

Jennifer Grant
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Pro Per

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

In re the) No. 37-2011-00150239-PR-TR-NC
SCHWICHTENBERG REVOCABLE)
FAMILY TRUST) Jennifer Grant's Objections to Bradd
DATED JULY 28, 1982) Schwichtenberg:
) PETITION CONCERNING THE INTERNAL
) AFFAIRS OF THE TRUST AND FOR (1)
) FORENSIC ACCOUNTING AND RESTORE TRUST
) "B" AND TRUST "C"; (2) CHARGE GIFTS
) TO CHILDREN AGAINST DISTRIBUTIVE
) SHARE; AND (3) INVALIDATE GIFT TO
) CARE CUSTODIAN
) [PROBATE CODE §§17200, 21350]
)
) DATE: 10/07/2011
) TIME: 9:30 am
) DEPT: 23

Objector, Jennifer Grant, is the daughter of Norman and Mary Schwichtenberg and a beneficiary of this trust. She is also the legitimate trustee of B and C. Jennifer offers the following objections to Bradd Schwichtenberg's Petition for Internal Affairs of the Trust

True and correct copies of the Schwichtenberg Revocable Trust and its amendments as submitted by Mr. Steven Barnes, my former attorney of Hickson, Kipnis and Barnes, are already on exhibit in this case and can serve as reference.

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1 1. Page 1 Starting Line 8 Paragraph 1 and Page 2 up to Statement of
2 Facts. Jennifer objects to all the prayers of this petition as stated
3 for reasons explained infra.

4 2. Page 2 Statement of Facts Line 16. In this paragraph, Bradd
5 incorrectly conveys the facts. Norman and Mary's assets were to be
6 divided equally only in ABSENCE of APPOINTMENT, not as Bradd alleges.

7 A full discussion of the Trust and its Amendments are contained in the
8 Petitions already before the court. What is pertinent here is that the
9 surviving trustor also was to have a testamentary general power of
10 appointment over the assets remaining in Trust A until her death. Upon the
11 death of the surviving trustor, both Trust A and Trust B were to terminate
12 and their combined remaining assets were to be distributed to and among any
13 of the trustors' issue or charity in such proportion as the surviving trustor
14 may appoint by written instrument delivered to the Trustee or by Will or
15 Codicil. *If* the surviving trustor failed to effectively exercise such power
16 of appointment, the assets of Trust A and Trust B remaining at her death were
17 to be distributed in equal shares to the trustors' children. Therefore the
18 assets of the trust were only equally distributable if appointed as such by
19 the trustors or became residue due to a trustor FAILING TO EXERCISE THEIR
20 GENERAL POWER OF APPOINTMENT. Objector alleges that Bradd, though very
21 intelligent and savvy in business, continually attempts to mislead the court
22 concerning this power of appointment in an attempt to void the gifts made in
23 the 8th amendment. He ignores the fact that if Mary had not had a general
24 power of appointment she could not designate his trust share, should he be
25 predeceased, to be put in the Schwichtenberg Grandchildren's Trust that she
26 funded for his children, after Norman's death. Therefore, Bradd obviously had

1 knowledge of Mary's right to exercise this general power of appointment.
2 Another example is in his characterization of the Second Amendment, Third
3 Amendment and 4th Amendment, descriptions of real property previously bought
4 for Melody and Paul. If the trustors did not have the right to exercise
5 their powers of appointment, these gifts would not have been possible and
6 references to them would not have appeared in the mentioned amendments.

7 3. Bottom of Page 3 Starting line 27 and Top of Page 4 Lines 1 - 4 having
8 to do with description of 1st Amendments Provisions for Trust C. Bradd
9 leaves out that the surviving Trustor had the power to receive income
10 and interest from Trust C before A and B were exhausted. Jennifer
11 alleges that Bradd's motivation is to mislead the court in an attempt
12 to strengthen his argument that Trust C was "misspent" by Mary,

13 4. Page 5, Paragraph starting at line 14. The description and the funding
14 of the trusts are inaccurately described. Bradd had very little, if
15 any, knowledge of Norman and Mary's finances beyond the separate trusts
16 the trustors funded for Melody's children and those Mary funded after
17 Norm's death for Bradd's. His information comes from a chart which was
18 made by a broker at AG Edwards (currently defunct) as a proposal for
19 how Mary might divide her brokerage assets. Nothing was finalized on
20 the allocations until some months later. The true and correct chart
21 showing the subtrust ABC distributions is attached as Exhibit B.

22 5. Page 5 starting at Line 22 Description of the 6th Amendment. Bradd
23 mischaracterizes the provisions of this amendment by failing to state
24 that they are regarding residue ONLY and pertain IN THE ABSENCE OF
25 APPOINTMENT (see 6th amendment pg 1, a true and correct copy submitted
26 to the court by Mr. Barnes who works for the same firm of the lawyer,

1 David Hickson, who drafted this amendment—an important fact should a
2 different version have been submitted to the court by either Bradd or
3 Rusty). He also mischaracterizes the equality provisions of the
4 residue in stating that “any loans were to be included in that child's
5 share of the trust”. He has eliminated the rest of the sentence which
6 goes on to read “at the amount of principle balance then remaining,
7 thereupon any interest remaining being disregarded for purposes of
8 allocation”. Nowhere in the amendment does it say that any previous
9 distributions are to be included in the child's share of B and C. Even
10 if it did, given that B and C were then irrevocable, it would not have
11 been legal for Mary to have written that. What the 6th amendment DOES
12 say is that in determining equality of distributions from the RESIDUE
13 that the trustee take into CONSIDERTION distributions previously made
14 from B and C to each child. The words “take into consideration” were
15 to allow for individual circumstances and were therefore not mandatory.

16 6. Page 6 – Line 24 and 25. In an obvious attempt to get Minda's gift
17 left her in the 8th amendment overturned, Bradd gives a limited and
18 thus deceptive description of Minda and Mary's relationship. While
19 Minda was a paid caregiver the last year of Mary's life, Bradd is only
20 presenting 1/17 of the truth because, as described more infra, Minda
21 enjoyed a true friendship with Mary with no caregiving involved for a
22 significant number of years. .

23 7. Page 7 beginning at line 20. Bradd presents a somewhat deceptive
24 picture to the court. In 1984, Norman suffered a severe cerebral
25 hemorrhage that left him tripelagic for the remainder of his life.
26 Throughout the next thirteen years, Mary tried to help him live a

1 quality life with dignity. She took Norman around the world and
2 included him on everything, including participating in such things as
3 the signing of trust amendments. However, the truth is that he was so
4 brain damaged that, should she have chosen, she could have declared him
5 incompetent and, should it still be possible to obtain psychiatric and
6 medical records from Encinitas Scripps Hospital, one would find
7 professional medical verification of this. Therefore, Mary was the one
8 who made the final legal decisions and is only the original trust
9 document that truly reflects Norman's wishes. Therefore, beginning with
10 the First Amendment, any statement of intent with regard to Norman is
11 inappropriate. Norman's "intent" only made it into legal documents if
12 it coincided with Mary's.

13 8. Page 8 beginning with line 1. In a "safe" attempt, meant to avoid the
14 risk of incurring the penalty in the no contest clause and accomplish
15 his goal of getting Mary's residence sold, Bradd has attacked his own
16 mother and accused her of "misspending" Trust B and C. Jennifer was
17 Mary's confident, particularly after Norman died and had extensive
18 knowledge of Mary's finances. Based on her own personal knowledge,
19 information and belief Jennifer made efforts to explain why B and C
20 appear to be "misspent", but aren't, to Bradd, Rusty, and Mr. McGurn
21 though each refused her attempts (Mr McGurn apparently refused at
22 Bradd's instruction).

23 As one can see from Exhibit C, there was both an annuity and a note
24 pertaining to a trust deed to a house bought for Paul which comprised Trust
25 C. Mary was allowed to take income and interest from this annuity which was
26 already in payout at the time of Norman's death. She also used close to

1 \$100k of principal to fund a Life Insurance Policy that paid out to each
2 child in equal shares much more than the premiums put into it. In addition,
3 Bradd had to know about this because each year that the annuity paid out (it
4 was set up to pay annually), he had to sign a document waiving his share of
5 the amount put into the policy which would benefit him later on. The final
6 reason Trust C is depleted is that Paul was unable to make payments on the
7 note securing his loan and the interest accrued at such a rate that the note
8 was worth almost as much as C had been at Norman's death by the time of
9 Mary's death. Therefore, C maintained its value until the moment of Mary's
10 death when that note became forgiven and cancelled with interest forgiven and
11 principal to be deducted from his share as per the trust documents. This
12 power of appointment was made by both trustors while Norman was alive and
13 overrides the equal share residue provisions of C.

14 In regards to Trust B, it must be remembered that there were 13 years
15 between Norman and Mary's death. The First Amendment (page 27, paragraph 2)
16 gave her the right to spend B's principle on all costs associated with her
17 residence and gifts to her children. The economy took some hard hits and
18 some investment values decreased, which Mary certainly can't be blamed for.
19 Additionally, if one looks at Exhibit B they will see that the 2014 treasury
20 bonds were in B, not A as Bradd's chart erroneously shows. The principal of
21 those bonds was \$216k which can be determined if one looks at the chart and
22 does the math concerning the number of shares purchased and their price. The
23 balance showing is the interest which is built into the bond and therefore it
24 was legal for Mary to take this interest before exhausting A which explains
25 \$123k of the "misspent money." If one were to look at a statement from
26 September 2010, and according to Rusty's November 2010 accounting, they would

1 see that at the time of Mary's death, the number of shares of Franklin and
2 the high yield bonds were the exact same number of shares as shows on the
3 exhibit B chart. All that is missing is the treasuries which included at 13 ½
4 percent annual interest projection value for the life of the bond (why the
5 figure given the bonds in the chart is so high). Wishing to save money, the
6 government recalled those bonds in 2009 (evidence of this can easily be found
7 on the internet). Mary did take some of the principal of the bond money for
8 her use. However, considering the principle of those treasuries was \$137k at
9 that point and Mary died with less than \$100k in A, not counting her
10 residence, it is easy to see that she would have been into B at the time of
11 her death if she had spent A first. Therefore this "reverse spending" is no
12 harm. In regards to the residence, both Jennifer and David Hickson, the
13 attorney who drafted the initial trust document and the first amendment, have
14 made a good faith attempt, but not been able to find any case law that
15 supports the reasoning that a trustors primary residence would need to be
16 sold in order for A to be "exhausted". Applying the reasonable man standard,
17 43 SW 508, 509, no prudent trust attorney or other professional, especially a
18 financial expert, would jeopardize their client by suggesting that their
19 house go into trust A given the terms of the trust. One has to question
20 Bradd's motive in contending that his terminally ill mother should have sold
21 her home rather than spend trust B money.

22 9. Page 9 Section Regarding Charging Children's Gifts against their
23 Inheritance starting line 14. Bradd mischaracterizes the trust and its
24 amendments. The original trust document and all of its amendments do
25 not contain any provisions for repayment of gifts out of A or C, only
26 out of B as found in the 1st amendment. The trustors, either together

1 or separately, did ask for specific amounts deducted from Melody and
2 Paul's share at the principal amount (all interest was to be forgiven)
3 that they had paid for in-vivo homes for Paul and Melody. Up until
4 2003, Jennifer's note was also to be deducted but became "considered
5 REPAID" since she had both paid the interest in entirety and she chose
6 to have the tax deductions she could have received from the loss on her
7 business to be given to her mother instead (Mary had loaned her the
8 money which funded the business so the loss write-off could be taken by
9 either). On information and belief, Mary had received the equivalent
10 by 2003 and chose to forgive the loan and consider it REPAID as stated
11 in the 7th amendment.

12 The 6th amendment does ask the trustee to CONSIDER the gifts and loans made
13 to each child in equalizing distributions from Trust A residue. Based on
14 personal knowledge, information and belief, Mary's intent here was that each
15 child's circumstances should be considered and that this was not a mandatory
16 provision, but an equitable one based on factors that included more than just
17 money when looking at the full family picture and considering the
18 circumstances of each child, including Bradd and the fact he is still raising
19 children.

20 Regardless, Rusty is not qualified to do a forensic accounting. She
21 has proved to have no personal knowledge of the trust and its assets by
22 supporting Bradd's use of an incorrect chart. Rusty has also shown prejudice
23 to Jennifer by refusing to entertain Jennifer's explanation of the correct
24 division of assets and how they were spent. Furthermore, Rusty has done no
25 investigation on her own utilizing the resources Jennifer gave her which
26 included numerous years of tax returns and five years of investment

1 statements contained in boxes that Mary asked Jennifer to give Rusty just
2 prior to her death. If Rusty had looked she would have seen the treasuries
3 were in B and thus the inaccuracy of Bradd's chart. Her failure to do this
4 has wasted everyone, including the court's, time and money on petitions such
5 as this one. Rusty is not an accountant and holds no personal qualifications
6 for doing a forensic accounting.

7 In theory, Jennifer has no problem with an accounting done by an
8 UNBIASED and QUALIFIED accounting professional, who will not attempt to
9 invade the privacy of her personal information, once the petitions are
10 settled and a accurate picture of how much, and in what subtrust, is
11 currently available for division other than the expense it will cause an
12 already severely depleted trust. A forensic accounting to determine gifts may
13 not be necessary once the allegations of Mary's "misspending" are resolved
14 and trust terms for Melody and Paul's deductions are applied. Thus, an
15 accounting should only be ordered if it looks like it would be truly needed
16 to make distributions in conformity with the terms of the trust documents in
17 order to preserve what money is left for distribution. The natural person to
18 do such an accounting would be Don Mess as he is the person best acquainted
19 with the trust assets as he was the trustors accountant for over 20 years
20 and is knowledgeable of all the financial factors within the family.

21 10. Page 10 starting with line 1 section regarding gift to caretaker.

22 Minda McConnell, a licensed practical nurse, met Mary in 1994 when Mary
23 hired her to both provide nursing and caregiving for Norman who was
24 severely brain injured and tripelagic from a cerebral hemorrhage
25 suffered in 1984. Over the 3 years, from 1994-97, that Minda worked
26 for the trustors, she and Mary developed a close bond. After Norman

1 died, that bond continued solely as a friendship from 1997-2009. In
2 1999 Minda took a trip to Egypt with Mary (exhibit C) and several other
3 family members. As one can see from the pictures, Mary appears in good
4 health and engaging in activities too strenuous to need a caregiver.
5 Minda was a regular guest at Mary's home. She exchanged gifts with
6 Mary on birthdays, Christmas, and other occasions. (Exhibit D). When
7 Mary's cancer came back in stage 4 in her hip so that she was no longer
8 able to drive, Minda came to help Jennifer care for her at a wage well
9 below what she can earn with her other patients (Jennifer cannot drive
10 and thus she and Mary needed help getting to places as well as Mary
11 needing help with hygiene tasks as her movement, but not her mental
12 functions, were compromised by the cancer). It is highly unlikely
13 that Mary even mentioned that Minda was working for her to her attorney
14 at the time the 8th amendment was drafted. Minda was a true friend to
15 Mary AND the family.

16 Furthermore, Minda uses part of her wages to support elderly relatives
17 and put younger ones through college who live in the Philippines, her native
18 country. To deny Minda the inheritance left her by Mary would not only hurt
19 her but also would affect those she helps and thwart part of Mary's intent in
20 leaving her money in the 8th amendment.

21 The intent of a Certificate of Independent Review is to prevent
22 caregivers, who have no other relationship with a client, from taking
23 financial advantage of them. When the full scope of Minda and Mary's
24 relationship is examined, it is clear that intent does not pertain to their
25 situation. Therefore, there is no need for a Certificate of Independent
26 Review to exist in order for Minda to qualify for the gift Mary left her in

1 the 8th amendment. She truly was Mary's friend as the 8th amendment
2 characterizes her.

3 **Prayers for Relief**

4 1. That Minda be granted her gift in accordance with the 8th amendment and
5 that Bradd's allegations of need for a Certificate of Independent
6 Review be denied in the interest of equitable justice.

7 2. That Bradd's Petition for Internal Affairs of the Trust be denied in
8 its entirety

9 3. That following a decision on the Remove Trustee Petition, should the
10 court determine that this petition still needs to go forward to
11 determine if Mary may have "misspent her money", that the court ask Mr
12 McGurn and Jennifer to work together in obtaining a honest, unbiased
13 and accurate accounting that will resolve any allegations of "
14 misspending of trust assets" of the B and C trusts by Mary. That the
15 scope be limited to only that which is necessary. That Jennifer is
16 given a chance to redact any personal ID information before documents
17 are seen by any other party or professional (Mr McGurn is invited to be
18 present while she does this). That the accounting be done by Mary's
19 accountant Mr. Mess who knows her financial history and family
20 circumstances with Mr McGurn and Jennifer meeting with him or having
21 prior inspection of the documents he will be using so that Mr. McGurn
22 will be satisfied that the accounting is honest and unbiased with a
23 provision that Mr. McGurn may also take the same documents and have a
24 "second opinion" accounting done if he is not satisfied with Mr Mess'
25 result..
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1 4. That once court proceedings have ended and any issues regarding
2 "mispending" assets resolved that Mr. McGurn and Jennifer work
3 together to determine if any more accounting is needed in order to
4 distribute the trust according to the trust documents.

5 5. If such an accounting is needed that it be done in a way which protects
6 Jennifer's personal information, is limited in scope to obtaining only
7 the information needed and conducted on the same terms as described in
8 prayer #3.

9 6. That should Rusty still be trustee of any portion of this trust at the
10 time that she be precluded from participating due her bias towards
11 Jennifer in violation of Probate Code 16003, and her failure to act in
12 a prudent manner as trustee, thereby severely depleting the trust
13 assets caused by litigation and the allegations against Mary. However,
14 findings may be reported to her as appropriate.

15 7. For a portion of the attorney fees Jennifer paid Hickson, Kipnis and
16 Barnes law firm during the time she was their client *to be deducted*
17 *from his share of the trust only (there is no wish to go beyond that),*
18 the amount to be determined by the court, for bringing a frivolous and
19 misleading petition before them and joining with Rusty who has acted in
20 disinterest of the trust and bias against Jennifer in Jennifer's
21 beneficiary capacity, as described in the Remove Trustee Petition.

22 8. For other relief as the court deems just and proper

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1 Dated this 5th day of January, 2012
(court copy signed)

2 _____
Jennifer Grant
3 840 Haverford Avenue, #2
Pacific Palisades, CA 90282
4 sjennig@yahoo.com
(310) 454-0899
5 Pro Per

6 Original file this _____ day of January,
7 2012, with:

8 Clerk of Court

9 And copy mailed the _____ day of January, 2012

<u>NAME/ADDRESS</u>	<u>RELATIONSHIP TO TRUSTOR</u>
10 Betty M. Huffman 11 1625 La Verde Lake San Marcos, CA 92078 12 Carlsbad, CA 92008	Sister and Beneficiary
13 Minda McConnell 624 Parker Street 14 Oceanside, CA 92057	Friend and Beneficiary
15 Irma Arroyo 1755 Boyle Place 16 Escondido, CA 92025	Friend and Beneficiary
17 Melody Underwood P.O. Box 2611 18 Crestline, CA 92335	Daughter and Beneficiary
19 Paul N. Schwichtenberg 4193 McConnell Avenue 20 Los Angeles, CA 90066	Son and Beneficiary
21 Bradd Schwichtenberg 5702 Maiden Lane 22 Bethesda, MD 20817	Son and Beneficiary Unsure/possible pro per
23 Rusty Grant 345 West 9 th Avenue Suite #102 24 Escondido, CA 92025	Successor Trustee of A Illegally acting Trustee of B and C
25 26 Constance Larsen	Attorney for Rusty Grant

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Acting Attorney/
status unknown for
Bradd Schwichtenberg

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