

## IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In re: Estate of Robert Henry Kay,  
deceased

Commissioner's Report  
Fiduciary No. FI-2011-0000187  
CL- 2011-0001980

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

RECEIVED APR 4 2013

At the request of John H. Rust, Jr., Commissioner of Accounts for the above estate, the undersigned gave notice pursuant to Virginia Code §§ 64.2-550 and 64.2-1209, setting the 18<sup>th</sup> day of October, 2012, at 1:30 p.m. at his office in Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Robert Henry Kay, and for receiving proof of objections or other matters of concern related to the alleged failure of the fiduciary to file proper accounts in the estate of Robert Henry Kay. At said time and place, Arthur Kay, III, administrator for the above estate, appeared along with his counsel, Darlene Langley. Susan Earman appeared on behalf of claimant Adel Al-Hosani. Judy Parker and Richard Kay, beneficiaries of the above estate, appeared. Dan Parker, Ms. Parker's husband, also appeared. No other persons appeared at the hearing. At the said time and place, your commissioner convened the hearing and received evidence from those present.

Your commissioner continued the hearing in order to permit the estate to provide disputed notice to certain claimants and to permit the beneficiaries to raise objections to the fiduciary's first interim account, filed on October 18, 2012, the day of the hearing. Pursuant to Virginia Code §§ 64.2-550 and 64.2-1209, your commissioner gave notice setting the 31<sup>st</sup> day of October, 2012, at 10:00 a.m. at his office in Fairfax, Virginia, as the time and place for the continued hearing. At said time and place, Arthur Victor Kay, III, administrator for the above estate, appeared along with his counsel, Darlene Langley. Judy Parker and Richard Kay, beneficiaries of the above estate, appeared. Dan Parker, Ms. Parker's husband, also appeared. No other persons appeared at the hearing.

Robert Henry Kay died intestate on January 3, 2011, survived by his three siblings: Arthur Kay, III, Richard Kay, and Judy Parker. Pursuant to Virginia Code § 64.2-201, the decedent's three siblings are his heirs-at-law. On February 7, 2011, Arthur Kay, III qualified as administrator for the decedent's estate. On February 15, 2011, this Court entered an Order appointing Judy Parker as co-administrator. On April 8, 2011, this Court entered an Order vacating the February 15, 2011 Order. On that same date, Arthur Kay, III qualified as the sole

CONFIRMED BY CIRCUIT COURT

Date Recorded: 4/24/2013  
Book #: 982 Page #: 1226  
Exceptions filed? No ☒ Yes, by Judy  
K. Parker (beneficiary of estate)  
If yes, confirming Order dated: 4/24/2013

administrator for the decedent's estate and posted a bond of \$1,300,000.00, with surety provided by Liberty Mutual Insurance Company. On January 20, 2012, your commissioner held a hearing pursuant to Virginia Code § 26-2,<sup>1</sup> upon the request of Richard Kay, to seek the removal of the fiduciary. On January 31, 2012, your commissioner filed a report declining to recommend the fiduciary be removed, but recommending the fiduciary's surety bond be increased to protect the \$2,600,000.00 in estate assets. This Court confirmed the report on February 12, 2012. The fiduciary's bond was thereafter increased to \$2,680,000.00.

On June 14, 2011, the fiduciary filed his inventory with your commissioner, later amended on November 28, 2011 and March 8, 2012. Your commissioner approved the amended inventory on April 3, 2012, wherein the fiduciary reported the estate contained total assets valued at \$2,674,773.21, consisting of \$385,397.88 in personal property, and various real estate properties over which the fiduciary had a power of sale, with a total value of \$2,289,681.00. Those properties and their tax assessed values listed on the inventory are as follows:

6241 Clara Edward Terrace, Fairfax County, Virginia	\$415,700.00
6118 Lynley Terrace, Fairfax County, Virginia	\$415,690.00
2434 Huntington Park Drive, Fairfax County, Virginia	\$468,490.00
8 Phoenix Mill Place, City of Alexandria, Virginia	\$644,601.00
5028 Cool Fountain Lane, Fairfax County, Virginia	\$345,200.00

The inventory also reports that the decedent owned a condominium in Florida, located at 715 Bayshore Drive, #404, Ft. Lauderdale, Florida, with an assessed value of \$676,970.00. The fiduciary's first account was due to your commissioner on June 7, 2012; the fiduciary failed to file the same until October 18, 2012.

On September 28, 2011, your commissioner issued a summons to the fiduciary for the filing of a proper inventory. On December 27, 2011, your commissioner filed a petition for a rule to show cause with this Court. On January 4, 2012, this Court entered an Order for a rule to show cause, directing the fiduciary to show cause why he should not be held in contempt for his failure to file a proper inventory with your commissioner and setting the matter down for March 9, 2012. On March 9, 2012, your commissioner filed a petition to remove Arthur Kay as fiduciary. On that same date, this Court entered an order continuing the rule to show cause until August 3, 2012. On August 3, 2012, this Court entered an Order continuing the rule to show cause until November 30, 2012. In light of

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<sup>1</sup> Now Virginia Code § 64.2-1204.

the continuance of the hearing, your commissioner was unable to complete his report in this matter prior to that date. On November 30, 2012, this Court entered an Order continuing the rule to show cause until April 19, 2013.

The fiduciary filed his first account with your commissioner at the hearing on October 18, 2012. The fiduciary's first account remains unapproved due to exceptions your commissioner identified. The first account reports receipts totaling \$72,973.29; adjustments totaling \$2,754.23; disbursements of \$147,190.71 in payment of debts and expenses; losses on asset sales totaling \$471,427.91; and remaining assets on hand of \$2,131,882.11. The losses resulted from the foreclosure of the decedent's primary residence, located at 2434 Huntington Park Drive, and the sale of the personal property contained therein. There were no surplus proceeds from the foreclosure sale, resulting in a loss of the entire inventory value of the real property, \$468,490.00. The fiduciary sold the contents of the home for \$27,062.09, reflecting a \$2,937.91 loss from the inventory value for the assets.

At the hearings, the fiduciary also informed your commissioner of the status of the decedent's other properties. On March 9, 2012, the fiduciary sold 5028 Cool Fountain Lane, Fairfax County, Virginia to Manoj Gandhi for \$330,000.00. The property had an inventory value of \$345,200.00. The estate also sold the decedent's property located 8 Phoenix Mill Place, City of Alexandria, Virginia, on October 26, 2012 to Renzo Chiappo-Arrieta and Monica Reyes-Fica for \$610,183.06. The property had an inventory value of \$644,601.00. A review of the land records subsequent to the hearings revealed that, on February 19, 2013, the fiduciary sold 6118 Lynley Terrace, Fairfax County, Virginia to Alexandra and James Murrin for \$495,000.00. The property had an inventory value of \$415,690.00. Based on the foregoing, the sole property currently remaining in the decedent's name is 6241 Clara Edward Terrace, Fairfax County, Virginia, with an inventory value of \$415,700.00.

*Debts and Demands Hearing Pursuant to Virginia Code § 64.2-550*

Prior to the hearing, three creditors filed claims against the estate with your commissioner. Bank of America filed claims in the following amounts:

Bank of America, Account *7137	\$ 19,108.44
Bank of America, Account *8699	\$286,924.10

Adel Al-Hosani filed a claim against the estate in an amount to be determined.

Beneficiary Judy Parker did not file a claim against the estate, but sent letters to your commissioner on June 27, 2012, and August 15, 2012, requesting reimbursement for various expenditures. Your commissioner advised Ms. Parker to present her reimbursement requests at the debts and demands hearing, which Ms. Parker did.

The estate disputes all the foregoing claims and sent notice of such disputes to the claimants, copies of which are attached hereto as Exhibit 1.

At the October 18, 2012 hearing, the estate also informed your commissioner of several other potential claims for deficiencies relating to the foreclosure of real properties that the decedent owned. In addition, the fiduciary testified that, during the course of investigating the decedent's debts, he reviewed records of Bank of America that showed the decedent had several outstanding loans with the company, for which Bank of America had little or no documentation. These debts are discussed in greater detail hereinafter. The fiduciary did not provide disputed notice to these claimants for the October 18, 2012 hearing. At the estate's request, your commissioner continued the hearing to permit the estate to provide disputed notice to these claimants. The estate provided your commissioner with copies of the foregoing disputed notices, which are attached hereto as Exhibit 2.

### *Dispute of Creditor Claims*

When a fiduciary disputes a claim, your commissioner inquires into the basis for the fiduciary's dispute. A fiduciary's proper dispute of a claim shifts the burden of going forward to the claimant, who must then establish the claim by satisfactory evidence. In the opinion of your commissioner, this matter presents the issue of whether the disputed notice alone is sufficient to shift the burden of going forward to the claimant, or whether there must be some additional showing from the estate to require the claimant to proceed with its proof. Your commissioner finds the statutory scheme for the determination of a decedent's debts and demands analogous to Virginia Code § 8.01-28, which permits a creditor to obtain judgment without further proof based upon the creditor's affidavit, unless the defendant denies the claim under oath. The statute allows such summary proceedings to avoid the dilatory assertion of sham defenses.<sup>2</sup> Similarly, your commissioner will allow a creditor's claim against a decedent's estate without

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<sup>2</sup> Sheets v. Ragsdale, 220 Va. 322, 257 S.E.2d 858 (1979).

further proof, unless the estate disputes that claim.<sup>3</sup> In the opinion of your commissioner, in both cases, the statutory scheme is intended to prevent dilatory pleas where no real defense exists.<sup>4</sup> Thus, your commissioner is of the further opinion that the mere dispute of a claim without some underlying basis or real defense is not sufficient to shift the burden of going forward to the claimant in a debts and demands hearing. Rather, the dispute must present some good faith defense that the estate intends to assert.<sup>5</sup> Your commissioner therefore requires an estate disputing a claim to state the basis of that dispute. Your commissioner does not require that such basis definitively bar the claim, nor does your commissioner make any determination whether the estate may prevail on the merits of the defense; however, the estate must demonstrate in its dispute of a claim that there is some scintilla of a good faith defense to the claim in order for the burden of going forward to shift to the claimant. Your commissioner addresses each of the claims before him in turn below.

#### 1. Wells Fargo Claim

Wells Fargo holds a claim against the estate in the amount of \$78,575.83, representing a deficiency balance for a loan that the decedent's Phoenix Mill property secured. The estate represented that Wells Fargo stated that the loan was also secured by other real properties, but Wells Fargo was unable to advise which properties or the status of such properties. The estate has evidence of the deed of trust related to the Phoenix Mill property; however, it has no other documentation regarding the loan, including the amount of the loan and what credits have been applied to the loan. The estate represents it has received no statements from Wells Fargo. The estate disputes the claims based on a lack of information concerning the loan. Lack of information is a proper basis on which to dispute a claim. The estate's proper dispute therefore shifted the burden of going forward to Wells Fargo to establish its claim. Wells Fargo failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate its claim, Wells Fargo failed to meet its burden of proof. Subsequent to the hearing, Wells Fargo provided a letter to the decedent stating that it considered the matter "to be settled in full, for less than the full balance." The letter also provided that "Wells Fargo will cease further collection efforts." Your commissioner therefore denies Wells Fargo's claim for \$78,575.83, in the entirety.

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<sup>3</sup> VA. CODE ANN. § 64.2-550.

<sup>4</sup> See *Gehl v. Baker*, 121 Va. 23, 92 S.E. 852 (1917).

<sup>5</sup> See *Paris v. Brown*, 143 Va. 896, 129 S.E. 678 (1925).

## 2. Bank of America Claims

The fiduciary testified that Bank of America's records revealed the decedent had several outstanding loans with company, but the bank has little to no documentation regarding these loans. The estate further stated that, aside from the claims filed with your commissioner, Bank of America took no direct action relating to the other potential claims. Your commissioner notes that the estate did provide your commissioner with a release of claim from Bank of America for Account \*4399, related to the decedent's Fort Lauderdale, Florida property. Your commissioner therefore finds that Bank of America holds no claim in relation in Bank of America, Account \*4399. DCM Services, on behalf of Bank of America, made demands upon the estate relating to several Bank of America loans to the decedent, but did not present any information concerning these loans other than the demands. Based on the lack of information, and in order to address any potential additional claims that Bank of America might assert, the estate disputed the claims of Bank of America. Your commissioner addresses the various Bank of America claims in turn below.

### a. Bank of America Claims filed with Commissioner

Prior to the debts and demands hearing, Bank of America filed claims in the following amounts with your commissioner:

Bank of America, Account *7137	\$19,108.44
Bank of America, Account *8699	\$286,924.10

The estate stated that Bank of America's claim regarding Account \*7317 is for a credit card bill with an outstanding balance of \$19,108.44. The estate disputes the claim based on a lack of information and lack of liability. The estate stated its investigation revealed that the decedent closed the account prior to his death, and Bank of America has issued no current billings for the account. The estate represents that Bank of America has also failed to provide information regarding when the charges were incurred, what the charges were for, or what payments have been made credited to the accounts. Based on this lack of information, the estate also stated it is unsure whether the statute of limitations bars the collection of the debt. Lack of information and lack of liability are proper bases on which to dispute a claim. The estate's proper dispute therefore shifted the burden of going forward to Bank of America to establish its claim. Bank of America failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate the claim, Bank of America failed to meet its burden of proof. Your

commissioner therefore denies Bank of America's claim for \$19,108.44, in the entirety.

Bank of America filed a claim with you commissioner for \$286,924.10, relating to Bank of America Account \*8699. At the hearing, the estate informed your commissioner that DCM Services also presented a claim to the estate relating to Bank of America Account \*8699, in the amount of \$290,705.90. Bank of America failed to submit any supporting documentation with the claim filed with your commissioner. The estate stated that it contacted Bank of America, and Bank of America advised that the account is for a line of credit secured by certificate of deposit. Bank of America was unable to provide any information regarding the loan and advised that the loan was reflected as having been charged off in its system. The estate further represented that Bank of America had no information on the certificate of deposit, other than the certificate no longer existed. DCM Services similarly failed to provide any documentation of its claim. The estate disputes this claim based on a lack of information. The estate stated it is specifically concerned by the lack of supporting documentation regarding the amount of the loan, the certificate of deposit, and whether the amount claimed reflects any credit of the certificate of deposit. Lack of information is a proper basis on which to dispute a claim, and the estate's proper dispute therefore shifted the burden of going forward to Bank of America to establish the claim. Neither Bank of America nor DCM Services appeared at the hearing after receiving disputed notice. In failing to appear and substantiate the claim, Bank of America failed to meet its burden of proof. Your commissioner therefore denies Bank of America's claim for account \*8699 in the entirety, including both the claim of \$286,924.10 filed with your commissioner, as well as the claim of DCM Services on behalf of Bank of America for \$290,705.90.

**b. Bank of America Claims through DCM Services**

Based on notices received from DCM Services, Bank of America also asserts claims against the estate in the following amounts:

Bank of America, Account *2699	\$305,484.90
Bank of America, Account *9099	\$321,317.71
Bank of America, Account *5699	\$496,260.50

Bank of America Account \*5699 is a mortgage claim that the decedent's property located at 6241 Clara Edward Terrace, Fairfax County, Virginia, secures. It will be addressed in the following section.

The estate represents that Account \*2699 relates to a line of credit with a balance of \$305,484.90, for which the estate has received no demands for payment from Bank of America (excluding the demands from DCM Services). The estate further represents that Bank of America's computer system reports the account as having been written off, and Bank of America has no other information regarding the account. The estate represents that Account \*9099 is no longer in Bank of America's system and Bank of America had no information on the account. In fact, the estate represents that Bank of America is unable to determine the full account number. With respect to both accounts, neither Bank of America nor DCM Services provided information regarding when the charges were incurred, what the charges were for, or what payments have been made credited to the accounts. Based on this lack of information, the estate stated it is unsure whether the statute of limitations bars the collection of the debt. The estate disputes the claims for which DCM Services demands payment.

Lack of information and lack of liability are proper bases on which to dispute a claim. The estate's proper dispute therefore shifted the burden of going forward to Bank of America and DCM Services to establish their claims. Bank of America and DCM Services failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate their claims, the parties failed to meet their burden of proof. Your commissioner therefore denies the foregoing claims by DCM Services and Bank of America in the entirety.

#### c. Bank of America Potential Deficiency Claims

The estate disputed several potential deficiency claims that Bank of America may assert relating to various loans that the decedent's real properties secure. Based upon the testimony and representations of the estate, your commissioner identifies the potential deficiency claims as follows:

Bank of America's records reflect Account \*9799 as an outstanding loan to the decedent with a balance of \$508,543.28, that the decedent's property located at 5028 Cool Fountain Lane, Centreville, Virginia, secured. The estate sold the property in a short sale on March 26, 2012, for \$330,000.00, from which Bank of America received \$314,514.36. Bank of America released its lien by a certificate of satisfaction recorded in Deed Book 22238 at page 828, which states "This release does not constitute a satisfaction of the debt. Absent a separate agreement in writing providing otherwise, the debt remains in full force and effect." Bank of America has taken no action since the short sale to enforce its debt. The estate

stated that Bank of America's Estate unit does not have record of any claim related to the account in its system. The estate disputes any claim for a deficiency balance on the account.

Bank of America's records reflect Account \*0923 as an outstanding loan to the decedent with a balance of \$654,725.33, that the decedent's property located at 2434 Huntington Park Drive, Alexandria, Virginia, secured. The estate stated that property was foreclosed. The trustee's report of such sale reports the sale took place on April 15, 2011, the high bid was \$492,500.00, and the trustee reported a credit on the note of \$488,930.59. The estate stated that based on Bank of America's documentation, it was unclear what amount was credited to the note and what amounts remain owing. The estate further stated that Bank of America's records report the loan as being charged off and no longer active in Bank of America's system. Based on the foregoing, the estate disputes any claim for a deficiency balance on the account.

Bank of America's records reflect Account \*7675 as an outstanding loan to the decedent with a balance of \$427,263.96, that the decedent's property located at 7619 Grey Goose Way, Alexandria, Virginia, secured. The estate stated that property was foreclosed on March 3, 2009, during the decedent's lifetime. The estate reports that the sale resulted in a deficiency balance in excess \$75,000.00. In 2010, the estate received a 1099-C statement from Bank of America reporting that the debt was cancelled and reporting the deficiency balance as income to the decedent. The estate has received no other documentation of loan forgiveness; however, it also has not received a claim for the deficiency balance. The estate stated that Bank of America's Estate unit does not have record of any claim related to the account in its system. Based on the foregoing, the estate disputes any claims for a deficiency balance on the account.

Bank of America's records reflect Account \*2715 as an outstanding loan to the decedent with a balance of \$905,420.00, that the decedent's property located at 6403 Deepwood Farm Drive, Clifton, Virginia, secured. The estate stated that property was originally foreclosed in 2008, during the decedent's lifetime. The trustee rescinded the sale and conducted a second foreclosure on March 5, 2012. The trustee's report states that the high bid was \$729,501.00, together with accrued interest of \$4,169.55, and there was a credit against the note in the amount of \$730,287.50. The estate stated it has not received any claim for the deficiency balance. The estate also stated that Bank of America's Estate unit does not have record of any claim related to the account in its system. Based on the foregoing, the estate disputes any claims for a deficiency balance on the account.

The estate also represents that DCM Services also presented a claim to the estate relating to Bank of America Account \*5699, in the amount of \$496,260.50. The estate stated that the foregoing represents the current mortgage on the decedent's property located at 6241 Clara Edward Terrace, Fairfax County, Virginia, which as of the date of this report is the sole property remaining in the decedent's name. The mortgage requires payments of interest only. A tenant currently occupies the property and it is not on the market; however, its market value is significantly below the amount of the outstanding debt. Bank of America has taken no action to foreclose the property and the estate represented that Bank of America's Estate unit reports the loans as having been charged off and no longer in its system. The estate no longer receives bills from Bank of America for the mortgage payments, but does now receive demand notices from DCM Services. The estate contacted DCM Services, which refused to continue to accept monthly interest payments and demanded payment in full of the outstanding loan balance. Since that demand, the estate has not made any payments on the loan. The estate does not dispute Bank of America's security interest in the real property, but disputes any claim for a deficiency balance on the loan. No foreclosure proceedings have been initiated against the property.

In the instant case, the estate disputes four deficiency claims arising after a foreclosure or a short sale of the decedent's property and one potential deficiency claim from a property that remains in the decedent's name and provided notice thereof to Bank of America. There appears to be little issue that the decedent incurred each of these debts and that he pledged his real property to secure those debts. Moreover, unlike the other claims of Bank of America, there are no issues of the enforceability of such claims or the application of the statute of limitations. Finally, while the estate may not know the exact balance of any deficiency claim, such lack of information does not rise to the level that would defeat the claim. Your commissioner is thus of the opinion that there must be something more than the above facts to support that the dispute of the deficiency claims constitutes a good faith assertion that the estate has a defense to the claims.

In the instance of the deficiency claim arising from the foreclosure of 7619 Grey Goose Way, Alexandria, Virginia, it is clear that Bank of America has given notice to the estate, through its issuance of the 1099-C, that it has cancelled the debt related to this deficiency. Your commissioner finds that this notice is sufficient to raise significant and good faith issues whether this debt is enforceable. Therefore, your commissioner finds with respect to this deficiency claim, that the estate's proper dispute of the claim shifted the burden of going forward to Bank of

America, which failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate the claim, Bank of America failed to meet its burden of proof. Your commissioner therefore denies the deficiency claim of Bank of America relating to Account \*7675 in its entirety.

The deficiency claim arising from the foreclosure of the decedent's property located at 6403 Deepwood Farm Drive, Clifton, Virginia, presents a less clear picture. This foreclosure also initially occurred during the decedent's lifetime; however, the trustee rescinded the 2008 sale and resold the property in 2012. Bank of America has taken no action to enforce its debt and the bank's Estate Unit has no record of the amount due. Although Bank of America has not provided notice to the estate of the cancellation of the indebtedness, it has also taken no action in more than five years to seek its deficiency balance. In light of the action of the bank to cancel the debt in a similar circumstance involving the same borrower, your commissioner is of the opinion that the estate has a basis to draw a reasonable inference that the bank has abandoned its claim. Such basis is sufficient to shift the burden of going forward to Bank of America, which failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate the claim, Bank of America failed to meet its burden of proof. Your commissioner therefore denies the deficiency claim of Bank of America relating to Account \*2715 in its entirety.

The deficiency claims relating to Account \*0923 and Account \*9799 are closer questions. The estate asserts, in essence, that Bank of America has abandoned its claim for any deficiency. Whether such an inference may be extended to the two remaining foreclosures is a matter that requires consideration of the overall Bank of America relationship. The foreclosure of the decedent's property located at 2434 Huntington Park Drive, Alexandria, Virginia, occurred approximately two years ago. The testimony is that Bank of America has charged off the loan and it is no longer active in Bank of America's system. Your commissioner is aware that the charge-off of a loan is an indication of the likelihood of collection rather than an abandonment of recovery; however, there has been a pattern of inaction in the transactions between this creditor and the decedent that appears to demonstrate a lack of interest or concern for the balances that remain due to the lender. Subsequent to the hearing, Bank of America wrote to the estate declining to change the name on the loan, stating "since your loan is paid off and no longer active in our system, we are unable to complete the transaction you requested." The most tenuous dispute that the estate asserts relates to the short-sale of the decedent's property located at 5028 Cool Fountain Lane, Centreville, Virginia. In that case, Bank of America executed a certificate of

satisfaction that expressly retained its right to pursue the deficiency. Yet Bank of America has taken no action since the short sale to enforce its debt, and the bank's estate unit does not have a record of a claim related to the account in its system.

In the instant case, the estate disputed obligations due to Bank of America that aggregate more than \$2,000,000.00 in unsecured claims where the collateral has been liquidated, together with another \$496,260.50 in a real estate loan in substantial default. There is no other pool of assets from which Bank of America may seek recovery other than the assets of the decedent's estate that remain. Despite the estate's dispute of nearly \$2.5 million in claims, Bank of America elected not to appear to substantiate any of its claims. It provided notice of a cancellation of the indebtedness on at least one of those claims. Your commissioner is of the opinion that the estate had a good faith basis to dispute the claims of Bank of America for deficiencies after the liquidation of its real estate collateral. Therefore, your commissioner finds with respect to these deficiency claims, that the estate's proper dispute of the claims shifted the burden of going forward to Bank of America, which failed to appear at the hearing after receiving disputed notice. In failing to appear and substantiate the claims, Bank of America failed to meet its burden of proof. Your commissioner therefore denies the deficiency claims of Bank of America relating to Account \*0923 and Account \*9799, each in its entirety.

With regard to Bank of America Account \*5699, in the amount of \$496,260.50, which the decedent's property located at 6241 Clara Edward Terrace, Fairfax County, secures, the loan is clearly in default and Bank of America has not pursued collection or initiated foreclosure proceedings. Bank of America continues to hold a valid security interest in the decedent's property, and the estate has presented no evidence that the bank has waived or abandoned its claim for repayment. Unlike the other cases where the collateral had been liquidated and the bulk of the debt recovered, this claim does not involve the unpaid balance of a loan where the collateral has been liquidated, rather it relates to an existing mortgage that the creditor has yet to enforce. Bank of America has demanded payment in full and its refusal to accept monthly payments is not an abandonment of its debt. Your commissioner therefore finds that the estate does not have a good faith basis to dispute the claim of Bank of America related to Account \*5699. Your commissioner allows this claim in its entirety.

Your commissioner notes that at the time of the hearings, Bank of America's records reflected Account \*2399 as an outstanding loan to the decedent with a balance of \$437,355.00, that the decedent's property located at 6118 Lynley

Terrace, Fairfax County, Virginia, secured. The estate stated that the property was then under contract, and it believed the sale would be sufficient to satisfy the outstanding mortgage. The estate therefore disputed Bank of America's claim, only to the extent a deficiency balance existed post-sale. On February 19, 2013, the fiduciary sold 6118 Lynley Terrace, Fairfax County, Virginia to Alexandra and James Murrin for \$495,000.00. Based on the representations of the fiduciary, your commissioner is of the opinion that the sale proceeds were sufficient to satisfy Bank of America's claim for \$437,355.00, relating to Account \*2399, and your commissioner finds no deficiency claim exists.

### 3. Claim by Adel Al-Hosani

Adel Al-Hosani presented filed a claim against the estate in an undetermined amount stemming from his dissatisfaction with the decedent's services to the claimant as a listing agent. Mr. Al-Hosani alleges that the decedent acted as a listing agent for the rental of a property that Mr. Al-Hosani owned located at 1781 Chain Bridge Road, Unit 308, McLean, Virginia. Mr. Al-Hosani alleges that the decedent failed to manage the rental unit properly. Mr. Al-Hosani stated that, as listing agent, the decedent leased the unit to George and Deborah Shapiro and executed a lease on behalf of Mr. Al-Hosani with a rental start date of January, 2010. Mr. Al-Hosani alleges that the decedent was to provide a copy of the lease to the home owner's association and failed to do so. Mr. Al-Hosani further alleged that neither the decedent nor PIR, Inc., his real estate company, responded to requests for copies of the listing agreement and lease agreement. No copy of the listing agreement or the lease agreement was provided with the claim. The only documentary evidence Mr. Al-Hosani submitted is a copy of the multiple listing service print-out attached to the claim showing the unit available for lease with PIR, Inc. as the listing company and Robert Kay as the listing agent.

The storage unit identified in the lease had the incorrect number. The tenants stored their items in the incorrect storage unit and the condominium association disposed of the tenants' items. The tenants sued both the condominium association and Mr. Al-Hosani for damages. The decedent was not a party to that litigation, nor did the association or Mr. Al-Hosani join him as a third-party defendant. The parties eventually settled the dispute for \$8,000.00, and Mr. Al-Hosani seeks to recover damages from the decedent, including the settlement amount and the attorney's fees that he incurred in the litigation.

The estate disputed Mr. Al-Hosani's claim and provided Mr. Al-Hosani with notice of such dispute. The estate disputes the claim on the grounds that the

claimant cannot establish that the decedent is personally liable for the alleged damages. The estate stated PIR, Inc. was the actual listing agent for the property and that Mr. Al-Hosani failed to submit documentation of any agreement with the decedent personally; nor did he submit documentation of any agreement with PIR, Inc.

Ms. Earman, as counsel for Mr. Al-Hosani, participated in the initial hearing before your commissioner, but elected not to present any evidence concerning the claim at that hearing. She deferred that presentation until the continuation of that hearing. After the conclusion of the first hearing, Ms. Earman advised your commissioner in writing that Mr. Al-Hosani had decided not to pursue his claim against the estate. Neither Mr. Al-Hosani nor Ms. Earman attended the continued hearing and no evidence substantiating the claim was presented. Your commissioner therefore denies Mr. Al-Hosani's claim in the entirety.

#### 4. Claim by Richard Kay for Reimbursement

At the hearings, Richard Kay presented a claim for reimbursement of \$60.00, for the costs of paying his daughter \$20.00 per hour to help him prepare for the October, 2012 hearings. Pursuant to Virginia Code § 64.2-1208, the estate may pay professional fees, such as attorney fees, that constitute reasonable expenses incurred in the course of administering an estate. An estate may therefore reimburse a third-party for professional fees that are reasonable, necessary, and for the direct benefit of the estate.<sup>6</sup> Fees which beneficiaries incur in resolving disputes among themselves or with the estate are however not appropriate administrative expenses.<sup>7</sup> When a party incurs fees in objecting to a fiduciary's administration of an estate, or compelling a fiduciary to act, those fees are not subject to reimbursement by the estate.<sup>8</sup> Your commissioner is of the opinion that Mr. Kay is not entitled to the requested reimbursement, and your commissioner denies Mr. Kay's claim in the entirety.

Your commissioner notes that the estate has reimbursed Mr. Kay for such fees in the past, related to the January 20, 2012 hearing. Your commissioner draws a distinction between Mr. Kay's current claim and his past reimbursement. Mr. Kay's request related to the January 20, 2012 hearing was based upon the unresponsiveness of the fiduciary. He was unable to get the fiduciary to provide

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<sup>6</sup> See *Clare v. Grasty*, 213 Va. 165, 170, 191 S.E.2d 184, 188 (1972).

<sup>7</sup> See *Gaymon v. Gaymon*, 63 Va. Cir. 264, 2003 WL 22785033 (2003).

<sup>8</sup> See Commissioner's Report, *In re Estate of Richard Eugene Bush*, deceased (FI-2007-0001651) at 5-6, confirmed December 1, 2010 (Fairfax Cir. Ct.).

documentation or answers to his questions. As a result, he demanded a hearing pursuant to former Virginia Code § 26-2,<sup>9</sup> in order to determine whether the fiduciary should be removed. At the hearing, Mr. Kay requested reimbursement for his costs. Mr. Kay sought reimbursement of \$1,376.33 from the estate for the hearing costs, which included the costs of transportation, lodging, meal expenses, and preparation for the hearing. The estate did not dispute the claim, and on January 27, 2012, Ms. Langley contacted your commissioner on behalf of the estate and requested your commissioner's approval of the foregoing reimbursement request as an administrative expense. As the reimbursement represented, in effect, costs incurred to force the proper administration of the estate, the costs directly benefited the estate. Your commissioner replied to Ms. Langley, by letter dated May 17, 2012, and advised he would approve an account reporting such a reimbursement.

Your commissioner is of the opinion that in those circumstances in which the fiduciary fails to act as the law requires and interested parties must seek recourse to the courts to enforce proper administration of the estate, your commissioner has the discretion to award costs to those parties for their actions. Your commissioner declines, however, to treat such costs as administrative expenses for which an objecting party is entitled to reimbursement where the dispute relates to objections to ongoing administration.<sup>10</sup> With regard to the October 18, 2012 and October 31, 2012 hearings, your commissioner is of the opinion that, although the fiduciary and the interested parties were in disagreement about much of the administration, the disputes over the course of administration did not constitute an abandonment of the fiduciary responsibility as was implicated in the first hearing. Your commissioner therefore finds that the objecting parties must bear their personal costs associated with the two October, 2012 hearings.

##### 5. Claims by Judy Parker for Reimbursement

Judy Parker presented the following claims for reimbursement to the estate at the hearing: \$466.06, for an electricity bill; \$2,205.00, for legal fees; \$8,677.87, for payment of the decedent's credit card bill; \$174.62, for Ms. Parker's hotel stay for the January 20, 2012 hearing; \$136.26, for Ms. Parker's hotel stay for the August 3, 2012 show cause hearing; \$4 for Ms. Parker's parking fees for the August 3, 2012 show cause hearing; and \$393.80, for Ms. Parker's hotel stay for the October 18, 2012 hearing. The estate disputes Ms. Parker's claims on the

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<sup>9</sup> Now Virginia Code § 64.2-1204.

<sup>10</sup> See *infra*, footnotes 6-8.

grounds that the decedent's estate is not liable for the charges. The estate also asserts that any amounts determined to be properly reimbursable to Ms. Parker should be set-off of by funds Ms. Parker currently owes to the estate. Lack of liability is a proper basis on which to dispute a claim. The estate's proper dispute therefore shifted the burden of going forward to Ms. Parker to establish her claims. Your commissioner shall address each separate claim in turn, followed by a discussion of the estate's request for a set-off of any amounts due to Ms. Parker.

a. Reimbursement of Legal Fees

Ms. Parker seeks reimbursement of legal fees totaling \$2,205.00. Ms. Parker testified that she retained Karl Pilger to assist her in being appointed co-administrator for the decedent's estate, after Arthur Kay, III qualified as administrator for the estate on February 7, 2011. The documentation Ms. Parker submitted in support of her claim indicates that Mr. Pilger rendered legal services to Ms. Parker from March through April, 2011. The estate disputes Ms. Parker's claim on the grounds that the decedent's estate is not liable for the charges.

Under the laws of the Commonwealth, each party bears his or her own attorney fees absent a specific statutory entitlement or contractual agreement providing otherwise. Pursuant to Virginia Code § 64.2-1208, the estate may pay professional fees, such as attorney fees, that constitute reasonable expenses incurred in the course of administering an estate. An estate may therefore reimburse a third-party for advanced professional fees that are reasonable, necessary, and for the direct benefit of the estate.<sup>11</sup> Attorney fees that beneficiaries incur in resolving disputes among themselves or with the estate are not appropriate administrative expenses.<sup>12</sup> Fees that a party incurs in objecting to administration of an estate, or compelling a fiduciary to act, are not subject to reimbursement by the estate.<sup>13</sup>

Based upon Ms. Parker's testimony and supporting documentation, she incurred legal fees seeking appointment as a co-administrator. The fees were incurred in advance of the administration of the estate. She acted based on her concerns and disagreements with Mr. Kay, the current fiduciary. The fees were not a direct benefit to the estate and arose from Ms. Parker's personal disputes with the current fiduciary. Your commissioner therefore finds that Ms. Parker is not

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<sup>11</sup> See *Clare v. Grasty*, 213 Va. 165, 170, 191 S.E.2d 184, 188 (1972).

<sup>12</sup> See *Gaymon v. Gaymon*, 63 Va. Cir. 264, 2003 WL 22785033 (2003).

<sup>13</sup> See Commissioner's Report, *In re Estate of Richard Eugene Bush*, deceased (FI-2007-0001651) at 5-6, confirmed December 1, 2010 (Fairfax Cir. Ct.).

entitled to reimbursement for her legal fees, and your commissioner denies her claim for \$2,205.00 in the entirety.

b. Reimbursement for Hearing-related Expenses

Ms. Parker is seeking reimbursement of the following hearing-related expenses: \$174.62, for Ms. Parker's hotel stay for the January 20, 2012 hearing; \$136.26, for Ms. Parker's hotel stay for the August 3, 2012 show cause hearing; \$4, for Ms. Parker's parking fees for the August 3, 2012 show cause hearing; and \$393.80, for Ms. Parker's hotel stay for the October 18, 2012 hearing. The estate disputes Ms. Parker's claim on the grounds that the decedent's estate is not liable for the charges.

As your commissioner noted when addressing Richard Kay's request for reimbursement, in those circumstances in which the fiduciary fails to act as the law requires and interested parties must seek recourse to the courts to enforce proper administration of the estate, your commissioner has the discretion to award costs to those parties for their actions. Your commissioner is of the opinion that the hearing on January 20, 2012, resulted from such circumstances and an award of costs is appropriate as the hearing was a direct benefit to the estate. Your commissioner will therefore allow Ms. Parker's claim for reimbursement of her hotel expenses for the January 20, 2012 hearing, totaling \$174.62.

Your commissioner finds that the remaining costs represent disputes with the estate and are personal charges to the objecting party. Personal charges incurred while engaging in disputes with an estate do not qualify as proper administrative expenses.<sup>14</sup> Your commissioner declines to treat Ms. Parker's remaining reimbursement requests as properly payable administrative expenses. Your commissioner therefore denies Ms. Parker's claims for the following reimbursements: \$136.26, for Ms. Parker's hotel stay for the August 3, 2012 show cause hearing; \$4 for Ms. Parker's parking fees for the August 3, 2012 show cause hearing; and \$393.80, for Ms. Parker's hotel stay for the October 18, 2012 hearing.

c. Reimbursement for Electricity Bill

Ms. Parker requests reimbursement of \$466.06 for an electricity bill she paid in relation to the decedent's condominium in Fort Lauderdale, Florida. Ms. Parker testified she received notice in April or May, 2012, that the decedent's

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<sup>14</sup> See *infra*, footnotes 12-13.

condominium had no electricity, resulting in mold growing in the unit. She testified that she received notice from the condominium association that the decedent's estate would be sued for any damage, should the mold spread. She stated that, at the time, she was co-administrator for the estate. The power company advised that there was not enough time to get the electricity account put in the estate's name. As a result, she put the electricity account in her name and paid the outstanding balances in order to permit the electricity to be turned back on. Ms. Parker's supporting documentation indicates she paid \$394.03 on May 12, 2011, and \$71.23 on June 28, 2011. She testified that when she learned she was no longer co-administrator, she advised the fiduciary to take over the account, or the power would be cut-off in thirty days. Ms. Parker's notes on the supporting documentation she submitted indicate she had the power turned off on May 15, 2011.

This Court's Order dated April 8, 2011, vacated the February 11, 2011 Order appointing Arthur Kay and Judy Parker as co-administrator. Ms. Parker's therefore appears to have paid the charges when she in fact was no longer a co-fiduciary for the estate. Nonetheless, your commissioner is of the opinion that Ms. Parker has demonstrated that she personally paid the foregoing charges for the benefit of estate. The fiduciary did not dispute the estate's liability for the electricity bills as administrative expenses, but rather indicated that Ms. Parker's requested reimbursement should be set-off by funds she owes to the estate. Without making a finding as to estate's set-off claim addressed below, your commissioner allows Ms. Parker's claim for reimbursement of \$466.06 as an administrative expense of the estate.

d. Reimbursement for Funds Deducted from Payable-on-death Account

Ms. Parker testified that she was the beneficiary for the decedent's payable-on-death bank accounts with Pentagon Federal Credit Union. She testified that Pentagon Federal Credit Union deducted \$8,677.87 from the account for payment of the decedent's outstanding Visa credit card bill, prior to transferring the remaining bank account funds to her. Ms. Parker is seeking reimbursement from the estate for the amounts that Pentagon Federal Credit Union set-off on the grounds that the debt should have been paid by the estate. The supporting documentation submitted by Ms. Parker reveals that the \$8,677.87 credit card balance was paid from the decedent's money market account with Pentagon Federal Credit Union on January 20, 2011, the day that the money market account was closed. The estate disputes Ms. Parker's claim on the grounds that she failed to submit any documentation regarding the actual charges, such as bills or

documents indicating the decedent was properly liable for the amount. Additionally, the estate contends that the transaction occurred completely outside the decedent's probate estate. The credit card bill was paid in January, 2011, prior to Ms. Parker receiving the balance of the money market account, and prior to the fiduciary's qualifying as administrator for the estate.

Pursuant to Virginia Code § 6.2-604, a payable on death account, or P.O.D. account, is "an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees." The provision further provides that P.O.D. accounts constitute "multiple-party accounts."<sup>15</sup> Virginia Code § 6.2-617 provides,

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

In the case at hand, the decedent's money market account with Pentagon Federal Credit Union was a P.O.D. account, in which he had full right of withdrawal. The total balance of the decedent's money market account was therefore subject to set-off by Pentagon Federal Credit Union for the decedent's outstanding Visa credit card bill. Therefore, your commissioner must determine whether a P.O.D. payee is entitled to repayment from a decedent's estate when a financial institution sets off debt against a P.O.D. account funds, based on the decedent's liability to the institution, prior to paying such funds to the P.O.D. payee.

Funds deposited into a bank account are the property of the bank and the contract relationship with the depositor is that of a creditor and a debtor.<sup>16</sup> Prior to transferring the sums, the funds are subject to the bank's right of set-off pursuant to Virginia Code § 6.2-617. Ms. Parker, as the P.O.D. payee, was entitled only to

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<sup>15</sup> VA. CODE ANN. § 6.2-604

<sup>16</sup> See *Bernardini v. Central Nat'l Bank*, 223 Va. 519, 290 S.E.2d 863 (1982).

“any sums remaining on deposit” upon the death of the original depositor.<sup>17</sup> Your commissioner is of the opinion that the set-off reduces the sum remaining on deposit that is available to the P.O.D. payee.

Ms. Parker asserts that the estate should be compelled to pay the decedent’s credit card bill as the funds available to her were reduced by the set-off of that debt. The issue presented is whether a P.O.D. payee may require exoneration or contribution from a decedent’s estate for the amounts set-off from a bank account. Exoneration is “the right to be reimbursed by reason of having paid that which another should be compelled to pay, and is generally based upon contract, express or implied.”<sup>18</sup> The common law doctrine of exoneration related to inheritance of encumbered real property has its roots in the doctrine that the decedent’s personal estate is the primary fund for payment of his debts, even though the decedent may have pledged real estate to secure that debt.<sup>19</sup> It does not apply to encumbered personal property. The Virginia Code now clearly establishes that there is no right of exoneration for real or personal property unless there is contrary intent clearly set out in the will.<sup>20</sup> The bank set-off the decedent’s funds to pay the decedent’s debt, pursuant to its statutory and contractual right of set-off to which the funds were subject. Ms. Parker never became the owner of the funds set-off for the bank’s debt. Therefore, Ms. Parker did not pay the decedent’s debt, even though the payment reduced the funds available to her. No statute requires exoneration of encumbered personal property and no agreement exists between the decedent’s estate and Ms. Parker, which would obligate the estate to assume liability for any set-off amounts. Ms. Parker therefore is not entitled to exoneration from the estate. Based on the foregoing, your commissioner denies Ms. Parker’s claim for reimbursement of \$8,677.87 in the entirety.

e. Estate’s Claim to Set-off Amounts Reimbursable to Judy Parker

Your commissioner’s above findings allow the following claims by Ms. Parker for reimbursement: her claim for reimbursement of her hotel expenses for the January 20, 2012 hearing, totaling \$174.62; her claim for reimbursement of an electricity bill totaling \$466.06. At the hearing, the estate requested any

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<sup>17</sup> VA. CODE ANN. § 6.2-608.

<sup>18</sup> *Uptagrafft v. United States*, 315 F.2d 200, 203 (4th Cir. 1963); *Brown v. Hargraves*, 198 Va. 748, 96 S.E.2d 788 (1957).

<sup>19</sup> The doctrine of exoneration has been abolished under the Uniform Probate Code. *See* UPC § 2-607. Virginia has taken steps to limit its impact prospectively as well. *See* VA. CODE ANN. § 64.2-531.

<sup>20</sup> VA. CODE ANN. § 64.2-531.

reimbursement of Ms. Parker be set-off by amounts Ms. Parker allegedly owes to the estate in relation to a car she jointly leased with the decedent. In contrast to recoupment, in which the asserting party's claim arises out of the same transaction and the same contract,<sup>21</sup> a set-off "arises out of some transaction *dehors* the transaction sued on."<sup>22</sup>

Ms. Parker and the decedent jointly leased a Lincoln motor vehicle through Ford Motor Credit Company. The estate states that the lease was paid in full upfront, along with a refundable deposit. The estate claims that \$2,000.00 is due to it, representing, upon information and belief, the amount of the refundable deposit. Your commissioner notes that on January 24, 2012, the estate received a refund from Ford Motor Credit of \$1,675.00 payable to Robert Kay, representing "Refund of Lessee Rental Security for \$1,600.00 & Remaining of \$75 From Payments recd on 12/12/11 (TOE Fee)." The estate failed to present any documentation related to the actual leasing agreement to your commissioner. A set-off is an affirmative claim.<sup>23</sup> The party advancing such a claim therefore bears the burden of establishing the claim. In the case at hand, the estate has failed to do so. Based upon the evidence before your commissioner, your commissioner is of the opinion that the estate has received the full security deposit directly from Ford Motor Company. Your commissioner finds that Ms. Parker is entitled to receive reimbursement in full for her claims for \$174.62 and \$466.06, respectively, a total of \$640.68.

#### *Hearing Pursuant to Virginia Code § 64.2-1209*

Beneficiaries Judy Parker and Richard Kay appeared at the hearings in order to present objections to the fiduciary's administration of the estate. Your commissioner addresses the beneficiaries' objections in turn below.

##### **1. Attorney Fees Incurred by the Fiduciary**

Mr. Kay and Ms. Parker both alleged that the fiduciary has retained attorney Darlene Langley to execute his fiduciary obligation and duties, in lieu of performing the activities himself. The beneficiaries both objected to the fiduciary's retaining and paying counsel to administer the decedent's estate. As

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<sup>21</sup> Dexter-Portland Cement Co., 147 Va. at 766. *See also* C-4 Media Cable South, L.P. v. Reds T.V. & Cable, Inc., 150 B.R. 374, 377 (Bankr. E.D. Va. 1992); 1-2 Virginia Remedies § 2.05.

<sup>22</sup> Dexter-Portland Cement Co., 147 Va. at 766.

<sup>23</sup> *See* Bremer v. Doctor's Bldg. Pshp., 251 Va. 74, 79-80 (1996); Bremer v. Bitner, 44 Va. Cir. 505, 506-507 (Va. Cir. Ct. 1996).

Ms. Langley bills at her hourly rate for the services she performs, the beneficiaries are of the opinion that her executing all tasks to be performed by the fiduciary significantly drains the estate's resources. The beneficiaries object to the estate bearing responsibility for Ms. Langley's fees and request the fiduciary be held personally liable for the same. They allege that Ms. Langley is the fiduciary's attorney, and not the attorney for the estate. Mr. Kay and Ms. Parker further noted that Ms. Langley has failed to submit timely filings to your commissioner.

In response to the foregoing, the fiduciary acknowledged that he has generally turned over all actions and writings pertaining to the estate administration to Ms. Langley. The fiduciary testified that he retained Ms. Langley's services, because she has expertise in estate administration, and he wanted to make sure the estate was administered properly. The fiduciary also stated he retained Ms. Langley's services to properly administer the estate, out of concern of being sued by his siblings for his administration of the estate.

Pursuant to Virginia Code § 64.2-1208, the estate may pay professional fees, such as attorney fees, when such professional services are reasonably necessary for the orderly administration of the estate. In those circumstances, the reasonable expenses of such services are allowed, in addition to the fiduciary fee. In contrast, if a fiduciary employs an attorney to perform duties that should be performed by the fiduciary, those attorneys' fees are to be deducted from the compensation otherwise due the fiduciary; however, the attorney fees remain the expense of the estate. Any attorney fees Ms. Langley bills will therefore impact the fiduciary fee allowable to Arthur Kay as administrator for the estate, to the extent those fees are charged for duties typically performed by a fiduciary, but do not impact the estate's obligation to pay Ms. Langley. If the fiduciary is able to establish portions of Ms. Langley's fees pertain to legal services reasonably necessary to the orderly administration of the estate, in addition to the duties the fiduciary is to perform, your commissioner will approve those legal fees without offset to the fiduciary fee, so long as those legal fees are otherwise reasonable.

Based on the filings to date, the guideline fiduciary fee for an estate of this type and size is \$78,569.88 if the fiduciary has sold the real property in the estate. In this estate lenders have foreclosed most of the real estate or the fiduciary has sold it in a short sale. Your commissioner generally will allow the fiduciary some fee based upon efforts to sell such real estate; however, your commissioner generally would not allow the full guideline fee in such circumstances. The fiduciary has not yet taken a fee for his services to the estate. Your commissioner directs the fiduciary to seek the approval of your commissioner prior to taking any

fiduciary fees for his services to the estate. The fiduciary's first account reports that the fiduciary has thus far incurred \$20,661.12 in professional fees. The fiduciary's request for approval should be accompanied by supporting documentation and include a description of the services the fiduciary personally performed for the estate, a description and allocation of the fees charged by Ms. Langley for services typically performed by a fiduciary, and a description and allocation of the fees charged by Ms. Langley for legal services necessary to the orderly administration of the estate.

Mr. Kay also objected to a specific charge on Ms. Langley's invoices for her services to the estate. Mr. Kay objected to Ms. Langley charging \$300.00 to review his request for reimbursement, which he stated your commissioner approved in January, 2012. In response, Ms. Langley testified that the expenses were not approved by your commissioner at the January, 2012 hearing, as Mr. Kay did not present his expenses and supporting documentation until after the hearing. Ms. Langley testified that after receiving said documentation, she solicited your commissioner's approval of the reimbursement as an administrative expense, which was important in the event the estate was determined to be insolvent. Ms. Langley also stated that she required your commissioner's opinion as to the sufficiency of Mr. Kay's supporting documentation for his request to be reimbursed for his office assistant's time in preparing for the January, 2012 hearing. Your commissioner confirms Ms. Langley's account of Mr. Kay's reimbursement requests and finds that Ms. Langley's services to the estate were not unnecessary or duplicative. Your commissioner declines to make any determination as to the reasonableness of the fees charged or whether such fees will offset any fee taken by the fiduciary, as your commissioner has reserved those matters for his later determination of a proper fee for the fiduciary.

## 2. Lack of Communication with Beneficiaries

Mr. Kay and Ms. Parker objected to fiduciary's failure to communicate with the beneficiaries. The beneficiaries testified that the fiduciary has been unresponsive to their letters and email messages. Your commissioner notes that in his hearing report filed January 30, 2012, subsequent to the January 20, 2012 hearing, your commissioner found that the communications between the fiduciary and the other heirs had been deficient prior to the hearing. Your commissioner directed the fiduciary and the heirs to remain in regular communication by having the fiduciary send monthly emails to the heirs. The fiduciary testified that he has been sending monthly emails to the beneficiaries, in accordance with your

commissioner's direction. Ms. Parker commented that Ms. Langley, not the fiduciary, has been sending the foregoing emails.

The annual filings submitted to your commissioner, along with copies submitted to any estate beneficiaries requesting copies thereof, are the sole communications the Virginia Code requires of an administrator for an estate. In certain circumstances, your commissioner also has the authority to direct a fiduciary to respond to requests for information via the various enforcement mechanisms he is afforded under the Virginia Code. There is therefore no obligation for a fiduciary to communicate regularly with the heirs or beneficiaries of the estate he administers. Nonetheless, your commissioner is of the opinion that regular communication between the fiduciary and beneficiaries of an estate is a good practice and encourages such. In the case at hand, your commissioner is of the opinion that the lack of communication between the fiduciary and the beneficiaries has increased the tension otherwise existing between the parties. Your commissioner directs the fiduciary to continue his monthly email updates to the heirs. The fiduciary does have the discretion to have Ms. Langley send such communications on his behalf, in lieu of sending the communications personally. Your commissioner notes, as set forth above, that such services performed by Ms. Langley will reduce the fee otherwise available to the fiduciary.

### 3. Failure to Timely Submit Filings

The beneficiaries objected to the fiduciary's failure to timely submit the filings due to your commissioner. Mr. Kay and Ms. Parker are correct that the fiduciary has failed to comply with his filings deadlines. As previously stated herein, the fiduciary's inventory was due to your commissioner on June 7, 2011. On June 14, 2011, the fiduciary filed his inventory with your commissioner, which he later amended on November 28, 2011 and March 8, 2012. The fiduciary's first account was due to your commissioner on June 7, 2012; the fiduciary failed to file the same until October 18, 2012. The fiduciary's first account remains unapproved due to exceptions identified by your commissioner.

At the hearing, the fiduciary testified that he has relied on his attorney to prepare the filings due to your commissioner. He had requested Ms. Langley file the accounts on time; however, there were delays in the process. He further stated that Ms. Langley worked to address the issues, and the administration of the estate thereafter proceeded. The fiduciary provided no further detail. Ms. Langley also stated that the decedent's lack of paperwork caused a substantial delay in the

administration process, particularly with reference to liquidating the decedent's real estate.

Mr. Kay and Ms. Parker are appropriately concerned about the fiduciary's failure to comply with deadlines. The fiduciary has nonetheless submitted the filings, although the filings were untimely. Your commissioner is of the opinion that a failure to abide by deadlines alone is insufficient grounds on which to remove a fiduciary, particularly when your commissioner has other means to compel the fiduciary to act. In the instant matter, your commissioner has assessed \$720.00 in delinquency fees for the fiduciary's failure to file proper and timely accounts with your commissioner. Delinquency fees assessed by your commissioner are amounts for which a fiduciary is personally liable and are not properly payable by the estate, absent consent from the beneficiaries. The fiduciary has paid such delinquency fees to your commissioner; however, the majority of the fees were paid in the period to be covered by the fiduciary's second accounting. Your commissioner also directs the fiduciary to comply with his future filing obligations in a timely manner and to provide copies thereof to the other beneficiaries.

#### 4. Failure to Timely Liquidate the Decedent's Jewelry

The fiduciary listed the following items of personalty in his inventory with your commissioner: Rolex watch, valued at \$14,500.00; 18 carat gold bracelet, valued at \$4,400.00. Mr. Kay objected to the fiduciary's failure to take any action to sell the decedent's jewelry. At the hearings, the fiduciary acknowledged that he had not yet sold the two items and deposited their proceeds into the estate. The fiduciary testified that he had arranged for a jeweler to sell the items, but the only offer he received was an offer to purchase both pieces for \$10,665.00. The fiduciary testified he believes the offer to be significantly lower than the market value for the items, as the items combined are an estimated nine ounces of gold. Mr. Kay also offered to purchase the two items from the estate for \$2,600.00. The fiduciary testified that he similarly declined Mr. Kay's offer. The fiduciary further testified that he planned to take the items to a different jeweler to solicit an offer.

Your commissioner directed the fiduciary to sell the items within sixty days of the October 31, 2012 hearing, and advised he would approve an account in which the fiduciary reported selling the items for \$10,665.00. Your commissioner further directed that, to the extent the fiduciary elected to sell the two pieces at a value equal to or lower than the \$10,665.00 current offer, the fiduciary was to provide Mr. Kay first right of refusal. On November 29, 2012, the fiduciary

notified the beneficiaries that he received an offer of \$12,200.00 for the two pieces, and asked Mr. Kay if he would like to purchase the items for the offered price. The beneficiaries refused the offer. Your commissioner has since received recent emails where the parties are still in disagreement as to the disposition of the jewelry. Your commissioner directs the fiduciary to sell the items forthwith for a price of \$10,665.00 or greater. Your commissioner will not require that the fiduciary grant any further right of first refusal to any other beneficiaries.

#### 5. Failure to Timely Liquidate the Decedent's Vehicles

Mr. Kay and Ms. Parker objected to the fiduciary's delay in liquidating the decedent's vehicles. Ms. Parker alleged the fiduciary delayed selling the decedent's Mercedes by two months. In response, the fiduciary testified that he sold the Mercedes on May 9, 2011, and there was no delay in selling the vehicle once he became the sole administrator. He testified that while co-administrators with Ms. Parker, she refused to sell the vehicle to CarMax; Ms. Parker instead wanted to sell the vehicle on eBay from her home in Williamsburg, Virginia. The fiduciary further testified that, after being appointed sole administrator in April, 2011, Ms. Parker did not turn over title to the vehicle to him until April 27, 2011. The fiduciary then sold the vehicle on May 9, 2011, twelve days after title was turned over to him. Ms. Parker also alleged that the fiduciary took no action with reference to the Lincoln from April, 2011 until January, 2012. In response, the estate stated that the vehicle had a prepaid lease, and therefore could not be sold. The fiduciary testified that he turned in the vehicle and received a refund of the lease deposit, which he deposited into the estate account.

The fiduciary sold the decedent's Mercedes within two weeks of receiving full custody over the property. Your commissioner is of the opinion that there was no delay in the fiduciary's liquidation of the Mercedes. The fiduciary provided little explanation for his delay in turning in the Lincoln, but Mr. Kay and Ms. Parker also did not demonstrate how the delay resulted in any harm to the estate. While your commissioner encourages the prompt disposition of vehicles, the vehicle has been returned and your commissioner declines to penalize the fiduciary absent some demonstration of harm.

#### 6. Objections to Specific Disbursements by the Fiduciary

The beneficiaries objected to disbursements for gas charges reported on the fiduciary's first account. The fiduciary's account reports the fiduciary having reimbursed himself for \$1,642.75 in gas charges and \$14.00 for a car wash, totaling \$1,656.75. Ms. Parker specifically objected to the lack of documentation

accompanying the charges. The fiduciary submitted only his gas receipts; she is of the opinion that the fiduciary should have submitted a log of where he was driving and the purposes of the trips. The fiduciary testified that he was unable to provide that information. When a fiduciary is out of state and required to travel to administer the estate, your commissioner generally considers reasonable travel expenses to be proper expenses of administration; provided the fiduciary can demonstrate that such travel is reasonably related to estate business. In those circumstances, gas and mileage may be considered proper expenses of administration. Your commissioner is of the opinion that gas and mileage expenses incurred by local fiduciaries do not constitute proper administrative expenses absent exceptional circumstances where the fiduciary can demonstrate benefit of such expense to the estate. In the instant case, the fiduciary is unable to demonstrate that the expenses relate in any way to the decedent's estate. Your commissioner therefore finds that the \$1,656.75 in charges constitute improper disbursements, and your commissioner directs the fiduciary to restore those funds to the estate.

Mr. Kay objected to the fiduciary's disbursing \$832.38 for office supplies on the grounds that Ms. Langley is in fact administering the estate, obviating the fiduciary's need for any such supplies. Your commissioner is of the opinion that reasonable office supplies routinely used in the course of administering an estate generally constitute proper expenses of administration. The fiduciary's testimony at the hearing reveals that he has some involvement in the administration of the estate, albeit limited. The testimony also reveals the fiduciary had greater involvement earlier in the administration. A review of the specific expenses incurred by the fiduciary reveals several unusual charges, primarily related to obtaining data from computers and servicing computers. Although the charges are unusual, your commissioner is of the opinion that some data recovery from the decedent's computer was likely necessary, as the extent of the real estate transactions the decedent was involved in was critical information for the estate to determine. No evidence of impropriety by the fiduciary has been presented. Based on the foregoing, your commissioner is of the opinion that the amounts disbursed for the office supplies are reasonable and proper expenses of administration.

Mr. Kay objected to the expenses incurred by the estate as a result of changing the locks on the decedent's Huntington Park property twice. The fiduciary's account reports that he disbursed the following amounts to replace the locks on the property: \$390.00, on February 9, 2011; and \$300.00, on April 14, 2011. Mr. Kay asserted the expenditures were unnecessary. The fiduciary testified that, prior to being appointed co-administrator, Ms. Parker advised him she had

been unable to locate keys for the decedent's cars and Huntington Park property, the decedent's primary residence. As a result, the fiduciary testified he changed the locks on the Huntington Park property. A fiduciary has a duty to take custody and control over the decedent's assets, and your commissioner therefore finds that the disbursement constitutes a proper administrative expense. The fiduciary provided two different explanations for the second change of the Huntington Park property locks in April, 2011: the fiduciary testified he had to rekey the locks, because the keys he had no longer worked; the fiduciary testified that he changed the locks after he became sole administrator. There is at least some intimation that Ms. Parker also changed the locks when she became co-administrator, requiring the second change. Although not clear, your commissioner is of the opinion that there appear to be proper grounds to change the locks of the property. Your commissioner therefore finds that the second disbursement to change the Huntington Park property locks constitutes a proper administrative expense.

Ms. Parker and Ms. Kay also objected to funds disbursed by the fiduciary to change the locks on the decedent's Mercedes motor vehicle. The fiduciary testified that, prior to being appointed co-administrator, Ms. Parker advised him she had been unable to locate keys for the decedent's cars. The fiduciary testified he changed the locks on the Mercedes based on Ms. Parker's representation that a key to the car could not be located. As a fiduciary has a duty to take custody and control over the decedent's assets, your commissioner finds that the disbursement constitutes a proper administrative expense.

Mr. Kay objected to the following moving expenses and repair expenses disbursed by the fiduciary on the first account: \$5,727.25 for moving expenses related to the Huntington Park property, on May 3, 2011; \$2,000.00 for repairs to the Clara Edwards property, on November 15, 2011; \$5,105.00 for repairs to the Clara Edwards property, on January 24, 2012; \$6,600.00 for repairs to the Clara Edwards property, on February 2, 2012. Mr. Kay objected on the ground that the fiduciary submitted no supporting documentation to substantiate that he selected the lowest bids received for the requested services. In response, the fiduciary testified that he obtained two estimates for the moving expenses and two estimates for the repairs to the Clara Edwards property, and he took the lowest estimates. The fiduciary also testified he did not submit documentation of any of the bids he solicited, as he didn't realize he was required to. Your commissioner generally does not require fiduciaries to submit documentation of bids solicited for services rendered to the estate. Expenses of administration must be reasonable, however, and your commissioner may require a fiduciary to provide documentation to the extent the reasonableness of the amounts billed for the services rendered are

challenged. A party challenging the reasonableness of an administrative expense bears the burden of establishing a prima facie showing of unreasonableness. In the case at hand, Mr. Kay objected only to the lack of bid documentation, and presented no evidence as to the unreasonableness of the amounts paid for the services. Mr. Kay failed to shift the burden of proof to the fiduciary. Your commissioner therefore approves the foregoing moving and repair expenses and will not require the fiduciary to submit documentation of any bids he solicited for the services.

Ms. Parker objected to the fiduciary disbursing \$275.00 on April 21, 2011 to clean the decedent's Huntington Park property prior to its foreclosure sale. Ms. Parker asserts that the services were unnecessary. The fiduciary testified that he hired a company to clean the property and dispose of trash, because the decedent had his personal papers disbursed all over the property. Your commissioner is of the opinion that reasonable cleaning expenses may constitute a proper expense of administration prior to the sale of a property. Your commissioner is of the opinion that the amount charged appears reasonable and therefore finds that the disbursement constitutes a proper administrative expense.

Mr. Kay objected to the invoices from HBS Title Services, Inc. paid by the estate. HBS Title Services submitted five separate invoices to the estate, each totaling \$40.00, for title searches. The invoices state the legal descriptions of the properties researched, in lieu of the street addresses. Mr. Kay stated that he is therefore unable to verify that the title searches paid for were conducted on the decedent's properties. Your commissioner reviewed the legal descriptions provided and the land records, and confirmed that the title searches pertain to the Clara Edward Terrace property, the Lynley Terrace property, the Huntington Park Drive property, the Cool Fountain Lane property, and the Deepwood Farm Drive property. Your commissioner finds that the disbursements constitute proper administrative expenses.

Ms. Parker objected to the fiduciary disbursing \$71.85 to renew the registration and tags for a Mercedes vehicle the decedent had owned in Florida on May 2, 2011. Ms. Parker objected to the disbursement on the grounds that she had informed the fiduciary that the decedent had sold the car in Florida prior to his death. The fiduciary testified that Ms. Parker did not inform him of the foregoing until after he had made the disbursement. The testimony is conflicting; however, the expense is de minimis and represents the type of expense normally approved. Your commissioner finds the expenditure to re-title the vehicle a proper expense.

## 7. Failure to Account for Personal Property located in Huntington Park Drive Property

Ms. Parker and Mr. Kay object to the fiduciary's failure to account for the contents of the decedent's Huntington Park property, which was the decedent's primary residence. The Huntington Park property was foreclosed in April, 2011. The fiduciary's inventory reports the estimated value of the contents of the decedent's home to be \$30,000.00. During the foreclosure process, the fiduciary auctioned the contents of the home. His first account reports that the auction resulted in sale proceeds of \$27,062.09, reflecting a \$2,937.91 loss from the inventory value for the assets. The beneficiaries objected to the fiduciary failing to account for the actual items turned over the auction house. They allege they should have received a breakdown of the various items sold.

The fiduciary testified that he turned over the contents of the decedent's home to an auction house that handled the sale. The fiduciary did not make an itemized list of the home's contents prior to turning over the property to the auction house. The fiduciary testified that he did not receive such an itemization from the auction house, and the estate was still in the process of trying to obtain one. Based on the auction house's lack of response to his requests, he had requested Ms. Langley contact the auction house. The fiduciaries initially raised the foregoing objection at the October 18, 2012 hearing. To address the beneficiaries' concerns, your commissioner directed the estate to provide the beneficiaries with an itemized list by October 25, 2012, prior to the October 31, 2012 continued hearing. The fiduciary failed to do so. The fiduciary also failed to submit such documentation to your commissioner subsequent to the hearing.

A fiduciary is generally not required to account for specific items of personal property, unless those items are the subject of specific bequests or are items having unusual value. The inventory does not report any items of unusual value, and Mr. Kay and Ms. Parker failed to provide evidence that any such items existed. The fiduciary's first account reflects that he liquidated the property, resulting in sale proceeds of \$27,062.09, and the fiduciary deposited those proceeds into the decedent's estate. This amount reflects only a \$2,937.91 loss from the inventory value for the assets, \$30,000.00. Your commissioner's experience is that personal and household effects generally have little market value and fiduciaries often overvalue such property. In the instant case, the fiduciary was able to realize significant value for the decedent's personalty. The beneficiaries request the fiduciary satisfy reporting requirements beyond those imposed upon most fiduciaries under the laws of the Commonwealth. Although

your commissioner generally encourages fiduciaries to report such information to beneficiaries, he declines to impose such heightened standards where there is no evidence of impropriety or evidence that estate property has been undervalued. Mr. Kay and Ms. Parker failed to present any such evidence to your commissioner. In light of this and the sale proceeds deposited into the estate, your commissioner is of the opinion that the fiduciary has sufficiently accounted for the decedent's household furnishings.

#### 8. Failure to Account for the Decedent's Florida Property

The decedent owned a condominium in Fort Lauderdale, Florida. The fiduciary's inventory reports the estimated value of the contents of the condominium to be \$30,000.00. Ms. Parker testified that the decedent had expensive furnishings and household goods in the property. Ms. Parker and Mr. Kay objected to the fiduciary's failure to account for the specific contents of the decedent's condominium, or provide the beneficiaries with any information as to their disposition. At the hearings, the fiduciary testified that he did not know what contents were located in the decedent's Florida condominium. He testified that he retained local counsel in Florida and turned custody of the condominium and its contents over to the attorney to administer. The fiduciary further testified that, to date, he has received no list or inventory of the personal property from the Florida attorney. The fiduciary also testified that the property was auctioned, but stated he had not received an account or the proceeds from the sale of such property.

The fiduciaries initially raised the foregoing objection at the October 18, 2012 hearing. At the October 18, 2012 hearing, your commissioner directed the fiduciary to contact his Florida counsel and obtain a list of the personal property located in the condominium, as well as information on the status of the property. Your commissioner directed the fiduciary to provide the requested information on October 25, 2012, prior to the continued hearing date. The fiduciary failed to submit the requested information by October 25, 2012 deadline and prior to the October 31, 2012 hearing. To date, the fiduciary has failed to provide the requested information to both your commissioner and the beneficiaries.

An executor or administrator, as a fiduciary, is responsible for the management of a decedent's estate.<sup>24</sup> The fiduciary bears a duty to demand and receive the decedent's estate, to ascertain the decedent's debts and distributees, and

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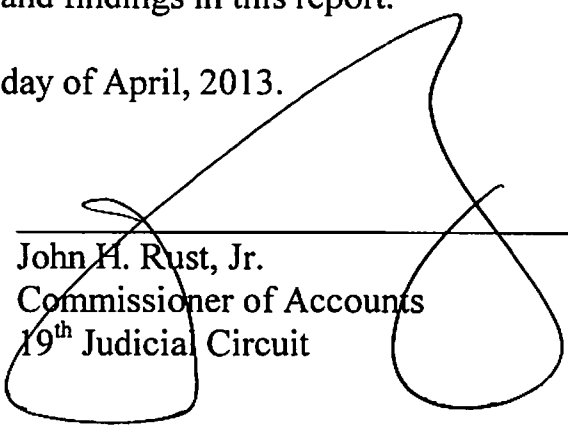
<sup>24</sup> See *Boyd's Sureties v. Oglesby*, 64 Va. (23 Gratt.) 674, 683-84 (1873).

report the administration of such to the court.<sup>25</sup> A fiduciary shall be held personally liable to the extent he or she is unable to establish estate property been properly disbursed or distributed. In the case at hand, the fiduciary cannot account for the contents of the decedent's Florida condominium. In fact, the fiduciary has not inspected the premises since his brother's death. In this instance, there is a failure to perform the basic duties of a fiduciary with respect to the personal property of the decedent. The fiduciary reports in his inventory the value of the household goods in Florida to be \$30,000.00. While the reported value is high in the experience of your commissioner, in the case of the similar value reported in the Virginia residence, the fiduciary was able to recover substantially all of that value. Your commissioner finds that the fiduciary is personally responsible to restore the value of such assets to the estate: \$30,000.00. To the extent that the fiduciary has not taken a fiduciary fee, he may offset the allowable fee against such restoration if he so desires.

#### *Recommendations of Commissioner*

As your commissioner noted in the earlier hearing in this matter, your commissioner is of the opinion that the fiduciary's execution of a proper surety bond provides adequate protection of the assets of the estate and that appointment of a new fiduciary to manage a complex and likely insolvent estate will impose unnecessary costs upon the creditors of the estate. Therefore, your commissioner declines to recommend that the fiduciary be removed at this time; provided the fiduciary complies with the direction and findings in this report.

Respectfully submitted this 4<sup>th</sup> day of April, 2013.



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

Commissioner's Fee for this Report    \$1,260.00 - UNPAID

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<sup>25</sup> See *Denny v. Searles*, 150 Va. 701, 735, 143 S.E. 484, 495 (1928).

## CERTIFICATE OF MAILING

I hereby certify that on this 4<sup>th</sup> day of April, 2013, 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:

Arthur Victor Kay, III  
7301 Walnut Knoll Drive  
Springfield, VA 22153

Darlene R. Langley  
Martin, Arif & Greene, PLC  
8001 Braddock Road, Suite 100  
Springfield, VA 22151

Richard L. Kay  
1407 Wooten Road  
Colorado Springs, CO 80915

Judy Parker  
128 Western Gailes  
Williamsburg, VA 23188

Adel Al-Hosani  
c/o Friedlander, Friedlander &  
Earman, P.C.  
1364 Beverly Road, Suite 201  
McLean, VA 22101-3645

Wells Fargo Bank, NA  
PO Box 4233  
Portland, OR 97208  
Re Account: #1988

Liberty Mutual Insurance Co.  
c/o Roseberry & Foster Bonding Co.  
10428 Main Street  
Fairfax, VA 22030

Liberty Mutual Insurance Co.  
c/o Corporation Service Company  
Bank of America Center, 16th Floor  
1111 East Main Street  
Richmond, VA 23219

Liberty Mutual Insurance Co.  
c/o Christopher K. Jones  
Morris & Morris, P.C.  
11 South 12th Street, 5th Floor  
P.O. Box 30  
Richmond, VA 23218

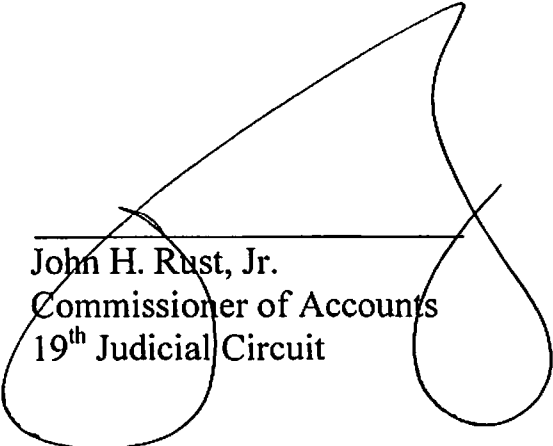
Bank of America, NA  
fka NationsBank #8699  
c/o Weltman, Weinberg & Reis Co., LPA  
323 W. Lakeside Avenue, Suite 200  
Cleveland, OH 44113-1009

Bank of America #7137  
FIA Card Services NA  
P.O. Box 982238  
El Paso, TX 79998

Bank of America  
c/o DCM Services  
7601 Penn Ave., S, Suite A600  
Minneapolis, MN 55423  
Re Accounts: #8699, #5699, #2699,  
#9099

Bank of America, Estate Unit  
4161 Piedmont Parkway  
Greensboro, NC 27410  
Re Accounts: #0923, #4399, #9799,  
#2399, #2715, #7675, #8699,  
#5699, #2699, #9099

Bank of America  
Attn: Correspondence Unit  
PO Box 5170  
Simi Valley, CA 92062  
Re Accounts: #0923, #4399, #9799,  
#2399, #2715, #7675, #8699, #5699,  
#2699, #9099



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

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

NOTICE

PLEASE TAKE NOTICE that the Commissioner of Accounts has set  
October 18, 2012, at 1:30 p.m.  
at his office at 10555 Main Street, Suite 500, Fairfax, Virginia 22030, as the time and place for  
receiving proof of debts and demands against the above estate.

In accordance with the provisions of Virginia Code § 64.2-550 and § 64.2-556, the  
following notices are provided:

1. The estate disputes your claim.
2. You have a right to attend the above hearing and present your case.
3. You have a right to obtain another date for the hearing if the Commissioner of  
Accounts finds the initial date inappropriate.
4. You will be bound by any adverse ruling.
5. You have a right to file exceptions with the Circuit Court in the event of an adverse  
ruling.

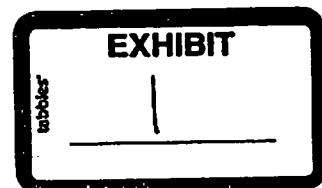
Darlene R. Layley  
~~Fiduciary~~ COUNSEL FOR FIDUCIARY

CERTIFICATE OF SERVICE

I certify that on October 4, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class mail~~, postage prepaid, to the following claimants at the addresses shown  
below: FEDERAL EXPRESS

JUDY PARKER  
128 WESTERN GAILES  
WILLIAMS BURG, VA 23188

Darlene R. Layley



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

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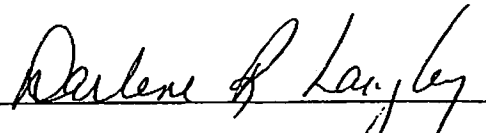
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~~Fiduciary~~ COUNSEL FOR ADMINISTRATOR

CERTIFICATE OF SERVICE

I certify that on October 4, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class~~ mail, postage prepaid, to the following claimants at the addresses shown  
below: EXPRESS

BANK OF AMERICA #7137  
FIA CARD SERVICES NA  
P.O. BOX 982238  
EL PASO TX 79998



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


IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

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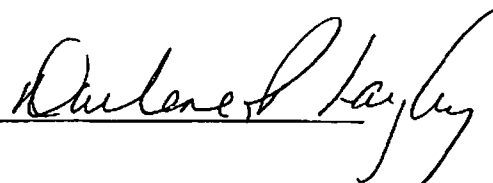
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Fiduciary Counsel For Fiduciary

CERTIFICATE OF SERVICE

I certify that on October 4, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class mail~~, postage prepaid, to the following claimants at the addresses shown  
below: FEDERAL EXPRESS

ADEL AL-HOSANI / SUSAN EARMAN, ESQ.  
c/o FRIEDLANDER, FRIEDLANDER & EARMAN PC  
1364 BEVERLY RD SUITE 201  
MCLEAN VA 22101

  
\_\_\_\_\_

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

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ruling.

6. CLAIM RE: BANK OF AMERICA, NA FK2 NATIONS BANK #8699

Darlene R. Layley  
Fiduciary COUNSEL FOR ADMINISTRATOR

CERTIFICATE OF SERVICE

I certify that on October 4, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class mail~~, postage prepaid, to the following claimants at the addresses shown  
below: FEDERAL EXPRESS

WELTMAN, WEINBERG & REIS CO, LPA  
323 W. 'LAKESIDE' AVE, SUITE 200  
CLEVELAND OH 44113

Darlene R. Layley

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

NOTICE

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6. Account # 654 265 9241 1988 - Home Equity Loan

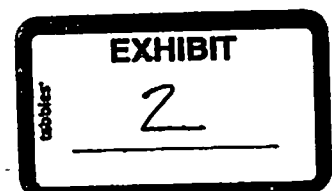
Darlene H. Layley  
Fiduciary Counsel for Fiduciary

CERTIFICATE OF SERVICE

I certify that on October 19, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class~~ mail, postage prepaid, to the following claimants at the addresses shown  
below: overnight

Wells Fargo Bank, NA  
PO Box 4233  
Portland OR 97208-4233

Darlene H. Layley



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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

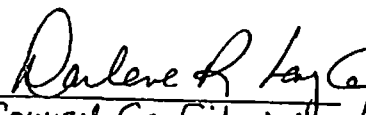
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6. ACCOUNT NUMBER 0128180923

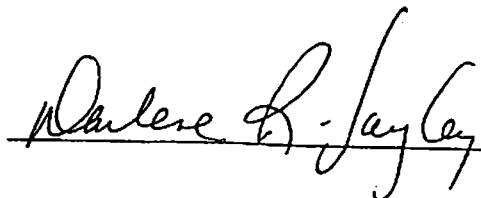
  
Fiduciary Counsel for Fiduciary

CERTIFICATE OF SERVICE

I certify that on October 19, 2012, a true and accurate copy of the foregoing was  
sent via ~~first-class~~ mail, postage prepaid, to the following claimants at the addresses shown  
below: ~~overnight~~

Bank of America  
Attn: Correspondence Unit  
PO Box 5170  
Simi Valley CA 92062

Bank of America  
Estate Unit  
4161 Piedmont Pkwy  
Greensboro NC 27410



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

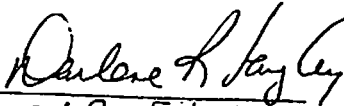
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6. ACCOUNT NUMBER 6899/013424399

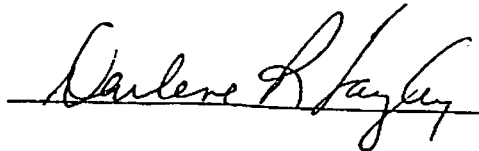
  
Fiduciary Counsel for Fiduciary

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Bank of America  
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IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS  
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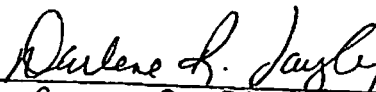
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6. Account Number 68991014219799

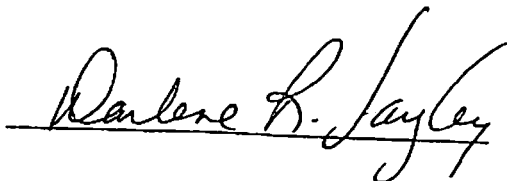
  
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CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

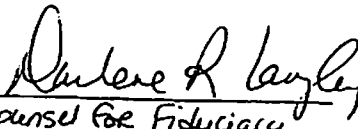
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ruling.
6. ACCOUNT NUMBER 68991012012399

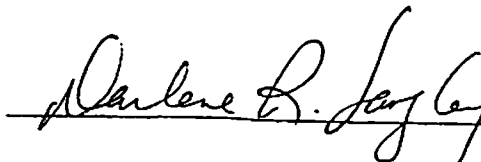
  
~~Fiduciary Counsel for Fiduciary~~

CERTIFICATE OF SERVICE

I certify that on October 19, 2012, a true and accurate copy of the foregoing was  
sent via ~~first class~~ <sup>overnight</sup> mail, postage prepaid, to the following claimants at the addresses shown  
below:

Bank of America  
Attn: Correspondence Unit  
PO Box 5170  
Simi Valley CA 92062

Bank of America  
Estate Unit  
4161 Piedmont Pkwy  
Greensboro NC 27410



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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

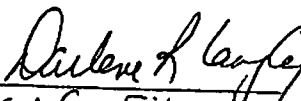
NOTICE

PLEASE TAKE NOTICE that the Commissioner of Accounts has set  
October 31, 2012, at 10:00 a.m.  
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In accordance with the provisions of Virginia Code § 64.2-550 and § 64.2-556, the  
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6. ACCOUNT NUMBER 0871212715

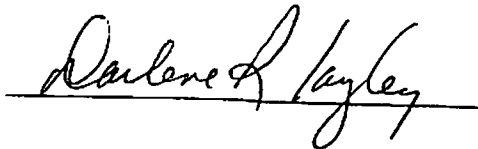
  
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IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS  
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

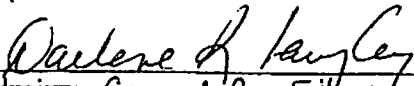
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6. Account Number 0871067675

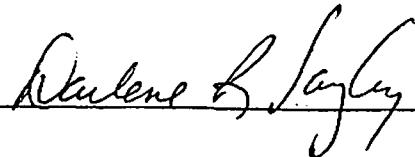
  
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IN THE OFFICE OF THE COMMISSIONER OF ACCOUNTS  
CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

IN RE: Estate of Robert Henry Kay, deceased  
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6. ACCOUNT NUMBER 68991018328699 - Bank of America

*Darlene L. Layley*  
Fiduciary Counsel for Fiduciary

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Greensboro NC 27410

DCM Services  
7601 Penn Ave S, Suite A600  
Minneapolis MN 55423

*Darlene L. Layley*

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

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6. ACCOUNT NUMBER 68991014045699 - Bank of America

*Darlene H. Layton*  
~~Fiduciary~~ Counsel for Fiduciary

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DCM Services  
7601 Penn Ave S, Suite A600  
Minneapolis MN 55423

*Darlene H. Layton*

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

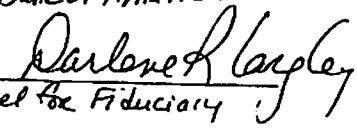
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6. Account Number 68991014382699 - Bank of America

  
Fiduciary Counsel for Fiduciary

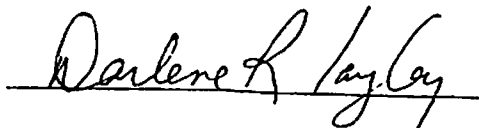
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Greensboro NC 27410

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

IN RE: Estate of Robert Henry Kay, deceased  
Fiduciary No. 2011-0000187

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6. ACCOUNT NUMBER ending in 9099- Bank of America

Darlene R. Layley  
Fiduciary Counsel for Fiduciary

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