



**ORDER FOR RENEWAL AND VARIATION
OF GUARDIANSHIP ORDER**

Mental Health Ordinance (Cap. 136)¹

(Section 59U)

BETWEEN

The Director of Social Welfare

Guardian²

and

Madam JCP

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J(3)(b): Mrs Marian CHEUNG NGAI Mei-yuk

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 and S59U(4)(b) of Mental Health Ordinance

³ S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

Background

1. Madam JCP, was a 70 year-old woman suffering from senile dementia. She was a singleton and lived alone in Central District. On 3 December 2009, the subject was accompanied by a stranger couple and their adult son to Bank A intending to withdraw a sum of \$7.5M from the sole-name account of subject and transfer to her joint account with the couple's adult son at Bank B. The incident was reported to police immediately by bank staff. The couple and their son were arrested for investigation. Madam JCP, was sent to a hospital for medical consultation and admitted to psychiatric ward of the hospital for psychiatric treatment.
2. According to the case summary of medical social worker, the subject only knew the suspected abusers (the couple's family) a few months ago. As investigated, on 23 October 2009, the subject was brought by the couple to banks and successfully transferred a sum of \$3.5M from her sole-name account at Bank A to a joint fixed deposit account of her and the couple's adult son at Bank B.
3. After Madam JCP was admitted to hospital on 3 December 2009, the medical social worker filed applications for Emergency Guardianship Order ("EGO") and normal Guardianship Order. After consolidated the replies from different banks to the Boards' witness summonses, the Board noted that the subject had over \$111 million cash at banks.
4. On 11 December 2009, the Board conducted a EGO hearing and appointed the Director of Social Welfare as the guardian of subject for three months with all powers (s.59R(a)-(f)) to make decisions on subject's behalf. The Board also recommended the public guardian to keep in custody of the

valuables and shares/stocks certificates of the subject pending final decision of the guardianship application. The public guardian was also required to immediately inform the Board on the apparent huge portfolio of the stocks of the subject.

5. According to the social enquiry report subsequently filed, the Board noted that the subject used to live with her late elder brother in a private flat at mid-levels which was under the sole name of the latter. The subject was the youngest daughter amongst twelve siblings. The Subject completed secondary education and worked as secretary in past. She never married and remained single. Unfortunately, her elder siblings have passed away and she had lost contacts with her nephews and nieces except the six children of her elder sister. But, the niece and nephews were not willing to involve in the welfare and finance arrangements of subject.
6. Regarding the financial details of subject, the Board noted that the subject had not only the huge sums of cash at bank. She also had assets including over \$100 million stocks on hand and she was the Administratrix of her late elder brother's residence at mid-levels.
7. During the period of EGO, the subject was brought to visit a self-financing care and attention home for elderly and it was planned to have the subject admitted to the home after the normal guardianship hearing. The subject was resistive to residential care though. DSWI account was opened to handle the monthly sums of \$10,500 as authorised by the Board for the subject.
8. After conducted the normal guardianship hearing, the Board ordered the Director of Social Welfare to continue to be the guardian of subject for one

year with the all powers, who should immediately inform all banks which the subject hold accounts with of the existence of the Guardianship Order. The Board also recommended the public guardian to apply for a Part II committee order to manage the landed property of subject's elder brother (deceased), stocks and safe deposit box. The Board also recommended the guardian to report to the future committee in order to recover the money abused on 23 October 2009. The amount involved should be around \$3.5 million.

9. Around one year later, i.e. in February 2011, the progress social enquiry report was filed to the Board in the purpose of a review hearing. According to the report, the subject lived in a 4-person room of care and attention home at a monthly fee of \$10,000 (included home fee and miscellaneous expenses). She received physiotherapy training about two sessions per week and regular follow-ups at hospital. Regarding the application to High Court for a Part II committee order, the report maker stated that:

“Considering the subject’s stable health and her monthly expenses will not involve expenses of more than \$10,500 per month while her relatives have not taken any action or request to invoke Part II, application to Court of First Instance under Part II of MHO for an order to manage the stock and financial affairs of the subject is considered not necessary at this stage.”

10. Regarding the progress of police intervention on financial abuse incident on 3 December 2009, the public guardian only said that she would make continuous contacts with police to update the case of “Obtaining Property by Deception”. It was learned that the police once passed the case to the

Department of Justice for advice and they were directed to gather more information about the subject's mental condition and her relationship with the suspected abusers. The case was still under police investigation. No action could be arranged to revert the ownership of joint fixed deposit account of subject and one of the three suspected abusers.

Hearings at the Board on 22 February 2011

11. At the review hearing, the delegated guardian told the Board that she had not sought legal advice on a Part II application at all.

Issues and Reasoning

Reasoning for continuing to receive the subject into guardianship

12. The Board expresses that it is important to apply for a Part II committee order for the reasons as alluded to in the Board's requisition raised on 14 February 2011. It is important that matters should be planned ahead and actions taken timely in order to promote subject's human rights (e.g. to live at her own home) and her entitlements to the best care possible, given her immense wealth and the serious abuse background of the case. The artificialities of guardianship (or public guardian's practical constraints) to adversely restrain the subject from enjoyment of her full rights and privileges is quite unwanted and against social justice. It is no difference from putting a cart before a horse. The Director of Social Welfare must re-consider the Board's Part II recommendation.
13. The Board accepted and adopted the progress social enquiry report and the views and recommendations as contained therein and accordingly decided

to continue to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for continuing to appoint the legal guardian

14. The Board accepted and adopted the view of the progress social enquiry report maker who recommended the Director of Social Welfare to continue to be appointed as the guardian of the subject in this case.

DECISION

15. The Board is satisfied and accordingly finds that the subject remains a mentally incapacitated person for whom a guardian should be appointed as the order has resulted in maintenance of the subject's welfare and health. The subject still needs a guardian to make substitute decisions, as the subject lacks capacity to make reasonable decisions on personal and welfare matters including decision on financial matters. For the same reasons as stated in the original Guardianship Order, the Board is satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concludes that it is in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.
16. The Guardianship Board applies the criteria in section 59S of the Mental Health Ordinance and is satisfied that the Director of Social Welfare is the most appropriate person to continue to be appointed the guardian of the subject.

Part II Recommendation

17. The Board also made the following recommendation: -

“Besides very substantial assets of the subject including huge size of stocks and a safe deposit box, the Board does not have jurisdiction over the subject’s entitlements to the estate comprising landed property of subject’s elder brother (deceased), the Board recommends that the Director of Social Welfare should seriously consider to 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 Board also strongly recommends the guardian to report to the future Committee to recover money abused on 23 October 2009. The amount involved should be \$3,059,406.03 which is now held at bank’s joint time deposit account of subject and the suspected abuser. The case social worker must take into full account of the serious abuse background of this case.....

The Director of Social Welfare must carefully consider the contents of the Reasons for renewing Guardianship Order dated 22 February 2011.”

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