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IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

In Re: Estate of Eric Dale Rudert, Deceased
Fiduciary Number FI-2008-0001516

Commissioner's Report
of Debts and Demands

RECEIVED JUL 01 2010

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

At the request of Rhonda J. Macdonald, attorney for the above estate, the undersigned gave the notice required under Virginia Code § 64.1-171, setting the 7th day of January, 2010, at 1:00 p.m. at the office of your commissioner in Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Eric Dale Rudert. Your commissioner provided Marguerite Chandler with notice of the hearing, a copy of which is attached hereto as Exhibit 1. At the said time and place, the said Rhonda J. Macdonald, together with Melissa Vinaya, executor for the estate, appeared on behalf of the estate. Marguerite Chandler, a claimant against the estate, and Kenneth L. Crosson, Ms. Chandler's counsel, appeared to substantiate Ms. Chandler's claim against the estate. No other person appeared to offer proof of any debts or demands against said estate.

Your commissioner convened the hearing on January 7, 2010 and continued the same to March 17, 2010 at 1:00 p.m. to allow the parties time to present additional evidence regarding Ms. Chandler's claim. On March 17, 2010 said Rhonda J. Macdonald, Melissa Vinaya, Kenneth L. Crosson, and Marguerite Chandler reappeared. Michelle Carpenter and Kathy M. Allen appeared as witnesses. Katherine M. Koppenhaver appeared as an expert forensic document examiner.

Ms. Chandler filed a claim against the estate for \$100,000 in connection with a promissory note allegedly executed by the decedent in connection with a real estate transaction. In addition, Ms. Chandler claimed ownership of \$29,381 in funds of which the estate took possession. The estate asserted that the promissory note was a forgery and presented expert testimony that at least some of the signatures in question were forged. Ms. Chandler presented evidence of the course of dealing between the parties over several years and of Mr. Rudert's knowledge of her use of and access to the funds in question.

After the hearings, the parties notified your commissioner that they were in the process of settling Ms. Chandler's claim against the estate and that they would notify your commissioner if the issue settled. Your



of Pages 11
WILL BK 00894 PG 1493
[Signature]

Fiduciary #: FI-2008-0001516
Date 07/19/2010
Estate: RUDERT, ERIC DALE
Recorded in
FAIRFAX COUNTY CIRCUIT COURT
TESTE: JOHN T. FREY

commissioner received a Settlement Agreement and Mutual Release on March 25, 2010, in which the parties agreed to a settlement. The Settlement Agreement called for payment to Ms. Chandler of \$56,881 in settlement of both claims against the estate.

The assets of the estate consisted of cash and personalty in the amount of \$43,075.93 and real estate assets in the amount \$620,000. The real estate assets were foreclosed and the estate has incurred significant legal bills in the administration of the estate. Your commissioner is of the opinion that the legal bills are reasonable in light of the complexity of the estate and the competing claims against it. The payment of the claim of Ms. Chandler will be funded in part by assets outside the probate estate. In addition, your commissioner finds that \$29,381 of such settlement payment represents the return of funds to Ms. Chandler that were not properly part of the estate in the first instance. Such payment is proper and is not subject to the priorities set forth in Virginia Code § 64.1-157 as the amount was not properly part of the probate estate. Your commissioner directs the estate to reflect the return of these funds as an adjustment on its account.

Based upon the representations of counsel for the estate, it would appear that legal fees, other proper costs of administration, and executor's fees would exhaust any remaining assets of the probate estate and that the settlement proceeds in excess of the return of the \$29,381 are to be paid from assets outside the probate estate. Based upon the foregoing, your commissioner is of the opinion that the Settlement Agreement is in the best interests of the estate and that it should be approved. The parties notified your commissioner that Ms. Chandler has been paid the settlement agreement amount. Therefore, your commissioner has marked Ms. Chandler's claim as settled and released in his office.

Your commissioner notes that the estate has paid funeral expenses in the amount of \$3,500, consistent with the limitation in Virginia Code § 64.1-157, and your commissioner finds that such payments are appropriate as priority 3 claims. Your commissioner also notes that the first account shows payment of certain pre-death expenses recorded in the decedent's bank account post-death, which are reductions in the gross estate rather than payments of debts of the decedent.

Finally, your commissioner notes that the executor has disclaimed certain interest in the Estate of Irma Langshaw pursuant to Virginia Code

§64.1-196.4.B, which is intended to allow such inheritance to pass directly to the decedent's heirs.¹

Virginia Code § 64.1-196.4(B) states:

Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity.

In *Abbot v. Willey*, 253 VA. 88, 479 S.E.2d 528 (1997), the Virginia Supreme Court had an opportunity to address whether Virginia law allows a person to disclaim an interest to the detriment of that person's creditors. In *Abbot*, the defendant disclaimed death benefits from a life insurance policy insuring her husband's life. The defendant's children received the death benefits and used the funds to support the defendant. Creditors of the defendant alleged the defendant's disclaimer constituted a fraudulent transfer or conveyance under Virginia Code § 55-80. Although decided under the former Virginia disclaimer statute, the Virginia Supreme Court confirmed the right of a beneficiary of life insurance death benefit proceeds to disclaim the life insurance death benefit proceeds in accordance with the then Virginia statute, even though such disclaimer is to the detriment of the beneficiary's creditors. The Court held that the exercise of the disclaimer right is not a fraudulent or voluntary conveyance as the disclaimer related back to the effective date of the policy and the disclaimant therefore acquired no interest in the insurance proceeds that was conveyed.

Virginia Code § 64.1-196.4.B grants to a personal representative the power to disclaim "any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity." The code section is substantially identical to section 2 of the Uniform Disclaimer of Property Interests Act. The Reporter's Notes for that section state that "The 1978 Uniform Acts added the personal representative of a decedent to the list of those who may disclaim in order to overcome the traditional view that the right to disclaim was a personal one that died with

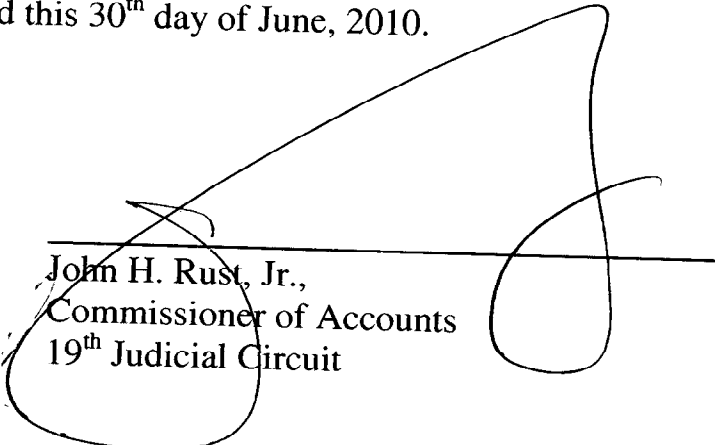
¹ The disclaimer, dated October 10, 2008, is of "the estate's interest in the estate of Irma Langshaw." Your commissioner expresses no opinion whether the disclaimer of the estate's interest is the same as the disclaimer of the decedent's interest.

the person entitled to disclaim." Therefore, your commissioner is of the opinion that the personal representative of a decedent in Virginia may disclaim an interest in property on behalf of the decedent. A disclaimer of the decedent, in proper form and executed by the personal representative, will be effective to disclaim the interest of the decedent in property as if the decedent had died immediately before the time of distribution. VA. CODE ANN. § 64.1-196.5.B.3(a). Therefore, your commissioner is of the opinion that the disclaimer made by the estate is valid and effective to disclaim any right of the estate to receive distributions from the Estate of Irma Langshaw.

The estate provided your commissioner with a list of additional claimants, a copy of which is attached hereto as Exhibit 2. At the hearing, the estate notified your commissioner that the inclusion of the ING account as a claimant was in error, as the account was a retirement account not otherwise a part of the probate estate. The estate did not provide the claimants with notice of the hearing; however, Virginia Code § 64.1-171 requires such notice only for disputed claims. The estate does not dispute the claims; however, the estate is insolvent and unable to pay such claims. Therefore, the claims are allowed in full as priority 9 creditors pursuant to Virginia Code § 64.1-157.

Subsequent to the hearing the Circuit Court of Fairfax filed a claim for \$113.10 for unpaid probate taxes. The claim is allowed in full as a priority 1 creditor. All other administrative expenses are given priority as priority 1 claims. Your commissioner finds that the administrative and funeral expenses of the estate have exhausted the estate of all assets. Therefore, no funds remain from which to satisfy the priority 9 creditors.

Respectfully submitted this 30th day of June, 2010.



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

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|------------------------------------|---------------------|
| Commissioner's Fee for this Report | \$500.00 |
| Publication costs | 10.00 |
| Wachovia Bank copy charges | 49.50 |
| <u>Subpoena Service Fees</u> | <u>540.00</u> |
| Total Amount Due | \$1,099.50 - UNPAID |

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2010, a true and correct copy of the above Commissioner's Report was mailed, first-class mail, postage prepaid, to the following persons at the addresses shown below:

Rhonda J. Macdonald
 Attorney at Law
 2071 Chain Bridge Rd., Ste 320
 Vienna, VA 22182

Melissa Vinaya
 6616 Comet Circle #107
 Springfield, VA 22150

Marguerite Chandler
 1305 Winterborne Court
 Herndon, VA 20170

Kenneth L. Crosson
 11350 Random Hills Rd.
 Suite 700
 Fairfax, VA 22030

Fairfax County Department of
 Housing and Community
 Development
 3700 Pender Drive
 Fairfax, VA 22030

Citi Cards
 P.O. Box 182564
 Columbus, OH 43218-2564

Department of Veterans Affairs
 Debt Management Center
 P.O. Box 11930
 St. Paul, MN 55111-0930

Georgetown University Hospital
 P.O. Box 631905
 Baltimore, MD 21263-1905

Wachovia Bank, N.A.
 P.O. Box 530554
 Atlanta, GA 30353-0554

HSBC Mortgage Corp. (USA)
 Suite 0241
 Buffalo, NY 14270-0241

Wachovia Bank FIA Card Services
P.O. Box 15726
Wilmington, DE 19886-5726

Wachovia Bank, N.A.
P.O. Box 96074
Charlotte, NC 28296-0074

Chase Bank
P.O. Box 15153
Wilmington, DE 19886-5153

United Mileage Plus
P.O. Box 15153
Wilmington, DE 19886-5153

FIA Card Services, N.A.
P.O. Box 15409
Wilmington, DE 19850

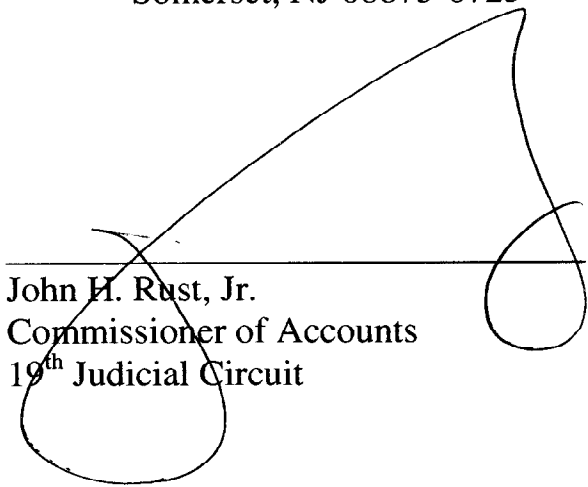
American Express
P.O. Box 650448
Dallas, TX 75265-0448

Wachovia Bank, N.A.
P.O. Box 13327
Roanoke, VA 24040-0001

Wachovia Bank, N.A.
NC8502
P.O. Box 563966
Charlotte, NC 28256-3966

Club Land'or (Nassau) Ltd.
4050 Innslake Drive
Suite 204
Glen Allen, VA 23060

ING
P.O. Box 6723
Somerset, NJ 08875-6723



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

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

Teste: JOHN T. FREY, Clerk

7-19-2010
Date


By: 
Deputy Clerk

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

IN RE: Estate of Eric Dale Rudert,)
Deceased) NOTICE
Fiduciary No. FI-2008-0001516)

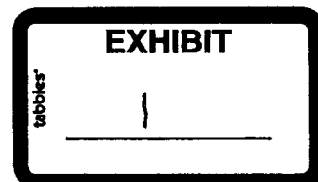
Pursuant to the provisions of §64.1-171 of the Code of Virginia, 1950, as amended, notice is hereby given that the undersigned Commissioner of Accounts has appointed the 7th day of January, 2010, at 1:00 P.M., at his office at 10555 Main Street, Suite #500, Fairfax, Virginia, as the time and place for receiving proof of debts and demands against the estate of Eric Dale Rudert, at the request of Rhonda J. Macdonald, attorney for said estate.

Given under my hand as Commissioner of Accounts this 3rd day of December, 2009.



John H. Rust, Jr.
Commissioner of Accounts for
Fairfax County, Virginia
8-4 jlt

JHRJ:jlt





John H. Rust, Jr.
Commissioner of Accounts

COMMONWEALTH OF VIRGINIA
CIRCUIT COURT OF FAIRFAX COUNTY
OFFICE OF THE COMMISSIONER OF ACCOUNTS
THE FAIRFAX BUILDING
10555 Main Street, Suite 500
Fairfax, Virginia 22030
703-667-4900



Joseph A. Barsanti
Deputy Commissioner

December 3, 2009

Marguerite Chandler
1305 Winterborne Ct.
Herndon, VA 20170

**RE: Estate of Eric Dale Rudert
Fiduciary No. FI-2008-0001516**

Dear Claimant:

Enclosed is a notice of a debts and demands hearing in the captioned estate at which your claim will be considered. Contested claims must be proven by satisfactory evidence. Contested claims not proven by satisfactory evidence are subject to being disallowed. A purpose of the hearing is to receive such evidence as you may choose to offer in support of your claim.

Very truly yours,

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

JHRJ/jlt

Enclosure

Eric Rudert

| Name of Company | Account # | Date of Last Statement | Amount Owed |
|--|----------------------|------------------------|-------------|
| Citi Cards P.O. Box 182564 Columbus, OH 43218-2564 | 54241807305341 92 | September, 2008 | \$9.95 |
| Department of Veterans Affairs Debt Management Center Bishop Henry Whipple Federal Building P.O. Box 11930 St. Paul, MN 55111-0930 | 25834556 | October, 2008 | \$520.00 |
| Georgetown University Hospital P.O. Box 631905 Baltimore, MD 21263-1905 | 7712192710 | June, 2008 | \$150.00 |
| Wachovia Bank, N.A. P.O. Box 530554 Atlanta, GA 30353-0554 | 32070100031375 8 | October, 2008 | \$253.10 |
| HSBC Mortgage Corporation (USA) Suite 0241 Buffalo, NY 14270-0241 | 5364810 | October, 2008 | \$4,026.21 |

EXHIBIT

tabber

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|---|----------------------|--------------------|-------------|
| Wachovia Bank FIA Card Services P.O. Box 15726 Wilmington, DE 19886-5726 | 42642983820515 33 | October, 2008 | \$481.00 |
| Wachovia Bank, N.A. P.O. Box 96074 Charlotte, NC 28296-0074 | 43865407128396 13 | October, 2008 | \$294.86 |
| Chase Bank P.O. Box 15153 Wilmington, DE 19886-5153 | 44171212171285 06 | October, 2008 | \$334.00 |
| United Mileage Plus P.O. Box 15153 Wilmington, DE 19886-5153 | 43885760324331 23 | October, 2008 | \$287.00 |
| FIA Card Services, N.A. P.O. Box 15409 Wilmington, DE 19850 | 54903551104442 66 | September, 2008 | \$24,736.35 |
| American Express P.O. Box 650448 Dallas, TX 75265-0448 | 37726427393100 3 | September, 2008 | \$0.00 |
| Wachovia Bank, N.A. P.O. Box 13327 Roanoke, VA 24040-0001 | 38654071906597 2 | 2007 | \$2,148.62 |
| Wachovia Bank, N.A. NC8502 P.O. Box 563966 Charlotte, NC 28256-3966 | 1010030216989 | September, 2008 | \$10.00 |

| | | | |
|--|-----------|---------------|--|
| Club Land'or (Nassau), Ltd. 4050 Innslake Drive Suite 204 Glen Allen, VA 23060 | 00158500R | October, 2008 | |
| ING P.O. Box 6723 Somerset, NJ 08875-6723 | 58880K | October, 2008 | |
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