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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Betty Louise Piffner, Deceased  
Fiduciary Number FI-2009-0000051

Commissioner's Report

RECEIVED JUL 19 2010

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

Marianne Stahl, a beneficiary of the above estate, requested a hearing before your commissioner upon her claims against the estate and her objections to the estate's administration. Owen Neal Piffner, co-executor for the estate, requested that your commissioner also advertise for and conduct a formal hearing on the debts and demands of the estate. Thus, your commissioner gave the notice required under Virginia Code §§ 64.1-171 and 26-29, setting May 26, 2010, at 1:00 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 Betty Louise Piffner and for a hearing on Ms. Stahl's objections to the administration of the estate.

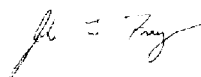
At the said time and place, Owen Piffner and Roland S. Buchanan, co-executors, appeared along with the estate's attorney, Craig E. Baumann, to represent the estate and to defend their administration of the same. Owen Piffner is the decedent's son and Roland S. Buchanan was the decedent's ex-husband's accountant. Ms. Stahl, the decedent's daughter and a resident of California, appeared to provide proof of her claims against the estate and to substantiate her objections to its administration and the inventory and account filed by the co-executors. The decedent also has another son, William Allen Piffner, who did not attend the hearing.

At the commencement of the hearing, Mr. Baumann requested that a court reporter be present to transcribe and record the testimony given at the hearing. Your commissioner contacted several court reporting agencies but was unable to secure a court reporter for the imminent hearing. Your commissioner held the hearing at the scheduled time and place because Ms. Stahl had traveled across the country to attend the same and would have been prejudiced by its continuance.

Following the hearing, your commissioner left the record open until June 11, 2010, to allow the parties additional time to submit further evidence. After hearing the testimony at the hearing, a review of the

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evidence filed by the parties and a review of the inventory and account filed in this matter, your commissioner respectfully submits the following report.

It is clear from the testimony presented at the hearing that there is a level of animosity between Ms. Stahl and Mr. Piffner which long predates their quarrel over the administration of the estate. Ms. Stahl and Mr. Piffner clashed earlier at the death of their father in 2003. Ms. Stahl still harbors bitter feelings concerning the administration of that estate by her brother.

Your commissioner notes that much of the testimony presented at the hearing by Mr. Piffner and Ms. Stahl is conflicting and not reconcilable. In light of the stark contrast between the sworn testimony of the two principal witnesses, your commissioner is left with the unpleasant task of deciding whose testimony is the more accurate and truthful.

### *Debts and Demands Against the Estate*

Ms. Stahl contends that the co-executors sold or disposed of personal property she stored in the decedent's home and she claims the value thereof. Ms. Stahl additionally claims the cost of her travel to the hearing. No other creditors filed any claims against the estate with your commissioner and no other person appeared at the hearing to offer proof of any debts or demands against the estate. The co-executors state that they are unaware of any other outstanding claims against the estate other than the claims of Ms. Stahl, to which they object.

### *Ms. Stahl's Personal Property*

Ms. Stahl's claim for the value of her personal property relies upon her assertions that the co-executors knowingly sold or disposed of her possessions in the decedent's home. In determining the validity of Ms. Stahl's claims, your commissioner finds as follows:

Mr. Piffner took responsibility for his mother's affairs during the months leading up to her death. On September 16, 2008, the decedent executed a will, prepared by Mr. Baumann, which appointed Mr. Piffner executor of her estate and left all her personal and real property equally to her three adult children. In November 2008, Mr. Piffner moved his mother into a nursing home and took possession and control of her home and possessions. Mr. Piffner also took control of one of the decedent's checking

accounts as her attorney-in-fact on or about December, 2008. Ms. Stahl testified that she was not informed of her mother's financial affairs and waning physical condition. Upon his mother's death, Mr. Piffner continued to exert total and exclusive control over his mother's affairs and her estate. Without consulting his siblings, he contracted for the decedent's funeral arrangements and the decedent was buried on January 10, 2010. Neither Ms. Stahl nor William Piffner attended her funeral.

Mr. Piffner and Mr. Buchanan qualified as co-executors for the estate on January 14, 2009. Mr. Buchanan, a Virginia resident, explained that he qualified only because the clerk would not waive surety for Mr. Piffner, a Maryland resident, if he qualified alone. Your commissioner finds that Mr. Buchanan played a limited role in the day to day administration of the estate. Upon his qualification, Mr. Piffner began refurbishing the decedent's home in preparation for its eventual sale. He conducted an estate sale at which much of the personal property in the home was sold. Mr. Piffner testified that he waited nine months from his mother's death before he disposed of any of the personal property in the home. The co-executors' account shows that the estate received a total of \$2,407.65 in proceeds from the sale of the household property.

Ms. Stahl testified that she moved from Virginia to California approximately thirty years ago. When she moved to California, she stored most of her personal belongings in the decedent's home, in boxes stored throughout the house. Ms. Stahl testified that she visited the decedent twice each year, usually for a month in April-May, around Ms. Stahl's birthday, and again for a similar period in September-October, around the decedent's birthday. She further testified that she would sometimes bring personal items when visiting and leave those items at her mother's home. For example, Ms. Stahl testified that she would make beaded necklaces while visiting and hang those necklaces on the hutch in the decedent's home with the hope that the decedent would sell them to her friends. Ms. Stahl also testified that she left a Dell laptop computer at the decedent's home with the intent that her mother would use the same to communicate with her family. Said testimony is corroborated by affidavits from the decedent's neighbors which Ms. Stahl submitted subsequent to the hearing. Ms. Stahl also testified that other items were shipped to her mother's residence on her behalf, some of which she had not had a chance to pick-up. Ms. Stahl testified that she last visited the decedent in September-October of 2008, at which time she saw her personal possessions which were not packed away.

Ms. Stahl provided a list, partially oral and partially written, of over forty individual items of her personal property which she alleged were in the decedent's home when she passed away. In addition to those mentioned above, her personalty included furniture, electronics, household goods, memorabilia, jewelry and art work. Ms. Stahl also listed children's toys and clothing she had as a child but your commissioner is of the opinion that such items are the property of the decedent and that she has no basis to claim their value from the estate.

During the hearing, Ms. Stahl described her property in detail and specifically identified each item's last known location in the home. The level of descriptive detail that Ms. Stahl provided is noteworthy. For instance, in describing the location of a 1964 Beatles Concert program, Ms. Stahl explained that in the closet there was a stack of records about 10 inches high; within that stack of records was the Beatles program from a show in England that she attended with her father; she stated she knew it was there. Your commissioner finds that the level of detail that Ms. Stahl recalls adds credibility to her testimony and makes it less likely that the testimony was fabricated. Although Ms. Stahl's personal knowledge often relates to items stored in the home over a period of years, your commissioner finds her testimony credible overall. Your commissioner is persuaded that Ms. Stahl stored many of her personal possessions in the decedent's home.

The decedent died January 3, 2009. Ms. Stahl did not receive word of her mother's death from her brother; rather she learned of it from a mutual acquaintance. In light of her prior experience during the administration of her father's estate, Ms. Stahl immediately emailed Mr. Piffner on January 5, 2009, stating,

This note is to all of the Piffners. Don't touch a [exploitative omitted] thing in that house that belongs to me. The sapphire and diamond ring mom wore was mine and I want it back. My plans remain the same and I will be in Virginia after the 14<sup>th</sup>. ~Marianne

Mr. Piffner made arrangements to bury his mother on January 10, 2009. He testified that he buried his mother wearing the sapphire and diamond ring notwithstanding the demand from Ms. Stahl. His counsel

submitted pictures of the decedent demonstrating that the ring was in fact on her hand in the casket.

Mr. Piffner responded to Ms. Stahl on January 12, 2009, after the funeral, as follows:

Marianne,

As of January 3, 2009 as with the death of my mother, I am now the executor of her estate. Regarding your request for property, what my mother did not give away, throw away or dispose of is now property of her estate. I am putting you on notice that the property located at 7903 Bayberry Drive, Alexandria, VA is now controlled by the executor of her estate. Furthermore I would like to advise you that any means of trespassing on this property will result in your arrest and prosecution to the fullest extent of the law. Any claims that you wish to make can be made through Fairfax County Circuit Court Probate Division.

Have a wonderful day,

Owen N. Piffner

Executor/ Personal Representative of Betty L. Piffner's estate

Ms. Stahl offered the e-mail as a part of her testimony. Mr. Piffner initially denied any knowledge of the email until confronted with a copy of the email. Mr. Piffner's counsel raised questions about the authenticity of the email exhibit in his supplemental materials, but includes a copy of the actual email as a part of his documents. The questions which counsel raises relate to time stamps on the email when it was forwarded to others and do not present any question as to the contents of the email.

Ms. Stahl testified that based upon that communication she cancelled her flight scheduled for after January 14, 2009. Ms. Stahl submitted copies of additional emails and letters she sent to the co-executors throughout 2009, each of which on its own puts them on notice that she was concerned about losing her personal possessions. Mr. Buchanan acknowledged receiving at least one of the letters from Ms. Stahl in early February, 2009.

Your commissioner is of the opinion that if the co-executors knowingly disposed of Ms. Stahl's personal possessions, or acted with complete disregard for Ms. Stahl's interests, they converted her property and are personally liable to her for its value.<sup>1</sup> On the other hand, the co-executors are not responsible to Ms. Stahl if the property at issue never came into their hands.

Mr. Piffner denied at the hearing seeing most of the personal property described by Ms. Stahl when he took possession of the home. He specifically denied that the laptop computer was located in the home. In reconciling the difference in the sibling's testimony, Mr. Piffner explained that there had been a flood of the premises in 2002 and that as a result several truck loads of damaged property were removed from the home and discarded. Mr. Piffner acknowledged that those few items that he did recall were sold by the estate without knowledge that they belonged to Ms. Stahl.

Mr. Buchanan testified that he has no knowledge of what personal property was in the premises and that he played only a passive role in the removal and sale of the decedent's personal property. The co-executors did not inventory or otherwise document the personal property which was in the home before committing its contents to an estate sale. Mr. Baumann argues that the estate waited nine months for Ms. Stahl to submit a list of her property; however, no evidence was presented that any demand or deadline for such a list was ever made by the estate. There is no evidence that the co-executors notified Ms. Stahl before the home's possessions were put up for sale nor that they made any effort to segregate and safeguard her possessions.

Your commissioner notes that there were numerous inconsistencies in Mr. Piffner's testimony at the hearing and your commissioner finds his testimony less than credible. As an example, during the hearing Mr. Piffner firmly testified that he had no knowledge of the decedent possessing a bank account at Virginia Commerce Bank. Later testimony revealed that Mr. Piffner controlled the decedent's Virginia Commerce Bank account as the decedent's attorney-in-fact, which account he concealed from the estate and its beneficiaries, cashed out and closed, and did not report on the inventory

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<sup>1</sup>Conversion is the wrongful assumption or exercise of the right of ownership over goods or chattels belonging to another in denial of or inconsistent with the owner's rights. *Economopoulos v. Kolaitis* 259 Va. 806, 528 S.E.2d 714 (2000)( citing *Universal C.I.T. Credit Corp. v. Kaplan*, 198 Va. 67, 92 S.E.2d 359, (1956)).

as required by Virginia law. Based upon that testimony, your commissioner is concerned that the co-executors may not have accurately reported other assets or property of the decedent.

Your commissioner is of the opinion that Ms. Stahl's testimony is the more accurate and truthful testimony. Based upon her testimony and the admission by Mr. Buchanan that he received Ms. Stahl's notice concerning her personal property, your commissioner finds that the co-executors knowingly disposed of or sold Ms. Stahl's personal possessions. Ms. Stahl testified at some length as to the items of her personal property that she observed in the home during her last visit shortly before her mother's death. Your commissioner also finds that at least some of the property Ms. Stahl described was present in the decedent's home on the date of her death.

Ms. Stahl presented oral testimony on the value of her personal property and explained that her figures were based upon values obtained for similar items for sale on E-Bay and the internet. Ms. Stahl admitted that many of the items have only sentimental value. She testified that the value of her sapphire and diamond ring alone was approximately \$1,200. Ms. Stahl testified that she valued the items of her personal property in the decedent's home at \$8,453.25. This value did not include the value of the Dell laptop computer that Ms. Stahl testified that she left in the decedent's home. No other evidence was presented to your commissioner on the value of the personal property. Your commissioner also notes that the estate sale brought only \$2,407.65; however, it is clear that items of unusual value such as the Dell laptop computer and the sapphire and diamond ring were not included in that sale.

The estate objected to Ms. Stahl's testimony on their values as hearsay. In Virginia, "[t]he opinion testimony of an owner as to the value of his personal property is competent and admissible, regardless of the owner's knowledge." *Shepherd v. Commonwealth*, 1998 WL 778024 (citing *Walls v. Commonwealth*, 248 Va. 480, 482, 450 S.E.2d 363, 364 (1994)). Your commissioner therefore finds that Ms. Stahl has presented adequate evidence of the value of the personal property she stored in the decedent's home.

Your commissioner is of the opinion that Ms. Stahl should be compensated for the conversion of her possessions and the only competent evidence of the value of such possessions before your commissioner is Ms. Stahl's testimony. Therefore, your commissioner finds that the co-executors

wrongfully converted the possessions of Ms. Stahl in the amount of \$8,453.25 and that they are jointly and severally liable to her in that amount. This amount shall be paid to Ms. Stahl as a charge against the fiduciaries' compensation for administration of the estate. Your commissioner is of the opinion that no further fee should be allowed to the fiduciaries for administration of this estate without the express written approval of your commissioner, obtained prior to taking such fee.

#### *Ms. Stahl's Travel Expenses*

Ms. Stahl claims from the estate the expenses she incurred traveling from California to Virginia for the hearing. Typically, parties at the commissioner hearings bear their own travel expenses and your commissioner is of the opinion that a party should not be entitled to reimbursement for such costs. Therefore, your commissioner denies her claim for travel expense reimbursement.

#### *Hearing Pursuant to 26-29 of the Virginia Code*

Your commissioner took further evidence at the hearing on Ms. Stahl's objections to the administration of the estate as reflected on the inventory and the account filed by the co-executors.

#### *Safe Deposit Boxes*

Ms. Stahl alleges that the decedent maintained safe deposit boxes with precious coins and other valuables at Burke & Herbert Bank and Virginia Commerce Bank, the contents of which were not listed by the co-executors on the inventory. The estate submitted a letter from Howard Spratt, assistant vice president of Burke & Herbert Bank, that states the decedent did not possess a safe deposit box at Burke & Herbert Bank at the time of her death. At the hearing, Mr. Piffner testified that the decedent did in fact have a safe deposit box at Virginia Commerce Bank but that the box was empty when he accessed and opened it. No person submitted any contrary evidence as to the contents, if any, of the Virginia Commerce Bank safe deposit box. The decedent had ample opportunity in her lifetime to dispose of assets which Ms. Stahl understood to be in the decedent's safe deposit boxes. Therefore, your commissioner is of the opinion that Ms. Stahl's objection to the exclusion of the contents of any safe deposit box from the inventory should be denied.



### *Decedent's Household Property and Jewelry*

Ms. Stahl objects to the inventory filed by the co-executors because it does not include many items of the decedent's personal property, including a handgun, jewelry, silver, and gold. Ms. Stahl believes that Mr. Piffner removed many of the decedent's valuables for his own use. Mr. Piffner testified that he sold or disposed of the possessions in the home and that the decedent did not possess a firearm or any jewelry of value and that there was no silver or gold in the home when he took control of the same.

Ms. Stahl testified in some detail to various items of personalty which were not included in the inventory and which Ms. Stahl believed to be in her mother's home. For example, she testified that her mother had a .38 caliber handgun in the top dresser drawer in the master bedroom. On cross-examination, she could not recall when she last saw it. Mr. Piffner denied that his mother had such a gun. Ms. Stahl also testified that her mother had International sterling silver flatware for twelve in a box in the hall closet, which she estimated had a value of \$1,795. The co-executors objected to this opinion testimony as to value, which your commissioner sustained. Moreover, Ms. Stahl testified that she last recalled seeing the sterling silver in the mid 1970s. Mr. Piffner denied that the decedent had any such silver.

Ms. Stahl's testimony was detailed and credible; however, unlike the testimony as to her own property, Ms. Stahl did not carry her burden to demonstrate that the personalty remained in the home to the date of her mother's death. In the case of her own property, as previously stated, Ms. Stahl testified at some length as to the items of her personalty that she observed in the home during her last visit shortly before her mother's death. She was unable to make the same representations as to the items she asserts were missing from the estate. Moreover, although she was able to present competent evidence as to the value of her own property, she is not entitled to the owner's presumption as to her opinion of the value of her mother's assets. There is an absence of credible proof of such value. Therefore, your commissioner is of the opinion that Ms. Stahl's objection that the account did not include assets of the decedent should be denied.

## *Toyota Pickup*

Ms. Stahl objects to the exclusion of the decedent's Toyota pickup truck from the inventory of the estate and asserts that the decedent promised her the truck. At the hearing, Mr. Piffner testified that the decedent gave the Toyota pickup truck to his daughter, Annette Piffner, in November 2009 and that it should not be considered an asset of the estate.

In order to establish a valid inter vivos gift, the gift must consist of personal property; possession of the property must be delivered at the time of the gift to the donee, and the donee must accept the delivery; and the title to the property must vest in the donee at the time of the gift.<sup>2</sup> Further, to establish an effective gift, it must be proven that the donor manifested a contemporary intention to make the gift and divest "all dominion and control over the property and invest it in the donee."<sup>3</sup> In Virginia, a valid gift must be demonstrated by clear and convincing evidence.<sup>4</sup>

In corroboration of his testimony, Mr. Piffner submitted a sworn affidavit by Annette Piffner. Ms. Piffner states that she is an Emergency Medical Technician and a Certified Nursing Assistant and that during the months preceding the decedent's death she provided the decedent with care twenty-four hours a day, seven days a week. Ms. Piffner further states that during this period the decedent gave her the Toyota pickup truck and that she accepted the same. Ms. Piffner transferred title of the truck into her name on January 12, 2009, after the decedent's death. Ms. Stahl testified that the decedent had promised her the truck but she presented no evidence contradicting the decedent's intention upon delivery of the automobile to Ms. Piffner. No other evidence was presented to your commissioner in regard to the decedent's transfer of the Toyota pickup truck to Ms. Piffner.

In Virginia, in order to make a valid gift, the gift must be "actual and complete, such as deprives the donor of all further control and dominion." *Quarles v. Fowlkes*, 147 Va. 493, 507, 137 S.E. 365, 369 (1927). In *Woo v. Smart*, 247 Va. 365, 442 S.E.2d 690 (1994), the Virginia Supreme Court held that a check which was delivered to a donee prior to the decedent's

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<sup>2</sup> *Maxine v. Smith*, 199 Va. 871, 102 S.E.2d 160 (1958); *Thomas v. First Nat. Bank*, 166 Va. 497, 186 S.E. 77 (1901) See also, 38 AM. JUR. 2d *Gifts* § 17; *Essential Elements of Gifts, Generally*.

<sup>3</sup> *Maxine*, 199 Va. 871; *Swan v. Swan's Ex'r*, 136 Va. 496, 117 S.E. 858 (1923); *Payne v. Tobacco Trading Corp.*, 179 Va. 156, 18 S.E.2d 281.

<sup>4</sup> *Robinson v. Robinson*, 46 Va.App. 652, 621 S.E.2d 147 (2005); *Nelson v. Liggan*, 189 Va. 637, 53 S.E.2d 798 (1949); *Grace v. Virginia Trust Co.*, 150 Va. 56, 142 S.E. 378 (1928).

death is not a completed gift unless it is presented for payment prior to the decedent's death, stating "Until the check is paid, the donor retains control and dominion over the funds and the gift is incomplete; the donor could stop payment or write another check for the funds payable to a third person, or the donor may die, thus revoking the donor-drawer's command to the drawee bank to pay the money." 247 Va. at 370, 442 S.E.2d at 693. The court held that the delivery of the check was not a completed gift and the funds were required to come back into the estate.

In the instant case, the decedent during her lifetime delivered the keys to her truck to the donee, Annette Piffner; however, she did not transfer title to the vehicle at that time. Virginia is a title-state, in which a motor vehicle can only be transferred through its indicia of ownership, the motor vehicle title. In Virginia, the owner of a vehicle is "the person who holds legal title to a vehicle." Virginia Code § 46.2-100. In the instant case, the title to the motor vehicle was not transferred to Ms. Piffner until January 12, 2009, nine days after the decedent's death. Following the rationale of *Woo*, until the title is transferred, the decedent could obtain a new title in her name, transfer the vehicle to another person, or the decedent might die, revoking her command to DMV to transfer the title to the vehicle by gift. Ms. Piffner's affidavit is not clear whether the decedent actually endorsed the title to the truck or whether Ms. Piffner was able to transfer the title without that endorsement. In either event, under *Woo v. Smart*, the failure to transfer the title to the truck prior to the decedent's death defeats the delivery necessary for a completed gift. Therefore, your commissioner is of the opinion that the gift of the 2000 Toyota Truck was not complete and the vehicle is properly a part of the decedent's estate. The co-executors are directed to restore the vehicle or its equivalent value to the estate.

#### *Certificate of Deposit Accounts*

Ms. Stahl objects to the exclusion of certain certificate of deposit accounts from the inventory. Ms. Stahl alleges that the decedent told her years ago that she had created three certificate of deposit accounts payable of her children on her death. Ms. Stahl submitted no other evidence that any such account benefiting her existed at the time of decedent's death. Mr. Piffner acknowledged that such accounts did exist years ago but that the certificate of deposit accounts owned by the decedent at her death were in the decedent's

name only. The inventory reflects two such certificate of deposit accounts which were appropriately made assets of the estate.

Your commissioner finds there is insufficient evidence to conclude that any such accounts existed at the time of the decedent's death. Furthermore, if the decedent did own a certificate of deposit titled jointly or payable to one of her children, such account would not be an asset of the estate as they would be paid directly to the survivor of the account. Therefore, Ms. Stahl's objection should be denied.

#### *Decedent's Bank Account at Virginia Commerce Bank*

During the hearing, it came to your commissioner's attention that the decedent owned a bank account at Virginia Commerce Bank. Mr. Piffner testified that the account is a joint account and is therefore not part of the probate estate. He further testified that the decedent told him "to use the account to pay her bills and that he could then keep the rest." Notwithstanding this testimony, the account was not listed on part 2 of the inventory as required under Virginia law.

By letter, received by your commissioner on June 10, 2010, the estate's attorney acknowledged that Mr. Piffner's name is on the Virginia Commerce Bank account as attorney in fact and not as a joint owner. According to the letter and the exhibits attached thereto, sufficient funds have been restored by Mr. Piffner to the estate's account. Therefore, your commissioner is of the opinion that this matter has been properly resolved.

#### *Funeral Services & Monument*

Ms. Stahl objects to the amount expended by the co-executors for the decedent's funeral services and in obtaining a monument for the decedent's burial site. Ms. Stahl testified that the decedent had a prepaid funeral account, plot and headstone. She testified that she believes Mr. Piffner received a "kick back" from the owner of Raymond Funeral Services; however, she submitted no evidence corroborating her testimony. Ms. Stahl further argues that the funeral expense should not be allowed as an expense of the estate because Mr. Piffner knowingly buried the decedent before she could travel to Virginia. In fact, her email to Mr. Piffner on January 5, 2010, made it clear that she would arrive in Virginia after January 14, 2010. Your commissioner finds that Mr. Piffner authorized an \$11,090.75 contract with

Raymond Funeral Services, which was paid by the estate on January 26, 2009. Mr. Piffner also authorized a \$4,786.70 contract with Raymond Funeral Services to prepare a monument in August, 2009, which was paid in full in November, 2009.

In *Scott Funeral Home, Inc. v. First National Bank*, the Court upheld the funeral expenses incurred where the estate was solvent, the charges were not disproportionate to the estate, and the funeral fairly reflected the decedent's station in life. 211 Va. 128, 176 S.E.2d 335 (1970). Your commissioner finds that in the instant case the estate is solvent and that the costs of the decedent's funeral arrangements are small when compared to the total value of the estate. There is no evidence of the extent and type of funeral that the decedent would have wanted. Your commissioner further finds that the funeral arranged for the decedent is not inconsistent with the decedent's station in life. While your commissioner is concerned that Ms. Piffner buried the decedent before Ms. Stahl could travel to Virginia, he cannot conclude that the funeral and monument expenses are unreasonable in amount. Therefore, your commissioner will approve the funeral and monument expenses as incurred.

#### *Cleaning & Repairs to Decedent's Home*

Ms. Stahl objects to the proprietary and amount paid from the estate to clean and repair the decedent's home. The account filed by the co-executors represents that \$9,950.00 were paid to Stine Contracting & Services to clean and repair the decedent's home for sale. Ms. Stahl argues that Stine Contracting & Services is owned by a friend of Mr. Piffner and that the amount paid from the estate is unreasonable.

Your commissioner reviewed the invoices of Stine Contracting & Services, dated November 16, 2009, which were submitted with the account. Stine Contracting provided services which included pressure washing and repainting the house, repairing windows and carpets, planting shrubs, fixing plumbing, removing trash and other reconditioning handy work. The invoices further represent that the cost of work included the cost of any supplies or materials necessary to repair the home, including: new carpeting, a new glass window, light bulbs, and a new front door. Your commissioner finds that the repairs and cleaning were necessary to prepare the decedent's residence for sale on the market and that the amounts paid from the estate

are reasonable. Therefore, Ms. Stahl's objection to this expense should be denied.

### *Promissory Note*

The amended inventory for the estate reflects that Ms. Stahl executed in favor of the decedent a non-interest promissory note, \$20,000.00 of which remains outstanding. At the hearing, the estate presented a copy of the promissory note, which was executed and witnessed on March 7, 2008. According to the note, Ms. Stahl received \$20,000.00 from the decedent and in return she promised to repay the decedent \$1,000.00 per month for 2 years. The note also reaffirms a loan made from the decedent to Ms. Stahl in 1993 and that it would be repaid in five additional payments of \$1,000.00. Ms. Stahl admits that she drafted and signed the promissory note but argues that the loan was in fact a gift and that she executed the note only because it made her feel more comfortable accepting money from her mother. No evidence was submitted to your commissioner corroborating Ms. Stahl's testimony that the loan was in fact a gift, or subsequently forgiven, and your commissioner is of the opinion that the note is valid and enforceable by the estate against Ms. Stahl.

On the inventory and at the hearing the estate acknowledged and gave credit to Ms. Stahl for making eight \$1,000.00 payments on the note prior to the decedent's death. Ms. Stahl submitted to your commissioner copies of canceled checks payable to the decedent following the execution of note. Your commissioner finds that these checks, totaling \$9,800.00, were in repayment of the loan. Therefore, your commissioner finds that that there is \$19,200.00 outstanding and due on the note and that Ms. Stahl is indebted to the estate in the amount of \$19,200.00. Your commissioner is of the opinion that the amount of the note should be offset against Ms. Stahl's entitlement as a beneficiary of the decedent's estate.

### *In Terrorem Clause*

The estate argues that Ms. Stahl's inheritance should be reduced to \$1.00 pursuant to an *In Terrorem* clause within the decedent's will. Similarly, Ms. Stahl believes that Mr. Piffner breached his fiduciary duty and that his inheritance should be reduced to \$1.00 pursuant to the clause. Your commissioner finds that neither party has challenged the validity of the will or any clause therein. Therefore, your commissioner is of the opinion

that the no-contest clause is not implicated by either Ms. Stahl's objections to the administration of the estate or Mr. Piffner's actions as co-executor.

### *Attorneys' Fees*

In this circuit it is clear that a fiduciary may not use the funds of the estate to engage counsel to advance his own interests. *Gaymon v. Gaymon*, 63 Va. Cir. 264 (2003). An executor may, in good faith, employ counsel with the estate's funds if there is a legitimate issue that "renders the employment of counsel reasonably necessary to aid the executor in the performance of his duties." *Clare v. Grasty*, 213 Va. 165,170;191 S.E.2d 184, 188 (1972). However, if counsel provides services which are not in aid of the executor's duties, and the attorney's services actually accrue to the personal benefit of the executor, the fees for those services are not chargeable against the estate. *Id.*; *In re Estate of Wicker*, 2002 WL 31431478 (Cir. Ct.). In *Perrow v. Payne*, an executor hired an attorney to defend him before a commissioner against exceptions raised to his accounting. 203 Va. 17, 121 S.E.2d 900(1961). The Court of Appeals found no merit in the executor's contention that the estate should bear the burden of the attorneys' fees incurred in his defense. *Id.*

In the instant case, the co-executors retained counsel principally to protect them from Ms. Stahl's claims for conversion of her personal property, which claims have been sustained in this report. Moreover, the co-executors retained counsel to defend the concealment of Mr. Piffner's misappropriation of the decedent's funds as her attorney-in-fact. Your commissioner is of the opinion that the counsel fees incurred in the hearing before your commissioner benefit the co-executors' personally and are not proper expenses of the estate. It is therefore the opinion of your commissioner that none of the legal fees incurred in the defense of the co-executors' actions as fiduciaries should be chargeable against the estate. Any payments to legal counsel from estate funds are subject to the express approval of your commissioner prior to their payment.

### *Summary*

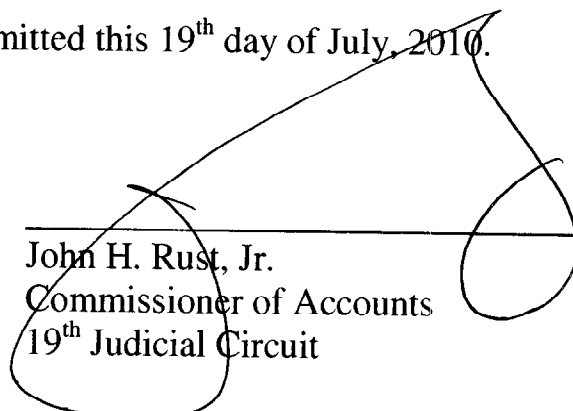
In summary, the co-executors have converted Ms. Stahl's personal property and shall promptly pay \$8,453.25 to her as a charge against their fiduciary commission. The co-executors are allowed no further fiduciary compensation without the prior written approval of your commissioner.

Similarly, no attorney fees shall be allowed against the estate without the prior written permission of your commissioner.

The co-executors are directed to restore to the estate the decedent's Toyota pickup truck, or its equivalent value, which was inappropriately transferred to Annette Piffner.

There is \$19,200.00 outstanding and due on a promissory note that Ms. Stahl executed in favor of the decedent and Ms. Stahl is indebted to the estate in such amount. Therefore, Ms. Stahl's share of her inheritance from the estate should reflect distribution to her of the promissory note, in the amount of \$19,200.00.

Respectfully submitted this 19<sup>th</sup> day of July, 2010.



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

Commissioner's Fee for § 26-29 Hearing and Debts & Demand Hearing	\$ 750.00	
<u>Publication Costs</u>	<u>\$ 10.00</u>	
Total Amount Due	\$ 760.00	-UNPAID



## CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of July, 2010, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

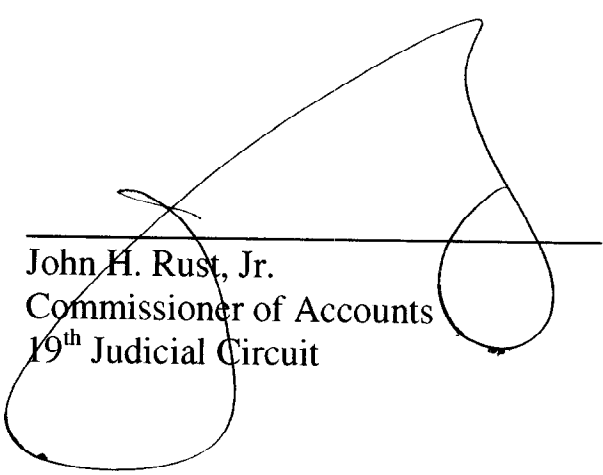
Owen Neal Piffner, Co-executor  
P.O. Box 144  
Faulkner, MD 20632-0144

Marianne Stahl  
34447 Camino el Molino  
Capistrano Beach, CA 92624

Roland S. Buchanan, Co-executor  
4605 Monterey Dr  
Annandale, VA 22003-5926

William Allen Piffner  
1407 Baltimore Street  
Hanover, PA 17331

Craig E. Baumann, Esquire  
8770 Richmond Hwy  
Alexandria, VA 22309



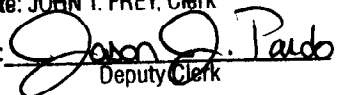
John H. Rust, Jr.  
Commissioner of Accounts  
19<sup>th</sup> Judicial Circuit

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

8/4/2010  
Date

By:

  
Deputy Clerk