



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Applicant²

and

Madam STY

Subject³

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 Nora LEUNG Yee-ping

Date of Reasons for Order: 11th December 2013

Background

1. Madam STY was a widow. Subject's husband and two of her sons have passed away. She lived in a public housing unit alone for a long time after the grandnephew moved away and he lost contact with Madam STY since

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

then. She has only a nephew, Mr H, who usually visited her 2-3 times per year. Mr H expressed that he was unable to take care of the subject as he was engaged in his own business.

2. Madam STY was known to an integrated family service centre since 2012 due to her hoarding behaviour. In mid-2013, the subject was assessed to be suffering from Alzheimer's disease. Then, she was referred to an elderly centre for meal services. The subject only went to the elderly centre for meals in evenings. She had no breakfast and only bread for lunch. She claimed that she did not feel hungry. The living condition of the subject was very poor due her habit of collecting waste paper for support of her own living. She forgot that she had savings (around \$500,000) in bank.
3. According to the record of Housing Department, the subject's public housing unit was allotted 14 penalty points in mid-2013 as the subject made her unit looked like a refuse collection point. The tenancy would be terminated when the penalty points accumulated up to 16. For the welfare issue, the casework of the integrated family service centre filed the guardianship application in order to mobilize the savings of subject to support her daily living. The nephew supported the applicant to propose the Director of Social Welfare to be the public guardian of subject.
4. Two days before the hearing, the social enquiry report maker informed the Board that during the subject's admission to the care and attention home, the subject gave around \$90,000 cash to her nephew for the purpose of depositing the money to her bank account. Due to lack of subject's bank account number, the nephew promised to put the money into his own bank account first and transfer back to subject's account once her account number became available. The incident was witnessed by the grandnephew, the

caseworker (i.e. the applicant) and the nurse of the care and attention home.

5. However, when the subject's account number was made available, the nephew refused to deposit back the money (in total: \$93,176.50) to the subject's bank account despite repeated advices by the applicant and social enquiry report maker. He claimed that the money was given to him by Madam STY for buying three niches for subject's family and preparing her funeral after death.

Summary of evidence adduced at hearing on 11 December 2013

6. Madam STY, the subject, says she was 89. She immediately forgot the Board members' surnames after one minute. She claimed that she stayed at a public housing unit in Kowloon. She has a husband and two sons who have passed away already. She stayed alone in a room since a long time ago. She went out to buy food for herself. Later, she said she was provided with free food. She has good appetite and bathed herself. She has no savings at bank. She has no relatives in Hong Kong. She later said that her husband has a nephew Mr H. Mr H paid her little visits. She has nothing entrusted to Mr H to do. She cannot remember if she has paid \$90,000 to him for buying niches or burial lots.
7. The applicant and social worker of integrated family services centre, said she has nothing to add.
8. [The supervisor of the applicant, attending.]
9. The social enquiry report maker, on behalf of the Director of Social Welfare, said she did not know of the incident of keeping of the sum of \$93,176.50 by Mr H until she enquired with the applicant on 5 November 2013 on the

surrender of the public housing unit. She further clarified with the applicant that the handing over the money was on the day of admission of the subject to the present aged home, i.e. 3 September 2013. She verified this matter with an NGO nurse who was present at the material time. [The applicant said it was the nurse and the nephew Mr H who took the subject to the aged home for admission while the subject carried along the sum and handed over to the nephew. She arrived later and knew of the matter. The paper recording the sum was then signed by Mr H. Nothing of buying of niches was mentioned at that occasion. It was made clear at that time that once the bankbook of the subject was located, Mr H should deposit the sum into subject's bank account. She did not tell the social enquiry report maker during the first stage of social enquiry.] The nurse told her that she could provide further information of this incident. According to the nurse, it was purely the absence of bankbook at that time that the money was temporarily held by the nephew.

10. In response of why continued to keep subject's cash, Mr H, the nephew of subject, quickly engaged in a dialogue arrogantly with the Board and refused to answer whether he would deposit back the money to the subject's account in the way as he did promise the nurse and the subject on 3 September 2013. He asked the Board to listen to him. He challenged the Board for not listening to his wish to buy three niches. He insisted it was the subject's wish to have the money spent for niches. On challenge by the Board, he said that there was no evidence of his taking away of the money. On being shown of the paper he signed, he surprisingly said that he forgot everything. On being asked to leave the hearing room, he surprisingly rushed up to the subject and insisted to talk to the subject, but was stopped by the Board. He appeared ruthless, rude and grossly impolite. He asked the Board to take whatever further action the Board's liked. The Board assessed that, on face of available evidence, he was an abuser.

11. [**Post note:** The Board received a copy page of a bankbook showing a deposit of \$93,200 into subject's bank account.]

Issues and Reasoning

Reasoning for receiving the subject into guardianship

12. The Board received and adopted 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.

Reasoning for choosing the legal guardian

13. The Board accepted and adopted 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

14. The Guardianship Board was satisfied on the evidence and accordingly found:-

- (a) That the subject, as a result of Alzheimer's disease, was 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 limited the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which related 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 were available as the subject lacked capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances, which has resulted in the subject's bank accounts being frozen;

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

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

15. 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.

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