

FINANCIAL SERVICES COMPANY ORDERED TO PAY RETIREMENT MONEY TO LONGTIME PARTNER INSTEAD OF EX-WIFE

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PHILADELPHIA, PA May 28, 2010 – The AIDS Law Project of Pennsylvania announces a victory in a case involving TIAA-CREF, a financial services company, which had awarded a deceased gay man’s retirement benefits to his ex-wife rather than his longtime partner who was named as his beneficiary.

On May 27, 2010, in connection with that victory, the parties agreed to settle the surviving partner’s claims against TIAA-CREF in consideration for payment of an undisclosed amount in attorneys’ fees.

This past January, U.S. District Judge Stewart R. Dalzell ruled in favor of Mr. Thomas Bernardo, Dr. John L. Turner’s life partner of more than 27 years, finding that Mr. Bernardo, and not the ex-wife, was the lawful beneficiary of Dr. Turner’s retirement benefits. Dr. Turner, who died in March 2008, was one of the first physicians—and among the few openly-gay physicians—to come forward to treat HIV in the earliest years of the epidemic.

Almost two years after they initially denied his claim, TIAA-CREF paid Mr. Bernardo the full contract amount, plus pre- and post-judgment interest, as ordered by the Court.

In 1977, Dr. Turner named his then-wife as the beneficiary of his TIAA-CREF retirement benefits. The couple separated in 1981, when Dr. Turner began his relationship with Mr. Bernardo. Dr. Turner and his wife were subsequently divorced.

In 1981, Dr. Turner contacted TIAA-CREF to change the beneficiary from his then estranged wife to Mr. Bernardo. He again designated Mr. Bernardo as his beneficiary in 1985, and received confirmation of that designation from TIAA-CREF in 1990. More than two-and-a-half decades later, TIAA-CREF asserted for the first time that Dr. Turner used the wrong form. Consequently, they denied Mr. Bernardo the benefits, sought out Dr. Turner's ex-wife, and awarded her the money.

“The evidence underlying our client’s claim was clear: all of the paperwork after 1977 identifies Mr. Bernardo—not the ex-wife—as Dr. Turner’s intended beneficiary,” said Ronda B. Goldfein, Esq., executive director of the AIDS Law Project of Pennsylvania.

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FINANCIAL SERVICES COMPANY ORDERED TO PAY... (page 2)

Representing Mr. Bernardo was Ms. Goldfein, AIDS Law Project *of counsel* Sarah R. Schalman-Bergen (an attorney at Berger & Montague, P.C.) and Brian E. Appel, of The Law Offices of Brian E. Appel,

According to attorney Sarah Schalman-Bergen, “TIAA-CREF applied an after-the-fact requirement to Dr. Turner’s beneficiary change not found anywhere in the contracts governing the policies. They insisted that a specific change of beneficiary form should have been used, even though Dr. Turner submitted written notice to the company demonstrating his desire to change his beneficiary that included all the required information.”

Judge Dalzell found that Dr. Turner complied with the terms of the contract, and also found that Dr. Turner made his intent to designate Mr. Bernardo as his beneficiary clear, and twice communicated that intent to TIAA-CREF in writing. In sum, “Dr. Turner did everything he could do to change his beneficiary from his ex-wife to Thomas Bernardo,” the Judge wrote.

The case was styled Teachers Insurance and Annuity Association of America, et al. v. Thomas Bernardo, et al., in U.S. District Court in the Eastern District of Pennsylvania, case number 09-911.

The ***AIDS Law Project of Pennsylvania*** is a public-interest law firm founded in 1988. Now with a staff of 14, the AIDS Law Project is still the nation's only independent public-interest law firm dedicated to AIDS and HIV. The organization serves all of Pennsylvania from its home base in Philadelphia. It has risen to the defense of more than 30,000 people free of charge, and has educated more than 32,000 others on AIDS-related legal issues. Each year, the nonprofit firm receives about 2,000 calls for assistance. In 2009, the AIDS Law Project of Pennsylvania represented 1,343 people in 1,713 legal matters. The agency also educates the public about AIDS-related legal issues, and works at local, state and national levels to achieve fair laws and policies.

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