



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr Y

Applicant²

and

Madam SY

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 CHOI Wing-kit

Member referred to in section 59J (3) (c): Mr Eddie CHAN Kwai-bor

Date of Reasons for Order: 5th December 2012

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. This case involved multiple abuses, physical, neglect, sexual and financial, on a mentally incompetent lady, Madam SY, (who is 70 years old widow and living alone) by her male ex-tenant, KL.
2. Suffering from three recurrent strokes and two falls (resulting in fractures of hand and leg bones) in the recent two and a half years, Madam SY became mentally incapacitated. On the follow-up home visit by the hospital's outreaching nurse team for discharged patients—ICM team—on the next day of discharge, the subject was found naked or half naked on the bed which was covered by newspaper. A male (later identified as KL) claimed to be the “son” of the subject told that he used to take care of the subject who has just finished bath. Later, this man was found to be of dubious background and in fact was only a subject's ex-tenant 9 years ago. The place was found to be dirty and untidy. Anyway, the nurse reported this case to the medical team at hospital and, on worries of abuse, decided to invite Mr Y, the younger brother of the subject (an old man) to apply for guardianship. The subject was soon recalled for medical follow-up 5 days later and was immediately hospitalized pending the outcome of guardianship application.
3. It was found out during social enquiry and at the hearing that in the past one and half years, KL gradually encroached upon the subject, controlled and manipulated all her six bank accounts and even fired the subject's estate agent from collecting monthly rentals of subject's real estate property. He admitted frankly that he used the subject's money and rental collected for his own purpose and freely withdrew money from time to time from her bank accounts. He moved in and lived at the subject's place on the pretext of being invited to take care of her since the time of her first stroke and then

he possessed the subject's body. LK admitted to the report maker (but not to the Board) that he had sex with the subject as well. Yet, the subject only told the Board that KL has "infringed" upon (冒犯) her. At hearing, KL seemed shameless and with rather blunt affects, admitted almost everything. It was also found that the beneficiary of the subject's insurance was changed in favor that man too. It is fortunate that upon issuance of witness summonses to banks, a joint name account with that man, holding as much as AUD100,000, was safeguarded. At the waiting lounge of the Board and before the hearing was started, LK, on request, signed a declaration confirming the subject's sole ownership of the joint account.

Summary of evidence adduced at hearing on 5 December 2012

4. KL said the subject was once his landlady in February 2003. That property was sold now. He was unemployed. He admitted that his name was added to the subject's bank account (which holds AUD\$100,000) around end of last year or early this year. (According to the information of the Board, the account became a joint-name account on 28 March 2012.) The Board noted that he had signed a declaration to acknowledge the subject's ownership of the money in this account before the hearing was started.
5. On being asked as to what happened on 1 August 2012, KL said that a team of two men and one woman (believed to be a social worker) came from hospital to visit the subject. He did tell them he was the subject's son or sworn son. He cannot be exact on the relationship. The Board confronted him with the hospital record that he told the outreaching team that he was the subject's son. On being further asked why he told something not true, namely, that he was not actually the subject's son, KL says it was because the subject addressed him as such. He therefore told the team that he was the subject's son. The Board noted that KL's attitude

was evasive. He finally said they are friends.

6. He admitted that, as described in the team's record filed, the housing unit of the subject was dirty at the time of visit. He said he cleaned it every day. He admitted that it was a singleton unit. On why he told the team he lived there too given such a small space, he said the subject once asked him to stay with her as she had a stroke. Being further questioned on the finding of lack of dress of subject at the time of the visit, he said that the subject liked to be naked when sleeping. At the time of visit, the subject just finished bathing. He further admitted that the subject was completely naked at that time and was covered by a small blanket which she liked much. He explained that there was a newspaper covered the bed and it was not used to cover the subject. The subject refused to use diapers but could not control her bladder and therefore the newspaper was needed. He admitted having bathed the subject himself. On being asked why he, as a male himself, did not feel embarrassed to bath a female friend, he said he used to bath his mother as well.
7. Describing the relationship with the subject, he said on the surface he was a son of the subject. In reality, they were friends. KL did not elaborate further.
8. He then on his own describes how he rescued the subject at the time of the first stroke on 27 February 2011. He said initially they had a picnic appointment. That morning, subject did not respond to his call. He then called police and broke open the door and saved the subject who had the stroke. He described that he saved the subject for five life-threatening incidents since that time.

9. On money withdrawals from subject's bank accounts, he said he withdrew money from the subject's account at the 1st Bank. [The Board noted that account has recorded multiple withdrawals of money since the time of the first stroke of the subject and continually during the hospitalization periods up to 8 August 2012, i.e. two days after the current hospitalization.] He accompanied the subject to withdraw money many times. When subject could not sign, then he signed for the withdrawals. On being queried, he further admitted that his name was added to all bank accounts of the subject, despite warning of the bank staff given to the subject. He forgot the dates of such changes. He remembered his name was first added to all the subject's accounts with 1st Bank and then the 2nd Bank. The Board finds this fact alarming.

10. KL admitted that he went to the bank to withdraw money by himself too. He could not recall how much was withdrawn in total during these periods, say for 2011 and 2012. KL then said the transactions were all recorded at the bank books. Every time when money was withdrawn, the subject knew of it beforehand. He frankly and flatly admitted that the money so withdrawn was then used together by him and the subject.

11. When asked about subject's insurance cover taken out from an assurance company through the 2nd Bank, he said the sum insured was over \$2.24 million. His name was added to the policy, i.e. becoming the beneficiary at subject's death. He did not know exactly when that was added by the subject. He came to know of it one day when the subject brought him to the bank's counter and confirmed this to him. That was added about three/four years ago perhaps. He said the insurance plan will mature next year. On why the subject has done so, KL said they used to be good friends long time ago when he helped to evict a tenant of the subject a few years back.

12. On not revealing this insurance plan and the joint bank account(s) to the social enquiry report maker, he said the subject told her not to disclose in order to avoid freezing of accounts due to guardianship order. [The Board was not sure if the subject really understands this matter.] He discussed with subject at hospital last month (November) and decided to disclose the above financial details finally. [The Board believed that probably the bank was seeking his consent to disclose his identity as joint holder when the bank received the second witness summons dated 27 November 2012 from the Board.]
13. In May 2012 (till now), he started to receive monthly rental at \$7,300 on behalf of the subject. He said, before, the estate agent charged \$300 monthly as collection fee. According to KL, one of the three tenants is not paying well. He frankly admitted that his wage for collecting rental is \$5,000 per month. The remaining \$2,300 had been used to pay for rent of the housing unit, miscellaneous expenses of the subject during hospitalization and his travelling. He confirmed that he had two financial resources, namely, using the subject's savings withdrawn from time to time plus the said wages from rental collected.
14. He agreed the Director of Social Welfare to act as guardian of the subject.
15. Before he left, the Board plainly told him that he is a suspected abuser in this case.
16. Mr Y, the applicant and younger brother of the subject, says he fully agreed with the appointment of the Director of Social Welfare as the legal guardian of the subject. He knew nothing of KL whom he first met during the first hospitalization of the subject in February or March 2011. The nurse told him that it was subject's husband (positively identified as KL at ward) who

sent the subject to hospital at that time. He was shocked as subject's husband died well over 10 years ago. He knew of such a man (meaning KL) "attaching" to the subject since that time. It was difficult to confirm the relationship between them.

17. He often met KL when visiting the subject at hospitals. They never spoke to each other.
18. He paid a visit to the subject's place in about May or June 2012 after subject's fracture of hand bone. Subject's trousers were drawn down to her knees. He wished to help the subject up with the trousers. But KL cursed him fiercely in foul language and told him not to touch the subject.
19. Mr Y remarks that the subject was very smart before her first stroke in February 2011. She recovered well in 2011 and even towards the end of that year paid him frequent visits by travelling from Shau Ki Wan to Tseung Kwan O on MTR. Subject did call him first before such visits. Nevertheless, he recalls that in 2011, the subject has once missed her way home and went wrongly to Mei Foo.
20. After February 2012 (i.e. after the second stroke), the subject did pay him occasional visits by herself. But her speech was getting confused and slurring.
21. Ms C, the maker of social enquiry report, on behalf of the Director of Social Welfare, said she has nothing to add. The Board clarified with her on the various dates and periods of various hospitalizations of the subject as stated in paragraphs 7 and 8 of her social enquiry report. In sum, the subject suffered from three strokes, one in February 2011, one in February 2012 and another in July 2012.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

22. This was an uncontested case. The abuser KL did not ask for reimbursement of subject's expenses. Nor did he ask to become the guardian of the subject. In fact, he agreed to the appointment of Director of Social Welfare as the legal guardian of the subject.
23. 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. Since the present case was one of most serious abuse cases heard by the Board, it was worth to re-cap the evidence in order to assist the public guardian to perform his duties. In summing up the evidence, the Board had strong suspicion that KL was an abuser of the subject, a widow. It was clear that KL knew of the subject some years ago as an ex-tenant. But it was not clear how the relationship developed or changed since. Nevertheless, KL, on his own admission to the social enquiry report maker Ms C, admitted that he started as a carer of the subject since the latter's first stroke in February 2011. From matters transpired since that time, it is highly likely that KL assumed more and more adverse influence and control over the subject along the pace of deterioration of her physical and mental abilities, resulting from two subsequent recurrent strokes respectively taken place in February and July 2012 plus two bone fracture accidents in mid-2012. KL admitted to this Board that he, in effect, got in control of all the subject's bank accounts either by becoming the authorized signatories or as joint account holder. He spent the monies withdrawn from the subject

bank accounts in these one and a half years for his own use and the subject's use. He even told Ms C that he had intimate relationship with subject and had sex. In sum, he got in control of the subject's abode and all her money. He was also in control of the subject as a person and virtually everything of her, including her body. The Board was alarmed by the content of paragraph 22 of social enquiry report which recorded that the subject told that KL has infringed [冒犯] upon her. It was not clear when those sexual advances were taken place but it remains doubtful whether the subject was forced upon to accept those advances or possessed the necessary capacity to consent to or refuse them. The Board found it also extremely doubtful that the subject had the necessary capacity to add KL's name to her bank account, which held substantial cash of AUD\$100,000 in around, according to the information obtained from bank, the end of March 2012. That was the time right after the subject's second recurrent stroke for which she was hospitalized between 29 February to 7 March 2012.

24. KL has been unco-operative with Ms C during the enquiry and evasive to disclose full financial information. His attitude at the hearing was equally evasive and his answers self-serving. The Board had strong reservation on the validity of KL's position to continue to collect rental for the subject and receive wages. Plainly, how it came to the arrangement for him to start collecting rental for the subject in May 2012 was altogether unclear. Whether the subject has the necessary capacity to make that decision, after the second stroke, was uncertain. As to who agreed to KL to take \$5,000 out of \$7,300 rental collected per month as a wage also remains doubtful. It was all the more so as the amount of wage was way out of proportion to the total amount of rental collected. Even the former estate agent only charged \$300 per month for the service. The Board noted from paragraph 25 of the social enquiry report that the subject had voiced out against the wage arrangement. The Board also noted that KL continued to withdraw

money from subject's account even after the subject was recalled for further hospitalization on 6 August 2012. From the relating bank book, the amounts of sums withdrawn were much larger and frequency higher as time went by, particularly so towards August 2012. Clearly, KL has made unjust financial gains for himself throughout.

25. Further, the observation at visit by ICM of the hospital on 1 August 2012 is alarming to the Board. The subject, as admitted by KL, was naked at that time and the place was dirty. The tragedy of the subject was then revealed by the ICM Case Manager Ms T. It was worth to reproduce hereunder the following excerpts: -

a. Paragraph 18 of social enquiry report

“According to the information provided by Ms L, Medical Social Worker and Ms T, Case Manager of ICM, MIP was found to have care arrangement problem when Ms T paid visit to her at home on 1 August 2012 after MIP's discharge from hospital. As reported by Ms T, MIP was found upper body was improperly dressed and the living condition was considered not desirable for MIP's rehabilitation despite that KL, who claimed to be the son of MIP, was there to assist in providing care for MIP. MIP's case was then put up for discussion in a case meeting. Considered the risk of MIP being abused and to make better care arrangement for MIP, Applicant decided to apply for Guardianship Order (GO) for MIP so as to protect her financial interest and safeguard her future proper care and welfare arrangement.”

- b. Letter dated 30 November 2012 by Dr W of hospital providing further details of the ICM visit on 1 August 2012:

“1) and 2): Madam SY was found lying on bed, which was covered by newspaper, and she was naked (though with trousers) and was covered by clothes (she was not wearing any clothes at that time).

3): Madam SY’s home had poor hygiene, her “son” was also living with her but that flat was to be a singleton flat.

4): KL alleged that he was the son of Madam SY.”

26. In addition, the Board is also shocked by information provided by the subject herself. Recorded in paragraphs 22 and 25 of the social enquiry report, the subject told that she was hit on the face and shouted at by KL. The subject also told that she was not given good care by him. Therefore, it was not difficult at all for the Board to agree with the view of the ICM that the subject was not under proper care by the alleged son/godson of the subject KL.

27. Given the medical history of the subject, with her poor mental state as assessed by medical officers in August 2012 for the purpose of the present guardianship application, the Board found it entirely unsatisfactory to leave the subject in the hands of KL any further. In the view of the Board, KL has been taking every conceivable and unjust advantages and manipulation of the subject throughout this period of time.

28. In conclusion, the Board had no hesitation to receive the subject into guardianship in order to protect her from physical, financial and sexual

abuses and wilful neglect. After all, as a mentally incapacitated person to such a degree, the subject needed a legal guardian to manage her finances and decide on her future welfare and accommodation.

29. Due to potential criminal elements of various incidents involving physical, financial abuse and sexual abuse, the Board found it suitable to refer this case to Hong Kong Police for further investigation.

Reasoning for choosing the legal guardian

30. 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

31. The Guardianship Board was satisfied on the evidence and accordingly finds:-
- (a) That the subject, as a result of vascular dementia, 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 had resulted being abused physically, sexually or financially.

In this case, the predominant needs of the subject remained to be satisfied were, namely, decision to be made on discharge from hospital, future welfare plan, future accommodation, future treatment plan and 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.

32. 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