

RECEIVED JAN 18 2011

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Jack F. Davis, deceased
Fiduciary Number FI-2009-0001593

Commissioner's Report

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

At the request of Rose Marie Cromwell and Jackie Davis, beneficiaries of said estate, the undersigned gave notice and, pursuant to Virginia Code § 26-29, set the 15th day of November, 2010, at 1:00 p.m. at the office of your commissioner in Fairfax, Virginia, as the time and place for a hearing upon: 1) whether the executor must account for proceeds received from a reverse mortgage executed before the decedent's death and 2) the status of items of tangible personal property that were allegedly in the home at the time of the decedent's death.

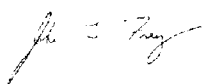
At the said time and place, the beneficiaries, Rose Marie Cromwell and Jackie Davis, appeared seeking an explanation of the status of the proceeds of a reverse mortgage on the decedent's home and an explanation of the status of tangible personal property in the home at the decedent's death. Michael Davis, executor of said estate, appeared, along with counsel, Michael D. Toobin, on behalf of the estate. Dawn M. Huffman, the executor's daughter, also appeared.

On April 6, 2010, Michael Davis filed an inventory for the estate wherein he reported assets totaling \$320,000.00 consisting solely of real estate in Falls Church, Virginia. On May 18, 2010, your commissioner received correspondence from Rose Cromwell requesting that the executor provide an explanation of the proceeds of a reverse mortgage executed on the decedent's home. Your Commissioner forwarded such correspondence to the executor and requested that he respond to the beneficiary and provide the Commissioner's office a copy of said response. On June 28, 2010, Mr. Davis filed a First and Final Account, supported by proper vouchers, wherein he reported his activity as executor of the estate and certified that he provided a copy of the accounting to the beneficiaries. On July 8, 2010, the executor responded to Ms. Cromwell's letter and again provided a copy of the accounting.

Reverse Mortgage

At the hearing before your commissioner, Mr. Davis testified that, pursuant to his authority as the decedent's attorney in fact, he executed a reverse mortgage on the decedent's home approximately five years before the decedent's death. Neither of the beneficiaries disputed the executor's testimony; however, they sought an accounting of the proceeds of the reverse mortgage.

Fiduciary # FI-2009-0001593 # of Pages 4
Date 02/07/2011 WILL BK 00912 PG 2473
Estate DAVIS, JACK F
Recorded in
FAIRFAX COUNTY CIRCUIT COURT
TESTE JOHN T. FREY



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The role of the Commissioner of Accounts is to “have general supervision of all fiduciaries . . . and make all ex parte settlements of their accounts.”¹ This supervision does not extend to activities carried out by an individual in another capacity prior to his qualification as representative of an estate. Your commissioner finds that Michael Davis did not execute the reverse mortgage in his capacity as executor. Therefore, your commissioner has no authority to require an accounting of the proceeds of the reverse mortgage.

Notwithstanding the above finding, at the hearing, your commissioner gave the executor an opportunity to explain how he utilized the proceeds of the reverse mortgage. Mr. Davis testified that, in 2004 his father had executed a durable power of attorney naming him as attorney in fact. Sometime thereafter, Mr. Davis received a letter from a physician stating that the decedent was unable to manage his finances. Between 2004 and 2006 the decedent had been admitted to the hospital for an Ambian overdose and the doctor advised Mr. Davis that the decedent needed full time supervision. Mr. Davis testified that he executed a reverse mortgage on his father’s home receiving \$3,107.00 monthly in order to pay for such care.

Mr. Davis explained that the original cost of the caretaking service was \$5,700.00 a month but was later reduced to \$3,500 monthly. In addition to care costs, Mr. Davis testified that the reverse mortgage financing accrued \$25,000.00 in interest and that the decedent had been constantly in and out of the hospital, required medical services and his home had to be made wheelchair accessible in addition to normal household maintenance. The expenses continued approximately 4 to 5 years until the decedent’s death on August 22, 2009. When the house was sold on January 13, 2010, the advances under the reverse mortgage for the decedent’s care and the maintenance of his home, together with the interest accrued thereon, amounted to \$262,874.19, as is reflected in the settlement statement that the executor filed with his final account. Your commissioner is satisfied that the executor provided a proper explanation of the use of the mortgage proceeds.

Tangible Personal Property

The executor’s inventory did not include any items of tangible personal property. The beneficiaries sought an explanation of the status of the tangible personal property that was in the home at the time of the decedent’s death. At the hearing before your commissioner, Jackie Davis testified that although she was not sure what items in the home were antiques; there were items that may have been of

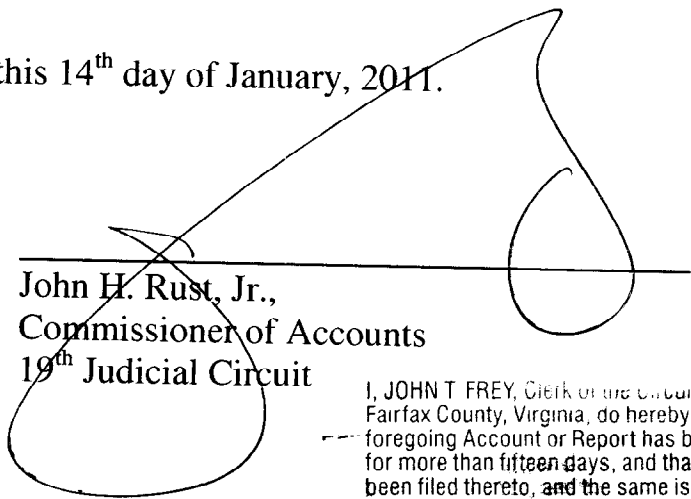
¹ Va. Code. Ann. § 26-8 (2005).

unusual value including an antique telephone, a cabinet and collectible dolls. The beneficiaries testified that they were not notified of what happened of any of the tangible personal property and were not given an opportunity to receive anything by which to remember their father.

It is a fiduciary's duty to make a fair-market valuation of the assets under his control and file an inventory of the same.² The tangible personal property of the decedent is part of these assets; however, your commissioner notes that used personal belongings rarely have significant value and often require disposal rather than distribution. Mr. Davis testified that there were no antiques in the decedent's home except for the telephone. He further stated that several items of personal property were taken from the home by others and were not within his custody and control. He stated that the cabinet had been taken by the decedent's son, William, and that it did not have a great deal of value. He further testified that the decedent's youngest son's ex-girlfriend, Barbara Weekly, visited the house and while the executor was away removed a number of items of personal property, including the collectible dolls. Mr. Davis testified that there was nothing else of any value in the home and that the remaining contents were discarded.

Your commissioner is of the opinion that the executor did not communicate well with his siblings concerning the administration of the estate. In hindsight, the executor would have been better advised to give his siblings an opportunity to receive any items of personal property they might wish, whether or not of nominal value. However, your commissioner finds that the executor's estimate of value of the contents of the home as of nominal value is reasonable and appropriate in the circumstances. Based upon the testimony at the hearing, your commissioner is of the opinion that the assets of the estate have been distributed properly in accordance with the account that the executor filed.

Respectfully submitted this 14th day of January, 2011.



John H. Rust, Jr.,
Commissioner of Accounts
19th Judicial Circuit

I, JOHN T. FREY, Clerk of the Circuit Court for Fairfax County, Virginia, do hereby certify that the foregoing Account or Report has been filed in my office for more than fifteen days, and that no exceptions have been filed thereto, and the same is now recorded pursuant to the provisions of §§26-33 and 26-35 of the Code of Virginia, as amended.

Teste: JOHN T. FREY, Clerk

2-11
Date

By: Hacey A. Danner
Deputy Clerk

² Va. Code. Ann. § 26-12 (2005).

Commissioner's Fee for this Report \$250.00 - UNPAID

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of January, 2011, 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:

Michael Davis, Executor
621 Cobblestone Blvd., Ste. 312
Fredericksburg, Virginia 22401

William Carl Davis
13535 Orchard Drive
Clifton, Virginia 20124

Michael D. Toobin, Esq.
7000-G Little River Tpke.
Annandale, Virginia 22003

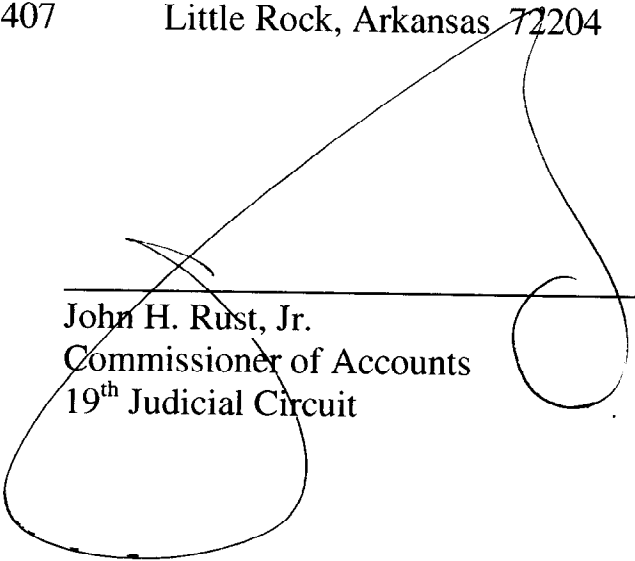
Sandra Kiery McCargo
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Jackie Davis
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Christmas, Florida 32709

Jack Edward Davis
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1512 Parham Pointe Dr., Apt. 13F
Little Rock, Arkansas 72204



John H. Rust, Jr.
Commissioner of Accounts
19th Judicial Circuit