



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Madam A

Applicant²

and

Madam B

Subject³

Mr C

Party added⁴

The Director of Social Welfare⁵ (represented by Ms M)

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr Cindy CHAN

Member referred to in section 59J (3) (c): Mr Paul CHEUK Ching-tak

Date of Reasons for Order: 16th November 2015.

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

⁵ 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 8 April 2015, was registered as received by the Board on 8 April 2015. The applicant is Madam A, daughter. 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.

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 the Director of Social Welfare as the legal guardian

3. From the medical evidence, the Board accepts that the subject, being a mentally incapacitated person, lacks capacity to manage her finances, treatment and accommodation and daily care. With savings left in her remaining five bank accounts (including sole name and joint accounts) amounting well over \$1 million (plus a sum of cash of \$255,514.47 held by Mr C the Party Added as at 11 July 2015), the subject plainly needs a guardian to manage all her affairs.

4. As alerted in the applicant's reasons for application and confirmed by the social enquiry, monies of the subject (originally at a total of around \$4.1 million) in August 2012 were depleted down to the current level via actual withdrawals and opening joint accounts and adding authorized signatories (pre-dominantly by the son, the Party Added) since 13 August 2013. Paragraphs 4.1 and 4.2 of the Supplementary Information dated 12 November 2015 has succinctly summarized as follows: -

4.1 By son, Mr C:

<i>Date / Period</i>	<i>From Which Bank</i>	<i>Amount Taken Away</i>
<i>24.02.2014</i>	<i>B bank joint account</i>	<i>HKD 1,000,000</i>
<i>21.06.2014</i>	<i>W bank joint account</i>	<i>HKD 67,338.62</i>
<i>21.06.2014</i>	<i>W bank joint account</i>	<i>HKD 729,452.41</i> <i>(AUD 100,392.57)</i>
<i>19.07.2014</i>	<i>W bank sole account</i>	<i>HKD 400,642.43</i> <i>(AUD 55,109.00)</i>
<i>27.08.2014</i>	<i>W bank joint account</i>	<i>HKD 730,454.11</i> <i>(AUD 101,170.93)</i>
<i>24.5.2014-11.04.2015</i>	<i>E bank sole account</i>	<i>HKD 73,300.00</i>
<i>29.09.2014</i>	<i>H bank joint account</i>	<i>HKD 2,221.20</i>
<i>13.04.2015</i>	<i>H bank sole account</i>	<i>HKD 3,704.70</i>
	<i>Total:</i>	<i>HKD 3,007,113.47</i>

4.2 By daughter, Madam A:

<i>Date / Period</i>	<i>From Which Bank</i>	<i>Amount Taken Away</i>
<i>17.06.2014</i>	<i>H bank joint account</i>	<i>HKD 90,000.00</i>
	<i>Total:</i>	<i>HKD 90,000.00</i>

5. The applicant has alleged financial exploitation by the Party Added and despite the explanations by him and his wife, the Board still had un-removed doubts of the substantial transfers of fund, say, as a reserve for his daughter's education fund at \$1 million and payment of premium of the subject's Home Ownership Scheme flat at around \$1.5 million (by which the Party Added took the benefit by becoming a joint owner of the property, which also became freely disposable at open market) respectively in February and July 2014. The couple said the transactions were all made with the subject's instruction. Yet, the Board duly noted that the subject was assessed at Yan Chai Hospital with a MMSE score of 17/30 on 21 January 2013, plus: -
 - (a) A CT brain scan done on 19 June 2014 showed lacunar infarct and cerebral atrophy.
 - (b) MMSE score on 17 June 2014 was 18/30.
 - (c) MMSE score on 1 April 2015 was 13/30.
6. Equally on the same grounds, the Board has doubts as to the alleged gift of \$90,000 to the applicant 17 June 2014.
7. There has also been allegations of neglect of adequate treatment and care against the Party Added based on the applicant's observation when she returned to visits Hong Kong on 4 June 2014 to 3 July 2014 (see paragraph 11 of the social enquiry report and paragraphs 1 to 21 of the applicant's document "Signs and Symptoms of Neglect & Financial Exploitation are" accompanying Form 1.)
8. In considering the lengthy reports and the parties written allegations and written responses prepared by the Party Added/daughter-in-law (see particularly Annex 10, Annex 16 [subsequently updated and became Annex

9 of Supplementary Report dated 11 November 2015] and Annex 17 of the social enquiry report, it was clear to the Board that the present state of managing of the subject's finances has been and is at present entirely inappropriate and unsatisfactory. In particular, paragraph 54 of the social enquiry report recorded the Party Added's allegation that the applicant has requested for a share in the subject's assets in their meeting on 10 June 2014. He interpreted the request as a “提早分身家”. Further complication in the family dynamics was the existence of two wills of the subject (separately made in 2003 and 2005) of different contents but they all went missing (see paragraphs 62 and 63 of social enquiry report). Thus, there was clear evidence that due to mutual accusations of financial abuse and mistrust between the applicant and the Party Added (as observed from the voluminous Facebook messages, emails and WhatsApp messages provided by the parties in Annex 18 of the social enquiry report), the subject plainly needed a neutral person to act as the legal guardian to safeguard her welfare and financial interests.

9. Since the Party Added was opposing to the Guardianship Order, there was no reason at all to consider him as guardian. Even if he did request so to act, he was assessed to be not suitable as there were conflicts of interests of financial nature with the subject. This also hindered the self-proposed appointment of the applicant as the legal guardian as she had the same potential problem of conflicts of financial interests. However, at the hearing, the applicant has clearly indicated to the Board that she agreed to the appointment of the Director of Social Welfare as the legal guardian of the subject.
10. Finally, the Board would like to quote the following concluding paragraphs from the social enquiry report, to which observations, the Board entirely agreed: -

“82. *The subject used to live alone without a full time caregiver before November 2014. Based on available medical assessment, she has been certified a mentally incapacitated person lacking in capacity to manage her finance or make decisions on her treatment and welfare. Her youngest daughter, who relocated to Hong Kong for taking care of the subject, filed an application for guardianship with a view to look after her welfare. Believing that her elder brother, Mr C, to have exploited the subject financially, the applicant had arranged the subject to transfer her savings amounting HKD 540,000 and CNY 500,000 to a B account jointly owned with her since June 2014 (Undertakings signed by the applicant were at Appendix 10 and 11 of Annex 15). Given her mental incapacity, the subject is not fit to sign for withdrawing money from that account. On the other hand, Mr C doubted the applicant’s financial motive behind her guardianship application. He had been managing the subject’s cash savings from her sole and joint accounts all along, the remaining amount of which was reported to be HKD 372,953.27 currently. He agreed to pay for the subject’s expenses continuously with this sum and to transfer the remaining sum to a specified account if Guardianship Order is to be granted (Undertaking signed by Mr C is at Appendix 12 of Annex 15).*

83. *Our present investigation reveals serious trust issues between the applicant as one camp; and his elder brother Mr C and his wife as the other camp. They gave different accounts of the subject’s past health and home care condition. They accused the other party of not being responsible in the caring*

of the subject. During the present enquiry, Mr C refused to disclose the purposes of financial transactions in the subject's sole and joint accounts; or the amount of remaining cash balance, to the applicant.

84. *It becomes evident that both the applicant and Mr C did not trust each other in managing the subject's finance to provide care to the subject. They believed the other party would exploit the subject financially. In view of the subject's mental status and the grudges between family members, guardianship would be the last resort to safeguard the subject's caring and protect her from any possible form of financial manipulation, despite the apparently sound care provided to the subject by the family members at present. Due to the family relationship problems between the applicant and Mr C, the ability and neutrality of the applicant to perform the guardian's role would be greatly undermined. Under these circumstances, it is recommended for the Board's consideration that the Director of Social Welfare be appointed as Madam B's guardian to manage her fiancé and welfare."*

11. The Board so orders.

12. 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 supplementary information 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 and to appoint the Director of Social Welfare as the guardian of the subject in this case.

13. The Board would like to thank Ms M for her substantial reports.

DECISION

14. 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 caused conflict between family members in making decisions for subject's welfare or finance;

In this case, the predominant need of the subject remained to be satisfied are, namely, decision to be made on future welfare plan, 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.

15. 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