

ELDER ABUSE

It Isn't Always About Physical Abuse

By Michael Panish, Construction Expert Witness

Having recently testified as the door hardware, lock and security expert witness on a very serious elder abuse case involving the rape of a 93 year old resident of a retirement home, I am intimately aware of the potential for physical violence and neglect aimed directly at senior citizens. The following is about a completely different kind of abuse involving our senior population.

During the past couple of years, with the downturn in the economy, and the significant slowdown in the construction trades, I have been contacted to evaluate and consult on several significant cases and many issues relating to contractor misconduct and construction fraud. It has become apparent that dishonest practices have begun to dominate the businesses of many low end contractors and home improvement companies. Seniors seem to be one of the prime targets for construction scams.

I was recently contacted by an old acquaintance seeking my advice as to the validity of charges proposed to his elderly mother regarding an HVAC (heating ventilation and air conditioning) system repair. It seems that during a recent heat spell, her almost brand new air conditioning system failed to adequately cool her home. She had hired a contractor to install a completely new system less than 18 months ago. The system came with a two year all inclusive labor and materials warranty, and a five year materials only warranty. So, she called the contractor that installed the new system. When the service repairman came to her home, he told his mother that the warranty did not include the materials for the multiple problems he found. He told her that he needed \$100.00 cash for the purchase of materials and that the repair necessary would cost her approximately \$2,500.00. She gave the repairman the \$100.00 in cash, and wrote a check for \$2,500 to the service repairman and then called her son immediately to ask his advice. Her son called me...

Another popular service these days is to buy a "blanket" home insurance policy that is supposed to cover all repairs needed to your house from top to bottom as long as you pay a small deductible fee at the time of the service call. For a pre determined price, monthly installment payments are sent to a central location. For example, whenever you need an appliance serviced, have a leaky faucet or need major rework to your roof, all appropriate service contractors are supposed to be dispatched for the small deductible, as per the master policy plan. Apparently, several geriatric magazines and group plans are advertising and endorsing the benefits of purchasing this type of policy for elder homeowners.

I was contacted by an elderly gentleman that told me that he had recently needed his attic ventilation fan serviced. He was happy because he had just purchased a blanket policy for repairs in his home. He said that the fan had been squealing and was driving him crazy. When he contacted his insurance plan, they sent a local electrician to see what the problem was. The electrician climbed into his attic and instantly made his assessment. The electrician came down from the attic, digital camera in hand and told the gentleman that he had major problems with the fan motor unit. It needed to be completely replaced. The electrician had taken a picture showing the homeowner that there was some problem with the structure of the attic, and he would have to remove a structural beam in order to gain access to the fan motor. He told the man that it would cost an additional \$250 cash to do work to the attic obstruction and he would also have to pay the deductible for him to get started. The owner thought that was the only way he could get the fan serviced and gave the electrician the requested cash. The electrician would not take a check, credit card or invoice the homeowner for this work and wanted immediate payment prior to any work being performed. A few days later, the owners son was in the backyard, and noticed that the stucco around the fan location had been broken, the fan was no longer in the proper place and debris was dangling from the side of the house. The son asked his elderly father what had happened to his fan, and the previous story was told to his son. The son, being concerned, contacted the blanket insurance company and was told the following by their customer service representative and supervisor: All of our contractors referred through this policy are

licensed and insured independently from our agency. They are individually responsible for any and all damages created on your property, and we as the insurance providers make no warranty or assurance that the quality of the work performed under this policy is appropriate or done correctly. We are an out of state business and hold policies nationally, and all of our referred contractors have been checked out and verified as licensed contractors in the state where they are performing work. We assume absolutely no liability for their actions and are uninvolved in all transactions other than to put you in touch with an appropriate service contractor. After hearing this, the son urged his father to seek my services.

An older woman found a flyer included in a mailing packet advertising that a roofing contractor was having a special re-roof promotion in her area. All she had to do was call the phone number on the flyer, and a salesman would visit her home, take all needed measurements and bring samples for her to choose her new roof material. The work would be completed in two days from signing of the work agreement. The woman in need of a new roof, made the phone call, a salesman came to her home, she picked the roof material that she wanted for her home, and gave the man the requested 50% deposit. The salesman arranged for work to start in 10 days instead of immediately, as he claimed that all of his crews were busy working in her area until then. 20 days passed - the roofer never came to install her roof, the check cleared her bank, and nobody was answering the phone number on the flyer. I am her next call for help...

These are just 3 examples of the many calls that I have received during the past couple of months. It appears in each case that a specific targeted market was chosen. In these cases and many more, the average age of the homeowner has been 80 + years old.

In the State of California, where these calls originated and these incidents took place, the law states that every home improvement contract must contain a three day right of rescission clause. It is unlawful for any contractor to take any deposit in excess of 10% or \$1,000 (whichever is greater), for securing a contracted project. The homeowner has a right to cancel the contract within the 3 day period without any monetary penalty and any further recourse. All contractors must specifically disclose all labor and materials required for the project contract and provide a homeowner with materials and labor lien releases at the completion of the project prior to receipt of payment for that project.

Most homeowners have a sense of anxiety over any home renovation project. I have been retained as an expert witness for cases where young, well educated professionals such as doctors and attorneys have been scammed by contractors. There is a sense of helplessness that homeowners have, and they want to trust someone, anyone to realize their vision.

The difference in these elder cases is a sense of urgency that they must act upon. They are sometimes lonely, vulnerable and looking for something to entertain them. They need an immediate sense of relief from their perceived problems. A friendly con man contractor is just the sort of companionship that they are looking for. A convincing salesman spending a few minutes or hours with them entices their need for belonging to something. The graphic promises and descriptions of how the project will unfold draws them in, and ripens them up for the quick score.

In the first example, above, the homeowner had a written contract furnished to her at the time of the completed HVAC installation indicating that all labor and materials were under warranty for the first two years after the installation of her system. As the system failed only 18 months after the installation, all repairs and materials needed for those repairs were the sole responsibility of the installation contractor, not the homeowner. The serviceman had absolutely no business asking the homeowner for any fees associated with this service repair, as per her contract. And, requesting a \$100.00 cash prepayment for materials was completely unacceptable and unprofessional. Upon my examination of the original invoice and work contract for the new HVAC system, I personally contacted the installing contractor. He gave me a ridiculous list of reasons why the system had malfunctioned, and even tried to put the blame on the elderly homeowner. After our discussion, the contractor was convinced that he was in violation of his agreement and he agreed to return all money to the homeowner, and make all needed repairs. As a gesture of good will, he extended the labor warranty for an additional 6 months.

In the second example, after being kept on hold for 45 minutes and transferred from one person to the next, I spoke to the home warranty company. They attempted to claim that they had no responsibility to indemnify the homeowner for defective workmanship or inappropriate behavior of their referred contractors. I was read the same lack of responsibility statement that the son of the owner was given. In the State of California, the blanket insurance company still retains responsibility for any contracted services, even if they are out of state. If you sell contracts in California, you must follow the laws of the State of California. So, the claim that they were out of state, but were doing business within California without responsibility was invalid. I also had a long and detailed discussion with the electrician that created this problem, and discovered that he was in fact unlicensed, uninsured and using the license of some other contractor without the other contractors knowledge. While all funds were returned to the owner of the house, corrective actions and legal issues are still pending through the State Contractors Board against the electrician that was unlicensed. The reality of whether or not the fan motor needed replacement is questionable. The fan company warrants that particular product for ten years and offers free replacement motors that easily connect into the existing frame. The complete lack of knowledge and experience on the part of the bogus electrical contractor created significant damages to the home. It was obvious that the contractor was looking out for his best interests and saw the elderly man as an easy target for some quick cash. Due to the damage created by the incompetent electrician, the homeowner had to hire additional tradesmen to repair the house.

In the third example, the elderly homeowner has lost her money. No trace of the roofing contractor has been found, however, reports of fraud were made to the police department and investigation is pending. Due to the fact that the flyers were sent via mail, it may become a federal fraud problem for the roofing contractor.

Today, even more so than in the past, older people appear easy targets to unscrupulous contractors and salesmen. They are quick to react with their wallets and easily satisfied even though the work may not be as promised. However, they are generally slow to realize that they have been taken advantage of. They appear to be afraid that their problems will not be solved unless they make an attempt to pay for services in advance or prior to any formalization of contractual obligation. In many circumstances, perhaps relating to pride or shame, they will not report their problems and many are "ripped off" as a result of their hesitance to report what has happened to them. From my experience, it appears that many of the home warranty companies are incompetent to assess the quality of the referred contractors that are sent to do home repairs. Their lack of knowledge about the referral network contractors should act as a "red flag" to anyone seeking these types of services. Some homeowners seek "peace of mind" from these home warranty policies, however, in most cases are let down by the responses that are given when actual warranty claims arise. Many home warranty companies are happy to take your annual premium, but do little to help you when you have a claim.

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