

RANDY SWEENEY  
LEWIS AND CLARK DISTRICT COURT

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DEPUTY

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

STATE OF MONTANA,

Plaintiff,

v.

ARTHUR HEFFELFINGER,

Defendant.

Cause No.: CDC-2010-21

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

Defendant Arthur Leroy Heffelfinger, was charged by amended information with three felony offenses: operating a pyramid promotion scheme (ponzi scheme), theft (common scheme), and exploitation of an elder person. On July 1, 2010, he pled guilty to operating a pyramid promotion scheme and theft. In an omnibus hearing memorandum signed that same date, and filed on July 2, 2010, Defendant waived his right to a jury trial. The remaining count, exploitation of an elder person, was tried to the Court on October 25 and 26, 2010.

From the testimony and evidence presented, the Court makes the following:

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1 **FINDINGS OF FACT**

2 1. The victim, Mary Ewing Parr (Mary), was born  
3 December 11, 1911.

4 2. Mary was a nurse. She spent most of the years 1940 through  
5 1977 working as a missionary in Africa. She was married to Monte Parr (Monte).  
6 She had four children, one of whom is Mary "Polly" Parr Robertson (Polly).

7 3. Mary and Monte permanently returned to the United States in  
8 1977.

9 4. In 1999, they moved to Montana to be near daughter Polly, who  
10 lives near Winston. When they moved to Montana, Mary was 87 years old. Monte  
11 was a few years younger.

12 5. The Parris initially lived in a trailer on Polly's property. Monte  
13 suffered from Alzheimer's disease and his mental health was deteriorating.

14 6. Mary did not drive. Polly provided her transportation for medical  
15 appointments, banking, grocery shopping, etc. Consequently, Polly also made most  
16 appointments for Mary. Mary also required help with outside or yard work.

17 7. In November of 2000, Mary executed a written power of attorney  
18 appointing Polly to act for her in any lawful way with respect to real property  
19 transactions, tangible personal property transactions, stock and bond transactions,  
20 commodity and option transactions, banking and other financial institution  
21 transactions, insurance and annuity transactions, estate, trust and beneficiary  
22 transactions, claims and litigation, personal and family maintenance, benefits from  
23 social security, medicare, Medicaid, or other governmental program or from military  
24 service, retirement plan transactions, and tax matters. The power of attorney stated

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1 that it “will continue to be effective if I become disabled, incapacitated, or  
2 incompetent.”

3           8. Polly, Mary, and Monte met the Defendant, Arthur Heffelfinger  
4 (Heffelfinger) in approximately 2000. Heffelfinger’s office was in the Mountain  
5 West Bank building, where Mary and Monte had their bank accounts. Mary, Monte,  
6 and Polly had little financial experience and Heffelfinger became their financial  
7 adviser, handling their “investments.”

8           9. On May 4, 2001, Mary executed a last will and testament. She  
9 also executed a living will declaration and durable power of attorney for health care  
10 appointing Polly as her attorney in fact and agent to make health care decisions.

11           10. On that same date, Mary executed a revocable living trust  
12 agreement established for the primary benefit of Mary, her surviving spouse and,  
13 thereafter, for her children. Mary placed into the trust any and all personal property  
14 she now owned or hereafter acquired; all of her right, title and interest in and to real  
15 property in Minnesota; all deposit accounts, certificates of deposit, checking  
16 accounts, savings accounts, and other accounts held at any bank or financial  
17 institution, including but not limited to, accounts at Mountain West Bank, Helena,  
18 Montana; and all retirement accounts, stock, securities, money market accounts,  
19 annuities, IRAs or other accounts held at any investment management firm or  
20 brokerage, including, but not limited to, accounts managed by Arthur Heffelfinger or  
21 his successor. Mary and Polly were the original co-trustees. Polly was listed as  
22 successor trustee.

23           11. Heffelfinger testified that he was aware of the revocable living  
24 trust agreement involving Mary, had, in fact, raised the issue of establishing a trust,  
25 and had read the document.

1           12. Heffelfinger admitted that, as early as March of 2001, he had  
2 begun stealing funds from Mary and Monte. On March 2, 2001, he instructed State  
3 Farm Life Insurance Company to liquidate two of Mary's and Monte's annuities  
4 totaling over \$96,000, and misappropriated the funds.

5           13. In order to liquidate the annuities, Heffelfinger prepared and sent  
6 a fax cover sheet (State's Ex. 29) to State Farm. In it, he informed State Farm of  
7 Mary's and Monte's decision to "cash surrender both of these [State Farm] contracts"  
8 and admittedly wrote, "Mr. and Mr. [sic] Parr are approaching 90 years of age, and  
9 they have elected to surrender these policies a year early due to declining health and  
10 personal needs."

11           14. At trial, Heffelfinger insisted this statement regarding the Parrs'  
12 declining health pertained only to Monte. The Court did not find Heffelfinger's  
13 explanation credible, and notes that Heffelfinger admitted at trial that he lied to Mary,  
14 Polly, Cindy Paradis, and multiple other clients during the several years he stole  
15 money from them.

16           15. Heffelfinger further admitted he misappropriated over \$1,000  
17 from Mary. In fact, in addition to the annuities listed in paragraph 12, he testified  
18 that he failed to invest the following amounts from Mary or her trust as directed, and  
19 deposited them into his personal checking account: a \$50,000 check written by Polly  
20 and signed by Mary on February 3, 2001; a \$28,776 United States Treasury tax  
21 refund check made out to Mary Parr on May 30, 2003; a \$50,000 check written and  
22 signed by Mary on February 24, 2004; a \$50,000 check written and signed by Mary  
23 on April 28, 2004; a \$50,000 check written and signed by Mary on May 21, 2004; a  
24 \$50,000 check written by Polly and signed by Mary on September 7, 2004; a \$27,000  
25 check written by Polly and signed by Mary on February 18, 2005; and a \$10,000

1 check written and signed by Polly on August 10, 2009. Heffelfinger testified that he  
2 had returned approximately \$50,000 of this money to Mary over the years, but  
3 provided no documentation supporting his claim.

4 16. These thefts from Mary took place from 2001 through 2009.  
5 Mary was 89 years old when Heffelfinger stole the State Farm annuity money from  
6 her. She was 97 years old at the time of Heffelfinger's final theft of \$10,000 from  
7 her trust.

8 17. Because of Monte's decline, Mary and Monte moved to the  
9 Waterford, in Helena, Montana, in the fall of 2002. They lived in the assisted living  
10 area at the Waterford. Residents in assisted living receive all services provided in  
11 independent living and additional personal care services, such as reminders for meals,  
12 assistance with dressing, showering, toileting, medications, etc. Monte died in  
13 December 2002. The independent living apartments at the Waterford are less costly,  
14 so, after Monte's death, Mary moved into independent living. Even in independent  
15 living, residents are provided with help with housekeeping, meals, maintenance, life  
16 enrichment, and activities. By December 2005, Mary moved back to the assisted  
17 living side of the Waterford.

18 18. Mary was of an extremely advanced age. She was not sixty,  
19 seventy, or eighty years old when Heffelfinger began preying upon her — he stole  
20 from her from the time she was 89 until she was 97.

21 19. Mary had executed a power of attorney, a living will, and a trust.  
22 Heffelfinger was well aware of the trust, its terms, and that Polly was Mary's  
23 co-trustee at the outset. Common sense dictates that these documents were executed  
24 in great part because of Mary's advancing age, and its resulting frailties and  
25 dependencies.

1           20. Mary was hard of hearing.

2           21. Polly, who visited Mary every week or two, noted that Mary was  
3 becoming confused by 2003.

4           22. As of May 7, 2004, Mary resigned as trustee of the trust and  
5 named Polly as the sole trustee. Polly testified that Mary's resignation stemmed from  
6 Mary's growing confusion and Polly's concern about her managing her own  
7 finances.

8           23. Merry Lunde, executive director of the Waterford, testified that,  
9 for six months prior to Mary's move back to the assisted living side at the Waterford  
10 in 2005, she had noticed memory problems in Mary, and other residents were  
11 expressing concern about her. Mary even needed reminders to come eat meals.

12           24. Heffelfinger testified that he met with Mary every six weeks to  
13 two months. He testified that he met with her at the Waterford, and was thus aware  
14 of her living arrangements. Heffelfinger was not a casual observer of this woman; he  
15 was a criminal who was periodically stealing from her after face to face "meetings."

16           25. From the beginning of Heffelfinger's relationship with Mary,  
17 Polly assisted Mary with check writing, often writing out checks for Mary's  
18 signature.

19           26. Heffelfinger made much of the fact that, when going to meet with  
20 Mary at the Waterford, he generally waited for Polly before he went to Mary's  
21 apartment. His actions illustrate his recognition that Mary was not able to personally  
22 protect herself.

23           27. Dr. Shari Marx was Mary's physician for the last nine years of her  
24 life. Dr. Marx testified that, although her medical records only note increasing falls  
25 and increasing confusion beginning in October 2005, she was aware that Mary had

1 memory issues prior to this notation. The cause of death Dr. Marx listed on Mary's  
2 death certificate in 2009 was "dementia."

3           28. Dr. Marx testified that fifty percent of persons over age 90 suffer  
4 from dementia. Dr. Marx opined that Mary did not have cognitive capacity to  
5 manage her own financial affairs for the last five years of her life, i.e., 2004 through  
6 2009.

7           29. Defense expert Dr. William Stratford did not agree that a  
8 diagnosis of dementia or ability to manage finances could be made retroactively.  
9 However, he testified that dementia, a progressive decline in intellectual functioning,  
10 normally progresses from onset to death in five to ten years. Twenty-five percent of  
11 people over 85 have dementia. Dr. Stratford did not disagree with Dr. Marx's  
12 diagnosis that Mary died of dementia.

13           30. By 2006, Mary had become suspicious of Polly. Mary  
14 complained to employees at Mountain West Bank that Polly was stealing her money.  
15 A bank representative contacted Adult Protective Services in November 2006. Adult  
16 Protective social worker Cindy Paradis met with Mary at the Waterford for  
17 approximately one hour. She noted that Mary seemed alert, but was slow, frail, and  
18 had short term memory loss.

19           31. At Paradis's request, Heffelfinger met with Paradis, Mary, and  
20 Polly on November 29, 2006. Art brought papers with him (which apparently no one  
21 read) and reassured all concerned about Mary's finances. Paradis noted that  
22 Heffelfinger seemed to know Mary well, and was "over kind," placing his arm  
23 around Mary. Paradis contacted the auditor's office and was informed that  
24 Heffelfinger was licensed and in good standing. She closed the investigation,

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1 believing that Polly and Heffelfinger were familiar with Mary and looking after her  
2 best interests.

3           32. The referral to Adult Protective Services indicates that persons  
4 coming in contact with Mary believed that she needed protection as a vulnerable  
5 older person.

6           33. Heffelfinger denied noting any change in Mary's judgment, but  
7 said he was aware that Mary "lost things." He also testified that he knew that Polly  
8 was concerned about that.

9           34. The records contain ample proof that Mary was unable to provide  
10 personal protection from exploitation because of mental or physical impairments, or  
11 because of frailties or dependencies brought on by advanced age.

12           35. Heffelfinger makes much of Polly's fiduciary duty as co-trustee  
13 and trustee, but Heffelfinger, as Mary's financial adviser, also owed Mary a fiduciary  
14 duty.

15           36. Heffelfinger's final theft from Mary occurred on August 10, 2009.  
16 Heffelfinger obtained from Polly a check for \$10,000 written and signed by Polly.  
17 Mary was nearing the terminal stage of her dementia. Heffelfinger was certainly  
18 aware that the funds he stole were meant to care for Mary, and that she had no ability  
19 to protect herself from him.

20           37. Heffelfinger took advantage of Polly's naiveté and trusting nature.  
21 His willingness and ability to also deceive Polly in no way minimize his exploitation  
22 of Mary.

23           38. In September 2009, Heffelfinger called Polly. He was repentant  
24 and crying, and confessed to her that there were discrepancies in her mother's  
25 finances.

1 From the foregoing findings of fact, the Court makes the following:

2 **CONCLUSIONS OF LAW**

3 1. The Court has jurisdiction over this matter.

4 2. There is no dispute that Heffelfinger stole over \$1,000 from Mary  
5 Parr by deception and fraud.

6 3. Contrary to the arguments of Defendant, the Court finds that this  
7 is not a subtle case. The Court's verdict is directed by a common sense view of the  
8 evidence as a whole. There was overwhelming evidence presented at trial that Mary  
9 Parr was an older person as defined in the elder exploitation statute, Section  
10 52-3-803(8), MCA, i.e., over sixty years of age and unable to protect herself because  
11 of mental or physical impairment, or frailties or dependencies brought about by  
12 advanced age.

13 4. From on or about February 25, 2004, until on or about  
14 October 12, 2009, Heffelfinger committed the offense of exploitation of an older  
15 person in violation of Sections 52-3-825(3)(a) and 45-2-101(8), MCA. He  
16 unreasonably used Mary Parr to obtain control of and divert her money by means of  
17 deception and fraud, with the result of permanently depriving Mary Parr of her  
18 property.

19 5. Heffelfinger acted purposely or knowingly.

20 **ORDER**

21 Based on the foregoing, **IT IS ORDERED:**

22 1. Arthur Leroy Heffelfinger is GUILTY of elder exploitation of an  
23 older person.

24 2. The Department of Corrections is directed to prepare a  
25 presentence investigation report.

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3. A sentencing hearing on all charges will be held on

December 8, 2010, at 9:00 p.m.

DATED this 3<sup>rd</sup> day of November 2010.

  
KATHY SEELEY  
District Court Judge

c: Michael Winsor/Jesse Laslovich  
Brendan McQuillan

d/KCS/Heffelfinger CDC-2010-21