



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam K

Applicant²

and

Madam S

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles Chiu Chung-yee

Member referred to in section 59J (3) (b): Miss Chan Pui-yi

Member referred to in section 59J (3) (c): Ms Pun Kun-lin

¹ Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

² S2 of Mental Health Guardianship Board Rules

³ S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

⁴ S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

Date of Reasons for Order: 5th September 2007.

Background

1. The subject, Madam S, was a 78 year old widow suffering from vascular dementia, believed to be unable to handle finances and incapable of consenting to medical treatment. She used to lead a stable living prior to the death of her husband in April 2006 and she was assessed as a mentally incapacitated person in April 2007. She had 3 daughters and 2 sons but their relationship with each other was poor. While receiving adequate care and attention in a private care home for elderly, numerous disputes existed within her children regarding her residential care, medical treatment and financial management, to the extreme that assistance from the Hong Kong Police had been frequently sought.
2. Regarding financial matters, the major conflict existed between her 3rd daughter, Madam K (the applicant) and her 1st son, Mr L. Madam S used to be independent in managing her finance. However, as her health and cognitive ability deteriorated after her husband's death, her children gradually interfered with her monetary affairs at different stages. As a result, the subject's money was distributed in a significant number of different bank accounts at both the DBS Bank and Hang Seng Bank, some of which were joint accounts and others being sole name accounts of the subject as well as her children.
3. In total, Madam S had six bank accounts at two different banks including four jointly owned accounts (with the 2nd daughter Madam LL, the 1st son Mr L and the applicant Madam K) and two solely-owned accounts. All money in the joint accounts was acknowledged to belong solely to the

subject. Altogether a sum of \$810,588.19 bank savings belonged to Madam S. In addition, Madam K also received disability allowance for Madam S as an appointee, credited into Madam K's personal saving account.

4. This already chaotic financial situation was worsened by the fact that the 1st son Mr L suspected the 3rd daughter Madam K of transferring the subject's money into her personal bank account, bringing about severe tension and disputes between them. On one occasion, Mr L even sought police assistance to demand Madam K to return the money to Madam S, which amounted up to \$500,000. Madam K subsequently made out a time deposit at \$500,000 under the name of Madam S for six months at the Hang Seng Bank.
5. Furthermore, Madam S was allegedly financially abused by her 1st son, Mr L, as, in November 2006 he sought legal assistance to prepare a will for Madam S, under which he was appointed as the sole executor and trustee of Madam S, and an assignment of land, by which the ownership of Madam S in her residential property was also changed to Mr L. All in all, the siblings handled the finances of Madam S in a rather confusing manner, and a conflict of interest clearly existed between them all.
6. The welfare plan of Madam S, including her residential and medical treatments, was also argued upon by her children. While her 3rd daughter Madam K considered Madam S's present arrangement in a private residential care home for the elderly (RCHE) unsuitable for Madam S, and wanted to arrange her mother back home with a domestic maid; the 3rd son Mr L found the present arrangement appropriate for the benefit of Madam S. Evidently, strong mistrust, oppositional and apathetic sibling relationship

existed within the subject's family.

7. An application for guardianship order for Madam S was lodged on 20 April 2007 by Madam K, the 5th daughter. Having found the owner of Madam S's property changed to her brother, coupled with advice given by medical officer during Madam S's hospitalization, she proposed herself as her mother's legal guardian in order to protect her mother's financial and welfare interests which she thought were in jeopardy.
8. In the Social Enquiry Report, the Social Welfare Department recommended Madam S to be received into guardianship with Director of Social Welfare appointed as public guardian for a period of twelve months and vested with all the six powers.

Mental health conditions

9. According to the two supporting medical reports, Madam S had been diagnosed with vascular dementia for a period of fifteen months, with history of atrial fibrillation, thyroid nodule on conservative management, old left thalamic haemorrhage and cerebrovascular accident. Her MMSE (Mini-mental State Examination score) in June 2006 was reported to be 14/30, indicating cognitive impairment. Madam S was able to self-feed, but required assistance in walking, toileting, bathing, dressing, grooming and transfer. She also had incoherent speech and was disoriented.

Hearing at the Board on 5 September 2007

10. Madam K, the applicant, proposed guardian and 5th child of the subject, refused to sign an undertaking to declare ownership of the money in two

joint accounts with the subject and in her sole name account which were in fact holding subject's money in the sum of around \$220,000.

11. Madam K said she agreed that the monies in those three accounts belonged to the subject, her mother. Yet, she refused to sign the undertaking despite repeated explanations by the Board. She insisted that it was the money entrusted to her by the subject and she might need it for pursuing legal matters. After repeated reminders, she insisted not to sign it on the same reason. After some persuasions by the family members, she asked time to think over this matter. The Board granted her a short recess.
12. After the recess, Madam K signed the required undertaking before the Board.
13. Regarding the welfare of the subject, Madam K was not too satisfied with the service of the existing aged home, e.g. always forgetting to collect the medication such that subject was running out of supply. She had thought of taking subject home for care, but the subject's conditions have deteriorated markedly since the first fall (i.e. May 2007) at the aged home, since which the subject was put on restraints. Subject could not speak or express herself and lost her sitting or walking balance. She intended, after discussing with her (another) elder brother Mr Y, to move subject to a better aged home in Sham Shui Po area for convenience of visits.
14. Madam K fully agreed, and it was her outright wish, to appoint the Director of Social Welfare as the public guardian, to avoid family dissensions on welfare and financial issues.

15. Madam K was very concerned with the future care of the subject. She was raged with the secret transfer of the property in the favour of Mr L.

16. Madam K questioned that the balance of the Integrated Account of the subject at Hang Seng Bank during the period between November 2006 to April 2007 was of a lesser amount than it should have and she believed that there was some money to an extent of \$16,000 gone missing. During this period, the bankbook was kept by her elder brother Mr L. In elaborating her point, Madam K referred to her joint account (with the subject) passbook at Hang Seng Bank showing the transfer out of a sum of \$513,000 on 24 November 2006 which, according to her, was put into a time deposit for the subject. She said she also paid into the Integrated Account of the subject 3 months' normal disability allowance in February 2007. [Mr L said there was no bankbook of the subject's Integrated Account which was a statement account. He explained that he did not withdraw any money from the bank account of the subject but he did accompany the subject to renew her time deposits at Hang Seng Bank. Conversely, he rather suspected the applicant to have done something that should not be done e.g. prepared the subject to sign a lot of withdrawal slips or in fact did not transfer the right amount of money to the fixed deposit.]

17. In further support of her suspicion, she showed the Board a pay-in slip of \$3,375 evidencing transfer of the amount, being the normal disability allowance mentioned, to subject's Integrated Account which proved that the account balance should not be that little. [Mr L produced a bank statement of the Integrated Account of June 2007. He confirmed that he did not withdraw any money from the subject's accounts.]

18. To refute the allegation of Mr L, the applicant said as early as 20 November 2006, the correspondence address of subject's Integrated Account had been changed to Mr L's address. Thus, it was not correct for Mr L to say that it was only until a few months ago that the bank statements were started to be sent to his home address. [Mr L said he needed to find this out from his records.]
19. On probing as to the whereabouts of the interest earned from the said time deposit, she (Madam K) did not have information. [Mr L said he understood from the bank manager at the start that the interest earned would be transferred to another savings account of the subject. However, he had no updated information because his recent enquiry was stopped by the bank as the accounts of the subject were frozen.] [Mr H, the social enquiry report maker, said according to the original certificate of the fixed deposit, it was shown that interest would be credited to the saving account under the Integrated Account of the subject. But he did not find payment of the \$6,000 odd representing the interest being recorded on the bank statement produced.]
20. Madam LL, the 2nd daughter of the subject, said she agreed the Director of Social Welfare to be appointed as guardian.
21. Mr Y, the 2nd son of the subject, said he agreed the Director of Social Welfare to act as the subject's guardian. He agreed with the view of the applicant on the welfare arrangement of the subject as expressed just now. He, her elder sister Madam LL and the applicant all expressed that they did not know beforehand of the signing of the will of the subject and the transfer of the subject's property in favour of Mr L on 27th November 2006. Mr Y said the subject always mentioned to him in 2005 and 2006 that the

savings in DBS in the amount of \$300,000 would be given to Madam LL and the property would be left to him to live on. [The applicant said the subject stayed at Tuen Mun Hospital and then Pok Oi Hospital between 7th October 2006 and 8th November 2006. She was not entirely sure of the exact discharge date as it was Mr L who assisted in the discharge.] Mr Y had no particular view on the matter regarding the will and the property transfer. [Madam LL and the applicant said they liked to have the will and the transfer assignment cancelled.]

22. Mr L, the 1st son of the subject, handed in an undertaking declaring the ownership of the money in the joint account with the subject at Hang Seng Bank.

23. He said regarding the row over the appointment for medical follow-up in April 2007 at Tuen Mun Hospital, he did not have any prior notice of the arrangement. [The applicant said she had no firm information on the attendance of subsequent follow-ups of the subject.] He confirmed that both he and his wife helped to escort the subject for medical follow-ups. The instruction not allowing the subject to leave the present aged home was given by him because the applicant gave the same instruction at the previous aged home that ended up in an occasion that he could not take the subject out for tea. However, he supplemented that the most important reason for this instruction was that the applicant had taken subject out to banks and opened a number of bank accounts upon cancelling the subject's joint account with her elder sister Madam L in the same year. He did not want that happened again. He further supplemented that he did not have objection originally against the subject's holding of the joint account with Madam LL.

24. Mr L pressed hard on 26th November 2006 at the applicant's office for the production of Hong Kong Identity Card of the subject; and for the return of the subject's Hong Kong Identity Card to him, he even knelt down before the applicant. But he insisted that he called the police on that day because also of the need to require the applicant to revert the money of the subject that was kept by the applicant. Pressed by the Board, he finally admitted that he used the Hong Kong Identity Card of the subject on the next day at the lawyer's office and have the subject signed the two aforesaid vital documents.
25. On being asked by the Board, he said he had first informed the eldest sister Madam C, but not other siblings, about the subject's signing of the will and the assignment of the flat. He told her that it was the view of his late father and the subject, while sober or before onset of illness, that all 5 children were bad and not on good terms with them as parents. He told Madam C that the flat would be shared by 5 siblings but as the eldest son, he liked to change the ownership of the flat under his name first. [The Board pointed out that his saying was contradictory to the contents of the will of the subject.] [Mr Y said, about this matter, he did talk to Madam C who said that Mr L did not talk to her about making of a will of the subject and she did not know at all of the changing of title of the property. Madam C even said he did not believe her younger brother Mr L would do things like that.]
26. On being questioned by the Board, Mr L said his lawyer did not seek a doctor's certificate on the mental capacity of the subject on signing of the will and the assignment beforehand. The lawyer made his own assessment. He knew that the assignment expressed a consideration of HK\$800,000 which he had not paid up. [The Board noted subject's medical report made by Dr W showed that subject's MMSE score in June 2006 was only 14/30.

Also, the dates between the subject's discharge from Tuen Mun Hospital and Pok Oi Hospital due to stroke and the date of signing the 2 vital personal documents fell in the same month of November 2006. The Board had strong reservation on the mental capacity of the subject to understand the nature and effect of those significant documents signed by her.]

27. Mr L said he was open to whether the subject should be transferred to another aged home. He would let the Board decide. He felt that his decision would be challenged by the other 3 siblings (in the hearing room) anyway. He felt that the present aged home was a satisfactory one, with sufficient space and the personal care workers' attitude was good. He could only financially support the subject to this limit and he did not intend to re-claim the expenses previously paid by him (He later changed his mind).
28. Madam YY, the wife of Mr L, said she once opened the joint safe deposit box on 23rd May 2006 and she handed to the Board a photocopy of a picture in which a number of personal items contained in the said safe deposit box, belonging to the subject, were shown. These items remained intact in the box.
29. Mr H, medical social worker of West Kowloon Psychiatric Centre and the maker of social enquiry report, on behalf of the Director of Social Welfare, said he had nothing to add.

Reasoning

30. After considering all documentary evidence and hearing all the witnesses, the Board had no reservation but entirely agreed with the view and

observation of Mr H in his social enquiry report, particularly his conclusion in paragraph 19 on his view that there existed strong mistrust, oppositional and apathetic sibling relationship in subject's family and the interests of the subject could not be safeguarded.

31. The more alarming fact of this case was the highly suspicious acts of Mr L who brought the subject to a solicitor's office and had her signed the will, appointing him as the sole beneficiary and trustee, and an assignment purportedly sold the only property of the subject in his favour, on the face, in the consideration of \$800,000. The Board had grave concern over the interests of the subject and formed a view, on basis also of the medical evidence on hand, that the subject was financially abused.
32. Further, the Board agreed with Mr H's report in paragraph 24 and observed that there existed a clear conflict of interests of a financial nature between the subject and the applicant, who also conceded that Director of Social Welfare would be an appropriate person to act as the guardian of the subject. The present distribution of the subject's own money in different bank accounts, some of which were joint accounts and some under the sole name of the subject or of the applicant was viewed by the Board as rather chaotic and might not serve the best interests of the subject. The Board also took into account that the applicant had unilaterally manipulated sizeable amounts of the subject's money and did open a number of bank accounts.
33. Apart from the finances of the subject, the long term welfare plan was also needed to be sought out. The Board has evidence before it to show that there were conflicting views in the past as to where the subject should live and serious disputes over attending medical follow ups at Tuen Mun clinics. It was also the applicant's view, as shared by some of her siblings, that a

new private old age home should be located. All these outstanding particular needs of the subject, together with the highly conflicting family background with disputes mainly between the applicant and Mr L (who was suspected to be abusing the landed property of the subject), warrant the reception of the subject into guardianship and the appointment of an independent and neutral third party, i.e. the Director of Social Welfare, to act as the guardian in order to safeguard the interests and welfare of the subject. On the premises, the Board has no hesitation to accept the recommendation of Mr H as contained in paragraph 26 of his report.

Decision

34. The Guardianship Board is satisfied on the evidence and accordingly finds:
- (a) That the subject, as a result of vascular dementia, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
 - (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
 - (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances which has resulted in the subject being abused financially;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on welfare arrangements and finance;

- (d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

35. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

36. The Board thanked Mr H for his very substantive report which greatly assisted the Board.

(Mr Charles CHIU Chung-yee)
Chairperson of Guardianship Board