

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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6 THE PEOPLE OF THE STATE OF CALIFORNIA,) FELONY COMPLAINT
7) WARRANT
8 Plaintiff,)
9)
10 vs.) No.12CF2662
11 BRIAN SMART 10/28/76) DOI 080C06883
12)
13 Defendant(s))

14 The Orange County District Attorney charges that in Orange
15 County, California, the law was violated as follows:

16 COUNT 1: On or about November 18, 2005, in violation of Section
17 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
18 SMART did willfully and unlawfully steal and embezzle money and
19 property which had a value exceeding four hundred dollars (\$400)
20 from VIRGINIA P., who was an elder of sixty-five (65) years of
age and older, and the defendant knew and reasonably should have
known VIRGINIA P. was an elder of sixty-five (65) years of age
and older.

21 COUNT 2: On or about May 09, 2005, in violation of Section 368
22 (d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN SMART
23 did willfully and unlawfully steal and embezzle money and
24 property which had a value exceeding four hundred dollars (\$400)
25 from VIRGINIA P., who was an elder of sixty-five (65) years of
26 age and older, and the defendant knew and reasonably should have
known VIRGINIA P. was an elder of sixty-five (65) years of age
and older.

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1 COUNT 3: On or about May 12, 2005, in violation of Section 368
2 (d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN SMART
3 did willfully and unlawfully steal and embezzle money and
4 property which had a value exceeding four hundred dollars (\$400)
5 from VIRGINIA P., who was an elder of sixty-five (65) years of
6 age and older, and the defendant knew and reasonably should have
7 known VIRGINIA P. was an elder of sixty-five (65) years of age
8 and older.

9 COUNT 4: On or about May 16, 2005, in violation of Section 368
10 (d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN SMART
11 did willfully and unlawfully steal and embezzle money and
12 property which had a value exceeding four hundred dollars (\$400)
13 from VIRGINIA P., who was an elder of sixty-five (65) years of
14 age and older, and the defendant knew and reasonably should have
15 known VIRGINIA P. was an elder of sixty-five (65) years of age
16 and older.

17 COUNT 5: On or about January 06, 2006, in violation of Section
18 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
19 SMART did willfully and unlawfully steal and embezzle money and
20 property which had a value exceeding four hundred dollars (\$400)
21 from VIRGINIA P., who was an elder of sixty-five (65) years of
22 age and older, and the defendant knew and reasonably should have
23 known VIRGINIA P. was an elder of sixty-five (65) years of age
24 and older.

25 COUNT 6: On or about January 19, 2006, in violation of Section
26 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
27 SMART did willfully and unlawfully steal and embezzle money and
28 property which had a value exceeding four hundred dollars (\$400)
from VIRGINIA P., who was an elder of sixty-five (65) years of
age and older, and the defendant knew and reasonably should have
known VIRGINIA P. was an elder of sixty-five (65) years of age
and older.

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1 COUNT 7: On or about November 21, 2005, in violation of Section
2 186.10(a) of the Penal Code (MONEY LAUNDERING), a FELONY, BRIAN
3 SMART did unlawfully conduct and attempt to conduct a
4 transaction and transactions within a seven (7) day period
5 involving a monetary instrument of a value exceeding five
6 thousand dollars (\$5,000.00), through ORANGE COUNTY CREDIT
7 UNION, a financial institution, with the intent to promote,
8 manage, establish, carry on, and facilitate that promotion,
9 management, establishment, and carrying on of criminal activity,
10 and knowing that the monetary instrument represented the
11 proceeds, and was derived directly and indirectly from the
12 proceeds of, criminal activity, namely: THEFT FROM ELDER.

13 COUNT 8: On or about December 07, 2005, in violation of Section
14 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
15 SMART did willfully and unlawfully steal and embezzle money and
16 property which had a value exceeding four hundred dollars (\$400)
17 from VIRGINIA P., who was an elder of sixty-five (65) years of
18 age and older, and the defendant knew and reasonably should have
19 known VIRGINIA P. was an elder of sixty-five (65) years of age
20 and older.

21 COUNT 9: On or about January 18, 2006, in violation of Section
22 470(a) of the Penal Code (FORGERY), a FELONY, BRIAN SMART, with
23 the intent to defraud, did willfully, unlawfully, and knowingly
24 without authority sign the name of KATHERINE B., a fictitious
25 person, to a CHECK, an item listed in Penal Code section 470(d).

26 COUNT 10: On or about February 01, 2006, in violation of Section
27 487(a) of the Penal Code (GRAND THEFT), a FELONY, BRIAN SMART
28 did unlawfully take money and the personal property of
KATHERINE B., which had a value exceeding four hundred dollars
(\$400).

29 COUNT 11: On or about March 24, 2006, in violation of Section
30 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
31 SMART did willfully and unlawfully steal and embezzle money and
32 property which had a value exceeding four hundred dollars (\$400)
33 from MARY JO O., who was an elder of sixty-five (65) years of
34 age and older, and the defendant knew and reasonably should have
35 known MARY JO O. was an elder of sixty-five (65) years of age
36 and older.

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1 COUNT 12: On or about March 27, 2006, in violation of Section
2 368(d) of the Penal Code (THEFT FROM ELDER), a FELONY, BRIAN
3 SMART did willfully and unlawfully steal and embezzle money and
4 property which had a value exceeding four hundred dollars (\$400)
5 from MORRIS O., who was an elder of sixty-five (65) years of age
6 and older, and the defendant knew and reasonably should have
7 known MORRIS O. was an elder of sixty-five (65) years of age and
8 older.

7 COUNT 13: On or about November 21, 2005, in violation of Section
8 487(a) of the Penal Code (GRAND THEFT), a FELONY, BRIAN SMART
9 did unlawfully take money and the personal property of DAGMAR
10 C., which had a value exceeding four hundred dollars (\$400).

10 COUNT 14: On or about January 25, 2006, in violation of Section
11 487(a) of the Penal Code (GRAND THEFT), a FELONY, BRIAN SMART
12 did unlawfully take money and the personal property of DAGMAR
13 C., which had a value exceeding four hundred dollars (\$400).

14 OTHER ALLEGATION(S)

15 As to Count(s) 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 14, it
16 is further alleged pursuant to Penal Code section 1203.045(a)
17 (OVER \$100,000 LOSS), that defendant BRIAN SMART committed the
18 crime of theft of an amount exceeding one hundred thousand
19 dollars (\$100,000).

19 As to Count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14,
20 it is further alleged pursuant to Penal Code sections 803
21 (c)/801.5 (STATUTE OF LIMITATION TOLLED), that the offense(s) of
22 THEFT FROM ELDER, GRAND THEFT & FORGERY are felonies, and no
23 victim of the offense and no law enforcement agency chargeable
24 with the investigation and prosecution of the offense had actual
25 or constructive knowledge of the offense prior to the date of
26 JANUARY 2, 2008, when it was discovered by MORRIS AND MARY JO
27 O'BRIEN. By means of receiving documents from the defendant
28 Brian Smart which showed that their investments had gone into
the defendant's company without their knowledge in January,
2006. The offense was not discovered earlier because the
defendant had the O'Brien's sign documents transferring their
American Equity IRA to FISERV, then the defendant without
permission had the FISERV account over to his own account on
March 24, 2006.

1 In July, 2008, as part of his duties as an Investigator with the
2 California Department of Insurance (CDI), Investigator Tomas
3 Petokas (Petokas) received an assignment to investigate
4 complaints alleging that SMART, while doing business as Smart
5 Assets, LLC and AIM/Smart, accepted money intended for insurance
6 and real estate investments, diverted the funds to undisclosed
investments and has failed to return the principal as demanded
by his victims.

7 Petokas reviewed the CDI licensing records that show SMART was
8 issued a California Individual Insurance License (#0C71102) to
9 transact in the following capacities: Life Agent from August 17,
10 1999 through August 31, 2007, and is currently inactive. SMART
11 was issued a number for his Limited Liability Company, Smart
12 Assets, LLC (200531110077) by the California Secretary of State
13 on November 4, 2005, type of business described as Financial
14 Services. SMART named himself as the Manager, Executive Officer,
15 Owner of Smart Assets, LLC, and Kelli Smart as a member in his
16 Statement of Information filing for Smart Assets, LLC, filed on
17 January 5, 2006.

18 Victims - Virginia Padilla & Lisa Maria Padilla

19 Lisa Maria Padilla contacted the California Department of
20 Insurance on June 26, 2008 alleging SMART stole money from her
21 81 year old mother Virginia Padilla and The Padilla Family
22 trust. Virginia Padilla, in declining health, resigned as the
23 trustee of her trust March 3, 2005, and appointed her daughter
24 Lisa Maria Padilla as the sole trustee of The Padilla Family
25 Trust. SMART represented to Lisa Maria Padilla that he was a
26 financial advisor and insurance agent who could manage her
27 mother's money in a safe manner to provide the monthly income
28 needed to pay for her mother's anticipated assisted living
expenses.

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1 SMART directed Lisa Maria Padilla to consolidate her mother's
2 money held in savings accounts and mutual funds and invest them
3 into a safe and secure annuity with American Equity Investments
4 (AE). Following SMART'S instructions Lisa Maria Padilla closed
5 her mother's savings accounts held in banks and mutual funds. On
6 May 26, 2005 an annuity application was received by AE and an
7 annuity account was established in Virginia Padilla's name. AE
8 received multiple deposits into the account from June 2005
9 through July 2005 with a deposit total of \$404, 317.94.

10 Virginia Padilla moved into a nursing home located in the City
11 of Anaheim, California in 2005 due to declining health and SMART
12 recommended that he could arrange the sale of her La Habra,
13 California home. Lisa Maria Padilla believing that SMART was
14 acting in her mother's best interest agreed to the sale. SMART
15 stated that he was going to invest the \$385,000 from the sale of
16 the house into a safe place with a good rate of return. On
17 October 19, 2005 the \$385,000 was sent to an escrow account in
18 Utah based on transfer instructions provided by SMART, these
19 funds are currently unaccounted for.

20 SMART in November 2005 directed Lisa Maria Padilla and her
21 mother to withdraw the entire amount from the recently
22 established AE annuity promising the new investment would be
23 just as safe but earn a higher rate of return. SMART presented
24 Lisa Maria Padilla and her mother with transfer document to sign
25 directing AE to have the proceeds of policy # 562984 sent to
26 First American Title Insurance "FBO-Smart Assets, LLC". A total
27 of \$407,013.43 was transferred on November 18, 2005 from the AE
28 annuity, these funds are currently unaccounted for.

29 Lisa Maria Padilla began to receive monthly payments of
30 \$3,173.75 from SMART beginning in early 2006. Lisa Maria Padilla
31 believed the payments were interest dividends from her mother's
32 money that was invested by SMART. The interest payments from
33 SMART stopped in February of 2008 and Lisa Maria Padilla
34 received promises from SMART throughout 2008 that the monthly
35 payments needed to pay for her mother's care would resume but
36 they did not.

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1 Lisa Maria Padilla demanded that SMART return all of her
2 mother's money and provide her with documentation detailing
3 where the money was invested. SMART failed to respond to Lisa
4 Maria Padilla's demands for documentation, the resumption of
5 interest payments and the return of her mother's money. Lisa
6 Maria Padilla does not know where her mother's \$385,000 from the
7 house sale and the \$407,013.43 from the AE annuity are.

8 It was also found that five of the checks that Lisa Maria
9 Padilla issued payable to "AMERICAN EQUITY INVESTMENTS/BRIA"
10 with a total sum of \$250,000 and sent to SMART were never
11 received by AE. Annuities are a form of Life Insurance and
12 investors make payments directly to the insurer therefore life
13 insurance agents do not operate trust accounts or deposit client
14 money intended for life insurance. The five missing checks bear
15 an endorsement believed to be SMART'S hand written signature
16 deposited into two bank accounts at Orange County's Credit
17 Union, believed to belong to SMART and/or Smart Assets, LLC. The
18 missing payments issued to AE are: (1) \$80,000 issued May 9,
19 2005 deposited May 17, 2005 into account# 91492430. (2)\$80,000
20 issued May 12, 2005 deposited May 17, 2005 into account
21 #91492430. (3)\$40,000 issued May 16, 2005 deposited June 10,
22 2005 into account#91942080 & 91492430. (4)\$25,000 issued January
23 8, 2006 deposited January 2006 into account# 91942080. (5)
24 \$25,000 issued January 19, 2008 deposited January 24, 2006 into
25 account #91942080. The five checks totaling \$250,000 issued to
26 AE but deposited into bank accounts believed to belong to SMART
27 are unaccounted for.

28 Over One MILLION DOLLARS belonging to Virginia Padilla were
29 transferred to SMART and/or Smart Assets, LLC and Lisa Maria
30 Padilla's repeated demands to SMART for the return her mother's
31 money have gone unanswered.

32 Victim - Morris & Mary Jo O'Brien

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1 SMART doing business as Smart Assets, LLC and AIM/Smart,
2 instructed Morris and Mary Jo O'Brien to invest their retirement
3 money into American Equity Investments (AE) annuities and two
4 annuities were purchased in April 2005. In late 2005 SMART
5 directed the O'Briens to withdraw their money from AE, on the
6 grounds he was moving the money to a new company named FISERV,
7 that was just as safe, paid a higher yield and they would be
8 credited for any early withdrawal penalties incurred from the
9 early surrender of the AE annuity. Morris O'Brien at age 65 and
10 Mary Jo O'Brien at age 68 told SMART that these are their
11 retirement accounts that they depend on and believing SMART was
12 looking out for their best interest agreed to the transfer.
13 SMART directed the O'Briens to sign transfer documents moving
14 their IRA money from AE to Fiserv and the transfers took place
15 on March 20, 2006.

16 The O'Briens received occasional interest dividend payments and
17 asked SMART in 2008 to begin sending them monthly interest
18 payments to help them pay their monthly living expenses. All
19 payments from SMART ceased in 2008 and SMART made promises that
20 they would resume but they have not. The O'Briens questioned
21 where their money was and demanded SMART provide documentation
22 on where their money was and explain why they cannot withdraw
23 their money none of which has happened.

24 The O'Briens learned that when they signed the documents moving
25 their money from AE to FISERV, SMART also had the O'Briens sign
26 documents transferring their money from FISERV to Smart Assets,
27 LLC. The O'Briens IRA retirement account money of \$56,000 and
28 \$51,000 went from AE to FISERV then immediately to Smart Assets,
29 LLC. The money was transferred from FISERV to Smart Assets, LLC
30 on March 20, 2006, into Wells Fargo account # 2018669606, for
31 the benefit of Smart Assets, LLC.

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1 The O'Briens believed their retirement money was invested with
2 FISERV and SMART never disclosed or mentioned that he intended
3 to put their money into Smart Assets LLC. The O'Briens later
4 learned that FISERV is not an insurance company but an
5 administrator for retirement accounts from where money is then
6 directed into investments. The O'Briens stated that they would
7 never have agreed to invest their retirement money in a limited
8 liability corporation. The O'Briens have made repeated demands
9 that Smart return their principal plus interest, SMART has made
10 repeated promises that he will comply but the O'Briens have not
11 received their retirement money.

9 Victim - Dagmar Chaplin

10 SMART doing business as Smart Assets, LLC and AIM/Smart,
11 represented himself to Dagmar Chaplin as a financial advisor,
12 who could invest her retirement savings in a safe place where it
13 could grow. SMART represented to Dagmar Chaplin that he would
14 invest her \$200,000 in a residential property located in La
15 Mirada with the intent of repair and resale of the home. Dagmar
16 Chaplin on November 21, 2005 sent \$200,000 to Order Express Casa
17 De Comido by wire transfer following SMART'S instructions.
18 Months later Dagmar Chaplin received a Membership Certificate
19 for 200,000 units of membership in Smart Assets, LLC attached to
20 a Promissory Note and Loan Agreement contract from SMART, terms
21 of the contract cited an interest rate of 8.5% per annum with a
22 maturity date of March 22, 2006, none of which she had agreed
23 to.

20 SMART promised the money was invested in a safe place and
21 convinced Dagmar Chaplin to lend him an additional \$50,000 on
22 February 6, 2006, the Promissory Note and Loan Agreement gave a
23 maturity date of April 13, 2006. Repeated promises and
24 assurances were made by SMART that the invested \$250,000 was
25 safe: however, at maturity without Chaplin's approval the money
26 was lent to Golden Key Investments, Inc., and was later told by
27 SMART her money was invested in property located in Utah but the
28 current whereabouts of her money are unknown.

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1 Dagmar Chaplin received several Smart Assets, LLC statements
2 from SMART showing interest accruing on her money and she did
3 receive several interest payments from SMART when she needed to
4 pay for her hospitalization. The last payment Dagmar Chaplin
5 received from SMART was in early 2008 and since then she has
6 made repeated demands to SMART that he return all of her money.
7 To date Dagmar Chaplin has not received her \$250, 000 in
8 retirement money from SMART or most of the interest promised by
9 SMART.

10 Additionally it is alleged pursuant to Penal code Section 803(d)
11 that the defendant has resided in the State of Utah during and
12 after the offenses were committed.

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ENHANCEMENT(S)

11 It is further alleged pursuant to Penal Code section 186.11(a)
12 (1)/(2) (AGGRAVATED WHITE COLLAR CRIME - OVER \$500,000), that as
13 to counts 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 14,
14 defendant BRIAN SMART engaged in a pattern of related fraudulent
15 felony conduct involving the taking of more than five hundred
thousand dollars (\$500,000).

16 As to Count(s) 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13 and 14, it
17 is further alleged pursuant to Penal Code section 12022.6(a)(3)
18 (PROPERTY DAMAGE OVER \$1,000,000), that defendant BRIAN SMART
19 intentionally took, damaged, and destroyed property valued in
20 excess of one million dollars (\$1,000,000) during the commission
and attempted commission of the above offense.

21 As to Count(s) 7, it is further alleged pursuant to Penal Code
22 section 186.10(c)(1)(B), that the value of the transaction and
23 transactions exceeded one hundred fifty thousand dollars
24 (\$150,000), but was and were less than one million dollars
25 (\$1,000,000).

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1
2 I declare under penalty of perjury, on information and belief,
3 that the foregoing is true and correct.

4 Dated 09-12-2012 at Orange County, California.
5 ML/DM 12F01337

6 TONY RACKAUCKAS, DISTRICT ATTORNEY

7
8 by: _____
9 Deputy District Attorney

10 RESTITUTION CLAIMED

11 [] None
12 [] \$ _____
13 [X] To be determined

14 BAIL RECOMMENDATION:

15 BRIAN SMART - \$ 1,786,000.00

16 NOTICES:

17 The People request that defendant and counsel disclose, within
18 15 days, all of the materials and information described in Penal
19 Code section 1054.3, and continue to provide any later-acquired
20 materials and information subject to disclosure, and without
21 further request or order.

22 Pursuant to Penal Code Section 296.1, defendant, BRIAN SMART, is
23 required to provide DNA samples and thumb and palm prints.