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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Eric Anderson Engh, Deceased
Fiduciary Number FI-2005-074708

Commissioner's Report
of Debts and Demands

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

At the request of Pamela E. Chomko, administrator for said estate, the undersigned gave the notice required under § 64.1-171 of the Code of Virginia, setting the 12th day of April, 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 Eric Anderson Engh. At the said time and place, Pamela E. Chomko appeared on behalf of the estate. Bernadette Golinowski, counsel, appeared on behalf of INOVA Health Care Services, a claimant against said estate. Dimitru and Eleanor Carstea appeared at the hearing in order to substantiate their claim against said estate. Adam Anderson Engh, the decedent's son and sole heir as well as Robin Bichy, the decedent's sister, also appeared at the hearing. No other person appeared to offer proof of any debts or demands against said estate.

Four creditors filed five claims against the estate with the Commissioner of Accounts in the following amounts:

Discover Financial Services	\$15,923.52
Domitru and Eleanor Carstea	\$ 8,861.00
INOVA Health Care Services	\$23,222.90
MBNA America #5732	\$ 6,456.71
MBNA America #6701	\$ 851.06

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

The estate disputes the validity of all five claims filed against the estate. MBNA and Discover Financial had notice of the hearing regarding their three claims; however, no representative of either claimant appeared at the hearing and no evidence was presented to your commissioner other than



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WILL BK 00884 PG 0481
Fiduciary # FI-2005-0074708
Date 03/23/2010
Estate ENGH, ERIC ANDERSON
Recorded in
FAIRFAX COUNTY CIRCUIT COURT
TESTE JOHN T FREY

the estate's dispute of said claims. Therefore, the two claims by MBNA and the claim by Discover Financial are denied in their entirety.

The claim by INOVA Health Care Services arises from medical services provided to the decedent between May 13, 1999 and February 11, 2004. INOVA filed a claim with your commissioner's office on June 30, 2005 in the amount of \$23,222.90. The claimant has submitted to your commissioner a "Patient Statement of Account" which documents the various services provided to the decedent and the charges for the same. After a review of the statements, your commissioner finds that the aggregate outstanding charges for medical services amount to \$23,422.90 rather than the amount filed with this office. In your commissioner's opinion, INOVA's claim is a proper debt of the decedent and he will allow said claim to the extent that it is not time barred. There is no contract signed by the decedent before your commissioner. Pursuant to § 8.01-246 of the Virginia Code, actions upon an unwritten contract, express or implied, must be brought within three years of the date when the cause of action accrued. Therefore, the services provided to the decedent prior to June 30, 2002, in the total amount of \$13,854.33, are denied. The remaining balance of the claim is for services provided to the decedent after June 30, 2002 and is not time barred; INOVA's claim should be allowed in the amount of \$9,568.57.

The claim by Dumitru and Eleanor Carstea arises from a landlord-tenant relationship between said parties and the decedent. The claim consists of charges to the decedent for cleaning and repairs necessitated by his occupancy of 12801 Point Pleasant Drive, an unpaid utility bill, rents for March and April of 2005, and the late fees from five delinquent rent payments. Mr. and Mrs. Carstea submitted to your commissioner documentation of the various rehabilitation services provided to the apartment as well as checks evidencing payments made to persons and businesses for these services. Based upon the evidence before him, your commissioner finds repair and maintenance expenses related to the premises of \$4,884.25.

Your commissioner finds that the landlord drafted the lease. Paragraph 21 of the lease allocates maintenance and repair expenses to the tenant; however your commissioner notes that Paragraph 48 of the lease, a hand-written provision, states in its entirety: "Tenant to pay first \$75.00 of any repairs and/or maintenance." In the event of a conflict between the provisions of a pre-printed document and hand-written amendments thereto,

the hand-written provisions will control.¹ Moreover, ambiguities in a written contract “must be construed against the drafter of the agreement.”² Your commissioner is of the opinion that Paragraph 48 controls the allocation of maintenance and repair expenses, and that the tenant is only responsible for the first \$75.00 of each maintenance or repair performed on the premises. The balance of any maintenance or repair costs is the responsibility of the landlord.

Your commissioner finds nine (9) distinct repairs or maintenance services performed on the property, all of which exceed \$75.00 in cost. Your commissioner finds that the landlord has a claim against the decedent’s estate for maintenance and repairs to the property in the total amount of \$675.00. In addition, your commissioner finds that the claimant paid \$54.91 to satisfy the decedent’s final water bill and prevent a lien from attaching to the property. Said water bill is the responsibility of the decedent’s estate. Therefore, the claim for maintenance, repairs and utilities is allowed in the total amount of \$729.91. The balance of that claim is denied.

Mr. and Mrs. Carstea demand from the estate rent for March and April of 2005 in the total amount of \$4,400. The monthly rent was \$2,200. The decedent passed on February 7, 2005. His sister, Robin Bichy, removed the decedent’s contents from the premises and provided the claimants with oral notice of the lease’s termination on February 27, 2005. Such notice was not effective to terminate the lease under its express terms. Ms. Bichy subsequently provided written notice to the claimants of the termination on March 2, 2005. Paragraph 41 of the lease states: “If any party to this lease, Landlord or Tenant, should die during the term of this lease, the surviving party of the deceased may terminate this lease by giving thirty (30) days written notice to the other parties involved in the lease.” This provision is in derogation of the common law rule which provides that the lease runs from month to month and that notice of termination within a month is effective to terminate the lease at the end of the following month. *See, e.g.*, Deed of Lease ¶¶ 15 and 16. Your commissioner finds that the decedent’s representative provided written notice terminating the lease on March 2, 2005. Said notice effectively terminated the lease as of April 1, 2005, and

¹ *Tuzman v. Leventhal*, 174 Ga. App. 297, 329 S.E.2d 610 (1985); *Patel v. United Inns, Inc.*, 887 N.E.2d 139 (In. App. 2008); *In re B.E.*, 186 N. Car. App. 656, 652 S.E.2d 344 (2007); *Ward v. West Oil Co., Inc.*, 379 S.C. 225, 665 S.E.2d 618 (2008). Williston, CONTRACTS § 32:13.

² *Martin & Martin, Inc. v. Bradley Enterprises, Inc., et al.*, 256 Va. 288, 504 S.E.2d 849 (1998); *Mahoney v. NationsBank of Virginia*, 249 Va. 216, 455 S.E.2d 5 (1995); *See also* 49 AM. JUR. 2d *Landlord and Tenant* § 43.

the estate should be responsible for rent through April 1, 2005, and no further. Therefore, the claim for rent is allowed in the amount of \$2,273.33, representing the month of March and one day in April.

The claimants further assert that the decedent is liable for late fees on five separate rent payments made during his life. Paragraph 3 of the lease agreement states: "If any installment of rent is not received by Landlord within (5) five days from the due date, Tenant covenants and agrees to pay as additional rent the sum of \$85.00." The due date for rent is set by the lease as the first of each month. To corroborate their testimony that the claimants received five late rent payments, the claimants submitted to your commissioner copies of checks written by the decedent for rent. Upon review, your commissioner notes that only two of the rent checks are dated later than the fifth of the month. (With only the claimant's testimony of when they actually received the payments, your commissioner will not speculate as to whether those checks dated the fifth of the month were in fact delinquent.) Your commissioner is satisfied that the decedent paid rent late on two instances and will allow a claim for late payments in the amount of \$170.00.

To summarize, Mr. and Mrs. Carstea possess a valid claim against the decedent's estate in the amount of \$3,173.24. However, the claimants acknowledge that they have withheld a \$2,000.00 deposit which the decedent paid when he entered into the original lease. Said deposit should offset the Carstea's claim; therefore, the net amount of \$1,173.74 should be allowed against the estate.

The estate provided an additional list of creditors with claims against the estate prior to the hearing in this matter. Said list is attached hereto as Exhibit 2. The estate sent notice of the hearing to only those creditors which filed a claim with your commissioner's office. No other creditors were adequately notified of the hearing. The estate acknowledges the validity of the claims for administrative expenses, funeral expenses, and Fairfax County Property taxes; therefore, these claims are allowed in full in the amounts shown on Exhibit 2. The estate disputes all other claims as insufficiently proven; nonetheless, your commissioner will not deny the claims listed on Exhibit 2 under the heading "All other debts." These claimants did not have notice of the hearing and their claims are therefore allowed until such time as a second hearing is held and the administrator provides said claimants with proper notice thereof.

On the date of the hearing, the estate was insolvent. Prior to this report's completion, the estate received a substantial sum in settlement of a charging lien placed by the estate. Therefore, your commissioner concludes that the estate's solvency is no longer at issue and no report as to the priority of claims is necessary.

The estate provided Adam Anderson Engh with support pursuant to the statutory allowances provided for by §§ 64.1-151.1, 64.1-151.2 and 64.1-151.3 of the Virginia Code; however, neither Mr. Engh or his legal guardian filed an election for said allowances within one year of the decedent's death as required by § 64.1-151.5 of the Virginia Code.³ Your commissioner is of the opinion that there is no entitlement to the statutory allowances provided by §§ 64.1-151.1, 64.1-151.2 and 64.1-151.3 of the Virginia Code without filing an election pursuant to § 64.1-151.5 of the Virginia Code within one-year of the decedent's date of death.

The Supreme Court of Virginia has held that when a new substantive right is created by statute, and the statute contains a time limitation, "the special limitation is a condition precedent to maintaining the claim and failure to comply with it bars the claim."⁴ In *Branch v. Branch*, two siblings brought an action to impeach the decedent's will, four years after it was admitted to probate.⁵ They instituted the proceeding pursuant to a statute which required that a bill in equity to impeach a will "may be filed within one year from the date of the order" admitting the will to probate.⁶ The Supreme Court of Appeals of Virginia held that the right to such an action was extinguished by the passage of time.⁷ "None of the exceptions which might otherwise take a case out of the bar of a pure statute of limitations can be applicable where no right of action exists."⁸ The Court in *Branch*

³ Va. Code. Ann. 64.1-151.5, "The election to take family allowance, exempt property and homestead allowance, or any of them, may be made within one year from the death of the testator or intestate. The election shall be made either in person before the court having jurisdiction over probate or administration of the decedent's estate, or by writing recorded in the court, or the clerk's office thereof, upon such acknowledgment or proof as would authorize a writing to be admitted to record under Chapter 6 (§ 55-106 et seq.) of Title 55."

⁴ *Dugan v. Childers*, 261 Va. 3, 9, 539 S.E.2d 723,726 (2001); *Barksdale v. H.O. Engen, Inc.*, 218 Va. 496, 498 (1977); See also, *Neff v. Gerrard*, 216 Va. 467, 497 (1975) (Discussing a mechanic's lien: "Where a statute creates a right unknown at common law and makes a time limitation the essence of the right as well as a constriction upon the remedy, the right expires upon the expiration of the limitation...").

⁵ 172 Va. 413, 2 S.E.2d 327 (1939).

⁶ § 5259 of Virginia Code, 1936.

⁷ *Branch v. Branch*, 172 Va. 413, 2 S.E.2d 327 (1939).

⁸ *Id.* at 418, 2 S.E.2d 327, 330.

explains that a proceeding instituted to establish a right only available through a statute must be commenced before the expiration of the statute's own time limit.⁹

There are also important policy objectives in mandating a one year limitation on the filing of statutory elections against an estate. The purpose of the allowance statutes, to provide a decedent's surviving family with the means to avoid economic distress during the administration of his estate, is in conflict with the Commonwealth's interest to expedite the administration of estates, creditors' expectations in an estate, and beneficiaries' rights to a speedy disbursement of their interest. The North Carolina Supreme Court reviewed the time limitation imposed by the spousal allowance statute and noted, "[n]o one can anticipate the confusion which might arise, or the injustice which might be done to the creditors, or the administrators, or the next of kin, if the widow might be permitted to defer her application for an indefinite period."¹⁰ More recently, in the *Estate of Mildred Mills Butler*, Judge Ledbetter, Jr. interpreted § 64.1-151.5 of the Code of Virginia to require that an election for allowances must be filed within the time limitation of the statute.¹¹ "Since some of the entitlements under these statutes take priority over all claims against the estate, such open-endedness would play havoc with the lawful demands of creditors and the proper expectations of beneficiaries."¹² It is clear that at some point the right to claim allowances must yield to the other interests in the estate. In providing the current scheme of statutory allowances, the legislature set forth that one-year after a decedent passes away, no one may elect for allowances against his estate.

In the case of an election for statutory allowances, no prior right or entitlement exists and only through conformity with Virginia Code § 64.1-151.5 does a person obtain entitlement to the allowances provided under Virginia Code §§ 64.1-151.1, 64.1-151.2 and 64.1-151.3.¹³ In other words, the time limitation set forth in § 64.1-151.5 of the Virginia Code is not a

⁹ *Id.*; See also *Barksdale v. H.O Engen, Inc.*, 218 Va. 496, 499, 237 S.E.2d 794, 796 (1997) ("the right to compensation under the workmen's compensation law is granted by statute, and in giving the right the legislature had full power to proscribe the time and manner of its exercise. Thus the limitation is part of the new substantive right").

¹⁰ *Id.*

¹¹ 1988 WL 619173 (Va. Cir. 1988)

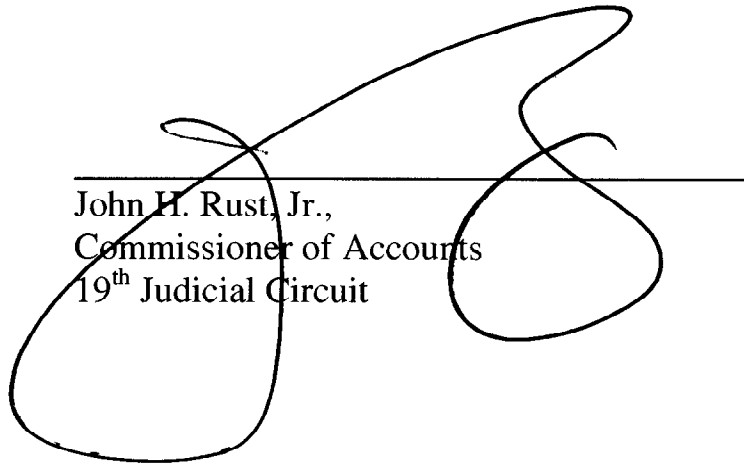
¹² *Id.*

¹³ See, *In re Estate of Liu*, 1999 WL 797190 (Va. Cir. 1999) (Spouse entitled to the allowances provided by §§ 64.1-151.1 & 64.1-151.2 of the Virginia Code as long as the election for these allowances fulfill the requirements of § 64.1-151.5 of the Code).

limitation on the availability of a remedy for an existing cause of action. Rather the statute provides a set procedure and time limit for obtaining a new substantive right. In the absence of such a filing, there is no right to such allowances. The minority of the beneficiary does not toll or otherwise affect the limitation in § 64.1-151.5, as there is no right to any benefit without the timely filing of the election.

In summary, your commissioner is persuaded that the one-year time limitation set forth by Virginia Code § 64.1-151.5 is to be strictly construed, that Mr. Engh's minority status does not toll the time limitation imposed by the same, and that all persons are now forever barred from making an election for statutory allowances against the Estate of Eric Anderson Engh. Notwithstanding the fact that Mr. Engh is not entitled to any statutory allowances, it appears to your commissioner that Mr. Engh is the decedent's sole heir and will receive a substantial amount from the estate subsequent to the estate's payment of expenses, claims and taxes. To the extent that Mr. Engh's inheritance exceeds the amount previously provided to him as support, no reimbursement to the estate shall be necessary.

Respectfully submitted this 10th day of November, 2008.



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

Commissioner's Fee for this Report	\$150.00
Publication costs	10.00
<hr/> Total Amount Due	<hr/> \$160.00

- UNPAID

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

3/23/10
Date

By: Nancy A. Davisi
Deputy Clerk

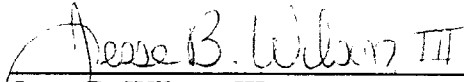
cc: Pamela E. Chomko, Administrator
Adam Anderson Engh
Dorothy Engh
Robin Bichy
County of Fairfax
Domitru & Eleanor Carstea
MBNA America
INOVA Health Care Services
Discover Financial Services
Am Medical Coll Agency
National Credit Corp
IC System Inc.
Practice Mgt. Partners
Am. Collections Enterprise
West Asset Mgt.
Suburban Credit
OSI Collection Service
Total Debt Mgt.
Collectech Systems
North Shore Agency Inc.
Financial Asset Mgt. Systems
AAA Disposal
Direct Tv
Military Book Club

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

IN RE: Estate of Eric Anderson Engh)
Deceased) **NOTICE**
Fiduciary No. 74708)

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 April, 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 Eric Anderson Engh, at the request of Pamela E. Chomoko, Administrator of said estate.

Given under my hand as Commissioner of Accounts this 28th day of March, 2006.



Jesse B. Wilson, III
Deputy Commissioner of Accounts for
Fairfax County, Virginia
By JC

JBW:lc

Exhibit 1

**Eric A. Engh Debt List In Order of Priority
Per Code 64.1-157**

Person or Creditor Valid	Amount of Claim	Reference	Account #'s	Collectors
Administration Reimbursements Robin Bichy	\$ 620.00	Monies paid to open Deceased	3 Safes	Robin Bichy, Sister of Deceased
Support for Heir Adam Anderson Engh - SON	\$ 10,800.00	Monies owed under Article 5.1	*64.1-151.1	Adam Anderson Engh, Son
Funeral Expenses Dorothy Engh	\$ 1,433.90	Funeral	Cremation/ Funeral Center	Dorothy Engh, Mother
Robin Bichy	\$ 100.00	Funeral	Pastor Fee	Robin Bichy, Sister of Deceased
Robin Bichy	\$ 200.00	Funeral	Memorial Reception	Robin Bichy, Sister of Deceased
Robin Bichy	\$ 75.00	Funeral	Memorial Soloist	Robin Bichy, Sister of Deceased
Taxes County of Fairfax	\$ 569.50	PP tax(van)	VIN **5005	County of Fairfax
County of Fairfax	\$ 272.41	PP tax(van)	VIN **4191	County of Fairfax
Claims Filed with Court NOVA Heath Care Services	\$ 23,222.90	Medical	**47510	Claim Filed With the Court
MBNA of America	\$ 6,456.71	Credit Card	**5732	Claim Filed With the Court
MBNA of America	\$ 851.06	Credit Card	**6701	Claim Filed With the Court
Discovery Financial Services	\$ 15,923.52	Credit Card	**1125	Claim Filed With the Court
Dumitru and Carstea	\$ 8,861.00	Household	none	Claim Filed With the Court
All other debts Lab Corp of America	\$ 1,299.55	Medical	**0A22	Am Medical Coll Agency
Fairfax Radiological Cons.	\$ 22.55	Medical	**5247	National Credit Corp
Gastro/Intest Med	\$ 544.55	Medical	**0999	IC System Inc.
Alex. Pulmonary Care	\$ 34.18	Medical	**7764	Practice Mgt. Partners
Fair Oaks Emerg. Phys	\$ 276.00	Medical	**3461	Am. Collections Enterprise
Fair Oaks Emerg. Phys	\$ 430.00	Medical	**3462	Am. Collections Enterprise
Reston Hosp Center	\$ 434.64	Medical	**5827	West Asset Mgt.
No Va Nephrology Asso	\$ 327.50	Medical	635	Suburban Credit
Fairfax Pathology Asso	\$ 416.00	Medical	**1114	Suburban Credit
Alex Pathology	\$ 37.00	Medical	**1114	Suburban Credit
Centerville Urgent Care	\$ 623.00	Medical	**1114	Suburban Credit
Fairfax CMI	\$ 1,521.00	Medical	**314.1	OSI Collection Service
Exxon/Mobil	\$ 1,379.17	Credit Card	**2734	Total Debt Mgt.
Verizon Comm	\$ 50.67	Household	**3945	Collectech Systems
Wash Gas	\$ 750.33	Household	**2072	North Shore Agency Inc.
Cingular Wireless	\$ 290.49	Household	**3330	Financial Asset Mgt Systems
Fairfax Water Authority	\$ 54.91	Household		
AAA Disposal	\$ 136.38	Household		
Direct Tv	\$ 102.08	Household		
Military Book Clug	\$ 102.32	Household	**1017	Eastern Coll Corp
Total	\$78,218.32			

Exhibit 2