

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF THE ESTATE OF)
G. JAMES SEPPI, deceased.)

C.A. No. 3189-MA

MEMORANDUM OPINION

Submitted: May 5, 2011

Decided: August 30, 2011

Jason C. Powell, Esq., Thomas R. Riggs, Esq., FERRY, JOSEPH & PEARCE, P.A.,
Wilmington, Delaware; *Attorneys for Petitioner Henry J. Seppi.*

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Bruno Seppi.*

PARSONS, Vice Chancellor.

This matter involves a dispute over the validity of a power of attorney, Will, and various estate documents executed by Gino James Seppi, who died on August 22, 2007 at the age of 87. Seppi is survived by his only son, Henry J. Seppi, and his younger brother, Bruno Seppi, both parties to this action.

Pursuant to Court of Chancery Rule 144, I have carefully reviewed *de novo* the record of the trial before the Master and also have heard live testimony regarding potentially dispositive credibility issues that I found existed based on my review of the record. For the reasons discussed in this Opinion, and consistent with the Master's Report, I conclude that the 2004 power of attorney and the 2006 Will and estate documents executed in favor of Bruno Seppi were the product of undue influence and are invalid. Therefore, I declare the 2006 Will and estate documents to be void and order that the Last Will and Testament executed by Gino James Seppi in 1983 be given full effect. In addition, I order an accounting from Bruno Seppi of his brother's estate and all transfers made under the 2004 power of attorney.

I. BACKGROUND

A. The Parties

Petitioner, Henry J. Seppi, is Gino James Seppi's only son. Henry was the sole beneficiary designated under the 1983 Will executed by his father.

Respondent, Bruno Seppi, is Gino James Seppi's younger brother and Henry's uncle. Bruno is the designated Trustee and sole beneficiary of the Will and related estate documents executed by Gino James Seppi on March 2, 2006.

B. Facts¹

1. The parties and their relationships

a. Gino James Seppi

Gino James Seppi (“Seppi”)² was born in Trento, Italy in 1920. At the age of six, Seppi immigrated with his family to the United States. While he never graduated from high school, Seppi completed the eleventh grade, and later earned his GED. At the age of twenty-one, Seppi enlisted in the United States Marine Corps and served in New Zealand during World War II. In 1945, after his discharge from the Marines, Seppi married Phoebe Baker of Ohio, and the two settled in Landover Hills, Maryland, where Seppi worked as a carpenter for the United States Department of Agriculture. The couple had one son, Henry, who was born in 1955. After twenty-seven years of working for the Federal government, Seppi retired in 1978 and over the course of the next two years, he and Phoebe built their “dream home” in Dagsboro, Delaware. Unfortunately, however, Phoebe passed away in June 1979.

b. Seppi and Henry

Prior to 2004, Seppi and Henry had a strong and loving father-son relationship. The two were very close and enjoyed each other’s company. Henry and Seppi shared mutual passions, which included hunting, bowling, and travel. They took many trips

¹ The facts recited herein constitute the Court’s post-trial findings of fact.

² With the exception of Gino James Seppi, I refer to the members of the Seppi family and Vernice Lee by their first names for the sake of brevity and to avoid confusion.

together over the years, including vacations to the Caribbean, the southwest United States, and a three-week trip to Australia and New Zealand for one of Seppi's Marine Corps reunions. During the construction of the Dagsboro house in 1978-79, Henry would travel on the weekends from Prince George's County, Maryland, where he worked as a correctional officer, in order to help his father with the construction. While the house was being built, the two often camped on the site together.

Seppi and Henry also had an open and trusting relationship. They discussed "everything" with each other, and Seppi took an active interest in Henry's affairs, keeping abreast of Henry's career, his relationships, and his life.³ Of particular importance to Seppi was discussing with and teaching his son about finance. While Seppi had limited formal education, he knew about finance and was a successful investor throughout his life. He kept meticulous records of his finances and discussed them with his son on a regular basis, keeping handwritten notes of his records, so that Henry would be able to manage Seppi's affairs if he were to become mentally-incapacitated.⁴ To this end, in 1991, Seppi had his lawyer prepare a durable power of attorney in favor of Henry (the "1991 POA").

³ 2011 Trial Transcript before this Court ("2d T. Tr.") 9 (Henry). When the identity of the testifying witness is not clear from the text, it is indicated parenthetically.

⁴ 2d T. Tr. 20 (Henry).

Along with discussing finance, Seppi was also financially generous to his son. He regularly made gifts of \$10,000 to Henry.⁵ He also gifted Henry parcels of property on two different occasions, one in College Park, Maryland, worth about \$45,000, and the other in Mount Airy, Maryland, having an estimated value between \$50,000 and \$75,000.⁶ Over the years, Seppi opened various joint accounts in his and Henry's names, and also created various payable on death ("POD") and transferable on death ("TOD") accounts in Henry's name. The purpose of these accounts was to allow for the transfer to Henry of Seppi's assets upon his death without the assets being subject to probate and taxed as part of his estate.⁷ Avoiding probate was important to Seppi, and he was meticulous in ensuring that the appropriate structures were set up to transfer his estate to Henry with as little tax consequence as possible.⁸ In addition, in 1983, Seppi executed a Last Will and Testament (the "1983 Will") that named Henry as his sole beneficiary.

c. Vernice Lee

Vernice Lee ("Vernice") was Henry's godmother and a longtime friend of the Seppi family. The wife of one of Seppi's friends from the Marine Corps, Vernice had lived a short distance from Gino and Phoebe Seppi in Maryland for much of Henry's

⁵ The dollar amount of the annual gifts Seppi made generally conformed to the amount that could be gifted without tax consequences. *Id.* at 12.

⁶ *Id.*

⁷ *Id.* at 14.

⁸ *Id.*

youth. When Seppi moved to Delaware in 1978-79, Vernice followed, moving to Fenwick Island in 1979.

Vernice's husband died in 1968, and after Phoebe's death in 1979, Seppi and Vernice began to see each other on a regular basis. They never married and kept separate residences throughout their lives, but Vernice moved just down the street from Seppi in 1996. Indeed, Seppi and Vernice acted like husband and wife, often staying at each others houses, traveling together, and caring for each other.

Those who knew Vernice considered her a strong and domineering woman.⁹ She was smart and independent, but could be forceful and dominating with the people with whom she interacted. The evidence shows that Vernice enjoyed her influence in Seppi's life and protected her relationship with him against outside interference. By the time Henry moved to Delaware in 2004, Vernice had assumed responsibility for Seppi's care on almost a full-time basis. She did his grocery shopping, cooked for him, maintained his house, dispensed his medications, brought him to his medical appointments, and managed his finances.

d. Bruno Seppi

Bruno is Seppi's younger brother. He and his wife, Martha Seppi, live on a thirty-five acre property in Bowie, Maryland, approximately 100 miles from Seppi's Dagsboro house. While Bruno receives a pension, he and Martha also operate a Christmas tree

⁹ 2009 Trial Transcript before Master Ayvazian ("1st T. Tr.") 212-13 (Gina Pecher), 305 (Kathy), 762 (Martha).

farm on their property, from which they derive an extra few thousand dollars in annual income. Bruno and Martha have seven surviving children and twenty-four grandchildren. They always have been active in their children and grandchildren's lives. After a daughter was murdered in August 2000, they helped her widowed husband raise their children.

Over the years, Bruno and Martha had been close with Seppi. Before 2000, they visited Seppi on a monthly basis and talked with him regularly on the phone.¹⁰ When Seppi was building his Dagsboro house in 1978-79, Bruno and Martha often came up to the site to help him.¹¹ While their visits became less frequent during 2000-02 following their daughter's death, they resumed visiting Seppi regularly once their grandchildren went off to college.¹²

2. Seppi's decline beginning in 2000

Around 2001, Henry began to notice that his father was beginning to have trouble remembering things and was also having trouble driving and walking. Concerned, Henry talked with his father about retiring early and moving to Delaware in order to take care of his father on a regular basis. Seppi liked the idea of having his son live closer to him. He

¹⁰ 2d T. Tr. 210-11 (Bruno).

¹¹ *Id.* at 211.

¹² *Id.* at 212.

told Henry to “run the numbers” to determine whether early retirement would be financially feasible.¹³

Upon determining that early retirement was possible, Henry and his then-girlfriend Kathleen (“Kathy”) moved to Delaware.¹⁴ With Seppi’s help, Henry purchased property in Georgetown, Delaware,¹⁵ a fifteen-minute drive from his father’s house in Dagsboro. In 2002 and 2003, Henry constructed a house on the property, staying with Seppi during the construction. In 2004, Henry completely retired from his job, and he and Kathy moved into the Georgetown house.

When Henry first moved to Delaware in 2004, Seppi would stay overnight a few days each month.¹⁶ Although Seppi generally preferred to sleep on the couch, Henry eventually made plans to have one of the downstairs rooms converted into a bedroom so that Seppi would not have to climb the stairs.¹⁷ Upon being around his father more often, Henry quickly recognized that his condition had deteriorated significantly.¹⁸ Seppi lived alone at the time, and was largely dependent on Vernice to manage his daily affairs.

¹³ 1st T. Tr. 556 (Henry).

¹⁴ 2d T. Tr. 11 (Henry).

¹⁵ Henry purchased his Georgetown property in 2002 through a like-kind exchange for his Maryland property. Seppi was “very happy” that Henry had undertaken such a lucrative transaction. *Id.* at 11, 21.

¹⁶ *Id.* at 23-24.

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 22.

In February 2004, Henry brought Seppi to Dr. Daryl Sharman, who had been Seppi's physician since 1984. At the appointment, Dr. Sharman began to suspect that Seppi was suffering from dementia or Alzheimer's disease. He ordered lab tests, and in September 2004, diagnosed Seppi with dementia. Shortly thereafter, Vernice changed Seppi's doctor from Dr. Sharman to her own physician, Dr. Kevin Wallace. She did not notify Henry of this change at first. But, Henry was present at a December 13, 2004 appointment where Dr. Wallace diagnosed Seppi with Alzheimer's disease.¹⁹

a. The 2004 POA and whether Seppi actually met with Stephen Parsons

Around the time that Seppi was diagnosed with Alzheimer's, he executed a new power of attorney in favor of Bruno (the "2004 POA") that expressly revoked the 1991 POA in favor of Henry. The parties dispute the circumstances surrounding the execution of the 2004 POA.

Dr. Wallace's notes from the December 13, 2004 appointment indicate that Henry informed him that he had a power of attorney over Seppi under the 1991 POA. On that same day, however, Vernice called her attorney, Stephen Parsons, and asked him to draft a new power of attorney for Seppi.²⁰ In response to Vernice's request, Parsons drafted a durable power of attorney on December 15, 2004, naming Bruno as Seppi's attorney-in-fact and explicitly revoking the 1991 POA in favor of Henry.

¹⁹ 1st T. Tr. 45 (Dr. Carol Tavani).

²⁰ 2d T. Tr. 458 (Parsons).

The parties dispute whether Seppi ever, in fact, met with Parsons before executing the 2004 POA. Vernice claimed in her deposition that Seppi wanted to change his power of attorney and that she had suggested they hire Parsons. Vernice further testified that on the day Seppi was scheduled to meet with Parsons, she drove him to Parsons's office, where the two met privately for ten to fifteen minutes while Vernice waited outside. She averred that Parsons then instructed the pair to go to the Wilmington Trust Bank in Millsboro and have the document executed and notarized. The witnesses to the signing were Vernice and her neighbor.

In his testimony, Parsons could not recall whether he ever actually met with Seppi and he further testified that he had no written notes of the alleged meeting.²¹ Furthermore, Parsons acknowledged that it was "unusual" in his practice that the 2004 POA was signed at a Millsboro branch of the Wilmington Trust Bank two days after his scheduled meeting with Seppi, because he was a notary himself.²² Parsons further acknowledged the possibility that he never actually met with Seppi, but instead simply prepared the power of attorney and had Vernice pick it up from his office.²³

Having considered the record and the testimony given by Vernice and Parsons, I find it more likely than not that Seppi never actually met with Parsons. In addition to the lack of any evidence or memory on the part of Parsons of a meeting with Seppi, I find it

²¹ *Id.* at 458, 460-61.

²² *Id.* at 460.

²³ *Id.* at 462-63.

unlikely that Parsons, who is a notary and whose usual practice is to have his clients execute documents in his office, would have instructed Vernice to take Seppi to the Wilmington Trust Bank to have the 2004 POA notarized. The only evidence supporting Vernice's version of how the 2004 POA was prepared and Parsons's role in its execution is Vernice's own testimony, which I find unreliable, and Parsons's description of his usual practice. Based on this record, I find that Parsons did not meet with Seppi in relation to the 2004 POA.²⁴

b. Whether Henry wanted to, and to what extent he did, participate in Seppi's care upon moving to Delaware

Significant factual disputes also exist as to whether Henry wanted to take care of Seppi, and to what extent he actually did, after moving to Delaware in 2004. According to Henry, whom I found to be credible, Vernice was in worse physical condition than Seppi in 2004, but she resisted Henry's attempts to become more involved in his father's affairs.²⁵ Henry described his relationship with Vernice before 2004 as "excellent." As Henry injected himself further into his father's life, however, his relationship with Vernice quickly deteriorated and she attempted to undermine Henry's efforts to care for his father. For example, when Henry asked Vernice to turn over a joint checkbook in Seppi's and Henry's names that he needed to pay Seppi's bills, she refused and later

²⁴ Moreover, even if Parsons did meet with Seppi, it was only for about fifteen minutes. I do not believe Parsons could have made an informed judgment about whether Seppi was subject to undue influence in such a short period.

²⁵ 2d T. Tr. 28.

accused him of breaking into her house in order to steal it.²⁶ When Seppi stayed with Henry, Vernice would give Henry a pillbox of Seppi's medications, but withheld the prescriptions, which made it difficult to identify the medications.²⁷ If Seppi tried to assert himself in favor of Henry, Vernice would threaten to stop seeing him.²⁸ Similarly, when Seppi stayed at Henry's house overnight, Vernice would call him and tell him that she would leave him if he did not stop visiting with his son.²⁹

At the same time Henry's relationship with Vernice was deteriorating in late 2004, Bruno and Martha were becoming increasingly involved in Seppi's life. Around that time, Bruno and Martha began visiting Seppi almost weekly, often staying overnight at his house.³⁰ Bruno acknowledged that Vernice was then in control of everything in Seppi's life and may have been "overdoing it in some cases."³¹ In any case, Bruno and Martha began caring for Seppi, doing his house and yard work, providing him with meals, driving him to his medical appointments, managing his prescriptions, and running his errands.³²

²⁶ *Id.* (Henry).

²⁷ *Id.* at 30.

²⁸ *Id.* at 29-30.

²⁹ *Id.* at 117.

³⁰ *Id.* at 387 (Martha).

³¹ *Id.* at 228 (Bruno).

³² *Id.*

Bruno testified that he and Martha became more involved with Seppi's care in late 2004 because Vernice had told them she had not been able to get Henry to do it.³³ Bruno further claimed that he told Henry in early 2005 that he should "try to help his dad out," but that Henry responded that he had other things to take care of at the time.³⁴ Bruno described Henry as being concerned solely about Seppi's finances and worrying constantly about Seppi's Medicare coverage.³⁵

Having considered the testimony given by the parties in the 2011 hearing and the previous record, I find Henry's testimony regarding what transpired during late 2004 and 2005 to be more credible. Despite having no ties to Delaware, Henry retired early from his job and moved over 100 miles to be closer to his father and to take a more active role in his care. Conversely, I find unpersuasive Bruno's allegations that so soon after leaving his career and home in Maryland and moving to Delaware, Henry suddenly would lose interest in and neglect to care for Seppi, with whom he always had had a strong relationship.

Instead, I find that the record, including Bruno and Vernice's own complaints about Henry, demonstrates that Henry attempted to have an active role in his father's care from the time he moved to Delaware until the fall of 2005. Seppi often stayed at his son's house during this time and Henry frequently visited his father in Dagsboro, where

³³ 1st T. Tr. 808.

³⁴ *Id.* at 809, 811.

³⁵ *Id.* at 809.

he helped out with whatever needed to be done around the house.³⁶ Henry took his father to medical appointments and was present at the December 2004 appointment with Dr. Wallace when Seppi was diagnosed with Alzheimer's. In the *ad litem* report filed by Shannon Carmean, Seppi's court-appointed attorney, on January 6, 2006, Carmean found that Henry "truly want[ed] to take care of his father."³⁷

Moreover, according to Bruno and Vernice's own testimony, the two sides butted heads over multiple matters regarding Seppi's care between late 2004 and 2005, illustrating Henry's active involvement in his father's life. For example, based upon Dr. Wallace's recommendation when he diagnosed Seppi as having Alzheimer's, Henry attempted to take away Seppi's keys to stop him from driving.³⁸ Instead of supporting that action, Bruno and Vernice used the incident to paint Henry as someone trying to limit Seppi's autonomy unnecessarily.³⁹ A similar incident arose when Henry attempted to remove a rowboat from his father's property to prevent him from going out on the river by himself.⁴⁰ Bruno and Vernice opposed that action as well, and made Henry return the

³⁶ *Id.* at 295 (Kathy).

³⁷ Joint Ex. ("JX") YYY at 6.

³⁸ 1st T. Tr. 45-46 (Tavani).

³⁹ Bruno thought that Seppi could have driven until the time of his death, but there is no independent evidence to corroborate his opinion. 1st T. Tr. 219.

⁴⁰ 2d T. Tr. 35 (Henry). Henry testified that, on one occasion, a neighbor had to save Seppi from drowning after he had taken the boat out on the river by himself. *Id.*

rowboat.⁴¹ In addition, in September 2005, when Vernice and Bruno brought Seppi to Dr. Wallace's office shortly after being informed of the pending guardianship proceeding, Dr. Wallace noted that Vernice complained about Henry wanting Seppi over at his house "all the time."⁴²

These conflicts illustrate that Henry attempted to be actively involved in his father's life in late 2004 and 2005, monitoring his condition, taking part in his care, and making difficult decisions he believed to be in his father's best interests. The record further shows that the consistent resistance Henry encountered from Vernice and Bruno hampered his efforts in this regard. Accordingly, I find that Henry desired and attempted to participate in his father's care during the end of 2004 and throughout 2005.

3. Henry resorts to the courts and Bruno and Vernice take primary control over Seppi's life

By August 2005, Henry had concluded that trying to cooperate with Vernice and Bruno regarding his father's care was "not working at all."⁴³ The "tug of war" over caring for Seppi was taking its toll on his father, and Henry did not want the continuous bickering between the parties to worsen his condition.⁴⁴ In fact, by the time Vernice had Seppi deliver the 2004 POA to Henry in late summer 2005, Henry realized he "had a

⁴¹ *Id.*

⁴² 1st T. Tr. 47 (Tavani).

⁴³ 2d T. Tr. 36.

⁴⁴ *Id.* at 47.

battle on [his] hands” and decided to pursue alternative avenues for relief that would not bear so directly on his father’s condition.⁴⁵

Henry then met with attorney Lynne O’Donnell to discuss possible legal options for him to regain control over his father’s care.⁴⁶ As a result of that meeting, Henry decided to file a guardianship petition for custody over his father.⁴⁷ On August 31, 2005, Henry brought Seppi to Dr. Sharman to obtain a physician’s affidavit in support of the guardianship petition. Dr. Sharman’s affidavit described Seppi as having moderately severe dementia, and alleged that Seppi met the statutory requirements for appointment of a guardian—*i.e.*, that he was “unable to properly manage and care for his property or make decisions concerning the care of his person, and in consequence thereof, [was] in danger of dissipating or losing his property or becoming the victim of designing persons.”⁴⁸ On September 15, 2005, Henry filed his guardianship petition with this Court. On September 16, the Court entered a preliminary order appointing Carmean as Seppi’s attorney *ad litem*.

By the time he filed the guardianship petition, Henry already had become concerned that Vernice and Bruno were rearranging Seppi’s estate and financial affairs. He inquired of O’Donnell as to whether he properly could withdraw funds from joint

⁴⁵ *Id.*

⁴⁶ *Id.* at 36, 47.

⁴⁷ *Id.* at 49.

⁴⁸ JX U at Ex. A; *see* 12 *Del. C.* § 3914(a).

accounts he held with Seppi in order to pay the legal fees associated with the guardianship proceedings, as well as any medical expenses his father might incur in the future.⁴⁹ O'Donnell advised him that so long as the withdrawn funds were used for Seppi or the guardianship, such withdrawals would be proper.⁵⁰ On that basis, on August 25, 2005, Henry withdrew \$65,000 from joint accounts he held with his father at PNC bank.⁵¹

On September 22, 2005, Bruno received notice of the guardianship petition by certified mail.⁵² A few days later, Vernice and Bruno took Seppi to see attorney Kashif Chowdrey to inquire about challenging the petition. Chowdrey previously had done work for Vernice, and she had suggested that the group meet specifically with him.⁵³ Ultimately, the group hired Chowdrey to represent Bruno in challenging the guardianship petition.⁵⁴ While it is unclear exactly who wrote the check to pay for the representation, Seppi ultimately paid Bruno's legal fees to challenge the guardianship.⁵⁵ At trial, Bruno

⁴⁹ 1st T. Tr. 579 (Henry).

⁵⁰ *Id.*

⁵¹ *Id.* at 580.

⁵² *Id.* at 735 (Martha).

⁵³ 2d T. Tr. 231 (Bruno).

⁵⁴ *Id.* at 223.

⁵⁵ *Id.*

denied being aware that Chowdrey was in fact *his* lawyer and that it arguably was not appropriate for Seppi to have paid his fees.⁵⁶

On December 7, 2005, Bruno filed an objection to Henry's guardianship petition. The objection stated the various allegations Bruno made against Henry, including that he appropriated \$65,000 from his father's accounts, that he had taken Seppi's checkbook, a watch, and sawhorses from Seppi's house, and that police had to intervene in a dispute Henry and Kathy had with Vernice and Seppi at Henry's house. Bruno also alleged that Seppi feared that Henry would physically harm him.

On January 6, 2006, Carmean submitted her *ad litem* report. After concluding that Seppi was disabled and incapable of caring for himself without Vernice's assistance, the report recommended that Henry be given guardianship over his father.⁵⁷

a. Accusations against Henry

By late 2005, after Henry petitioned the court for guardianship, he became increasingly isolated from his father. Henry's relationship with his father was undermined not only by less frequent contact, but also by various accusations of theft that Vernice and Bruno were making against him. Foremost among these accusations was that Henry had "stolen" the \$65,000 that he removed from the PNC accounts for the guardianship proceeding. The evidence shows that Henry promptly and properly returned the funds after the guardianship proceeding was resolved and that Carmean

⁵⁶ *Id.* at 322.

⁵⁷ JX YYY.

found in her *ad litem* investigation that the withdrawal was, in fact, proper. Nevertheless, Vernice and Bruno characterized the withdrawal to Seppi as a theft and continually reinforced with him the idea that Henry had stolen the \$65,000 from him.

The record further indicates that, in his weakened state, Seppi believed Vernice and Bruno's accusations. Regardless of whether the withdrawal was proper, the accusations against Henry had a devastating effect on Seppi. According to Martha, the \$65,000 "was constantly on his mind" and Seppi "never got over it."⁵⁸ When Petitioner's expert, Dr. Carol Tavani, interviewed Seppi in January 2007, she found that he possessed a "fixed ideation" that his son had stolen from him, even though he could not explain how he knew that to be true or why his son would have taken the money.⁵⁹

In addition to the \$65,000, Vernice and Bruno accused Henry of stealing various other effects of Seppi's, including a checkbook, a watch, and two sawhorses. The checkbook was later found at Seppi's house.⁶⁰ As to the watch, Bruno admitted that he was not even aware of the existence of a watch before the claims that it had gone missing.⁶¹ On October 21, 2005, Vernice drove Seppi to Henry's house to reclaim the

⁵⁸ 1st T. Tr. 734.

⁵⁹ *Id.* at 93.

⁶⁰ 2d T. Tr. 46 (Henry).

⁶¹ *Id.* at 246.

sawhorses. A confrontation ensued when Vernice drove her van into Henry's yard, and Kathy eventually had to call the police to get Vernice to leave the property.⁶²

Although neither Bruno nor Martha could substantiate the claims made against Henry with any personal knowledge, they never attempted to contact Henry to inquire about them.⁶³ Rather, Bruno and Martha accepted Vernice's accusations against Henry at face value. Indeed, when Seppi's nephew and his wife, Robert and Garnet Bowman, visited with Seppi at his house in April 2006, Vernice, Bruno, and Martha attempted to raise the \$65,000 withdrawal with them. The Bowmans, however, declined to take part in such a discussion.⁶⁴

b. Bruno's credibility in relation to the accusations against Henry

I find Bruno's testimony in support of the accusations made against Henry to be highly exaggerated and unreliable. The following example illustrates how uncritically Bruno was willing to make, accept, and go along with the accusations leveled against Henry during this period. When asked during cross-examination whether he ever had witnessed Henry verbally abuse his father, Bruno responded affirmatively, stating:

Bruno: I saw him verbally abuse him right, you know. Just when Jimmy [*i.e.* Seppi] would say something, [Henry] would push him to the side, but say, "Yeah, okay," and -- not really paying attention to what he was trying to say.

Counsel: You agree that Henry loves his father, right?

⁶² *Id.* at 46 (Henry).

⁶³ *Id.* at 247 (Bruno).

⁶⁴ *Id.* at 287 (Garnet).

Bruno: Right.

Counsel: You agree Henry would never do harm to his father?

Bruno: No. That's right.

Counsel: The most severe example of verbal abuse you can provide of Henry towards his father is Mr. Seppi asking a question, and Henry would say, "Yeah, I know what you mean," and just try to push it off, correct?

Bruno: Correct.

Counsel: That's the most severe example you can provide.

Bruno: Right.⁶⁵

I find this exaggerated claim of abuse that Bruno made in open court to be indicative of the general nature of the claims and accusations he and Vernice made against Henry in 2004 and 2005. I also note that not one of the accusations of wrongdoing they made against Henry was proven to have been accurate.

4. Changes to Seppi's estate in late 2005-early 2006

a. Removal of Henry from Seppi's accounts

When the dispute over Seppi's guardianship commenced in September 2005, Vernice and Bruno also began to assist Seppi in making changes to the disposition of his assets and accounts.⁶⁶ Bruno and Vernice wrote letters and made phone calls to various

⁶⁵ *Id.* at 244-45.

⁶⁶ *Id.* at 338 (Bruno).

financial institutions to research how the accounts could be changed. They also brought Seppi to various banks to execute those changes.⁶⁷

On September 24, 2005, Vernice brought Seppi to PNC Bank where he opened a new account solely in his name. Two days later, \$20,000 was transferred into the new account. On October 3, 2005, Seppi executed a Wilmington Trust Company power of attorney in favor of Bruno, giving him access to Seppi's accounts there. On October 5, Seppi gave Bruno a power of attorney over his PNC Bank accounts, which Bruno then used to transfer money from Seppi and Henry's joint PNC accounts into accounts held solely in Seppi's name. On December 5, 2005, Vernice wrote a letter to Fidelity Investments, signed by Seppi, to have Henry's name removed as the POD beneficiary on Seppi's Fidelity accounts. In early January 2006, Seppi's accounts with Royal Dutch Shell, Johnson Controls, Inc., and T. Rowe Price, all of which were designated as TOD to Henry, were transferred to accounts solely in Seppi's name. In February 2006, Bruno helped transfer over \$250,000 dollars from an account at Tri-Continental Corporation with a POD designation in favor of Henry into an account solely in Seppi's name.⁶⁸ On March 20, 2006, Vernice sent another letter that she wrote, and Seppi signed, to Phoenix Investment Partners, LTD, removing Henry as the TOD beneficiary on an account there.

⁶⁷ *Id.*

⁶⁸ *Id.* at 339.

On April 20, 2006, Vernice, Bruno, and Martha brought Seppi to meet with David Humes at Morgan Stanley to discuss changing Seppi's accounts there.⁶⁹ Although Seppi was present at the meeting, Humes testified that it was Bruno who told him that Seppi was concerned about Henry taking money from his accounts and that Seppi wanted the account changed from Henry Seppi and Jim Seppi to Jim Seppi and Bruno Seppi.⁷⁰ Humes described Bruno as the "aggressor" in the conversation, leading Seppi and attacking Henry.⁷¹ Because he was suspicious, Humes refused to change the account, and the group left.⁷² By the end of April 2006, the Morgan Stanley account, worth approximately \$400,000, was the only one of Seppi's assets on which Henry's name remained.

b. Execution of new estate documents in favor of Bruno

At the same time that Bruno and Vernice were removing Henry from his father's accounts and holdings, they also set about to change Seppi's estate plans. In December 2005, Bruno contacted his attorney, Chowdrey, about making changes to Seppi's will.⁷³

⁶⁹ *Id.* at 340.

⁷⁰ *Id.* at 342.

⁷¹ *Id.* at 344.

⁷² 1st T. Tr. 428-29.

⁷³ Chowdrey stated in a December 21, 2005 letter to Carmean that he had warned Bruno not to make any changes. The letter surprised Carmean because Seppi had not indicated to her that he had any desire to change his estate documents. Carmean, therefore, advised Chowdrey that she thought it would be inappropriate to execute any estate planning documents while the guardianship proceeding was ongoing. JX FF.

Chowdrey advised Bruno against making such changes while the guardianship proceeding was pending. Nevertheless, on January 10, 2006, Vernice and Bruno brought Seppi to another attorney, David Baker, to discuss possible changes to Seppi's estate plans.⁷⁴ On March 2, 2006, the three returned to Baker's office and executed a new Will and Revocable Trust Agreement (collectively, the "2006 Estate Documents"). The Will left Seppi's residuary estate to Bruno as Trustee of Seppi's Revocable Trust Agreement. Seppi also executed (1) a Bill of Sale that transferred legal title over all of Seppi's tangible personal property to Bruno as Trustee and (2) a Revocable Trust Agreement that named Bruno as Trustee and remainder beneficiary of the trust, with a stipulation providing for Bruno's daughter Marilyn to be designated Trustee and his children as the remainder beneficiaries if Bruno predeceased Seppi. The 2006 Estate Documents and the subsequent retitling of Seppi's assets and accounts effectively disinherited Henry in favor of Bruno.

5. Henry and Kathy's wedding

In April 2006, Henry and Kathy married. Worried that Seppi would be upset if Vernice and Bruno did not allow him to attend the ceremony, Henry did not invite his father and kept the ceremony a secret from him. Throughout the rest of 2006, Henry did not see his father, but in 2007, in the midst of litigation, the two sides agreed on a guardianship arrangement that split custody between Bruno and Henry as co-guardians. The two would alternate months caring for Seppi throughout the year and a neutral third

⁷⁴ 2d T. Tr. 349 (Bruno).

party would be appointed to manage Seppi's assets. In April 2007, Bruno and Henry agreed to hire Karen Fisher as Seppi's full-time caregiver.

By 2007, Henry knew about the changes to Seppi's estate, but did not harbor any ill will toward his father. Henry reengaged his father during this time and reconnected with him. They even traveled together to a family reunion in Ohio, which Seppi enjoyed immensely.

On June 26, 2007, Vernice died. Her death deeply upset Seppi and hastened his own decline. On August 22, 2007, Seppi died.

C. Procedural History

On August 29, 2007, one week after his father's death, Petitioner, Henry, filed in this Court a Caveat to the admission to probate of Seppi's 2006 Will and a Complaint to Invalidate Transfers of Property and Rescind Trust Agreement and Invalidate Transfers to Same against Respondent Bruno. Henry alleged in the Caveat and Complaint that his father lacked testamentary capacity at the time he executed the 2006 Will, two preceding powers of attorney executed in favor of his brother Bruno in 2004 and 2006, the Revocable Trust Agreement in favor of Bruno executed concurrently with the 2006 Will, and the property transfers to the trust made thereafter. Henry further claimed that the documents and transfers were made under the undue influence of Bruno and Vernice. In his Answer, Bruno denied Henry's claims and asserted various affirmative defenses, as well as a counterclaim against Henry for the \$65,000 Henry allegedly wrongfully withdrew from his and Seppi's joint account.

Master in Chancery Kim Ayvazian held a trial on February 2-4, 2009 and March 30, 2009. On March 30, 2010, Master Ayvazian issued her Final Report (“Master’s Report”) finding that the 2006 Will, the 2004 POA, the institutional powers of attorney, letters of instruction, and other documents executed by Seppi on or after December 15, 2004 were the product of undue influence by Vernice and Bruno and that those documents and any transfers of property or changes to beneficiary designations made in reliance on them were invalid. Master Ayvazian also ordered that Seppi’s 1983 Will be admitted to probate and that Henry have a right to an accounting from Bruno and to surcharge Bruno for any assets unrecoverable by the estate.⁷⁵

In accordance with Rule 144, Bruno filed timely Exceptions to the Master’s Report on April 6, 2010. Upon reviewing the Master’s Report and the supporting record, I determined that there were material questions of fact regarding dispositive credibility determinations as to some of the witnesses. Accordingly, I conducted a new trial as to those witnesses, among others, on May 4-5, 2011 and June 16, 2011.

II. ANALYSIS

A. Standard of Review of the Master’s Report

This Court reviews a Master’s Report *de novo* as to both findings of fact and conclusions of law.⁷⁶ Unlike the review of a decision made by a trial judge duly appointed by the Governor and confirmed by the Senate, the factual findings made by a

⁷⁵ 1st T. Tr. 3.

⁷⁶ *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

Master are not entitled to any special weight or deference.⁷⁷ *De novo* review, however, may be conducted on the record

[e]ven where the parties except to one or more of the master's factual findings If the parties object to the conclusions that the master drew from the evidence, the court may read the portion of the record relevant to the exception raised and draw its own factual conclusions. Only where exceptions raise a *bona fide* issue as to dispositive credibility determinations will a new hearing be inevitable. In those cases the new hearing can be limited to the witness or witnesses whose credibility is at issue.⁷⁸

Here, I determined that certain *bona fide* issues existed as to dispositive credibility determinations made by the Master. Having supplemented the record accordingly, I now turn to my *de novo* findings of fact and conclusions of law in this matter.

B. Applicable Standard for a Will Contest

Delaware law presumes that a duly-executed will is valid and that the testator had the requisite testamentary capacity to execute it.⁷⁹ The party who challenges the validity of a duly-executed will has the burden to show by a preponderance of the evidence that the testator either lacked the requisite testamentary capacity, or was unduly influenced, at the time of the will's execution.⁸⁰ The presumption of testamentary capacity, however,

⁷⁷ *Id.* at 182-83, 184.

⁷⁸ *Id.* at 184.

⁷⁹ *In re Szewczyk*, 2001 WL 456448, at *3 (Del. Ch. Apr. 26, 2001); *see also In re Melson*, 711 A.2d 783, 786 (Del. 1998).

⁸⁰ *See Melson*, 711 A.2d at 786; *In re Norton*, 672 A.2d 53, 55 (Del. 1996); *In re West*, 522 A.2d 1256, 1263 (Del. 1987).

does not apply and the burden on claims of undue influence shifts to the proponent where the challenger of the will is able to establish, by clear and convincing evidence, the following elements: a) the will was executed by a testatrix or testator who was of weakened intellect; b) the will was drafted by a person in a confidential relationship with the testatrix; and c) the drafter received a substantial benefit under the will.⁸¹

If the party challenging the will can meet his or her burden as to these three elements, the ultimate burden of persuasion shifts to the proponent of the will to demonstrate that the testator “possessed the requisite testamentary capacity” and was not unduly influenced in the execution of the will.⁸²

Henry contends, and Bruno denies, that each of the three elements identified in *Melson* exist in this case. Accordingly, I address each of those elements below.⁸³

1. Did Seppi possess a “weakened intellect”?

To be deemed “of weakened intellect,” a testator need not have manifested an advanced degree of debilitation.⁸⁴ The Court need only find that such “weakened intellect” existed, taking into account factors such as a sudden change in the testator’s living habits and emotional disposition.⁸⁵

⁸¹ *Melson*, 711 A.2d at 788 (internal quotation marks omitted).

⁸² *Id.*

⁸³ The question of whether *Melson* applies to a power of attorney is a question of first impression in this Court. Because I find the *Melson* standard inapplicable to the documents at issue, however, I do not reach the issue of whether *Melson* applies to powers of attorney.

⁸⁴ *Szewczyk*, 2001 WL 456448, at *4.

⁸⁵ *Id.*

The record shows that Seppi was of “weakened intellect” when the 2004 POA was executed on December 15, 2004. By that time, Dr. Wallace and Dr. Sharman had diagnosed Seppi with dementia. Dr. Wallace also had diagnosed Seppi with Alzheimer’s disease. Moreover, all of the parties stipulated that, by this time, Seppi needed regular assistance and that he had long ago ceded control over his affairs to Vernice, upon whom he was more or less dependent for his day-to-day care. Accordingly, I find that Petitioner has shown by clear and convincing evidence that Seppi possessed a “weakened intellect” at the time he executed the 2004 POA.

The parties further agree that Seppi’s condition only worsened over time and that neither his mental nor physical state ever rebounded after he was diagnosed with dementia and Alzheimer’s disease in 2004.⁸⁶ Therefore, I find that Petitioner has shown by clear and convincing evidence that Seppi was of “weakened intellect” when he executed the 2006 Estate Documents.

2. The existence of confidential relationships among those involved with the challenged documents

The Delaware Supreme Court has held that “where the drafter of the will is a lawyer acting in a lawyer-client relationship, sufficient safeguards exist to permit the application of the usual presumptions and burden of proof.”⁸⁷ Hence, where the relevant confidential relationship is between an attorney and her client, and the attorney does not

⁸⁶ 2d T. Tr. 235-36.

⁸⁷ *Melson*, 711 A.2d at 787.

stand to benefit substantially from the execution of the documents she has been called upon to draft, the *Melson* standard will not apply.⁸⁸

Under that principle, the *Melson* standard would not apply to the 2004 POA or 2006 Estate Documents because those documents were drafted by independent, licensed attorneys who did not stand to benefit from the dispositions made in the documents. Although the Delaware Supreme Court has cautioned that “an attorney drafting a will should, where circumstances permit, make a preliminary determination of competency through personal contact with the testatrix before the drafting process,” such determinations are not mandatory.⁸⁹ Moreover, in the prior cases in which this Court has applied the *Melson* standard, the challenged documents were drafted by persons who were “without legal training [and] under no ethical constraints concerning the limitation on [their] conduct.”⁹⁰ The involvement of attorneys makes this case different, and absent a showing of an ethical violation, personal benefit, or other misconduct on the part of the attorney in drafting a challenged document, this Court will not second-guess the

⁸⁸ See *id.* (noting that “where an attorney acts as the drafter of the will, the attorney is ethically forbidden from sharing under it”); see also Del. Lawyers’ Rule of Prof’l Conduct R. 1.8(c) (“A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client.”).

⁸⁹ *Melson*, 711 A.2d at 787.

⁹⁰ *Id.*

procedure the attorney used, so long as it is within the bounds of the law and the Rules of Professional Conduct.

The relevant confidential relationships in the drafting of the 2004 POA and the 2006 Estate Documents were between Seppi and Parsons and Seppi and Baker, respectively. There is no evidence that Parsons or Baker lacked independence or stood to benefit from the dispositions made in or through those documents. Thus, the *Melson* standard does not apply to this case and the burden of persuasion remains with Henry as the challenger of the Will.⁹¹ Because application of *Melson* requires satisfaction of all three elements by clear and convincing evidence and the second element is not met here, there is no need to address the third issue of substantial benefit under the documents in question.

C. Undue Influence

Preliminarily, I note that all of the parties appear to have been devoted to Seppi. Henry challenges the changes made to the disposition of Seppi's estate, but unlike most such cases, it is not clear that Bruno was motivated primarily by financial gain. Although Bruno's judgment may have been clouded by the prospect of receiving Seppi's estate, the underlying conflict and tension that arose between the parties stemmed mainly from Vernice's designs. While she never directly benefited from the changes to Seppi's estate, it is clear that Vernice was the prime mover behind those changes. She desired to control Seppi and manipulated Bruno and Martha to achieve that end. As a result, while the

⁹¹ *Id.*

challenged changes to Seppi's estate were made in favor of Bruno, it is important to consider Vernice's influence over Seppi as well as Bruno's.

To prove undue influence, Henry must demonstrate by a preponderance of the evidence that Vernice and Bruno exerted influence adverse to the interests of Seppi and that the 2004 POA and the 2006 Estate Documents were inconsistent with Seppi's intentions.⁹²

As the Supreme Court stated in *Langmeier*:

Undue influence is an excessive or inordinate influence considering the circumstances of the particular case. The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, must be such as to subjugate his mind to the will of another, to overcome his free agency and independent volition, and to compel him to make a will that speaks the mind of another and not his own. It is immaterial how this is done, whether by solicitation, importunity, flattery, putting in fear or some other manner. Whatever the means employed, however, the undue influence must have been in operation upon the mind of the testator at the time of the execution of the will.⁹³

The essential elements of undue influence are: (1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect.⁹⁴

⁹² See *In re West*, 522 A.2d 1256, 1264 (Del. 1987); *Melson*, 711 A.2d at 788.

⁹³ *In re Langmeier*, 466 A.2d 386, 403 (Del. Ch. Aug. 3, 1983).

⁹⁴ *In re Norton*, 672 A.2d 53, 55 (Del. 1996).

The mere fact that the proponent of a will had an opportunity, when it was executed, to exercise undue influence raises no presumption that he did so. Nor do any of the following factors: (1) the existence of a confidential relationship between the testator and beneficiary; (2) the alteration of an existing will arbitrarily and without reason; or (3) the mere fact that a testator disposes of his property unequally or in a manner which may seem unreasonable. The reason is that a testator having capacity, and acting freely, may dispose of his property as he sees fit.⁹⁵

In this case, Petitioner separately challenges both the 2004 POA and the 2006 Estate Documents as being products of undue influence. Accordingly, I turn next to the circumstances surrounding the execution of each of those sets of documents and my conclusions as to whether they resulted from undue influence.

1. The 2004 POA

While the question of whether the same test for undue influence as to wills applies to a power of attorney may be a matter of first impression before this Court, I see no reason why the test should be different. Like wills, powers of attorney can be used to make significant changes to the disposition of a person's assets, and their execution is susceptible to undue influence in much the same way that wills are. Thus, in the analysis below, I apply the same test for undue influence to the 2004 POA and the 2006 Estate Documents.

⁹⁵ West, 522 A.2d at 1264-65.

a. Susceptible testator

As discussed *supra*, Seppi possessed a “weakened intellect” when he executed the 2004 POA. By December 2004, he already was suffering from dementia and Alzheimer’s disease. On a mini mental status test taken in October 2004, Seppi scored a 16 out of a possible 30, which reflects moderately severe dementia. Bruno acknowledged that he had become forgetful and would walk around tapping his head, saying that he could not think straight.⁹⁶ At the same time, Seppi had become increasingly dependent on Vernice, Henry, and Bruno for his daily care. By late 2004, Seppi’s disposition also had changed. According to Bruno, starting in 2003, as his condition worsened, Seppi’s disposition came to be such that he was “nervous, apprehensive, [and] a worrier”⁹⁷ Based on Seppi’s mental condition and heavy dependence on others for his care, I find that he was a susceptible testator when he executed the 2004 POA.

b. Opportunity to exert influence

The most important relationship to consider in terms of possible undue influence in relation to the 2004 POA is that between Seppi and Vernice. While they were not formally married, Seppi and Vernice shared their lives much like husband and wife for almost thirty years. The two spent many of their days together and often stayed overnight at each other’s homes. Seppi was devoted to Vernice and was devastated when she died.

⁹⁶ 2d T. Tr. 235-36.

⁹⁷ *Id.* at 236.

As discussed *supra*, by the time Henry moved to Delaware in 2004, Seppi not only had a close personal relationship with Vernice, but had become heavily dependent on her to manage his daily affairs. As Bruno testified, Seppi “just put all his trust in certain people” and perhaps nobody more so than Vernice.⁹⁸ Seppi’s trust and reliance on Vernice provided her with the opportunity to exert significant influence over him. Therefore, I find that Henry has proven that Vernice had an opportunity to exert influence as to the 2004 POA.

c. Disposition to do so for an improper purpose

Although Henry described his relationship with Vernice before 2004 as “excellent,” their relationship quickly deteriorated when Henry moved to Delaware and became more involved in Seppi’s affairs.⁹⁹ Vernice was a strong and controlling woman accustomed to getting her way. Prior to 2004, she enjoyed exclusive control over Seppi.¹⁰⁰ As Henry credibly testified, when he confronted Vernice about taking over Seppi’s daily care, Vernice “would not allow it at all” and instead insisted that “she was going to handle it, [that] there was no need for [Henry] to do it, and it would never happen as long as she was alive.”¹⁰¹ Bruno also acknowledged that Vernice was used to

⁹⁸ *Id.* at 215.

⁹⁹ *Id.* at 23.

¹⁰⁰ 1st T. Tr. 7.

¹⁰¹ 2d T. Tr. 28.

being in control of everything in Seppi's life and "overd[id] it in some cases."¹⁰² In fact, Bruno initially viewed his role as a "peacemaker" between Henry and Vernice.¹⁰³

The record also demonstrates that Vernice was hostile to Henry's influence in Seppi's life. As Seppi's son and his designated power of attorney, Henry possessed the legal authority to control Seppi. This posed a threat to Vernice because her ability to care for and control Seppi represented a major part of her life in and after 2004. In fact, I find that Vernice's desire to control Seppi and her lack of a formal legal relation to him gave her cause to want to limit Henry's legal authority over Seppi in favor of her own control. While the 2004 POA did not grant Vernice herself power of attorney over Seppi, it strengthened her control by putting Bruno in that situation. In that regard, I note that Vernice actively enlisted Bruno's assistance to help her care for Seppi. Bruno and his wife, Martha, acted as allies of Vernice and they appear to have been content to let Vernice assert the controlling voice. I also find it significant that Vernice kept the existence of the 2004 POA secret from both Henry and Bruno for almost nine months, presumably to maximize her own options. She finally disclosed its existence by having Seppi deliver it to Henry in or around August 2005.

From this evidence, I find that Vernice was disposed to influence Seppi to execute the POA for an improper purpose. That purpose was not to benefit Vernice financially, but rather to preserve her control over Seppi.

¹⁰² *Id.* at 228.

¹⁰³ *Id.* at 220.

d. The actual exertion of that influence

The 2004 POA appears to have been executed almost entirely under Vernice's control and design. It was Vernice, not Seppi, who contacted *her* attorney, Parsons, to have the 2004 POA drafted. As discussed *supra*, it is unlikely that Parsons ever met with Seppi; instead, Vernice probably picked up the 2004 POA from Parsons's office and took it and Seppi to the Wilmington Trust Bank to have it executed. Vernice kept the 2004 POA a secret for months until she took Seppi to present it to Henry.¹⁰⁴ On that occasion, Seppi handed the 2004 POA to Kathy and said: "Here. Vernice and Bruno said I have to give you this."¹⁰⁵ Based on the crucial role that Vernice played in procuring the 2004 POA, I find it more likely than not that the 2004 POA was a product of her design, rather than Seppi's own volition.

The Supreme Court has noted that "[t]he law disfavors invalidating a will absent strong evidence mandating such drastic action. . . . especially [] where . . . two equally plausible reasons exist."¹⁰⁶ In this case, there is no other equally plausible explanation

¹⁰⁴ *Id.* at 222.

¹⁰⁵ *Id.* at 176.

¹⁰⁶ *In re West*, 522 A.2d 1256, 1265 (Del. 1987); *see also In re Konopka*, 1988 WL 62915, at *5 (Del. Ch. June 17, 1988) ("[U]ndue influence must be established by a preponderance of the evidence, and that undue influence is not established if the evidence discloses one or more plausible alternative explanations for the testator's change of beneficiaries. It would therefore follow that the evidence must clearly show that undue influence is the more probable, plausible explanation for the testator's acts, and that, conversely, any alternative explanations are improbable and implausible. The evidence of undue influence in this case will be evaluated within that narrow compass.").

for the change of powers of attorney. The 2004 POA was executed before the acrimonious events of 2005 that arguably might have turned Seppi against Henry. When the 2004 POA was executed in December 2004, Henry was actively engaged in Seppi's life and the two still enjoyed a strong relationship. I find it wholly incredible that Seppi would have harbored strong reservations in December 2004 as to Henry's desire or capacity to act properly as his power of attorney. Nothing in the record suggests that Seppi had such an inclination aside from Vernice's own statements, which I do not find reliable.¹⁰⁷ Moreover, it is equally, if not more, implausible that Seppi would change his power of attorney to Bruno, who understandably was only just beginning to become more active in Seppi's life after having been largely absent between 2000 and 2002, tending to his own family's needs. Rather, it is much more likely that the 2004 POA resulted from Vernice's desire to fortify her own control over Seppi by limiting Henry's legal authority. Therefore, I find that Vernice actually exerted her influence over Seppi and that the result of that influence was the execution of the 2004 POA revoking Henry's power under the 1991 POA.

2. The 2006 Estate Documents

a. Susceptible testator

As discussed *supra*, Seppi's mental and physical condition only worsened after 2004. As he continued to decline, Seppi became ever more reliant on Vernice, Bruno,

¹⁰⁷ Vernice testified that Seppi told her that "[I]t's about time to change [the 1991 POA] because I don't believe [Henry] is a person that's going to represent me and assure my care." Dep. of Vernice B. Lee on Nov. 30, 2006 at 65.

and Martha for his daily care. Furthermore, Dr. Wallace confirmed that by March 2006 Seppi was a susceptible testator.¹⁰⁸ Therefore, I find that Seppi was a susceptible testator at the time of the execution of the 2006 Estate Documents.

b. Opportunity to exert influence

Beginning in late 2004 and early 2005, Vernice, Bruno, and Martha began to coordinate as a group to control and care for Seppi.¹⁰⁹ They managed his affairs and provided him with his daily care, doing his errands, managing his finances, preparing his meals, driving him to the doctor, and managing his prescriptions.¹¹⁰ While all three may have had different and distinct relationships with Seppi, they coordinated their efforts in caring for Seppi and, following Vernice's lead, acted as a unified front in excluding Henry from Seppi's life.

By late 2005, Henry's influence and presence in his father's life was waning and Vernice, Bruno, and Martha, as a group, had almost exclusive control over Seppi. Kathy testified that even before the fallout over the guardianship petition, when she and Henry tried to visit his father they were "rarely ever allowed alone with [Seppi]."¹¹¹ Phone calls they left Seppi regularly went unreturned and they began to resort to sending him cards by registered mail just to make sure he received them.¹¹² Robert and Garnet Bowman

¹⁰⁸ 1st T. Tr. 56.

¹⁰⁹ *Id.* at 945.

¹¹⁰ 2d T. Tr. 239-40, 241.

¹¹¹ *Id.* at 185.

¹¹² *Id.* at 186.

had a similar impression when they visited Seppi shortly after the 2006 Estate Documents were executed. According to Robert Bowman, they got the “distinct impression that [Vernice, Bruno, and Martha] were not going to let [them] visit with [Seppi] alone.”¹¹³ The Bowmans also stated that, on multiple occasions when they talked to Seppi on the phone, they could tell someone was listening in on the other line, and once actually caught Vernice eavesdropping.¹¹⁴

Based on these facts, I find that Vernice, Bruno, and Martha all had the opportunity to exert influence over Seppi.

c. Disposition to do so for an improper purpose

The 2006 Estate Documents made drastic changes to Seppi’s estate that resulted in a complete disinheritance of Henry, except for \$400,000 in a joint Morgan Stanley account that Bruno and Vernice unsuccessfully tried to convince Morgan Stanley to change. Under the 1983 Will, Henry was designated as the sole beneficiary of Seppi’s estate. As a result of the 2006 Estate Documents and the corresponding changes to Seppi’s accounts, however, Bruno became the sole beneficiary of Seppi’s estate, which at the time of his death was worth \$1.5 million dollars. If Bruno had predeceased Seppi, Seppi’s estate would have gone to Bruno’s children, whom Bruno always had strived to provide with “a good life.”¹¹⁵ Accordingly, because of the alliance between Vernice and

¹¹³ *Id.* at 261.

¹¹⁴ *Id.* at 281 (Garnet).

¹¹⁵ 1st T. Tr. 840.

Bruno and the clear windfall Bruno and his family stood to gain from the change in Seppi's estate under the 2006 Estate Documents, I find that Vernice and Bruno were disposed to influence Seppi to change his estate plans through the 2006 Estate Documents for an improper purpose.

d. The actual exertion of that influence

As the Supreme Court noted in *In re West*, being the beneficiary of changes made to the estate of a susceptible testator and having the opportunity to influence such changes do not by themselves prove undue influence without further proof of the actual exertion of such influence by the beneficiary.¹¹⁶ The record contains ample evidence, however, to show that Bruno and Vernice actually exerted influence upon Seppi in having him execute the 2006 Estate Documents.

This Court has held that a party with the opportunity to exert influence on a susceptible testator engages in actual exertion of that influence when that person knowingly allows the testator to persist in the belief of a clear falsehood regarding an existing beneficiary of the testator's estate that results in the disinheritance of the existing beneficiary.¹¹⁷ On facts strikingly similar to this case, this Court held in *In re Konopka* that the son of a testatrix had engaged in the actual exertion of improper influence where he allowed his ailing mother to persist in the belief that her other son had misappropriated

¹¹⁶ *In re West*, 522 A.2d 1256, 1265 (Del. 1987).

¹¹⁷ *In re Konopka*, 1988 WL 62915, at *7 (Del. Ch. June 17, 1988).

her funds.¹¹⁸ The Court found that by “remain[ing] silent and never attempt[ing] to correct that misconception whenever his mother voiced it” the son had “thereby fuel[ed] her unsubstantiated and unfortunate belief about her [other] son.”¹¹⁹ The Court then went on to invalidate codicils executed in favor of the silent son based on this misconception because they were the product of undue influence.

Bruno’s participation and acquiescence in the baseless allegations made against Henry mirrors that made in *In re Konopka*. While Vernice generated many of the accusations against Henry, Bruno was at least a willing participant in perpetuating those accusations and he never attempted to dispel any misconceptions that Seppi had about his son’s actions toward him. Furthermore, unlike the silent son in *In re Konopka*, Bruno not only held his tongue as to Seppi’s misconceptions, but actively nurtured Seppi’s belief by, in particular, repeatedly characterizing Henry’s \$65,000 withdrawal as a “theft” and making such claims to third parties, such as the Bowmans.

I find, therefore, that Vernice and Bruno actually exerted improper influence on Seppi by actively nurturing and allowing Seppi to persist in his erroneous beliefs regarding the accusations made against Henry.

e. A result evidencing the exertion of that influence

The effect of the litany of accusations made against Henry by Vernice and Bruno is clear. Seppi was devastated by the charges that Henry had stolen from him. In the

¹¹⁸ *Id.*

¹¹⁹ *Id.*

context of his weakened intellect, I find that Seppi's misguided belief in the veracity of those accusations probably motivated him to change the disposition of his estate and disinherit his only son. That change contrasts sharply with the generosity Seppi exhibited throughout his life toward his son. Moreover, the record shows that the primary motivation for Seppi in changing the disposition of his estate arose from the falsehoods propagated by Vernice and Bruno, upon whom Seppi was utterly dependent when he executed the 2006 Estate Documents.

For all these reasons, I find that Seppi executed the 2006 Estate Documents under the undue influence of Vernice and Bruno and, therefore, those documents are invalid.¹²⁰

III. CONCLUSION

For the reasons discussed in this Opinion and based on an independent *de novo* review of the record before the Master and the supplemental record created before me, I concur with the conclusions reached in the Master's Report. Specifically, I conclude that the 2004 POA and the 2006 Estate Documents executed in favor of Bruno were made under undue influence and are invalid. As a result, I declare the 2006 Estate Documents to be void and order that the 1983 Will be given full effect. I further order an accounting from Bruno of Seppi's estate and all transfers made pursuant to the 2004 POA. In the

¹²⁰ Because I find that Seppi executed the 2004 POA and 2006 Estate Documents under the undue influence of Vernice and Bruno, I need not reach the issue of Seppi's testamentary capacity at the time of their execution.

event that any assets of the Seppi estate are not recoverable, Henry is entitled to surcharge Bruno for any shortfall.

Counsel for Petitioner shall submit, on notice, an appropriate form of final judgment within ten days of the date of this Opinion.