

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

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FIDUCIARY SECTION  
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JOHN T. FREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

In re: Estate of Rachel Charles, Rachel  
St. Amant Irrevocable Trust

Fiduciary No. FI-2002-0069810  
Commissioner's Report

To the Honorable Judges of the Circuit Court of Fairfax County, Virginia:

At the request of John H. Rust, Jr., Commissioner of Accounts for the above estate, the undersigned gave the notice required by Virginia Code § 64.2-1209, setting the 17<sup>th</sup> day of December, 2012 at 1:00 p.m. at his office in Fairfax, Virginia, as the time and place for receiving proof of objections or other matters of concern related to the alleged failure of the fiduciary to file proper accounts in the Estate of Rachel Charles. At the said time and place, trustee Rhonda St. Amant appeared, along with her mother and step-father, Reverend Anne Gehman and Dr. Wayne Knoll. Robin Puckett and Kevin Ward appeared on behalf of the trustee BB&T, along with counsel James Phillip Head. Rachel St. Amant, the principal beneficiary of the trust, also appeared. No other persons appeared at the hearing.

As a result of a personal injury suit initiated by Rhonda St. Amant on behalf of her minor child, Rachel St. Amant, Rhonda St. Amant received a settlement of \$3,500,000.00, with \$3,200,000.00 of said funds allocated to Rachel, after payment of costs and attorney's fees. Rachel was a minor. On September 20, 2002, Rhonda St. Amant executed a trust agreement creating the Rachel A. St. Amant Irrevocable Trust. Ms. St. Amant appointed herself and BB&T as co-trustees of the trust. Rachel St. Amant is the primary beneficiary of the Rachel St. Amant Irrevocable Trust. The trust was initially funded with \$1,750,400.39, with the balance of the funds due to Rachel to be paid in annuity payments beginning in May, 2012 and continuing for sixteen years and seven months. The trustees' bond was set at \$3,500,800.00, with surety waived by Virginia Code §§ 6.1-18 and 26-2.<sup>1</sup>

Section 3.1(1) of the trust agreement provides:

Until the beneficiary for whose benefit the trust has been created shall attain the age of fifty (50) years, the Trustee shall pay to or apply for the benefit of such person, or her issue, so much or all of the net income from and principal of such person's trust as the Trustee, in its sole and absolute discretion shall deem necessary or appropriate for that person's health, education, support or

<sup>1</sup> Now, VA. CODE ANN. § 64.2-1204.

REPORT CONFIRMED BY CIRCUIT COURT OF FAIRFAX

1 Date Recorded: 3/20/13  
Book #: 979 Page #: 1020  
Exceptions filed?  No  Yes, by BB&T, Co-Trustee  
If yes, confirming Order dated: 3/20/13

maintenance. The Trustee shall take into consideration, in deciding the necessity or desirability of making payments to or for the benefit of the beneficiary, all other sources of income for such person, including but not limited to, the beneficiary's parents' legal obligation to care for the beneficiary. However, the Trustee shall be generous in its use of the Trust Estate for medical or educational needs of the beneficiary. Health and medical needs shall include, but not be limited to, family counseling, mental health needs of any kind, including psychological, psychiatric, psychotherapy, therapy and individual and family counseling. The Trustee is authorized to expend any funds necessary to provide for the beneficiary's physical or mental health whether that is being provided by a licensed physician or any other providers.

The trust agreement also provides for certain mandatory distributions to Rachel. Pursuant to Section 3.1, one-fourth of the remaining principal and undistributed income shall be disbursed to Rachel when she turns thirty-five; one-third of the remaining principal and undistributed income shall be disbursed to Rachel when she turns forty; one-half of the remaining principal and undistributed income shall be disbursed to Rachel when she turns forty-five; and the trust shall terminate when Rachel turns fifty, at which time the entire trust proceeds are to be delivered to her. In the event of Rachel's death prior to age fifty, the trust proceeds are to be delivered to Rachel's survivors. Section 3.2(2) delineates those qualifying as survivors.<sup>2</sup>

On February 13, 2004, the trustees filed an inventory with your commissioner, reporting assets on hand of \$1,748,829.91. Your commissioner approved the inventory on August 13, 2004. Thereafter, the trustees filed nine accounts. The ninth account reports assets on hand of \$1,388,487.00. The trustees' tenth interim account is due May 1, 2013. To date, your commissioner has only approved the trustees' first account. Accounts two through nine remain unapproved due to unresolved exceptions your commissioner identified.

Due to the trustees' continued failure to file proper accounts addressing the exceptions to accounts two through nine, your commissioner requested a hearing on December 17, 2012, pursuant to Virginia Code § 64.2-1209. Prior to the

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<sup>2</sup> Pursuant to Section 3.2(2), the funds shall first go to Rachel's living issue; if she has no living issue, then to her parents, Rhonda and Christopher St. Amant; if her parents are predeceased, then to her siblings; if her siblings are predeceased, then the funds shall be divided equally among her surviving grandparents. These persons are the residual beneficiaries of the trust.

hearing, the trustees submitted to your commissioner a Consent and Release Agreement executed on November 30, 2012, by co-trustees Rhonda St. Amant and BB&T, and the trusts' beneficiaries, Rachel St. Amant, Christopher St. Amant, Anne Gehman Knoll, Dr. Wayne A. Knoll, Madelyn St. Amant, and Anthony St. Amant. Pursuant to Virginia Code § 64.2-716, Anthony St. Amant entered into the agreement individually and as the grandparent of Madelyn St. Amant, Sophia St. Amant, and Ryan St. Amant, the siblings of Rachel St. Amant, as well as any unborn descendants of Rhonda St. Amant and Christopher St. Amant. The agreement contains the following provisions:

1. *Approval of Accounts.* The Beneficiaries approve the Accounts and do not object to any of the disbursements, distributions or other actions of the Co-trustees, Rhonda A. St. Amant and BB&T, during the periods covered in the Accounts.”
2. *Release of Claims.* The Beneficiaries fully release, remise, acquit and forever discharge Rhonda A. St. Amant and BB&T of any and all claims, causes of action, or other demands that the Beneficiaries, either jointly or severally, may have had, have now, or may hereafter have or assert against Rhonda A. St. Amant and/or BB&T that arise from or relate to the Trust during the period from the Trust's inception until December 31, 2011, including without limitation all matters before the Commissioner of Accounts Office of Fairfax, Virginia, regarding the Accounts.

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5. *Advice of Counsel.* BB&T and the Beneficiaries represent that, prior to the execution of this Agreement, they have had the opportunity to consult with and receive the advice of qualified counsel on the effects of this Agreement. The Beneficiaries acknowledge that they have not relied on the advice of BB&T or its counsel in executing this Agreement. The Beneficiaries further acknowledge and agree that, pursuant to Section 7.1(9) of the Trust, the Trust shall bear the attorneys' fees and costs of preparing this Consent and Release Agreement, and representation related to the proceedings before the Commissioner of Accounts Office of Fairfax, Virginia, and the Beneficiaries have no objection to the Co-Trustees paying such expenses from the principal and/or income of the Trust.

6. *Non-judicial Settlement Agreement.* This Agreement constitutes a binding non-judicial settlement agreement pursuant to the provisions of Virginia Code § 64.2-709. The parties acknowledge that: (i) this Agreement was not induced by the improper conduct of the Co-Trustees of the Trust, and (ii) they have knowledge of their rights and the material facts affecting the operation of the Trust and this Agreement.

The trustees assert that this agreement resolves the outstanding issues relating to the trust, including the exceptions taken by your commissioner.

Your commissioner is of the opinion that the Consent and Release Agreement, while relevant, is not dispositive of your commissioner's jurisdiction or authority regarding his exceptions to the trustees' accounts. Pursuant to the Order of this Court, the trust is under the supervision of your commissioner, who has responsibility to review and approve the accounts that are filed with your commissioner. A trust that is subject to the supervision of the Court and its commissioner is not the same as an unsupervised trust.<sup>3</sup> A non-judicial settlement does not deprive the Court of jurisdiction over a trust under judicial supervision and any such agreement is subject to the approval of the Court.<sup>4</sup>

#### *Objections/Exceptions to Trust Administration*

Your commissioner has noted a significant number of exceptions to the trustees' accounts. The following exceptions are those considered to be of greatest concern:

1. Interest-Free Loan of \$100,000.00 to Christopher and Rhonda St. Amant

On August 18, 2003, Christopher St. Amant contacted co-trustee BB&T and requested a loan of \$100,000.00, in order to put a down payment on a house in

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<sup>3</sup> VA. CODE ANN. § 64.2-700.

<sup>4</sup> VA. CODE ANN. § 64.2-709.C. *See also* Comment to § 201 of the Uniform Trust Code, which provides

While the Code encourages the resolution of disputes without resort to the courts by providing such options as the nonjudicial settlement authorized by Section 111, the court is always available to the extent its jurisdiction is invoked by interested persons. The jurisdiction of the court with respect to trust matters is inherent and historical and also includes the ability to act on its own initiative, to appoint a special master to investigate the facts of a case, and to provide a trustee with instructions even in the absence of a dispute.

Stafford, Virginia. In his letter, Mr. St. Amant stated the home would benefit Rachel because she would be able to have her own room, she would be closer to her grandparents, Stafford County had excellent schools, and the area offered many different extracurricular programs. In this same letter, Mr. St. Amant provided wiring instructions to the co-trustee. BB&T retained counsel to prepare a Loan Agreement and Unsecured Promissory Note. On August 26, 2003, the trustees made an interest-free loan of \$100,000.00 to Christopher and Rhonda St. Amant in order to purchase the home. That same date, the parties executed a Loan Agreement and an Unsecured Promissory Note. The Loan Agreement contained the following recitals:

WHEREAS, the Trustee has determined that moving to such a house would be necessary or appropriate for Rachel's health, education, support or maintenance;

WHEREAS, in order to enable Rachel's parents to purchase this house, the Trustee has determined that it is in the best interests of Rachel to distribute to Rachel's parents One Hundred Thousand Dollars (\$100,000.00), as an interest-free loan, with the foregoing of interest treated as an additional distribution of principal from the Trust;

WHEREAS, the Trustee is not making this loan pursuant to any authority to make commercially reasonable loans, but rather pursuant to its authority to make distributions in general.

The Unsecured Promissory Note provided in Section 5 that the assets of Mr. and Ms. St. Amant would not secure the repayment of the loan.

At the hearing, Ms. St. Amant testified that, at the time she and her husband requested the loan, the family was living in Frederick, Maryland and her husband was working in Fredericksburg, Virginia. Due to Mr. St. Amant's substantial commute, they wished to relocate closer to his job. Ms. St. Amant testified this relocation was beneficial to Rachel, because having a shorter commute enabled Mr. St. Amant to be available to assist Ms. St. Amant with parenting. She also testified that the schools in Frederick, Maryland were not meeting Rachel's educational needs. Ms. St. Amant testified that she believed the loan was necessary or appropriate for Rachel's health, education, support, and maintenance, and in Rachel's best interest. Your commissioner asked Ms. St. Amant why Rachel should be responsible for the purchase of the home. Ms. St. Amant testified that Rachel had the means to purchase the home, and Ms. St. Amant was

trying to rebuild their family. Ms. St. Amant also testified, however, that at the time the loan was made, she and her husband were in the process of selling a townhouse they owned and were in a financial position to purchase a new home. She also acknowledged that both she and her husband were employed at the time, and the family was in no financial stress. The St. Amants also testified that the proceeds from the sale of that townhouse were not applied to curtail the loan from the trust. Your commissioner notes that Mr. and Ms. St. Amant did repay the \$100,000.00 loan to the trust in full on July 26, 2005, after they sold the house in Stafford, Virginia.

BB&T stated that, prior to disbursing the funds, BB&T's representatives considered the factors set forth in Section 3.1(1) of the trust agreement, including Mr. and Mrs. St. Amant's legal obligation to care for Rachel. Ms. St. Amant stated that as trustee she also did consider her legal obligation to care for Rachel at the time the loan was approved, but she stated she was unsure what conclusions she reached after considering those obligations.

BB&T testified that its internal policies require a Senior Trust Manager to provide written approval for discretionary trusts on a Discretionary Distribution Form, if the discretionary distributions to a beneficiary are equal or greater than \$100,000.00 in a calendar year. BB&T stated because the disbursement was treated as a loan and not a discretionary distribution, no Senior Trust Manger approved the loan and no Discretionary Distribution Form was required or obtained prior to disbursing the funds.

## 2. Loan to Christopher and Rhonda St. Amant for Purchase of Home in North Carolina and Related Disbursements

In the spring of 2005, Christopher and Rhonda St. Amant again contacted the trust to request a loan. Mr. and Ms. St. Amant wished to relocate the family to North Carolina, and they requested a loan of \$364,720.10, in order to purchase a home in North Carolina. BB&T retained counsel to prepare a Negotiable Promissory Note. In April, 2005, the trustees disbursed \$364,720.10 to Mr. and Ms. St. Amant, in exchange for a negotiable promissory note from Christopher and Rhonda St. Amant with 3% interest, which the St. Amants executed on April 8, 2005. BB&T states that the interest rate selected was consistent with the then-current Federal rates. Your commissioner notes that national mortgage rates at that time were between 230 and 289 basis points in excess of such interest rate,<sup>5</sup> and the

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<sup>5</sup> Federal Home Loan Mortgage Corporation Weekly Primary Mortgage Market Survey.

Federal Reserve Discount Rate was 3.75%.<sup>6</sup> BB&T also made various distributions related to the purchase of the North Carolina home, including \$3,645.97 for the settlement costs, \$2,853.50 for the preparation of the promissory note, and \$15,000.00 for the construction of improvements.

BB&T stated that, prior to disbursing the funds, BB&T's representatives considered the factors set forth in Section 3.1(1) of the trust agreement, including Mr. and Mrs. St. Amant's legal obligation to care for Rachel. Because the disbursement was treated as a loan and not a discretionary distribution, no Senior Trust Manger approval or Discretionary Distribution Form was required or obtained prior to BB&T disbursing the funds.

At the hearing, Ms. St. Amant testified that the relocation of the family from Stafford, Virginia to North Carolina was for Rachel's benefit, stating the move was entirely for Rachel's educational needs. She testified that Rachel experienced learning difficulties while in Stafford County schools; however, the school system did not provide assistance to Rachel because her conditions were improving. Ms. St. Amant testified that she had a neuropsychiatrist examine Rachel. The doctor diagnosed Rachel with a variety of learning disabilities. Ms. St. Amant testified that she did not believe the public school system could accommodate Rachel's needs, and she began looking for private schools. The neuropsychiatrist recommended various schools in northern Virginia and the Washington, D.C. area; however, Ms. St. Amant did not believe those programs were a good fit for Rachel. Ms. St. Amant testified that she found a school in North Carolina she believed would serve Rachel best. At that point, she sought to relocate as quickly as possible, prior to either parent locating new jobs. She contacted BB&T, and she stated that BB&T indicated it would support a move on Rachel's behalf, so long as the new home in North Carolina was comparable to their current home. Shortly after the disbursement in April, 2005, the family relocated to North Carolina.

Your commissioner asked Ms. St. Amant at the hearing whether she and her husband investigated obtaining mortgage loans to purchase the new home in North Carolina. She testified that they only inquired with BB&T, and BB&T advised that it would not finance their purchase of a new home, given their lack of employment. The \$364,720.10 in funds disbursed was the price of the new home in North Carolina, to which the St. Amants held title. Ms. St. Amant testified that she and her husband later sold their home in Stafford, Virginia in July, 2005. At

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<sup>6</sup> "Discount Rate" on Advances to Member Banks under Sections 13 and 13a of the Federal Reserve Act in Effect at the Federal Reserve Bank of San Francisco.

that time, they repaid the prior interest-free loan to the trust. The St. Amants also received net proceeds of about \$80,000.00. She testified that they did not pay any of those proceeds to the trust in repayment of their current loan, but rather retained all such proceeds.

On July 8, 2005, representatives from co-trustee BB&T and Rhonda St. Amant discussed refinancing the \$364,720.10 promissory note. BB&T retained counsel to prepare a new secured promissory note, in the amount of \$381,000.00 with an interest rate of 5.5%. BB&T stated that this interest rate was consistent with the then-current Federal interest rates.<sup>7</sup> BB&T also stated that it determined the refinance to be in the best interests of Rachel. Because the disbursement was treated as a loan and not a discretionary distribution, no Senior Trust Manger approval or Discretionary Distribution Form was required or obtained prior to BB&T disbursing the funds. On December 21, 2005, Christopher and Rhonda St. Amant executed the new promissory note. They also executed a Deed of Trust and Security Agreement regarding the North Carolina home.

Mr. and Ms. St. Amant made monthly interest payments on the loan through December 31, 2007. After that time, they were unable to make payments on the loan. Mr. and Ms. St. Amant remained in the home from December, 2007 through 2010, without making any payments to the trust. In October, 2010, a deed in lieu of foreclosure was provided to BB&T in exchange for the note, and the North Carolina home was transferred to the trust. The property has remained vacant since 2010, except for one week when Rachel stayed at the property. Ms. St. Amant testified she attempted to rent the property as co-trustee, but the property was never rented. The home was not listed for sale until mid-to-late 2012.

### 3. Distribution of \$46,000.00 for the Purchase of a New Vehicle

At the end of 2005, Rhonda St. Amant's car broke down and required repair. At the hearing, Ms. St. Amant testified this was the family vehicle, and she contacted BB&T in order to obtain funds to have the car repaired. Ms. St. Amant testified that BB&T suggested it would be best for her to purchase a new vehicle. In January, 2006, the trust made a distribution of \$46,000.00 for the purchase of a Chevrolet Suburban. The trustees identified the payment as a distribution to Rachel. At this time, Rachel was thirteen. Rhonda St. Amant testified that she

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<sup>7</sup> Your commissioner notes that national mortgage rates at the time ranged between 5.84% and 5.66%. See Federal Home Loan Mortgage Corporation Weekly Primary Mortgage Market Survey; HSH Associates, Financial Publishers' Mortgage Rate Survey; Federal Housing Finance Board's Monthly Interest Rate Survey, National Average Contract Mortgage Rate.

personally took possession of the vehicle and the vehicle was titled in her name. Rachel never possessed the vehicle, nor was it ever included as a trust asset.

BB&T and Ms. St. Amant stated that, prior to making the distribution, the trustees considered whether a distribution to purchase a vehicle would be necessary or appropriate for Rachel's health, education, support, and maintenance, and also in Rachel's best interest. They concluded that the purchase of the vehicle was in Rachel's best interest. BB&T did not believe it would be appropriate for the trust to hold title to the vehicle, and because Rachel was a minor, she could not hold title to the vehicle and funds to purchase a vehicle could not be distributed directly to her. Therefore, BB&T distributed the funds to Ms. St. Amant. Ms. St. Amant testified that the distribution was for Rachel's benefit, because she used the vehicle to drive Rachel to school, to extracurricular activities, and to social activities. She stated that transporting Rachel and her friends also benefited Rachel, because it enabled Ms. St. Amant to have greater supervision over Rachel. She testified that the vehicle also enabled the St. Amants to take family trips. She acknowledged her husband owned a separate vehicle that he used for work. Ms. St. Amant also testified that the Suburban was not used exclusively for Rachel's benefit, but was rather a family vehicle.

At the hearing, your commissioner asked Ms. St. Amant why Rachel should be solely responsible for purchasing the vehicle. Ms. St. Amant stated Rachel incurred the expense, because the family was having financial difficulty at that time. She testified that the family would not have been able to afford that costly a vehicle without the trust's assistance. Your commissioner inquired into the current status of the vehicle, and Ms. St. Amant testified that in June, 2012, the car required repairs exceeding the value of the car. As a result, she and her husband sold the vehicle as-is for an estimated \$5,000.00 and purchased a new vehicle. She testified that she and her husband retained the \$5,000.00 and did not reimburse the trust for that amount.

#### 4. Distributions for Repair Expenses to Home of Anne Gehman Knoll

In 2010 and 2011, Rachel went to live with Ms. St. Amant's parents. Ms. St. Amant testified that, during that time, Rachel caused substantial damage to her grandparent's home. She testified that Rachel damaged the carpet throughout the house, the kitchen cabinets, and the window treatments in the home. She also testified that Rachel's dog caused some damage to the property. Such testimony relied upon the representations from Ms. Knoll as to the cause of such damage. Ms. Knoll and her husband left the hearing before testifying as to the damage that

Rachel may have done to their home. The trust distributed a total of \$15,962.00 to Anne Gehman Knoll, Rachel's grandmother, to replace or repair the carpet, kitchen cabinets and window treatments in her home. Ms. St. Amant testified that the payment represented the costs of the various repairs or replacements. Ms. St. Amant provided photographs of the damages for which Ms. Knoll was compensated. Your commissioner had difficulty distinguishing the imperfections in the photographs from normal wear and tear to such items; however, your commissioner did not have the benefit of testimony from Ms. Knoll. The payment to Ms. Knoll was consistent with a number of smaller payments to the St. Amants for painting and repair or replacement of household appliances and televisions in their home; however, it represented an increase in such expenditures by an order of magnitude. It appears the trust spent a substantial sum to redecorate Ms. Knoll's home at Rachel's expense. Your commissioner is unable to find that Rachel was responsible for any such damages. Your commissioner is likewise unable to find that it was either appropriate or necessary for the trust to make such payment.

#### 5. Loan to Christopher and Rhonda St. Amant of \$12,000.00

On May 16, 2007, the trust distributed \$12,000.00 to Christopher and Rhonda St. Amant in exchange for a promissory note. To date, no payments have been made on the loan. It remains among the assets on hand in the trust, but there appears to be no effort either to collect the note or to repay it. This loan was not among the enumerated items in the non-judicial settlement agreement tendered to your commissioner.

#### *Conclusions of Commissioner*

BB&T asserts that the trustees have acted properly, as the foregoing distributions and loans were made in good faith and pursuant to the trustees' broad discretionary powers under Sections 4.2, 7.1, 7.1(19) of the trust. BB&T further asserts that the trustees may only be liable if they failed to exercise "ordinary prudence," since the trustees' actions were not in bad faith or outside the scope of their authority.<sup>8</sup> Your commissioner is of the opinion that such an assertion is disingenuous given the evidence at hand and the well-established duties of trustees under the laws of the Commonwealth.

A court has the authority to intervene "where the trustees are acting in bad faith in the exercise of their discretion, or they are plainly abusing their discretion,

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<sup>8</sup> Powers v. Powers, 174 Va. 164, 171, 3 S.E.2d 162, 165 (1939).

or exercising it in such an arbitrary manner, as in effect, to make it a means of destroying the trust which it was intended to aid and maintain.”<sup>9</sup> A fiduciary’s duty to act in good faith forbids the fiduciary from placing himself in a position where his personal interests clashes with those of his beneficiary:

as long as the confidential relation lasts the trustee or other fiduciary owes an undivided duty to his beneficiary, and cannot place himself in any other position which would subject him to conflicting duties, or expose him to the temptation of acting contrary to the best interests of his original *cestui que trust*.<sup>10</sup>

Moreover, a trustee commits a breach of trust by using trust funds for his personal benefit, or lending trust funds to himself or to a third party with the intent of indirectly benefitting from such loan.<sup>11</sup> Such transactions are voidable by a beneficiary, regardless of whether any fraud, bad faith, or insufficiency of consideration is demonstrated.<sup>12</sup>

BB&T and Rhonda St. Amant made loans and distributions to Rhonda St. Amant personally, as well as to her husband, while Ms. St. Amant served as co-trustee. The co-trustees allege that the foregoing loans and distributions were done for benefit of Rachel. Generalized statements that the loans and distributions were made for the benefit of Rachel cannot cloak the fact that the distributions were primarily for the benefit of the Christopher and Rhonda St. Amant. Any benefit to Rachel arose indirectly from the direct benefit to her parents.

First, BB&T and Ms. St. Amant made loans to Rhonda St. Amant and her husband when she and her husband had sufficient income and assets to support Rachel or acquire property, consistent with their duties as parents of the trust beneficiary. In that instance, the trustees did not require the St. Amants to apply the proceeds of sale from their existing home to reduce the loan exposure of the trust. Rather, the St. Amants kept those proceeds for their own use. When the home that was purchased with trust assets was later sold, the St. Amants realized profit of approximately \$80,000.00, which the trustees allowed them to retain, notwithstanding that the profit was derived solely from the advances of the trust.

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<sup>9</sup> Rinker’s Adm’r v. Simpson, 159 Va. 612, 621 (1932). See also NationsBank v. Grandy, 248 Va. 557, 561-62, 450 S.E.2d 140, 143 (1994).

<sup>10</sup> Rowland v. Kable, 174 Va. 434, 366-67 (citing Pomeroy’s Eq. Juris. Vol. 3 (3d Ed.) sec. 1077). See also Trout v. Pratt, 106 Va. 431, 433 (1907).

<sup>11</sup> McIver v. Salomonsky, 5 Va. Cir. 524, 525 (Va. Cir. Ct. 1978).

<sup>12</sup> Parsons v. Wysor, 180 Va. 84, 94 (1942).

Second, when the St. Amants elected to leave their employment and purchase a new home in North Carolina, the trustees made a loan to Rhonda St. Amant and her husband on extraordinarily favorable terms when no independent lender would be willing to make such a loan. The loan was for one hundred percent of the purchase price of the North Carolina home, and the St. Amants were not required to make any down payment to reduce the risk to the trust of default, notwithstanding the more than \$80,000.00 in net proceeds they realized from the sale of their home in Stafford. When the St. Amants defaulted as a result of their limited ability to pay, the trustees allowed the St. Amants to remain in the home for more than three years without making any payments and without seeking any income for the trust from rental or other use of the home. Finally, the trustees accepted a deed in lieu of foreclosure and made no effort to recover any of its losses from the St. Amants. The home remained idle and off the real estate market for another period of almost two years before the trustees elected to place it on the market for sale. Until the home is sold, one cannot determine the actual loss to the trust from this transaction.

Third, the trustees made unsecured loans from the trust to the St. Amants with knowledge of their financial distress and limited ability to repay the amounts. The trustees made no effort to collect such loans and continue to treat them as assets of the trust, notwithstanding the ongoing default and lack of payment.

Fourth, the trustees made distributions to Rhonda St. Amant and to her parents in circumstances where it is unclear what benefit accrued to the beneficiary and where an irreconcilable conflict exists between the person as trustee and the person as a recipient of the trust distributions.

The Supreme Court of Virginia has held that a trustee making a loan to him or herself is “not in a position to form an unbiased opinion or to exercise a sound discretion as to the best interests of the trust.”<sup>13</sup> Even if no bad faith is imputed to the trustee, the trustee does not satisfy the “ordinary prudence” standard and may be held personally liable for said transaction.<sup>14</sup> In the present circumstances, Ms. St. Amant’s bad faith or lack of ordinary prudence are sufficient to hold her liable for the improper loans and distributions. Rhonda and Christopher St. Amant treated the corpus of the trust as their personal bank account. BB&T, nominally an independent trustee, failed utterly in providing oversight over proper use of the

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<sup>13</sup> *Id.* at 91.

<sup>14</sup> *See id.* at 90-96.

trust funds and was complicit in the abuse of the trust. BB&T failed to exercise independent discretion, resulting in the substantial loss of trust assets. Your commissioner is of the opinion that both trustees have abused the discretionary powers they were afforded under the trust.

Although the trustees have abused their discretion, your commissioner has reviewed the non-judicial settlement agreement, which seeks to resolve the financial improprieties in the management of this trust, notwithstanding the damage caused to the trust. Given the particular facts of the instant case, your commissioner is of the opinion that it is in the best interest of the principal beneficiary, Rachel St. Amant, not to disturb the settlement agreement. Therefore, your commissioner will not recommend any forfeiture of the bond of the trustees for the matters addressed in the non-judicial settlement agreement. Your commissioner notes, however, that the unsecured and unpaid promissory note in the amount of \$12,000.00 from Rhonda and Christopher St. Amant to the trust was not a part of the non-judicial settlement agreement and remains a part of the trust assets. Your commissioner is of the opinion that the trustees are jointly and severally liable to restore such funds to the trust. The trustees may resolve the rights of contribution between themselves after restoration of the funds to the trust.

The nonjudicial settlement agreement only resolves past damage and cannot guarantee future performance of the trustees. Rhonda St. Amant has abused the trust and has acted in a manner that is not in the best interests of Rachel. BB&T has demonstrated that it is unable to exercise independent judgment or control when confronted with demands from Rhonda St. Amant.

At the hearing, your commissioner asked the trustees both whether, and why, Rhonda St. Amant should be permitted to continue as co-trustee. Ms. St. Amant testified that she has done the most in terms of locating and coordinating treatment for Rachel. She testified it is necessary for her to remain in control of Rachel's funds in order to continue to do so. She also stated she wanted the ability to make ultimate determinations as to Rachel's care and treatment. She also acknowledged, however, that she had minimal contact with Rachel and little knowledge of Rachel's current personal life and circumstances. Ms. St. Amant also testified that she had attempted to control Rachel's annuity, paid to her upon her reaching the age of majority, pursuant to a power of attorney, but stopped doing so after it caused further friction in her personal relationship with Rachel. Ms. St. Amant stated that she is the trustee who looks out most for Rachel's best interests. Your commissioner is of the opinion that her actions as trustee belie that statement.

In *McIver v. Salomonsky*, the Circuit Court of Richmond held that, had a trustee not voluntarily resigned, the trustee would have been removed for violating his duty of loyalty by lending trust funds to himself.<sup>15</sup> In the case at hand, sufficient grounds exist for removing Ms. St. Amant as a co-trustee given her extended pattern of self-dealing. Additionally, Ms. St. Amant has stated no compelling reason for her to maintain her position as co-trustee, in spite of her improprieties: Ms. St. Amant has minimal knowledge of Rachel's current living situation, making it difficult for her to identify what options and treatments are in fact in Rachel's best interest; and there is no need for her to have control and access to Rachel's funds for her to continue assisting Rachel, if Rachel's best interest is truly her motivation. Your commissioner is also of the opinion that removal of Ms. St. Amant as co-trustee may be beneficial to the relationship between Rachel and her mother.

Based on the above, your commissioner is of the opinion that, to provide protection to Rachel and to assure that the trust is used in a manner consistent with her best interest, Rhonda St. Amant should be removed as co-trustee of the trust. Your commissioner recommends this Court enter an Order removing Rhonda St. Amant as co-trustee and directing the co-trustees to restore \$12,000 to the trust account. BB&T may remain as an independent trustee, provided it now exercises independent judgment consistent with the best interest of the beneficiary.

Respectfully submitted this 26<sup>th</sup> day of February, 2013.

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John H. Rust, Jr.  
Commissioner of Accounts  
19<sup>th</sup> Judicial Circuit

Commissioner's Fee for this Report \$ 500.00 – UNPAID

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<sup>15</sup> *McIver v. Salomonsky*, 5 Va. Cir. 524, 525 (Va. Cir. Ct. 1978).

## CERTIFICATE OF MAILING

I hereby certify that on this 26<sup>th</sup> day of February, 2013, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

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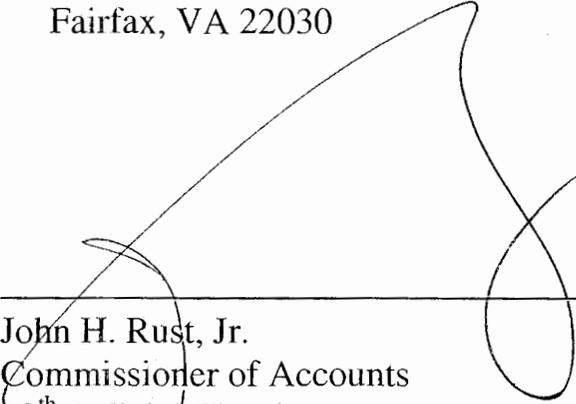
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