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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 ACCOUNTING (GUARDIANSHIP REPORT) OF GUARDIAN
OF PROPERTY FILED BY CURTIS ROGERS AND SERVED JULY 8, 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 Accounting (Guardianship Report) of Guardian of Property filed by Curtis Rogers and served upon the undersigned counsel on July 8, 2015, and in support therefore, states as follows:

1. Schedule A (and the exhibit thereto) 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 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 (and the exhibit thereto) 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 (and the exhibit thereto) 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. Finally, Schedule A (and the exhibit thereto) incorrectly identifies income from the first floor tenant of 808 Lexington, Fig & Olive, as income from Royalties.

5. Schedule B (and the exhibit thereto) 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 (and the exhibit thereto) also fails to include any expenses for repairs, renovations, or maintenance to 808 Lexington to obtain the highest and best rental values of the property.

7. Additionally, Schedule B (and the exhibit thereto) includes an inappropriate payment of \$687.76 on December 6, 2013, to Eastern Consolidated for the Lieberman court hearing that should not have been paid out of the Ward's funds and was not for the benefit of the

Ward. Moreover, the following payments to counsel for the Guardian should not have been paid as a result of their breaches of fiduciary duty to the Ward and failure to benefit the Ward:

- a. \$10,000.00 to Cooperman Lester Miller on April 21, 2014;
- b. \$10,000.00 to Bill T. Smith, Jr. P.A on June 2, 2014; and
- c. \$10,000.00 to Ciklin Lubitz & O'Connell on June 9, 2014.

8. Schedule C (and the exhibit thereto) 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. Exhibit E identifies various law firms to whom the Guardian intends to make payment for fees and cost reimbursement, as well as himself, but fails to identify the specific amounts to be paid; specifically, it fails to identify the amounts as of the date of the accounting. Julian Bivins objects to any further payments to the Guardian or the law firms identified therein.

10. Julian Bivins objects to Exhibit F which provides that the Guardian, who should have already turned over all funds to the successor guardian, Stephen Kelly, will retain assets in Exhibit H to pay or put towards the final costs of administration. Exhibit H further fails to identify the total amount of assets to be turned over to the successor trustee, Stephen Kelly, which Curtis Rogers should have already turned over to Stephen Kelly.

WHEREFORE, Julian Bivins respectfully objects to the Final Accounting (Guardianship Report) of Guardian of Property filed by Curtis Rogers and served upon the undersigned counsel

on July 8, 2015, and requests this Court enter an Order requiring the Guardian to account for the discrepancies set forth above.

Dated: August 7, 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 7, 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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