

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

IN THE MATTER OF)
TIMOTHY BUONAMICI, JR.) C.M. No. 04116-N-VCP

MEMORANDUM OPINION

Date Submitted: April 1, 2008
Dated Decided: August 11, 2008

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PARSONS, Vice Chancellor.

This matter is before me on exceptions to the final accounting of a guardianship. Petitioner/Exceptant, the Estate of Timothy Buonamici, Jr. (the “Estate”), took exception to the Final Accounting of the guardianship of Timothy Buonamici, Jr. (the “Ward”), alleging that Respondent, Eileen DiFelice (the “Guardian”), breached her fiduciary duty as guardian of the Ward. The exceptions include allegations that the Guardian undervalued the Ward’s assets and made an unauthorized loan from the Ward to another. As a result of these alleged breaches, the Estate urges the Court to deny the Guardian any guardianship commissions. The Guardian denies any wrongdoing.

These issues formed the basis of a hearing before Master Glasscock. After the Master issued his Final Report in December 2007, Exceptant filed additional exceptions, the parties briefed those exceptions, and the Court heard argument on them on April 1, 2008. This memorandum opinion embodies the Court’s post-hearing findings of fact and conclusions of law on the exceptions to the final accounting.¹

For the reasons set forth below, I conclude as to the undervaluation of the Ward’s assets that the Guardian did not breach her fiduciary duty, but was unjustly enriched. The Guardian, however, did breach her fiduciary duty in making the unauthorized loan from the Ward’s estate to his mother. Therefore, the Guardian must repay the Estate her proportionate share of the unjust enrichment, and also is liable for the full amount of the unauthorized loan, with interest. I further conclude that, despite the unauthorized loan,

¹ Under Court of Chancery Rule 144, this Court reviews the legal and factual findings in the Master’s Final Report *de novo*.

the Guardian is entitled to the normal commissions, but that the Estate's request for its attorneys' fees and costs is not well founded.

I. BACKGROUND

A. The Facts

1. Timothy Buonamici, Jr.

The Ward, Timothy Buonamici, Jr. ("Tim"),² was one of five children of Timogenito and Ersillia Buonamici.³ Tim's siblings were the Guardian, L. Richard Buonamici, Violet Buonamici, and Fiorine Marie Mastrippolito.⁴

In 1974 or 1975, Tim married Ann-Marie Juliano.⁵ Juliano had four children from a previous relationship (the "step-children").⁶ The marriage lasted approximately four years, and in 1979, Tim and Juliano divorced.⁷

At some point during the marriage, Juliano stabbed Tim. As a result, Tim suffered severe injuries and required hospitalization.⁸ After this incident, Tim lived with his mother for awhile, and later, with his cousin, until he was placed in Saint Francis

² Tim also was known as "Sonny." Tr. at 21. Citations in this form ("Tr.") are to the transcript of the trial held on September 18, 2006 before Master Glasscock.

³ Ersillia Buonamici was also known as Cecelia Buonamici.

⁴ Because many of the individuals mentioned in this opinion share the surname Buonamici, I generally will refer to those individuals by their first names. No disrespect is intended.

⁵ Tr. at 6, 25.

⁶ *Id.* at 6-7, 25.

⁷ Tr. at 7, 25.

⁸ *Id.* at 97-98.

Hospital on April 9, 1981, due to his physical and mental condition.⁹ Because Tim could not manage his own affairs, his mother, Cecelia, served as his guardian from April 1984 to January 1989. Thereafter, Eileen acted as Tim's Guardian. Tim eventually left St. Francis and lived at several different nursing homes before finally residing at Millcroft Nursing Home ("Millcroft"), where he stayed until his death on December 28, 1999.¹⁰

On or about April 3, 1975, Tim executed a will, which named his then-wife Juliano as the sole beneficiary of his estate.¹¹ The will further provided that in the event Juliano passed away before Tim, the alternate intended beneficiaries would be the step-children.¹² The will was not produced, however, until it was filed with the Register of Wills a few days after Tim was buried.¹³ Thus, throughout the course of Tim's guardianship, Tim's siblings had no knowledge of the will, and believed that he would die intestate.¹⁴

Upon Tim's death, Alfred M. Isaacs, Esquire was appointed executor of Tim's estate.¹⁵

⁹ *Id.* at 100; JX 48 at 1 (Pet. for Apptmt. of Guardian, dated Sept. 16, 1981).

¹⁰ Tr. at 24, 101; JX 12.

¹¹ JX 1 (Tim's Last Will and Testament).

¹² *Id.*

¹³ Tr. at 90, 92-93, 102. Before the will was filed, Juliano had it. *Id.* at 92.

¹⁴ *Id.* at 105-06.

¹⁵ JX 1.

2. The family business

Members of the Buonamici family operated a business that involved a number of corporations, partnerships, and limited liability companies. Many years ago, Timogenito Buonamici founded Hockessin Mushroom Products, Inc. (“HMP”), a mushroom growing and canning business, which operated in northern New Castle County, Delaware.¹⁶ After Timogenito’s death in 1973, Tim, his mother, and all four siblings continued to operate the family business.¹⁷

The five siblings became equal partners in a partnership, Route 41 Enterprises (“Route 41”), which held a piece of inherited real estate.¹⁸ The family also owned Buonamici Enterprises, Inc. (“BEI”), a corporation engaged in retail liquor sales under the name “Tim’s Liquor.”¹⁹

In October 1987, the siblings decided to liquidate HMP and form a new partnership, Southwood Farms (“Southwood”), to hold the real estate owned by HMP.²⁰ As he had with HMP, Tim owned a 14.9% interest in Southwood.²¹

¹⁶ Tr. at 22.

¹⁷ *Id.* at 21-24.

¹⁸ Cecelia’s Pet. by Guardian for Auth. to Sell Real Estate, dated Oct. 13, 1986 (“Oct. 13, 1986 Pet.”), ¶¶ 6-9.

¹⁹ Tr. at 23.

²⁰ Cecelia’s Pet. by Guardian for Auth. to Enter into P’ship Agreement, dated Oct. 27, 1987 (“Oct. 27, 1987 Pet.”), ¶¶ 9-10.

²¹ *Id.* ¶¶ 5, 12.

After the creation of Southwood, a number of limited liability companies were formed to manage the business operations and real estate of Southwood. These companies included Realty Enterprises, LLC (“Realty”), which owned the real estate used by Southwood in its mushroom processing business, and The Real Vest Group, LLC (“Real Vest”), which financed and guaranteed the business operations of Southwood.²² Tim owned a 14.9% interest in both Realty and Real Vest, which the Guardian liquidated in May 1999.²³

In addition to these family enterprises, Eileen and Cecelia formed a partnership, Buonamici and DiFelice (“B&D”), in March 1988.²⁴ B&D owned and developed real estate, and owned three parcels of real property in Chester County, Pennsylvania.²⁵ After Cecelia’s death in 1996, her partnership interest in B&D passed to Eileen.²⁶

3. The guardianship

Upon Tim’s admission to a nursing home, his siblings petitioned the Court for appointment of a guardian. In October 1981, the Court granted Violet and Richard’s petition for guardianship, and Violet and Richard remained guardians until April 1984,

²² Eileen’s Pet. for Instructions, dated May 20, 1999 (“May 20, 1999 Pet.”), ¶ 2.

²³ *Id.*

²⁴ JX 19 (Certificate of Firm or Association of Buonamici and DiFelice, dated Mar. 30, 1988).

²⁵ JX 20 at 2, Ex. A (General P’ship Agreement of B&D, dated Mar. 30, 1988); JX 22 (Deed between Ersillia and B&D, dated Mar. 30, 1988); Tr. at 28-31.

²⁶ JX 21 (Irrevocable Trust of Ersillia, dated Nov. 19, 1985, as amended on Mar. 30, 1988).

when the mother, Cecelia, petitioned for successor guardianship. In support of her petition, Cecelia submitted the affidavit of a physician, who diagnosed Tim with Korsakoff's Psychosis or Dysmnesic Syndrome, and indicated that the disease was irreversible.²⁷

Cecelia remained guardian over Tim and his estate for approximately five years, until she was unable to continue due to her own deteriorating health. In January 1989, the Court granted a petition by Eileen for appointment as successor guardian.²⁸ Eileen remained the guardian for Tim and his property until his death.²⁹

a. Tim's finances under Cecelia's guardianship

During the period of her guardianship, Cecelia petitioned this Court twice for authorization to sell Tim's assets.³⁰ In late October 1987, Cecelia also petitioned the Court to allow Tim to enter into the Southwood partnership agreement, which the Court approved.³¹

²⁷ Cecelia's Pet. for Successor Guardian, dated April 25, 1984, Ex. F.

²⁸ See Order granting Eileen's Pet. for Apptmt. of Successor Guardian, dated Jan. 27, 1989.

²⁹ Tr. at 25. Eileen concurrently held a durable power of attorney for Cecelia. JX 15.

³⁰ One petition involved the sale of Tim's 20% interest in the family enterprise Route 41. The other involved the sale of Tim's 50% interest in another entity, Buonamici & Simeone. The Court approved both of these petitions.

³¹ See Order entered Nov. 2, 1987, approving Oct. 27, 1987 Pet.

In late 1986, Cecelia filed a corrected verified inventory and an accounting covering the time period from October 1981 through September 1986.³² Before the end of her guardianship, Cecelia filed two more accountings, one in July 1987, and the other in May 1988.³³ The May 1988 accounting listed Tim's estate as having a net worth of approximately \$72,000.

b. Tim's finances under Eileen's guardianship

After becoming successor guardian, Eileen filed the Eighth Accounting in March 1989, which listed Tim's total assets at approximately \$471,000.³⁴ The change in asset valuation between the 1988 and 1989 accountings resulted from an increase in the value of Southwood's real estate.³⁵

No accounting was filed between 1989 and 1994. After requesting several extensions, Eileen filed the Ninth Accounting in November 1995, covering the six-year period between 1989 and 1994.³⁶ Eileen filed two more accountings before Tim's death on December 28, 1999.³⁷

³² Cecelia's Corrected Ver. Inv. & Accounting, dated Oct. 28, 1986 ("Oct. 28, 1986 Accounting").

³³ Sixth and Seventh Accountings.

³⁴ Eighth Accounting at 3.

³⁵ *Id.*

³⁶ See Eileen's letters dated July 21, 1995 and Sept. 27, 1995 to Register in Chancery.

³⁷ See Tenth Accounting, filed Oct. 1, 1997; Eleventh Accounting, filed May 21, 1999.

After Tim passed away, Eileen filed the Twelfth and Final Accounting (“Final Accounting”) in May 2000. Concurrently, Eileen filed for guardianship commissions in the amount of \$36,171.³⁸ Before then, Eileen had never petitioned for, nor received, any commissions in connection with Tim’s guardianship.³⁹

1. Loans from Tim to Cecelia

The Ninth Accounting listed several loans to Cecelia in amounts varying from \$1000 to \$6000. Between August 9, 1991 and November 18, 1994, twelve such loans, totaling \$46,000, were made from Tim’s estate.⁴⁰ In October 1997, Eileen filed the Tenth Accounting, which listed four additional loans to Cecelia in amounts varying from \$5000 to \$6000. Eileen never petitioned the Court for approval as to any of these loans from Tim’s estate.⁴¹

By the time of her death in January 1996, Cecelia had received loans totaling \$67,000 from Tim’s estate.⁴² The money was used to pay for Cecelia’s nursing home care.⁴³ Upon her death, Tim’s siblings, Violet, Richard, Eileen, and Fiorine, each

³⁸ Eileen’s Pet. for Guardianship Comm’ns, dated May 9, 2000.

³⁹ Tr. at 113. Nothing in the record suggests Cecelia ever petitioned for or received commissions relating to her guardianship.

⁴⁰ One loan was made in 1991, four in 1992, three in 1993, and four in 1994. Ninth Accounting.

⁴¹ Tr. at 63, 83.

⁴² *Id.* at 34; JX 25 at Sch. K (State of Delaware Inheritance Tax Return for Estate of Ersillia Buonamici, dated Feb. 25, 1997).

⁴³ Tr. at 82-83.

assumed \$5,726 of the loan debt as beneficiaries of Cecelia's estate.⁴⁴ To date, none of the debt has been repaid.⁴⁵

2. The sale of Tim's interests in the family businesses

Three years later, in May 1999, Eileen filed a petition for instructions and authority to sell Tim's interests in the family businesses because his income was no longer sufficient to pay for the costs of his care.⁴⁶ In her petition, Eileen asserted there was no public market for Tim's interests in the closely-held family businesses, and proposed, in accordance with the provisions of the company agreements, transferring all of Tim's interests to Real Vest in exchange for marketable stocks and securities having a fair market value of \$134,200.⁴⁷ Eileen's petition further contemplated that after the exchange, the stocks and securities would be liquidated to generate funds to pay for Tim's care.⁴⁸ The Court approved Eileen's petition on May 21, 1999.⁴⁹

⁴⁴ Cecelia's estate had net probate assets of \$22,904 to allocate toward the \$67,000 debt. Because the probate assets were not liquid, the four sibling beneficiaries of Cecelia's estate assumed the debt to the extent of the probate assets. Eleventh Accounting at 4.

⁴⁵ Tr. at 64, 82-84.

⁴⁶ May 20, 1999 Pet. ¶ 2. The cost of Tim's care at Millcroft Nursing Home was approximately \$47,000 a year. *Id.* Yet, Tim's annual income amounted to only \$24,000: \$12,000 each from Social Security benefits and investment income. *Id.* Furthermore, due to a decline in the mushroom processing business, by 1999, Tim was no longer receiving income from the family businesses. *Id.* In previous years, income from those sources had ranged from \$38,000 to \$45,000. *Id.* In addition, Tim's estate was then \$78,000 in debt to Millcroft, and Millcroft had threatened legal action. *Id.*

⁴⁷ May 20, 1999 Pet. ¶¶ 3-4, Ex. G.

⁴⁸ *Id.* ¶ 5.

Salvatore Morici, a certified public accountant, performed the valuation of Tim's interests in Southwood, Realty, Real Vest, and BE, and determined the fair market value to be \$134,200.⁵⁰ Eileen provided Morici with real estate appraisals, one of which was performed by Joyce Tice, and another by Appraisal Consultants.⁵¹ Tim's interests in the family businesses were liquidated for the stated amount, and the proceeds were used to pay off the Millcroft debt.⁵² The remaining proceeds (\$58,672.07) were deposited into Tim's account.⁵³

In his deposition, Morici admitted making an error in his calculations that resulted in his undervaluing the Realty asset by approximately \$994,000.⁵⁴ This resulted in a substantial undervaluation of Tim's estate.⁵⁵

⁴⁹ May 21, 1999 Order, signed by then-Vice Chancellor Jacobs.

⁵⁰ May 20, 1999 Pet. Exs. A-D. Morici was also the accountant for the three LLCs, Southwood, Realty, and Real Vest, as well as Tim's Liquor and B&D. Morici Dep. at 7-13.

⁵¹ Tr. at 72-73; see Morici Dep. at 26-27. The appraisals Morici relied upon could not be located, and were not produced in this litigation. Morici Dep. at 27-28.

⁵² Final Accounting at 1, Sch. C.

⁵³ *Id.* at 3.

⁵⁴ May 20, 1999 Pet. Ex. B at Sch. III; see Morici Dep. at 49. Eileen did not become aware of this error until Morici's deposition. Tr. at 115.

⁵⁵ Rule 16 Pre-Trial Order ("PTO") ¶ 2. The parties dispute the exact amount of the undervaluation. *Id.* ¶¶ 2, 3. In his Final Report, Master Glasscock found the undervaluation to be \$101,100. Final Report at 12. Although Petitioner originally claimed the undervaluation was \$101,100 (PTO ¶ 2I), in its exceptions to the Final Report, Petitioner asserted the undervaluation was \$214,000. Pet'r's Notice of Exceptions, dated Dec. 21, 2007, ¶ 7. In response, Eileen argued the Master was

B. Procedural History

In July 2000, Isaacs, as executor for the Estate, filed objections and exceptions to the Final Accounting (“July 2000 Exceptions”).⁵⁶ The Estate contended Eileen had failed to protect the Ward’s principal, and, due to her extensive involvement in managing the family businesses, had breached her fiduciary duty to him.⁵⁷ The Estate sought to recover damages from Eileen arising from (1) the \$67,000 loan to Cecelia and (2) the undervaluation of Tim’s assets in the buyout.⁵⁸

In September 2000, Eileen responded to the July 2000 Exceptions and denied the Estate’s allegations.⁵⁹ In her response, Eileen maintained that all of the Buonamici family members believed, until Tim’s will was probated, that Tim would die intestate, and they were the intended beneficiaries of Tim’s estate. In addition, Eileen asserted that, based on this understanding, she always acted in the best interest of Tim and had not breached any fiduciary duty.⁶⁰

correct in finding an undervaluation of \$101,100.00. Resp’t’s Ans. Br., dated Jan. 21, 2008, at 11.

⁵⁶ Obj. and Exceptions to the Guardian’s Accounting and Pet. for Comm’ns and Fees, dated July 6, 2000.

⁵⁷ *Id.* ¶¶ 1, 3.

⁵⁸ *Id.*

⁵⁹ Resp. to Obj. and Exceptions, dated Sept. 7, 2000.

⁶⁰ *Id.* ¶¶ 3, 6-7.

After a period of inactivity, the parties agreed in March 2004 to refer this matter to a Master in the Court of Chancery under Rule 135. Master Glasscock conducted a trial on September 18, 2006, and issued his draft report in July 2007.

In his draft report, Master Glasscock held that Eileen's involvement in the family businesses did not represent a breach of duty to Tim, who was a part-owner in those businesses.⁶¹ He also granted Eileen's request for commissions.⁶² The Master did find Eileen liable, however, for the unauthorized \$67,000 loan to Cecelia, and ordered Eileen to repay that amount, *without* interest.⁶³ The Master also held Eileen liable for her pro rata share of the undervaluation of Tim's buyout on a theory of unjust enrichment.⁶⁴

In July 2007, both the Estate and Eileen filed exceptions to the draft report. After considering the parties' arguments, Master Glasscock issued his Final Report on December 3, 2007. In his letter transmitting the Final Report, the Master noted that he modified some of his factual findings in response to the parties' exceptions, but did not

⁶¹ Draft Report, dated July 3, 2007, at 8. The Estate also sought to hold Eileen personally liable for the portion of a family mortgage that no family member other than Tim had repaid. The Master held that even though no other family member contributed to the repayment of that debt, Eileen could not be held liable for Tim's repayment of it because it did not occur during her guardianship. *Id.* at 8-9.

⁶² *Id.* at 16.

⁶³ *Id.* at 13-14. Master Glasscock noted that while the \$67,000 loan was unauthorized, the family had a history of loaning money to one another without interest, and thus, Eileen's actions were not in bad faith. *Id.* One of the Estate's exceptions to the Master's Final Report seeks interest on the \$67,000 loan.

⁶⁴ *Id.* at 11-12.

change his conclusions.⁶⁵ Additionally, Master Glasscock denied the Estate’s request for attorneys’ fees and costs because it had not demonstrated a sufficient reason to depart from the American Rule.⁶⁶ In the same letter, the Master denied as untimely the Estate’s alternative request for recalculation of the guardianship commissions, because the request was not made in the July 2000 Exceptions.⁶⁷

In accordance with Rule 144, the Estate filed exceptions to the Final Report on December 10, 2007 (the “December 2007 Exceptions”). After briefing, I conducted a hearing on those exceptions in April 2008. The parties have agreed that the record, for purposes of this Court’s review, consists solely of the exhibits and transcript from the trial before the Master.⁶⁸

C. Parties’ Contentions

1. The Estate

In its December 2007 Exceptions, the Estate contends that Master Glasscock improperly relied on the family’s mistaken assumption as to the identity of the Ward’s beneficiaries, as well as the circumstances surrounding Tim’s marriage and its dissolution, in determining whether Eileen breached her fiduciary duty. The Estate asserts that a “hopeless conflict” existed between Eileen’s fiduciary duties as a guardian

⁶⁵ Letter from Master Glasscock to counsel, dated Dec. 3, 2007 (“Transmittal Letter”).

⁶⁶ *Id.*

⁶⁷ *Id.*; see Ct. Ch. R. 144(a)(1).

⁶⁸ 4/1/08 Tr. at 2-3.

and her own personal financial interest in the family businesses.⁶⁹ According to the Estate, this conflict caused Eileen to breach her fiduciary duties and justifies holding her personally liable for the undervaluation of Tim's buyout. The Estate also asserts that because Morici could not produce the appraisals he used to value Tim's interests in the family businesses, the Court should determine the extent of the undervaluation using the appraisal figures relied on by the Estate's expert.

In addition, the Estate seeks repayment of the \$67,000 loan with interest. The Estate contends Eileen breached her fiduciary duty when she made the loan on Tim's behalf, because she also served as Cecelia's power of attorney and trustee of Cecelia's estate, and made no effort to obtain court approval, security, or documentation for the loan. The Estate also alleges that after Cecelia passed away, Eileen made no effort to repay the debt to Tim's estate using the funds she and her siblings inherited from Cecelia.

Further, the Estate urges the Court to deny Eileen's petition for commissions, because she breached her fiduciary duty and should not "benefit" from her breach. Moreover, even if the Court decides to award commissions, the Estate objects to the amount the Master recommended. Specifically, the Estate contends Eileen improperly computed the commissions due based on the value of Tim's interest in the family businesses in earlier years, which is "inflated" compared to the value she used to buy out Tim's interest.

⁶⁹ Pet'r's Reply Br., dated Feb. 5, 2008, at 1.

Finally, asserting that it was required to file this action to object to and correct Eileen's accounting, the Estate seeks to recover its attorneys' fees and costs from Eileen.

2. The Guardian

The Guardian asks the Court to confirm the Final Report, and deny the Estate's exceptions. In particular, Eileen avers that while she and Tim, as well as the other siblings, were involved in the family businesses, Tim's assets were disclosed to the Court in numerous accountings. Further, both Cecelia and Eileen operated the guardianship under the assumption that Tim would die intestate and the intended beneficiaries of his estate would be his siblings. During their respective terms as guardian, Cecelia and Eileen each petitioned the Court for authorization or instructions to liquidate Tim's assets when necessary, and in each instance, the Court approved the petition. Thus, Eileen denies that she breached any fiduciary duty.

With respect to the Estate's claim based on the loan to Cecelia, Eileen maintains that the facts show a history of interest free interfamily loans, and that if Tim had been competent and able, he would have made the same decisions regarding the loan as she did, in her role as guardian. Eileen also argues that Tim would have agreed to liquidate his interests in the family businesses, if he needed the money for his own care.

Additionally, Eileen contends that Master Glasscock did not abuse his discretion in awarding her commissions, or err in denying the Estate's request for attorneys' fees and costs.

II. ANALYSIS

A. Legal Standards

As the guardian of Tim's person and property, Eileen had a duty to do whatever is necessary for the care, preservation, and increase of his property.⁷⁰ Guardians, like other fiduciaries, are required to meet a reasonable prudence standard of judgment and care in managing the ward's property.⁷¹ Specifically, 12 *Del. C.* § 3302(a) provides in pertinent part:

When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax consequences of the investment and the anticipated duration of the account and the needs of its beneficiaries.

In performing this responsibility, the guardian may petition the court for instructions, and may employ or retain accountants, lawyers, and other professional advisers for assistance in managing the ward's property.⁷²

Under Rule 144, this Court will review the legal and factual findings of the Master's Final Report *de novo*.⁷³ Consistent with the agreement of the parties, I will

⁷⁰ 12 *Del. C.* § 3921(c).

⁷¹ *Id.* § 3302.

⁷² *Id.* § 3921(d)-(e).

⁷³ Ct. Ch. R. 144(a)(2).

perform my *de novo* review based on the testimony and exhibits submitted to the Master.⁷⁴ Furthermore, although I have considered the record broadly, I have focused primarily on the issues raised by the Estate's exceptions.

B. The Buyout of Tim's Interest in Realty

1. The undervaluation does not constitute a breach of fiduciary duty

The Estate contends Eileen breached her fiduciary duty in the assessment of the fair market value of Tim's assets, which consisted of his interest in the family businesses, for the buyout. In particular, the Estate contends Eileen failed to follow the procedures required by the "buy-sell" provisions of the Realty LLC operating agreement. Instead of using three appraisers to determine the fair market value price of Tim's assets, Eileen relied on Morici, the family businesses' accountant, to perform the valuation. The Estate characterizes Morici as a "conflicted accounting professional" because he contemporaneously represented Eileen, the other siblings, Cecelia, and each of the businesses he valued. Thus, according to the Estate, Morici's valuation violated Court of Chancery Rule 113.⁷⁵ As a result, the Estate avers that Eileen's decision to use only Morici to value Tim's interests constituted a breach of fiduciary duty.

⁷⁴ *Id.*

⁷⁵ Pet'r's Opening Br., dated Dec. 31, 2007, at 12. Under Rule 113, when a guardian petitions the court to sell real estate owned by the ward, the guardian must produce a valuation performed by "at least one disinterested person familiar with the value of real estate in the vicinity of the subject property." A disinterested person is one that does not have a pecuniary interest in the controversy at hand, and is free from actual or probable bias, prejudice, or partiality. *Scott v. Arden Farms Co.*, 28 A.2d 81, 85-86 (Del. Ch. 1942).

a. There was no breach of contract

Under Section 6.4 of the Realty LLC operating agreement, a member seeking to transfer his company interest must offer that interest first to the company.⁷⁶ Section 6.4 further provides that “[t]he purchase price for such interest will be the . . . fair market value of the interest, determined by agreement if possible and, if agreement is not possible, by the majority vote of three qualified appraisers.”⁷⁷

Under standard rules of contract interpretation, absent an ambiguity, the court must give effect to the clear language of the contract.⁷⁸ Here, the operating agreement unambiguously specifies two methods by which a fair market value of Tim’s interest can be determined.⁷⁹ First, the members of the LLC could agree on a fair market value of the interest, and that would be the purchase price.⁸⁰ Under the second method, if the members could not agree on a value, they could have the interest evaluated by three qualified appraisers and abide by the purchase price set by the majority vote of those appraisers.⁸¹

⁷⁶ JX 43 at 15 (Realty Enters. Limited Liability Company Agreement). As previously noted, the Realty LLC owned the real estate used in the Buonamici family mushroom processing business.

⁷⁷ *Id.*

⁷⁸ *Benihana of Tokyo, Inc. v. Benihana, Inc.*, 891 A.2d 150, 171 (Del. Ch. 2005).

⁷⁹ JX 43 at 15.

⁸⁰ *Id.*

⁸¹ *Id.*

In this case, the sibling members of Realty agreed on the value of Tim's interest. Eileen testified that she and her siblings agreed to the valuation of Tim's interest determined by Morici.⁸² In addition, the siblings all signed a waiver consenting to the calculated price.⁸³ Eileen also agreed to the purchase price on Tim's behalf in her role as his guardian.⁸⁴ Thus, the only question is whether, in agreeing to Marici's value, Eileen acted contrary to the purposes of the guardianship or to Tim's presumed intent.

Nothing in the record suggests that, before he became incompetent, Tim would have disagreed with how the family businesses were handled or to selling his interest in those businesses to facilitate his ability to pay for the cost of his care. There is also nothing to suggest that Morici acted less than competently in representing the various family members and businesses before he made the valuation mistake at issue in this case. As evidenced by Eileen's testimony, none of the siblings even knew about the mistake until Morici's deposition, which was taken six years after the calculations were performed.⁸⁵ Thus, there was no reason for Eileen personally, or as Tim's guardian, to question the accuracy of Morici's valuation.

Based upon these findings, I conclude that Tim, like his siblings, would have agreed to the fair market value calculated by Morici. Thus, there was an agreement by the members of Realty (*i.e.*, the siblings) as to the fair market value of Tim's interest.

⁸² Tr. at 79.

⁸³ May 1999 Pet. Ex. F.

⁸⁴ *Id.*

⁸⁵ Tr. at 115.

Accordingly, Eileen acted consistently with the Realty LLC operating agreement, and was not required to utilize the alternative, second appraisal method set forth in Section 6.4 of the operating agreement.

b. Although the buyout was self-interested, there was no breach of fiduciary duty

Because Eileen stood on both sides of the buyout transaction, this Court, as the ultimate fiduciary of the Ward, may inquire into the propriety of Eileen's actions as Tim's guardian in that transaction.⁸⁶ Based on the evidence, I am convinced that Eileen acted in good faith and did not breach her fiduciary duty to Tim. In particular, on numerous occasions, Cecelia, and later Eileen, as Tim's guardians, provided full disclosure of the joint ownership among family members in various real estate and business interests.⁸⁷ Neither Cecelia nor Eileen mislead, or attempted to mislead, the Court, intentionally or inadvertently, regarding Tim's participation in the family businesses.

Further, Eileen pursued the buyout of Tim's interests solely for the purpose of raising cash to pay for the costs of his care at Millcroft.⁸⁸ By 1999, it had become obvious that Tim's guardianship estate required greater liquidity to pay the debts of the Ward to Millcroft, the nursing home where he lived. As of April 9, 1999, Millcroft had

⁸⁶ *In re Jones*, 2006 WL 2035714, at *5 (Del. Ch. July 13, 2006) (holding that the Court, as ultimate fiduciary of a Ward, may inquire into a guardian's behavior when the challenged transaction is self-interested).

⁸⁷ Oct. 13, 1986 Pet. ¶¶ 6, 9-10, Ex. A; Oct. 27, 1987 Pet. ¶ 6; May 20, 1999 Pet. ¶ 2(d), Ex. F.

⁸⁸ May 20, 1999 Pet. ¶¶ 2(c), 5.

sought entry of a judgment against Tim's estate for more than \$75,000.⁸⁹ In May 1999, on the advice of counsel Robert Schlusser,⁹⁰ Eileen filed a petition for instructions with the Court of Chancery requesting authorization to sell Tim's ownership interest in the family businesses to generate sufficient cash to pay his creditors.⁹¹ The Court approved that petition.

I also find that Morici, the accountant who appraised the assets, qualified as a disinterested person within the meaning of Rule 113, to the extent that Rule applies in these circumstances.⁹² Even though Morici prepared Eileen's personal tax returns, he also prepared the tax returns for all of the other siblings, and he had provided accounting services for Southwood, Realty, and Real Vest, as well as Tim's Liquor, since approximately 1993.⁹³ He was not a member, or an owner or significant creditor, of any of the family businesses. Rather, Morici was the financial person most familiar with those businesses and their respective values.⁹⁴ Further, as previously discussed, there was no reason for Eileen to doubt Morici's abilities as a professional.

⁸⁹ JX 5.

⁹⁰ Schlusser had been advising the Buonamici family businesses since at least 1985, well before Eileen's appointment as Guardian. See JX 38.

⁹¹ May 20, 1999 Pet.

⁹² Ct. Ch. R. 113; see *Scott*, 28 A.2d at 85-86. Rule 113 applies in the case of sales of real estate. The assets sold here were interests in businesses, which in some cases consisted largely of real estate holdings.

⁹³ Tr. at 67-69; Morici Dep. at 7-8, 11.

⁹⁴ Tr. at 78-79, 104-05.

I therefore conclude that, although the transaction was self-interested in the sense that Eileen stood to benefit from the sale as a member of the family businesses and a prospective purchaser, she entered into the transaction, both personally and in her capacity as Tim's guardian, to assist her brother, and not for personal gain. I also hold that Eileen effectuated the sale of Tim's interests in accordance with the rules of this Court.⁹⁵ Thus, I find that Eileen did not breach her fiduciary duty in connection with the buyout transaction.

2. Eileen was unjustly enriched by the undervaluation

Even though Eileen did not breach her fiduciary duty to Tim in connection with the buyout, she was unjustly enriched by the undervaluation of Tim's interest. The undervaluation allowed Eileen and her other siblings, as the remaining members of Realty, to purchase Tim's interest at less than fair market value.

As to the exact amount of the undervaluation, the Estate contends that because Eileen failed to produce the appraisals utilized by Morici in his calculation, the Court should adopt the appraisal values and calculations of the Estate's expert, Charles F. Seitz. In his report, Seitz calculated the undervaluation to be between \$167,910 and \$200,110.⁹⁶ Eileen contends that the undervaluation was \$101,100.

⁹⁵ See Ct. Ch. R. 113.

⁹⁶ See JX 7 at 3 (Report of Charles F. Seitz, CPA, dated Mar. 1, 2006). Seitz arrived at these values by using a June 29, 2001 real estate appraisal from Appraisal-Associates, Inc., and discounting the value back by either 10% or 15% to December 31, 1998. *Id.* The June 29, 2001 appraisal valued the real estate at \$3,500,000. *Id.* Morici used an appraisal value of \$1,754,915. May 20, 1999 Pet. Exs. A-D.

In the Pre-Trial Order filed in advance of the trial before Master Glasscock, the Estate noted at one point that it claimed the undervaluation was \$101,100,⁹⁷ and elsewhere stated that it sought damages against the Guardian for breach of fiduciary duty in the amount of “\$115,500.00 plus interest . . . for undervaluation of the Ward’s interest in Realty Enterprises, LLC”⁹⁸ The \$115,500 number came from Seitz’s calculation of the correct fair market value of Tim’s interest based upon the appraisal values Morici used.⁹⁹ Yet, by the time they filed the PTO, the Estate already had Seitz’s higher alternative valuations and presumably used the values they considered most defensible in their damages award request. The Estate did not actively seek to recover a greater amount until after the September 2006 trial.¹⁰⁰

Because the Estate indicated in the PTO that it was an admitted fact that the undervaluation was in the range of \$100,000, and because the Estate stated in the PTO that it sought damages based on an undervaluation of \$115,500, even though they were aware of Seitz’s higher valuations, I hold that the Estate is estopped from seeking damages at this stage based on the higher values Seitz provided in his March 2006 report. Rather, the undervaluation should be calculated based on the appraisal values used by

⁹⁷ PTO ¶ 2I.

⁹⁸ PTO ¶ 4A(i).

⁹⁹ JX 7 at 3.

¹⁰⁰ In the Estate’s post-trial briefing, it sought to recover between \$101,100 and \$200,000, with interest. Pet’r’s Mem., dated Nov. 28, 2006, at 9.

Morici.¹⁰¹ Further, based upon my review of the record, I find that the evidence supports Eileen's contention that Tim's interest in Realty was undervalued by \$101,100.00.

As a member of Realty who unjustly benefited from Morici's depreciation error, Eileen will be responsible for her proportionate share of the undervaluation. Thus, I conclude that Eileen must return an amount equal to \$101,100.00 multiplied by her percentage ownership of Realty, as it existed after the buyout, together with simple interest thereon at the legal rate from March 15, 1999.

C. The Loan to Cecelia Constituted a Breach of Fiduciary Duty

The Estate contends Eileen breached her fiduciary duty to Tim by making unauthorized loans, which totaled \$67,000, from Tim's estate to Cecelia. The Estate seeks an order requiring Eileen to repay to it that \$67,000 loan, together with interest thereon at the legal rate.

Eileen asserts that the family had a long history of loaning money to each other in times of need, and in this case, Cecelia needed money for her nursing home care. Although she did not seek court approval to make the loans, Eileen maintains that Tim, if he were able and competent, would have loaned the money to his mother, interest free.¹⁰²

¹⁰¹ The appraisal values Morici used were not produced in this litigation. A review of the record suggests that the values may have been misplaced or lost when Morici left Ostroff, Fair & Company. See Morici Dep. at 26-28.

¹⁰² The record is silent as to whether any of the other siblings loaned money to their mother to help pay for her nursing home expenses.

I find that Eileen's failure to seek court approval for the loan disbursements resulted from a lack of care, and not from disloyalty to Tim or bad faith.¹⁰³ Still, Eileen occupied the position of a fiduciary for each of the parties to the loan transaction, in one case as guardian for Tim, and in the other as Cecelia's power of attorney. In these circumstances, she should have sought court approval before making any of the loans to which the Estate has excepted.

These loans had the effect of diminishing Tim's estate by \$67,000, while Cecelia received a corresponding benefit. Upon Cecelia's death, the debt was not repaid, even though Eileen served as executrix of Cecelia's estate. Rather, the four siblings, other than Tim, assumed a portion of the debt in the amount of \$5,726 each.¹⁰⁴

¹⁰³ The disbursements from Tim's guardianship estate for loans to Cecelia were listed in the Ninth and Tenth Accountings, as filed by Eileen. Ninth Accounting at 18; Tenth Accounting at 1, 4.

In this regard, I reject the Estate's argument that the identity of the expected beneficiaries of Tim's guardianship estate has no relevance to the issues of breach of fiduciary duty or entitlement to fees and costs. Until Tim's former wife, Juliano, made the existence of the will known and it was filed with the Register of Wills shortly after Tim's death, Eileen and her other siblings reasonably believed Tim had no will and would die intestate. In that case, they and their mother, before she died, were the likely beneficiaries of his estate. Consequently, as to the loan to Cecelia, Eileen acted consistently with Tim's presumed purposes for his assets and was entitled under 12 *Del. C.* § 3302(a) to consider the needs of Cecelia, an expected beneficiary of Tim's estate.

¹⁰⁴ A note in the Tenth Accounting provides the following explanation for this action:

Over a period of years, the guardianship has made loans totaling \$67,000 to ward's mother, Cecelia Buonamici. Cecelia Buonamici died on January 21, 1996. After expenses, her estate had net probate assets of \$22,904 to allocate towards this debt. However, since probate assets

Based upon these facts, I find that the loan disbursements totaling \$67,000 to Cecelia constituted a breach of Eileen’s fiduciary duty to Tim. Therefore, Eileen is liable to the Estate for the full amount of the \$67,000 loan.¹⁰⁵

The Estate contends in its exceptions that Eileen also should have to pay interest on the loan amount. In his Final Report, Master Glasscock denied interest because the family had a history of making interest free interfamily loans, and he considered it “reasonable to assume that the ward would have reciprocated and that any loan made for his mother[’s] benefit would have been without interest.”¹⁰⁶

As previously discussed, Eileen should have sought court approval before making the loans. Eileen’s only excuse for not doing so is that she did not think it was necessary.¹⁰⁷ Had she sought approval, the court conceivably might have approved an interest free loan from Tim to Cecelia based on the surrounding circumstances, but that is

were not liquid, the beneficiaries of her estate (who are also the interested parties shown on the guardianship accounting) have assumed the debt to the extent of the probate assets.

Tenth Accounting at 4.

¹⁰⁵ Assuming Eileen pays the amounts due pursuant to this ruling regarding the loan, she may be able to recover a portion of that amount from her siblings on a subrogation or other similar theory.

¹⁰⁶ Final Report at 13-14, citing *In re Du Pont*, 194 A.2d 309 (Del. Ch. 1963) for the proposition that the Court’s role, as ultimate guardian, is to approach such transactions as the ward himself would have, absent the disability.

¹⁰⁷ Tr. at 63, 83, 114.

far from a foregone conclusion.¹⁰⁸ Although it may be likely that Tim would have loaned his mother the money, I am not sure he would have done so without interest. Indeed, on the facts available, I seriously doubt that this Court would have approved the loan without any interest. This uncertainty stems from Eileen's carelessness in failing to request court approval. Consequently, I do not consider it equitable to make an exception here to the ordinary practice of assessing interest on a loan. Therefore, Eileen must pay the Estate simple interest at the legal rate from the date of each of the respective components of the loan that ultimately totaled \$67,000.

D. Eileen is Entitled to Commissions

A guardian is entitled to seek fees for her performance as guardian under Court of Chancery Rule 132. Concurrent with the filing of the Final Accounting, Eileen filed a petition for guardianship commissions in the amount of \$36,171. The Estate contends that because Eileen breached her fiduciary duty, she does not deserve any commission.¹⁰⁹

While Eileen did breach her fiduciary duty by loaning money to Cecelia without the Court's approval, nothing in the record suggests she acted out of bad faith. Rather, it

¹⁰⁸ In determining whether the ward, if competent and able, would have contributed to another's support, the Court would consider the following factors: (1) the needs of the ward; (2) the relationship between the ward and the other, prior to the ward's disability; (3) whether there are dependents upon the ward for support, and the extent of the dependencies; and (4) the size of the ward's estate. *In re Pawley*, 1978 WL 4650, at *3 (Del. Ch. Jan. 30, 1978).

¹⁰⁹ In the alternative, the Estate contends that if Eileen were awarded commissions, the amount should not be calculated based upon the inflated values of Tim's estate. The Estate did not request such a recalculation of commissions, however, until after Master Glasscock issued his Draft Report. I therefore deny that request as untimely, just as the Master did.

appears that Eileen's breach resulted from a lack of due care and an underappreciation of the importance of the Court's oversight function. To deny Eileen guardianship commissions because of this relatively isolated mistake, after she served as Tim's guardian for ten years, would not be appropriate.¹¹⁰ Therefore, I grant Eileen's request for guardianship commissions in the amount of \$36,171.

E. The Estate's Request for Attorneys' Fees and Costs is Denied

In Delaware, each party must pay their own legal expenses and costs pursuant to the American Rule.¹¹¹ In extraordinary circumstances, however, a party may be awarded attorneys' fees, such as when the opposing party acted in bad faith during the course of litigation.¹¹²

Neither party contends the other acted in bad faith during this litigation. Further, as previously discussed, I specifically found that Eileen did not act in bad faith when she made the disputed loan disbursements from Tim's estate to Cecelia. Moreover, a breach of fiduciary duty alone, especially one that was not in bad faith, does not justify a departure from the American Rule.¹¹³ Therefore, I deny the Estate's request for attorneys' fees and costs.

¹¹⁰ I note that after Cecelia was no longer able to continue as Tim's guardian, Eileen was the only person who sought guardianship of her brother.

¹¹¹ See *Carlson v. Hallinan*, 2006 WL 771722, at *22 (Del. Ch. Mar. 21, 2006) (internal citations omitted).

¹¹² *Shapiro v. Healthcare Acq., Inc.*, 2004 WL 878018, at *1 (Del. Ch. Apr. 20, 2004).

¹¹³ See *HMG/Courtland Props., Inc. v. Gray*, 749 A.2d 94, 124-25 (Del. Ch. 1999) (holding that a breach of the duty of loyalty does not justify awarding attorneys' fees).

III. CONCLUSION

For the reasons stated, I conclude that the undervaluation of Tim's interest in Realty in connection with the buyout did not result from a breach of contract or of fiduciary duty by the Guardian. I do conclude, however, that Eileen was unjustly enriched by the undervaluation, and thus, must return her proportionate share of the \$101,100.00 enrichment to the estate with interest at the legal rate from March 15, 1999.

In addition, I hold that the \$67,000 loan to Cecelia constituted a breach of fiduciary duty on the part of Eileen. Therefore, Eileen is liable to the Estate for the full amount of the loan disbursements to Cecelia plus interest at the legal rate from the date of each such disbursement.

I grant Eileen's request for guardianship commissions in the amount of \$36,171, and direct that the amount of her liability to the Estate be reduced by that amount. Further, I deny the Estate's request for attorneys' fees and costs.

Subject to the rulings reflected in this memorandum opinion, I confirm the Final Accounting, and deny the Petitioner's exceptions, other than as indicated.

Counsel for the parties shall confer and submit an appropriate form of order implementing these rulings within ten days of the date of this opinion.

fees and expenses because the "exception to the American rule is 'narrow' and should be applied 'in only the most egregious instances of fraud or overreaching.'" (quoting *Boyer v. Wilmington Materials, Inc.*, 1999 WL 342326, at *5 (Del. Ch. May 17, 1999)) (internal citations omitted).