

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

SUSAN PATTON, individually and on behalf of)
all others similarly situated,)

Plaintiff,)

vs.)

AMCORE FINANCIAL, INC.)

Defendant.)

Civil Action No. 09-1038-MJR

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff Susan Patton, through her counsel, and on behalf of all others similarly situated, and for her Complaint against Defendant AMCORE Financial, Inc.

("AMCORE"), states as follows:

1. This action arises out of the mismanagement and misappropriation of funds from a thousand or more Health Savings Accounts ("HSA").
2. An HSA is a tax-exempt custodial or trust account used for paying qualified medical related expenses under 26 USC §223.
3. Plaintiff is the owner of an HSA.
4. Plaintiff opened her HSA via Canopy Financial, Inc. ("Canopy"), a non-party.
5. AMCORE is the custodian bank for HSAs opened by Plaintiff and other members of the Class through Canopy.

PARTIES

6. Plaintiff opened and presently owns an HSA account via Canopy where AMCORE serves as the custodian bank.
7. Defendant AMCORE operates as the bank holding company for AMCORE Bank, N.A. (collectively “AMCORE”), which provides consumer banking and other financial services. AMCORE is a Nevada Corporation headquartered in Rockford, Illinois.
8. Non-party Canopy is a Delaware Corporation based in Chicago, Illinois. On or about November 25, 2009, Canopy filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code. That case is pending in the United States District Court for the Northern District of Illinois, Case No. 09-44943.
9. Non-party Jeremy J. Blackburn (“Blackburn”) was a co-founder and senior officer of Canopy until approximately November, 2009. On or about November 30, 2009, the United States filed a criminal complaint against Blackburn concerning an alleged scheme by him to defraud investors of Canopy by creating fraudulent audit statements of Canopy. Blackburn allegedly used these fraudulent financial statements to raise approximately \$75 million for Canopy in 2009. The criminal complaint is styled as *United States of America v. Jeremy Blackburn*, United States District Court for the Northern District of Illinois, Case No. 09 CR 976. Further, on or about November 30, 2009 the United States Securities and Exchange Commission (“SEC”) filed a complaint against Canopy and Blackburn seeking, among other things, disgorgement of the \$75 million raised for Canopy by the allegedly fraudulent scheme involving the allegedly fraudulent auditing

statements. The SEC action is styled as *SEC v. Canopy Financial, Inc. and Jeremy J. Blackburn*, United States District Court, Northern District of Illinois, Case 09 CV 7429.

JURISDICTION AND VENUE

10. This Court has jurisdiction and subject matter over this action pursuant to 28 U.S.C. § 1332. The Plaintiff is a natural person and citizen and resident within the Southern District of Illinois. The aggregated amount in controversy exceeds \$5,000,000 exclusive of interest and costs. There are in excess of 100 members of the proposed Class and certain members of the Class are citizens of a state or states other than Illinois. No more than two-thirds of the members of the proposed Class are citizens of Illinois.
11. Venue is appropriate under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District. Specifically, non-party Shawnee Administrative Services, LLC (“Shawnee”), which purports to offer HSA administration services to a range of entities including financial institutions, is located in Benton, Illinois. Shawnee worked with Canopy to establish some 770 HSAs. The HSAs established via Shawnee accounted for approximately \$2.47 million of the HSAs at issue at AMCORE. Plaintiff opened her HSA using Shawnee.

SUBSTANTIVE ALLEGATIONS

12. Canopy held itself out as an agent to establish HSAs with custodial banks. Canopy purported to provide reporting and electronic transfer services to individuals, including Plaintiff, and custodian banks for HSAs.

13. Canopy represented that AMCORE acts as a custodian for HSA deposits for certain Canopy facilitated HSAs.
14. AMCORE was the custodian bank for approximately \$17 million in HSA accounts that had been facilitated by Canopy. Canopy managed these accounts at AMCORE.
15. Several millions of dollars were misappropriated from the HSA custodial account(s) at AMCORE. As a result of this misappropriation, with respect to the funds at AMCORE which remain, Canopy has purportedly frozen those account(s) and thus Plaintiff and the Class are unable to access even those remaining monies.
16. AMCORE had reason to know that it was acting as a fiduciary with respect to these monies for at least the following reasons:
 - a. The HSAs could be drawn on via debit cards by the individual HSA account owners. AMCORE was involved in processing these debit card transactions against the custodial account(s).
 - b. AMCORE received electronic deposits into the custodian account(s) from over one thousand individual bank accounts via Canopy's facilitation.
 - c. Plaintiff received an Internal Revenue Service Form 5498-SA identifying AMCORE as Trustee for the year 2008 for her HSA account (Exhibit A).
This Form is used to report contributions to HSA accounts.
17. AMCORE and Canopy had a contractual relationship whereby AMCORE would serve as custodian for Canopy facilitated HSAs deposited at AMCORE.

18. AMCORE had a uniform contractual relationship with Plaintiff and the Class whereby it agreed to maintain their HSAs.
19. Alternatively, AMCORE had a fiduciary obligation to Plaintiff and the Class by virtue of its custodian or trust obligations associated with maintaining their HSAs. AMCORE's fiduciary duties in this respect included, among other things, avoiding improper co-mingling of assets and preventing blatant misappropriation from the HSAs.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this class action on behalf of a class of all HSA owners who opened such accounts via Canopy where AMCORE is the custodian bank.
21. Plaintiff is a Class member and will fairly and adequately assert and protect the Class's interests.
22. Plaintiff's interests are coincident with, and not antagonistic to, those of other Class members.
23. Plaintiff's claims are typical of those of the Class.
24. Plaintiff has retained counsel who is experienced in class action litigation.
25. Members of the Class are so numerous that joinder of all members is impracticable. While Plaintiff cannot ascertain the exact number and identity of Class members prior to discovery, on information and belief, there are in excess of one thousand Class members and their identity can be ascertained from AMCORE's books and records.
26. Plaintiff and the Class sustained damages from AMCORE's conduct.

27. This case presents questions of law or fact which are common to all class members, and those common questions predominate over any questions affecting only individual members of the Class, including:
- a. Does AMCORE's conduct constitute a breach of contract?
 - b. Does AMCORE's conduct violate its fiduciary duties to the Class?
 - c. Is the Class entitled to an accounting?
 - d. Is the Class entitled to injunctive relief?
 - e. Is the Class entitled to impose a constructive trust on their monies, which remain at AMCORE?
28. The class action method is a superior means for the fair and efficient adjudication of this action, because individual actions would or might:
- a. Result in inconsistent or varying adjudication with respect to individual Class members;
 - b. Result in adjudication with respect to individual Class members that could, as a practical matter, be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests; or
 - c. Produce a multiplicity of cases creating a substantial but unnecessary burden for the courts.
29. A trial of this case as a class action will be manageable because the claims and defenses will be subject to class-wide proof.

COUNT I – BREACH OF CONTRACT

30. Plaintiff incorporates paragraphs 1-29, above, by reference as paragraphs 1-29 of this Count I, as if fully set forth herein.
31. AMCORE's contractual relationship with Plaintiff and the Class requires AMCORE to safeguard and maintain their HSAs against, among other things, misappropriation.
32. AMCORE has failed to maintain and safeguard the HSAs of Plaintiff and the Class.
33. As a result, Plaintiff and the Class have been damaged.

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Certify this action as a class action under Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3);
- b. Award injunctive relief as may be appropriate, including but not limited to the imposition of a constructive trust on the HSA monies at AMCORE for the benefit of Plaintiff and the Class;
- c. Award Plaintiff and the Class the costs of suit and attorney's fees;
- d. Award Plaintiff and the Class any other relief the Court deems just, property and equitable;
- e. Award prejudgment interest.

COUNT II – FIDUCIARY DUTY

34. Plaintiff incorporates paragraphs 1-29, above, by reference as paragraphs 1-29 of this Count II, as if fully set forth herein.

35. Plaintiff and the Class put their trust in AMCORE by providing it with their monies to fund their HSAs.
36. In undertaking its role as custodian for the HSAs, AMCORE directly or impliedly held itself out as skilled in these matters, possessing the knowledge, skill and care ordinarily used by reasonably well-qualified institutions engaged in providing custodian banking services.
37. At all relevant times hereto, AMCORE had a fiduciary duty to exercise that degree of knowledge, skill and care ordinarily used by reasonably well-qualified institutions engaged in providing custodian banking services.
38. AMCORE has violated its fiduciary duties by failing to maintain their HSAs in a safe manner and prevent misappropriation.

WHEREFORE, Plaintiff respectfully request that the Court:

- a. Certify this action as a class action under Fed. R. Civ. P. 23(b)(2) and/or 23(b)(3);
- b. Award injunctive relief as may be appropriate including, but not limited to the imposition of a constructive trust on the HSA monies at AMCORE for the benefit of Plaintiff and the Class.
- c. Award Plaintiff and the Class the costs of suit and attorneys' fees;
- d. Award Plaintiff and the Class any other relief the Court deems just, proper and equitable;
- e. Award prejudgment interest.

DATED: December 15, 2009

Respectfully submitted,

By: /s/Steven a. Katz

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