## COURT OF CHANCERY OF THE STATE OF DELAWARE

KIM E. AYVAZIAN MASTER IN CHANCERY CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

July 31, 2013

Neal J. Levitsky, Esquire Fox Rothschild, LLP Citizens Bank Center 919 N. Market Street, Suite 1300 Wilmington, DE 19801

Mary Ann Plankinton, Esquire MacElree Harvey, Ltd. 5721 Kennett Pike Centerville, DE 19807

RE: Estate of Robert N. Gardner, C.A. No. 5506-MA

Dear Counsel:

In the Master's Final Report dated October 24, 2012, <sup>1</sup> I ordered Respondent Nancy Jennifer Haywood ("Nancy") to provide the Court with a formal accounting of her handling of Robert N. Gardner's funds. The formal accounting was to be supported by bank statements, receipts, invoices, cancelled checks and other relevant documents, to give Nancy an opportunity to demonstrate that some of her expenditures had been incurred for the benefit of Mr. Gardner. Thus, Nancy might be able to reduce the amount of money that she would otherwise be required to compensate the Estate of Robert N. Gardner for her self-dealing transactions and misuse of Mr. Gardner's property.

The Master's Final Report was approved and the findings of fact therein were adopted in a Final Order of this Court dated December 5, 2012,<sup>2</sup> after Nancy's exceptions to the Master's Final Report had been withdrawn.<sup>3</sup> Thereafter, by Order dated January 23, 2013,<sup>4</sup> I gave Nancy until March 5, 2013 to submit a formal accounting of her expenditures of Mr. Gardner's property beginning February 27, 2006 until Mr. Gardner's death on May 15, 2010. The deadline passed and on April 3, 2013,<sup>5</sup> I directed Nancy to file her formal accounting within 30 days or else I would issue Rule to Show Cause against her. On April 25, 2013, I received a letter from Nancy's counsel indicating that he had been instructed to submit the paperwork on which she had relied at trial to serve as her formal account.<sup>6</sup> Attached to the letter were documents that had appeared as part of Nancy's trial exhibits at Tabs 7-13.

Nancy has failed to provide the Court with a formal accounting. Her submission, that might have been provided as supporting documentation to a formal accounting, consists of 148 pages of copies of receipts, handwritten notes and receipts, invoices, bank statements, credit card statements, investment account statements, EZ pass statements, utility bills, store receipts, and checks. Many of these pages include numerous items on each page. Some of the copies are so faded as to be illegible.

The record of this case shows that Nancy wrote checks on Mr. Gardner's account to her husband Michael Hayward from February 20, 2006 to September 19, 2007, in

<sup>&</sup>lt;sup>1</sup> Docket Item ("D.I.") No. 63.

<sup>&</sup>lt;sup>2</sup> D.I. No. 68.

<sup>&</sup>lt;sup>3</sup> D.I. Nos. 64 & 66.

<sup>&</sup>lt;sup>4</sup> D.I. No. 70.

<sup>&</sup>lt;sup>5</sup> D.I. No. 71.

amounts that totaled \$35,000.00.7 Nancy also wrote checks on Mr. Gardner's account to herself from September 15, 2005 through October 5, 2009, in amounts that totaled \$243,447.20. Nancy also obtained a credit card in her own name on Mr. Gardner's American Express account, on which she charged \$42,167.85 in goods and services for herself starting in December 2006. These self-dealing transactions come to a grand total \$321,115.05. It is not the responsibility of this Court to wade through these documents in an attempt to determine whether Mr. Gardner's funds were used for Mr. Gardner's benefit. Since Nancy has failed to demonstrate through a formal accounting that \$304,485.058 of Mr. Gardner's funds was expended for Mr. Gardner's benefit, it is my recommendation in this Final Report that a personal judgment in the amount of \$304,485.05 be entered against Nancy. See Hogg v. Walker, 622 A.2d 648, 654 (Del. 1993) ("For a failure to account as required by court order, the constructive trustee may be surcharged or be required to pay compensatory damages. .. Another possible remedy includes a personal judgment against [the constructive trustee]." (citations omitted)).

Sincerely,

/s/ Kim E. Ayvazian

Kim E. Ayvazian Master in Chancery

<sup>&</sup>lt;sup>6</sup> D.I. No. 72.

<sup>&</sup>lt;sup>7</sup>Report and Supporting Documentation of William Kane, CPA, Tab B, Volume I of Plaintiff's Exhibits.

<sup>&</sup>lt;sup>8</sup> Because the formal accounting was for the period beginning February 27, 2006, I have deducted all checks made payable to Nancy or her husband prior to that date, except for the two "anniversary gift" checks that Nancy had written to herself and her husband on February 20, 2006.