

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In Re: Estate of : **Orphan's Court No. 41-08-0479**

S. DOROTHY GREEN :

OPINION AND ORDER

Sara Dorothy Green died on August 8, 2008 at the age of 81. Her Last Will and Testament dated March 27, 1991 was duly probated on September 12, 2008. Letters Testamentary were granted to Francis Green, Decedent's second alternate Executor under the Will. Decedent's husband and the named primary Executor under the Will had predeceased her.

Unfortunately, the subsequent administration of the estate was anything but routine. On May 20, 2011, the daughters of Decedent, Colleen Cahill and Linda Shump, filed a Petition to Compel the Executor to file an Accounting. On June 21, 2011, the Executor filed a Response to the Petition. On June 22, 2011, the daughters filed an Amended Petition to Compel. The estate filed its First and Partial Account on August 19, 2011. Objections were filed by the daughters on October 3, 2011. By Order dated December 19, 2011, a hearing on said Objections was stayed until further Order of Court and to allow the below-referenced matters to first be resolved.

Prior to her death, on October 15, 2007, Decedent executed and delivered a written Power of Attorney to her son, Clarence Michael Green. On April 18, 2011, daughters filed a Petition to Compel an Accounting by Agent under Power of Attorney alleging that the Power of Attorney misappropriated funds. On June 3,

2011, the Power of Attorney filed an Answer denying any wrongdoing.

On September 30, 2011, the Power of Attorney filed an Accounting for the period of October 17, 2007 through August 7, 2008. On November 4, 2011, daughters filed Objections to the Accounting. Subsequent discovery litigation ensued. An Order was entered on December 19, 2011 addressing the objections and discovery issues.

The First Amended Accounting was filed by the Power of Attorney on February 14, 2012. Objections were filed by the daughters on March 29, 2012. A subsequent First Amended Accounting was filed by the Power of Attorney on April 18, 2012. On April 24, 2012, the daughters again filed Objections. A Second Amended Accounting was filed by the Power of Attorney on June 11, 2012. Objections were filed by the daughters on June 18, 2012. A hearing on the Objections was held on July 18 and July 19, 2012.

At the hearing, the Court heard testimony from Decedent's four children including C. Michael Green, Agent under the Power of Attorney; Colleen M. Cahill; daughter and Petitioner; Linda L. Shump, daughter and Petitioner; and Francis Green, son and Executor. Numerous documents were offered and admitted as evidence including the following: written Power of Attorney and Acknowledgement dated October 15, 2007 (Petitioner's Exhibit 1); Accounting; First Amended Accounting and Second Amended Accounting of C. Michael Green, Agent under Power of Attorney respectively dated September 30, 2011, April 18, 2012, and June

11, 2012, collectively marked Petitioner's Exhibit 2; Jersey Shore State Bank account records regarding Account No.: 54-119 from 9-24-2007 through 1-22-2009 marked as Petitioner's Exhibit 3; Jersey Shore State Bank account records from Account No. 1366-203 from the period from September 10, 2007 through September 9, 2008 marked as Petitioner's Exhibit 4; Jersey Shore State Bank deposit records on Account No. 1366-203 from September 28, 2007 through August 14, 2008 marked as Petitioner's Exhibit 5; Knights of Columbus documents referencing Policy No's.: OOH91857 and OOH91375 collectively marked as Petitioner's Exhibit No. 6; marked calendar for the month of April, May and June 2008 marked as Petitioner's Exhibit No. 7; July 30, 2011 letter to Ms. Cahill from Michael Green marked as Petitioner's Exhibit 8; undated settlement proposal from Petitioners marked Respondent Exhibit 1; Jersey Shore State Bank Checking Transfer Credit slip dated March 13, 2008 marked as Respondent's Exhibit 2; Williamsport Teachers Credit Union statement for Account No. 1535 for a period from October 1, 2007 through December 31, 2007 marked Respondent Exhibit 3; Williamsport Teachers Credit Union statement on Account No.: 0396 for a period from October 1, 2007 to December 31, 2007 marked as Respondent's Exhibit 4; Williamsport Teacher Credit Union statement on Account No.: 0396 for a period from January 1, 2008 to March 31, 2008 marked as Respondent's Exhibit 5; and February 17, 2011 letters to Petitioners from Charles F. Greevy, III, Esquire and referenced attachments collectively marked as Respondent's Exhibit No. 6.

Paul Hohman, an individual who handled issues regarding Knights of Columbus insurance policies previously owned by the Decedent was subpoenaed to testify on behalf of Petitioners. The subpoena was sent to Joseph A. Niglio, Esquire, an attorney at the Legal Department of Knights of Columbus. Attorney Niglio had apparently agreed to accept service of the subpoena on Mr. Hohman's behalf. Apparently, however, there was some confusion and Mr. Hohman did not appear to testify. The Court contacted Mr. Hohman who agreed to provide testimony by deposition if necessary. The parties agreed to do so, the record was held open, Mr. Hohman's deposition was taken and the transcript was submitted.

The parties subsequently submitted Proposed Findings of Fact and Conclusions of Law. This matter is now ripe for a decision.

Petitioners claim that the Agent committed a breach of his fiduciary duties in several respects. They claim that the accounting failed to comply with the local rules, that the Agent failed to maintain receipts of expenditures that he made on behalf of the Decedent, that the Agent failed to account for the disposition of various forms of income that he received on behalf of the Decedent, that he failed to account for monthly rental income in the amount of \$650.00 that the Decedent received from two separate properties, that he failed to properly account for retirement checks, that he failed to account for dividends taken out on two different Knights of Columbus policies, that he failed to account for a federal tax return check in the amount of \$954.00, that he failed to account for a death benefit paid to the Decedent by

American General Insurance Company on behalf of the life of Decedent's husband, and that he generally failed to account for withdrawals from the Decedent's savings and checking account, credit card charges, ATM withdrawals and other transactions. While the Objections are numerous in detail, they generally allege that the Agent misappropriated his mother's assets for his own benefit. Instead of addressing the specific Objections which in large part are duplicitous, the Court will address the assets at issue which the Petitioners claim were misappropriated.

Among the assets allegedly misappropriated were the Decedent's retirement check, a table, rent from two separate properties, a tax refund check, withdrawals from ATM's, checks for cash taken out of the Decedent's checking account, and jewelry purchased by the Decedent.

Prior to addressing the specific claims, the Court deems it necessary to set forth some background regarding the Decedent and her spending habits. Such is helpful to an analysis of the issues involved in this litigation. The Decedent was described by her son, Francis, as well as her other children as a very generous woman. She "would always hand people money if she had it." She always offered to pay for the expenses of those assisting or visiting with her; she would pay for gas for the vehicle, pay for meals and simply give money for "expenses." She enjoyed gambling, shopping, visiting with her loved ones and being independent to the extent her health allowed her to be. She gambled at many different locations including but not limited to, Atlantic City, Mohegan Sun in Wilkes-Barre, PA and at a casino in Wilmington,

DE. She loved shopping for jewelry and clothing for herself and others. She always bought gifts for her children and grandchildren. While she apparently fought her cancer rather admirably, she was acutely aware of her prognosis and was not simply going to waste away. She was active until the end.

She was also apparently sure of her decisions and not very happy about being questioned on them. To argue with her, according to her son, Michael, was a “waste of time.” When questioned by her son, Francis, about obtaining visual access to her financial accounts, she was not at all happy.

Because she liked to shop, buy jewelry, buy clothes and pay for most items in cash, she liked to keep cash on her. She often times carried large sums of money with her. Furthermore, she always carried her ATM card although others needed to utilize the card for her in order to obtain money. She also carried her checkbook with her all of the time.

This background is important because it foretells how the future conduct of the Agent can be explained and justified. While the Agent certainly assisted the Decedent with her financial transactions, the Decedent never abrogated her power or authority. While she was dying of cancer and while the Agent was exercising some authority on her behalf, she still transferred monies between her accounts over the phone, debited monies on her own, she authorized others to use her ATM card and she generally directed how a vast majority of her financial transactions would take place. An example of her generosity and steadfastness with respect to her

finances, concerns her cleaning lady, Irene. For many years, the Decedent utilized Irene as the individual to clean her home. As Irene's age increased, her abilities lessened. Nonetheless, Decedent continued to allow Irene to clean her residence and continued to pay her. Moreover, while Decedent was either hospitalized or staying with her daughter, the Decedent directed her son to continue permitting Irene to clean and to get paid for her services.

One who seeks to surcharge a fiduciary bears the burden of proving that the fiduciary breached an applicable fiduciary duty. In Re: Estate of Stetson, 463 Pa. 64, 345 A.2d 679 (Pa. 1975); In Re: Estate of Genivia, 450 Pa. Super. 54, 675 A.2d 306, 311 (1996).

On the other hand, when a beneficiary has succeeded in proving that the fiduciary has committed a breach of duty and a related loss has occurred, the burden of proof shifts to the fiduciary to prove, as a matter of defense, that the loss would have occurred in the absence of the breach of duty. Stetson, 345 A.2d at 679. Where a significant discrepancy appears on the face of the record, the burden shifts to the fiduciary to present exculpatory evidence and avoid the surcharge. Genivia, 675 A.2d at 311. (Citing In Re: Estate of Lohm, 440 Pa. 268, 273, 269 A.2d 451, 454 (1970)). The Court has determined that the burden of proof under the circumstances of this case differs with respect to the particular assets allegedly misappropriated.

I. Retirement Checks

The retirement checks that the Decedent received amounted to

\$2,312.78 per month. With respect to the checks, the Petitioners have failed to prove that a significant discrepancy appears on the face of the record with respect to the checks. Accordingly, the Petitioners bear the burden of proving that the fiduciary breached an applicable duty and that a related loss has occurred.

The Court accepts as credible the Agent's testimony that he did not begin to exercise his powers under the Power of Attorney until late December 2007 after Christmas. Petitioners presented not one iota of evidence to the contrary.

The Decedent's practice as clearly evidenced by the retirement checks she received for the months of September, October and November of 2007 illustrated her disposing of her checks in vastly different manners. In September, she deposited a retirement check but obtained cash in the amount of \$1,500.00 from it. In October, she did essentially the same thing except withdrew \$1,000.00 instead of \$1,500.00. In November, the Decedent chose not to deposit a retirement check at all. Once the Agent exercised control over the retirement checks, his conduct was consistent with the past conduct of the Decedent and as credibly testified to by him, followed the directives of his mother. In December of 2007, the Agent deposited the entire check. In January, no check was deposited. The Agent credibly testified that his mother kept all of the check because she "wanted to." He also testified that towards the end of January, his mother and father went to Sam's Club and purchased numerous bulk items consistent with their past practice.

In February, the check was deposited in full by the Decedent. The

March check was deposited by the Agent, but \$2,000.00 was “kept back” as directed by the Decedent. The April 2008 check was deposited in full by the Agent. The May 2008 check was deposited by the Decedent who kept all but \$1,500.00 of it. The June 2008 check was also deposited by the Decedent who again held \$1,000.00 back.

Petitioners have clearly failed to support their claim that the Agent somehow took the checks, deposited them on behalf of his mother and then retained the monies for his own purposes. The Petitioners have also failed to prove that the Agent took any checks from his mother, cashed them and then used the proceeds for his own purchases. Petitioners presented no evidence whatsoever in support of their claims. Indeed, the evidence clearly supports the conclusion that the Agent followed his mother’s directives. With respect to those checks that he handled, the Agent acted entirely consistent with how the Decedent disposed of the checks that she handled.

II. Rent

Petitioners seek to surcharge Agent the total amount of \$7,150.00 for rental payments that the Decedent and her husband allegedly received but that Agent allegedly misappropriated for a period of eleven (11) months. Again, because no discrepancy appears on the face of the record, Petitioners must prove the breach and related loss.

Decedent and her husband owned two different rental properties, one known as the cabin and one known as the Country Club Lane property. It is

undisputed that the rent being paid on the cabin was \$200.00 per month and the rent being paid on the Country Club Lane property was \$450.00 per month.

With respect to the cabin rent, the Agent credibly testified that he never collected a “nickel” from the cabin. The money was paid directly to his parents and then to his mother following his father’s death on February 23, 2008. The Agent met the tenant on only one occasion. Following the payment of the rent for March 2008, the tenant advised the Decedent that the hot water heater had broken. An agreement was reached with the Agent’s input that in exchange for the tenant fixing the hot water heater, the tenant would receive credit against any outstanding rent. The Agent did eventually receive the receipt for the repairs, approximately \$400 plus dollars. As far as the Agent recalls, no monies were paid after the tenant was eventually evicted. The Williamsport Teachers Credit Union statements verified that \$200.00 was deposited in October 2007, November 2007, December 2007, January 2008 and March 2008. Clearly, there is no evidence that the Agent misappropriated the rental payments.

With respect to the Country Club Lane property, the Agent credibly testified that the tenant would pay the monthly rent of \$450.00 to each parent and then his mother alone by either check or cash. The Agent testified that he never collected the rent monies and candidly did not know “where they went.” He did, however, recall his father depositing at least a portion of the rent in his Williamsport Teachers Credit Union account. He drove his father to the credit union and stayed in the car while his father made the transaction. The credit union statement for the period from October

2007 to December 2007 verifies at least two deposits of \$400.00. Again, there is no evidence that the Agent misappropriated these rental payments for his own benefit. Indeed, the evidence is clear that he had no dealings whatsoever with them.

III. Tax Refund Check

The Petitioners claim that the Agent misappropriated a tax refund check in the amount of \$954.00. Petitioners claim that according to their parent's 2007 tax return, they were to receive a \$954.00 refund. Because Petitioners never saw a deposit record, they contend that Agent misappropriated the monies.

Agent credibly explained however that he drove his mother to an accounting firm located in Lock Haven, PA in order for her to prepare and file her taxes. He recalled the name of the firm as being "Emert & Associates." Agent recalled discussing with his mother the fact that there would be a \$900 plus dollar refund. His mother informed him that she applied the refund to her quarterly tax payments for the next year. The Agent explained that his mother "never paid taxes" on her income, choosing instead to pay quarterly thereby giving her greater access to more monies.

Again, not one shred of evidence was introduced to refute the Agent's explanation. Clearly, the parties had access to any subsequent returns by the Decedent and/or estate and could easily verify whether the refund was applied to a future quarterly payment. Petitioners have again failed to meet their burden.

IV. Jewelry

Petitioners allege that the Agent misappropriated jewelry that was

purchased by their mother. Petitioners allege that the value of the jewelry constituted \$5,500.00. The assumption that Petitioners make is that there are checks to their mother's jeweler representing payment for purchases of jewelry. Because they never saw this jewelry, Petitioners conclude that Agent must have misappropriated it.

The evidence was undisputed that during her life, the Decedent purchased jewelry not only for herself but for her loved ones including her children and grandchildren. The Decedent purchased her jewelry primarily from a Ruth Hoke. During the months from September of 2007 to December of 2007 before Agent exercised his authority under the Power of Attorney, the Decedent purchased jewelry from Ms. Hoke as follows: on September 16, 2007 in the amount of \$195.00 (Check No. 1242), on October 31, 2007 in the amount of \$575.00 (Check No. 1294) and on December 22, 2007 in the amount of \$450.00 (Check No. 1335).

From late December of 2007 (after Christmas) to the date of her death, the time period that the Agent exercised his powers under the Power of Attorney, there were two additional jewelry purchases. One on January 20, 2008 in the amount of \$295.00 (Check No. 1360) and one on April 30, 2008 in the amount of \$750.00 (Check No. 1402). Of these two purchases, the Agent signed only Check No. 1360. He credibly explained that the purchase was for jewelry for his mother consistent with his mother's past practice. The evidence clearly shows that during the months in question, the Decedent purchased jewelry, writing out and signing her own checks for jewelry for which she paid \$1,970.00. Agent wrote a check under his POA authority on one

occasion in January of 2008 for \$295.00 as directed by his mother. Petitioner's claim that the Agent took the jewelry because they did not see it, not only lacks merit but candidly casts suspicion on their entire claims. Their claim is so specious that the Court questions whether their objections are based on proof or baseless suspicions motivated by animus towards their brother. Petitioners claim a loss in jewelry of \$5,500.00. The only check written out by the Agent was for \$295.00. This fact clearly belies Petitioners' claim.

V. ATM's/Cash/Check Withdrawals

Petitioners next claim that the Agent should be surcharged \$36,000.00 for monies he misappropriated through ATM withdrawals, cash withdrawals and/or checks for services and/or goods that were utilized only for his purposes. Like the prior Objections, because there is no clear discrepancy on the record, the Petitioners bear the appropriate burden of proof with respect to the alleged breach of duty and losses.

The testimony and exhibits evidence that prior to the Agent exercising his authority under the Power of Attorney following Christmas of 2007, the Decedent would write numerous checks every month. These checks were not only for goods and services but also for family members. Many of the checks were for cash as well. In September, for example, the Decedent wrote three different checks for cash in the total

amount of \$1,300.00. She also wrote a check to Paul Shump in the amount of \$75.00. In October, she wrote four checks for cash totaling \$2,000.00. She also wrote numerous checks to family members totaling \$2,530.00 (Amy Cahill - \$100.00, Janet Green - \$150.00, Paul Shump - \$150.00, Frank Green - \$2,000.00, and Margaret Green - \$130.00). In November, Decedent wrote four different checks for cash totaling \$4,600.00 and checks to family members totaling \$1,490.00 (Sara Cahill - \$140.00, Paul Shump - \$100.00, Patricia Green - \$1,000.00, C. Michael Green - \$250.00). In December, there were no checks for cash but numerous checks to family members totaling \$1,140.00. She wrote three checks totaling \$1,000.00 (Frank Green - \$300.00, Paul Shump - \$100.00, Janet Green - \$600.00) and the Agent wrote one check totaling \$140.00 (Frank Green).

It is apparent that once the Agent began exercising his powers that his mother's spending was consistent with her prior habits. It is important to note that the testimony was uncontradicted regarding the mother's health from approximately January 2008 until she passed away in August. There were periods of time when Decedent was undergoing treatment, traveling and not feeling particularly well. She did recover, however, and became more active before again deteriorating prior to her death.

In January of 2008, all of Decedent's transactions were handled by her Agent. There were no cash withdrawals although there were ATM withdrawals for cash in the amount of \$950.00. Not only were all of these withdrawals credibly

explained by the Agent, but the total figure of \$950.00 is well below the average of close to \$2,000.00 that the Decedent was withdrawing for cash in the four previous months. In January, checks to family members were distributed in the total amount of \$425.00 (Colleen Cahill - \$350.00, Paul Shump - \$75.00).

In February, there were cash withdrawals through checks, debits or ATM transactions in the amount of \$2,400.00. Again these transactions were credibly explained by the Agent and consistent with Decedent's past spending habits. With respect to family members, one check was paid to Paul Shump in the amount of \$75.00 and signed by the Agent.

For the March 10, 2008 through April 9, 2008 period, there was one check for cash in the amount of \$400.00 signed by the Decedent and two ATM withdrawals, one in the amount of \$300.00 and the other in the amount of \$304.00. The larger amount was from an ATM machine in Atlantic City. Several aspects of these transactions are worth noting. Again, the total amount is far below the average that the Decedent was utilizing per month in late 2007. \$400.00 was actually taken out by the Decedent rather than the Agent. One of the ATM debits was in Atlantic City where the Decedent was gambling. The Agent credibly testified that he had no involvement whatsoever in this transaction. He surmised that it was to either pay for a room or that his mother lost monies gambling and needed money to return to Williamsport.

With respect to the April through early May period, there was only one

ATM withdrawal in the amount of \$300.00. This was conducted at an ATM machine in Media, PA where one of the Decedent's daughters live. Again, the Agent credibly testified that he had no involvement in this transaction. For the May to early June period, there were numerous transactions. There were ATM withdrawals made by the Agent on behalf of his mother in the total amount of \$1,050.00. All of these transactions were credibly explained by the Agent. Another ATM transaction was in the amount of \$300.00 at a machine in Ashton Township. Agent credibly testified that he had no involvement in this transaction.

There was a questioned debit on May 19, 2008 in the amount of \$2,000.00. At the time of the debit, the Decedent was residing with her daughter in Media. The Agent credibly testified that he was not involved with this debit but consistent with his mother's past practice, he believes that she conducted the transaction "via phone" and most likely needed the monies for various items.

Including the \$2,000.00 debit, the total amount debited in cash for this period was \$3,050.00. This total was clearly above the monthly average from the late 2007 months but well below the \$4,600.00 figure that the mother took out in cash in late November and early December. On December 7, 2007, the Decedent cashed a check for "cash" in the amount of \$2,500.00.

In May, the Decedent also wrote numerous checks to her family members totaling \$2,400.00 (Margaret Green - \$100.00, Donald Shump - \$800.00, Donald Shump - \$500.00, Linda Shump - \$500.00, Amy Cahill - \$500.00).

In June 10, 2008 through July 9, 2008, four withdrawals were made from ATM machines, none from Williamsport. They totaled \$1,204.50. Two were in Media, one was in Ashton Township and one was in Atlantic City. Agent credibly testified that he was “not there” and could not explain these transactions which on their face were conducted either directly by the Decedent or by other family members on her behalf.

During this time period again numerous checks were made to family members directly by the Decedent. These checks totaled \$4,950.00 (Paul Shump - \$100, 00, Karen Shump - \$1,000.00, Donald Shump - \$50.00, Donald Shump - \$1,000.00, Margaret Green - \$300.00 and Donald Shump - \$2,500.00).

In July, there were three ATM transactions, all in Williamsport, totaling \$670.00. All were credibly explained by the Agent. There were no checks to family members.

Finally, the account statement for the period from August 11, 2008 through September 9, 2008 showed two checks made to Linda Shump directly from the Decedent totaling \$3,500.00. One was on May 19, 2008 in the amount of \$2,000.00 and the other one was in the amount of \$1,500.00 on June 12, 2008.

In light of the Decedent’s payments to family members, it is inexplicable that the Petitioners contend that the Agent somehow diverted monies to himself. Over the many months in question, Paul Shump was paid \$1,900.00, Karen

Shump was paid \$1,000.00 and Petitioner Linda Shump was paid \$4,000.00. Donald Shump was paid \$3,550.00. Stella Cahill was paid \$140.00 while Amy Cahill was paid \$600.00. C. Michael Green was only paid \$250.00 while Patricia Green was paid \$1,000.00. Incidentally, this \$1,000.00 was verified as a loan to which at least \$250.00 was paid back. Frank Green was paid \$2,446.00 while Janet Green was paid \$750.00 and Margaret Green was paid \$530.00.

Summarizing the family payments, Petitioner Cahill's family including herself and two of her daughters were paid close to \$1,100.00. Petitioner Shump's family including herself, her husband and some of her children were paid approximately \$9,500.00. Executor Frank Green's family including himself and his wife were paid approximately \$3,200.00. Agent's family including his wife and his one daughter were paid approximately \$1,800.00.

Candidly, it is astonishing to the Court that given these figures, Petitioners claim misappropriation by the Agent. Clearly, all of Decedent's family members received monies from the Decedent. Moreover, and as testified to by both the Agent and Francis Green, there is no reason whatsoever why the Agent would have needed to misappropriate any monies. All he had to do was ask the Decedent. During the time period in question, Petitioner Shump herself received \$4,000.00 from her mother. Her husband received \$3,550.00. The claims of misappropriation not only beg logic but are scurrilous.

There are other matters of note with respect to this particular claim of

misappropriation. The Court finds as entirely credible the testimony of the Agent regarding the explanation of the various expenses paid out by him on his mother's behalf, the process by which bills were paid, and how the ATM card was utilized. The Court also finds credible the testimony of the Agent regarding his mother's handling of her various accounts. For example, it was not uncommon for the mother to conduct some of her banking via the telephone. Additionally, the Decedent had arranged for overdraft protection through the bank in which transfers were made from one account to the other to cover any overdrafts or expected expenses. Finally, and perhaps determinatively, the Decedent controlled and disbursed her monies as she desired. The expenditures made by the Agent were only as directed by his mother and/or only for her benefit.

VI. Miscellaneous Objections

Petitioners raised additional Objections with respect to miscellaneous items. Petitioners claim that Agent paid \$202.00 in March of 2008 for the restoration of a table. Petitioners claim that the Agent essentially stole the table after it was restored. Petitioners base their claim on the fact that they never saw the table. Agent testified that the table was at his parent's home. This claim by the Petitioners completely fails due to the lack of any evidence whatsoever. Again, the Court finds the Agent's testimony to be credible with respect to the restoration of the table and the fact that once it was restored he "left it" at the house.

Petitioners also assert that monies were misappropriated by payments

to CVS Pharmacy. They reference a July 22, 2008 check to CVS Pharmacy in the amount of \$75.64 that was written by Agent. Agent credibly explained, however, that often times family members would obtain the Decedent's medication. If needed, he would sign the check in blank and then give it to whomever was obtaining the medication.

Petitioners object as well to a July 30, 2008 check to CVS in the amount of \$45.71. On many different months, the Decedent purchased medication at CVS. Petitioners claim that the Agent misappropriated funds by writing checks to CVS is entirely without merit. The Agent's explanation is accepted as credible and is entirely consistent with the Decedent's other expenditures for medications.

Petitioners also claim that Agent improperly withdrew \$2,100.00 from the Teacher's Credit Union on February 27, 2008. Again, there is no evidence to support this claim. Agent credibly testified that his father died on February 23, 2008 and the money was taken out as directed by the Decedent in order to "bury" his father. This is the only occasion when he ever accessed the account. Agent testified that his father wanted a headstone and in order to do so it was required that four plots be purchased at the cemetery.

In conjunction with this, Petitioners also claim that the Agent improperly debited \$3,000.00 on March 11, 2008 and another \$8,000.00 on March 13, 2008. As Agent credibly testified, however, these monies were initially transferred and then debited to pay for his father's funeral expenses.

VII. Insurance Policies

Petitioners raise objections with respect to two life insurance policies through the Knights of Columbus. Petitioners claim that the Agent failed “to account for the dividends, taken out on Policy No’s. 01514748 and 00891372.” Petitioners claim damages in the amount of \$3,756.00 with respect to Policy No. 01514748 and \$3,722.00 to Policy No. 00H91372.

According to the Agent, his mother wanted to close out life insurance policies that her and her late husband had through the Knights of Columbus. She thought that she needed the money. She contacted the Knights of Columbus on her own in March of 2008. The Agent assisted his mother in arranging for an appointment with the Knights of Columbus representative. On either the last Monday or second to last Monday in June of 2008, the representative visited at the Decedent’s home. The Agent was sure that the meeting took place during this time period because it was between his mother’s medical treatments and a July 4 wedding that his mother was planning on attending. The meeting was set for noon but the representative did not arrive until approximately 2:30 p.m.

At the meeting, the Decedent insisted that she wanted the accounts closed. At the time, the Agent knew that the mother had policies but did not know much more about them. The initial discussion did not go well. The representative was insistent on keeping the policies despite the Decedent’s wishes. The Agent eventually stepped in and demanded that the policies be surrendered and the accounts closed.

Because, however, the Agent had to go to football weight training, he requested that the representative provide him with the documents that he would need to sign. The Agent signed approximately four documents which were blank other than his signature. The Agent indicated as follows: "If I am going to do this, I've got to do this now."

At the time the Agent signed the documents, he believed that the policies were in his mother's name and that he was signing what he needed to in order to surrender the policies and close the accounts.

In late July, the Agent was contacted by the Knights of Columbus representative. A call was made to the house and the representative indicated that there were other documents that needed to be signed. The representative came to the house and met with the Decedent and the Agent. The Agent signed the documents that were presented to him.

Subsequently, the Agent started receiving checks from the Knights of Columbus. These checks first came the Friday before his mother died. He was aware that his mother was in "really poor shape." He held on to the checks but at a meeting of the siblings prior to the funeral, the Agent handed the checks to his siblings.

Previously, Agent had begun receiving bills on loans taken out on the policies. He investigated the matter and realized that "he screwed up" and made a mistake. He started paying the bills. He was not sure what exactly to do under the circumstances which is why he was paying the bills. He had been previously accused

by his siblings of stealing from his mother. Among other things, the Agent received threats that the legal authorities would be called, that he would be put in jail, and that his life would be ruined.

Subsequently, he tried to rectify the matter by having the policies reinstated and transferred to his sisters but his sisters refused to do so.

According to Mr. Hohman, he met with Decedent and the Agent on two occasions at Decedent's home. The purpose of the meetings was to execute the necessary documents to borrow against Decedent's life insurance policies. There were medical bills that needed to be paid and monies were needed from the policies.

Mr. Green ultimately signed numerous documents including three Absolute Assignments of Contract transferring ownership of the policies to him, and at least two Requests for Life Policy Values.

Petitioners offered in evidence numerous documents regarding Policy Nos. OOH91857 and OOH91375. Mr. Hohman's deposition transcript also attaches documents regarding Policy Nos. 00N66141, 01514748 and 00H91372. These documents included three Absolute Assignment of Contract forms signed by the Agent as well as three Requests for Life Policy Value also signed by the Agent. The date of the signatures is not entirely established. Two Assignments were apparently notarized on July 11, 2008, with the other being notarized on February 4, 2009. The Requests for Life Policy Values were dated July 23, 2008 and December 12, 2008 respectively. On the one Assignment of Contract, Linda Shump's name appeared

although she credibly testified that it was not her handwriting. That forged signature is dated May 19, 2008. On the other Assignment of Contract form, Colleen Cahill's forged signature is dated May 19, 2008. She credibly testified that it was not her signature.

The effect of the signed documents was a transfer from the owners of said policies, the Petitioners, to the Agent. Petitioners' Exhibit 8 is a letter authored by Agent to Petitioner Cahill dated July 30, 2009. He admits not reading the paperwork. The Agent reiterated his statement that "mom" wanted to cash in the policies and wanted the checks sent to him. Instead of closing out the policies, the paperwork borrowed against them. He admitted that he "panicked" and paid the premium. He also admitted to signing "Colleen's name." Nonetheless, he also admitted to trying to resolve the issue and offered to cooperate fully to make things correct.

The Court has great concern regarding the propriety of these transfers. The Agent's testimony differs significantly from Mr. Hohman's testimony. Indeed, depending on who is telling the truth, the Agent may have liability for any losses sustained.

Unfortunately, there are three factors that cause the Court to deny the Objections. With respect to Policy Nos. 00H91375, 00N66141 and 00H91857, there is no evidence whatsoever that the Knights of Columbus contracts at issue were owned by the Decedent or that the Agent dealt with them as Power of Attorney for his mother. Indeed, the assignments transfer ownership from the Agent's sisters to

himself. Secondly, the assignee's signature is in the Agent's name individually and not as a Power of Attorney. Lastly, and with respect to Policy No's. 01514748 and 00H91372, there is no evidence of misappropriation by the Agent or damages to the deceased.

Obviously, this is a matter outside the scope of the Objections to the Accounting. Instead it is a civil matter to be litigated between the sisters individually and Mr. Green individually.

Conclusion

The Petitioners have failed in meeting their required burden with respect to their Objections. Indeed, the complete lack of any proof by Petitioners might appear to warrant sanctions. After thorough consideration, however, it is clear to the Court that this litigation was in large part due to the Agent's failure to comply with his record keeping and disclosure obligations as he agreed under the Power of Attorney. Agent was clearly not a "detail man" and his lack of attention and inability to provide appropriate records and accounting information precipitated this litigation. As indicated throughout, however, Petitioners' claims fail for lack of proof. The Court cannot act on suspicion but must weight the evidence objectively. There is insufficient evidence to support Petitioners' claims and accordingly their Objections shall be denied.

ORDER

AND NOW, this _____ day of _____, 2012,
following a hearing, argument and the submission of Findings of Fact and
Conclusions of Law, Petitioners' Objections to the Accounting of C. Michael Green as
Agent under Power of Attorney are **DENIED and DISMISSED**.

By The Court,

Marc F. Lovecchio, Judge

cc: W. Jeffrey Yates, Esquire
Andrea P. Pulizzi, Esquire
Charles F. Greevy, III, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File