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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In re: Estate of Marjorie Field Sullivan, deceased | Commissioner's Report  
Fiduciary Number FI-2008-0001273 | of Debts and Demands

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

At the request of Susan K. Pollack, attorney for the above estate, the undersigned gave the notice required under Virginia Code § 64.1-171, setting the 20<sup>th</sup> day of August, 2009, at 12:30 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 Marjorie Field Sullivan. At the said time and place, no person appeared to offer proof of any debts or demands against said estate.

There are no claims filed against the estate with your commissioner. The estate, however, provided your commissioner prior to the hearing a "proposed schedule of distribution" which includes a list of the claimants possessing claims against the estate. Said list is attached hereto as Exhibit 1. The estate did not provide notice of the hearing to any claimant. 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.

The estate submitted to your commissioner a Proposed First and Final Account and your commissioner observes that the estate is planning to disburse \$7,763.57 as administrative expenses in satisfaction of attorney's fees incurred by each of the decedent's two children. The proposal includes a disbursement of \$3,715.25 to Gerard Rugel, Esquire, and a second disbursement of \$4,048.32 to Needham, Mitnick & Pollack. This is in addition to an attorney's fee disbursement of \$6,839.99 previously paid to Needham, Mitnick & Pollack as an administrative expense of the estate. In correspondence received by this office on May 21, 2009, Ms. Pollack explains that the fees are the product of disputes among Katherine H. Sullivan and Daniel Sullivan in which each hired an attorney to represent their interest. Ultimately, the attorneys drafted a settlement agreement which "included resolution of numerous outstanding issues and include their agreement that the Estate would pay the legal fees of both law firms."<sup>1</sup> A copy of the agreement is attached hereto as Exhibit 2. Besides the agreement to pay the attorneys as an administrative expense of the estate, your commissioner finds that the settlement agreement resolves disputes among the decedent's children in the reimbursements

<sup>1</sup> Letter from Susan K. Pollack, Counsel to Executor (received May 21, 2009).



they should receive from the decedent's estate and the decedent's trust as well as the their personal entitlements to certain monies and personal property of the decedent.

Your commissioner finds that the estate contained net assets of approximately \$20,000.00 prior the satisfaction of administrative expenses and creditor's claims. Therefore, the estate proposes to disburse approximately 73% of the estate's assets for the payment of attorney fees. Virginia Code § 26-30 sets forth that "[t]he commissioner, in stating and settling the account, shall allow the fiduciary any reasonable expenses incurred by him as such." The settlement agreement between Katherine H. Sullivan and Daniel Sullivan resolves disputes between the siblings as beneficiaries and creditors of the estate. In your commissioner's opinion, attorney fees which beneficiaries incur in resolving the disputes between themselves are not appropriate administrative expenses of an estate. *Gaymon v. Gaymon*, 63 Va. Cir. 264, 2003 WL 22785033 (2003). Your commissioner finds that Katherine H. Sullivan and Daniel Sullivan should bear the attorney's fees in question personally as the same were of no benefit to the estate. Your commissioner will not approve an account showing such distribution as an administrative expense of the estate.

Your commissioner is without sufficient information to determine whether the fees in the amount of \$6,839.99 previously paid to Needham, Mitnick & Pollack also arise from the dispute between the decedent's children. Your commissioner finds that Katherine H. Sullivan should reimburse the estate the sum of \$6,839.99, except for such portion of that amount as your commissioner may approve as reasonable and necessary expenses of administration of the estate after your commissioner's examination of the time and billing records evidencing such charges.

The estate does not dispute any claims against the estate; therefore, all other claims are allowed as shown on Exhibit 1. The disallowance of the aforementioned attorney's fees should render the estate solvent and capable of paying its creditors in full. However, to the extent that the estate is insolvent and is unable to satisfy all claims in full, the assets are to be distributed pursuant to the priorities established by Virginia Code § 64.1-157. All expenses of administration are priority 1 claims and would be satisfied first pursuant to Virginia Code § 64.1-157(1). The claims for funeral expense reimbursement, including the payment by Daniel Sullivan for flowers to the extent that they were for the decedent's funeral services, are below the statutory maximum accorded priority under Virginia Code § 64.1-157(3), and are allowed as a priority 3 claim. The claim of Inova Cameron

Glen Care Center for the decedent's expenses of last illness is within the statutory allowance for such expenses and would receive priority 5 treatment. The claim by Katherine H. Sullivan for debts due to her from her service as the decedent's conservator would be paid as a priority 7 claim. The claim by Katherine H. Sullivan for reimbursement from the payment of the decedent's personal property tax would be satisfied as a priority 8 claim. All other claims would be treated as a priority 9 claim and satisfied at its pro rata share of the balance of the estate.

Furthermore, if the estate is in fact insolvent, no distribution to beneficiaries is proper. The estate should not make the proposed distribution of \$49.98 to a beneficiary as shown in the proposed account and the estate should not incur the cost of shipping the decedent's personal property to Daniel Sullivan also reported in the proposed account.

Respectfully submitted this 25<sup>th</sup> day of September, 2009.

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

Commissioner's Fee for this Report	\$ 350.00	
<u>Publication costs</u>	<u>\$ 10.00</u>	
Total Amount Due	\$ 360.00	- Unpaid

cc: Katherine H. Sullivan, Executor  
 Daniel Sullivan  
 Gerard Rugel, Esquire  
 Susan K. Pollack, Esquire  
 Inova Cameron Glen Care Center  
 Leland T. Gilmore  
 Neighbor Care

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

10-14-09 By: Karen S. Deardine  
 Date Deputy Clerk

PROPOSED SCHEDULE OF DISTRIBUTION  
 ESTATE OF MARJORIE SULLIVAN  
 FIDUCIARY #2008-0001273

Balance in conservatorship	\$8,490.43		
<i>Adjustment</i> - reimbursement to conservatorship by Kate Sullivan (conservator commission reduced for attorney's fees)	\$2,624.14		
<i>Adjustment</i> - withdrawal of Kate Sullivan's funds erroneously deposited to conservatorship account	-\$1,000.00		
<b>BALANCE TO ESTATE FROM CONSERVATORSHIP</b>			\$10,114.57
Payments in order of priority			
<b>Administrative expenses</b>			
Attorneys fees - Needham Mitnick & Pollack - per beneficiaries' agreement	\$4,048.32		
Attorneys fees - Gerald Rugel - per beneficiaries' agreement	\$3,715.25		
Conservator bond (paid by Kate Sullivan)	\$1,145.00		
proposed shipping costs to Daniel Sullivan	\$200.00		
Total Administrative expenses			\$9,108.57
<b>Funeral expenses (paid by Kate Sullivan)</b>			
gravesite (paid by Kate Sullivan)	\$575.00		
minister (paid by Kate Sullivan)	\$200.00		
	\$231.00		
Total funeral expenses			\$1,006.00
<b>Debts &amp; Taxes with Preference</b>			
			\$0.00
<b>Last Illness expenses</b>			
Cameron Glen	\$400.00		
Total last illness expenses			\$0.00
<b>Debts due conservator</b>			
Partial reimbursement to Kate Sullivan for payment of conservator's attorney's fees (insufficient funds)	\$3,031.97		\$0.00
<b>Other claims</b>			
Leland T. Gilmore, podiatrist	\$40.00		\$0.00
	\$52.63		\$0.00
Neighbor Care	\$550.00		\$0.00
Neighbor Care	\$54.81		\$0.00
David Sayles, M.D. (paid by Kate Sullivan)	\$238.21		\$0.00
Kate Sullivan - reimbursement conservator's attorney's fees	\$3,031.97		\$0.00
property tax (paid by Kate Sullivan)	\$100.22		\$0.00
Cameron Glen			\$400.00

PROPOSED SCHEDULE OF DISTRIBUTION  
 ESTATE OF MARJORIE SULLIVAN  
 FIDUCIARY #2008-0001273

flowers (paid by Daniel Sullivan)	\$164.74		
Total unpaid claims			\$4,632.58
Balance on Hand			\$0.00
	\$19,403.26		

## SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (hereinafter "Agreement") is made by Katherine H. Sullivan ("Kate") and Daniel F. Sullivan ("Dan") in their individual capacities, as Co-Trustees of the Marjorie Field Sullivan Inter Vivos Revocable Trusts, dated March 30, 1998 and August 11, 2000, and as Co-Executors of the Estate of Marjorie Field Sullivan. The Agreement is effective on the date signed by both parties, as written below.

**WHEREAS**, Marjorie Field Sullivan died testate on November 30, 2007 leaving Katherine H. Sullivan and Daniel F. Sullivan as her sole beneficiaries and naming Katherine H. Sullivan and Daniel F. Sullivan as her Co-Executors.

**WHEREAS**, Marjorie Field Sullivan executed two separate living trusts on March 30, 1998 and August 11, 2000 naming Katherine H. Sullivan and Daniel F. Sullivan as her successor Co-Trustees.

**WHEREAS**, Katherine H. Sullivan and Daniel F. Sullivan (hereinafter referred to as the "Parties") have had some disagreement regarding the division of the tangible and intangible property of Marjorie Field Sullivan, which also incorporates the close-out of the Conservatorship of Marjorie Field Sullivan and the disposition of all trust property, and seek to reach an amicable resolution of all outstanding issues.

**NOW THEREFORE, THE PARTIES AGREE** and bind themselves as follows:

1. Kate and Dan agree to qualify as Co-Executors of the Estate of Marjorie Field Sullivan;
2. Kate will transmit a preliminary conservatorship accounting prior to submission to the Commissioner of Accounts which will include unpaid administrative expenses including conservatorship expenses that need to be reimbursed and the legal fees of Needham Mitnick & Pollack, plc and Gerard S. Rugel;
3. Dan will sign a Receipt, for purposes of the final accounting, indicating that he received ½ of the assets in the Morgan Stanley account;
4. Kate and Dan agree to pay all administrative expenses before funding the Trust, including funds owed to Kate; any disagreements would be decided by the Commissioner of Accounts;
5. Kate agrees that Dan is entitled to be reimbursed from the Trust for reasonable expenses associated with the preparation for sale of the condo, plus monthly fees;
6. Kate will pay Dan a total of \$15,000 to cover the price differential between the 2 properties, his half of the doll collection and ½ of the proceeds from the SBLI policy;

Ex. 2-1

7. Kate will ship the items selected by Dan in May 2005 to Winston Salem, NC; the shipping costs will be borne by the Estate;
8. Kate has selected some fine sterling silver turquoise jewelry, given to her by her mother, which she will give to Dan;
9. Kate agrees to fast track any contract for the purchase of the condo presented to her for signature;
10. Dan agrees not to initiate/pursue any litigation against Kate, relating to the Conservatorship, the Estate or any action to assert the validity of the February 2005 Trust Amendment or any other trust amendment that may be in existence that Kate is not aware of;
11. The Parties to this Agreement represent and warrant that they have consulted with independent counsel of their own choosing, or have had the opportunity to consult with independent counsel; that they have read the entire Agreement; that they understand this Agreement; that they executed the Agreement freely and voluntarily; and that they intend for it to be binding, effective and enforceable by the Circuit Court of Fairfax County.
12. It is expressly agreed that the obligations of the parties as set forth herein shall survive this Agreement and that the provisions herein are specifically enforceable in the Circuit Court of Fairfax County, Virginia.
13. This Agreement shall be governed by the laws of Virginia.
14. In the event of any dispute concerning this Agreement, the party prevailing in any litigation shall be entitled, in addition to any damages or other relief awarded by the Court, to its legal fees and expenses.

**BALANCE OF THE PAGE LEFT BLANK INTENTIONALLY**

Ex 2-2

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date recorded by their signatures as set forth below.

Date June 4, 2008

Katherine H. Sullivan  
Katherine H. Sullivan

STATE OF VIRGINIA )  
 ) ss.  
CITY/COUNTY OF \_\_\_\_\_ )

On this day, \_\_\_\_\_, 2008, before me personally appeared Katherine H. Sullivan, personally known to me (or proved to me on the basis of satisfactory evidence), to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed for the purposes therein contained.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

\_\_\_\_\_  
Daniel F. Sullivan

STATE OF NORTH CAROLINA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this day, \_\_\_\_\_, 2008, before me personally Daniel F. Sullivan appeared, personally known to me (or proved to me on the basis of satisfactory evidence), to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed for the purposes therein contained.

\_\_\_\_\_  
Notary Public

Ex: 2-3