



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr U

Applicant²

and

Mr Y

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Mrs Marian CHEUNG

Member referred to in section 59J (3) (c): Ms YUEN Yuen-yau

Date of Reasons for Order: 22nd February 2011.

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)(a) of Mental Health Ordinance

Background

1. The subject, Mr Y, was a 64 year-old man suffering from schizophrenia since 1975. His father passed away about 2 years ago while his mother was receiving residential care in an old age home. The subject ranked the third among four siblings. His elder brother had emigrated to Australia about 40 years ago. His younger sister, a psychiatric patient, was living alone and seldom contacted him. He used to live in a Home Ownership Scheme flat with his twin elder brother since about 1980. The flat was jointly owned by them. The twin elder brother was also a psychiatric patient. Due to stroke, the twin elder brother was admitted to hospital in January 2010 and discharged to an old age home.

2. The subject, through a matching company, had acquainted with a woman, Madam L. In January 1998, they proclaimed marriage, by hosting a marriage banquet in the presence of relatives; but they had no sexual relationship or legal registration. The subject perceived Madam L was his wife and he felt obliged to provide financial support to her. Madam L had been living apart from the subject over the years. They met about once a week at MTR stations to collect the dishes which were prepared by Madam L for the subject's meals.

3. The subject was a civil servant for 28 years and retired in late 2001. He received a lump sum about \$1.1 million. He deposited all the money to Madam L's personal account and he gave the cash withdrawal card and its password to Madam L for withdrawing the monthly pension \$5,700 from his personal account as her maintenance. After retirement of subject, Madam L requested the subject to work as security guard with monthly income of \$6,000 to further support her monthly maintenance (as well

mortgage repayments) at total amount of \$10,000 per month. Madam L also kept some other bankbooks and cash withdrawal cards of subject. As known by the subject, there were only left very little or no money in those accounts. The subject now only has had around \$10,000 in total held in his bank accounts. On the advice from the family after guardianship application (since November 2010), the subject opened a new bank account for receiving monthly pension without disclosing it to Madam L.

4. In 1988, the subject and Madam L had jointly purchased a property (referred to as "Flat 17E"). According to the land search record, the flat was owned by Madam L solely since November 2001. That property was re-mortgaged to bank with Madam L as the mortgagor and the subject and Madam L was the borrowers. In August 2001, the subject had funded Madam L to purchase another flat (referred to as "Flat 15C") which was in the sole name of Madam L. Also, the subject gave \$300,000 to \$400,000 to Madam L to purchase a third property (referred to as "Flat 468") in part of which Madam L lived. But according to the land search record, Madam L was not the owner. Monthly rental income from Flat 17E and Flat 468 was generated and collected by Madam L all along. Regarding the jointly Home Ownership Scheme flat of subject and his twin elder brother, the subject, under the influence, has transferred his share of the flat to Madam L by a Deed of Gift in June 2004.
5. The twin elder brother has been admitted to hospital due to stroke. Before hospitalisation, he lived with the subject in the Home Ownership Scheme flat. On 9 March 2010, a woman claiming to be the younger sister of the twin elder brother came to the medical social worker's office to request to take the twin elder brother out to bank for cash withdrawal. It was subsequently confirmed with the subject and the uncle (the present applicant)

that the woman approaching the medical social worker was not the younger sister of subject but was Madam L. Besides, a bank staff came to hospital and asked the twin elder brother to sign the withdrawal slip on 22 April 2010. This was turned down by the hospital. In the circumstances, the medical social worker then filed an guardianship application for the twin elder brother on 29 April 2010. According to the social enquiry report, the twin elder brother hold around \$400,000 savings at banks. At that occasion, the Board granted an Order to appoint Director of Social Welfare to be the guardian.

Circumstances leading to the present application

6. The family members accused that Madam L had financially abused the subject and his twin elder brother. They had reported the case to police in April 2010. The family members were angry that Madam L had manipulated the subject financially and also neglected his health condition and urged him to work as a security guard to support her. The uncle of subject, Mr U, filed an application in order to protect the interests of subject and proposed Director of Social Welfare to be the guardian.

Mental and health conditions

7. According to the medical report, the subject was known to the mental health service in aged 28, presenting with months of auditory hallucination, persecutory delusion and somatic delusion. The subject had psychiatric admissions to mental hospitals in 1975 and 1988. He remained mentally stable and free of psychotic symptoms. He attended outpatient follow-up regularly and adhered to psychotropic drug treatment well. The subject has poor affectionate skill and limited judgment in allocation of personal assets.

Summary of evidence adduced at hearing on 22 February 2011

8. **Mr Y**, the subject, said he came from home today. He stayed there for 30 years. He had purchased flat but his share of it was transferred to his girlfriend Madam L (who was absent today). Madam L told him that if he has done something wrong (as he worked as a security guard at that time), he would need to pay for compensation and then would lose his flat. Thus, Madam L suggested to him that it was better to transfer his share of the property to her. He therefore had no intention to make an outright gift to her. He liked to resume his entitlement of the flat now.
9. He was 65 and has not married. He has not consummated with Madam L at all in the past.
10. Regarding Flat 17E, he was originally a co-owner with Madam L. He transferred his share to Madam L because she told him that by doing so, he would not need to pay tax on the rental collected. All the rentals were collected by Madam L for household expenses as he trusted her due to long period of courtship.
11. Regarding Flat 15C, he paid for the down payment (\$400,000) and kept the property in Madam L's name only. The rental collected was also held by Madam L for household expenses. He believed that in the future sale of the property, he could share in the profits.
12. He said Madam L lived at Flat 462, for the purchase of which he paid \$400,000 as down payment. There were three suites inside and Madam L occupied only one of them. The rest were rented out all along. The rentals were all for household expenses of Madam L. [The Board noted that the relevant land search record showed that it was not held under the

name of the subject or Madam L.]

13. The last three properties mentioned were all under mortgage. After retirement in 2001, he initially paid nothing to Madam L towards mortgage repayments. Until SARS period (2003), he started to make mortgage repayments with the contributions from his father till 2005. Then he started to work as a security guardian in 2005 in order to assist in mortgage repayments. Since that time and till 2010, he paid \$10,000 a month to Madam L for such purpose. He stopped payment to Madam L altogether since January 2010.
14. He liked to claim back all his entitlements from Madam L. He has insufficient income to spend as Government pension was his only source of income.
15. **Mr U**, the applicant and uncle of the subject, said he was advised by Dr MAK to make an application for guardianship. He did not have high hope for property recovery actions. He was just worried over the future undue influence of Madam L who was wicked and pre-meditated. Madam L kept phoning up the subject. [The subject said that Madam L called him in these few days. Madam L told him that she had not enough money to spend.] The subject's mother was old and stayed in Australia. The subject's twin brother suffered from CVA and not until his twin brother's case surfaced that he came to know of the manipulations of Madam L on the twin brothers. He was unable to take up the role of subject's guardian himself. The properties in question were worth a lot of money now. He did not think there was justice in this society. [The Board asked him to approach Legal Aid Department.]

16. **The maker of social enquiry report**, on behalf of the Director of Social Welfare, said the future case work will focus on assessing the subject's degree of ability to handle his own money and facilitate the subject's use of his pension.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

17. The Board accepts and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the views and recommendations as contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject. The Board would add that the instant case is a serious financial abuse which calls for an appointment of a committee to recover the rightful entitlement of the subject's abused assets, including rentals collected and the co-ownership of his abode in Sui Wo Court, Shatin.

Reasoning for choosing the legal guardian

18. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case.

DECISION

19. The Guardianship Board is satisfied on the evidence and accordingly finds:

- (a) That the subject, as a result of schizophrenia, 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, his own welfare plan and finances, which has resulted the subject being abused financially;

In this case, the predominant need of the subject remained to be satisfied is, namely, decision to be made on finance;

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

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

Part II recommendation

21. According to the evidence available and the matters on exploitations as contained in the social enquiry reports, the subject should be entitled to his shares of entitlements of and in the four properties (including subject's own

residence in Sui Wo Court) as mentioned (see paragraph H of the social enquiry report). As the Board does not have jurisdiction over the recovery actions as well as the resolution over the various bank loans relating to some of those properties, the Board recommends that the guardian, or a relative should apply to the Court of First Instance under Part II of the Mental Health Ordinance for a Committee order immediately to manage the property and financial affairs of the subject. The case social worker is required to submit an interim report on the progress of the application within 6 months from today. As the Board takes the view that the welfare plan of the subject has not been settled, the guardian is requested to instruct his legal representatives to apply to Court, during the Part II proceedings, for a standing order of disclosure authorising the future Committee to provide updated financial information of the subject to the Guardianship Board and Director of Social Welfare on request. In submitting the grounds for obtaining such a disclosure order, the legal representative of the guardian should inform the Court that the Guardianship Board has powers under s. 10 of Mental Health Guardianship Board Rules (Cap. 136 sub. leg. E) to restrict further disclosure of such information on appropriate grounds.

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