

# When Advisors Go BAD

By Jennifer Wray

Is your investment portfolio safe? Not entirely, but there are ways to protect yourself.

If you were looking for a trustworthy investment advisor, Julie Jarvis seemed like a safe bet. Founder and principal of Crossroads Financial Planning, Jarvis had 20 years' experience providing financial planning and investment management services. By 2009, she was managing more than \$22 million in assets for more than 250 clients. Her professional peers respected her enough to make her president of the Financial Planning Association of Central Ohio.

But Jarvis was keeping a terrible secret. From 2000 to early 2009, she had stolen nearly \$2.7 million from a pair of elderly clients, Barbara Stradley and Joanne Rainey, both in their late 80s. Jarvis forged signatures, switched funds from client accounts to her own, created phony financial statements and lied repeatedly about what she was doing and why she was doing it.

Jarvis used stolen money to buy real estate in the Caribbean and Ohio, pay off credit card balances and pay down her mortgage. By the time FBI investigators caught on to the thefts in March 2009, most

of the money was gone. Facing a possible sentence of 20 years in federal prison, Jarvis chose to take a plea bargain. In May, she pleaded guilty to one count of mail fraud. In October, U.S. District Court Judge Gregory Frost sentenced her to 66 months in prison; Jarvis also agreed to make restitution of \$2.66 million to her victims, partly by forfeiting virtually everything she owned, right down to the Yamaha grand piano.

Terry Sherman, the criminal defense attorney who represented Jarvis at trial, says the sentence was fair. "She's lost everything," he says. "She lost her career, she lost her life. She comes out of prison with zero. Nothing of her past life will be around."

Jarvis has “some mental health issues,” Sherman adds, stemming in part from an incident in which she was kidnapped and assaulted. “She’s been suffering from untreated post-traumatic stress disorder, and she believed she had to win people over by buying things,” he says. “She thought she had to buy love both from her kids and her boyfriend.” At one point, Sherman says, Jarvis told her children that she had cancer, a falsehood that came to light during her prosecution.

Dale Williams, assistant U.S. attorney for the Southern District of Ohio, says Jarvis “went to great lengths to present herself as a trustworthy person.” By all accounts, her façade was convincing. “Those of us who knew her were in shock,” says financial planner Peggy Ruhlin, a principal at Budros, Ruhlin & Roe, where Jarvis worked before launching her own firm. “There was nothing that would have made me believe she was capable of doing something like that. It’s just unbelievable.”

Jarvis wasn’t the only Columbus-area financial advisor to be caught on the wrong side of the law in recent months. In March, Lawrence Nallie pleaded guilty to six felony charges: three counts of investment advisor fund mishandling involving more than \$187,000, and three of acting as an unlicensed investment advisor (“The Affinity Scammer,” August 2009).

Coming just as the multibillion-dollar Ponzi scheme of New York investment manager Bernie Madoff was making headlines, the crimes of Jarvis and Nallie got the attention of investors and financial pros around Central Ohio. Should financial planners and investment managers be more tightly regulated? Should clients require financial advisors to obtain approval before every transaction? Can *anyone* be trusted these days?

## Legislating Integrity

It’s by no means clear that more extensive laws or regulations would have dissuaded Madoff, Jarvis or Nallie from stealing. Still, federal officials are pushing for stricter oversight and tougher standards of conduct for those who invest other people’s money, or advise others on how to invest their own money.

In June, President Barack Obama’s administration proposed holding investment broker-dealers to the same fiduciary standards that already apply to financial advisors. As it stands, advisors have a fiduciary duty to put their clients’ interests before their own. For example, an advisor can’t ethically recommend a mutual fund that carries a hefty front-end “load”—that’s finan-

cial-speak for commission—if there’s a no-load fund that’s just as suitable for the client and likely will produce a better total return.

A broker isn’t subject to the same fiduciary standard, which explains why you’ll almost never hear a broker recommend a no-load fund. Even bottom-feeding penny stock brokers are free to peddle their high-risk, high-commission dreck with impunity, as long as they don’t tell outright lies about what they’re selling.

Advisory firms that manage at least \$25 million are regulated by the U.S. Securities and Exchange Commission (SEC). Those that manage smaller amounts are regulated by the states. Brokers and other registered securities salespeople fall under the purview of the Financial Industry Regulatory Authority (FINRA).

Instead of a fiduciary duty, FINRA imposes a “suitability standard,” which allows brokers to recommend investments that generate greater commissions for themselves—and may not perform as well as others—as long as they fit a client’s goals and risk tolerance.

Regulatory reform bills under consideration in both the U.S. House of Representatives and U.S. Senate would subject every-

one providing investment advice—broker-dealers as well as financial planners and investment managers—to the stricter fiduciary duty of care.

The changes have gained support from the National Association of Personal Finance Advisors (NAPFA), the Financial Planning Association (FPA), the Certified Financial Planner (CFP) Board of Standards, and several other groups. In a July 14 letter to senior members of the House Financial Services Committee, the organizations said they “share the view that the highest legal standard—a fiduciary duty—should apply to all who give financial advice to clients. Over the years, we have looked on in dismay as brokers have been allowed to offer extensive advisory services, and market their services based on the advice offered, all without having to comply with the Investment Advisers Act of 1940 (Advisers Act).”

NAPFA, the FPA and the CFP have formed the Financial Planning Coalition, which advocates a professional oversight board for financial planners and advisors. “The financial planning industry has always fought to establish standards,” says NAPFA Chairman Bill Baldwin. “It’s important to the credibility of the industry. We’re selling trust and confidence as well as advice.”

“Critical at the core of our ability to serve the customer is the need to put their interest above everyone else,” says FPA board member Karin Maloney Stifler, a CFP and founder of Huron-based True Wealth Advisors. “Our goal is to create a world where everyone thrives and prospers, and we can’t feel good about having anything less than a fiduciary standard.”

The Senate Banking Committee is considering legislation that would extend the fiduciary standard to broker-dealers by removing a section of the Investment Advisers Act of 1940 that exempts brokers who provide advice that is “solely incidental” to their brokerage activities.

In late October, the House Financial Services Committee voted to approve the Investor Protection Act, which would require any financial service professional providing investment advice to act as a fiduciary. The House bill would require the SEC to write new regulations defining the fiduciary standard for advisors.

Kristina Fausti, a blogger for *fi360*, the fiduciary blog of *InvestmentNews*, wrote that the House bill “keeps two separate sets of rules in place for brokers and investment advisors, making the ultimate goal of ‘harmonizing’ investor protection rules for financial professionals harder to achieve.”

A consolidated bill may be ready for

Obama’s signature early in 2010. Whatever its final form, it seems clear that the legislation will produce sweeping changes throughout the industry. “Our financial system in general is going to be vastly different several years from now,” says Matt Stewart, chairman of the Central Ohio chapter of the FPA and an investment advisor for KeyBank.

## Self-Protection

If there’s an upside to recent national and local scandals, it may be heightened awareness among investors of their own responsibility to exercise care when choosing an advisor, says Richard Caw, CFP and vice president of the Sherrington Group, a Columbus-based, fee-only financial planning and investment consulting firm. Caw urges investors to take several steps that will minimize the risk of being ripped off:

**Hold assets in accounts with an independent third-party custodian.** Ruhlin says the only check an advisory firm should receive is for its fee; all other funds should be made payable to the brokerage firm or custodian holding the account. Budros, Ruhlin & Roe, for example, uses Charles Schwab as custodian. “The worst thing that can happen is if your advisor is also your custodian, like in the Madoff case, because you’re having information reported back to you by the person who’s stealing the money,” says Baldwin.

Even a third-party custodian isn’t a guarantee against fraud. In April, Ron Lieber, a financial columnist for the *New York Times*, reported that the SEC had charged his own financial planner, Matthew Weitzman, with siphoning at least \$6 million from clients’ accounts (not including Lieber’s), even though Weitzman’s firm used Schwab as its custodian. In the end, it’s the client’s responsibility to examine monthly account statements and red-flag transactions that don’t look right.

**Vet the advisor.** Referrals are a great way to find an advisor, but don’t stop with the endorsement of a friend or family member. Flipping President Ronald Reagan’s oft-quoted enjoiner, “trust, but verify,” Stifler urges investors to “verify, then trust.” Treat choosing an advisor as “one of the most important hiring decisions they’ll ever make,” she advises. “We need to take the process very seriously.”

Clients can check advisors’ backgrounds with such agencies as the SEC, the Ohio Department of Commerce Division of Securities, the Ohio Department of Insurance, FINRA and the Better Business Bureau.

Credentials are important, too. To be-

