

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : ORPHANS' COURT DIVISION
:
ESTATE OF WELLARD R. GUFFY : 41-12-0298

OPINION AND ORDER

Wellard Raymond Guffy died on February 10, 2012 of cardiopulmonary arrest at the age of 85. He had executed a Last Will and Testament dated December 27, 2011. Pursuant to his Will, he devised all of his estate to the co-trustees named and appointed under the Declaration of Trust known as the Wellard Raymond Living Trust (Trust), also dated December 27, 2011. As well, pursuant to his Will, he named his niece, Mozelle Snyder, to be Executor. He noted that if she was unable or unwilling to serve, his nephew, William Randall Colyer, would be the named Executor. Previously, by Power of Attorney dated February 3, 2010 Mr. Guffy authorized Mr. Colyer to act as his agent.

Mr. Colyer petitioned for a Grant of Letters and was named Executor on June 5, 2012. He filed an Estate Inheritance Tax Return on July 12, 2012 which included a copy of the Trust. The co-trustees named under the Trust were Mr. Guffy and Ms. Snyder.

On September 27, 2013, Alfred Kaufman, a trust beneficiary, filed a Petition for a Trust Accounting. On November 4, 2013, Ethel Lucas, by her Power of Attorney, Trudy Fields, and Margaret Stryker, filed a Petition for both an Estate and Trust accounting. By Order of Court dated December 31, 2013, it was directed that

Mr. Colyer, in his capacity as Agent, Trustee and Executor, file accountings no later than February 1, 2014. Mr. Colyer subsequently filed purported accountings but by Order of Court dated March 3, 2014, following the filing of a Petition for Sanctions and an argument on such, the Court directed that supplemental accountings be filed no later than April 4, 2014 because the first filings were “entirely incomplete” and failed to comply with the mandates of the Pennsylvania Rules of Orphan’s Court.

On May 6, 2014, the Estate of Ms. Lucas, who had since passed away, by her Executrix, Ms. Fields, and Ms. Stryker (hereinafter Petitioners), filed a Petition to Remove Mr. Colyer as the Executor and Trustee. A conference was held on June 25, 2014. For purposes of obtaining Estate and Trust information and by Order dated June 25, 2014, the Court temporarily appointed Ms. Fields, Ms. Stryker and Mr. Dennis Stalker as limited co-executors and co-trustees. Mr. Colyer was directed to make himself available for a discovery deposition. The Court also permitted the parties to engage in additional discovery until September 30, 2014. By subsequent Order, the discovery deadline was extended to November 14, 2014.

On October 29, 2014, Petitioners (Mr. Stalker joined with Ms. Stryker and Ms. Fields) filed an Amended Petition for Removal of Mr. Colyer as Trustee and Executor. On November 18, 2014, Mr. Colyer filed a response requesting the Court to dismiss the Removal Petitions.

The first hearing on the Petitions was scheduled for January 27, 2015 but was continued via consent of the parties. The deposition of Mr. Colyer took place

on October 10, 2014. The first hearing in this matter took place on March 17, 2015. At this hearing, Trudy Fields testified.

The next hearing was held during the entire day on May 6, 2015. At this hearing, Trudy Fields completed her testimony, and Margaret Stryker, James Pede, Kenneth Snyder and William Colyer all testified. The final hearing was held on July 16, 2015. Mr. Colyer's testimony was completed at this hearing. As well, Donald Colyer testified.

At the conclusion of the hearing, the Court directed the parties to submit Briefs addressing the issues in dispute and the parties' positions with respect to said issues. The Briefs were timely filed. Petitioners filed their Brief on or about August 4, 2015 while Respondent Mr. Colyer filed his Brief on August 25, 2015. Unfortunately, the hard copies of the Briefs were not provided to the Court. On or about September 1, 2015, the Court contacted counsel and learned that the Briefs had been filed. Counsel subsequently emailed copies of the Briefs to the Court. This matter is now ripe for decision.

Numerous issues were raised by Petitioners in their respective Petitions with respect to Mr. Colyer continuing to act as a fiduciary. Petitioners alleged that he breached his fiduciary duties as a Power of Attorney in the following particulars:

- (1) Mr. Colyer failed to transfer approximately \$90,000.00 in life insurance proceeds to the Trust, contrary to Mr. Guffy's directives and in favor of Mr. Colyer's mother;

(2) Mr. Colyer accepted a gift of a Toyota Prius within one year of Mr. Guffy's death and failed to include this in the Inheritance Tax Return; and

(3) Mr. Colyer advised and assisted Mr. Guffy in purchasing investments which were not in Mr. Guffy's best interests;

Petitioners also alleged that Mr. Colyer breached his duties in his capacity as Executor and Trustee in the following particulars:

(1) Not including saving bonds, or cash if liquidated, worth approximately \$400,000.00 in the estate and/or trust;

(2) Arranging for Mr. Guffy to purchase a \$350,000.00 annuity at age 84;

(3) Failing to have an accurate understanding of Mr. Guffy's assets, which were more toward a one million dollar plus figure rather than \$450,000.00;

(4) Allowing Mr. Guffy to purchase annuities, establish the trust and gift the Prius all when Mr. Guffy had a diagnosis of Alzheimer's, cognitive difficulty and/or a deteriorating mental condition. Petitioners allege that Mr. Colyer "should have done more to protect" Mr. Guffy;

(5) Mr. Colyer should have demanded that the life insurance

proceeds be paid over to the trust and by not doing so, there was a conflict of interest;

- (6) Mr. Colyer failed to notify beneficiaries of the resignation of Mozelle Snyder as trustee as required. Along with this, he failed to provide any notice of Schedule A of the Trust;
- (7) Mr. Colyer paid himself traveling expenses for numerous trips when he could not explain or justify expenditures and received monies for expenses before his date of appointment;
- (8) Mr. Colyer filed improper accountings;
- (9) Mr. Colyer failed to appear at court hearings, was non-responsive and not cooperative;
- (10) Mr. Colyer failed to serve the beneficiaries with a second accounting; and
- (11) The second accounting that was filed was insufficient and improper.

Contrary to Petitioners' contentions, Respondent Colyer submits that all actions were taken with the consent and approval of Mr. Guffy and not the result of any individual exercise of discretion.

Among other things, Mr. Colyer contends that Mr. Guffy decided not to transfer the life insurance proceeds and was aware that the amounts were not equal. As well, Mr. Guffy's one sister gave approximately \$38,000.00 to his other sister. The

gifts that were made by Mr. Guffy were made to others as well and each gift receiver or donee would be responsible to pay their own tax. Mr. Colyer did not provide any specific advice to Mr. Guffy. Mr. Guffy made his own decisions and Mr. Colyer did not act as power of attorney during any of the determinative decisions. Mr. Colyer had no idea of there being any savings bonds and did not cash in any bonds.

Further, Mr. Colyer did not arrange for the decedent to purchase the annuity. This was made as a result of Mr. Guffy's decision and no one else. Mr. Colyer never made any inquiry of Mr. Guffy regarding the extent of his financial affairs and based solely on bits and pieces of information that Mr. Guffy had provided from time to time, Mr. Colyer estimated his assets to be worth approximately \$450,000.00.

Mr. Colyer submits that he had no duty or obligation to ascertain the full amount of Mr. Guffy's assets during Mr. Guffy's lifetime since he was never required to do so.

Mr. Colyer admits that an Ameriprise annuity was purchased in October of 2011. He further admits that the Trust was signed on December 27, 2011 and that the gift of the Toyota Prius occurred on or about October 22, 2011. He denies however that he was aware that Mr. Guffy had any diagnosis of any cognitive disease or difficulty at the time of those actions. According to Mr. Colyer, Mr. Guffy appeared to be in full control of his decisions and acted accordingly.

With respect to the life insurance beneficiary designations, Mr. Colyer

contends that when Mr. Guffy got the forms to send to the insurance company to change the beneficiary designations, he changed his mind and decided he was not going to do so and preferred that the life insurance beneficiaries remain as his two sisters. The letters to change the beneficiaries' designations were not signed by Mr. Guffy nor mailed to the life insurance companies. As well, the life insurance proceeds were paid to Ethel Lucas based on beneficiary designations previously filed with the insurance companies. As noted earlier, a portion of the life insurance proceeds that were paid to Pearl Colyer was subsequently paid for the benefit of Ethel Lucas in the form of paying off her mortgage in an effort to equalize the amounts of life insurance proceeds delivered to the two of them.

Mr. Colyer further contends that he took over as a successor trustee at the same time he was appointed as the executor of Mr. Guffy's estate which occurred on June 12, 2012. He admits that he was paid for certain expenses incurred while assisting Mozelle Snyder in the performance of her duties and that he submitted an accounting of these expenses and reimbursement checks that were signed by Ms. Snyder. He denies that his trips to the Williamsport area were for non-estate or non-trust business; he contends that he was assisting Mozelle Snyder at her request in the performance of her ongoing duties as the trustee of the Trust.

Trudy Fields testified before the Court on March 17, 2015. She is the niece of the deceased, Wellard Guffy. Her mother and Mr. Guffy were brother and sister.

She testified about numerous concerns she had with respect to her cousin, Mr. Colyer, administering the estate of Mr. Guffy.

First, she was concerned that Mr. Colyer was pressuring her mother, Ethel, to sign “stuff.” A written letter was sent to Mr. Colyer instructing him not to be alone with Ethel.

Second, she was concerned that the main beneficiaries of the Trust were not the same beneficiaries as she was previously told were the beneficiaries by her cousin, Ms. Snyder.

Third, she expected Mr. Guffy’s estate to be valued at “over a million dollars” and not what was set forth on the Inheritance Tax Return, namely \$365,000.00.

Fourth, she questioned how Mr. Guffy, when he was 85 years old, while Mr. Colyer was advising him and perhaps acting under a power of attorney, purchased an annuity that stretched out over ten plus years. She indicated that Mr. Guffy was not “that type of person.” Mr. Guffy liked banks and savings.

Lastly, following her mom passing away, Mr. Colyer was very secretive and did not share information with her or others with respect to Mr. Guffy’s estate. She expected information because once her mom died, she became a beneficiary.

On cross-examination, she explained further some of her concerns and discussed as well some of the claims set forth in her Petition to Remove Mr. Colyer.

While the Petition alleged that the estate should have included savings bonds which Ms. Fields explained Mr. Guffy purchased for years at the rate of one per month, she conceded that pursuant to information obtained from the Department of the Treasury that all of them were cashed in prior to 2012.

She had concerns regarding life insurance benefits. Yet, she knew that her mother's outstanding mortgage of more than \$38,000.00 was paid by Mr. Colyer in July of 2012 apparently from life insurance benefits. As well, her mom received \$6,800.00 in December of 2012 and \$7,906.98 in November of 2013. She wasn't sure if these amounts were an accurate percentage of her mom's "share." She had a difficult time explaining all of her concerns regarding the life insurance proceeds. She simply explained that "they were never given a good accounting."

She could not explain the basis upon which she contended that the estate had assets that were not listed. She admitted that she did not consider the annuity value. She conceded she did not know "what was in the estate."

Regarding Mr. Guffy's mental state, she "questioned" if he knew what he was signing in December of 2011 when he signed the trust documents. She was aware that Mr. Guffy executed one Power of Attorney in February 2010 but was not aware that any other powers of attorney were executed.

At the May 6, 2015 hearing, Ms. Fields again testified.

She became aware of the fact that savings bonds previously owned by Mr. Guffy were redeemed between October of 2006 and May of 2010 with the total

face amount being \$134,600.00 (Petitioners' Exhibit 1). Despite these redemptions, there were no correlating documents which would have reflected deposits of the redeemed monies. As well, none of the monies were referenced in the estate inventory.

Margaret Stryker next testified on behalf of Petitioners.

She knew Mr. Guffy since 1966. She was previously married to Don Colyer, Mr. Guffy's nephew.

From November of 2006 to January of 2007, she temporarily relocated to Maryland to assist Mr. Guffy with his terminally ill wife. She became acquainted with all of Mr. Guffy's friends living in Maryland.

Mr. Guffy's wife died on December 24, 2006. After her death, his physical health deteriorated and his "mental capacities were not all there."

Soon, however, after the death of his wife (Actually, Mr. Guffy's second wife), he started dating a woman who became his third wife. They married some time in 2007. Unfortunately, this wife contracted pancreatic cancer.

Ms. Stryker moved in with Mr. Guffy and his third wife while his third wife was in hospice. She eventually died in June of 2009.

The death of Mr. Guffy's third wife "took him very hard." According to Ms. Stryker, "he really felt this." His mental capabilities "really went downhill", his physical capabilities rapidly deteriorated and he even had a "minor stroke."

A couple months after his third wife died, Ms. Stryker went to visit Mr. Guffy. He was "not the man she remembered." He was very weak, his hair was

disheveled, he did not have his teeth in and he actually had two different shoes on the “wrong feet.” She had significant concerns about him living alone. He was far different from the way he had been in the past.

Approximately a year after his third wife died, Mr. Guffy and Ms. Stryker started discussing alternative living arrangements for Mr. Guffy. Prior to his third wife’s death, he and his wife had looked at other apartments as well as a place at Vantage retirement community. Apparently, the down payment was more than \$175,000.00.

Mr. Guffy was looking forward to moving. He was socially active previously. While he was very frugal, he agreed he had to move.

Occasionally, Ms. Stryker would discuss finances with Mr. Guffy. According to her, he always carried with him large amounts of cash. He told her he had money in his safe. He in fact showed her the safe many times. While she never saw coins or cash, she did see jewelry and a “tall stack of savings bonds.”

In the fall of 2010, she had a long telephone conversation with Mr. Guffy. At first, he indicated that he could not afford to go to Vantage. Afterwards, he changed his mind and indicated that he would spend the money “the way he wanted to.” A few days later, however, he called indicating to her that he could not go and that he could not afford it.

Regarding moving to Williamsport, Mr. Guffy told Ms. Stryker that he did not want to go “with family where they would treat him like 7 instead of 80.”

Surprisingly, however, one day she received a call from Mr. Guffy indicating that his house was sold and that he was moving to Williamsport.

In May of 2011, a handful of months after Mr. Guffy moved to Williamsport, Ms. Stryker visited with Mr. Guffy. She described his mental capacities as “going downhill” and not “mentally there.”

In the fall of 2011, she had a further opportunity to visit with Mr. Guffy. He “seemed very confused.” As well, he had a difficult time in conversing.

After Mr. Guffy’s death, Mr. Colyer prepared binders which were purported to contain all of the relevant documentation with respect to the Trust. Ms. Stryker saw a binder at Ms. Snyder’s home which was similar to a binder produced in Court (Petitioners’ Exhibit 3; Respondent’s Exhibit 27). According to what Ms. Snyder told Ms. Stryker, Mr. Colyer told her that it included “all of the relevant documents.”

Ms. Stryker testified that she never received any formal notice of an estate being raised on behalf of Mr. Guffy nor any other estate documents until she received a May 30, 2012 letter from Mr. Colyer referencing a release and covenant not to sue (Petitioners’ Exhibit 5).

With respect to some of the particular concerns involving Mr. Colyer’s alleged misconduct, Ms. Stryker testified that the purchase of the annuity in October of 2011 was essentially inexplicable. According to her, Mr. Guffy was 84 years old, he didn’t need an income. He was still receiving approximately \$100,000.00 a year

through his pension. He was not paying any expenses at his sister's home and his health was such that he was not likely to live another 11 years.

Ms. Stryker had significant concerns about estate and/or trust assets not being listed on tax returns or not being provided to the beneficiaries. For example, the large annuity of approximately \$365,000.00 was not referenced on the Inheritance Tax Return while a smaller annuity in the amount of \$100,000.00 was listed. The Prius transfer was not listed on the Inheritance Tax Return. Schedule A, which listed the trust property (Petitioners' Exhibit 6; Respondent's Exhibit 10) was not in the trust binder although it should have been. As well, a bill of transfer and notice of assignment (Petitioners' Exhibit 7; Respondent's Exhibit 11) was not included in the trust binder although it should have been.

Moreover, despite the fact that documents directed certain transfers, it appeared to her that Mr. Colyer failed to follow the directives. In the bill of transfer document, for example, the life insurance policies were to be placed in the trust. Instead, the life insurance proceeds went directly to the listed beneficiaries.

Ms. Stryker also expressed concern over the fact that the estate/trust paid for expenses that should not have been paid for such as vet bills and travel expenses. Moreover, she questioned how the estate value could be listed on the Inheritance Tax Returns at so much less than what the figure was, as provided to Mr. Colyer via information that was sent to Mr. Guffy at Mr. Colyer's North Carolina address. She referenced Ameriprise financial statements which indicated an individual

net worth of \$1,200,000.00. (Petitioners' Exhibits 8 and 9).

Ms. Stryker conceded that Mr. Colyer made distributions to the beneficiaries in July and December of 2012, as well as November of 2013, totaling thousands of dollars.

She acknowledged that she was aware that Mr. Guffy made a down payment of approximately \$18,000.00 with respect to the Vantage Retirement Community. As well, she acknowledged that it was not a "quick decision" by Mr. Guffy to sell his house. It was "not a spur of the moment decision." The house had gotten too big for him and he was considering his options. He often times discussed things in depth with Ms. Stryker and he talked to his sisters almost every day.

James Pede next testified on behalf of the Petitioners. He met Mr. Guffy when in 2001, he and his then wife Esther, moved "into the neighborhood" in Maryland.

According to Mr. Pede, Mr. Guffy soon became a "leader" in the neighborhood. He was very active, very fit and had a big circle of social friends. He was always very concerned with his finances. Mr. Pede and Mr. Guffy went to financial seminars and had meetings with financial advisors "to learn and share information."

As time went on and after Esther died, Mr. Guffy deteriorated both physically and cognitively. His grooming "was not so good." He was disheveled and "began to experience difficulties." Following the death of his next wife, he

deteriorated even more. His driving abilities worsened. He was in two accidents. He had difficulties walking and overall his deterioration was of great concern to Mr. Pede.

According to Mr. Pede, he “wasn’t too aware at the time but looking back, Mr. Guffy appeared to have dementia.”

Mr. Guffy confided that he would feel stupid. On one occasion, he almost killed himself forgetting how to properly use a tractor. He could “no longer make things work.”

As the months went on, Mr. Pede and Mr. Guffy discussed alternative living arrangements such as continuing care, campuses or assisted living facilities. Mr. Guffy finally settled on Vantage which was within five miles of his home. Mr. Guffy expressed to Mr. Pede that he “never wanted to come home to Williamsport.” They even came up with a code whereas if Mr. Guffy went to Williamsport, he could communicate it to Mr. Pede and Mr. Pede would come and get him.

Mr. Pede was convinced that given Mr. Guffy’s income and assets, he could live comfortably at Vantage for life. He had enough cash to buy in. He had income to afford rent and he also had the luxury of profits from the sale of his home.

Surprisingly, the next morning after Mr. Guffy chose Vantage and met with a representative and Mr. Pede, and actually wrote a deposit check, Ms. Styker called and said that Mr. Guffy cancelled the contract. Mr. Guffy never spoke to Mr. Pede about it and never explained his reasons.

According to Mr. Pede, Mr. Colyer “took the bull by the horns” and

“brought [Mr. Guffy] north” to Williamspoort.

Subsequent to the relocation, Mr. Pede received an email from Mr. Colyer regarding the annuity. Mr. Pede was shocked because there was no reason for an annuity. According to him, the only thing that an annuity would do would be to make the financial institution representative “richer.” According to Mr. Pede, Mr. Guffy was not a risk-taker.

On cross-examination, Mr. Pede conceded that he knew Rita, who was a female friend of Mr. Guffy. He indicated that Mr. Guffy had an “inappropriate relationship with Rita.” He spoke with Mr. Guffy about his concerns which included “questionable purchases for Rita.”

Ken Snyder next testified on behalf of the Petitioners. He was married to Mozelle Snyder through the time of her death. He knew both Mr. Guffy and Mr. Colyer.

His ex-wife, Mozelle Snyder was co-power of attorney for Mr. Guffy but she did not handle any matters because “Mr. Colyer said he’d do it.”

According to Mr. Snyder, while Mr. Colyer did send in 2012 a beneficiary check from the estate/trust, he did not send Ms. Snyder a check in November of 2013. Because Mozelle Snyder died on November 6, 2013, Mr. Colyer took the position that her share would be transferred to the others.

He confirmed as well that the trust binder that was provided to Petitioners was in the same condition as it was when it was given to Ms. Snyder by

Mr. Colyer years before.

Mr. Colyer next testified on his own behalf. Prior to referencing his testimony in court, the Court will reference his deposition testimony. On October 10, 2014, a deposition was taken of Mr. Colyer. Pursuant to the Rules of Civil Procedure, the Court may consider his statements as set forth in his deposition.

Mr. Colyer, at the time, resided in Charlotte, NC for the past 18 years. By way of education, he received a BA in Human Resources and a BS in Education. He also studied for a Masters in Guidance and Counseling.

While he was then retired, he worked for JC Penny's for 27 years previously and then for Belk, also a large department store for 10 years.

He had no education or training in financial investments although while working, he invested in the company savings and profit sharing plans. For the past 20 years, he utilized the services of Tom Nelson, of Ameriprise in Youngstown, OH as his financial advisor. Mr. Nelson was given a lot of "latitude" with respect to investments.

He is the nephew of Mr. Guffy. Following Mr. Guffy's retirement after almost 40 years in the Navy, Mr. Guffy lived in Ellicot City, MD and then moved to Pennsylvania.

In 2009 and 2010, while Mr. Guffy lived in Maryland, he and Mr. Colyer spoke occasionally. During this time even though Mr. Guffy was in his early 80's, he was in very good physical shape and very active. Mr. Colyer was not aware

of Mr. Guffy being diagnosed with dementia or Alzheimer's and in fact described him as being mentally sharp and on top of his finances.

Pursuant to a written financial Power of Attorney dated February 3, 2010, Mr. Guffy appointed both Mr. Colyer and his cousin, Mozelle Snyder as his attorneys in fact. According to Mr. Colyer, Mr. Guffy was looking for someone to serve as an executor for his Will and Mr. Colyer suggested both a financial and a medical power of attorney for Mr. Guffy. Mr. Guffy wanted both Mr. Colyer and Ms. Snyder to serve as his financial power of attorney. At the time Mr. Guffy signed the financial Power of Attorney, his mind was good. He had no problems in terms of memory or being influenced by other people. For the most part, he was firm in his opinions.

Mr. Colyer was, however, concerned that Mr. Guffy might be improperly influenced or taken advantage of by Rita who he had a relationship with after the death of Mr. Guffy's "last wife." Mr. Colyer became aware that Mr. Guffy's codicil to his Will named "Rita" as a beneficiary.

Mr. Colyer understood that Mr. Guffy prepared all of his own estate documents including any Wills and codicils. When the financial Power of Attorney was prepared and signed in February of 2010, Mr. Colyer "believes" he would have been aware of Mr. Guffy's wishes pursuant to his Will and possibly any codicils. Mr. Colyer, however, never saw Mr. Guffy's previous Will.

Despite Mr. Colyer being named financial power of attorney, Mr.

Guffy did not discuss his finances with Mr. Colyer. They never discussed Mr. Guffy's assets. He was aware that Mr. Guffy's post-retirement income was approximately \$100,000.00 per year from the Navy. He knew as well that Mr. Guffy had "some CD's in a bank in Baltimore" or "Elicott City." He was aware further that Mr. Guffy owned his own home and that there was no mortgage on it.

Despite Mr. Colyer being named financial power of attorney for Mr. Guffy, Mr. Guffy continued to handle his own financial affairs. Mr. Colyer never used the financial power of attorney and was not aware of Ms. Snyder ever using her power of attorney.

Mr. Guffy moved to Pennsylvania on or about January 21, 2011. Mr. Colyer was not involved in any discussions or decision regarding Mr. Guffy's relocation. He had "no input" in that decision. He was under the belief that his mother, Pearl, and his Aunt Ethel were the "moving forces" being Mr. Guffy moving to Pennsylvania. He understood that once Mr. Guffy decided to move, he was going to stay with Mr. Colyer's mother temporarily until he found a suitable place to live on his own.

While Mr. Colyer was aware that Mr. Guffy might be interested in at least one senior living community, he was not involved in any decisions regarding such. Mr. Guffy utilized a moving company to transport his furniture and other personal items to Pennsylvania from Maryland. Mr. Colyer helped him on one occasion and was present at the closing when Mr. Guffy sold his Maryland house. He

did not see and was not aware of Mr. Guffy owning any savings bonds, coins or safe contents. He testified that the open safe was empty.

Probably, at Mr. Guffy's request, Mr. Colyer took him to a Morgan Stanley office to open a cash management account with the proceeds of the sale of his Maryland house or \$365,578.03. This was after Mr. Guffy moved to Pennsylvania. Mr. Colyer could not recall if he was named as a signatory to that account.

When Mr. Guffy first moved to Pennsylvania with Mr. Colyer's mother, he was still in good physical condition, mentally sharp and handled all of his financial affairs. Mr. Colyer described Mr. Guffy as an extremely conservative investor. Without talking to Mr. Colyer, Mr. Guffy subsequently decided to close the Morgan Stanley account and transfer the money to Susquehanna Bank. According to what Mr. Guffy told Mr. Colyer afterwards "he did not want to be speculating with his funds and closed the account and moved it."

Afterwards, both gentlemen had been discussing other investments. Mr. Colyer was aware that the money was in the Susquehanna Bank savings account and asked Mr. Guffy if he ever considered other investments. They discussed annuities. Mr. Guffy expressed that he was too old to "get one." He "challenged" Mr. Colyer to obtain information regarding an annuity. Mr. Colyer spoke with his investment advisor at Ameriprise, Tom Nelson, and confirmed that Mr. Guffy could purchase an annuity. Mr. Colyer asked if an annuity was available and after that "for the most part", Mr. Guffy took it from there. The terms interested Mr. Guffy because it was a

guaranteed annuity, he wouldn't lose any money and if he outlived the ten-year period, he would still get the annual payments. Mr. Guffy decided to purchase the annuity and relevant information was exchanged between Mr. Nelson and Mr. Guffy with "some assistance" by Mr. Colyer.

Mr. Colyer became aware that there were three accounts established through Ameriprise. During the general timeframe of establishing these accounts, "October of 2011", Mr. Guffy's mind was "still sharp" and Mr. Guffy was making his financial decisions "himself." Of the three accounts, one was an annuity, which was purchased for \$354,889.22. With respect to this, Mr. Colyer was aware both of the purchase price and the fact that over ten years the annuity would pay out "the exact same amount." He was aware that the annuity was not structured to provide any interest income. Choosing the annuity "was all Mr. Guffy's decision." Mr. Guffy chose this type of investment because "it was guaranteed that he couldn't lose money." Further, if he outlived it, he would get approximately \$34,000.00 a year and if he didn't outlive it, the money would go to his beneficiaries.

The second account was a fixed annuity which paid 5 ½ percent the first year and which was funded with approximately \$100,000.00. Apparently, the purchase of this annuity was for diversification. The idea came from Mr. Nelson and was discussed directly with Mr. Guffy. Mr. Colyer did not recall discussing this account with Mr. Guffy.

The third account was a brokerage account funded by approximately

\$30,000.00. Mr. Colyer could not recall having any discussions with Mr. Guffy regarding this account nor could he recall any specifics regarding the account, although he had contact with Mr. Nelson regarding the purchase of a government bond.

After the Ameriprise accounts were established, Mr. Guffy discussed the idea of a living trust with his sister Pearl and then asked Mr. Colyer “his advice.” Mr. Colyer advised that “they were a good idea” because there was no probate, the terms were relatively confidential and the assets would be titled in the name of the trust.

Mr. Colyer confirmed that the value of Mr. Guffy’s Ameriprise accounts at the time of Mr. Guffy’s death were “pretty close” to \$471,000.00.

Approximately four months before he passed, Mr. Guffy created his estate documents through the Legal Zoom website utilizing Mr. Colyer’s Legal Zoom account. Mr. Colyer was not aware of Mr. Guffy having any diagnosis of Alzheimer’s during this time. The Will and Trust were signed on December 27, 2011 and Mr. Guffy “very much” understood everything he was signing. Mr. Colyer assisted Mr. Guffy in inputting the information to prepare the documents. Mr. Guffy gave Mr. Colyer “directives” with respect to the Will and codicil. He believes he inputted the information with the same beneficiaries and percentages. The Trust was directed by Mr. Guffy to “mirror” his then current Will. As well, and despite Mr. Guffy staying in touch with his friend Rita against others’ wishes, he wanted her excluded from his

beneficiaries. It also did not include Trudy Fields.

With respect to the Trust document, there was never any other version naming different beneficiaries, from the one in existence and signed by Mr. Guffy on December 27, 2011. Mr. Colyer never saw a Trust document naming as beneficiaries Trudy Fields, William Lucas, Rita Troche or the “dog Sam.” When the Trust was completed, per instructions from Legal Zoom, Mr. Colyer sent form notice letters to financial and investment institutions. The purpose was to direct the institutions to change the accounts to the name of the Living Trust. When all of the documents were completed, Mr. Colyer prepared a white binder of relevant documents and provided such to Ms. Snyder. He also kept a binder for himself.

Mr. Guffy also had life insurance policies on his own life. He did not want them to be put in the Trust. The only two beneficiaries were his sisters, Ethel and Pearl. Pearl was the beneficiary for the vast majority of the life insurance proceeds. Mr. Guffy was clear in his intent that the life insurance policies not go into the Trust. Mr. Colyer never saw the document titled “Bill of Transfer.” He did, however, believe that he sent out assignment letters to the life insurance companies.

Mr. Guffy did make a gift to Mr. Colyer. He gave Mr. Colyer the 2006 Toyota Prius. He also gave \$5,000.00 to Mozelle Snyder.

Mr. Guffy kept his own checkbook ledger. With respect to one ledger entry which was assumed to reflect a loan for the Prius, Mr. Colyer indicated that it reflected a loan to “Tyler” to buy an auto.

Regarding the administration of the estate, Mozelle Snyder relinquished her responsibility as executor and trustee by a signed written document. Mr. Colyer did not recall that the Trust document required 30 days' notice to beneficiaries for a Trustee's resignation. Neither he nor Ms. Snyder sent such a notice letter.

With respect to estate expenses, he explained why the vet bill was an estate expense. It was Mr. Guffy's dog. He also explained why travel expenses incurred on February 9 through February 16, 2012, February 28, 2012 to March 3, 2012, March 24 to March 28, 2012, June 5 to June 8, 2012, July 11 to July 15, 2012, and August 11 to August 13, 2012 were estate expenses. He specified that they all involved estate and trust work.

He also explained in detail paying off the mortgage for his Aunt Ethel. This was prompted by Trudy Fields. Mr. Colyer discussed it with his mother Pearl. He then lent Pearl the money from the estate, she paid the mortgage for Ethel and when Pearl received life insurance proceeds, they paid back to the estate the amount of \$38,000.00.

The Court will next reference Mr. Colyer's testimony taken at the May 6, 2015 hearing. The direct examination of Mr. Colyer focused on specific areas of dispute.

With respect to the safe, Mr. Colyer testified that in January prior to Mr. Guffy moving to Pennsylvania, Mr. Colyer had gone to Mr. Guffy's house to

“help him get the house ready for sale.” They walked by the safe at which time Mr. Guffy said “there’s the safe.” On January 19, the day before Mr. Guffy moved, he took Mr. Colyer downstairs, opened up the safe and told him that he wanted him to see that “the safe is empty.” He had no “idea” of what Mr. Guffy kept in the safe if anything.

With respect to the savings bond issue, Mr. Colyer testified that prior to the October Petition being filed in this matter he provided to Mr. Stalker income tax returns for 2007, 2008 and 2009 that were filed by Mr. Guffy and which Mr. Colyer found in Mr. Guffy’s possessions. As well, he provided to Mr. Stalker an electronic filing document for 2010. All of these documents clearly reflected the redemption of savings bonds.

Further, Mr. Colyer indicated that after the issue of the alleged missing savings bonds was discovered, he submitted a claim to the Department of Treasury through his attorney. (Respondent’s Exhibit 5). Following his deposition when he was first provided with a list of alleged missing savings bonds, he made another request to the Department of Treasury dated October 14, 2014. (Respondent’s Exhibit No. 6).

In response to his requests, the Department indicated “that they could not locate any opened unredeemed bonds under the social security number of Wellard Raymond Guffy.” Mr. Colyer was also informed that previously a request was made by Margaret Stryker, Dennis Stalker and Trudy Fields of which he was not made aware. Mr. Colyer referenced numerous documents verifying that approximately 180

savings bonds over a substantial period of time, taken out by Mr. Guffy with various beneficiaries, were in fact redeemed. (Respondent's Exhibits 6, 7, 8 and 9).

Mr. Colyer testified that he had no information as to Mr. Guffy possessing savings bonds, redeeming savings bonds or what he might have done with money from any redemptions. He began investigating the matter once he became aware of the Petition to Remove him as a fiduciary.

The next issue addressed during Mr. Colyer's testimony concerned the annuities. Mr. Colyer was aware that he and Mozelle Snyder were named as co-agents via a February 3, 2010 Power of Attorney executed by Mr. Guffy. He adamantly denied ever using the document to convey any assets or to transfer any assets that belonged to Mr. Guffy.

With respect to Mr. Guffy's move to Williamsport from Maryland, it was never discussed between them except for Mr. Guffy telling Mr. Colyer that he was going to move to Williamsport and live with his sister Pearl, Mr. Colyer's mother, on a temporary basis until he found something else that suited him.

After the closing on Mr. Guffy's house in Maryland, Mr. Guffy received approximately \$355,000.00. Mr. Colyer drove him to Williamsport. The next day they visited with a representative of Morgan Stanley. Morgan Stanley, which has an office in Williamsport, has handled investments for Pearl for many years.

According to Mr. Colyer, there was a brief conversation about the type of investments Mr. Guffy was interested in. Given that he was unsure, he simply

opened a money market account and deposited the check. It was agreed that after Mr. Guffy “got settled in” they would get back together and start to review options and make decisions. At that point, Mr. Colyer returned to North Carolina to his home.

Two or three months later when Mr. Colyer had returned to Williamsport to visit with his mother, he learned from Mr. Guffy that he closed the Morgan Stanley money market account and moved the monies to Susquehanna Bank and purchased CD’s. Mr. Colyer had no knowledge of, let alone participation in, that transaction.

While Mr. Colyer and Mr. Guffy were discussing the transfer, Mr. Guffy said that he wanted the monies invested in an annuity. When Mr. Colyer asked why, Mr. Guffy said “because it is safe and that’s what I want to do.” However, Mr. Guffy related that he had been told that he was too old to purchase an annuity.

Mr. Colyer offered assistance to Mr. Guffy by utilizing his financial advisor, Tom Nelson, at Ameriprise. Mr. Colyer contacted Mr. Nelson and explained the circumstances. Specifically, he asked if it was possible for Mr. Guffy to get a guaranteed annuity to which Mr. Nelson said yes. He supplied Mr. Guffy’s name and telephone number to Mr. Nelson and asked Mr. Nelson to contact Mr. Guffy to “see what his particular interests are and proceed.”

Following Mr. Guffy’s death, Mr. Colyer located “paperwork” with respect to the annuity. Marked as Respondent’s Exhibit 9 (second exhibit 9) was a several page document entitled “Immediate Annuity Illustration.” It provided several

options for Mr. Guffy to consider. Mr. Colyer indicated that Mr. Guffy initialed the one option entitled “Single Life Annuity with Installment Refund.” Mr. Colyer had no knowledge of either the document or the decision by Mr. Guffy to choose this option allegedly in September of 2011, the date set forth on the front page of the document.

While Mr. Colyer apparently was not present for Mr. Guffy’s decision to purchase any annuity, he subsequently had conversations with Mr. Guffy regarding the annuities that were purchased.

Mr. Colyer was under the understanding that Mr. Guffy purchased two annuities. The one larger annuity was guaranteed for ten years. Mr. Guffy chose this because he liked being guaranteed \$34,000.00 plus per year as long as he lived. While Mr. Guffy expected to live more than ten years, he was also happy with the provision that if he died before the ten years, the payments would continue. According to Mr. Colyer, Mr. Guffy “wanted a guarantee that whatever he put in, he was going to get back out no matter what.”

The second annuity was described as a fixed annuity. That had the ability to generate some income for Mr. Guffy while he was alive.

The paperwork concerning these two annuities was submitted in evidence as Respondent’s Exhibits 10 and 11. The date on the respective documents was the same, October 6, 2011. Mr. Colyer recognized Mr. Guffy’s signature on the documents and was adamant that he had nothing to do with the signing of either document. At no time whatsoever did Mr. Guffy ever inquire of Mr. Colyer as to

whether he should purchase any annuity. Conversely, Mr. Colyer never told Mr. Guffy what he should or should not do with respect to any annuities. Mr. Colyer was completely unaware of the content of any conversations between Mr. Guffy and Mr. Nelson. Mr. Colyer further testified that he had no role in entering into the life annuity contract “seeing that the premium was delivered or anything like that.” (See Respondent’s Exhibit 12).

Regarding the second annuity, Mr. Colyer’s knowledge of the relevant paperwork came about after Mr. Guffy died. He researched the second annuity after Mr. Guffy’s death and determined that the money to fund such came from two different accounts that Mr. Guffy closed; one at PNC Bank and one at Columbia Bank.

Mr. Colyer was also aware that Mr. Guffy funded a traditional brokerage account for \$50,000.00. He denied having any involvement with the selection of what may have been placed in that brokerage account or when it was so placed.

Regarding in general the annuities, Mr. Guffy’s goal was to preserve the capital and to provide planning for his estate. Mr. Colyer believed that the annuities were consistent with Mr. Guffy’s goals.

Moving to other areas in dispute, Mr. Colyer agreed that Mr. Guffy “liked to give away his money.” He had similar concerns to those of Mr. Pede with respect to substantial amount of monies being given to Rita.

Concerns were made regarding alleged missing gold coins, jewelry and

perhaps other personal possessions. Mr. Colyer was not aware of any such personal possessions and in fact, all of Mr. Guffy's personal household items or possessions were stored at Roan's Transfer and Storage Company in Williamsport. He produced a bill and storage inventory sheet marked as Respondent's Exhibit 14. A decision was eventually made to distribute all of the items in storage to the heirs. On February 23, 2012, all of the relatives came to the storage facility and essentially took what they wanted.

A few months afterwards, Mr. Colyer and Ms. Snyder gathered Mr. Guffy's Navy memorabilia, took pictures, cataloged them and sent the information off to the Navy museum in either Baltimore or Washington. Eventually, it was boxed up and shipped off.

Mr. Colyer testified that he was in Williamsport on many occasions prior to actually being sworn in as the fiduciary for the estate, handling the estate related matters.

With respect to the trust document and how it came about, one summer, Mr. Colyer was visiting his mother. Mr. Colyer, Mr. Guffy and Mr. Colyer's mother were sitting at a table discussing her Living Trust. Actually, Mr. Colyer's mother had a Living Trust that was prepared by an attorney and Mr. Colyer had a Living Trust that was set up through Legal Zoom. Mr. Guffy, who was listening to the conversation and asking questions, asked if Mr. Colyer could help him set up a Trust through Legal Zoom because "he had a dislike for attorneys."

According to Mr. Colyer, it was a fairly straightforward process essentially filling in the blanks. Mr. Guffy indicated that he wanted the Trust to mirror his present Will. He gave Mr. Colyer a copy of the Will. Mr. Colyer then took the Will back to North Carolina and submitted the information to Legal Zoom. The Will had named beneficiaries with certain percentages. Legal Zoom then presented Mr. Colyer with a binder of documents. He then made arrangements with Mr. Guffy as to a time when they could be signed. Mr. Colyer traveled to Williamsport and the documents were signed on December 27, 2011.

Prior to signing the documents, Mr. Colyer returned Mr. Guffy's Will. Mr. Guffy opened up the book and went through it page by page, line by line, to make sure that the documents mirrored the Will.

Regarding page 12 or what has been previously referenced as "Schedule A", looking through the binder he found it "back in the financial section" out of place. He did not know how it got there because once it was signed, Mr. Guffy took it home and it was "his."

In the binder there were documents and/or letters that were to be sent to business institutes and/or enterprises such as Ameriprise and Susquehanna Bank. Those letters were signed and delivered. There were also forms to send to the life insurance company. Mr. Colyer had no idea what happened to those forms. He does not know why they were never signed. Apparently, documents were eventually signed by Mr. Guffy but never sent. These matters were never discussed with Mr. Colyer and

he had nothing to do with it. As he explained, “you didn’t make him do anything. He did what he determined what he wanted to do in his mind.”

Following Mr. Guffy’s death, an issue arose as to whether the life insurance proceeds should have been paid into the Trust or to the named beneficiaries.

Mr. Colyer was aware that Mr. Guffy never notified any of the life insurance companies to change their beneficiaries. The beneficiaries were his two sisters, Ethel and Pearl. 80% of the proceeds were to go to Pearl and 20% were to go to Ethel. More specifically, and contrary to his estimated percentages, Pearl was to receive \$85,000.00 and Ethel was to receive \$5,000.00.

The actual distribution of the life insurance monies was not as clear-cut. Because there were concerns about Ethel wasting monies as previously expressed by her daughter as well as Mr. Guffy and as known by Mr. Colyer, the Trust paid off Ethel’s mortgage in the amount of approximately \$35,000.00. When the life insurance proceeds came in, Pearl deposited \$85,000.00. In essence, Pearl gave to her sister Ethel \$35,000.00 of the life insurance proceeds. Even though the direct beneficiary distribution was \$85,000.00 to Pearl and \$5,000.00 to Ethel, the de facto distribution was \$40,000.00 to Ethel and \$50,000.00 to Pearl. Of significance to Mr. Colyer is that all of the beneficiaries were aware that this was being done and no one objected. Ms. Fields did not object and Ms. Lucas did not object.

Within five months of Mr. Guffy’s death, by letter dated July 18, 2012 to all of the beneficiaries as named in the Trust, a distribution was provided. The

amounts ranged from as low as \$13,500.00 to a high of \$38,500.00. Information was provided as well to the beneficiaries that they would be receiving annuity payments each year through 2021. (Respondent's Exhibit 17).

Referencing other more isolated issues, Mr. Colyer testified that after Mozelle Snyder died, it was his understanding that the remaining annuity payments would go to the remaining beneficiaries and that essentially no distributions would be made to Ms. Snyder's estate or her heirs.

With respect to Mr. Colyer retaining the services of an attorney to assist in his fiduciary responsibilities, his present attorney was not retained until the summer of 2014. Previously, Mr. Colyer and his wife went to see attorney Andrea Pulizzi in connection with another matter concerning Mr. Colyer's mother. At the initial meeting, a discussion ensued about the estate/trust matters involved in this case.

The first Petition was filed in November of 2013 and Mr. Colyer tried to provide Ms. Pulizzi with the information that he believed included "everything she was looking for." He produced a several page document responding to a Petition for Sanctions. The document was dated June 17, 2014 and the hearing was scheduled for June 25, 2014. Respondent's Exhibit 20 includes a June 17, 2014 letter to Ms. Pulizzi, a November 4, 2013 response to a Petition for Sanctions, a March 7, 2014 Order, a May 6, 2014 Response to Petition and a May 6, 2014 Response. Mr. Colyer testified that he was providing information to Ms. Pulizzi "all along throughout this time period from November 2013 through June of 2014 and that he relied upon her to

prepare the accounting.” After June of 2014, he continued to provide information to her. He has no explanation as to why Ms. Pulizzi did not file the accounting that needed to be filed. If information was requested from Ms. Pulizzi, it was provided. As to some requests, there was no information to be provided. For example, he never charged the estate for any of the “time” that he spent in connection with his estate/trust responsibilities.

With the assistance of his present attorney, Mr. Guffy prepared a “Combined Amended First and Final Account of William R. Colyer, Trustee and Executor of the Trust and Estate of Wellard R. Guffy, deceased.” The account is stated to December 31, 2014 and was marked as Respondent’s Exhibit 19.

Mr. Colyer’s testimony continued at the July 16, 2015 hearing. The relevant documents confirmed that upon Mr. Guffy’s sale of his Maryland residence, he received \$365,578.03. Those exact monies were deposited in a Morgan Stanley account on February 25, 2011. (Respondent’s Exhibits 21, 22 and 23).

Selective issues were discussed including the Ameriprise account and documentation that was sent to Mr. Guffy, care of Mr. Colyer’s address (Respondent’s Exhibit 24) and the fact that Mr. Guffy was willing to take the risk given the reward of getting back all of his monies either directly or to his beneficiaries over the next ten years.

With respect to Attorney Pulizzi, Mr. Colyer produced numerous items of correspondence including emails, letters and other documents purporting to

demonstrate his attention to the obligations of his position as a fiduciary and what can best be described as Ms. Pulizzi's inattention to such or inability to properly represent Mr. Colyer's interests as said fiduciary. (Respondent's Exhibit 29).

Mr. Colyer concluded his direct testimony by noting that he was willing, able and interested in continuing on as the fiduciary "because his uncle asked him to do it." He explained that he did the best that he could and that he did "exactly what he was asked to do" by his uncle.

Mr. Colyer expressed that he was responsible, thorough, fastidious, prompt and kept good records. He was involved in many small details and handled both significant as well as insignificant matters. For example, he was involved in magazine subscription refunds and medical bill payment refunds.

Once the accusations were made against him, he was extremely surprised stating that they came "right out of left field." He asked his attorney Ms. Pulizzi to get specific information regarding the accusations but it was not until his deposition that he became aware of what he was being accused of.

On cross-examination, Mr. Colyer made several admissions. He admitted that the estate was not advertised nor were the required notices sent. He made assumptions concerning responsibilities that were simply not correct. He admitted being a bit too casual with his decisions. While he may have read certain documents, he missed obvious and important details. He admitted that he "should have caught" things. He admitted not talking with beneficiaries about certain decisions and

could not explain why.

An abstract of the Trust was sent to the beneficiaries but never the actual Trust document. While he noticed at some point that Schedule A was not attached, he never sent it to the beneficiaries.

He attempted to pay a sanctions order from an estate checking account. Unfortunately, he “just remembered now” that he was to pay personally.

In reviewing Mr. Colyer’s deposition and hearing testimony as a whole, the Court finds him not to be credible. His claimed ignorance of critical and material facts is simply not believable. It makes no sense to the Court that after being appointed Mr. Guffy’s financial power of attorney, that Mr. Guffy failed to discuss any of his financial decisions with Mr. Colyer. It is entirely disingenuous for Mr. Colyer to argue that Mr. Guffy relied on him for so much advice, but that Mr. Guffy kept him in the dark regarding life impacting decisions. Further, much of the documentation belies Mr. Colyer’s assertions. The emails between Mr. Nelson and Mr. Colyer are telling. Further, it is not a coincidence that the relevant paperwork was all addressed to Mr. Guffy at Mr. Colyer’s North Carolina address. Finally, Mr. Colyer’s insistence to Ms. Snyder that he would “do it” as the Power of Attorney speaks volumes. The scenario that the Court sees is not Mr. Guffy keeping Mr. Colyer in the dark but rather Mr. Colyer knowing much more than he claims, seeking exclusive control and keeping everyone else in the dark.

Donald Colyer, although not represented, requested to testify. The

Court permitted him to do so. He is Mr. Colyer's brother and an estate/trust beneficiary.

He testified that after Mr. Guffy moved to Williamsport, he visited with him on different occasions. One time, they visited with a financial advisor but the expected return on the appropriate \$200,000.00 investment was not guaranteed.

On another occasion, he was with Mr. Guffy. They discussed what would happen if Mr. Guffy's sisters died while the estate was pending. Mr. Guffy said the heirs of his sisters would not receive any estate proceeds. They would go "to the remaining people on the short list." He confirmed that Ms. Stryker was on this "short list."

One day they discussed Rita. Based on what Mr. Guffy said, Mr. Colyer believes that over time Mr. Guffy gave her "twenty thousand, if not more."

Interestingly, Mr. Colyer conceded that his brother "didn't have a law degree that maybe he should have had to begin with." Yet, "if he had gone to a lawyer and said here handle this, how much money would a lawyer have taken in fees over the past several years?"

Petitioners seek the removal of Mr. Colyer as the Trustee of the Trust and as Executor of the Estate. Petitioners request that Margaret Stryker and Dennis Stalker be appointed as the respective fiduciaries.

While the reasons in support of the request have changed since the filing of the original Petition and Amended Petition, this change was to be expected

given the limited and/or inaccurate information provided to Petitioners and other beneficiaries prior to the litigation being initiated. Indeed, but for the litigation, all of the beneficiaries may have remained at least partially in the dark for years to come. This begs the question of whether these failures in and of themselves by Mr. Colyer constitute a basis for removal.

The Court has the authority to remove both a personal representative of an estate and a Trustee for a variety of different reasons. 20 Pa. C.S.A. § 3182; 20 Pa. C.S.A. § 7766 (b).

It is well settled, however, that a “substantial” reason must exist to remove a fiduciary before such action will be taken by the Court. Glessner’s Estate, 343 Pa. 370; 22 A.2d 701 (1941). Removal of a trustee or personal representative, especially one who has been specifically named by a settlor or testator, is a drastic action. Estate of Croessant, 482 Pa. 188, 193; 393 A.2d 443, 446 (1978). Generally speaking, the Court has the authority to remove a fiduciary where the interests of the estate and/or trust are likely to be jeopardized by his/her continuance in office. Zaleski Estate, 17 Pa. D. & C. 3rd 456 (1980); 20 Pa. C.S. § 3182 (5). The estate must be endangered and the proof of the cause for removal must be clear. Quinlan’s Estate, 441 Pa. 266, 273 A.2d 340 (1971).

Petitioners first assert that Mr. Colyer should be removed because he has failed to perform his fiduciary duties as imposed by law. 20 Pa. C.S.A. § 3182 (1) (failure to perform any duty imposed by law); 20 Pa. C.S.A. § 7766 (b) (3) (not

effectively administering the Trust because of persistent failures).

With respect to the estate, there is abundant evidence that Mr. Colyer failed to comply with many of his statutory duties. The Petition for Grant of Letters was filed on June 5, 2012 approximately four months after Mr. Guffy's death on February 10, 2012. Contrary to the requirements of Rule 5.6 of the Pennsylvania Rules of Orphan's Court, Mr. Colyer failed to provide notice of the estate administration in the appropriate form to the entitled entities and/or persons. As well, Mr. Colyer failed to file a certification of notice as required by Rule 5.6 (d).

Further, Mr. Colyer failed to file a timely (within four months of advertising) first account as required by Rule 6.4. As well, he failed to file any statement of proposed distribution, failed to notice such and failed to appropriately serve such as required by Rule 6.9.

With respect to the Trust, by Order of Court dated October 24, 2013, a Rule was issued upon Mr. Colyer to show cause why a Trustee account should not be filed.

No accounts were filed and by Order of Court dated December 31, 2013 following a hearing at which Mr. Colyer failed to even appear, the Court directed that Mr. Colyer in his capacity as both Agent, Executor and Trustee file separate accountings with respect to all capacities no later than February 1, 2014. The Court noted that if the accountings were not filed or should they be incomplete or not in accordance with law, the Court would take appropriate action including but not

limited to sanctions.

Purported accountings were filed late, on February 3, 2014. Petitioners filed a Petition for Sanctions for failure to file a complete accounting in accordance with law. By Order of Court dated March 3, 2014, following a hearing and a review of the purported accountings, the Court determined that said documents did not comply with the Court's December 31, 2013 Order.

They were filed late and were entirely incomplete. As well, they failed to comply with the mandates of Rule 6.1 of the Pennsylvania Rules of Orphan's Court and were entirely deficient as compared to the model accounts which have been incorporated into the Rules.

As a result of Mr. Colyer's failures in direct violation of the Court Orders, sanctions were imposed upon him. He was directed to pay attorney's fees and by no later than April 4, 2014, to file supplemental accountings in the form and substance of the model accounts.

With respect to the grossly deficient accountings, Mr. Colyer argues that he "in good faith" attempted to do exactly what the Court directed by relying on the services of the Malee Law Firm. He claims that he provided all of the requested documentation to Attorney Andrea Pulizzi and requested her to comply with the Court's Order. Curiously and despite Mr. Colyer's claims that he had hired the Malee Law firm and in particular, Ms. Pulizzi, to draft and file the accounts on his behalf, no entry of appearance was ever filed and contrary to the model accounts provided as an

Appendix to the Orphan's Court Rules, the name and identifying information of counsel was not attached in any form to any of the accountings. Mr. Colyer claims that the documentation produced at the hearing supports his version of the events. The Court cannot agree.

The December 13, 2013 Order required that the separate accountings be filed no later than February 1, 2014.

The first written contact produced by Mr. Colyer with respect to providing information to Ms. Pulizzi notes that he would "attempt to have" the requested information in her "hands by February 1, 2014." (Respondent's Exhibit 29). By email from Ms. Pulizzi to Mr. Colyer dated December 31, 2013, she specifically advised him that he was facing sanctions and "it would be best" if he "could get [the] drafts to [her] ahead of time" for her review. (Respondent's Exhibit 29). By a Sunday, January 19, 2014 email to Ms. Pulizzi, Mr. Colyer attached what he characterized as "the information" requested "and more." Attorney Pulizzi responded to him by email dated January 20, 2014 setting forth numerous inquiries and requesting several specifics. Mr. Colyer responded that he was returning to North Carolina later that week and that he would "begin the needed response Friday" which would have been January 24, 2014. Mr. Colyer in fact responded to the inquiries by email dated January 24, 2014. There was no further correspondence between Ms. Pulizzi and Mr. Colyer between January 24, 2014 and February 3, 2014. On that date, late in the afternoon Ms. Pulizzi apparently emailed Mr. Colyer attaching front pages to the accountings,

including verifications and requesting specific information regarding anything that he liquidated, as well as copies of all assets that were in the Trust. She indicated that upon receipt, she would review and amend the accountings.

Clearly Ms. Pulizzi is in part responsible for not insisting that the information be provided to her in a correct form in a more timely manner.

Nonetheless, Mr. Colyer's claim that he bears no blame is without merit. The Court finds that he was in fact dilatory and failed to respond thoroughly to Ms. Pulizzi's requests.

The Court does not accept Mr. Colyer's position that he was entirely reliant upon counsel and that it was counsel's 100% responsibility to handle the matters and provide the requested information. Rather, the Court sees a scenario in which in an attempt to save as much money as possible, Mr. Colyer attempted to do as much as possible himself and to then expect the lawyers to put it in an appropriate format. For example, in one of the items of correspondence, Mr. Colyer noted that the information was in an Excel format and expected it to be appropriate.

Curiously, Mr. Colyer claims that "the new attorney to be representing the estate will file a more acceptable format." The Court questions why no new attorney has been hired by the estate to correct the obvious errors and to file the appropriate documents now. Mr. Colyer hired an attorney to represent him individually. It seems clear to the Court that Mr. Colyer seems far more interested in his own welfare than the welfare of the Estate and Trust.

On April 9, 2014, again late, Mr. Colyer filed an Amended Accounting. This Accounting only addressed his capacities as Executor and Trustee. No Accounting was filed in his capacity as Power of Attorney. He argues that this failure should be excused because he testified that he never took action as Agent. He also claims that because Accountings were not required of Ms. Stryker and Mr. Kaufman, his failure should be excused. He claims that if the Petitioners were truly looking for the truth, they would have “produced that information.” His arguments are no excuse for this failure.

Mr. Colyer also failed to comply with Rule 6.12. He still has not filed any report notifying the Register of Wills and interested parties that the estate has not been completed within two years of Mr. Guffy’s death.

The Petition for Removal was filed on May 6, 2014. Following discovery, an Amended Petition was filed on October 29, 2014. Mr. Colyer filed his Response on November 18, 2014. Despite conceding errors in his capacities of Executor and Trustee both in his Response and Brief, he has yet to correct such.

The Pennsylvania Department of Revenue Inheritance Tax Return as well as a payment of \$36,105.58 were timely (within nine months of death) submitted and filed on July 9, 2012 (postmarked). The total gross value of the estate was listed as \$287,990.87. This included no real estate but did include two checking accounts, cash, wearing apparel, household goods, books, one brokerage account in the approximate amount of \$60,000.00 and one annuity in the approximate amount of

\$100,000.00.

Expenses included attorney's fees of approximately \$960.00 and Mr. Colyer's travel and administrative expenses of approximately \$5,000.00 plus. Mr. Colyer verified under penalty of perjury that all of the information set forth in the Return was true and correct.

This Return, however, was clearly not accurate. It failed to report the Estate's biggest asset, that being a \$350,000.00 plus annuity. It also failed to report the gift to Mr. Colyer of a Toyota Prius automobile. He not only failed to properly determine what assets should be included by doing the relevant research and/or soliciting professional help, but once he discovered that significant errors were made, he neglected to correct them. He still has not filed a supplemental return and still has not paid the required taxes with perhaps interest and penalties, all to the detriment of the beneficiaries.

Mr. Colyer testified that he relied upon the advice of Legal Zoom Attorneys and tax advisors that the annuity was not taxable. He admittedly confused income tax with inheritance tax. He agrees that any interest and penalty be assessed against him. He argues, however, that this does not establish a basis for removal. He also acknowledges that he was either incorrect and/or confused with respect to the Prius. He falls on his sword ready to accept any tax or penalty consequences as a "personal obligation."

With respect to the alleged Orphan's Court Rule violations, Mr. Colyer

“concedes that in hindsight he probably could have done some things differently.” He concedes the Grant of Letters was not published and that notice of estate and administration was not sent to the beneficiaries. He claims, however, that the Estate of Mozelle Snyder is equally culpable and accordingly it has “unclean hands.” Mr. Colyer also submits that “while [he] did not follow any particular form” the current beneficiaries were well aware of the particulars, especially since “each of the beneficiaries accepted the distribution check” which carried with it implicit knowledge. Mr. Colyer argues that the beneficiaries should not have accepted the checks.

The Petitioners further argue that when Mr. Guffy took over the Trust following the removing of her executor position by Ms. Snyder in 2012, without any mention of the Trust, he was acting both contrary to law and the Trust document. He was not the Trustee, he was only the successor Trustee. Additionally, he never provided notice of the resignation or purported resignation to anyone.

Arguing form over substance, Mr. Colyer contends that of course Ms. Snyder and/or the estate knew that she was no longer acting as Trustee, as did the other beneficiaries and regardless, Mr. Colyer’s July 2012 letter and checks gave them all the information they needed.

Mr. Colyer clearly failed to follow the law. He deviated from the requirements of controlling statutes. His duties were specifically set forth and imposed by law but he failed to perform them. What perhaps is most telling is that when after

being cited by the Court, he still failed in his duties. The prudent course would have been to retain an estate and trust lawyer and/or tax counsel. To date, he has still failed to do so. His failures have seriously impaired the administration of the trust and estate. His failures have resulted in needless litigation and the wasting of estate and/or trust assets. The “primary duty” of an estate’s personal representative is to marshal the assets and to liquidate and terminate as soon as possible. Estate of Andrews, 92 A.2d 1226 (Pa. Super. 2014). Mr. Colyer has fully failed in this regard. Removal is justified pursuant to 20 Pa. C.S.A. § 3182 (1) and 20 Pa. C.S.A. § 7766 (b) (3). See also Estate of Andrews, 92 A.3d 1226 (Pa. Super. 2014).

The next issue concerns whether the interests of the estate are likely to be jeopardized by Mr. Colyer’s continuance “in office.” Petitioners clarify this complaint by noting that Mr. Colyer’s personal interests are in conflict with those of the estate and trust. See In Re: Estate of Westin, 874 A.2d 139 (2005).

A fiduciary has a duty to see that his/her purely private interests are not advanced at the expense of the estate. Andrews, supra. at 1231. A fiduciary may be removed when his/her personal interests are in conflict with that of the estate, such that the two interests cannot be served simultaneously. Andrews, Id. at 1232. Neither bad faith nor fraudulent intent is required. Andrews, Id. at 1232.

First, Petitioners claim that Mr. Colyer must assert a claim to retrieve the life insurance proceeds in order that they may be included in the Trust. Petitioners contend that this would require Mr. Colyer to bring a claim against himself. Factually,

Petitioners claim the life insurance proceeds should not have been paid to Mr. Guffy's sisters but to the Trust to be distributed to all of the listed beneficiaries.

While the conflict on its face is apparent, for Petitioners to succeed on this claim of a conflict, there at least must be cognizable grounds to make such a claim. Andrews, Id. at 1232.

The evidence is arguable that Mr. Guffy never intended to change the beneficiaries in the life insurance policies. He chose not to sign the forms needed to do so. He signed the Estate and Trust documents he wanted to sign and did not sign the ones that he did not want to sign. Yet the circumstances surrounding Schedule A (Petitioners' Exhibit 6) suggest otherwise. First, the Schedule was specifically addressed in the trust documents. Second, it directs that the Life Insurance Proceeds be placed in the Trust. Next, the Bill of Transfer arguably supports the proceeds going into the trust (Petitioners' Exhibit 7; Respondent's Exhibit 11). Lastly, the misplacement of Schedule A with respect to the binder documents is highly suspicious.

A conflict is clear from the circumstances. Mr. Guffy's intent is clearly at issue. There is a genuine dispute regarding the life insurance proceeds. Mr. Colyer as executor and trustee would need to make a claim against himself and his mother in order to recover the proceeds. Further, he certainly is a material witness.

Next, Petitioners claim that Mr. Guffy should have investigated the propriety and expense of tying up more than \$350,000.00 of Mr. Guffy's assets in an

eleven-year annuity, in late 2011, when he was 85 years of age.” The Petitioners claim that Mr. Colyer as a fiduciary under the Power of Attorney failed to protect Mr. Guffy from this unwise investment during a time when Mr. Guffy was diagnosed with Alzheimer’s. The conflict arises per the Petitioners because Mr. Colyer will not take action on this issue against himself. This claim of a conflict fails. There was absolutely no testimony whatsoever that this investment was objectively unreasonable or unwise under the circumstances. The Court will not speculate or engage in deciding which investment strategy is better than another. This is better left to financial experts, none of whom testified.

Next, Petitioners complain that a conflict exists because Mr. Colyer will not ensure that the Trust will be fully funded through assets that Mr. Colyer claims do not exist. In other words, Mr. Colyer will not take action against himself or others to investigate the existence of potential trust assets and if they do exist, to obtain them. With respect to assets Petitioners claim that Mr. Colyer had, they include savings bonds, gold coins and large amounts of cash from redeemed savings bonds which were never accounted for. Petitioners claim all of those assets were in Mr. Guffy’s possession at the time of his death.

While these claims generated much testimony and documentary evidence, they fail as well. There simply is no proof that these assets existed at the time of Mr. Guffy’s death.

Petitioners’ further claim relates to Mr. Guffy’s alleged mental state at

the time he made critical financial decisions. The Power of Attorney by Mr. Guffy to Mr. Colyer was executed on February 3, 2010.

Following such, Mr. Guffy made a number of critical financial decisions including but not limited to executing a Will and Trust, designating life insurance beneficiaries, investing in assets, moving, cashing in investments, gifting assets and alike. Certainly, for no other reason than thoroughness and accountability, the estate and trust should have, or should in the future, demand a complete Power of Attorney accounting. Mr. Colyer is conflicted from doing so. His interests as Power of Attorney conflict with his interests as Executor and Trustee. While not a particularly huge item, the Prius automobile is a clear example. The Court does not find credible Mr. Colyer's claim that he was not aware of Mr. Guffy's actual net worth, his investments or assets. He clearly was provided with and had access to all of this information. The Court finds as incredible Mr. Colyer's claims that he disregarded Dr. Olinski's letter regarding Mr. Guffy's Alzheimer's diagnosis a few months prior to his death as "only one man's opinion." The record is replete with examples of instances of behaviors and actions by Mr. Guffy that can and should be explored and investigated, especially since at least one, if not more, individuals were his agents under a Power of Attorney at the time. As Petitioners assert, "Mr. Colyer cannot serve the interest of the estate since, to do so, he must question his own actions or inaction when serving as Guffy's Agent under the Power of Attorney." (Petitioners' Brief, p. 7).

Petitioners claim lastly that Mr. Colyer wasted or mismanaged the

estate. For example, they claim he paid \$500.00 to an attorney for a release and covenant not to sue, he used estate funds for mileage between North Carolina and Williamsport, he spent estate funds for monetary bills, he made decisions without competent professional advice, and he unilaterally and perhaps in error determined that shares would lapse and money be distributed. He also paid counsel fees out of the estate despite being ordered to do so individually.

The Court finds most of the allegations to be de minimus and unfounded. One very significant issue, however, relates to Mr. Colyer not seeking competent professional advice. He argues he was just following the sentiments of Mr. Guffy who “didn’t prefer lawyers.” The Court finds this to be utter nonsense. A fiduciary’s obligation is not to just follow the wishes of the settlor or deceased but to also protect the interest of all of the beneficiaries.

In conclusion, at best Mr. Colyer has mishandled this estate and is clearly conflicted. His interests in the different capacities to which he was appointed conflict. He has failed to properly administer the Estate and Trust pursuant to the requirements of law and the interests of the Estate and Trust are likely to be jeopardized by his continuing in his capacities. He has failed to perform his duties at the very least by not employing competent, legal and/or financial experts to assist him. He was not capable of doing it on his own or with the assistance of Legal Zoom.

ORDER

AND NOW, this ____ day of September 2015, following a Petition,

several hearings and submission of Briefs, the Court GRANTS the Petition to have William Colyer removed as the Trustee and Executor. Margaret Stryker and Dennis Stalker are accordingly appointed co-trustees and co-executors.

By The Court,

Marc F. Lovecchio, Judge

cc: Kristine Waltz, Esquire
James Malee, Esquire
Andrea Pulizzi, Esquire
Frank Miceli, Esquire
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