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Clerk & Comptroller
Palm Beach County

**DIVISION OF INSPECTOR GENERAL
PUBLIC INTEGRITY UNIT
GUARDIANSHIP**

Date: February 6, 2013
Ward: Violet K. LeSuer (Deceased June 28, 2011)
Case Number: 2005GA000063
Subject: Guardianship of Violet K. LeSuer
Catholic Charities (Limited Guardian)
Brian O'Connell Esq. (Attorney of Record), Casey Ciklin Lubitz
Martens & O'Connell
Period: March 10, 2005 through October 16, 2012
Reference: Level 2 Audit Report

The Public Integrity Unit of the Clerk & Comptroller's Division of Inspector General was created to provide independent, objective auditing and investigative services, supporting the Clerk & Comptroller's mission to protect and safeguard the public's interest. Our Guardianship Unit was established to serve and protect the property interests of those served by guardianships, including minor children, elderly persons, and incapacitated individuals. The Guardianship Unit shall advise the Court, as needed, of the results of audits per Administrative Order 6.306 and Fla. Stat. 744.368, and will be available to the judiciary for direction and consultation.

A. Scope

The Clerk & Comptroller's Public Integrity Unit of the Division of Inspector General (IG) initiated a Level 2 audit of the guardianship case file of Violet K. LeSuer (case #2005GA000063), in compliance with Administrative Order 6.306 and Fla. Stat. §744.368.

In conducting the Level 2 audit, the Clerk's IG reviewed the following records and references to audit the establishment of the Emergency Temporary Guardian (ETG), initial inventory, and appointment of guardian.

- Florida Guardianship Statutes, Fla. Stat. §744, Florida Probate Rules,
- Annual Accountings, Initial Inventory, Guardianship Reports, Pleadings, Affidavit, and Judicial Orders from the Court file, ETG file, guardian's file; and,
- Statewide Public Guardian Office website.

EXHIBIT

A

B. Conclusion

The Clerk's IG identified various instances in which duplicate invoices and fees were paid and questionable expenses were incurred using the Ward's assets, which totaled \$15,256.18.

Failure to pay property taxes timely resulted in the sale of two tax certificates for delinquent property taxes on the Ward's residence (one in 2008 and one in 2011), requiring use of guardianship assets to pay late payment interest and collection fees totaling \$562.03. It is not clear if the remaining interest and fees of \$592.69 has been paid.

A final and complete annual accounting report has not been filed with the Court. However, an "Order for Discharge of Guardian of Person" was approved by the Court and filed on October 16, 2012, which stated "all reports and accountings not previously approved are approved." It is not clear if the court order relieved the guardian of preparing the final accounting.

The "Annual Accounting of Guardian of Property" for the period ending March 31, 2010 reported proceeds of \$99,306.10 for a reverse mortgage on the Ward's residence executed by the guardian on January 25, 2010. However, the guardian did not report settlement closing costs totaling \$36,848.16.

Catholic Charities may be in violation of elements of Florida Statute that govern conflict of interest. Brian M. O'Connell Esq., Treasurer and officer of Catholic Charities as well as a partner at Casey Ciklin Lubitz Martens & O'Connell (CCLMO), served as the guardian's legal counsel and guardianship attorney. In our opinion, Catholic Charities, as guardian of the ward, may be in violation of elements of Florida Statute that govern conflict of interest.

"Petitions for Liens" were filed against the Ward's assets by the guardian's attorney (CCLMO) during the guardianship totaling \$99,306.10 in May 2009 and January 2010 though satisfaction of the liens were not filed with the Court to release the liens after payments were made.

C. Background

On January 31, 2005, Kyle MacNeneny filed a "Petition for Appointment of an Emergency Temporary Guardian", requesting appointment of himself as guardian, alleging an imminent danger that the Ward's physical or mental health or safety would be seriously impaired or that the property of the Ward was in danger of being wasted, misappropriated or lost unless immediate action was taken.

On January 31, 2005, Kyle MacNeneny filed a "Petition to Determine Incapacity" and a "Petition for Appointment of a Plenary Guardian", requesting appointment of himself as Guardian. An examination committee appointed by the Court diagnosed the Ward as having dementia and the Court-appointed counsel (Steven J. Goldberg) for the alleged incapacitated person recommended that the Court establish Catholic Charities as limited guardian, not as a plenary guardian.

On February 10, 2005, the Court found concerns with withdrawals of the Ward's funds and use of the Ward's automobile by Michael MacNeneny and appointed Catholic Charities as Emergency Temporary Guardian (ETG). The Court stated:

"The Court does find that Violet K. LeSuer's property is in imminent danger of being wasted, misappropriated or lost unless immediate action is taken... The Court also finds that there has been no adequate explanation presented by her son Michael MacNeneny, who resides with her, or other evidence satisfactorily explaining withdrawal of funds from Mrs. LeSuer's accounts... He [Michael MacNeneny] also testified that he had driven Mrs. LeSuer's vehicle that is titled in her name in violation of his restrictions... This could place his mother's assets at risk... Michael MacNeneny should be enjoined from driving Ms. LeSuer's vehicle in violation of his driver license restrictions."

On March 10, 2005, the Court found no other less restrictive alternatives that were sufficient to address the needs of the Ward. Catholic Charities was appointed limited guardian by the Court based on allegations of discourse between the Ward's two sons (Kyle MacNeneny and Michael MacNeney) and the recommendation by Court-appointed counsel. Prior to the guardianship, the Ward had delegated fiduciary and trust authority to Kyle MacNeneny through a power of attorney dated December 9, 1999 and also an estate trust document dated January 3, 2000. In the estate trust

document, the successor to Kyle MacNeneny was designated as the Ward's daughter - *IN-LAW* and it specifically excluded Michael MacNeneny from any authority.

One reason for the family discourse was due to the execution of a restated estate trust document that was filed to replace the original estate trust (dated January 3, 2000) within 37 days of the Ward being adjudged incapacitated due to dementia. On February 1, 2005, Michael MacNeneny caused the power of attorney (dated December 9, 1999) to be terminated and a restated estate trust document to be executed, which designated Michael as trustee and removed Kyle MacNeneny and the Ward's daughter - *IN-LAW* from the trust. The restated estate trust was executed and filed while petitions for determination of incapacity based on dementia, appointment of an ETG, and appointment of a Plenary Guardian were pending Court action. On November 29, 2011, after the Ward's death, the Probate Court determined that the original estate trust (dated January 3, 2000) was the valid estate trust document and Kyle was appointed as representative of the estate.

On June 28, 2011, the Ward died.

On November 29, 2011, "Letters of Administration" for the estate were filed with the Probate Court.

On December 5, 2011, a "Death Certificate" was filed by the estate attorney in Probate Court.

On December 19, 2011, a "Notice to Creditors" was filed by the estate with the Probate Court, with a publication date of December 28, 2011.

On July 19, 2012, the guardianship attorney filed a "Death Certificate" with the Court.

On July 19, 2012, Margaret Nagele terminated her employment as a certified professional guardian at Catholic Charities. As of February 4, 2013, Catholic Charities is finalizing the bond certification for two individuals to satisfy the professional guardian requirements for the organization.

On September 10, 2012, a "Request for Information" was sent by the Clerk's IG to Brian O'Connell, who served as the guardian's legal counsel and guardianship attorney.

On October 5, 2012, a "Petition for Discharge" of the Guardian was filed.

On October 16, 2012, an "Order for Discharge of Guardian of Person" was approved by the Court.

Guardianship total net assets were reported as \$627,181.88 according to the "Verified Inventory of Guardian" filed with the Court on May 16, 2005. In the last annual accounting filed on March 28, 2012, total net assets on hand were reported as \$211,748.71. The residual cash amount of \$3,097.12 was transferred to the representative of the estate of Violet LeSuer at termination of the guardianship.

Guardianship bank account balances, reported total expenses, and billed nursing expenses are summarized by annual accounting year in the table below:

<u>Annual Accounting Period</u>	<u>Bank Account Balance @ 3/31</u>	<u>Reported Total Expenses</u>	<u>Billed Nursing Expenses</u>
3/10/2005 to 3/31/2006	\$77,958.81	\$ 61,600.93	\$ 2,085.13
4/1/2006 to 3/31/2007	\$63,819.77	\$ 27,182.87	\$ 1,315.59
4/1/2007 to 3/31/2008	\$10,620.31	\$ 92,197.62	\$ 49,199.32
4/1/2008 to 3/31/2009	\$ 4,824.07	\$ 30,100.38	\$ 28,520.99
4/1/2009 to 3/31/2010	\$ 6,018.78	\$160,873.16	\$ 71,940.18
4/1/2010 to 3/31/2011	\$16,115.07	\$226,148.89	\$116,220.50
4/1/2011 to 3/16/2012	\$ 3,097.81	\$ 25,498.35	\$ 2,694.00

The Ward was provided 24-hour nursing services for seven days-per-week beginning November 23, 2009. Beginning December 13, 2010, nursing services were decreased to four hour nursing care for three days-per-week. Full time nursing care was available directly from assisted living facilities that the Ward resided in from October 2009 until her death on June 28, 2010. -2011

WRO N6

D. Report Findings**1. Duplicate and other questionable expenses totaling \$15,256.18 were paid using the Ward's assets.**

The review disclosed various instances in which duplicate invoices and fees were paid and questionable expenses were incurred using the Ward's assets, which totaled \$15,256.18.

- a. One invoice (#10285) dated November 29, 2010 from Nursing Services of Palm Beach for \$3,093.00 was paid twice by the guardian (check #1070 and check #1079). We did not identify a related refund or credit for the duplicate payment in the guardianship reports.
- b. Seven invoices from the Nursing Services of Palm Beach totaling \$3,488.32 were paid twice by the guardian, as detailed below. These invoices were paid individually and in a lump sum payment to the vendor for \$63,752.68 (check #1473).

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Service Dates</u>	<u>Amount</u>	<u>Check #</u>
9/8/2008	5224	9/2/2008 - 9/7/2008	\$411.16	1311
10/20/2008	5521	10/13/2008 - 10/19/2008	\$491.12	1326
3/30/2009	6617	3/23/2009 - 3/29/2009	\$575.24	1372
4/13/2009	6712	4/6/2009 - 4/12/2009	\$571.04	1377
4/20/2009	6759	4/13/2009 - 4/19/2009	\$479.36	1382
5/18/2009	6937	5/11/2009 - 5/17/2009	\$481.04	1394
8/24/2009	7579	8/17/2009 - 8/23/2009	<u>\$479.36</u>	1419
Total			\$3,488.32	

In addition, a duplicate payment of \$1,110 was made to Nursing Services of Palm Beach. One invoice (#2628) for \$1,110 dated July 23, 2007 included services from July 16-22, 2007. We identified two checks (#171 and #177) for \$1,110. No invoice was provided by the guardian to support the second \$1,110 payment. Our review of the invoices did not identify any gap in nursing service dates that would support the need for the second payment.

- c. A duplicate payment of \$1,472.50 was made by the guardian paid to Catholic Charities. The two checks (#1032 and #1420) each for \$1,472.50 were for guardianship services from February 3, 2009 through July 21, 2009.
- d. Nursing Services of Palm Beach invoice #10406 dated December 20, 2010 included hours worked by B. Sembrano on December 13-15, 2010 that conflicted with hours reported on parking garage receipts on an expense report submitted by B. Sembrano. The parking garage receipt reflected that B. Sembrano was not working for portions of the invoiced hours, as detailed below. Based on the \$17 hourly billing rate for approximately eight hours, the Ward was overbilled by \$136.

<u>Date</u>	<u>Parking Garage</u>	<u>Work Hours</u>	
	<u>Invoice Hours</u>	<u>Receipt Hours</u>	<u>Not Supported</u>
12/13/2010	7:00 AM - 7:00 PM	10:48 AM to 6:48 PM	4 hrs 0 min
12/14/2010	7:00 AM - 7:00 PM	6:52 AM to 3:52 PM	3 hrs 8 min
12/15/2010	7:00 AM - 4:00 PM	8:05 AM to 4:20 PM	<u>1 hr 5 min</u>
Total			8 hrs 13 min

- e. One Nursing Services of Palm Beach invoice (#9256) dated May 31, 2010 reported that a nurse began her duties at 7:00 AM on May 24, 2010. However, based on commercially available information, a traffic accident report indicated that the same nurse was involved in an accident in Lauderhill, Florida on the same morning at 7:53 AM. Therefore, the nurse could not have been serving the Ward as invoiced.
- f. A duplicate payment of \$1,010.20 was made by the guardian to Auto-Owners insurance company for the Ward's automobile. A check (#146) for \$1,010.20 was issued in payment of a statement dated June 21, 2005, which was followed by another check (#149) for the same amount for a statement dated July 22, 2005 that did not reflect receipt of the first payment. The insurance broker was Acordia Southeast Inc. No refund was noted during our review of the annual accounting reports.
- g. Questionable cash advances and credit charges on the Ward's Citi credit card were alleged by Kyle MacNeneny to have been incurred by Michael MacNeneny (Ward's son) totaling \$4,746.16 from August 30, 2006 through January 27, 2007. The cash advances totaling \$1,850 and credit charges, interest, and late payment

fees totaling \$2,896.16 were not reported to the Court by the guardian as suspicious in nature and were not included in the Annual Accountings. During the period of questionable cash advances and charges, several cashier checks were purchased from Wachovia Bank and signed by the Ward's son Michael MacNeneny for \$365 in payments to the Citi card. Copies of credit card statements obtained from the guardian did not have sufficient detail to identify what was purchased or who made the purchases. The descriptions indicate that the purchases were made at businesses that included automobile service stations, restaurants, and a dive shop specializing in barnacle removal. It is not clear if the final credit card balance was paid using the Ward's funds.

- h. An apparent "loan" of \$200 by the Ward's son (Michael MacNeneny) was paid on January 5, 2010 to Rod Sidway (guardianship case manager) using the Ward's funds.

We did not find any petition or Court order directing the support of Michael MacNeneny. F.S. 744.421 states that any person dependent on the Ward for support may petition for an order directing the guardian of the property to contribute to the support of the dependent person from the property of the Ward.

Further, we found that documentation for the reimbursement included a disclosure statement dated December 18, 2009, signed by Rod Sidway, which indicated the "loan" was coerced by Michael MacNeneny under threat of disclosure to the media and the "Chancery" of information not identified in the memo. The disclosure statement signed by Rod Sidway stated *"He also indicated that unless we responded to his urgent need that he was going to the papers and channel 5 and to the Chancery for action. In view of the above, an advance was rendered in the amount of \$200.00. Please further note that at the present time there is a reverse mortgage issue pending, which we deem vital to close for all interest. In direct accord a cash advance of \$200.00 was rendered; on behalf of Ms. LeSuer."*

2. Property tax late payment and interest fees totaling \$1,154.72 were incurred on the Ward's residence.

Two property tax certificates for delinquent property taxes were sold on the Ward's residence, one in 2008 and one in 2011, creating a liability of late payment interest and collection fees totaling \$1,154.72. Delinquent 2008 property taxes of \$4,096.27 were paid on February 4, 2010 using the proceeds of a reverse mortgage executed by the guardian on January 25, 2010 placed on the Ward's residence. Delinquent 2011 property taxes of \$4,902.43 were paid on June 7, 2012 according to the Palm Beach County Tax Collector's Office website but it is not clear who paid the taxes.

Florida Statute Sec. 744.361(8) "Powers and duties of guardian" requires the payment of taxes by the guardian from the Ward's funds.

3. A final and complete annual accounting has not been filed.

A final and complete annual accounting report has not been filed with the Court. However, an "Order for Discharge of Guardian of Person" was approved by the Court and filed on October 16, 2012, which stated "all reports and accountings not previously approved are approved." It is not clear if the court order relieved the guardian of preparing the final accounting. Additional use of the guardianship funds occurred after the last annual accounting report was filed for the period ending March 31, 2012, which has not been reported to the Court. The Ward died on June 28, 2011.

Per Sec. 744.527(1) F.S., a final annual accounting report is due within 45 days of service of estate letters of administration. "Letters of Administration" were approved in Probate Court on November 29, 2011; therefore, the final report was due on January 13, 2012. A "Waiver Of Service of Notice of Petition For Discharge; Waiver Of Final Report And Accounting; Receipt By Personal Representative And Consent To Discharge" was signed by the estate representative (Kyle MacNeneny) and was filed with the Court on October 5, 2012. However, Florida Statute (Section 744.527(1)) does not authorize a waiver of the responsibility of the guardian to file a final report within 45 days of being served with "Letters of Administration".

4. Reverse mortgage settlement costs totaling \$36,848.16 were not included in the annual accounting.

The "Annual Accounting of Guardian of Property" for the period ending March 31, 2010 reported proceeds of \$99,306.10 for a reverse mortgage executed by the guardian on January 25, 2010 on the Ward's residence. However, the guardian did not report settlement closing costs totaling \$36,848.16. Settlement costs included \$28,791 for various loan fees and expenses and \$8,057.16 for 2008 delinquent and current property taxes. Proceeds from the reverse mortgage were used to pay outstanding liens on the Ward's assets for nursing expenses totaling \$58,040.68, guardian fees totaling \$9,292.50, and legal fees by the guardian's attorney (CCLMO) totaling \$31,972.92 that included substantial hours billed for legal work related to the reverse mortgage.

Florida Statute Sec. 744.3678(2)(a) requires a full and correct account of the receipts and disbursements of all of the Ward's property over which the guardian has control.

5. Liens were filed against the Ward's assets though not released after payments were made.

Two "Petition for Lien" documents were filed against the Ward by the guardian's attorney (CCLMO) during the guardianship totaling \$99,306.10 for amounts owed to the guardian (\$9,292.50), guardian's attorney (\$31,972.92), and Nursing Services of Palm Beach (\$58,040.68). The liens were filed on May 15, 2009 and January 7, 2010. However, documents to record satisfaction of the liens were not filed with the Court to release the liens after payments were made.

6. Catholic Charities may be in violation of elements of Florida Statute that govern conflict of interest.

Florida Statute Sec. 744.446(2)(a) prohibits the guardian from having any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship.