

# Austin American-Statesman



## Retirees lost savings in fraud but won in court

*Insurance agent cheated women with high-risk investing, jury says*

By Robert Elder

Austin American-Statesman – September 28, 2005

In late 1998, Martha Eberhard says, her husband asked Austin insurance agent Danny Ballard how long it would take the couple to reach \$1 million in their retirement accounts. "He paused for a bit and said, 'Seven years,'" Eberhard said.

By the end of 2002, the approximately \$645,000 that they had invested had fallen by almost 50 percent. Worse, the Eberhards faced a hefty surrender charge to escape the variable annuities in which Ballard, then an agent for Golden American Life Insurance Co., had put their savings.

Last week, a U.S. District Court jury in Austin took a big step toward replenishing the retirement accounts of Eberhard and Peggy Gannon, a fellow retiree from Southwestern Bell Telephone Co., another Ballard customer.

Eberhard, the estate of her late husband David, and Gannon won a total of \$5.3 million in damages against Ballard and The Leaders Group Inc., Ballard's current employer in Littleton, Colo.

ING USA Annuity & Life Insurance Co., the new name of Golden American Life, reached a confidential settlement before trial.

According to court documents, the jury found that Ballard had committed fraud and "unconscionable" acts against the retirees – both of whom had worked for the phone company for almost 40 years – had been negligent in handling their accounts and had made numerous misrepresentations about the risk and expected performance of their investments.

Many wronged investors do not make it to court because of the usual mandatory arbitration agreements in securities transactions. Fewer still win verdicts that make up their investment losses.

But the plaintiffs' complaints about variable annuities are common, including high fees and commissions.

### **'Common occurrence'**

Variable annuities combine mutual funds with insurance products such as guaranteed income or death benefits.

The retirees knew nothing about investing, the importance of diversifying their assets and how fees are a crucial factor in long- term returns.

They turned over their savings to one individual, who put them in costly, high-risk investments.

The Texas Department of Insurance regulates insurance agents who sell annuities. The State Securities Board regulates an annuity policy only if it has not been registered with the insurance department.

Neither agency tracks the number of complaints about annuities. But State Securities Commissioner Denise Voigt Crawford said insurance agents peddling annuities are “targeting senior citizens. There’s no question about it.”

“Older investors who are living on a fixed income find them very appealing because (agents) promise very high returns, and people aren’t seeing much of a return on their CDs right now,” she said. “People are often told they cannot lose money. That’s a common occurrence.”

### **Earning their trust**

The jury verdict came almost seven years after Martha Eberhard first sat down with Ballard at her Central Austin home. Eberhard said she and her husband, who died last year, were inclined to trust Ballard because she met him at church.

Ballard “told us he would treat us like he did his own parents,” she said. “That’s how he got our trust.”

Ballard did not return calls for comment. Leaders Group CEO David Wickersham said Ballard is an independent salesman for his company’s products, which include annuities. He declined to comment on the verdict.

Ballard acknowledged in court that he had racked up \$50,000 in commissions on the women’s accounts. He kept about half; the rest went to the companies that offered the annuities. The sum does not count annual administrative fees for the annuities and separate charges for insurance products.

Eberhard said Ballard put her and her husband’s money into high- risk annuities even though her husband was disabled and unable to work.

In early 2002, in the midst of a broad market decline, the Eberhards said, they started switching their funds at Ballard’s direction. From April to December 2002, court records show, the Eberhards switched between stocks and bonds five times, incurring fees and commissions.

In court filings, Ballard and Golden American Life said they should not be liable because it was ultimately the plaintiffs’ decisions how to invest their money and how often to switch accounts.

## 'Easy targets'

Don Taylor, the lawyer for the Eberhards and Gannon, said his clients were easy targets.

"These people were savers, not investors," Taylor said. "They literally did not know what a stock was, what a bond was."

Gannon said: "My mother always told me, 'If you want to protect your money, put it under your mattress or bury it in a can in the backyard.'"

Gannon invested with Ballard on the advice of Martha Eberhard, who also told other co-workers about Ballard. "I thought I was doing everyone a great service," she said. "No one regrets it more than I do."

In 1999, Gannon invested about \$600,000 with Ballard – her savings account, two money market accounts, a life insurance policy, 401(K) and an IRA.

"But he told me, 'You're losing money by working,'" Gannon said. She soon retired and cashed in a \$100,000 life insurance policy to add to the money Ballard would invest for her.

By August 2003, Gannon had lost about \$366,000.

The verdict against Ballard includes about \$3 million in punitive damages. U.S. District Judge Lee Yeakel has not yet entered a judgment in the case.