

Attachment “B”

Matter of JP Morgan Chase Bank N.A. (Marie H.) 2012 NY Slip Op 22387

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[*1] Matter of JP Morgan Chase Bank N.A. (Marie H.) 2012 NY Slip Op 22387 Decided on December 31, 2012 Sur Ct, New York County Glen, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on December 31, 2012
Sur Ct, New York County

IN THE MATTER OF THE ACCOUNTING BY JP Morgan Chase Bank, N.A., and H. J. P., as Co-Trustees of the MARK C.H. DISCRETIONARY TRUST OF 1995,

against

Marie H., Grantor.

2005-1307

Counsel for trustee Chase Manhattan Bank: Davidson, Dawson & Clark

Counsel for individual trustee H.J.P.:stat Roy H. Carlin

Kristin Booth Glen, J.

This case raises important questions about the obligations of fiduciaries, including institutional trustees, to beneficiaries, with disabilities, of trusts that seek to provide for the welfare of those beneficiaries. A review of the history of this trust and related proceedings places the issue in sharp perspective.

This history reveals a severely disabled, vulnerable, institutionalized young man, wholly dependent on Medicaid, unvisited and virtually abandoned, despite a multi-million dollar trust left for his care by his deceased mother. It reveals two co-trustees, one who was personally involved with the deceased and who holds himself out as an expert in planning for children with intellectual disabilities, and one which is a major banking

institution, neither visiting or inquiring after the beneficiary's needs nor spending a single penny on him.

The history turns brighter after a serendipitous SCPA Article 17-A proceeding, where the co-trustees were called to task, educated about available services, and hired a certified care manager to attend to the beneficiary's needs. That intervention, now after almost four years, has dramatically improved the beneficiary's quality of life and his functional capacity to enjoy what is now a near "normal" existence in the community.

This history, and the legal consequences that flow from it, discussed below, should provide a clarion call for all fiduciaries of trusts whose beneficiaries are known to have disabilities to fulfill their "unwavering duty of complete loyalty to the beneficiar[y]" (106 NY Jur 2d, Trusts § 247) or be subject to the remedies available for breach of their fiduciary obligation.

HISTORY

Will and Trusts

Marie H. died on March 20, 2005 at the age of 85, survived by two adopted children, Charles A.H., and Mark C.H., then sixteen years old. Prior to her death, upon learning of her terminal cancer, Marie searched for an appropriate residential setting for Mark, and ultimately [*2]placed him in the Anderson School in Straatsburg, New York.[FN1] Mark's disabilities are described more fully below.

In her Will, Marie left her entire estate to the Marie H. Revocable Trust of 1995, created by trust agreement dated March 23, 1995 (the Revocable Trust).[FN2] The Revocable Trust provided that, upon Marie's death, after dividing her tangible property between her two children, the balance was to be divided into two equal shares, one for Mark's Trust, and one for Charles's Trust. The Will, also dated March 23, 1995, named her sister Betty as Executor and Guardian of the Person and Property of her minor children. Marie's attorney, H.J.P., was named the successor executor.

The will was admitted to probate on July 5, 2005. Because Betty predeceased Marie, letters testamentary issued to H.J.P.[FN3] The federal estate tax return (the 706) indicated a gross estate of approximately \$12 million, of which \$2,575,000 was the date of death valuation of Marie's co-op apartment, and \$8,973,653.79 was the date of death value of her stocks and bonds. Other miscellaneous property was valued at \$471,439.77. According to the 706, the only assets that were transferred to the Revocable Trust during Marie's lifetime were two Citibank accounts totaling \$1,390.41.

The 706 estimated the executor's commission at \$133,000 and attorneys fees at \$300,000,[FN4] with other administration expenses [FN5] shown as \$462,717.45. Federal estate taxes were shown as \$3,479,561.55.[FN6] [*3]

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