



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

Madam A

Applicant²

and

Madam B

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): Dr Jess LEUNG Lam-ming

Member referred to in section 59J (3) (c): Ms Rosina HON

Date of Reasons for order: the 6th day of September 2016.

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

Background

1. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 31 December 2015, was registered as received by the Board on 31 December 2015. The applicant is Madam A, daughter. The evidence shows that the subject is 78 years of age, woman, with mixed-type dementia. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

2. 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.

Issues and Reasoning

Reasoning for receiving the subject into guardianship and appointing public guardian

3. The subject's finances were altogether rather unclear due to un-co-operation of the applicant, e.g. reluctant disclosure of existence of subject's C Bank sole or joint accounts (paragraph 12, social enquiry report) and the details of associated withdrawals, refusal to disclose details of the withdrawal of \$550,000 from D Bank account ("the said sum of \$550,000") and another withdrawal of \$500,000 from subject's E Bank account (paragraph 14, social enquiry report) (paragraph 9, Supplementary Report), late disclosure of

obtaining \$650,000 from subject at the time shortly after acquiring the new abode (which is found to be under the sole name of applicant) (paragraph 8, Supplementary Report). The applicant was observed to be evasive and ambiguous in her attitude in providing financial information of the subject during the whole period of enquiry (paragraph 38, social enquiry report and paragraph 28, Supplementary Report).

4. With efforts made by issuing witness summonses, it is now found that the said sum of \$550,000 was withdrawn and put into a joint name All-in-one account of the subject and the applicant on 21 September 2015, which was closed on 30 December 2015 and hence there was no trace of the money. The Board notes that the present guardianship application was filed one day later on 31 December 2015 (subject having first been certified by two doctors as mentally incapacitated person respectively on 23 and 28 December 2015). There is, therefore, a clear case of both financial abuse committed against the subject and conflict of interests of a financial nature existed between the applicant and the subject. It is correct that the applicant could not be appointed as the legal guardian of the subject. On the same basis, the Board declines to approve the applicant's request for reimbursement of expenses of the subject claimed to be paid by her before. The Board also explains that the subject's current monthly expenses are huge and there is unlikely to have any surplus to repay any debts.
5. Regarding the disappearance of the said sum of \$550,000, the applicant finally says she will return the sum to the subject by depositing it into subject's sole name bank account. The Board will therefore withhold the recommendation to report the loss of money to Police.
6. The Board requests the Director of Social Welfare to become the subject's appointee immediately.

7. 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 accordingly decides to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.
8. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the Director of Social Welfare to be appointed as the guardian of the subject in this case.

DECISION

9. The Guardianship Board is satisfied on the evidence and accordingly finds: -
 - (a) That the subject, as a result of mixed-type 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 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.

10. 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-ye)
Chairperson of Guardianship Board