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DATE: 12th November 2004

TO: Philip Stilianos

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FROM: Sarah Holliday

Telephone: 8204 0285

TOTAL NUMBER OF PAGES INCLUDING THIS SHEET: 11

M E S S A G E :

RE appeal by DCADD-04-488 Philip STILIANOS (Protected Person: Erini STILIANO)
against an order of the Guardianship Board

Please find the Statement of Reasons from the Guardianship Board in the above matter.

Regards,
Sarah.



STATEMENT OF REASONS GUARDIANSHIP BOARD

CLIENT NAME: STILIANO, Erimi G.B. NO: 667/01

HEARING DATE: 26 August 2004

VENUE: Guardianship Board
Level 8 ABC Building
85 North East Road
COLLINSWOOD 5081

BOARD: Ms Lin Gilfillan (Deputy President)
Ms Candace Hyde (Board Member)
Ms Jan Harry (Board Member)

BEFORE THE BOARD CAME:

Attending at Guardianship Board, Collinswood:

Ms Lesley McPhurlin (Applicant/Crown Solicitor's Office for Public Trustee)
Ms Anna Itsines (Daughter)
Mr Steve Itsines (Son-in-law)
Mr Gary Stiliano (Son)

Attending via speaker-phone:

Mr Philip Stilianos (Applicant/Son)
Ms Nicole Vlahos (Grand-daughter)

WRITTEN EVIDENCE BEFORE THE BOARD:

- Review Report from Stella Stiliano
- Letter from Crown Solicitor's to Guardianship Board dated 10 August 2004
- Letter from Philip Stilianos to Guardianship Board dated 5 August 2004
- Letter from Philip Stilianos to the Board dated 26 August 2004
- Administration Review Report from Dr G. Colombo dated 20 August 2004

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REASONS FOR DECISION:

Introduction

Mr Philip Stilianos, son of the protected person applied to the Guardianship Board for a review of the limited Administration Order in relation to his mother Erini Stiliano. Public Trustee were appointed limited administrator of the estate of the protected person on 26 November 2001. The Administration Order was limited to managing the estate of the protected person other than her pension entitlement and sum of \$2,500. The administrator's role was to include ongoing investigation of property held by the protected person in Greece.

By way of letter dated 10 August 2004, the administrator through its legal representative, Ms McPharlin sought direction from the Guardianship Board as to the following:

1. Whether Public Trustee should continue to instruct the current solicitors in Greece and Melbourne to pursue sale of the properties.
2. Whether Mr Philip Limberis should be engaged to undertake the sale of the properties held in Greece in the name of the protected person, as recommended by Mr Philip Stilianos.

A hearing of the Guardianship Board was convened on 26 August 2004 and the Board made the following orders:

1. THAT the application for Section 74 Directions/Advice is dismissed.
2. THAT PUBLIC TRUSTEE of 25 Franklin Street, ADELAIDE 5000 be appointed limited administrator of the estate of the protected person.
3. THAT the Administration Order be limited to managing the estate of protected person other than her pension entitlement and a sum of \$2,500. The Administrator's role should include ongoing investigation of property held by the protected person in Greece.
4. THAT PUBLIC TRUSTEE shall provide an annual report to the Board with six monthly reports due on or before 26 February 2005 to PHILIP STILIANO of 2/3 Yendon Road, GLEN HUNTLY 3163, ANNA ITSTINES of 5 Frobisher Avenue, FLINDERS PARK 5025, GARY STILIANO of 7 Jennifer Terrace, PARAFIELD GARDENS 5107, STELLA STILIANO of 33 Halifax Avenue, PARAFIELD GARDENS 5107 and to the protected person on its administration of the estate of the protected person.
5. THAT the protected person shall not make any will or other testamentary disposition after this date except in the presence of, and with the consent of, Public Trustee.

THAT the Administration Order will remain in full force and effect until revoked or varied by the Board provided always that the protected person, the applicant and any other person entitled thereto may be at liberty to apply to the Board for a review of its orders at any time. The Board recommends that this order be reviewed on or before 26 August 2005.

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Legislation:

Section 5 sets out the principles to be observed by the Board in making its decision. It states:

Where a guardian appointed under this Act, an administrator, the Public Advocate, the Board or any court or other person, body or authority makes any decision or order in relation to a person or a person's estate pursuant to this Act or pursuant to powers conferred by or under this Act

(a) consideration (and this will be the paramount consideration) must be given to what would, in the opinion of the decision maker, be the wishes of the person in the matter if he or she were not mentally incapacitated, but only so far as there is reasonably ascertainable evidence on which to base such an opinion; and

(b) the present wishes of the person should, unless it is not possible or reasonably practicable to do so, be sought in respect of the matter and consideration must be given to those wishes; and

(c) consideration must, in the case of the making or affirming of a guardianship or administration order, be given to the adequacy of existing informal arrangements for the care of the person or the management of his or her financial affairs and to the desirability of not disturbing those arrangements; and

(d) the decision or order made must be the one that is the least restrictive of the person's rights and personal autonomy as is consistent with his or her proper care and protection.

Section 57 sets out the parameters for review of the Board's orders. It states:

(1) The Board must review the circumstances of a protected person

(a) in the case of a protected person who is being detained in any place pursuant to an order of the Board within six months of the making of the order and thereafter at intervals of not more than one year; and

(b) in any other case at intervals of not more than three years, for the purpose of ascertaining whether the order or orders to which the person is subject under this Act are still appropriate.

(2) The Board may conduct a review in such manner as it thinks fit.

(3) The Board must, on completion of a review, revoke the order or orders to which the protected person is subject unless the Board is satisfied that there are proper grounds for the order or orders remaining in force.

(4) If the Board is satisfied that there are proper grounds for an order remaining in force, the Board may, by order, vary the terms of the order.

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In considering whether there are proper grounds for an order to remain in force and what the terms of that order might be, the Board is mindful of Section 35 of the Act which governs Administration Orders. It relevantly states:

(1) If the Board is satisfied, on an application made under this Division

- (a) that the person the subject of the application has a mental incapacity; and
- (b) that an order under this section should be made in respect of the person, the Board may, by order, appoint an administrator, or administrators, of
 - (c) a specified part of the person's estate (a "limited administration order");
 - or
 - (d) if satisfied that an order under paragraph (c) would not be appropriate, the whole of the person's estate (a "full administration order").

(2) Any of the following may be appointed as an administrator under this section:

- (a) the Public Trustee;
- (b) a trustee company under the Trustee Companies Act 1988;
- (c) any natural person who the Board considers suitable to act as administrator of the person's estate.

"Mental incapacity" is defined in the Interpretation Section 3 of the Act as follows:

"mental incapacity" means the inability of a person to look after his or her own health, safety or welfare or to manage his or her own affairs, as a result of

- (a) any damage to, or any illness, disorder, imperfect or delayed development, impairment or deterioration, of the brain or mind; or
- (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever;

Section 50 of the Act defines the criteria for determining suitability for appointment. It states:

- (1) In determining the suitability of a person for appointment as a guardian or administrator, the Board must have regard to
 - (a) whether the potential appointee and the protected person would be incompatible;
 - (b) whether there is some existing family arrangement or relationship that should be preserved or should not be disturbed;

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(c) whether the potential appointee would be competent to discharge the functions of guardian or administrator under the order and would do so in accordance with the principles stated by this Act;

(d) whether the potential appointee would be readily available for discharging those functions;

(e) whether any conflict of interest would arise from the appointment;

(f) such other matters as the Board considers relevant.

(2) The fact that a proposed appointee is related to the protected person by blood or marriage will not, of itself, be taken to give rise to a conflict of interest.

Section 74 provides that the Board may give advice, direction or approval on application from an administrator. Section 74 states:

(1) A guardian or administrator appointed under this Act may apply to the Board for advice or direction on the exercise of his or her powers under this Act or any other Act or law or as to the scope of those powers or for approval to the taking of any action for which the approval of the Board is required.

(2) An application under this section

(a) need not be served on any person; and

(b) may be determined by the Board ex parte, unless the Board directs otherwise.

(3) A direction given by the Board under this section is binding on the applicant and any other joint guardian or administrator.

Issues

The issues to be determined by the Board in this case are:

- Upon Review, should the Administration Order be revoked or is the Board satisfied there are proper grounds for an Administration Order to remain in force?
- If the Board is satisfied there are proper grounds for an Administration Order to remain in force, should the terms of that order be varied?
- Should the Board give advice, direction or approval to the Public Trustee on its ongoing investigation of properties owned by the protected person in Greece?
- If the Board determines to give Directions/Advice to the Administrator, what is the nature and extent of that Advice?

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Material before the Board

The Board had before it the material contained in letters from Philip Stilianos dated 5 August 2004 and a letter faxed to the Board on 26 August 2004. A review report was received from Stella Stiliano (daughter) and the treating doctor, Dr Colombo.

The request for advice was received from the Public Trustee by way of letter from the Crown Solicitor dated 10 August 2004.

In addition, the Board heard evidence from those interested parties attending the hearing in person and by telephone conference.

The presentation of evidence before the Board was somewhat clouded by the emotion of family members attending the hearing. There was considerable tension between the children of the protected person, in particular between Anna Itsines, her husband Steve Itsines and the applicant for Review, Philip Stilianos. The conflict particularly centred around the terms of the protected person's will. The applicant is allegedly the sole beneficiary of the protected person's will, which includes properties located in Greece. These properties, according to Mr and Mrs Itsines, were intended to be distributed to all the children of the protected person by her husband. He apparently died prior to this arrangement being put in place leaving his estate to his wife, the protected person, who in turn has left her estate to her son Philip Stilianos and his children. The administrator has acknowledged that there may well be a challenge to the protected person's will on her death and funds have been retained for that purpose. (See page 2 of letter from Crown Solicitor to Guardianship Board dated 10 August 2004).

The protected person did not attend the hearing. A review report on mental incapacity was provided by her treating general practitioner, Dr Colombo. He noted in his report dated 20 August 2004 that the protected person still has a mental incapacity and "suffers from severe senile dementia and cannot manage her financial affairs". (See page 3 transcript).

All parties at the hearing agreed that the protected person continues to suffer a mental incapacity which renders her unable to look after her finances or legal affairs. (Page 3 transcript).

All parties at the hearing were satisfied with the current informal arrangements whereby Stella Stiliano manages the pension entitlement of the protected person, together with the sum of \$2,500. (See page 4 transcript).

Dr Colombo supported the continuation of the Administration Order setting out his support in his review report dated 20 August 2004.

Philip Stilianos sought to be appointed administrator in lieu of Public Trustee. He outlined that at least three Public Trustee officers he had spoken to had given him the impression that they would prefer he take on that role. Or, at least "didn't see any problem with it". Ms McPharlin, representing Public Trustee, was not aware of the application and was not able to comment on the views of her fellow employees as to their attitude to the appointment of Philip Stilianos. (Page 7 transcript)

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The applicant outlined why he thought he should be appointed administrator by stating: "I have familiarised myself with Guardianship and Administration Act and feel that I am in the best position to protect my mother's overseas assets from squatters. The squatters are now legally able to claim the land." He goes on to say: "Public Trustee is unable to do this or pursue any further than it has without incurring huge legal costs and long delays as it does not have the special contacts necessary to obtain at minimal cost and efficiency of the essential leasing documentation and file ...". (See letter dated 5 August 2004 from applicant to Guardianship Board - letter of application).

Later in the hearing the applicant stated: "My main objective is not to be administrator but to secure the land. This is the prime objective". "The sole task that I see is to establish whether the property is secure against squatters." (Page 23 transcript).

The applicant went on to outline the special contact who he submitted would be able to facilitate both a search of the properties in relation to their security of tenure and facilitate sale of same if deemed appropriate. He referred to him as a "high profile owner of a large hotel complex in Rhodes Greece. He also develops/builds large hotels ... he has also a very good knowledge of the people and land values in Lahania (the village where the properties are) and will obtain maximum market value by selling to the right people. We were best mates at high school and university ...". (Letter of application and referred to in page 12 transcript).

Anna Itsines and her husband Steve Itsines were strongly opposed to the appointment of Philip Stiliano as administrator. Anna stated: "The only reason this is taking place is because he (Philip) knows he is the sole beneficiary of his mother's will." (Page 20 transcript).

Gary Stiliano (son of the protected person) was also adamant that he did not want his brother Philip appointed as administrator. He stated: "He can't be trusted. He can't be trusted. He doesn't have any commercial nous whatsoever." (Page 14 transcript). He also went on to say later in the hearing that he felt there was too much family conflict for any family member to be appointed as administrator. (Page 22 transcript).

Stella Stiliano was not present at the hearing, but provided some guidance to her opinion regarding the review by way of the administration review report. In that she stated that the Administration Order should continue.

As to whether there is a need for the Administration Order, the Board was provided with some updated information by Lesley McPharlin from the Crown Solicitor's Office as to the extent of investigations conducted so far regarding properties owned by the protected person in Greece. The Board was advised that solicitors in Melbourne and Greece have been appointed and instructed to investigate the status of land, in particular whether there are squatters present on the land, would there be a legal impediment to sale and what would actually be involved in proceeding to sale. There has been some interest expressed in some of the plots, but communication from the Greek solicitors has not been forthcoming and this lack of communication had been compounded by the Olympics.

Ms McPharlin outlined that on one hand the protected person had enough funds to take care of her needs and probably didn't need to spend money to sell these properties. On the other hand, she recognised that the properties had some value and "if there are squatters there I'd be

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reluctant to be sitting here doing nothing while she is losing money. But, I can't get a firm answer as to what is involved at the Greek end, so I can't really tell you one way or another whether we need to proceed quickly or it doesn't matter." (See page 5 transcript).

There was an apparent difference of opinion between Philip Stilianos and Lesley McPharlin as to the ongoing role of the current administrator. Ms McPharlin indicated that she was "aware that Mr Philip Stilianos was not happy with the progress of the matter and wanted to expedite things". (Page 5 transcript).

Philip Stilianos stated: "We are at an impasse. We have gone as far as we can with Public Trustee." When asked if she agreed with that statement, Ms McPharlin stated: "No." (See page 26 transcript).

The proposed involvement of a friend and cousin of Philip Stilianos to assist in investigations and perhaps effect a sale was discussed at length. Philip in his application and his evidence to the Board outlined how he thought Phil Limberis could assist to facilitate the investigation.

Anna and Steve Itsines expressed grave concerns regarding Philip Limberis being involved in any investigation and/or sale of subject properties. (See pages 14 and 20 of transcript). The opposition was based on the fact that Philip Limberis "has interests in the village. His mother is from that village. And, he has some properties there".

It was observed by Anna and Steve Itsines that Philip Limberis had a conflict of interest so was not an appropriate person to be appointed in any formal way to investigate and/or sell property owned by the protected person.

Stella and Gary were not opposed to Phil Limberis being involved in the sale of properties.

Discussion of Evidence and Findings

In considering its decision, the Board has kept in mind the principles enunciated in Section 5 of the Act.

The Board conducted the Review of the Administration Order by considering the written material and evidence provided by those attending the hearing. The Board was mindful of the conflict between the interested parties present and the strong, emotional views of Anna and Steve Itsines in opposing the appointment of Philip Stilianos. Gary Stiliano was also strongly opposed to the proposed appointment of his brother Philip Stilianos.

The Board was satisfied that there were proper grounds for the order to remain in force. The protected person continues to suffer mental incapacity and there are complex legal issues to be addressed by an Administrator.

While the pension and the sum of \$2,500 are currently being administered informally to the satisfaction of all interested parties, the rest of the estate, in particular properties located in Greece remain in dispute as to their legal status. In particular, inquiry is ongoing as to whether there are squatters on any of the properties and any other legal impediment to sale.

It is also noted that there is some \$70,000 from the proceeds of the sale of the home, which is currently administered by Public Trustee.

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Given the family conflict evident at the hearing, it would seem appropriate that an independent administrator continue to administer those funds.

The Board, having concluded that a limited Administration Order was still needed, turned its attention to who should be that administrator. Philip Stilianos presented his credentials to the Board by way of his application and in submission at the hearing. He too supported a limited order. In determining whether Philip Stilianos was suitable for appointment, the Board was mindful of Section 50 of the Guardianship and Administration Act in particular Sections 50(c) and (e).

Mr Stilianos made it clear that his main objective in being appointed administrator was "to secure the land". (Page 23 transcript). While this may not necessarily be at odds with his duty as administrator, as sole beneficiary of his mother's estate, it is arguable that he may make decisions looking to what is in the best interests of his inheritance rather than what's in the best interests of the protected person.

At the very least, Mr Stilianos may well have a perceived conflict of interest. This together with the forceful and heartfelt opposition of three family members to his appointment led the Board to conclude that in the circumstances it was appropriate to appoint Public Trustee limited administrator.

As to the application for direction under Section 74 of the Guardianship and Administration Act, the Board raised questions as to whether Mr Limberis may potentially have a conflict of interest in dealing with property in Greece as he is a developer/hotel developer in Rhodes and that that is where the land is for sale. Mr Stilianos did not accept the suggestion of a potential conflict of interest. (See page 13 transcript).

When this concern of a potential conflict of interest was raised with Lesley McPharlin, Ms McPharlin stated: "I think it is a concern for the reasons that you raise, but I would be prepared to communicate with him with a view to ascertaining whether there are squatters on the land or anyone else, anyone in the family can put forward to assist us ...". (Page 19 transcript).

It is noted that Gary Stiliano and Stella Stiliano were supportive of an involvement by Mr Limberis, whereas Anna and Steve Itsines are strongly opposed to his involvement.

In relation to the other enquiry of Public Trustee as to whether they should continue to instruct current solicitors in Greece and Melbourne, Ms McPharlin seemed to answer her own question when she stated: "I guess we really need to carry on with the investigation, confirm whether there are squatters or not, and then I can make a recommendation to proceed to sale or not. That would seem to resolve it, really, wouldn't it." (Page 25 transcript).

In all the circumstances, it seemed to the Board that it did not have sufficient information to provide meaningful advice, direction or approval to the administrator in relation to the properties owned by the protected person in Greece at this stage.

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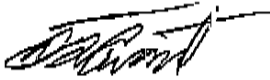
PUBLIC ADVOCATE

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The Board cannot properly address the grounds of appeal raised by the appellant. The attachment setting out the grounds of appeal have apparently been marked "confidential", and have not been made available to the Board and therefore cannot be addressed in this Statement of Reasons.

Application of Law and Decision

It follows from the above that the Board is satisfied that in conducting the Review pursuant to Section 57 of the Guardianship and Administration Act that the order should not be revoked. The Board was satisfied there were proper grounds for the order remaining in force and that in all the circumstances there was not sufficient evidence and/or grounds for providing a direction pursuant to Section 74 to the administrator as requested.



for Lin Gilfillan
Deputy President