

RECEIVED APR 14 2009

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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Jon Jay Jungjohann, Deceased
Fiduciary Number FI-2007-0001576

Commissioner's Report
of Debts and Demands

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

At the request of Diane M. Yawn, counsel for the above estate, the undersigned gave the notice required under Virginia Code § 64.1-171, setting the 20th day of February, 2009, at 3:00 p.m. at the office of your commissioner in Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Jon Jay Jungjohann. At the said time and place, the said Diane M. Yawn appeared on behalf of the estate. Tiffany Murray, counsel for Huntington Club Condominium Association, appeared to substantiate its claim against the estate. No other person appeared to offer proof of any debts or demands against said estate.

Four creditors filed five claims against the estate with your commissioner in the following amounts:

American Express #4005	\$ 2,805.14
Huntington Club Condominium Assoc.	\$ 3,235.50
Huntington Club Condominium Assoc.	\$ 6,784.00
Nat'l City Bank #0900	\$ 28,862.80
PNC Bank #6499	\$ 6,106.04

The undersigned provided notice of the hearing to each of the claimants, a copy of which is attached hereto as Exhibit 1.

Huntington Club Condominium Association filed two claims against the estate with the commissioner of accounts in the amounts of \$6,784.00 and \$3,235.00. The estate does not dispute the validity of the claims by Huntington Club Condominium Association; however, the estate is insolvent and your commissioner is of the opinion that the claims should be denied to the extent the claims include assessments, late payment charges and attorney fees incurred subsequent to the foreclosure of the condominium unit.

Fiduciary # FI-2007-0001576
Date 04/30/2009
Estate JUNGJOHANN, JON JAY
Recorded in
FAIRFAX COUNTY CIRCUIT COURT
TESTE JOHN T. FREY

of Pages 7
WILL BK 00859 PG 0659

John T. Frey



008590659

Your commissioner informed Ms. Murray at the hearing that he would leave the record open in this matter for two weeks in order to provide her with an opportunity to submit a brief on the issue of whether a decedent's estate is liable for condominium assessments arising after his death. Your commissioner received correspondence as to that issue on March 6, 2009, and the record is now closed.

The claim by Huntington Club Condominium Association arises from condominium assessments, fees and late charges, which were assessed from August, 2007 until March, 2009. The decedent died on August 16, 2007. Thus all claims arise after the decedent's date of death.

There is no issue that the Association may pursue a personal judgment against a unit owner for assessments arising which such person owned the condominium unit. The Huntington Club Condominium Association Bylaws clearly contemplate and authorize personal suits against condominium owners. "A Unit Owner shall be personally liable, without right of set-off or deduction, for all lawful assessments, or installments thereof, levied against his Condominium Unit which become due *while he is the owner of a Unit.*"¹ (*emphasis added*). Further, "[t]he Board of Directors shall take prompt action to collect any assessments for common expenses due from any *Unit Owner* which remain unpaid..."² (*emphasis added*). However, there does not appear to be a basis to pursue such claims against the decedent for assessments and fees arising after his death. To the extent that the Association seeks to assert such a claim against the decedent, the claim is denied.

The issue in this matter is whether the Association may pursue a claim against the estate during the period of its administration as a result of its dominion and control over the condominium unit. As a general rule, your commissioner is of the opinion that the liability of the estate for such assessments and fees is limited to the obligations of the decedent to the condominium association. In most circumstances, the estate does not step into the shoes of the decedent as owner of the real property; to the contrary, the real estate passes directly to the heirs and the estate has no interest in the land. *Coles v. Jamerson*, 112 Va. 311, 71 S.E. 618 (1911). However, in the instant estate, the decedent's will provides that "[t]he proceeds (after sale) of the two real estate properties [including the instant condominium property] go to Africa University, Old Mutare, Zimbabwe." There is no residuary beneficiary to whom the property passes. Rather, the real estate is part of the probate estate, with the express direction to the executor to sell it and

¹ Bylaws, Huntington Club, A Condominium p.9 Article VI, Section 6.1(c)

²*Id.* at p. 25 Article VI, Section 4

distribute the proceeds to the Africa University.³ In *Cole v. Jamerson*, the court quoted with approval § 330 of Crosswell, *Executors and Administrators*, as follows:

The question often arises whether, under the words of the will, the executor holds the land in trust to sell, or whether he has a mere power to sell the land. The importance of this distinction is obvious, since in the one case the title to the land vests in the executor, while in the other it vests in the heirs subject to be divested by the execution of the power of the executor. It is said to be now settled that if the land is devised to the executor to sell, or devised subject to the debts of the testator, this passes the interest in the lands to the executor, but a direction that the executors shall sell the land gives them only a power of sale, and no interest in the land. 112 Va. 311, 71 S.E. 618 (1911). *Accord*, Harrison, *WILLS AND ADMINISTRATION* § 405 (3rd Edition 1986).

Therefore, in these limited circumstances, your commissioner is of the opinion that the assessments accruing during the period of administration are in fact obligations of the estate.

HSBC Mortgage Company held the first deed of trust upon the subject condominium unit. On April 22, 2008, it foreclosed the deed of trust and sold the subject condominium unit. At that time, the ownership of the estate ended. After April 22, 2008, the Huntington Club Condominium Association had no further recourse against the property itself for the prior accrued assessments or against the estate as the unit owner. Therefore, your commissioner is of the opinion that the claim of the Association for assessments, fees and expenses after the date of foreclosure is improper and must be denied.

Finally, your commissioner finds that the decedent's estate is insolvent. When an estate is insolvent, no interest is allowed on the claims against the estate. *Virginia Surety Co. v. Hilton*, 181 Va. 952, 27 S.E.2d 62 (1943) (interpreting the predecessor to § 64.1-170). This is consistent with the adoption of the rule in Virginia disallowing interest on claims against insolvent entities. *See, e.g. Swiss Re Life Co. v. Gross*, 253 Va. 139, 479 S.E.2d 857 (1997)(insolvent insurance

³ The will failed to provide power of sale to the executor. The executor sought the same from the Circuit Court and the Court entered an order granting the executor such power of sale on October 19, 2007. As the order was entered prior to the assessment liens in question, there is no issue whether the executor had the power of sale during the period in question.

company); *Metompink Bank v. Bronson*, 172 Va. 494, 2 S.E.2d 323 (1939)(insolvent banking institution). Your commissioner is of the opinion that the late charges, attorney fees and costs assessed subsequent to the decedent's date of death in the instant matter stand on all fours with interest charges and the same should not be allowed as charges against a decedent's estate when the estate is insolvent.

Your commissioner has reviewed the Statement of Account Details, submitted by the claimant, and finds that there were no unpaid assessments by the Huntington Club Condominium Association as of the date of the decedent's death. However, your commissioner finds that the Association charged \$4,392.00 in monthly assessments against the subject property between August 16, 2007 and April 22, 2008 when said property was an asset of the probate estate. Therefore, your commissioner is of the opinion that the claims of Huntington Club Condominium Association should be allowed against the estate in the amount of \$4,392.00. For the reason set forth in this report, the balance of the claims by Huntington Club Condominium Association should be denied in their entirety.

The estate does not dispute any other claim filed with your commissioner against the estate. Therefore, the claims by American Express, National City Bank and PNC Bank are allowed.

The estate provided the following additional list of creditors with potential claims against the estate prior to the hearing in this matter:

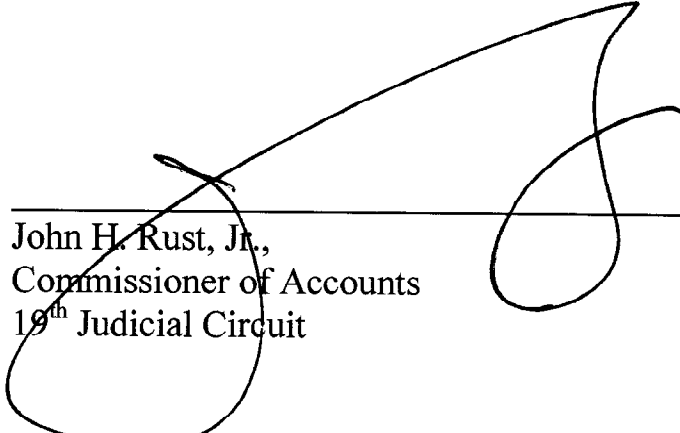
Joyce Junjohann	\$ 2,542.75
Sprint PCS	\$ 114.06
PNC Bank (credit card)	\$ 883.76
SunTrust (credit card)	\$ 271.36

The estate did not provide notice of the hearing to these claimants. The Virginia Code requires such notice to the holder of any disputed claim. The estate does not dispute any of the claims against the estate; therefore, such notice is not statutorily required and each claim is allowed.

Your commissioner finds that the estate is insolvent; therefore, the assets are to be distributed pursuant to the priorities established by Virginia Code § 64.1-157. The estate should first satisfy all priority 1 administrative expenses pursuant to

Virginia Code § 64.1-157. Further, your commissioner approves of the proposed executor's commission in the amount of \$10,000.00, which is within the fee guidelines set forth by this court. The claim for funeral expenses exceeds the statutory maximum accorded priority under Virginia Code § 64.1-157(3) as a priority 3 claim.⁴ Therefore, the first \$2,000.00 of said claim should be satisfied as a priority 3 claim; the balance should be treated as a priority 9 claim. All other claims are to be treated as priority 9 claims and should be satisfied at their pro rata share of the balance of the estate.

Respectfully submitted this 6th day of April, 2009.



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

Commissioner's Fee for this Report	\$ 250.00	
<u>Publication costs</u>	<u>\$ 10.00</u>	
Total Amount Due	\$ 260.00	- UNPAID

cc: Karen Jungjohann, Executor
Diane M. Yawn, Esquire
American Express
Huntington Club Condo Association
c/o: Tiffany Murray, Esquire
Joyce Jungjohann
National City Bank
PNC Bank
Sprint PCS
SunTrust

I, JOHN T. FREY, Clerk of the Circuit Court of 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

4-30-09
Date

By: 
Deputy Clerk

⁴ Effective July 1, 2008, the legislature amended Va. Code 64.1-157(3) increasing the maximum statutory allowance for funeral expenses from \$2,000 to \$3,500. In your commissioner's opinion, the new allowance should apply to claims for funeral expenses that accrue after July 1, 2008. See Va. Code. § 1-239. The claimants paid the decedent's funeral expenses prior to July, 2008. Their rights to reimbursement accrued at the time of the payments and the previous allowance should apply.



John H. Rust, Jr.
Commissioner of Accounts

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
THE FAIRFAX BUILDING
10555 Main Street, Suite 500
Fairfax, Virginia 22030
703-667-4900



Joseph A. Barsanti
Deputy Commissioner

February 2, 2009

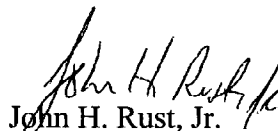
National City Bank 6750 Miller Road Locator No. 01-7103 Brecksville, OH 44141	PNC Bank Consumer Loan Center 2730 Liberty Avenue Pittsburgh, PA 15222
West Asset Management 7171 Mercy Road, Suite 400 PO Box 6618 Omaha, NE 68106	Whitford, Taylor & Preston, LLP 1025 Connecticut Ave., NW Suite 400 Washington, DC 20036

RE: Estate of Jon Jay Jungjohann
Fiduciary No. FI-2007-0001576
Claimants: American Express xxxx4005
PNC Bank xxx6499
National City Bank xxxx0900
Huntington Club Condo Assoc.

Dear Sir or Madam:

Enclosed is a notice of a debts and demands hearing in the captioned estate at which your claim will be considered. Contested claims must be proven by satisfactory evidence. Contested claims not proven by satisfactory evidence are subject to being disallowed. A purpose of the hearing is to receive such evidence as you may choose to offer in support of your claim.

Very truly yours,


John H. Rust, Jr.
Commissioner of Accounts

By J

JHRJ/tlw
Enclosure

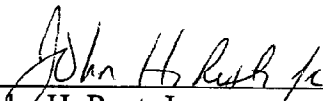
Exhibit 1

IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

IN RE: Estate of Jon Jay Jungjohann)
Deceased) **NOTICE**
Fiduciary No. FI-2007-0001576)

Pursuant to the provisions of §64.1-171 of the Code of Virginia, 1950, as amended, notice is hereby given that the undersigned Commissioner of Accounts has appointed the 20th day of February, 2009, at 3:00 P.M., at his office at 10555 Main Street, Suite #500, Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Jon Jay Jungjohann, at the request of Diane M. Yawn, Attorney of said estate.

Given under my hand as Commissioner of Accounts this 28th day of January, 2009.



John H. Rust, Jr.
Commissioner of Accounts for
Fairfax County, Virginia
By [initials]

JHRJ:tlw