

Small Claims County Court District Court
 Probate Court Juvenile Court Water Court
Saguache County, State of Colorado
Court Address: P.O. Box 164, 501 4th St., Saguache,
CO 81149

Plaintiff: HEATHER WOLFSMITH

vs.

Defendant: JUDITH ANN ARBETTER

Case Number: 2001 S 19

▲ COURT USE ONLY ▲

Div.: Ctrm:

Small Claims County Court District Court
 Probate Court Juvenile Court Water Court
Saguache County, State of Colorado
Court Address: P.O. Box 164, 501 4th St., Saguache,
CO 81149

Plaintiff: GABRIELLE LOOMIS

vs.

Defendant: JUDITH ANN ARBETTER

Case Number: 2001 S 20

▲ COURT USE ONLY ▲

Div.: Ctrm:

Small Claims County Court District Court
 Probate Court Juvenile Court Water Court
Saguache County, State of Colorado
Court Address: P.O. Box 164, 501 4th St., Saguache,
CO 81149

Plaintiff: NICOLE KRIEGEL

vs.

Defendant: DONNA CONRAD and JOSHUA HILLMAN

Case Number: 2001 S 21

▲ COURT USE ONLY ▲

Div.:

Ctrm:

Small Claims County Court District Court
 Probate Court Juvenile Court Water Court
Saguache County, State of Colorado
Court Address: P.O. Box 164, 501 4th St., Saguache,
CO 81149

Plaintiff: HOLLY DEIACO

vs.

Defendant: DONNA CONRAD and JOSHUA HILLMAN

Case Number: 2001 S 22

▲ COURT USE ONLY ▲

Div.:

Ctrm:

<input type="checkbox"/> Small Claims <input checked="" type="checkbox"/> County Court <input type="checkbox"/> District Court <input type="checkbox"/> Probate Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> Water Court Saguache County, State of Colorado Court Address: P.O. Box 164, 501 4 th St., Saguache, CO 81149	
<hr/> Plaintiff: SARA WHALEN vs. Defendant: DONNA CONRAD and JOSHUA HILLMAN <hr/>	<hr/> Case Number: 2001 S 23 ▲ COURT USE ONLY ▲ Div.: Ctrm:
ORDER	

THIS MATTER came before the court on December 13, 2001 for trial. At that time Saguache County Small Claims cases 2001 S 20, 2001 S 21, 2001 S 22 and 2001 S 23 were heard jointly for the purposes of court economy. Present were plaintiffs Heather Wolfsmith, (Wolfsmith) Gabrielle Loomis (Loomis), Nicole Kriegel (Kriegel), Holly Delaco (Delaco), and Sara Whalen (Whalen). The three defendants of the five cases, Judith Ann Arbetter (Arbetter), Donna Conrad (Conrad) and Joshua A. Hillman (Hillman), were also present.

I. Preliminary Findings:

All of the Plaintiffs, as well as Arbetter and Conrad, were involved in a "Women's Gifting Circle". The literature given to the Plaintiffs prior to joining a circle explains that the concept of the Women's Gifting Circle was started over a decade ago by small group of women. (Plaintiffs' Ex. 1). No evidence was presented regarding the pioneers of the groups involved in these cases. Arbetter had a significant role in recruiting the Plaintiffs, or recruiting those who recruited the Plaintiffs.

There are two separate components of the Women's Gifting Circle. One component comprises a loose affiliation of women who participate in supportive conversation, telephone seminars and other activities. All of the female participants in this action agreed this component was positive and helpful. There are no fees or costs required for this participation, other than one's own telephone costs.

The second component, the "business component", of the Women's Gifting Circle is the portion which brought the matter before this court. This component was the financial, or business portion of the circle. The literature received by the Plaintiffs explained this component as follows: "Each woman who participates gives a gift of

\$5,000.00 to another woman in the circle.....Within the circle you enter, there are a total of 15 women at any given time who participate. Eight Women give to one, the other six occupy various 'positions' in the group moving towards the center. Each woman 'cycles' through the circle as new women join, ultimately receiving the sum of \$40,000." (Plaintiffs' Exhibit 1). Examples of some specific "circles" were presented in Plaintiffs' Exhibit 4, and Defendants' Exhibit C.

New members of the business portion of the circle enter at the "Appetizer" level. There were three ways in which a woman could become an "Appetizer". The first was to pay \$5,000.00 to the woman in the "Dessert" slot of the circle. The second was to have some one else pay the \$5,000.00 to the woman in "Dessert", on behalf of the woman entering at "Appetizer" (a type of sponsorship). The third was for the woman in "Dessert" to forgo the \$5,000.00 and give a slot to a woman. Sometimes, with the third option, "Dessert" would forgo a portion of the \$5,000.00. That decision was always in the control of the person in "Dessert". There are various reasons why "Dessert" would give a slot to another person. That person could be a friend, or that person might have contacts which would help fill the open slots in the table. It also could be, as argued by the Defendant, that person given the slot has special talents or a personality which would benefit the group. However, a woman does not have to be a member of the table to participate in the support portion of the group. So there is no reason to give that person a slot on the table unless she will not give her talents without the opportunity to receive a financial pay-off.

Once the eight "Appetizer" positions are filled, the group splits in half. The person in "Dessert" leaves the circle (although she can put herself into one of the Appetizer slots while she is in "Dessert" so she will continue to be part of the cycle). Those at the "Entrée" level move to the "Dessert" level in the new groups. Those at "Salad" move to "Entrée", and those at "Appetizer" move to "Salad". This opens up 8 new slots at "Appetizer" in each of the new circles, and the cycle begins again.

There was no evidence on how Arbetter entered the various circles she was involved with. Conrad apparently was sponsored on some circles. In the circle connected to this matter, Conrad borrowed \$5,000.00 from Hillman, in return for which Hillman took a promissory note from Conrad. When Conrad reached "Dessert", she had the woman entering "Appetizer" pay \$2,500.00 to herself, and \$2,500.00 to Mr. Hillman. Mr. Hillman testified that he wasn't sure how much he had received, but that it was at least \$7,500.00.

II. Specific Claims by Plaintiffs

Heather Wolfsmith: Wolfsmith entered into the business portion of the gifting circle by sending Judith Arbetter \$5,000.00. Arbetter was "Dessert" of the circle entered by Wolfsmith. Wolfsmith testified that she entered the circle because of the financial benefit she could reap. Wolfsmith executed a "Gifting Statement" when she sent

Arbetter the \$5,000.00. Wolfsmith thought her "Gifting Statement" was in the form of Plaintiffs' Exhibit 2, a document which had been provided to in connection with her recruitment to the circle. It appears that she actually signed Defendants' Exhibit D. Exhibit D states: This money is a gift, freely given to Judith Arbetter without consideration. I have not been forced in any way or by anyone to give this money. This is strictly a gift and I expect nothing in return." Similar forms were signed by the other plaintiffs when they paid their \$5,000.00. It was their understanding that the purpose of the form was tax avoidance. This interpretation is understandable, as a great deal of the literature sent out by the group focused on the tax free aspect of the money. Whalen's gifting statements actually contained references to tax codes.

Wolfsmith set about recruiting new members of her circle. When some of her friends indicated that they believed the circle to be an illegal pyramid scheme, Wolfsmith began her own research. Reaching the same conclusion as her friends, Wolfsmith asked Arbetter for her money back. Prior to this request, there had been some discussions among the members of the circles about the return of a woman's money, if that woman no longer wanted to be a member of a circle. One way in which to receive one's money was to sell one's place in the circle to another woman. Wolfsmith and the other Plaintiffs did not want to "sell" their places in their circles to other women, because they felt that would be continued participation and propagation of the scheme. Wolfsmith corresponded by both e-mail and traditional mail with Arbetter and asked for a return of Wolfsmith's \$5,000.00. Arbetter declined to do so.

Wolfsmith's claim requests \$7,500.00 plus costs. This figure is based upon the \$5,000.00 she submitted to Arbetter plus damages authorized by C.R.S. §6-1-113.

Gabrielle Loomis: Loomis complaint and circumstances are essentially the same as Wolfsmith's.

Holly Delaco: Delaco entered her circle by sending \$2,500.00 to Hillman, and \$2,500.00 to Conrad. Conrad was in the "Dessert" slot of the circle Delaco entered. Delaco also sent an executed "gifting statement" to both Conrad and Hillman. Prior to filing this matter, Delaco also requested her money back from both Conrad and Hillman. Hillman did not respond, and Conrad declined to send any money back.

Delaco 's claim requests \$5,000.00 from Conrad and \$2,500.00 from Hillman. These claims are for actual damages and statutory damages authorized by C.R.S. §6-1-113.

Nicole Kriegel: Kriegel's complaint is also against Hillman and Conrad and her circumstances mirror those of Delaco.

Sara Whalen: Whalen's complaint is also against Hillman and Conrad and her circumstances mirror those of Delaco and Kriegel. The "Gifting Statements" of Whalen

contain specific reference to the United States and Canadian tax codes. (Exhibits O and P).

III. Counterclaims:

Arbetter submitted a counterclaim against both Wolfsmith and Loomis, claiming the legal action by the women against Arbetter constituted fraud and breach of contract.

Conrad submitted a counterclaim against Delaco, Kriegel, and Whalen, also claiming fraud and breach of contract.

Joshua Hillman submitted a counterclaim against Delaco, Kriegel, and Whalen claiming fraud and breach of contract.

IV. Legal Conclusions:

Colorado has adopted a Consumer Protection Act. The act makes illegal certain behavior or business practices which might otherwise be legal. The act is based upon public policy. It is a violation of the Colorado Consumer Protection Act to be involved in a pyramid promotional scheme. Under the Colorado Consumer Protection act, "you should have known better" or "you knew the risks" is not a defense. The inability of the public to make good financial decisions when faced with the lure of easy money is a re-occurring theme through history. Thus, the legislators in many states have passed laws to protect citizens from themselves.

The success of the plaintiffs is hinged upon the court classifying the financial practices of the Women's Gifting Circle as a pyramid promotional scheme. In Colorado, a pyramid promotional scheme is defined by C.R.S. 6-1-102(9) as a "program utilizing a pyramid or chain process by which a participant in the program gives a valuable consideration in excess of fifty dollars for the opportunity or right to receive compensation or other things of value in return for inducing other persons to become participants for the purpose of gaining new participants in the program." It is illegal in the state of Colorado to promote a pyramid promotional scheme by "inducing one or more other persons to become participants, or attempting to so induce, or assisting another in promoting a pyramid promotional scheme by means of references or otherwise."

The financial portion of the Women's Gifting Circle fits the definition of a pyramid promotional scheme. There is a set amount, \$5,000.00, for the "gift". The giving of this amount is the only way a person enters the financial portion of the circle. The only way a person has the opportunity to make it to the "Dessert" position is by recruiting new members. The only way a person in "Dessert" has an opportunity to receive the gifts from those in the "Appetizer" position, is to recruit new members to the circle.

The term pyramid is derived from the shape the scheme would make if written down on paper. The financial portion of the Women's Gifting Circle is in the shape of an inverted pyramid. In *Lashbrook V. State*, 550 N.E.2d 772 (Ind. App 1990), the scheme was referred to as an airplane program because the participants were designated pilots, co-pilots, crew members and passengers. In that plan, each "airplane" contained one pilot, two co-pilots, four crew members, and eight passengers. Participants boarded the plan as passengers by paying \$ 1,500.00 to the pilot. Once all the passenger seats were filled, the airplane broke into two sections, everybody moved up a place, and new passenger seats were sold.

In *Nebraska v. Irons*, 254 Neb. 18; 574 N.W.2d 144 (Neb 1998), the scheme was entitled the "Friends Network", and the monetary contributions were termed "gifts". In *Pacurib v. Villacruz*, 705 N.Y.S.2d 819 (1999), the scheme was termed a private club in which consumers and business owners got together to expand the base of the businesses. The financial portion of that program was wholly dependent upon the recruitment of new members who gave "voluntary gifts" to the person in the CEO position. That CEO could use the money for any purpose, including the fulfillment of the CEO's dreams. When a sufficient number of new members joined the "gifting board", the board split, allowing the participants to move into or closer to the CEO position. All of these groups were found to be pyramid schemes.

As in *Pacurib v. Villacruz*, 705 N.Y.S.2d 819 (1999), the Women's Gifting Circle attempts to distinguish itself from a pyramid scheme by using the characterization of "gifting circle" and by presenting self-serving information regarding the legality of the process. The Women's Gifting Circle attempts to evade the label of pyramid by having each new participant send a signed "Gifting Statement" with the money. This statement states that the money is a gift, given without consideration, that the person giving the money expects nothing in return. However, the literature sent to prospective participants emphasizes that the "gift" language is necessary so recipients do not have to pay tax on the money. In fact the process of the gifting circle is contrary to the language contained in the "gifting statement". New members do in fact receive something in exchange for their money. They receive a place at the dinner table, and an opportunity to be in the position of receiver if enough people are recruited to the table. Of course, few, if any, members truly participate without the hope of a windfall profit. Movement of the circle (the bringing in of new members) was a regular topic of conversation during meetings.

The Defendants argue that the signing of the "Gifting Statement" makes the payment of the money irrevocably a gift and enforceable as a contract. Even if the Court found this argument persuasive, the contract would be illegal and void as a matter of public policy. *Menzel V. Niles Company* 86 Colo. 320, 281 P. 364. (Colo. 1929).

There are many variations on the pyramid theme and the present case is no exception. The intertwining of this pyramid with the "women helping women" theme,

makes the scheme less obvious, and perhaps more insidious. Certainly the loose net of women calling each other and participating in self help, is not the reason this case is before the court. Nor is this case at issue because giving can be a healing and redemptive act. Certainly both of these things can be done without promoting a chain of pyramids, all linked together, all relying on an ever increasing amount of financial donors. The Defendants submitted numerous affidavits of participants and presented many witnesses all of who stated that they gave their gifts without promise of return. Many stressed the benefits of the network of women. However, the supportive programs are not dependent upon the financial program in anyway. If these programs are helpful, and not financially supported by the person in dessert, then there is no reason why they cannot continue to function without the "Gifting Circle".

The financial portion of the Women's Financial Circle is an illegal pyramid promotional scheme. The math of the Women's Gifting Circle makes it clear why these programs are against public policy. The layout of each supper table is as follows:

4 4 4 4 4 4 4 4
 3 3 3 3
 2 2
 1

In the initial circle, those in position 1,2 and 3 would not invest anything. The following shows the progression of members needed to continue the circles to the 20th level.¹

Level	Running total of people needed
1 8 (new appetizers)	8
2 16 "	24
3 32 "	56
4 64 "	120
5 128 "	248
6 256 "	504
7 512 "	1,016
8 1,024 "	2,040
9 2,048 "	4,088
10 4,096 "	8,184
11 8,192 "	16,376
12 16,384 "	32,760
13 32,768 "	65,528
14 65,536 "	131,064
15 131,072 "	262,136
16 262,144 "	524,280
17 524,288 "	1,048,568
18 1,048,576 "	2,097,144
19 2,097,152 "	4,194,296
20 4,194,304 "	8,388,600

¹ From Pacurib v Villacruz, 705 N.Y.S.2d 819 (1999).

Those entering "Appetizer" when the Level 4s are at Dessert, are the 7th level. There are 1,016 Level 7s. Those in the 7th level will not all get their "dreams fulfilled" until they recruit 8,184 women. In 1998 there were only 5,205 registered voters in Saguache County.² The financial portion of the woman's gifting circle exhibits the classic disadvantage of the pyramid scheme: those who come late to table are going to go to bed without dessert.

Since it is clear that the financial portion of the Women's Gifting Circle is an unlawful pyramid scheme, the question remains what is the appropriate remedy for the plaintiffs. The plaintiffs' all have standing to seek damages under C.R.S. 6-1-113. They each have been harmed by their participation in the circle. Arbetter, Hillman and Conrad were the direct recipients of monies paid by the various plaintiffs. Each of the defendants would not have received monies from the plaintiffs if not for the operation of the illegal pyramid. With regard to Hillman, although he was not a named participant in the circle, he lent money to Conrad with the knowledge and intention that she was going to participate in the circle. At the very least, the money he received was tainted, and unjust enrichment. Hillman, Arbetter's live-in significant other, was not credible in his protestations that he did not know anything about the function of the circle or that he did not think it odd that woman he did not know were sending him gifts of \$2,500.00.

The amount of damages allowed by C.R.S. 6-1-113 is the amount of actual damages unless the court finds by clear and convincing the Defendants behave with "bad faith conduct" in this matter. If "bad faith conduct" is found, treble damages are allowed. "Bad faith conduct" is defined as "fraudulent, willful, knowing, or intentional conduct that causes injury". It is clear that the defendants were involved in a pyramid promotional scheme. Even though this was brought to their attention, they did nothing to return plaintiffs money. They continue to participate in the scheme. They have even sought to find a way to change their literature to make the scheme less obvious. The court finds by clear and convincing evidence that the defendants acted with bad faith conduct in this matter.

IT IS THEREFORE ORDERED:

Judgement is entered in favor of Heather Wolfsmith, and against Judith Arbetter in the amount of \$7,500.00 (actual damages plus treble damages up to the court's jurisdictional limit), plus costs in the amount of \$24.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.

Judgement is entered in favor of Gabrielle Loomis, and against Judith Arbetter in the amount of \$7,500.00 (actual damages plus treble damages up to the court's

² The Court takes judicial notice of this fact from the Master Jury list for Saguache County.

jurisdictional limit), plus costs in the amount of \$24.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.

Judgement is entered in favor of Sara Whalen, and against Joshua Hillman in the amount of \$2,500.00 (she did not ask for any more against Mr. Hillman), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001

Judgement is entered in favor of Sara Whalen, and against Donna Conrad in the amount of \$7,500.00 (actual damages plus treble damages up to the court's jurisdictional limit), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.


Judgement is entered in favor of Nicole Kriegel, and against Joshua Hillman in the amount of \$2,500.00 (she did not ask for any more against Mr. Hillman), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001

Judgement is entered in favor of Nicole Kriegel, and against Donna Conrad in the amount of \$7,500.00 (actual damages plus treble damages up to the court's jurisdictional limit), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.

Judgement is entered in favor of Holly Delaco, and against Joshua Hillman in the amount of \$2,500.00 (she did not ask for any more against Mr. Hillman), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.

Judgement is entered in favor of Holly Delaco, and against Donna Conrad in the amount of \$7,500.00 (actual damages plus treble damages up to the court's jurisdictional limit), plus costs in the amount of \$12.00. Interest shall accumulate at the rate of 8% per annum, commencing December 13, 2001.

Done this 31st day of January, 2002



Amanda Pearson
Saguache County Judge

Certificate of Mailing

I do hereby certify that on 1/31, 2002, I did send a true and correct copy, first class mail, postage prepaid, of the foregoing order to the following.

HOLLY DEIACO
PO BOX 555
ALBURTIS PA 18001

NICOLE KRIEGEL
2126 W WARNER AVE
CHICAGO IL 60618

DONNA CONRAD
PO BOX 277
CRESTONE CO 81131

JOSHUA HILLMAN
PO BOX 456
CRESTONE CO 81131

SARA WHALEN
5048 NORTH MARINE DR. #03
CHICAGO IL 60640

GABRIELLE LOOMIS
1204 E. BETHANY HOME RD #54A
PHOENIX, AZ 85014

JUDITH ARBETTER
PO BOX 456
CRESTONE CO 81131

HEATHER WOLFSMITH
112 WEST 72ND ST #5E
NEW YORK, NY 10023


Clerk of the Court