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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

GUARDIANSHIP

IN RE: GUARDIANSHIP OF:

OLIVER BIVINS,

CASE NO.: 50 2011 GA 000006 XXXX SB
DIVISION: IY – COLIN

An incapacitated person.

**OBJECTION TO FINAL REPORT OF GUARDIAN OF PROPERTY
FILED BY STEPHEN M. KELLY AND SERVED JULY 9, 2015**

COMES NOW, Julian Bivins, as the ancillary personal representative of the Estate of Oliver Bivins in Florida and the temporary administrator of the domiciliary administration of the Estate of Oliver Bivins in Potter County, Texas, by and through his undersigned counsel and hereby files this Objection to Final Report of Guardian of Property filed by Stephen M. Kelly (“Final Report”) and served upon the undersigned counsel on July 9, 2015, and in support therefore, states as follows:

1. Schedule A fails to include the following rental income from 808 Lexington Avenue, New York, New York (“808 Lexington”) that should have been collected by the Guardian from the tenants or Oliver Bivins Jr., as personal representative of the Estate of Lorna Bivins pursuant to the September 17, 2013, Court Approved settlement agreement (the “New York Settlement”) entered into between Curtis Rogers, as guardian for Oliver Bivins Sr., Oliver Jr., individually and as personal representative of the Estate of Lorna Bivins, and Beachton Tuxedo, LLC (“Beachton”):

- a. One hundred percent of the rental income from the first floor tenant, Fig and Olive, following the Court’s approval of the New York Settlement;
- b. Rental income from the second floor tenant, Pinafore Nursery; and



c. Rental income from the third and fourth floor units.

2. Schedule A also fails to include one-half of the real estate taxes for 808 Lexington and 330 Ocean Boulevard that should have been collected by the Guardian from Oliver Bivins Jr., as personal representative of the Estate of Lorna Bivins pursuant to the New York Settlement.

3. Additionally, Schedule A fails to include one-half of the interest on the Beachton Mortgage accruing after June 30, 2013, that should have been collected by the Guardian from Oliver Bivins Jr., as personal representative of the Estate of Lorna Bivins pursuant to the New York Settlement.

4. Schedule B includes a payment for \$550.00 to Vantage Computer Systems for converting emails pursuant to a subpoena that should not have been paid out of the Ward's funds and was not for the benefit of the Ward.

5. Schedule B fails to include any payments of either principal or interest on the Beachton mortgage that encumbered 808 Lexington in contravention of the New York Settlement, any payments of expenses to enforce the satisfaction of the mortgage, or any payments of expenses to find substitute financing for the Beachton mortgage at a lower interest rate than the default rate the Beachton mortgage was charging.

6. Schedule B also fails to include any expenses for repairs, renovations, or maintenance to 808 Lexington that should have been incurred by the Guardian to obtain the highest and best rental values of the property.

7. Schedule C includes unauthorized payments to Ciklin Lubitz & O'Connell and Bill T. Smith, Jr. P.A. for purported contingency fees, the sum of which is not consistent with the total set forth in the May 23, 2014 Order on Hybrid/Contingencies Fee Portion of Application of Attorneys For Ward for Fees and Costs ("Contingency Fee Order"). *See* Contingency Fee Order

attached to Final Report. The sum of the total contingency payments to Ciklin Lubitz & O'Connell and Bill T. Smith, Jr. P.A. set forth on Schedule C equal \$413,343.24; yet, the Contingency Fee Order provides that the contingency fee payment shall be \$394,818.24. Moreover, the Guardian should have sought to reduce the contingency fee payment payable to counsel because the Contingency Fee Order determined the contingency fee based upon a figure of \$435,000.00 for the Beachton mortgage; yet \$596,681.78 was actually paid at closing to satisfy the Beachton mortgage. Had the figure of \$596,681.78 been used to calculate the contingency fee, the contingency fee would have been \$7,900.90 less than the amount set forth in the Contingency Fee Order.

8. Schedule C fails to properly include the Ward's interest in certain real property located at 67th Street, New York, New York and 82 Portland Place, London, England and the value of the same to which the Guardian agreed to waive or relinquish in favor of the Estate of Lorna Bivins in exchange for a 100% fee simple interest in 330 Ocean Boulevard and 808 Lexington. Moreover, Schedule C fails to properly set forth an accurate value of those properties.

9. Schedule D provides that the Guardian is currently holding \$155,383.51 and his counsel, Ciklin Lubitz & O'Connell, is holding \$675,994.35 in trust. Pursuant to the Order on Global Settlement attached to the Final Report, only \$275,000.00 from the closing proceeds of 808 Lexington should be held in trust by Ciklin Lubitz & O'Connell. The remaining \$400,000.00 should have been paid to the Oliver Bivins Management Trust pursuant to paragraph 10 of the Order on Global Settlement. *See* Order on Global Settlement attached to the Final Report. The moneys held by the Guardian in the amount of \$155,383.51 should also be paid to the personal representative of the Estate of Oliver Bivins as the \$125,000.00 being held in trust by the Guardian's counsel, Ciklin Lubitz & O'Connell, is to be utilized for guardianship administration

expenses and is sufficient to cover those expenses. See paragraph 9 of the Order on Global Settlement attached to the Final Report.

10. Lastly, the Statement of Closing of 808 Lexington attached to the Final Report identifies two separate amounts (\$16,093.93 and \$50,000.00) being held by the Guardian's counsel, Beys Stein Mobargha & Berland LLP ("Beys Stein"). See Statement of Closing attached to Final Report. There is no Court order permitting Beys Stein to hold these funds. As such, these funds should have been included in the net proceeds from the sale of 808 Lexington and paid to the Oliver Bivins Management Trust pursuant to paragraph 10 of the Order on Global Settlement.

WHEREFORE, Julian Bivins respectfully objects to the Final Report of Guardian of Property filed by Stephen M. Kelly and served upon the undersigned counsel on July 9, 2015, and requests this Court enter an Order requiring the Guardian to account for the discrepancies set forth above.

Dated: August 10, 2015.

Respectfully Submitted,

THE BLEAKLEY BAVOL LAW FIRM

/s/ J. Ronald Denman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2015 a true and correct copy has been served on all counsel of record identified on the attached Service List via electronic mail or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

/s/ J. Ronald Denman
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