

IN THE CIRCUIT FOR PALM BEACH COUNTY, FLORIDA PROBATE DIVISION

IN RE: ESTATE OF
VIOLET K. LEUSER,

Deceased.

FILE NO. 502011CP004003XXXXNB

Division IH

**Amended Petition for Further Administration, Objection to Accountings,
Return of Funds, Determination of Conflicts of Interest and other relief;**

Petitioner, Kyle C. MacNeney, pursuant to Fla. Statutes Sec. 733.903 and Fla. Prob. R. 5.460, and pursuant to re-appointment as Personal Representative and re-issuances of letters of administration, hereby petitions for further administration of the above captioned estate, and states:

1. A Petition for further administration was E-filed with this Court on Feb. 11, 2015, and received stamped by the Clerk on Feb. 13, 2015. See Exhibit 1.
2. On Feb. 27, 2015 this Court granted an Order for further Administration appointing myself as Personal Representative of the Estate of Violet K. LeSuer and further granted Letters of Administration with full power to administer the estate according to law, to ask, demand, sue for, recover and receive the property of the decedent and other powers according to law. See Exhibit 2 and 3.
3. The original petition filed in Feb. of 2015 identified \$15,256.18 of Estate property paid by questionable practices and duplicate invoices being identified by a Level II Audit performed by The Public Integrity Unit of the Clerk & Comptroller's Division of Inspector General of Palm Beach County. See Exhibit 1.

4. No proper judicial resolution or resolution of those funds in the amount of \$15,256.18 has occurred to date while difficulties in obtaining Discovery has occurred from the Office of Brian O'Connell Esq. Attorney of .Record, from the law firm of Boose¹ Casey Ciklin Lubitz Martens McBane & O'Connell who has acted at all times relevant herein as Counsel for both the Guardian Catholic Charities and the Ward herself, Violet K. LeSuer.
5. Thus, formal discovery proceedings may be necessary to resolve both the original amount raised in question in the Petition for further administration as well as resolving additional financial items raised by a County level audit and items determined by my own due diligence which exceed the original sum significantly.
6. Upon information and belief according to the Palm Beach County website, 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. See, <http://www.mypalmbeachclerk.com/publicintegrityunit.aspx>.
7. According to the County of Palm Beach website, "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." See website above.
8. Thus, by creation and mission statement, said county office was established to serve and protect the best interests of elderly persons served by guardianship such as my now deceased mother Violet K. LeSuer.

¹ "FBI setting up corruption squad" August 8, 2007|By Dianna Cahn Staff Writer Sun-Sentinel Tribune Publishing Company http://articles.sun-sentinel.com/2007-08-08/news/0708070594_1_corruption-squad-new-agents-palm-beach-county

9. The Clerk & Comptroller's Public Integrity Unit of the Division of Inspector General (IC) 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. A copy of the 10 page "Level II" Audit is attached hereto. See, Exhibit 1.
10. Said Audit, however, appears to be missing pages and as fiduciary and Personal Representative of the Estate I should be entitled to determine if other substantive parts of this audit have been withheld and as fiduciary PR of the Estate, I should be entitled to access to all pages and parts of this audit.
11. The Audit noted that "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." See Exhibit 1.
12. The County's Integrity Unit Audit further identified that Brian M.O'Connell Esq. acts as both Treasurer and officer of Catholic Charities which was serving as the Guardian, and is also a partner at Casey Ciklin Lubitz Martens & O'Connell (CCLMO), which served as the guardian's legal counsel while also serving as the guardianship attorney, thus having conflicting loyalties and conflicting interests between Catholic Charities and the ward, Violet K. Le Suer.
13. According to the County's Integrity Unit Audit itself, "In our opinion, Catholic Charities, as guardian of the ward, may be in violation of elements of Florida Statute that govern conflict of interest."

14. Said audit further determined as follows: “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.” See Exhibit 1.
15. There has never been proper disclosure nor Accounting of the \$36,848.16 charged as “settlement costs” allegedly for a “Reverse-Mortgage” taken out by the O’Connell office against the Ward’s real property where the proceeds were then used to pay substantial fees to Catholic Charities and the Ciklin, O’Connell law firm.
16. Upon information and belief, Daniel Lewis was head of the Catholic Charities Real Estate Dept. during all relevant times herein.
17. This was reported by myself as PR of the Estate to Anthony Palmieri of the Palm Beach County Clerk’s Audit Office on Dec. 14, 2013 by email to his address at apalmieri@mypalmbeachclerk.com.
18. The Level 2 Audit also noted that “legal fees by the guardian's attorney (CCLMO) totaling \$31,972.92” were also paid In ADDITION to the \$36,848.16 “settlement costs” not accounted for above and such Audit noted that the \$31,972.92 legal fees “included substantial hours billed for legal work related to the reverse mortgage.”
19. Said Audit also noted that \$8,057.16 for 2008 delinquent and current property taxes had been paid as part of “settlement costs” but noted it was unclear who made the payments and that “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” further raising questions about the valid use of the Ward’s property, assets and home during the entire period of the guardianship. See Exhibit 1.

20. The County audit further reported that “Catholic Charities may be in violation of elements of Florida Statutes 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.”
21. Still further, the County audit noted that “Questionable cash advances and credit charges on the Ward's Citi credit card were alleged by Kyle MacNeney to have been incurred by Michael MacNeney (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 MacNeney for \$365 in payments to the Gti 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.”
22. Still, “An apparent "loan" of \$200 by the Ward's son (Michael MacNeney) was paid on January 5, 2010 to Rod Sidway (guardianship case manager) using the Ward's funds.” yet further found that “We did not find any petition or Court order directing the support of Michael MacNeney. 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.”

23. These are all outstanding items that require proper accounting, disclosure and resolution by the Court as I was deprived of proper due process notice and process to participate in any of these matters.
24. Records further show that 4 consecutive Withdrawals of including three for \$50,000.00 and one for \$55,000,.00 totalling approximately \$205,000.00 were taken from the Reverse Mortgage Funds by the O’Connell law office Ciklin law firm PRIOR to Court Approval and prior to Petitioning for Court approval.
25. These withdrawals were later approved by Judge Diana Lewis in proceedings after my mother, the Ward, passed away in proceedings where I was not notified by due process to appear and participate.
26. Upon information and belief, Daniel Lewis who worked at Catholic Charities heading up the real estate Dept. is brother of Judge Diana Lewis ruling on transactions directly benefiting Catholic Charities where her brother worked.
27. The County Audit, however, had found that “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 MacNeney 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. LeSeur. "

28. That such information raises further questions of the propriety of the actions in taking such "Reverse Mortgage" on the Ward's property as it raises the questions of what type of improprieties Catholic Charities and the O'Connell firm were involved with that would permit an admitted drug addict demonstrated to have already taken and stolen monies and assets of the Ward to then be able to "pressure" the "Guardian" into a "Loan" by threat of exposing matters with the media and authorities.
29. Upon information and belief, Mr. O'Connell's office was advised by more than one source including Wells Fargo who issued the "Reverse Mortgage" that the Terms of the Mortgage loan required the Owner to be Occupying the residence and yet this was not the case as Catholic Charities had taken my mother out of the home for care incurring charges at another facility even though the option to have my mother cared for in my home was available.
30. That any said "Final Accounting" by the Guardian occurred without proper due process notice to myself as PR of the Estate and where conflicts of interest were never resolved or determined and these matters should all be opened up for further proceedings and administration in the best interests of the Estate.
31. The Final Accounting did not account for Social Security funds that the Ward received during a significant period of time of the Guardianship nor for Pension funds during this time either.
32. The O'Connell, Ciklin law firm placed an additional attorney's lien on the home for approximately \$22,000.00 (twenty-two thousand) for alleged work performed after the

Ward passed away which has also not been properly accounted for or disclosed or properly judicially settled.

33. The O'Connell, Ciklin law firm, upon information and belief, billed an excessive amount of fees over \$20,000 to simply "cash in" Stock in the amount of approximately \$30,970.69 owned by the Ward from shares of stock in the the Allied Bernstein fund. These transactions should be further reviewed and judicially settled.
34. The County Audit identified an alleged amount the Ward had left after her passing of \$211,748.71 which is not properly documented or determined and should now be determined in proper accounting and administration procedures.
35. There is an approximate amount of \$19,500, of 64 months of Dock Rentals not properly accounted for during any of the Guardianship or Accounting or Audit proceedings.
36. There is an approximate amount of \$15,168.00 of Prudential Pension Funds owned by the Ward that were not accounted for in the proceedings, approximately \$237 a month for 64 months which must now be accounted and properly returned to the Estate.
37. There is approximately \$31,136.00 in Social Security Income for the Ward for years March 1, 2005 to July 2007 that were never accounted for and must now be judicially resolved.
38. At the commencement of the Guardianship on April 6th of 2005 , Petitioner mailed a check made out to Catholic Charities from an account, that he held jointly with his mother Violet LeSuer, in the amount of \$115,391.66 to attorney Brian O'Connell. There was also \$10,000.00 in one of the Ward's bank accounts transferred to the O'Connell firm and thus approximately \$125, 391.66 paid to the O'Connell firm in the first year of

the Guardianship of which over \$60,000.00 or more was never accounted for properly and must be judicially resolved now.

39. Petitioner, the PR herein, has never seen any documents or accounting showing where the \$10,000.00 was deposited nor the \$115, 391.66 either and must be properly accounted for at this time.

GENERAL FACTUAL BACKGROUND AND HISTORY OF THE GUARDIANSHIP

40. Petitioner is an elderly person, 67 years of age, who lived in Palm Beach County from 1950 to June of 2004 before moving his family to Indian River County.

41. Violet K. LeSuer, petitioner's mother, had been a legal secretary in West Palm Beach in the early 1950's, personal secretary of BF Paty Sr., founding partner for Paty Downey Davis and Lewis. Her last employer was Walter Colbath, father to Chief Judge Jeffery Colbath. Her legal training made her more than capable of overseeing and planning her valid and well thought out end of life estate documents drafted by William Boyes Esq.

42. Violet K. LeSuer, was a product of the Great Depression, who lived fugally as a result of having lived through that experience as a young girl.

43. Her estate's value on January 3rd, 2000, when she executed her will and trust, was worth approximately \$800,000.00. Her largest asset was her free and clear small waterfront home that she placed in the Violet K. LeSuer Trust.

44. Violet had two sons from her first marriage: Kyle C. MacNeney and Michael C. MacNeney.

45. She left her entire estate to Kyle C. MacNeney, the petitioner, and specifically excluded Michael MacNeney her younger son.

46. Michael MacNeney has had a lifelong addiction to hard drugs and numerous felony convictions and jail time, all related to his drug habit. His Florida Driver's License permanently suspended as a result of multiple DUI convictions. He was diagnosed with AID's in 1986.
47. Violet LeSuer excluded her son Michael MacNeney for the following reasons: She knew that he was an incurable drug addict. If he outlived her, any inheritance would fuel his addiction and contribute to his early demise. She had worked too hard and denied herself too many luxuries to create her estate. The realization of the fact that her money would be squandered on drugs was a reality that was unacceptable to her peace of mind over her remaining years. She trusted her eldest son Kyle (the petitioner) implicitly. He and his mother had always worked together to help Michael during the short periods of Michael's sobriety over the years. A covenant was agreed to: Kyle (petitioner) would inherit her entire estate if his mother should die before her son Michael, Kyle would always be there to manage the estate assets, as he had been doing most of his adult life, and provide Michael with the basics. He would guarantee that Michael would have a substantial roof over his head, food and clothing. Beyond that, Michael's monthly Social Security disability check should guarantee that he would live out the rest of his life comfortably.
48. In 1995 Violet LeSuer's husband died. Her son Kyle MacNeney (petitioner) was there for his mother managing her financial affairs and managing the maintenance of her home and the small rental home that she inherited a life estate in upon the death of her husband Stanley LeSuer.

49. On or about August 7th of 1997, Michael MacNeney showed up at his mother's home after serving his time in the Ft. Lauderdale jail for the conviction of the sale and possession of cocaine. (Ft. Lauderdale Police agency case #24572) He had no car, no job, and an insatiable appetite for drugs. He moved himself into his mother's home and declared to his brother that he was going to take care of their mother. It was less about taking care of his mother and more about an easy opportunity to exploit his mother's finances to feed his drug habit.
50. Michael MacNeney fits the classic and clinical profile of a financial exploiter: A family member, a long history of drug abuse and trouble with the law, a charming sociopath, who immediately started to alienate his targeted mother from friends and family members.
51. By January of 2000. Violet MacNeney came to the conclusion that her son Michael was a hopeless drug addict and criminal. He had been stealing money and jewelry from her, dealing drugs out of her home to shady characters who were showing up on a regular basis to purchase pain pills.
52. Michael MacNeney would acquire the pain pills that he was selling by using his mother's car, and doctor shopping as far away as Miami, securing prescription pain medication under the the pretense that his AID's was causing him severe pain. On one of his doctor shopping trips he rear-ended another car, totalling his mother's car in Fort Lauderdale. He did not have a driver's license. It had been suspended many years earlier and labeled a habitual offender.

53. Endless phone calls to Kyle (petitioner) from his mother, Violet LeSuer, about his brother's criminal behavior had become a living nightmare. Michael refused attempts to be moved out.
54. To Kyle MacNeney, there didn't seem to be a resolution to this problem except a bad ending. His mother's home at risk of being seized in a drug bust seemed to be inevitable.
55. By December of 1999, Violet LeSuer had witnessed enough. She instructed Kyle to locate a reputable attorney to have her will and trust agreement re-written.
56. William Boyes drafted a valid will and trust agreement, executed January 3rd, 2000, as per Violet LeSuer's wishes, excluded her son Michael MacNeney.
57. In June of 2004 Kyle MacNeney (Petitioner) moved his family (wife, 13 year old son, and 86 year old father-in-law) to Vero Beach, Fl. He was spending most of his time there brokering acreage and citrus groves.
58. Once a week Kyle (petitioner) would drive down to Palm Beach Gardens to check in on his mother, whom he'd find most of the time lethargic, in bed, and unable to communicate because of the severe dementia that very suddenly invaded her mind. Brother, Michael, gone off somewhere in his mother's car, leaving his mother alone for two and three days at a time.
59. Kyle suspected that his brother was drugging his mother into a coma like state, enabling him to leave his mother alone for hours at a time unattended.
60. Petitioner received two phone calls in the last week of January 2005. One came from his mother. She told him that Michael was taking her to an attorney, but she didn't know why. The other came from William Boyes, attorney who had drafted the last will and trust agreement for Violet LeSuer. He explained that his brother had showed up with his

mother in tow, screaming for the original estate documents that he had drafted and executed in 2000. Both he and his secretary witnessed Violet LeSuer in a state that seemed to reflect that she had no idea of what was transpiring.

61. William Boyes advised the petitioner, Kyle MacNeney, that he should file a Petition for Emergency Guardianship to become his mother's guardian and gave the name of attorney Freeman Barner (now deceased).
62. The petitioner began to feel relief that he could now gain control of this bad situation within his mother's home, protect his mother and get the professional care that was required, protect her assets, and evict the criminal exploiter, Michael MacNeney, from his mother's home legally. Mr. Barner never explained the potential downside filing an Emergency Guardianship Petition.
63. The Petition for Emergency Guardianship was filed on January 29th, 2005.
64. Michael MacNeney had taken his mother to attorney, Lee Sayler, who drafted a new will and amended trust agreement all to Michael MacNeney's benefit, executed on Feb. 2, 2005.
65. Judge Karen Martin (now retired) ruled that Mrs. LeSuer was incompetent in Feb. 2005 and her assets were at risk because of Michael MacNeney, who could not explain missing funds and why he was driving his mother's car without a driver's license.
66. Judge Karen Martin gave Kyle MacNeney (Petitioner) the option of selecting one of two professional guardians: One, The Jewish Federation of the Palm Beaches and the other Catholic Charities of the Diocese of the Palm Beaches. Catholic Charities became the Guardian.

67. On April 6th of 2005 , I as Petitioner mailed a check made out to Catholic Charities from an account, that he held jointly with his mother Violet LeSuer, in the amount of \$115,391.66 to attorney Brian O'Connell. There was also \$10,000.00 in one of the Ward's bank accounts thus approximately \$125, 391.66 paid to the O'Connell firm in the first year of the Guardianship of which over \$60,000.00 or more was never accounted for and must be judicially resolved now.
68. Kyle MacNeney (petitioner) had already met with Rod Sidway caseworker for Catholic Charities and turned over the safety deposit box key and contents that he held jointly with his mother Violet LeSuer, a month earlier. The box had about \$3000.00 in jewelry and had been originally secure to prevent Michael MacNeney from stealing anymore of his mother's jewelry. This action was taken on the insistence of Violet LeSuer.
69. Catholic Charities did not evict Michael MacNeney from his mother's home, as Kyle MacNeney would have done, had he be appointed guardian for his mother. Michael MacNeney continued to commit the same crimes with impunity over the course of the guardianship, just as he had done prior to the appointment of Catholic Charities as the guardian.
70. The petitioner alerted Catholic Charities caseworker, Rod Sidway, when dunning letters arrived at his home address in Vero Beach demanding payment on approximately \$15,000.00 in credit card advances that Michael MacNeney had done by using his mother's identity.
71. Kyle MacNeney (petitioner) tried in vain to communicate to Catholic Charities caseworker that they were not doing an adequate job in protecting Violet LeSuer's assets. By allowing Violet LeSuer's social security check to come to her home, they

were only making a bad situation worse. Most of this money was going to support Michael MacNeney's insatiable drug addiction.

72. Visiting his mother became impossible for Kyle MacNeney (petitioner) as he feared for his life. On his last visit to his mother's home, before the petition for emergency guardianship, Michael opened the door with an electric cattle prod in hand, threatening his brother Kyle.

73. Michael would never leave the house as Kyle MacNeney (petitioner) requested the guardianship to arrange so that he could visit his mother without the threat of violence and confrontation that was part and parcel of his brother's character. The only time Kyle MacNeney (petitioner) was able to a visit, was when the aid worker was kind enough to arranged to bring his mother to meet him at the nearby Palm Beach Gardens Mall, where they were allowed a mother and son peaceful and pleasant reunion.

74. After two years of witnessing his mother under the guardianship of Catholic Charities and the masterful manipulation by this powerful organization and their legal department to malign and denigrate his character, keep him away from his mother and to characterize poor Michael MacNeney as his mother's savior. The reality was that there were now two financial exploiters victimizing his mother.

75. In the 3rd year of the guardianship, the petitioner reviewed the annual accounting that showed approximately \$49,000.00 in nursing services fees paid to Nursing Services of the Palm Beaches, all in addition to the guardian fees and attorney fees being billed from Brian O'Connell's office. The petitioner file a petition pro se accusing Catholic Charities of wasting his mother's assets. After all, she could still clothe, bathe, and feed herself--- and of course---- Michael was still living in her home, couldn't he help out with some of

the caregiving needs? These expenses are excessive and over the top considering the ward was still living in her home.

76. Now retired Judge Cook had denied the petition at that time. It was after this hearing that the petitioner realized that he was powerless to protect his mother's asset. All would be targeted and taken under the guise of for the benefit of the ward. Protection through deception!

77. From that point in time, the guardianship went after Violet LeSuer's assets with more intensity. When I was given notice to any hearing, those petitions were always inconveniently scheduled at 8:00 A.M. the next morning, following the early evening receipt in my mailbox after I arrived home from work to my Vero Beach home after 6:00 P.M.. I would have to leave my home for the hearing at 5: A.M. to attend the scheduled hearing on my mother's behalf. The Notices were Inadequate for due process purposes and Petitioner was unable to attend several hearings as a result.

78. When Petitioner did manage to show up at a hearing, all action was canceled because I didn't have an attorney, only to be re-scheduled for another date.

79. Petitioner contacted Anthony Palmieri, Auditor of the Public Integrity Unit of the Division of the Inspector General, eleven months after his mother's death, in May of 2012, searching for justice for his stolen mother and plundering of her entire estate by what he perceived as racket of protection by deception, operated by officers of the court, who perverted the true and good intention of the the State of Florida guardianship law to take advantage of the most vulnerable citizens of Palm Beach County's population.

80. Mr. Palmieri met the petitioner at his deceased mother's home, 11288 W Teach Rd. Palm Beach Gardens in May 2012 to take his complaint statement.

81. At this May 2012 meeting, Mr. Palmieri witnessed the neglected condition and obvious depreciation in value evident by the guardian's failure to maintain the home or monitor the occupants and their illegal activities.
82. The petitioner explained to Mr. Palmieri how the guardian had placed his mother in a \$11,000 per month nursing home, The Catholic affiliated Loudes Noreen Mckeen Residence in downtown West Palm Beach.
83. The petitioner explained to Mr. Palmieri that a more practical and economical solution to his mother's residency had been provided to the guardian in writing over two years before her death, offering to take care of his mother in his own home where she would be surrounded by a loving family with a beautiful bedroom and private shower with already installed handicap shower bar, along with all the necessary durable equipment: Wheelchair, walker, etc.
84. Petitioner explained to Mr. Palmieri, that he and his wife and family had the experience as caregivers. They had provided loving care for his father-in-law for 15 years until his death in his own bedroom, in their home at the age of 92, surrounded by loved ones. That bedroom became available for his mother on April 22, 2008, but Catholic Charities and Brian O'Connell ignored this genuine, and most economical and sensible alternative, to his mother's care.
85. Instead, the Petitioner explained to Mr. Palmieri that the guardian petitioned the court to become Trustee of the Violet LeSuer Trust, concealing relevant facts in the petition to be appointed trustee.
86. The petitioner revealed to Mr. Palmieri how the the guardian had petitioned the court to place a reverse mortgage on his mother's home, but neglected to explain that the ward

was not living in the home, a statutory requirement for the approval of the reverse mortgage by the lender of the federally backed program.

87. The petitioner explained to Mr. Palmieri, that the guardian secured the reverse mortgage, and contrary to the occupancy clause within that document, falsely represented that the borrower was living in the home, when in fact, the ward was residing in a nursing home.

88. The Public records indicate a reverse mortgage amount of \$915,000.00.

89. The market value or just value of the home on January 1, 2011 according to the Palm Beach County property appraiser for proposed property taxes \$436,559.00.

90. The audit itself raises issues that show Catholic Charities impeded the fair marketing and sale of the home by continually having Liens on the home that went unsatisfied and still remained on the public record even after being fully paid.

91. In summary, multiple items involving substantial monies in the thousands and potentially hundreds of thousands of dollars for the proper administration and accounting for the Estate are at issue and there should be further administration and full proceedings at this time on all matters raised herein.

WHEREFORE, Petitioner seeks an Order granting further administration of the Estate on this Amended petition and for such other and further relief as may be just and proper.

Dated: June 13, 2016

/s/Kyle C. MacNeney

Kyle C. MacNeney

Petitioner Pro Se

5526 49th Ave

Vero Beach, Florida 32967

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 13th day of June, 2016.

/s/Kyle C. MacNeney

Kyle C. MacNeney

Petitioner Pro Se

5526 49th Ave

Vero Beach, Florida 32967

SERVICE LIST

1. Brian M. O'Connell, Partner
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EXHIBIT 1



SHARON R. BOCK
Clerk & Comptroller
Palm Beach County

DIVISION OF INSPECTOR GENERAL PUBLIC INTEGRITY UNIT GUARDIANSHIPS

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

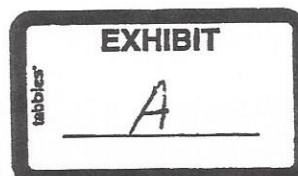
The Public Integrity Unit of the Clerk & Comptroller's Division of Inspector General was created to provide independent, objective auditing and investigative services, supporting the Clerk & Comptroller's mission to protect and safeguard the public's interest. Our Guardianship Unit was established to 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.



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

WRONG

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 Statue 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.