



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Applicant²

and

Madam A

Subject³

Mr N

Party added⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms CHAN Kit-ling

Member referred to in section 59J (3) (c): Ms WONG Lai-ming

Date of Reasons for Order: 25th February 2014.

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)(b) of Mental Health Ordinance

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 25 February 2014 concerning Madam A ("the subject"). The Board appointed the Director of Social Welfare as the guardian of the subject, for a period of one year, with powers to make decisions on the subject's behalf, as set out in the Board's Order, and subject to the conditions referred to therein.

REASONING OF THE BOARD

Background

2. The emergency guardianship application and normal guardianship application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, both dated 16 December 2013, was registered as received by the Board on 16 December 2013. The applicant is Ms S, medical social worker, on behalf of the Director of Social Welfare. The evidence shows that the subject is 65 years of age, woman, with chronic schizophrenia. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

3. Section 59O (3) of the Ordinance provides that, in considering whether or not to make a guardianship order, the Guardianship Board must be satisfied that the person, the subject of the application, is in fact a mentally incapacitated person in need of a guardian, having considered the merits of the application and observed the principles and criteria set out in sections 59K (2) and 59O (3) (a) to (d) of the Ordinance respectively.

Summary of evidence adduced at hearing

4. At the start of hearing, the Board has made the following orders: -
 - (a) Add **Mr N**, subject's 3rd elder brother, as a party to these guardianship proceedings. (Mr N indicated that the subject is mentally sound and technically he can be regarded as opposing to a grant of Guardianship Order.)
 - (b) Consent to the applicant's application for withdrawal of Emergency Guardianship Application made on 16 December 2013.
5. Initially, Mr N asked for an adjournment for obtaining another psychiatric assessment on the mental capacity of the subject. After discussions, he preferred to proceed with the hearing today because he understands a Guardianship Order is annually reviewed and during the interim he may obtain an updated psychiatric assessment on the subject. As the subject averred that she preferred Mr N to be her guardian, the Board stood the hearing down for the social enquiry report maker Ms C to assess the suitability of Mr N as guardian.
6. During the interim waiting time, two letters were received from Madam Y and Madam W (who were present at the hearing), opposing to the appointment of Mr N as guardian and counter-proposing the appointment of Director of Social Welfare as guardian.
7. **Madam A**, the subject, says in English and Cantonese (before the hearing actually started) she likes to make a point. She says she read the papers of this case and would like to make it clear that she is not mentally incapacitated. She has taken breakfast. She says (after the hearing resumed

later) she agrees to a Guardianship Order over her and her brother Mr N as her guardian.

8. She says in August 2013, she signed a contract with Madam Y (“Y”) and she gave money to Y at Bank of Communication. The amount given was US\$29,000 according to the relating bank book. But the actual amount of transfer to NG should be US\$23,000. She cannot explain the discrepancy regarding the stipulated amount of HK\$230,000 in the contract in question. She did so because Y told her to transfer all money to her and then she will take care of her in everything. Y said she would manage her money. The money taken will include fees for activities and short trips e.g. to Macau.
9. On being prompted, she says Y promised there would be no need for payment of home fees as long as the money was under her management, like a guardian. Y never told her of transferring shares of old age home to her. But, after moving her to a three persons’ room, Y mentioned to her that she would become a director of the old age home. Y also said to her there would be no need to pay home fees anymore. The home staff appeared happy on her becoming a director of the aged home. She signed the contract at a lawyers’ office, some lawyers were there and one was called Mr H. She cannot remember the name of the old age home where she stayed at the time of signing of the contract.
10. **Ms S**, the applicant and medical social worker, says she supports a grant of Guardianship Order and takes the view that Director of Social Welfare should be the guardian.
11. **Madam Y**, the operator of the aged home, says the relating law office was at Sheung Wan, the two lawyers were respectively called Mr H and Mr L. She cannot remember the name of the law office. (The Board notes that Y is

evasive in attitude.) She denies having ever told the subject of becoming a director of an aged home nor did she sell to the subject any shares of any old age home. She confirms that the contract in question was signed on 16 August 2013. At that time, the subject stayed at XYZ Rehabilitation and Training Centre.

12. As to why the contract involved ABC Nursing Home at Mongkok, she says it was because moving subject to Mongkok could save the subject's travelling expenses during visits to her family in that area. On discussion with the subject after realizing the requirement of Social Welfare Department on fitting out of Nursing Home, she asked subject if the latter liked to change to live there. (The Board questions against this move as, according to Y, the elder brother has indicated to Y many times in the past of selling the family home in that area.)
13. She repeatedly says she had sympathy for the subject and promised to give her a placement till her death plus funeral fees for free. This remains her wish. (The Board questions, then, why the contract stated free placement for only 5 years.) She says the insertion of a limit of duration in the contract was under her lawyers' advice.
14. She says Madam W, her colleague, (present at hearing) knows all of her arrangement with the subject.
15. She confirms she took subject to bank on 15 August 2013 for transfer of money and on the next day attended lawyers' office to sign the contract. She confirms having taken from the subject HK\$230,000.
16. On the question of returning the money or part thereof as the subject has started to stay at another old age home (not operated by her) as early as 2

December 2013, she becomes very argumentative and, departing from her “sympathetic” attitude towards the subject, then says she only charged the subject 2/3 of the usual home fees for the past four years and has not charged for medical escorts. She questions, if anything were to pay back, an account would need to be taken. The Board reminds her that during the past years she fully realized the subject was on continual psychiatric follow-ups and thus should have notice or doubt if the subject was truly voluntary and capable to make a contract. She repeatedly says she sympathized the subject because the subject said she has no money and the brother did not sell the family home. (The Board doubts this statement as Y has set a contract price at HK\$230,000. She must have known that the subject has money.) She then says if an account is be properly taken, she may agree to repay outstanding amounts by installments. She has no ill motive behind all the contract arrangements, but instead there was ill motive of the subject’s family members. (The Board does not find this explanation convincing.)

17. **Ms C**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says she still recommends Guardianship Order for this case and the Director of Social Welfare to be appointed as legal guardian. She explains three reasons against elder brother Mr N as legal guardian at this particular juncture in time. According to the medical record (and what was stated in paragraph 10 of the social enquiry report), subject has been paranoid against family members including Mr N. Secondly, during conversations with Dr I and Dr G in December 2013, the subject has shown that she did not trust Mr N (*inter alia*, paragraph 26 of the social enquiry report). Thirdly, during the past few years’ stay at hostel, the subject was only cared for and assisted by the hostel staff. Subject had no family assistance or support during those times.

18. Despite, Ms C furthers that Mr N has showed much concern to the subject during the past three months since the crisis of subject's abuse incident was reported. The Director of Social Welfare will keep in view of the assistance to be offered by Mr N to the subject in future and may consider recommending future appointment in appropriate time.
19. **Mr N**, the elder brother of the subject, says he understands the views and reasoning of appointing Director of Social Welfare as legal guardian as explained by Ms C. But he likes to respect subject's view. He refers the Board to consider the subject's letter (enclosed in the social enquiry report, Appendix 6) and one Mr T's email of 23 February 2013 to the Board. He likes to be appointed as subject's guardian.
20. On the apparent distant past relationship with the subject in four years, he explains that he was truly impressed by the apparent genuineness of Y and was given to understand that there was no need to assist the medical escorts or to pay visits to the subject. He says he was in a comfort zone because the subject returned home during weekends regularly, though the subject liked to talk to the eldest brother more.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

21. The Board does not find the explanation by Y convincing regarding the transfer of the subject's money of HK\$230,000 to her and the signing of the dubious contract on respectively on 15 August 2013 and 16 August 2013. Considering the averments of Y at the hearing and her full notice of the subject as a chronic mental illness patient, the Board is driven to believe that the subject's money was shamelessly abused. Indeed, what the subject said

at the hearing indicated one serious matter, that is, Y has attempted to persuade the subject to let her manage *all* her money by the lured promise of free services of all kind in future. It is somewhat fortunate that the inroads were stopped at this stage by the concerted efforts of the attending psychiatrists and Mr N. The only conclusion the Board can draw is that Y has skillfully manipulated the vulnerability of the subject and took full advantages of it. To protect the interests of the subject, the Board therefore has no hesitation to receive her into guardianship.

22. The Board would thank Dr I, Dr G and the applicant Ms S to come forward to apply for a Guardianship Order in this case.

23. Accordingly, the Board receives 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 reasoning for recommending Guardianship Order as contained therein and decides to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for choosing the legal guardian

24. The Board has carefully considered the suitability of Mr N as the guardian of the subject, particularly his honest demeanor and timely efforts to arrange the subject to a safe place after the abuse incident. On balance, however, the Board prefers the three reasons as advanced by Ms C, the social enquiry report maker, at the hearing (see above) and decided to appoint the Director of Social Welfare as the legal guardian of the subject at this point in time. Particularly, the Board notes there has been a long distant relationship between Mr N and the subject, at least, in the past four years (e.g. paying no or no regular visits to subject at old age home) as well as Mr N has during

the social enquiry stage clearly indicated that he prefers not to act as the legal guardian and would like Director of Social Welfare to become the guardian (see paragraph 24 of social enquiry report) after he was explained to the various statutory duties and responsibilities. At the present stage, the Board cannot be fully satisfied that Mr N is capable and able to act as the subject's guardian. Besides, the Board is somehow doubtful if the subject and Mr N are compatible in personality as the subject always harbored persecutory or un-trustful belief against the latter.

DECISION

25. 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, her own welfare plan, treatment plan and finances, which has result that 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 future welfare plan, future accommodation, future treatment plan and 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.

26. 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.

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