

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DIVISION**

SHERYL L. CRIST,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	Division
	)	
CREATIVE PLANNING, LLC,	)	
	)	
Registered Agent:	)	<b>JURY TRIAL DEMANDED</b>
Universal Registered Agents, Inc.	)	
300 E High Street	)	
Apt. B	)	
Jefferson City, Missouri 65101	)	<b>K.S.A. Chapter 60</b>
	)	
Defendant.	)	

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**PETITION FOR DAMAGES**

Plaintiff Sheryl L. Crist, for her Petition against Defendant Creative Planning, LLC, states and alleges as follows:

**INTRODUCTION**

1. This lawsuit arises out an Investment Advisory Agreement (the “Advisory Agreement”) dated November 9, 2021 between Plaintiff Sheryl L. Crist (“Crist”) and Defendant Creative Planning, LLC (“Creative Planning”).

2. During her initial meeting with Creative Planning on November 8, 2021, Crist was informed that Creative Planning would work with her to perform a Roth IRA conversion from her traditional IRA every year until 2030.

3. Consistent with its promise, Creative Planning performed a Roth IRA conversion in tax year 2022.

4. In tax year 2023 however, Creative Planning failed to perform a Roth IRA conversion, let alone inform Crist that it would not be performing a Roth IRA conversion.

5. This lawsuit seeks the damages that Crist incurred as a result of Creative Planning's failure to perform a Roth IRA conversion in tax year 2023.

### **THE PARTIES**

6. Crist is a natural person and a citizen of the State of Missouri.

7. Creative Planning is a limited liability company in good standing, organized, and existing under the laws of the State of Missouri.

8. Creative Planning can be served through its Missouri registered agent Universal Registered Agents, Inc. at 300 E. High Street, Apt. B, Jefferson City, Missouri 65101 or its Kansas registered agent Peter Mallouk at 5454 W. 110<sup>th</sup> Street, Overland Park, Kansas 66211.

### **JURISDICTION AND VENUE**

9. This Court has personal jurisdiction over Creative Planning as it transacts business in the State of Kansas and it committed a tortious act in the State of Kansas.

10. Venue is proper in this Court. In the Advisory Agreement, the parties agreed that the venue for the resolution of any dispute between them would be in Johnson County, Kansas.

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## FACTUAL BACKGROUND

### *Crist's Engagement of Creative Planning*

11. Creative Planning is a wealth management firm that offers personalized financial planning, investment management, and retirement planning to clients.

12. In the fall of 2021, Crist met with Creative Planning in the hopes of becoming a client and getting professional management of her brokerage and retirement accounts and guidance for her retirement years.

13. Crist planned to retire in January 2022.

14. On November 8, 2021, Crist had an initial meeting with Zach Lyman, a Partner / Private Wealth Manager at Creative Planning.

15. During the meeting, Crist and Lyman discussed Crist's upcoming retirement, future living and travel needs, and wealth transfer upon her death.

16. During the discussion, Lyman had a 30-year outlook for Crist's finances and Crist told Lyman that she wanted to use her Roth IRA as an investment vehicle for her estate.

17. Lyman and Crist discussed converting as much as possible from Crist's traditional IRA into her existing Roth IRA while keeping Crist within what was considered the 24% tax bracket.

18. Accordingly, Lyman placed an emphasis on performing Roth conversions from Crist's traditional IRA every year until 2030.

19. If the plan was properly executed, approximately half of Crist's traditional IRA would be converted into her Roth IRA by 2030. This would make the

traditional IRA's required minimum distributions more manageable and Crist would receive the benefits associated with the tax-free growth and withdraw offered by the Roth IRA.

20. To this end, in a document created for the November 8, 2021 meeting, Creative Planning noted that it would "work with [Crist] annually to determine how much of [her] IRA to convert to a Roth IRA to maximize [Crist's] tax bracket. This will reduce your required minimum distributions when you turn 72 as well as sheltering the tax on the growth within your Roth IRA."

21. On November 9, 2021, Crist and Creative Planning executed the Advisory Agreement.

22. The Advisory Agreement was drafted by Creative Planning.

23. Under the Advisory Agreement, Creative Planning agreed to "discharge its investment management responsibilities consistent with [Crist's] designated investment objectives."

24. In November 2021, Crist transferred most of her brokerage accounts to Creative Planning, which included a traditional IRA and a Roth IRA.

***Creative Planning's Failure to Make a Roth IRA Conversion in***

***Tax Year 2023***

25. Crist retired in January 2022.

26. Throughout tax year 2022, Crist made estimated quarterly tax payments on the tax liability she would owe as a result of the Roth IRA conversion.

27. Creative Planning, through Lyman, was aware that Crist was making estimated tax payments in tax year 2022.

28. In tax year 2022, Crist received only one paycheck before retiring, so Creative Planning converted \$130,000.00 from Crist's traditional IRA to her Roth IRA per the plan Lyman and Crist discussed on November 8, 2021.

29. Because she was fully retired with no earned income in tax year 2023, Crist believed that Creative Planning would convert at least \$150,000.00 from her traditional IRA to her Roth IRA per the plan Lyman and Crist discussed on November 8, 2021.

30. Throughout tax year 2023, Crist made estimated quarterly tax payments on the tax liability she would owe as a result of the Roth IRA conversion.

31. Creative Planning, through Lyman, was aware that Crist was making estimated tax payments in tax year 2023.

32. At no point during tax year 2023 did Creative Planning instruct Crist to discontinue making estimated quarterly tax payments.

33. At no point during tax year 2023 did Creative Planning work with Crist to determine how much of her traditional IRA to convert to her Roth IRA.

34. At no point during tax year 2023 did Creative Planning inform Crist that it would not be performing a Roth conversion.

35. Despite having told Crist it would perform a Roth conversion every year until 2030 and being aware that Crist was making estimated quarterly tax payments

for a conversion in tax year 2023, Creative Planning failed to perform a Roth conversion for Crist in tax year 2023.

36. As a result of Creative Planning's failure to perform a Roth conversion in tax year 2023, Crist has missed out on one year's conversion opportunity and the associated compounding tax-free growth opportunities that a Roth IRA offers.

37. As a result of Creative Planning's failure to perform a Roth conversion in tax year 2023, Crist needlessly made estimated tax payments in tax year 2023 that she otherwise would have invested.

38. Pursuant to the Advisory Agreement, Crist paid Creative Planning an annual fee for tax year 2023.

***Creative Planning's Waiver of the Advisory Agreement's  
Arbitration Provision***

39. In January 2024, Crist discovered that Creative Planning failed to perform a Roth conversion in tax year 2023.

40. On January 23, 2024, Crist raised the issue with Lyman via email.

41. On February 19, 2024, Lee Richardson Jr., Creative Planning's Chief Risk and Compliance Officer, sent Crist an email in which he characterized Creative Planning's failure to perform a Roth conversion in tax year 2023 as a "miscommunication."

42. In his email, Richardson noted that a literal interpretation of the document created for the November 8, 2021 meeting is that Creative Planning "would

have a discussion with [Crist] about the determination of how best to maximize [her] tax bracket with respect to [her] IRA.”

43. In the February 19, 2024 email, Creative Planning offered to refund ¼ of Crist’s 2023 advisor compensation fees.

44. On February 21, 2024, Crist replied to Richardson by noting that Creative Planning’s offer to refund ¼ of her fees was woefully inadequate and that she had contacted an attorney.

45. On February 25, 2024, Richardson responded to Crist’s email by stating that he was “reviewing [her] perspective as shared in [her] emails and [would] respond more fully in the near future.”

46. As of the filing of this Petition, Richardson has not responded to his February 25 email.

47. Section 15 of the Advisory Agreement provides as follows:

15. **Arbitration.** Subject to the conditions and exceptions noted below, and to the extent not inconsistent with applicable law, in the event of any dispute pertaining to ADVISER’s services under this Agreement, both ADVISER and CLIENT agree that the dispute shall be resolved through individual binding arbitration. ADVISER and CLIENT will select the arbitration sponsoring organization and the neutral arbitrator, who shall be a retired judge, by mutual agreement. If ADVISER and CLIENT cannot mutually agree on an arbitration sponsoring organization, the arbitration will be held under the auspices of JAMS, and except as provided in this Agreement, will be under the then-current Comprehensive Arbitration Rules and Procedures (“JAMS Rules”), which are available via the internet at [www.jamsadr.com](http://www.jamsadr.com). To the extent that any of the terms, conditions or requirements of this Agreement conflict with the JAMS Rules, the terms, conditions or requirements of this Agreement will govern. ADVISER and CLIENT understand that such arbitration shall be final and binding, and that by agreeing to arbitration, ADVISER and CLIENT are waiving their respective rights to seek remedies in court, including the right to a jury trial. No party may join his or her claims with the claims of any other party for any purpose. All aspects of the arbitration, including any award, shall be treated as strictly confidential. This arbitration provision shall survive the termination of this Agreement. CLIENT acknowledges that CLIENT has had a reasonable opportunity to review and consider this arbitration provision prior to the execution of this Agreement. CLIENT further acknowledges and agrees that in the specific event of non-payment of any portion of the Adviser Compensation pursuant to paragraph 3 of this Agreement, ADVISER, in addition to the aforementioned arbitration remedy, shall be free to pursue all other legal remedies available to it under law, and ADVISER shall be entitled to reimbursement of reasonable attorneys’ fees and other costs of collection.

**Pre-arbitration resolution procedure.** Before initiation of an arbitration, CLIENT and ADVISOR shall attempt to resolve all disputes through a mandatory pre-arbitration resolution procedure. CLIENT shall send a written notice by fax to 888-243-9402 or 913-338-4507 or by letter to ADVISER’s home office at 5454 W. 110<sup>th</sup> St., Overland Park, KS 66211, detailing the dispute, including (1) a concise statement of the factual basis of the dispute, including the dates, times, places and circumstances of the act, omission or event complained of; and (2) the name and address of any employee of ADVISER involved, if known. Thereafter, no arbitration shall be commenced until after ninety (90) days has passed, during which time CLIENT and ADVISER shall discuss and attempt to resolve the dispute.

48. On or about March 11, 2024, undersigned counsel sent a letter to Creative Planning pursuant to the Pre-Arbitration Resolution Procedure paragraph set out in section 15 of the Advisory Agreement (the “March 11 Letter”).

49. The March 11 Letter was sent to Creative Planning’s home office at 5454 W. 110<sup>th</sup> Street, Overland Park, Kansas 66211.

50. The March 11 Letter detailed Crist’s dispute with Creative Planning and included (1) a concise statement of the factual basis of the dispute, including the dates, times, places, and circumstances of the act, omission, or event complained of, and (2) identified Lyman by name.

51. The March 11 Letter was delivered to Creative Planning’s home office on March 12, 2024.

52. The March 11 Letter requested a response by April 1.

53. Creative Planning did not respond to the March 11 Letter.

54. On April 3, 2024, undersigned counsel sent a letter to Creative Planning via its Missouri registered agent noting that he had not received a response to the March 11 Letter and stated “if you do not wish to comply with the ‘mandatory pre-arbitration resolution procedure’ in your Advisory Agreement (*i.e.*, that the parties ‘discuss and attempt to resolve the dispute’ [b]efore initiation of an arbitration), please provide input regarding the arbitration sponsoring organization and the neutral arbitrator to be engaged for the arbitration.”

55. The April 3, 2024 letter was delivered to Creative Planning’s registered agent in Missouri on April 4, 2024.



56. Creative Planning did not respond to the April 3, 2024 letter.

57. Despite receiving written notice pursuant to the Pre-Arbitration Resolution Procedure paragraph set out in section 15 of the Advisory Agreement, Creative Planning did not discuss or attempt to resolve the dispute with Crist after it received the March 11 Letter.

58. By failing to discuss or attempt to resolve the dispute with Crist after it received the March 11 Letter, Creative Planning waived its right to arbitration set out in section 15 of the Advisory Agreement.

59. Because Creative Planning failed to discuss or attempt to resolve the dispute with Crist after it received the March 11 Letter, a condition precedent to arbitration per section 15 of the Advisory Agreement has not occurred.

60. During all times relevant to this Petition, Lyman, Richardson, and all other employees of Creative Planning were acting as agents of Creative Planning, under Creative Planning's express direction, and with Creative Planning's knowledge and consent.

## **CAUSES OF ACTION**

### **Count I**

#### **Breach of Contract**

61. Crist incorporates the foregoing allegations as if fully set forth herein.

62. The Advisory Agreement is a binding contract.

63. The named parties to the Advisory Agreement are Crist and Creative Planning.

64. The Advisory Agreement was supported by sufficient consideration.

65. Crist performed all her obligations under the Advisory Agreement.

66. Creative Planning failed to perform all of its obligations under the Advisory Agreement and thereby breached the Agreement.

67. In particular, Creative Planning breached the Advisory Agreement by failing to discharge its investment management responsibilities consistent with Crist's designated investment objectives in that Creative Planning did not work with Crist to convert a portion of her traditional IRA to a Roth IRA in tax year 2023.

68. Creative Planning's breach of the Advisory Agreement caused Crist to suffer damages in an amount to be proven at trial.

## **Count II**

### **Breach of Fiduciary Duty**

69. Crist incorporates the foregoing allegations as if fully set forth herein.

70. Because Creative Planning was Crist's investment advisor, a fiduciary relationship existed between Creative Planning and Crist.

71. Creative Planning breached fiduciary duties owed to Crist in a variety of ways, including, but not limited to:

- a. Failing to convert a portion of Crist's traditional IRA to a Roth IRA in tax year 2023, and
- b. Failing to inform Crist that it would not be doing a Roth IRA conversion in tax year 2023.

72. As a direct and proximate result of Creative Planning's breach of fiduciary duty, Crist was damaged.

### **Count III**

#### **Violation of the Kansas Consumer Protection Act**

73. Crist incorporates the foregoing allegations as if fully set forth herein.

74. Crist was a consumer as defined by K.S.A. 50-624(b).

75. Creative Planning was a supplier as defined by K.S.A. 50-624(l).

76. Creative Planning's rendering of services, or lack thereof, to Crist pursuant to the Advisory Agreement was a consumer transaction as that term is defined by K.S.A. 50-264(c).

77. In connection with that consumer transaction, Creative Planning engaged in deceptive or unconscionable acts or practices in violation of K.S.A. 50-626 and/or K.S.A. 50-627.

78. Crist was aggrieved by such acts or practices.

WHEREFORE, Plaintiff Sheryl L. Crist requests entry of judgment in her favor on the claims asserted against Defendant Creative Planning LLC, the actual damages Plaintiff sustained as a result of Defendant's breaches and/or violations, any special damages, pre- and post-judgment interest; attorney's fees; the reasonable costs Plaintiff incurred in bringing this action, and any other and further relief this Court deems just and appropriate.

#### **DEMAND FOR JURY TRIAL**

Plaintiff Sheryl L. Crist hereby demands trial by jury on all issues so triable.

Respectfully Submitted,

DLM LAW LLC

By /s/ Benjamin B. Donovan  
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