky or wired to other accounts owned by Mezvinsky within 20 days. On July 27, 1999, another \$250,000 was wired into the trust account by Sonders, and by August 9, it was all gone.

(Pl.'s Mem. Supp. Reconsid. at 14-15.)⁷ Plaintiff's counsel focused much of his oral argument on this evidence.

The court has reviewed all of the evidence submitted by plaintiff, including the summary chart of the activity on Account 0387 plaintiff presented in his Reply at pages five through six. Plaintiff dramatically understates the activity in Account 0387. Plaintiff contends that minimal activity occurred until December 1997. On the contrary, from July through November, 1997, funds in the amount of \$857,994.22 were deposited into Account 0387. (Pl.'s Reply at 5-6.) During that same time period, withdrawals and transfers totaled \$857,746.77. Id. Three large deposits totaling \$2,175,000.00 were made in December 1997 through February, 1998, with withdrawals and transfers for the same time period aggregating \$1,773,286.80. Id. From March through December, 1998, deposits totaled \$314,945.60 (no deposits were made in April, August and September 1998). Withdrawals and other transfers for March through December 1998 totaled \$716,484.70. Id. Plaintiff then reports no "dramatic" deposits until May 1999. (Pl.'s Mem. Supp. Reconsid. at 15.) The chart supplied by plaintiff, however, reveals that from January through April 1999, deposits totaled \$392,401.10. (Pl.'s Reply at 5-6.) Withdrawals and transfers for the same four month period aggregated \$392,328.17. Id. May 1999 showed deposits of \$1,020,000.00 and withdrawals/transfers of \$1,007,339.50. Id. In June

⁷ Plaintiff identified the three month time period to which he was referring as "June through August 2001." (Pl.'s Mem. Supp. Reconsid. at 14.) The court assumes plaintiff meant "June through August 1999," the time period during which plaintiff's money was deposited and then removed from Account 0387.

through December 1999, deposits totaled \$660,491.83 (with no deposits in November or December 1999), and withdrawals or transfers totaled \$763,559.99. Id.

For this two and one-half year time period, July 1997 through December 1999, the chart reveals: (1) two months where the aggregate deposits exceeded \$1,000,000 (1/98 and 5/99); (2) eight months where the aggregate deposits exceeded \$200,000 but were less than \$1,000,000 (8/97, 9/97, 11/97, 12/97, 2/98, 3/99, 6/99, and 7/99); and (3) fifteen months where the aggregate deposits totaled up to \$200,000 (7/97, 10/97, 3/98, 5/98, 6/98, 7/98, 10/98, 11/98, 12/98, 1/99, 2/99, 4/99, 8/99, 9/99 and 10/99).

Plaintiff attempts to differentiate between the deposits into the account by referring to some as “dramatic.” (Pl.’s Reply at 15.) However, according to plaintiff’s own usage of the word “dramatic,” plaintiff’s two deposits of \$250,000 were not dramatic. Moreover, the chart supplied by plaintiff clearly shows a steady and predictable pattern of activity in Account 0387. After funds came into Account 0387, funds in an almost equal amount shortly left Account 0387. The activity level in June through August 1999, the time period in which Sonders gave money to Mr. Mezvinsky, was no different. Nothing anomalous occurred in the level of activity in Account 0387 in June through August 1999, or at any other time, to put PNC on notice that Mezvinsky may have been breaching his fiduciary duties.

Plaintiff makes much ado about PNC’s alleged failure to investigate transactions that required, or might have required, the filing of CTRs and SARs. Plaintiff contends that whether PNC actually filed CTRs or SARs is not the critical issue. The issue, plaintiff urges, is whether PNC performed the investigations required under the Regulations. Plaintiff argues that if PNC had conducted, as required, investigations of the transactions regarding Account 0387,

PNC would have uncovered Mezvinsky's activities. At oral argument, plaintiff's counsel identified the relevant regulations as 31 C.F.R. §§ 103.21 (SARs), 103.22 (CTRs) (1999).

Section 103.21(a) requires a bank to file an SAR with the Treasury Department for any transaction involving an aggregate of at least \$5,000, and the bank knows, suspects, or has reason to suspect that, inter alia, the "transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction." 31 C.F.R. § 103.21(b)(2)(iii). Section 103.22 requires a financial institution to file a CTR for any "transaction in currency of more than \$10,000." 31 C.F.R. § 103.22(b)(1).

Plaintiff presented no evidence that PNC failed to perform an investigation it was required to perform under these Regulations. While acknowledging that PNC cannot discuss its activities regarding the filing of SARs under penalty of possible criminal charges, plaintiff urges that if PNC had conducted the investigation required by section 103.21 for filing SARs, PNC would have discovered that there was no business or lawful purpose for the transactions and that the transactions were not of the sort in which the customer, Mr. Mezvinsky, normally engaged.

The evidence submitted by plaintiff, however, proves just the opposite. Considering the evidence and drawing all reasonable inferences therefrom in favor of plaintiff, the evidence shows that deposits went into Account 0387 in varying amounts, shortly followed by withdrawals and transfers aggregating almost the same amounts. The evidence submitted by plaintiff confirms that the types of transactions reflected on the bank statements were the sort of transactions in which Mr. Mezvinsky normally engaged.

Plaintiff's counsel acknowledged during oral argument that an isolated transaction requiring the filing of a CTR would not trigger a duty by a bank to conduct an investigation for bad faith under the UFA. However, in the instant matter, plaintiff argues that the numerous transactions involving large dollar amounts created a pattern of activity putting PNC on notice that Mezvinsky may have been breaching his fiduciary duties. In particular, plaintiff urges that the numerous transactions transferring funds from one attorney trust account into other attorney trust accounts, both at PNC and other banks⁸, and into personal accounts should have placed PNC on notice that Mr. Mezvinsky was "up to no good."

As case law has explained, an active and busy attorney may have reason to transfer money between accounts and into personal accounts and to withdrawal money to make payments. Such activity does not establish bad faith under the UFA. The Pennsylvania Supreme Court in Davis v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 12 A.2d 66, 69 (Pa. 1940) held that evidence regarding the amount of transfers made by a fiduciary is insufficient to establish bad faith, even when the dishonest fiduciary transferred the entire balance in the trust account into his personal account. The court stated:

[The plaintiff] loses sight of the fact that defendant presumably knew nothing about the assets of the trust, or what other bank accounts the trustee might be maintaining or what proportion of the entire estate was represented by the \$18,400 transferred from the trust account to the personal account. As far as defendant was informed the \$18,400 might have constituted only a small part of the trust funds, and might have been owing to the trustee because of commissions due him over a long period of years or of advancements made by him for the purchase of

⁸ Plaintiff submitted evidence showing that some of the transfers to and from Account 0387 involved several accounts owned by Mezvinsky at First Sterling Bank (which was acquired by Prime Bank during these events): (1) First Sterling Bank/Prime Bank Account 15-41001581 (not a trust account); and (2) First Sterling Bank/Prime Bank Account 15-41001672 trust account). (Pl.'s Reply Supp. Reconsid. at 8-9.)

investments. The very purpose of the Uniform Fiduciaries Act was to facilitate banking transactions by relieving the depository, acting honestly, of the duty of inquiry as to the right of its depositors, even though fiduciaries, to check out their accounts.

Id.

The additional evidence regarding the activity levels in Account 0387 now presented by plaintiff, confirms the court's conclusion that, considering all of the evidence in the light most favorable to plaintiff, the activity in Account 0387 did not show that PNC acted with any "deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in the transaction." Robinson Protective Alarm Co. v. Bolger & Picker, 516 A.2d 229, 304 (Pa. 1986).⁹

B. PNC Accounts 1143 and 7094

Plaintiff also offered evidence regarding two other attorney trust accounts maintained by Mr. Mezvinsky at PNC. Account 1143 was opened September 17, 1999, after plaintiff's money had already been taken by Mr. Mezvinsky. An individual from ALM Systems,

⁹ Plaintiff also contends that the statements for Account 0387 reveal that Mr. Mezvinsky wrote numerous checks from Account 0387 payable to PNC adding that "it is not clear where the money went." (Pl.'s Reply Supp. Reconsid. at 16.) PNC counters that the payments to PNC were made in exchange for PNC's simultaneous issuance of cashier's checks to payees identified by Mr. Mezvinsky. (Def.'s Mem. Opp. Reconsid. at 12-13, Ex. B (Kelsey Declaration).) Plaintiff has offered no evidence to rebut PNC's representation in this regard, and consequently plaintiff has offered no evidence to support his allegations that PNC acted in bad faith with respect to the checks made payable to PNC. To defeat summary judgment, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party cannot rest on the pleadings, but rather must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "If the evidence [offered by the non-moving party] is merely colorable or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986).

Inc. (“ALM”) wired \$200,000 into Account 1143 on September 22, 1999. On September 23 and 24, 1999, Mr. Mezvinsky made two transfers of \$100,000 each into Account 7094. Account 7094 was opened in January, 1998. Plaintiff submitted evidence of correspondence between PNC and attorneys for ALM in October 1999 in which ALM advised PNC of a misappropriation of funds from Account 1143. Plaintiff also contends that Mezvinsky transferred funds from Account 0387 into Account 7094. (Pl.’s Reply Supp. Reconsid. at 6-7.)

Plaintiff contends that PNC’s attorney sent a letter to ALM’s attorney claiming that Mr. Mezvinsky was the sole signatory on the Account 1143, but sent a letter to Mr. Mezvinsky stating that Account 1143 required two signatures for withdrawals. (Pl.’s Mem. Supp. Reconsid. Ex. F.) Plaintiff averred that these letters were relevant to show that when challenged with respect to Mr. Mezvinsky’s trust accounts, PNC’s response was to “[turn] a blind eye to Mezvinsky’s misdeeds, which constitutes bad faith.” (Pl.’s Reply Supp. Reconsid. at 15.) Plaintiff further contends that since the two signature requirement with respect to Account 1143 was not followed, it is reasonable to assume that the two signature requirement for Account 0387 also was not followed.

Plaintiff’s argument raises several issues requiring response. First, as stated above, none of plaintiff’s money was deposited into Account 1143 which was opened after plaintiff’s investment had already been misappropriated. Any action PNC took in response to Account 1143 would not have prevented plaintiff’s loss. Second, there was no dispute that Account 1143 required dual signatures for withdrawals and transfers. Here, PNC disputes that Account 0387 required a dual signature. The evidence now has shown that on February 11, 1998, Mr. Mezvinsky, on his sole signature, transferred \$504,000 from Account 0387 to an

account of Wesley Sine, at the request of Mr. Sine. (Def.'s Sur-Reply Opp. Reconsid. at 10, 13, Ex. A (Sine Deposition at 297-99).) Consequently, Mr. Sine was aware that Mr. Mezvinsky was able to make withdrawals and transfers from Account 0387 on his signature alone. Moreover, PNC's counsel explained at oral argument that the two letters highlighted by plaintiff regarding Account 1143 did not conclude PNC's efforts concerning that account. After PNC investigated Account 1143, PNC settled with ALM on a misrepresentation claim; ALM did not show that PNC acted in bad faith. Plaintiff's counsel did not dispute this representation.

However, in the June 3, 2003 Memorandum of Decision and in the instant Memorandum of Decision, the court has assumed that Account 0387 required the dual signature of Messrs. Sine and Mezvinsky and that PNC allowed withdrawals and transfers on Mezvinsky's signature alone. Considering all of the evidence and drawing all reasonable inferences in favor of plaintiff, the facts concerning Accounts 1143 and 7094, and PNC's failure to abide by the dual signature requirement for Account 1143, do not show the PNC acted in bad faith with respect to Account 0387. As stated in the June 3, 2003 Memorandum of Decision, PNC's failure to abide by the alleged dual signature requirement for Account 0387, at best, may indicate that PNC was negligent. It does not, however, prove that PNC acted in bad faith for the purposes of the UFA.

Plaintiff's additional evidence regarding Accounts 1143 and 7094 does not show that PNC acted with "any deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in the transaction." Robinson Protective Alarm, 516 A.2d at 304.

C. White and Scott Memoranda

Plaintiff submitted into evidence three memoranda prepared by PNC employees. (Pl.’s Mem. Supp. Reconsid. at 7 and Ex. G.) Two of the memoranda were prepared by Malveena White and the third by Cheryl Scott. The two memoranda prepared by Ms. White concerned Account 0387 (the “White Memoranda”). The first memorandum, dated February 5, 1998 and to the attention of “Paul Silverstein,” stated that PNC had an “excellent and long term relationship with Congressman [Edward M. Mezvinsky],” and Ms. White attested personally to Mr. Mezvinsky’s “fine character and outstanding professionalism.” The memorandum also confirmed that Account 0387 was a trust account. Id. The second memorandum by Ms. White, which appears to be dated March 2, 1999 and to the attention of Arthur Voley, also referred to PNC’s long term relationship with Mezvinsky and his “fine character and outstanding professionalism.”¹⁰ Ms. White further stated that “the established Trust Accounts will be handled according to regular business banking procedures.” Id.

The memorandum dated September 22, 1999, was prepared by Cheryl Scott, and referred to Account 1143 (the “Scott Memorandum”). Id. Ms. Scott attested to PNC’s excellent relationship with Mezvinsky and stated that “[a]ll accounts have been maintained as agreed.”

¹⁰ Plaintiff points out that Ms. White acknowledged that she had a “long time relationship” with Mr. Mezvinsky. (Pl.’s Reply at 20.) The court is unclear what inference plaintiff wishes the court to draw from this information. Plaintiff may want the court to infer that because Ms. White had a long time relationship with Mr. Mezvinsky, that she knew about his activities. This would not be a reasonable inference for the court to draw. Many of the victims plaintiff identified in plaintiff’s Reply Memorandum also had long time relationships with Mr. Mezvinsky, and some of those relationships also were personal. Yet, they were not aware of his misdeeds.

The memorandum also confirmed that Account 1143 was a trust account requiring two signatures to transfer funds. Id.

Plaintiff never saw the White Memoranda, nor does he claim he relied upon them in deciding to make an investment with Mezvinsky. Plaintiff never inquired of PNC regarding Mezvinsky's character or Account 0387. The Scott Memorandum was prepared after plaintiff incurred his loss, and did not concern Account 0387. Rather, plaintiff argues that in order for Ms. White and Ms. Scott to write these memoranda, they must have investigated the accounts before concluding that the accounts were being handled properly. Such investigation, plaintiff contends, would have revealed Mezvinsky's breach of fiduciary duties. At oral argument, plaintiff attributed this "knowledge" to PNC through Ms. White and Ms. Scott, and urged that PNC was "actively aiding" Mezvinsky in his misdeeds.¹¹

¹¹ In greater specificity, plaintiff contends that Ms. White's second memorandum clearly implies that PNC was actively overseeing the activity in these trust accounts, so that it is in a position to confirm that "regular business banking practices" are being observed. It also clearly implies that PNC will continue to actively oversee the accounts to assure proper handling in the future. Of course, at this time, Mezvinsky had already been using the 0387 Account to convert other people's funds for almost two years, and the 7094 Account had been in operation for well over a year. Malveena White, the highest ranking PNC official at the Willow Grove branch, was asserting that PNC was aware of the activity in these accounts and vouching for Mezvinsky's use of the accounts. There is simply no other way to interpret these memos.

...

[Cheryl Scott's] memo goes even further than the previous two, in that it asserts that "all [Mezvinsky] Accounts have been maintained as agreed," and promised that two (2) signatures would be required to transfer funds in the 1143 Account. Unless PNC takes the position that Mezvinsky's victims all agreed to have their funds stolen, this statement is false. Further, it clearly implies (again) that PNC is actively monitoring ALL of Mezvinsky's trust accounts so that it can assure ALM that everything is being handled correctly. And it is another affirmative action taken by PNC Bank that aids and abets Mezvinsky's fraud.

The White Memoranda confirmed that Account 0387 was a trust account. The second White Memorandum confirmed that Account 0387 would be handled according to “regular business banking procedures.” Contrary to plaintiff’s assertions, the White Memoranda did not create an inference that PNC was “officially reassuring the recipient that deposits in that account are safe.” (Pl.’s Mem. Supp. Reconsid. at 7.) Such an inference would be unreasonable and wholly unsupported by the text of the memoranda. The Scott Memorandum referred to Account 1143 and stated that “all accounts have been maintained as agreed.” Ms. Scott was not addressing Account 0387, and she issued this memorandum after plaintiff’s loss had occurred. Plaintiff does not support his claim that Ms. White and Ms. Scott must have investigated the accounts thereby learning about Mezvinsky’s misdeeds with any evidence. Ms. White testified at her deposition that customers frequently asked the bank for memoranda attesting to an account’s existence.

A careful review of the memoranda, particularly the White Memoranda since they address Account 0387, reveals that neither Ms. White nor Ms. Scott knew or suspected that Mr. Mezvinsky was breaching his fiduciary duties. Rather than show that PNC had knowledge regarding Mezvinsky’s activities, the memoranda reveal that PNC’s employees did not know of or suspect his misdeeds.

When considered in the context of the vast number of “suspicious transactions” and the frenetic pattern of dispersing large deposits quickly from the 0387 or 7094 Accounts into other Mezvinsky accounts or withdrawing it outright, these memos can only be read as statements on behalf of PNC that it is specifically aware of what is going on in these accounts, or is deliberately ignoring the obvious facts.

(Pl.’s Reply Supp. Reconsid. at 20-21 (emphasis in original).)

After carefully reviewing the memoranda and drawing all reasonable inferences in favor of plaintiff, the memoranda do not show that PNC acted with any “deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in the transaction.” Robinson Protective Alarm, 516 A.2d at 304.¹²

¹² This court has carefully studied and considered all of the evidence submitted by plaintiff in support of his motion for reconsideration and in response to this court’s July 7, 2003 order. In addition to the evidence addressed above, plaintiff submitted evidence showing that (1) with respect to Accounts 0387 and 7094, Mr. Mezvinsky first used his social security number for the accounts, and later substituted an Employer Identification Number (“EIN”) for the accounts; and (2) Mr. Mezvinsky supplied plaintiff with two forged account statements for Account 1143. As to the social security number, the parties do not dispute that Mr. Mezvinsky was entitled to use an EIN for the accounts. Plaintiff has failed to show how Mr. Mezvinsky’s substitution of an EIN for his social security number is evidence of bad faith by Mr. Mezvinsky. As to the forged bank statements, the evidence now has shown that PNC did not supply these forged accounts. Rather, an individual in London prepared the forged statements at Mr. Mezvinsky’s behest in furtherance of his fraudulent scheme. This evidence, therefore, does not support plaintiff’s claim that PNC acted in bad faith under the UFA.

Plaintiff also provided a list of other victims of Mr. Mezvinsky’s fraud garnered from the Plea Memorandum filed in United States v. Edward Mezvinsky, Criminal Number 01-0156 (E.D. Pa.). (Pl.’s Reply Supp. Reconsid. at 9-15, Ex. O.) This information does no more than confirm that plaintiff was not Mr. Mezvinsky’s only victim, and that his fraudulent scheme continued for approximately two years. Id. Neither the number of victims nor the dollar amount lost, in and of itself, means that PNC acted in bad faith for the purposes of the UFA.

The court has attempted to discuss all of the evidence raised by plaintiff in this Memorandum of Decision. The court finds that, after scrutinizing all of the evidence, plaintiff, at most, has established what may be considered to be suspicious circumstances. Plaintiff has failed to show that PNC acted with any “deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in the transaction.” Robinson Protective Alarm, 516 A.2d at 304.

IV. CONCLUSION

For all the above reasons, plaintiff's motion for reconsideration is **DENIED**. An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge