

FC

2005

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Eugene Bartholomew Livaudais III
Deceased
Fiduciary Number FI-2005-0075384

Commissioner's Report
of Debts and Demands

RECEIVED AUG - 7 2006

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

At the request of Elizabeth Chichester Morrogh, attorney for the estate, the undersigned gave the notice required under §64.1-171 of the Code of Virginia, setting the 12th day of July, 2006, at 10:00 A.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 Eugene Bartholomew Livaudais III. At the said time and place, the said Ms. Morrogh appeared on behalf of the estate, together with Gabrielle M. Wortman, Administrator of the estate. Lesley Lee Francis, a claimant, and her attorney, George Rita, also appeared to offer proof of her debts and demands against the said estate.

The following creditors filed claims in the amounts shown below against the estate with the Commissioner of Accounts:

Ford Credit US	\$3,914.94
HSBC Bank	\$850.63
Lesley Lee Francis	\$21,333.00

The undersigned sent notice of the hearing to each of the three claimants, which notices are attached hereto as Exhibit 1. The estate sent notice of a disputed claim to Ms. Francis as required by law, which notice is attached hereto as Exhibit 2.

The estate does not dispute the claims of Ford Credit US and HSBC Bank and these claims are allowed in the amounts claimed as shown above. The estate does dispute the claim of Lesley Lee Francis.

The claim of Ms. Francis consists of a number of payments from Ms. Francis to the decedent, beginning in 1993 and continuing into 2005. All payments were made by check with the exception of a reported cash advance of \$50.00 on May 29, 2002. The total of the identified advances is \$21,333.75. Ms. Francis in her claim asserts that the checks represent money she lent to the decedent which he intended but was unable to repay. The claim included copies of the checks constituting the claim, together with copies of brokerage account statements showing similar advances to the decedent, for which checks were not returned.

At the hearing, Ms. Francis presented the original checks which made up a part of her claim. Many of the checks bear the notation "Loan" in the memorandum line. Based upon a review of the original checks, these entries do not appear to have been made contemporaneously with the other entries on the check. Ms. Francis indicated in her



testimony that it was likely that she had added those notations after the fact to the original checks.

In her testimony at the hearing, Ms. Francis indicated that in addition to the advances she made to the decedent, she also paid the decedent for the preparation of her income taxes annually and she indicated that a number of the checks may be payments for such tax services. Ms. Francis indicated that the amounts of such payments were generally in the range of \$1,200 each year and that it would be appropriate to reduce her claim by the sum of \$15,600, representing payments of \$1,200 for each of the thirteen years which her claim covers. She also indicated that she never expected the decedent to repay her for the advances she made.

Ms. Morrogh, on behalf of the estate, objected to the claim on two bases. First, she asserted that a portion of the claim was time barred, being founded upon an oral promise to repay and not brought within three years of such promise. VA. CODE ANN. §8.01-246. This objection appears well taken. The decedent passed away on June 22, 2005.¹ The claim includes \$14,433.75 in advances made prior to June 22, 2002. Therefore, these amounts are denied. Although not applicable to denied claim amounts, these advances would also have been reduced based upon an allocation of the agreed upon credit for tax payments Ms. Francis conceded at the hearing. It appears from the advances during 2002 that the \$1,200 payment for tax services was made in July, 2002. Therefore, during the period in question, the credit would have reduced the claim by \$10,800 or \$1,200 each year from 1993 to 2001.

Second, the estate objected to the claim as uncorroborated under section 8.01-397 of the Virginia Code. That section provides that in an action against an estate where the decedent is incapable of testifying, “no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony.” VA. CODE ANN. §8.01-397. In Virginia, there is no hard and fast rule to determine what constitutes corroborative evidence, rather each case must be decided on its own facts and circumstances. See *Davies v. Silvey, Adm’x*, 148 Va. 132, 138 S.E. 513 (1927); *Burton’s Executor v. Manson*, 142 Va. 500, 129 S.E. 356 (1925). It is clear, however, that the corroborative evidence need not be sufficient to support the verdict alone, for otherwise there would be no requirement for the testimony of the adverse party. See *Brooks, Adm’r v. Worthington*, 206 Va. 352, 143 S.E.2d 841 (1965); *Clay v. Clay*, 196 Va. 997, 86 S.E.2d 812 (1955). In the Virginia cases which have dealt with oral promises to pay, the courts have generally found that proof of the transfer of funds independent of the testimony of the adverse party is corroborative evidence of the debt. See, e.g., *Morrison v. Morrison*, 174 Va. 58, 4 S.E.2d 776 (1939); *Davies v. Silvey, Adm’x, supra*. In the instant case, there is uncontested corroborative evidence of the advances which Ms. Francis made to the decedent, subject to the credit for tax payments which she has

¹ The fiduciary qualified on April 4, 2006, and Ms. Francis filed her first iteration of her claim on August 26, 2005. Under §8.01-229.B of the Code of Virginia, the statute of limitations upon a claim arising prior to death is further tolled from the date of death if the claim is filed within one year after the qualification of the fiduciary.

conceded. Therefore, it is the conclusion of the undersigned that there has been sufficient corroborative evidence presented to allow the claim, at least in part.

From June 22, 2002 until the date of the decedent's death, Ms. Francis advanced the sum of \$6,900 to the decedent. Based upon Ms. Francis' agreed upon credit, this amount would be reduced by \$4,800, representing payments for tax services for 2002, 2003, 2004 and 2005. Thus, the claim of Lesley Lee Francis is allowed to the extent of \$2,100. The balance of such claim is denied.

The decedent died in an automobile accident for which a wrongful death claim has been filed. In her claim and at the hearing, Ms. Lesley and her counsel raised a question whether the wrongful death claim constituted an estate asset. It appears clear under §8.01-53 of the Virginia Code that any award arising from such claim is payable directly to the designated heirs of the decedent as shown under the statute and is not otherwise an asset of the estate available to creditors of the decedent.

Ms. Morrogh, on behalf of the estate, provided the undersigned with a schedule of categories of debts of, or claims against the estate on June 16, 2006. The estate revised this schedule by letter dated June 22, 2006, and Ms. Morrogh, on behalf of the estate, further revised the schedule in her presentation at the hearing. The schedule includes the claims filed with the Commissioner of Accounts; however, the claim of HSBC Bank is shown as \$894.38 rather than \$850.63 as stated in the claim filed with the Commissioner of Accounts. HSBC did not appear at the hearing and no evidence was presented of any additional or greater claim than that asserted before your Commissioner. Therefore, the claim is denied to the extent that it exceeds the amount of the claim filed with your Commissioner. The schedule of claims did not accurately reflect the priority of payments established under §64.1-157 of the Code of Virginia and has therefore been reordered to reflect the statutory priority. That schedule, revised in accordance with the representations of the estate and the findings in this report, is attached hereto as Exhibit 4. The claims shown on Exhibit 4 are allowed in full in the amounts shown, to be distributed pursuant to §64.1-157 of the Code of Virginia according to the priorities set forth in the statute.

Respectfully submitted this 28th day of July, 2006.



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

cc: Elizabeth Chichester Morrogh, Esquire
George Rita, Esquire
Ford Credit US
HSBC Bank
Lesley Lee Francis

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 Sections 26-33 and 26-35 of the Code of Virginia, as amended.

Teste: JOHN T. FREY

8-23-06

By: 

Deputy Clerk



John H. Rust, Jr
Commissioner of Accounts

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
FAIR OAKS PLAZA
11350 Random Hills Road, Suite 550
Fairfax, Virginia 22030
703-385-0268



Jesse B. Wilson, III
Deputy Commissioner

June 14, 2006

Balogh Becker, Ltd
Attn: Jason A. Iannone
4150 Olson Memorial Highway, #200
Minneapolis, MN 55422

RE: Estate of Eugene B. Livaudais, III
Fiduciary No. 75384
Claimant: HSBC Bank
BBLTD File No. 2653677
Claimant: Ford Credit US
BBLTD File No. 2479828

Dear Mr. Iannone:

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

JHR:lc

Enclosure



John H. Rust, Jr.
Commissioner of Accounts

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
FAIR OAKS PLAZA
11350 Random Hills Road, Suite 550
Fairfax, Virginia 22030
703-385-0268



Jesse B. Wilson, III
Deputy Commissioner

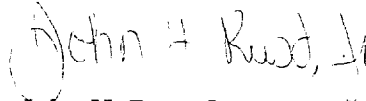

June 14, 2006

Lesley Lee Francis
6823 N. 30th Road
Arlington, Virginia 22213

RE: Estate of Eugene B. Livaudais, III
Fiduciary No. 75384

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


JHR:lc


Enclosure

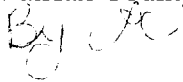
IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

**IN RE: Estate of Eugene Bartholmew Livaudais, III)
Deceased) NOTICE
Fiduciary No. 75384)**

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 12th day of July, 2006, at 10:00 A.M., at his office at 11350 Random Hills Road, Suite #550, Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Eugene Bartholmew Livaudais, III, at the request of Elizabeth Chichester Morrogh, Attorney of said estate.

Given under my hand as Commissioner of Accounts this 14th day of June, 2006.



John H. Rust, Jr.
Commissioner of Accounts for
Fairfax County, Virginia


JHR:lc

NOTICE OF HEARING OF PROOF OF DEBTS AND DEMANDS

June 13, 2006

Ms. Lesley Lee Francis
6823 N. 30th Road
Arlington, VA 22213

Re: Estate of Eugent B. Livaudais, III
Fiduciary No. FI-2005-0075384

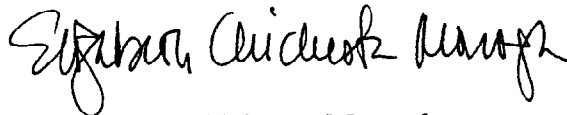
Dear Ms. Francis:

A Hearing for Proof of Debts and Demands against the decedent or his estate referenced above has been scheduled for Wednesday, July 12, 2006 at 10:00 a.m. before the Commissioner of Accounts in his office at 11350 Random Hills Road, Suite 550, Fairfax, Virginia 22030. This notice is being sent to you at least 10 days prior to the date of said hearing.

You have a right to attend the hearing and present your case. You have the right to obtain another date if the Commissioner of Accounts finds the initial date inappropriate. You will be bound by any adverse ruling made by the Commissioner and you have the right to file exceptions with the Court in the event of an adverse ruling.

You are receiving this notice because you filed a formal claim with the Commissioner of Accounts, which is contested by the estate. You have the opportunity to present evidence to prove your claim at the hearing. If you do not appear at the hearing, the Commissioner will not rule on your claim.

Very truly yours,



Elizabeth Chichester Morrogh

cc: John H. Rust, Jr., Commissioner of Accounts
Ms. Gabrielle M. Wortman

Exhibit 4
CLAIMS AGAINST ESTATE OF EUGENE B. LIVAUDAIS, III
Fiduciary No. FI-2005-0075384

Priority of Claims Under Va. Code § 64.1-157

A.	Debts and Taxes with Preference under Federal Law - Va. Code Ann. § 64.1-157.4	
	1 Internal Revenue Service (2003 tax, penalty & interest)	\$14.57
B.	Medical and Hospital Expenses of the Last Illness of the Decedent - Va. Code Ann. § 64.1-157.5 (Limited to \$400 for each hospital or nursing home and \$150 per person furnishing goods and services if assets are not sufficient for the satisfaction of all demands)	
	1 RSI Enterprises, Inc. (INOVA Fairfax Hospital)	\$310.84
	2 Fairfax Radiological Consultants, P.C.	\$983.04
	3 Fairfax County Fire & Rescue	\$407.50
	Total	\$1,701.38
C.	Debts and Taxes Due the Commonwealth of Virginia - Va. Code Ann. § 64.1-157.6	
	1 Prince William County (2005 personal property tax)	\$108.97
	2 Prince William County (2001-2002 personal property tax)	\$184.54
	3 Fairfax County (2005 personal property tax)	\$91.71
	Total	\$385.22
D.	All Other Claims - Va. Code Ann. § 64.1-157.8	
	1 Alexandria Urological Associates, P.C.	\$140.00
	2 Howard Hoffman, D.D.S.	\$245.00
	3 Centennial (Master Card 0670)	\$248.27
	4 Omnium Worldwide, Inc. (HSBC Bank MC 6613)	\$850.63
	5 Providian (Visa 5315)	\$2,597.43
	6 Balogh Becker Ltd. (Ford Credit US)	\$3,914.94
	7 Retailers National Bank (Target Visa 0519)	\$81.17
	8 Military Book Club	\$52.66
	9 BMG Music	\$35.04
	10 LDC Collection (District of Columbia parking tickets)	\$165.00
	11 NCO Financial Systems (Dominion Virginia Power)	\$206.21
	12 Cingular Wireless	\$48.10
	13 Fairfax County Water Authority	\$33.52
	14 Cavalier Telephone	\$80.13
	15 Lesley Lee Francis	\$2,100.00
	Total	\$10,798.10
	Total Claims Against the Estate of Eugene B. Livaudais III	\$12,899.27