

RECEIVED MAR 12 2008

FC

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Milton C. Harding,)
Deceased,) Commissioner's Report
Fiduciary No. FI-2006-0001233)

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

On August 23, 2007, Jean Galloway Ball, counsel for the estate, wrote to this office requesting approval of a proposed transfer of the decedent's real estate. On September 10, 2007, Dr. Phylicia Harding-Smith, a beneficiary of the above estate, wrote to your Commissioner objecting to the proposed sale and raising certain other issues in connection with the proposed distribution of assets. On November 29, 2007, your Commissioner responded to Ms. Galloway Ball's request, advising the estate that in light of the substantial discrepancies between the fiduciary and Ms. Harding-Smith as to the valuation of the property, the amount and treatment of the fiduciary's unpaid rent obligation, and the offset of expenses of sale, this office would not approve an account that included the sale as proposed. In the absence of consent from all the heirs, your Commissioner recommended that the fiduciary should pursue an arms' length sale of the property to an unrelated and independent third party. Your Commissioner further stated that if the fiduciary wished to continue to pursue purchase of the property for his own account, your Commissioner would not approve such a self-dealing transaction without either the consent of the beneficiaries or an independent review. Therefore, your Commissioner recommended that there be a hearing under § 26-29 to address the questions of the other heirs and to establish both the fair value of the premises, the amount of the fiduciary's debt to the estate, and whether any credit is to be given for that debt as a down payment upon the purchase of the property.

At the request of Jean Galloway Ball, counsel for the estate, your Commissioner gave notice setting the 25th day of February, 2008, at 10:00 a.m., at his office at 10555 Main Street, Suite 500, Fairfax, Virginia 22030, as the time and place for a hearing to take evidence in accordance with § 26-29 of the 1950 Code of Virginia, as amended. A copy of that notice is attached hereto as Exhibit 1. At the said time and place, there appeared Milton C. Harding, Jr., the executor, together with Jean Galloway Ball, counsel for the estate, Dr. Phylicia Harding-Smith, a beneficiary, and Deborah L. Harding, the spouse of the fiduciary. The undersigned Commissioner took the testimony of the executor, his spouse, and Dr. Harding-Smith in connection with the aforesaid issues.

Pursuant to § 26-29 of the 1950 Code of Virginia, as amended, your Commissioner reports as follows:

The decedent died testate on June 26, 2006. His son, Milton C. Harding, Jr. qualified as his executor on August 11, 2006. Ms. Carolyn H. Quinn, a daughter of the decedent, was named as co-executor of the estate, but declined to serve. The will provides for the equal division of the estate among the three surviving children of the decedent: Carolyn H. Quinn, Phylicia H. Smith, and Milton C. Harding, Jr. There is no express provision in the will for sale of the real estate nor

John T. Frey



for any credit for prior rent payments; however, the executor is granted powers under § 64.1-57 of the Virginia Code and does have power to sell the real estate.

On April 30, 2007, the fiduciary filed an amended inventory with this office showing \$1,141,812.17 in assets, including the family home, valued at \$700,000, and intra-family loans from the decedent to the heirs and other family members totaling \$178,880.53. The fiduciary filed his first account with your Commissioner on December 11, 2007.

The fiduciary proposes to purchase the real estate of the decedent for a gross purchase price of \$665,000, less usual and customary amounts paid for commissions, settlement costs, and fix-up expenses totaling \$72,672. He also proposed receiving a credit in the amount of \$120,000 for rent obligations previously incurred. This rent has never been paid and constitutes the bulk of the debt due to the estate from the fiduciary. Ms. Ball argues, on behalf of the fiduciary that "Milton, Jr. and his father both contemplated that the \$120,000 would be 'payable' from Milton's share of the estate after the death of his parents." She further represents that this accrued rent "was to be treated as a down payment by Milton, Jr. on the house." Ms. Harding-Smith objected to the valuation of the property, in part based upon the earlier inventory value of \$700,000. She also objected to the discount for fix-up expenses and costs of sale. She further stated that the fiduciary had represented to her that he had paid rent, but refused to produce receipts of canceled checks evidencing such payment to her accountant. She indicated that the decedent engaged counsel prior to his death to pursue Milton, Jr. for non-payment of monies due to him, also in the amount of \$120,000.

1. Intra-Family Debts.

In the inventory for the estate, the fiduciary shows the following intra-family debts as assets of the estate:

Carolyn Harding Quinn	-	\$27,350.00
Phylicia Harding Smith	-	\$7,521.00
Milton C. Harding, Jr.	-	\$3,529.53
Christopher Quinn	-	\$2,280.00
Keysha Quinn	-	\$18,200.00
Milton C. Harding, Jr.	-	\$120,000.00

(characterized as Rent/Mortgage Payments owed estate)

Neither Ms. Harding-Smith nor Ms. Quinn has disputed the loan amounts attributed to them or to the children of Ms. Quinn.

The amount that Milton C. Harding, Jr. owes to the estate and the nature of that obligation was a matter of considerable discussion at the hearing before your Commissioner. Based upon the testimony and evidence presented at the hearing, your Commissioner makes the following findings of fact:

On or about September 29, 1988, Milton C. Harding, the decedent, gave a general power of attorney to his son, Milton C. Harding, Jr. Mr. Harding, Jr. used the power of attorney to

manage his father's affairs from the date thereof until September 4, 1998, when the decedent revoked the power of attorney. On March 20, 1996, the decedent and his wife purchased a home located at 14301 Compton Village Drive, Centreville, Virginia, together with Milton C. Harding, Jr. and his wife. The parties held the property as joint tenants with the common law right of survivorship. Mr. Harding, Jr. executed the documents of sale on behalf of his parents pursuant to specific powers of attorney granted to him for this purpose. Mr. Harding, Jr. was unable to make payments in connection with the mortgage indebtedness upon the property and on January 20, 2000, Milton C. Harding, Jr. and Deborah L. Harding transferred all their title and interest to the property to Milton C. Harding, Sr. and Delores B. Harding, as tenants by the entirety. In connection with this transfer, Mr. Harding, Jr. agreed to pay to his father \$1,000 monthly as rent for his family's occupancy of the home on Compton Road. The rent was to accrue from the dated of the initial acquisition of the property in March, 1996.

During the period from September 29, 1988, until September 4, 1998, Milton C. Harding, Jr. controlled funds of the decedent amounting to \$152,000. Mr. Harding, Jr. appropriated certain of his father's monies for his own use, totaling approximately \$121,000. On June 21, 1999, Milton C. Harding, Jr. paid \$50,000 to his father to be applied against the amounts he had taken, leaving a balance of \$71,000 still owed to his father. On or about January 15, 2002, Dorothy J. Paczosa, an attorney retained by the decedent, contacted Milton C. Harding, Jr. demanding an accounting of the monies expended for his personal use during his administration of his father's affairs. In February, 2002, Mr. Harding, Jr. provided an accounting to Ms. Paczosa. Thereafter, father and son entered into negotiations without benefit of counsel. On or about July 14, 2002, Milton C. Harding, Jr. wrote to Ms. Paczosa, advising her that he and his father had entered into an agreement regarding the debt that Milton C. Harding, Jr. owed to his father. As a part of that correspondence, both father and son executed a memorandum setting forth the terms of that agreement. The memorandum is the only writing signed by Milton C. Harding, Sr. presented to your Commissioner. A copy of such memorandum is attached hereto as Exhibit 2.

Pursuant to that memorandum, Milton C. Harding, Jr. owed his father \$129,620, including \$61,220 representing funds appropriated for his personal use from his father's accounts and the attorney's fees owed to Ms. Paczosa, and \$68,400 in rent from April 1996 until December 2002, at \$1,000 per month, less his father's share of utilities that Milton C. Harding, Jr. paid. The memorandum expressly states "The rent amount is \$1,000 monthly less utilities (daddy's)." Notes produced from the negotiations appear to indicate that the utility credit has been taken into account in the calculation of the net amount of rent due.¹ However, such notes also show that the negotiations took into account a credit for \$10,600 for personal services rendered to the decedent. The notes further show that the parties miscalculated the number of months for which rent was due, and that after adjustment for such additional rent is made, it appears that the credit for personal services is the only credit considered in determined the balance of the rent due. While your Commissioner is unable to state with certainty what additional credits were considered or taken into account, based upon the testimony and the evidence presented and notwithstanding the express statement in the notes from the negotiations,

¹ Notes from such negotiations provided by Milton C. Harding, Jr. state "Utility costs for M.C. Harding, Sr. has (sic) already been applied thru this time period." A copy thereof is attached hereto as Exhibit 3.

your Commissioner is of the opinion that the amount of rent agreed upon to be due of \$68,400 does not include any credit against such amount for utility payments previously paid.

Milton C. Harding, Jr. provided evidence of payment of utilities and other household maintenance charges from 1996 until the decedent's death. Based upon an allocation of 1/3 of such utilities and fifty percent of maintenance costs and home owner's association dues paid, Mr. Harding, Jr. claims a credit of \$15,199.16 against the indebtedness due to the decedent. Your Commissioner finds that such evidence is credible, the allocation of such expenses reasonable, and that the same is in accordance with the express agreement of the decedent as set forth in the aforesaid memorandum. Therefore, your Commissioner finds that the debt of Milton C. Harding, Jr. to the decedent should be reduced by the sum of \$15,199.16 as and for a credit for utility and household expenses that Milton C. Harding, Jr. paid.

From the date of the acquisition of the home on Compton Road in 1996 to the date of the hearing in this matter, Milton C. Harding, Jr. and his family have continued to reside in the real property belonging to the decedent. The memorandum of agreement between father and son set forth rent due from April 1996 until December 2002. Based upon the memorandum and the testimony of Milton C. Harding, Jr., rent continued to accrue thereafter at \$1,000 each month. The decedent passed away on June 26, 2006. Milton C. Harding, Jr. presented evidence calculating the rent due to his father's estate as \$120,000, the same amount as was included in the inventory filed for the estate. This represents rents due from April 1996 until May 2006.² It is the opinion of your Commissioner that the death of the decedent did not terminate the obligation of Milton C. Harding, Jr. to pay rent for occupancy of the decedent's property. From April 1996 until February 2008 is a period of 143 months. Reduced for the prior credits reflected in the memorandum, your Commissioner finds that as of the date of the hearing in this matter, Milton C. Harding, Jr. owed net rent in the amount of \$130,400, subject to further reduction for utility payments and for rent payments made after July 2002. Rent shall continue to accrue at such rate until the property is sold or until Mr. Harding, Jr. vacates the premises, whichever first occurs.

Milton C. Harding, Jr. also produced evidence, in the form of cancelled checks, showing payment of \$27,100 in rent payments to the decedent. All of these payments were made after the date of the memorandum of agreement.³ Your Commissioner finds that such evidence is credible, and that the payment is in accordance with the express agreement of the decedent as set forth in the aforesaid memorandum. Therefore, your Commissioner finds that the debt of Milton C. Harding, Jr. to the decedent should be reduced by the sum of \$27,100.00 as and for a credit for rent that Milton C. Harding, Jr. paid after the date of the agreement.

Milton C. Harding, Jr. presented evidence of further credits against the amounts owed to his father, to-wit: \$15,000 for gifts of \$5,000 each to the Harding children in accordance with instructions from Milton C. Harding, Sr. and \$10,600 for 106 weeks of care services rendered to the decedent by the family of Milton C. Harding, Jr. The gifts to the Harding children were

² It should be noted that the time period in question is actually 122 months and gross rents for such period should be \$122,000.

³ Check number 7280 appears to have the date of October 30, 2001; however, it was negotiated in November 2004. Therefore the date appears either to have been misread or to be in error.

made in 1988 and were part of the discussions of amounts due to the decedent from Milton C. Harding, Jr.⁴ Such amounts were included in the calculations reducing the \$152,000 received by Milton C. Harding, Jr. from his father to the \$61,220 agreed upon in the memorandum executed by both parties. The charges for care services of \$10,600 were also part of the negotiations concerning the rents due to the decedent. In the notes provided by Milton C. Harding, Jr. this sum was expressly used to reduce the amount owing to the decedent to the sum of \$68,400 agreed upon in the memorandum.⁵ Your Commissioner is therefore of the opinion that Milton C. Harding, Jr. is not entitled to further reductions in his debts to the decedent for either gifts to family members or for prior care services.

Finally, in connection with the debt that Milton C. Harding, Jr. owes to the estate, your Commissioner notes that much of the presentation at the hearing was based upon an amount owed of \$71,430, approximately \$10,210 more than agreed upon in the memorandum executed by both parties. Your Commissioner is of the opinion that the memorandum is the better record of the agreement and that differences between the two figures may reflect the previous application of credits which Mr. Harding, Jr. now seeks to claim. Therefore, your Commissioner is of the opinion that the memorandum controls the amount of the debt as of the date of that document.

Based upon the foregoing, your Commissioner finds that Milton C. Harding, Jr. owes the estate of the decedent the sum of \$149,320.84, consisting of rent in the amount of \$130,400 and misappropriated funds of \$61,220, less credits for rents paid of \$27,100 and utilities paid of \$15,199.16.

Ms. Galloway Ball proposes that that the debt of the heirs to the estate be allocated among them so that each would be entitled to a net share of the outstanding debt. The proposed allocation appears to be reasonable and would relieve the two daughters of the requirement to settle their loans prior to receiving distributions from the estate. No proposal has been presented to deal with the debts of the decedent's grandchildren. In the absence of payment of such amounts, if the parties are in agreement your Commissioner would also approve an account showing the reduction by such amount of the share of the parent of such children as a further mechanism to settle such accounts. Based upon the information provided with the first account, it is the understanding of your Commissioner that each heir has received an advance distribution of \$43,333.75. While it does not appear to be a problem at the present time, care should be taken before making further advances that the aggregate amount of such advances will not exceed the cash due to the beneficiary, net of his or her debt, which would create an obligation to repay such amounts to the estate.

2. Sale of the Real Property.

In the estate inventory, the fiduciary reported the value of the decedent's real estate on Compton Road at \$700,000. In connection with the fiduciary's proposal to purchase the decedent's real estate, the fiduciary initially presented the 2007 tax assess of the property showing an assessed value of \$659,780 and an appraisal of the Compton Road property dated

⁴ See Reconciliation of Milton, Sr. Cash Received by Milton, Jr., attached hereto as Exhibit 4.

⁵ See Exhibit 3.

May 2, 2007, for \$665,000. At the hearing in this matter, the fiduciary presented a further appraisal from the same appraiser dated February 21, 2008, estimating the fair market value of the Compton Road property to be \$660,000. Subsequent to the hearing in this matter, the fiduciary tendered the 2008 tax assessment for the Compton Road property, showing an assessed value of \$570,760. Dr. Harding Smith objected to establishing a price below the inventory value of the Compton Road property and submitted data from home listings in the area showing a wide range of values for property in the area of the Compton Road property.

Your Commissioner notes that real estate values in the County of Fairfax have fallen during the past two years and that absent an arms' length sale between an unrelated buyer and seller, it is difficult to get a reliable measure of current fair market value of the Compton Road property. In the opinion of your Commissioner, the most recent appraisal of the Compton Road property dated February 21, 2008, provides the best available estimate of its fair market value, and therefore, your Commissioner finds that the estate will receive fair market value for Compton Road property if the fiduciary purchases the same for \$660,000.

The fiduciary proposes that such purchase price be reduced by certain usual and customary costs of sale: (1) a six percent realtor's commission; (2) painting and flooring repairs and fix-up expenses of \$26,772; (3) estimated settlement costs of \$6,000. At the hearing, the fiduciary withdrew his claim for credit for settlement costs, as the estate will incur such costs whether the fiduciary purchases the Compton Road property or it is sold to a third party purchaser.

Your Commissioner is of the opinion that the realtor's commission is an ordinary and usual cost of selling real estate and that the amount of such commission would not be incurred if the estate sells the Compton Road property to the fiduciary. Therefore, your Commissioner is of the opinion that a reduction in the purchase price of the Compton Road property of \$39,600, representing six percent (6%) of the proposed sales price, is a reasonable and proper adjustment which causes no loss to the estate.

The fiduciary's request for a credit for repairs and fix-up expenses is based, at least in part, upon a home inspection report that USInspect performed for the Compton Road property. In that report, the inspector recommended a number of repairs, replacements, and corrections. Among those were recommendations to replace laminate floor coverings and stained carpets. The inspector did not recommend repainting the property, but did note the presence of moisture stains on one wall, for which he recommended cosmetic repairs and painting. Your Commissioner is unable to opine whether such repairs and fix-up expenses are necessary or desirable to market the Compton Road property to an unrelated third-party purchaser; however, it is apparent that such repairs and expenses are not necessary to market the property to the fiduciary, who seeks to purchase the Compton Road property and who currently resides in such property. Therefore, the issue of whether a price adjustment is appropriate depends upon whether the appraised fair market value of the Compton Road property reflects its "as is" value or whether the estate must make a further investment in the property to achieve that value.

The appraisals provided to your Commissioner, including the appraisal of February 21, 2008, both state that "The subjects (sic) floor plan is functional and improvements show normal

wear.” The appraisals both state that there are no physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property. Finally, both appraisals state that the appraisal is made “as is” and is not subject to the making of any repairs or alterations to the property. Therefore, the appraised value of the Compton Road property at \$660,000 assumes no improvements, repairs or other fix-up expenses. In the opinion of your Commissioner, no credit against the purchase price is warranted in such circumstances as the costs of such repairs and fix-up expenses would represent a windfall to the purchaser and a detriment to the estate receiving the full fair market value of the Compton Road property.

Based upon the foregoing, it is the opinion of your Commissioner that the fiduciary may sell the Compton Road property to himself (and his spouse if he wishes) for the sum of \$620,400, representing its appraised value less the usual and customary realtor’s commission, provided that the fiduciary holds the estate harmless for any claim from a realtor for a commission in connection with such sale.

Your Commissioner is of the opinion that any such sale should proceed promptly. Your Commissioner does not have the expertise to evaluate rental rates for single family homes in Fairfax County; however, your Commissioner notes that the rental rate upon the Compton Road property does not appear to be a market rate of rent. A brief review of current offerings in local newspapers showed no single family townhome offered for less than \$1,350 per month and no single family detached dwelling offered for less than \$1,595 per month. For this reason, your Commissioner recommends that the fiduciary proceed to sell the Compton Road property promptly, either to himself as provided above or to an unrelated third-party purchaser. Further delay in the worsening market conditions impacts the estate both in the reduced purchase price received and in the bargain rent paid.

3. Credit Against the Purchase Price for Rent Paid.

The fiduciary requests a credit against the purchase price of the Compton Road property for rent paid from April 1996 until May 2006 in the amount of \$120,000. Mr. Harding, Jr. maintains that this credit was a part of an agreement between him and his father so that he might purchase the Compton Road property after his father’s death. Your Commissioner notes initially that the greatest portion of such rent was never paid to the decedent, with a balance remaining to be paid to the estate of \$88,100.84 from a total rent obligation of \$143,000. The unpaid rent balance constitutes almost sixty percent of the amount which the fiduciary owes to the estate. In the opinion of your Commissioner, one cannot receive credit for what one has not paid, and therefore, no credit is due to the fiduciary if the estate is not paid the amounts due to it.

Second, the fiduciary seeks to enforce an oral agreement for the sale of real estate against the decedent. Milton C. Harding, Jr. testified that it was his understanding that he and his father had agreed that rent payments upon the Compton Road property would be treated as a down payment upon the purchase of that property. Your Commissioner, upon review of the evidence presented, can find no evidence which corroborates the existence of any such agreement and no writing that the decedent executed which contains the terms of that agreement or makes any reference to it whatsoever. In response to inquiries about such supporting evidence, Ms. Galloway Ball provided copies of the decedent’s tax returns for calendar years 2004, 2005, and

2006, noting that the decedent did not report receipt of any rent during those periods. In 2004, 2005, and 2006, Mr. Harding, Jr. paid \$27,100 in rent to his father. Your Commissioner notes that during those periods, Mr. Harding, Jr. also owed the sum of \$61,220 to his father for prior misappropriations of funds. While the decedent's failure to report the payments from his son as income is consistent with treatment of such payments as a down payment for purchase of the property, it is also consistent with an election to treat such payments as the recovery of funds previously misappropriated by Mr. Harding, Jr., or a negligent or inadvertent omission from the decedent's tax return, or even an improper attempt to avoid tax on income not otherwise reported to the Internal Revenue Service. In the opinion of your Commissioner, the failure to report such payments as income provides no guidance whether an agreement existed to grant a substantial credit against the sales price of the decedent's real estate.

There are elements of the testimony before your Commissioner which seem to militate against the existence of such an agreement. The decedent and Mr. Harding, Jr. consistently referred to the payments of \$1,000 each month as "rent." Mr. Harding, Jr. testified that the term "down payment" was not used. Ms. Harding testified that the term "rent" that appears on the memo line of a number of the checks exhibited to your Commissioner was sometimes written on those checks by her and sometimes was written on the checks by the decedent upon receipt of the payments. Dr. Harding Smith testified that when she visited her father in 2005 he was concerned about not receiving the rent payments from Mr. Harding, Jr. and worried that he would never receive those funds. Dr. Harding Smith also indicated that her father was meticulous when dealing with his children and his money, charging interest and late fees against them consistently and treating advances as a business transaction. Under questioning from Dr. Harding Smith, Mr. Harding, Jr. agreed with that characterization of their father.

Perhaps the most important evidence of a lack of an agreement for a purchase credit is the memorandum that the decedent and the fiduciary executed. That memorandum resolved seven years of unpaid rent and makes no mention of any such agreement, nor do any of the notes provided by Mr. Harding, Jr. relating to the negotiation of such an agreement. In fact, the letter from Mr. Harding, Jr. to Dorothy J. Paczosa, the attorney representing the decedent, sent on or around February 1, 2002, outlines the amounts which Mr. Harding, Jr. appropriated for his own use from his father's monies and states that his intention is to repay the entire amount; however "[t]o date there have been no discussions regarding terms, but to the best of my ability I will make every effort to comply with what he chooses." If in fact the negotiations with the decedent had included discussions of a \$120,000 purchase credit in exchange for paying rent as agreed, it would seem that such an agreement would have been sufficiently important to merit mention in correspondence with the decedent's lawyer.

Virginia Code § 8.01-397 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. More importantly, Virginia Code § 11-2 requires that no action shall be brought upon any contract for the sale of real estate "[u]nless a promise, contract, agreement, representation, assurance, ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged." It is generally held that an oral contract for the sale of land is unenforceable at law, even though it is well-defined and concluded agreement. *See, e.g., Brown v. Pollard*, 89 Va.

696, 17 S.E. 6 (1893); *Dunsmore v. Lyle*, 87 Va. 391, 12 S.E. 610 (1891); *Perry v. Ruby*, 81 Va. 317 (1886); *Blow v. Maynard*, 29 Va. (2 Leigh) 29 (1830). Similarly, an oral promise to devise real estate is not enforceable. *Clay v. Clay*, 196 Va. 997, 86 S.E.2d 812 (1955); *Ricks v. Sumler*, 179 Va. 571, 19 S.E.2d 889 (1942).

It is clear that an agreement such as the fiduciary describes is within the Statute of Frauds. In *Walker v. Tyler*, 94 Va. 532, 27 S.E. 434 (1897), the owner of a lot in Richmond made an oral promise to another that if she funded construction of the house, he would convey an interest in the property to her. She advanced the funds, the house was built, but the owner did not convey any interest in the property to her. She sued his estate, seeking to enforce the agreement. The Court found her to be a general creditor only, and not entitled to any claim of interest in the real estate. The Court stated

If the contention that there was an agreement by which appellee was to have an interest in the property in proportion to her contribution towards the building was well founded, and could be maintained under the pleadings in this case, it would avail nothing in the face of the plea of the statute of frauds relied on by appellants in the court below to meet this phase of appellee's case. . . . Hence, by the very terms of the statute, appellee's claim to an interest in the house and lot must fail. 94 Va. at 532, 27 S.E. at 435.

The Statute of Frauds requires a signed memorandum that contains the essential elements of the contract, including the essential promise to pay. *American Indus. Corp. v. First & Merchants National Bank*, 216 Va. 396, 219 S.E. 2d 673 (1975); *Reynolds v. Dixon*, 187 Va. 101, 46 S.E. 2d 6 (1948); *Hale v. Hale*, 90 Va. 728, 19 S.E. 739 (1934). In the instant case there is no document containing the essential elements of the contract and no memorandum that the decedent has signed, other than the agreement for payment of the rent arrearage and misappropriated funds, which is silent about any agreement for a purchase credit upon the property. It is the opinion of your Commissioner that no enforceable agreement exists between the decedent and the fiduciary allowing a credit against the purchase price of the Compton Road property for rent previously paid. For that reason, no such credit is allowed.

Conclusion

In summary, your Commissioner reports that Milton C. Harding, Jr. owes the estate \$149,320.84, together with additional rent accruing at the rate of \$1,000 per month on and after March 1, 2008; and that he is not entitled to any credit against the purchase price of the Compton Road property for payment of any portion of such sum. Your Commissioner further reports that the fair market value of the decedent's property at 14301 Compton Village Drive, Centreville, Virginia is \$660,000. Your Commissioner finds that the fiduciary may sell the Compton Road property to himself for \$620,400, representing the fair market value of the property less the usual and customary real estate commission which would be avoided in such a sale.

Your Commissioner's fee for the conduct of the hearing in the above estate and the preparation of this report is \$1,750, unless the Court shall establish another amount therefor.

Respectfully submitted this 11th day of March, 2007.



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

Hearing Fee - \$1,750 UNPAID

cc: Milton C. Harding, Jr., Executor
Jean Galloway Ball, Attorney at Law
Phylicia Harding Smith

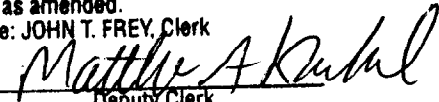
I, JOHN T. FREY, Clerk of the Circuit Court of
Fairfax County, Virginia, do hereby certify that the
foregoing Account or Report has been filed in my office
for more than fifteen days, and that no exceptions have
been filed thereto, and the same is now recorded
pursuant to the provisions of §§26-33 and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

Teste: JOHN T. FREY, Clerk

3-28-08
Date

By:

Deputy Clerk

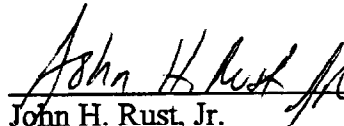


IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

IN RE: **Estate of Milton C. Harding**)
 Deceased) **NOTICE**
 Fiduciary No. FI-2006-0001233)

Pursuant to the provisions of § 26-29 of the 1950 Code of Virginia, as amended, notice is hereby given that the undersigned Commissioner of Accounts has appointed the 25th day of February, 2008, at 10:00 A.M., at his office at 10555 Main Street, Suite #500, Fairfax, Virginia, as the time and place for receiving proof concerning objections to the accounts files in the above-styled estates of Milton C. Harding, at the request of Jean Galloway Ball, Attorney of said estate.

Given under my hand as Commissioner of Accounts this 30th day of January, 2008.



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

JHRJ:tlw

Dorothy J. Paczosa , P.C.
13890 Braddock Road, Suite 307
Centreville, VA 20121

July 14, 2002

RE: Financial Management Agreement
between M.C. Harding, Sr. and M.C. Harding, Jr.

Dear Ms. Paczosa,


This letter advises you of the agreement my father and I have come to:

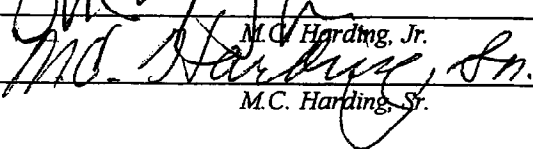
1. Attorney's fee requested in your letter dated, April 24, 2002, of \$480.00 included as a part of dispersed funds. Conveyed in my phone call to you on May 13, 2002.
2. The total amount of funds disbursed, \$61,220.00
3. Rent amount is \$1,000 monthly less utilities(daddy's)

The accounting for sum total amount is:

Rent Amount (April 1996 - December 2002)	\$ 68,400.00
Loan/Attorney's Fee	\$ 61,220.00
Total	\$ 129,620.00

4. The starting date for repayment on the above total will be **January, 2003**



M.C. Harding, Jr. Date _____


M.C. Harding, Sr. Date 2/28/02

Respectfully,

M. C. Harding, Jr.

Exhibit 2

Rent Agreement

May 1996 - December 2002

M.C. Harding, Sr./M. C. Harding, Jr.

5-Jul-02

Document 2

Time Period		Rent Amt.	Mo./Wks	Total	
May-96	Jul-98	\$ 1,000.00	2627	\$ 26,000.00	less credit for Personal Ser
APR 96 - "		\$ 100.00	106	\$ 10,600.00	less allowance for service 106 wks
				\$ 15,400.00	Rent owed during this time period
Aug-98	Mar-02	\$ 1,000.00	43	\$ 43,000.00	Rent owed during this time period
				\$ 58,400.00	Sub Total through March 2002 *
Apr-02	Dec-02	\$ 1,000.00	8	\$ 8,000.00	
				\$ 67,400.00	Total Amount Owed

(*Utility ^{Costs} allowance for M.C. Harding, Sr. has already been applied thru this time period)

Exhibit 3

EXHIBIT A

RECONCILIATION OF MILTON SR. CASH RECEIVED BY MILTON JR.

CASH UNDER MILTON, JR'S CONTROL (1988-1998)	\$152,000
DISBURSEMENTS AUTHORIZED BY MILTON SR. (1988)	\$ 15,000
CAROLYN	\$5,000
PHYLICIA	\$5,000
MILTON JR.	\$5,000
GRANDCHILDREN (\$2,000/each)	\$ 10,000
CHRISTOPHER QUINN	
KEYSHA QUINN	
DAVID QUINN	
MELLISA HARDING, JR.	
JONATHAN HARDING, JR.	
DOWN PAYMENT AND HOUSE APPRAISAL - \$14,750 AND \$300	\$ 15,050
TOTAL AUTHORIZED BY MILTON, SR.	<u><\$40,050></u>
BALANCE OF FUNDS	\$111,950
PLUS: ^{FOR} BILLS PAID BY MILTON, JR. BY MILTON, SR. WHILE LIVING IN RICHMOND	\$ 6,000
PLUS: \$6,000 LOAN TO BUY VAN (HALF GIFTED BY MRS. HARDING)	\$ 3,000
PLUS: ATTORNEY PACZOSA FEE	\$ 480
TOTAL CURRENT (2/02) FUNDS OWED BY MILTON, JR.	\$121,430
LESS: PAYMENT BY MILTON, JR. (6/21/1999) (copy of check attached)	<u><\$ 50,000></u>
NET BALANCE CURRENTLY (2002) OWED	<u>\$ 71,430</u>