

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

BURTON W. WIAND, as Receiver for
TRI-MED CORPORATION and
TRI-MED ASSOCIATES INC.,

Plaintiff,

Case No. 15-001074-CI

v.

A.J. BRENT,

Defendant.

COMPLAINT

Burton W. Wiand (the “**Receiver**”), as Receiver¹ for Tri-Med Corporation (“**Tri-Med**”) and Tri-Med Associates Inc. (“**TMA**”) (collectively with TMFL, the “**Receivership Entities**”), by and through his undersigned counsel, hereby files suit against A.J. Brent (“**Defendant Brent**”), and alleges as follows:

INTRODUCTION

1. The Circuit Court for the Sixth Judicial Circuit in Pinellas County originally appointed Mr. Wiand as Receiver for Tri-Med and TMA by an Order dated March 5, 2014 (the “**Order Appointing Receiver**”).

2. The Court entered the Order Appointing Receiver in an enforcement action brought by Florida’s Office of Financial Regulation (“**OFR**”) styled, *State of Florida, Office of Financial Regulation v. Tri-Med Corp., et al.*, Case No. 14-001695-CI (the “**OFR Proceeding**”), which was brought pursuant to Florida Statutes Chapter 517.

¹ By Order dated May 13, 2014, Mr. Wiand also was appointed Receiver for TMFL Holdings, LLC (“**TMFL**”), but he does not sue on its behalf.

3. The Receiver was appointed pursuant to Florida Statutes Section 517.191(2) and the Court's inherent equity powers, including the powers to carry out the purposes of the OFR Proceeding.

4. Under the Order Appointing Receiver, to carry out OFR's mandates, the purposes of the OFR Proceeding, and the obligations and duties imposed on receivers by law, the Receiver was directed to, among other things, hold and manage the assets and property of the Receivership Entities and marshal and safeguard all such properties and assets and seek constructive trusts as appropriate. He also was conferred the power and authority to assert and prosecute claims, actions, suits, and proceedings which may have been or which may be asserted or prosecuted by Receivership Entities.

5. The Receiver brings this action to recover money transferred to Defendant Brent which originated from Tri-Med and TMA.

JURISDICTION AND VENUE

6. This is an action for damages in excess of \$15,000, exclusive of interest, costs, and attorney's fees.

7. The Receiver was appointed in the OFR Proceeding, which is pending in the Circuit Court for the Sixth Judicial Circuit in Pinellas County. He is a citizen of the State of Florida and resides in Pinellas County, Florida.

8. Defendant is a resident of Hillsborough County, Florida.

9. Venue is proper in this circuit as this action is related to the OFR Proceeding pending in this circuit, the fraudulent investment scheme underlying this case occurred in this circuit, the transfers to Defendant Brent underlying this case originated in this circuit, and the

Receiver was appointed in this circuit. As such, the causes of action asserted in this case accrued in Pinellas County, Florida.

THE PARTIES

10. Mr. Wiand is the duly appointed and acting Receiver for the Receivership Entities. The Receivership Entities on whose behalf the Receiver asserts the claims in this case are (1) Tri-Med and (2) TMA.

11. Jeremy Anderson; Anthony N. Nicholas, III; Anthony N. Nicholas, Jr.; Eric Ager; Irwin Ager; and Teresa Simmons Bordinat, a/k/a Teresa Simmons (collectively, the “**Insiders**”), used the Receivership Entities to defraud over 200 investors from at least October 2011 forward by making material misrepresentations and omissions to lure investors into purportedly investing in medical-practice-related accounts receivables subject to Letters of Protection (“**LOPs**”), including by essentially characterizing the purported investment as a certificate of deposit, or “CD”, and offering guaranteed purported interest rates of up to 8%.

12. Defendant Brent acted as a “sales agent” for Tri-Med by soliciting, offering, and selling Tri-Med’s “investment program” to investors. As alleged below, in connection with this fraudulent investment scheme – which in this case amounted to a Ponzi scheme – Tri-Med, directly or through TMA, paid “commissions” or other “transaction-based compensation” to “sales agents” (collectively, “**commissions**”), including Defendant Brent, to solicit and sell Tri-Med’s “investment program” to investors.

13. Defendant Brent engaged in misconduct, including by making material misrepresentations and omissions to lure people into investing in this fraudulent investment scheme so he could earn high commissions. Defendant Brent continues to make material misrepresentations and omissions to Tri-Med investors in conjunction with Insider Jeremy Anderson, including about placing the Receivership Entities into Bankruptcy, to try to conceal

his and Insiders' misconduct and escape liability. Examples of Brent's misrepresentations and omissions are set forth in paragraphs 31 to 33 below.

14. The Receiver seeks to avoid the "commissions" and any other transfers to Defendant under the Florida Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, *et seq.* ("FUFTA"). In the alternative, the Receiver seeks disgorgement of that amount pursuant to an equitable claim of unjust enrichment.

THE FRAUDULENT SCHEME

15. From 2011 through March 2014, over \$17 million was raised from over 200 investors on behalf of Tri-Med by the Insiders through the offer and sale of securities as part of a single and continuous fraudulent scheme (the "**scheme**"). TMA was used as a so-called "marketing arm" of Tri-Med and focused on soliciting investors for Tri-Med's "investment program."

16. The Insiders and sales agents raised money mainly from elderly Florida investors through numerous material misrepresentations and omissions and through the promise of guaranteed interest rates of up to 8% from the purported purchase of LOPs. Tri-Med and TMA derived all of their assets from investors' principal investments.

17. Insiders fraudulently likened Tri-Med's "investment program" to bank CDs to make it seem very safe, and to underscore the purported safety of the "investment program," Insiders misrepresented that the LOPs were "secured," "guaranteed," "backed," and/or "paid" by major insurance companies. These same misrepresentations, and many others, including others alleged in this complaint, were made by Defendant Brent and other sales agents; they were included in documents used by Defendant Brent and other sales agents to solicit and sell Tri-

Med's "investment program;" or, at a minimum, Defendant Brent and other sales agents knew these misrepresentations were being made to investors and potential investors.

18. In reality, the LOPs were not secured, guaranteed, backed, or paid by any insurance companies as there was no established right to collect from an insurance company. Rather, the LOPs were agreements merely between medical providers and patients which gave medical providers some right to collect for all or part of their services from any settlement money the patient might receive.

19. As previously alleged, Insiders and sales agents guaranteed annual rates of "interest" of up to 8% with purported "interest" payments paid monthly for a term of up to two years. Insiders purported to assign LOPs supposedly purchased by Tri-Med to different investors and guaranteed that if the receivable underlying the LOP was not paid by the end of a two-year term from the time an investor invested, Tri-Med would still pay back to the investor the full principal amount or the investor could roll the investment amount over and continue receiving "interest" payments for another term.

20. These purported "interest" payments were primarily paid out of investors' commingled principal investment money. Indeed, only approximately \$4 million of the over \$17 million raised from investors were used to buy LOPs.

21. Investors were also falsely told their investment money would be held in an attorney trust account with Marlowe McNabb P.A. during the time it was not used to purchase accounts receivable. Yet, only approximately \$2.8 million of the over \$17 million raised from investors actually was deposited in trust with Marlowe McNabb P.A.

22. Insiders also made other material misrepresentations to investors, including (1) that the investments were registered with the OFR; (2) in other instances, that the investments

were exempt from registration; and (3) that Hospital Corporation of America hospitals were one of the sources from which Tri-Med purchased LOPs.

23. Insiders also forged many documents, including LOPs and a purported opinion from a major Florida law firm that the securities being sold to investors were exempt from registration.

24. During the scheme, Tri-Med's attorneys provided to Insiders a comprehensive memorandum that clearly notified Insiders they were violating state and federal securities laws. The memorandum notified Insiders they were violating securities laws by, among other things, not providing full and fair disclosure of information to investors; making inaccurate or misleading representations; advertising the Tri-Med "investment program" in newspapers and on Tri-Med's website; failing to register the securities and certain entities and individuals; and paying unlawful commissions.

25. In fact, this memorandum bluntly notified Insiders that:

Tri-Med and its principals have potential exposure to liability for claims by purchasers, as well as exposure for sanctions by Federal securities regulators.

It also explained that:

[u]ntil the Investors are repaid in full, the only way to eliminate the potential claims by purchasers would be to conduct a rescission offer to all prior purchasers who purchased [investments from Tri-Med].

26. The memorandum also warned that, "**Florida securities regulators could impose sanctions, require a rescission offer or pursue other civil or criminal liabilities,**" and concluded that, "**Tri-Med should discontinue all offers and sales of [investments] ... immediately.**" The Insiders ignored this and continued their investment scheme.

27. The vast majority of investors' money was not used to purchase LOPs, and a portion of that money was used to pay commissions to sales agents, including Defendant Brent.

28. Insiders intentionally and wrongfully caused Tri-Med to pay purported "interest" to investors. They also intentionally and wrongfully caused Tri-Med, directly or through TMA, to pay commissions to Defendant Brent and other sales agents. Because the information provided to investors did not reflect the true nature of the Insiders', the Receivership Entities', and Defendant Brent's and the other sales agents' activities, by intentionally and wrongfully causing Tri-Med, directly or through TMA, to pay those amounts to investors and Defendant Brent and other sales agents, the Insiders improperly diverted assets of Tri-Med and TMA to both perpetrate and perpetuate the scheme.

29. These (and all other) transfers of money which the Insiders caused Tri-Med and TMA to make to investors and Defendant Brent and other sales agents were paid from the fruits of the scheme.

30. Tri-Med and TMA were harmed by this unauthorized course of conduct, which was effectuated in furtherance of the scheme.

EXAMPLES OF DEFENDANT BRENT'S MISCONDUCT

31. As previously mentioned, Defendant Brent made numerous material misrepresentations and omissions to investors so he could lure as many people as possible into the scheme and earn high commissions. Following are some examples:

- Defendant Brent advocated for the purported interest rate paid to investors to be lowered so that the percentage of his commission could be raised – he never disclosed this to actual or potential investors.
- Defendant Brent drafted some of the documents used to lure investors into the scheme which contained material misrepresentations or omissions – he never disclosed the material misrepresentations or omissions to actual or potential investors.

- Defendant Brent knew that representations made to actual or potential investors that the Tri-Med “investment program” was essentially a guaranteed investment were false – he never disclosed this to actual or potential investors.
- Defendant Brent knew Bank of America froze Tri-Med’s and TMA’s bank accounts and expelled them from the bank – he never disclosed this to actual or potential investors.
- Defendant Brent was not comfortable with the ethics of some of the insiders – he never disclosed this to actual or potential investors.
- Defendant Brent was not comfortable that the Insiders had access to the investors’ money – he never disclosed to actual or potential investors that the Insiders had access to it and that he was concerned about that.

32. Defendant Brent continues to misrepresent information to investor victims in conjunction with Insider Jeremy Anderson, including by advising them that if Tri-Med is placed into bankruptcy they will receive their principal and interest back.

33. Defendant Brent knowingly made this and other misrepresentations and omissions to conceal and deceive his customers of his and others’ fraudulent conduct. He has continued to perpetuate his misconduct and fraudulent activities by interfering with the activities of the Receiver, all of which seems clearly designed to try to shield himself and Insiders like Jeremy Anderson from liability.

TRANSFERS TO DEFENDANT BRENT

34. As detailed in Exhibit A attached hereto and incorporated herein, Tri-Med, directly or through TMA, paid commissions to Defendant Brent to solicit and sell Tri-Med’s purported investment program to investors. Because Tri-Med and TMA were operated as part of a scheme as detailed in this complaint, those commissions were paid in violation of state and federal law and they improperly and wrongfully diverted money from Tri-Med and TMA.

35. Those commissions were also paid in violation of state and/or federal law because Defendant Brent was not licensed to offer and sell securities, including Tri-Med’s “investment program.”

36. Specifically, as detailed in Exhibit A, based on the records reviewed by the Receiver as of the filing of this complaint, between 2011 and 2014, Insiders caused Tri-Med to pay commissions, directly or through TMA (as detailed in Exhibit A), to Defendant Brent as itemized in Exhibit A.

37. Under the circumstances alleged in this complaint, to allow Defendant Brent to keep those and any other commissions or other transfers of money received by Defendant Brent directly or indirectly from any of the Receivership Entities would be inequitable and unjust, including to the Receivership Entities’ investors as a whole.

38. All money the Insiders wrongfully caused any of the Receivership Entities to transfer or pay to Defendant Brent was diverted and misappropriated in furtherance of the scheme. Thus, all of the money transferred or paid to Defendant Brent was improperly diverted assets of the Receivership Entities.

COUNT I

Florida Statutes § 726: Uniform Fraudulent Transfer Act

39. The Receiver re-alleges each and every allegation contained in Paragraphs 1 through 38.

40. By intentionally and wrongfully causing the transfer to Defendant Brent of money from Tri-Med and/or TMA as identified in Exhibit A under the circumstances alleged in this complaint, Tri-Med and TMA, through the Receiver, have a right to repayment of at least that amount from Defendant Brent.

41. In light of this right to repayment (and independently because the Insiders' conduct as alleged in this complaint with respect to Tri-Med and TMA amounted to embezzlement, breach of fiduciary duty, fraud, and/or other violations of law), Tri-Med and TMA have a claim against the Insiders and consequently are creditors of the Insiders under FUFTA. Accordingly, the Insiders are debtors under that act.

42. The transfers of commissions that the Insiders caused Tri-Med and/or TMA to make to Defendant Brent were inherently fraudulent because the transfers were made as part of the scheme.

43. Those transfers were fraudulent under Florida Statutes § 726.105(1)(a) because the Insiders caused Tri-Med and/or TMA to make the transfers with actual intent to hinder, delay, or defraud creditors of the Insiders, Tri-Med, and TMA.

44. Those transfers also were fraudulent under Florida Statutes § 726.105(1)(b) because: (a) the Insiders caused Tri-Med and/or TMA to make those transfers; and (b)(i) the Insiders and the Receivership Entities were engaged or were about to engage in a business or transaction for which their remaining assets were unreasonably small in relation to the business or transaction; or (ii) the Insiders intended that they and/or the Receivership Entities incur, or believed or reasonably should have believed they would incur, debts beyond their ability to pay as they became due.

45. Those transfers also were fraudulent under Florida Statutes § 726.106(1) because neither the Insiders nor the Receivership Entities received a reasonably equivalent value in exchange for those transfers to Defendant Brent, and the Insiders and the Receivership Entities were insolvent at all relevant times.

46. On behalf of Tri-Med and TMA, from which money was transferred to Defendant Brent, the Receiver is entitled to avoid and recover transfers equal to the commissions and other transfers that the Insiders caused Tri-Med and TMA to pay to Defendant Brent (and to any other pertinent remedy, including those available under Florida Statutes § 726.108).

47. On behalf of Tri-Med and TMA, the Receiver is entitled to avoid and recover those transfers because (i) money was commingled and (ii) the Insiders used Tri-Med and TMA as a single, continuous scheme.

WHEREFORE, the Receiver asks this Court to enter judgment against Defendant Brent avoiding transfers from Tri-Med and TMA in the amount of commissions and other money received by Defendant Brent, together with interest and costs, and for such other and further relief as the Court may deem just and proper.

COUNT II
Unjust Enrichment

48. The Receiver re-alleges each and every allegation contained in Paragraphs 1 through 38.

49. This unjust enrichment claim is asserted in the alternative, in the event the statutory remedy asserted in Count I does not provide an adequate remedy at law.

50. Defendant Brent received a benefit when in furtherance and during the course of the scheme, the Insiders wrongfully caused Tri-Med and/or TMA (as indicated in Exhibit A) to transfer money to Defendant Brent in an amount equal to the commissions and any other transfer received by Defendant Brent.

51. Defendant Brent knowingly and voluntarily accepted and retained a benefit in the form of that money.

52. The circumstances alleged in this complaint render Defendant Brent's retention of that benefit inequitable and unjust so Defendant Brent must pay the Receiver, acting on behalf of Tri-Med and TMA, the value of the benefit received.

53. Defendant Brent has been unjustly enriched at the expense of Tri-Med and TMA in the amount of the transfers received by Defendant Brent as detailed in Exhibit A, and Tri-Med and TMA, through the Receiver, are entitled to judgment in that amount.

54. The Receiver, on behalf of Tri-Med and TMA, is entitled to the return of that money through disgorgement or any other applicable remedy.

WHEREFORE, the Receiver asks this Court to enter judgment against Defendant Brent in the amount of commissions and other money received by Defendant Brent from Tri-Med and TMA, together with interest and costs, and for such other and further relief as the Court may deem just and proper.

s/Gianluca Morello

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EXHIBIT A**Transfers to A.J. Brent**

Date	Amount	Transfer Directly From
1/18/2012	\$6,000.00	Tri-Med Associates Inc.
1/18/2012	\$6,000.00	Tri-Med Associates Inc.
1/31/2012	\$600.00	Tri-Med Associates Inc.
2/16/2012	\$1,800.00	Tri-Med Associates Inc.
2/28/2012	\$600.00	Tri-Med Associates Inc.
3/7/2012	\$3,000.00	Tri-Med Associates Inc.
3/9/2012	\$600.00	Tri-Med Associates Inc.
3/19/2012	\$1,200.00	Tri-Med Associates Inc.
4/1/2012	\$1,800.00	Tri-Med Associates Inc.
4/1/2012	\$600.00	Tri-Med Associates Inc.
4/5/2012	\$374.00	Tri-Med Associates Inc.
4/7/2012	\$600.00	Tri-Med Associates Inc.
4/9/2012	\$600.00	Tri-Med Associates Inc.
5/9/2012	\$2,700.00	Tri-Med Associates Inc.
5/15/2012	\$6,000.00	Tri-Med Associates Inc.
6/20/2012	\$565.00	Tri-Med Associates Inc.
6/25/2012	\$1,440.00	Tri-Med Associates Inc.
6/25/2012	\$600.00	Tri-Med Associates Inc.
7/9/2012	\$600.00	Tri-Med Associates Inc.
7/25/2012	\$3,000.00	Tri-Med Associates Inc.
7/30/2012	\$105.42	Tri-Med Associates Inc.
8/9/2012	\$1,200.00	Tri-Med Associates Inc.
8/12/2012	\$1,440.00	Tri-Med Associates Inc.
8/16/2012	\$7,200.00	Tri-Med Associates Inc.
9/5/2012	\$12,900.00	Tri-Med Associates Inc.
10/3/2012	\$1,200.00	Tri-Med Associates Inc.
11/23/2012	\$300.00	Tri-Med Associates Inc.
11/30/2012	\$2,410.00	Tri-Med Associates Inc.
12/14/2012	\$2,604.00	Tri-Med Associates Inc.
1/8/2013	\$6,900.00	Tri-Med Associates Inc.
3/25/2013	\$1,500.00	Tri-Med Associates Inc.
4/5/2013	\$26,429.35	Tri-Med Corporation
5/13/2013	\$2,100.00	Tri-Med Corporation
7/31/2013	\$4,774.00	Tri-Med Corporation
10/1/2013	\$2,100.63	Tri-Med Corporation

10/29/2013	\$1,400.00	Tri-Med Corporation
12/24/2013	\$1,400.00	Tri-Med Corporation
Total	\$114,642.40	