

## **Bank Pays Price for Refusing to Honor Request Made Under a Power of Attorney**

A durable power of attorney (POA) allows the person creating the POA, called the "principal," to name a trusted agent who can act on his behalf in almost any situation. But because of the risk of abuse, many banks will scrutinize a POA carefully before allowing the agent to act on the principal's behalf, and often a bank will refuse to honor a POA. Bank of America rebuffed a Florida agent's request that funds be withdrawn from the principal's account. The agent fought back in court and won a \$64,000 judgment against the bank.

Clarence Smith, Sr., named his son, Clarence Smith, Jr., as his agent under a POA. When his father no longer wanted to manage his own finances, he asked Clarence Jr. to step in as his agent. Clarence Jr. reviewed his father's account activity and became suspicious about some withdrawals from a bank account that Clarence Sr. owned jointly with a friend from his retirement community.

Acting as his father's agent under the POA, Clarence Jr., asked Bank of America to transfer \$65,000 from the account into a new account that listed only his father as the owner. Before doing so, Bank of America contacted the other person named on the account. When she told the bank that she did not want the funds withdrawn and also accused Clarence Jr. of stealing his father's money, Bank of America refused to honor Clarence Jr.'s request. The other account owner then withdrew all of the funds from the account and placed them into her own account, effectively preventing Clarence Sr. from accessing his own money. Clarence Sr. died several weeks later.

Clarence Jr. sued Bank of America under a Florida law that imposes penalties on financial institutions that refuse to honor reasonable requests from agents named in properly executed POAs. A jury returned a verdict against the bank and awarded \$64,142 to Clarence Sr.'s estate. The jury found that Bank of America had not acted reasonably when it rejected Clarence Jr.'s request, even though the joint owner of the bank account had not agreed to the release of the funds.

While this case clearly illustrates the conflicts that can arise through the use of a POA, it also raises the issue of the proper use of joint bank accounts in estate planning. Under most state laws, when two or more people own "joint" bank accounts, each of them has the right to the entire account, no matter whose money is actually in the account. While joint accounts can often be useful, sometimes, as in this case, joint owners or their agents can disagree about the use of funds in the accounts. When that happens, the party who makes it to the bank first often wins. I can explain the pros and cons of joint ownership, draft an effective POA, and assist family members when disputes arise. Give me a call!