



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

The Director of Social Welfare

Applicant²

and

Madam TYN

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Ms LEE Nga-ye

Member referred to in section 59J (3) (c): Ms Cindy Cat LEE Cheung-pui

Date of Reasons for order: the 21st day of July 2017.

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

Background

1. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 29 March 2017, was registered as received by the Board on 30 March 2017. The applicant is Ms L, social worker of Integrated Family Services Centre. The evidence shows that the subject is 81 years of age, woman, with mixed-type dementia. The subject was unable to handle finances and was incapable of consenting to treatment.
2. The Board granted the Emergency Guardianship Order on 26 April 2017 and appointed the Director of Social Welfare as legal guardian for 3 months.

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.

Reasoning for receiving the subject into guardianship

1. Subject, 81 years old widow, living alone, suffered from dementia (mixed-type dementia) as diagnosed in September 2015, that is, some two years ago. Her adopted son (Mr W) (the abuser), married with a wife, was a habitual offender and has been imprisoned on and off. History revealed a male friend (hereafter referred to as “Mr S”) has been helping the subject to manage her money since.

2. Life of the subject would seem to have taken its uneventful course, despite the diagnosis, until she was certified unfit to manage her normal disability allowance on 16 January 2017, when she was then referred to the applicant's office to consider appointment of an appointee.
3. The serious financial abuse on the subject was then came to the light.
4. The Board was bewildered and dismayed by the contents of social enquiry report (particularly paragraphs 18, 23 and 35) largely concluding against existence of financial abuse.
5. Indeed, it is the affirmative view of the Board that the subject was financially abused by her adopted son throughout the years since she was diagnosed dementia on **10 September 2015** (paragraph 10 of both supporting medical reports by Dr K and Dr N). Accordingly, the Board is duty-bound to put this case in the correct perspective with the purpose to demonstrate decisively that a mentally incapacitated person's rights must be fully respected and let no one take such serious inroads lightly.
6. The financial abuses have recorded a casualty in the total sum of **\$329,000**, done by way of a series of 21 alleged loans since the said diagnosis. It was crystal clear.

	Withdrawals	Amount (HK\$)		Loans	Amount (HK\$)
1.	19.11.2015	\$8,000	1.	5.3.2016	\$30,000
2.	19.11.2015	\$50	2.	11.4.2016	\$20,000
3.	22.12.2015	\$10,000	3.	17.6.2016	\$10,000
4.	5.2.2016	\$12,000	4.	1.7.2016	\$10,000
5.	7.3.2016	\$40,000	5.	22.7.2016	\$28,000

6.	12.4.2016	\$32,000	6.	4.9.2016	\$50,000
7.	15.6.2016	\$30,000	7.	26.9.2016	\$3,000
8.	4.7.2016	\$50,000	8.	3.11.2016	\$15,000
9.	26.7.2016	\$50,000	9.	18.11.2016	\$10,000
10.	6.9.2016	\$30,000	10.	25.11.2016	\$5,000
11.	6.9.2016	\$50,000	11.	16.12.2016	\$8,000
12.	28.12.2016	\$18,000	12.	27.12.2016	\$20,000
13.	28.12.2016	\$60,000	13.	2.1.2017	\$20,000
14.	25.2.2017	\$60,000	14.	14.1.2017	\$5,000
15.	16.3.2017	\$12,000	15.	12.2.2017	\$18,000
16.	16.3.2017	\$60,000	16.	21.2.2017	\$5,000
TOTAL		\$522,050	17.	27.2.2017	\$30,000
			18.	3.3.2017	\$7,000
			19.	15.3.2017	\$20,000
			20.	19.3.2017	\$10,000
			21.	20.3.2017	\$5,000
					TOTAL

7. There is ample research literature concluding that patients with even Mild Cognitive Impairment, not to mention dementia (from which the subject suffered), has incapacity in financial management. Further, mental incapacity (unless resulted from a sudden collapse) usually takes a course of progression over a period of time before actually assessed so. In other words, mental incapacity will not suddenly occur just because a doctor has certified it at a particular point in time. It is therefore safe to conclude that mental incapacity does already exist for a reasonable period of time (length of which depends on cases) before certification was made. Therefore, the Board safely holds the view that since September 2015, the subject did not have the necessary capacity to handle her finances. The awkward

assessment on the subject later in July 2016 (assessed subject as fit to handle NDA) was doubtful and of little value or assistance in this case.

8. The alleged loans were started since 5 March 2016, i.e. about half a year after the diagnosis of dementia, at which time, the subject's bank savings (inclusive of fixed deposit) were at about **\$600,000**. It is worth to point out there was no loan records before that time because the subject's bank book showed that the bank account did not have substantial cash at all until after 27 October 2015. Once the first alleged loan was made, the snowball effect was then seen from July 2016 onwards. The alleged loans then increased in number and amount and was gradually intensified, i.e. more than one loan in a single month. It was not difficult to understand that the activity of abuse increased with commensuration of further deterioration of subject's mental condition and vulnerability. This is so clear and well corroborated by the almost uncontrolled loan activities **after** the subject was (even) certified unfit by the MAF issued on 16 January 2017. In a nutshell, within a short span of a year, \$329,000 was depleted.

9. Out of the total amount of savings (\$600,000), the total loan amount (\$329,000) was way out of proportion and unreasonable. The subject's bank account today is only left with a small balance of slightly over **\$165,000**. The abuser's scheme was clear, that is, to embezzle the subject's money as quickly as he could. On this point, the Board does not believe there was ever an "independent" witness to the so-called borrowing notes for each of the loans. The wife of the adopted son cannot be an independent witness by virtue of her marital relationship with the abuser. Neither was Mr S who was indeed a key player, as he did keep withdrawing the subject's bank savings for sixteen times during this period in question, with knowledge of subject's mental incapacity (see paragraph 2 (3)(a) and (d), minutes of MDCC and paragraph 9 of case summary dated 30 March 2017) and the

“loan” activities. Indeed, it was Mr S who actually paid over the money to the abuser. Thus, Mr S was in fact an aider and abetter of this scheme of abuse, albeit some part of the money so withdrawn could have very well been spent on subject’s basic maintenance. Neither does the Board believe there was valid consent(s) given by the subject due to her mental incapacity and vulnerability. Neither does the Board accept the only dividing line of mental capacity was as late as on **23 March 2017**, i.e. the date of the two medical reports supporting the present guardianship application. For if that were ever true, one can hardly be able to find a financial abuse case of mentally incapacitated patients because by that time guardianship application must have been, like the present case, laid.

10. The Board finds that the intent of preparing and signing of the great number of so-called borrowing notes were nothing but conforming the hallmarks of similar financial abuse cases. These borrowing notes were intended to be produced for defence by the abuser in case his acts of abuses, like the present case, came to broad daylight. The more the completeness of these documentations (e.g. stating clear wish/duration to repay, witnessed and signed), the more the conclusiveness is the proposition that the present series of financial abuses were a pre-meditated scheme to deprive the subject of her cash. Did the abuser ever actually repay the loans since March 2016? The answer is plainly no, save \$2,000 on 8 May **2016**. In the view of the Board, after examining each of the so-called borrowing notes, the consistent pattern of written promises to repay was one of many ways the abuser has used to lure the subject to lend him the money.

11. Was the subject genuinely willing to give the loans to the abuser? Of course, it was not. With the kind of advance age and mental vulnerability and feeling of loneliness and fear of losing collateral supports, the subject, as the Board finds, was put under tremendous undue influence and constructive

coercion and was coaxed to give up her money. At the interview by the Chairperson on 24 April 2017, the subject was observed to be extremely poor in memory and vulnerable. She said: -

- “2. *Her speech was clear and relevant, but noted to have poor long and short term memory. She almost forgot all the names of her friend/relatives until and unless given strong hints. She forgot the surnames of the interviewers time and again despite repeated coaching. Time and again, she said she has poor memory and was very afraid losing it all. She even said she had no friends or relatives at the beginning.*
3. *She, though, remembered her age correctly and her (past) address (3rd Floor, 30 D Street) apparently well but then gave a confused account of her purchase of flat(s). She vaguely remembered her husband has died but could not tell how long that was. She said to have no children.”*

The subject also said these alarming words: -

- “6. *When given strong hints, she then recalled Mr S, a friend and property agent, whom she trusted and has given her bank book. He asked Mr S to manage her money but only two of them together to sign for withdrawing money, but she did not allow him to use the money freely. She could not elaborate clearly how that worked out, after confronting large amounts of money were withdrawn from her bank account in these two years. She was apparently confused. She could not recall how much was the original*

credit balance and she said it should not be much left. She said she had no other choice as she needed his (and others') support as she needed to consult him (or them) even when she had headache. She vaguely suggested she would have no one to turn to or not even friends if not allowing all these."

- "8. All these three characters had seldom seen her or had seen her less and less recently. Then she narrated how the step-son always asked her, almost every month on the rental payment day, for money. She knew him was a gambler in football matches. She gave him money always as a loan but she would not need him to repay. He always told her not to tell others or else he would not further borrow from her. He even promised to repay \$2,000-3,000 a month back. But when confronted her with loans of over hundreds of thousands of dollars (\$390,000), she said she had no other ways but to continue to lend him the money as she was afraid he would commit crimes and even robbery. She asked not to pursue for recovery of money. She expressed very afraid of having no friends from now.
9. Responding to financial need in the long run (with \$160,000 left), she said she was told by her step-son Mr W to apply for government assistance and she was prepared to sleep on the street and commit suicide. She said she pitied her step-son and Mr S (whom was chased by debt collectors and beaten up) and voluntarily given them money."

(N.B. underline was supplied and names edited.)

Judging from the contents of paragraphs 8 and 9, the Board cannot draw any other conclusion but holds firmly that the subject was unduly influenced and coaxed to allow the abuser to take her money away.

12. The subject was certified unfit to handle her normal disability allowance on 16 January 2017. That said, it means clearly that the subject was certified unable to manage a sum as small as **\$1,650 per month**. How could she be considered as mentally capable to manage her savings by (1) making 3 loans to the abuser in February 2017 alone (respectively at \$18,000, \$5,000 and \$30,000), and (2) making 4 loans to the abuser in March 2017 alone (respectively at \$7,000, \$20,000, \$10,000 and \$5,000). Also, probably due to the Government social workers' involvement into this case around that time, the abuser has sped up with his scheme before the gate was finally closed. The abuser is viewed by the Board as a ruthless predator.
13. The Board concludes that the financial abuse on the subject was crystal clear and there was not any room of doubt. Accordingly, the Board rejected the social enquiry reports and the conclusion of the so-called MDCC (in fact, only social workers attended) as superficial, simplistic, convoluted and most unhelpful.
14. Accordingly, the Board directs the public guardian to register this case with the Central Information System on Elder Abuse Cases.

Reasoning for choosing the legal guardian

15. Due to the complicated case nature, the Board appoints the Director of Social Welfare as the legal guardian of the subject.

DECISION

16. 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 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.

17. 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