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May 5, 2022

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Re: Estate of Kenneth Blaisdell

Dear Barney:

Welcome to the case. John Durkee, the Special Administrator, has now completed his initial review of financial records for the period that Trini Brassard exercised control over Ken Blaisdell's property pursuant to his 2013 General Power of Attorney. Unfortunately, it appears that your client engaged in a complex and long-standing pattern of self-dealing, co-mingling of assets, and conflict of interest that exceeded her authority under the POA instrument and in many instances violated her fiduciary duties as an agent pursuant to 14 V.S.A. §3505.

14 V.S.A. §3505(a)(2) specifically proscribes acts of self-dealing by a POA agent, which it defines as "any transaction, including transfer of property of a principal to an agent, that directly or indirectly benefits the agent of the immediate family of the agent, regardless of whether the agent has provided consideration for the transaction." 14 V.S.A. §3501(11). An agent must also "avoid conflicts of interest which would impair the ability of the agent to act in the interest of the principal." 14 V.S.A. §3501(3). We've now identified many acts of improper self-dealing, co-mingling, and conflicts of interest by Ms. Brassard, the most egregious being:

1. In 2020 Ms. Brassard executed and recorded an enhanced life estate deed conveying 101.7 acres of Ken's land to her daughter, Courtney Brassard, including active hayfields and a valuable gravel pit. Also, in 2014 Ms. Brassard used Ken's money to purchase a 2013 Commodore mobile home that she placed into joint ownership with Courtney. Upon Ken's death, Courtney became the sole owner of the land, hayfields, gravel pit, and mobile home, all conveyed to her without any consideration. For legal purposes these transfers will be treated as voidable unauthorized gifts.

2. For many years Ms. Brassard has allowed Brassard family members to use, maintain and fuel Ken's farm equipment for Brassard family business that did not benefit Ken. We also suspect that Ken's funds were used to fuel and maintain Brassard vehicles and equipment, as the amounts spent seem far beyond Ken's needs.

3. The haying operation routinely commingled hay bales, revenue and expenses for hay harvested from Blaisdell, Brassard and perhaps other properties. Given the discrepancies in the financial records, we suspect that much of Ken's crop was regularly converted by the Brassards for their personal use, sale, or barter. The Administrator still has no receipts, invoices or other documentation of hay sales from

Exhibit 2
Trini Brassard's Memo in Opposition to Motion to Compel

2013 to the date of his appointment and assumes that the current arrangement has been in place throughout the POA period. Any discrepancies resulting from a lack of supporting records will be charged to Ms. Brassard for failing her duty to "keep records of all transactions taken under the power of attorney" and to "provide accountings upon request of the principal." 14 V.S.A. §3505(a0(9-10). 1

4. Ms. Brassard paid large and clearly excessive amounts annually to herself, her husband, and her children for unsubstantiated personal services and labor.

5. Ms. Brassard allowed her son Daniel Brassard to enjoy rent-free use Ken's land for his mobile home and rent-free use of the sugar house and a separate sugarbush off Rt. 66. It also appears that Ken may have partly paid for the purchase of the mobile home that Daniel installed on Ken's property.

6. In 2021 Ms. Brassard directed a logging contractor to leave $8,400 worth of cordwood on the site for Daniel Brassard's use. Brassard then appears to have used Ken's wood processor, dump truck, fuel and repairs to finish, sell and deliver the wood for his own profit. The value of the cordwood reserved for Daniel was deducted from the stumpage check with no apparent consideration to Ken. The net stumpage of $36,759 was paid directly to Trini with no evidence that it was remitted to Ken's account. Likewise, in 2015 Trini retained $8,025 in log-length firewood from stumpage paid to Ken from Lincoln Agrisources, LLC, likely for the same improper purpose.

7. Ken's funds were used to purchase a skid steer in joint ownership with Trini and a bale wagon purchased in Daniel Brassard's name. Both pieces of equipment must be restored to the Estate. We still need to document all purchases and sales of equipment since 2013 to establish whether all items purchased with Ken's funds and maintained at his expense were properly titled to him and used solely for his benefit, and to establish whether proceeds from equipment sales were improperly retained by others.

All these transfers violated the general principal that a fiduciary must manage a principal's affairs with the same prudence with which the fiduciary would manage her own affairs, i.e., "to act in good faith and in the interest of the principal." 14 V.S.A. §3505(a)(1). More specifically, every time Trini transferred Ken's money or property to herself or her immediate family without arms-length consideration, and every use or exchange of Ken's property by others without compensation, violated the law that POA agents may not make gifts or loans of a principal's property to themselves or others "unless the terms of the power of attorney explicitly provide the authority to make gifts or loans." 14 V.S.A. §3504(d-f).

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1 We still don't fully understand the details of the haying operation. The Administrator believes that 1,248 total bales were produced in 2021 but can account for only 260 bales sold and 291 still in inventory, leaving 697 bales unaccounted for. Also, the amount of fuel consumed, and the cost of equipment maintenance charged to Ken, seems excessive for the Estate's needs and may prove to have primarily benefitted Daniel Brassard and perhaps others. Because we have no records of prior years' hay production and sales, we assume until proven otherwise that the current arrangement has been in place throughout the POA period.

Ken Blaisdell's 2013 POA gave Trini Brassard no such authority. Moreover, the Brassards' indiscriminate use of Ken's farm equipment (maintained and operated at his expense) for their personal use and their failure to segregate Ken's hay from their own or to otherwise account for all of Ken's hay, likewise violated an agent's duty to not "commingle the funds of the principal with his or her own funds or the funds of third parties." 14 V.S.A. §3505(a)(2).

To the extent that Ms. Brassard believed she was making testamentary "advancements" to herself and her children on Ken's behalf, the POA provided her with no such authority, nor will the common law treat these transfers as advancements absent clear proof that Ken intended them as such. See, 14 V.S.A. §3504(b)(2-4) and Simonds v. Simonds' Estate, 96 Vt. 110 (1922).

Finally, your client needs to understand that she will be liable for the Estate's attorneys fees should we need to litigate whether she exceeded her authority or otherwise violated her §3505 duties. 14 V.S.A. §3511. This could be a significant liability that may be avoided if she works with the Administrator to make restitution.

Ms. Brassard's fiduciary breaches have caused significant damage to Ken Blaisdell's Estate. When gravel receipts and non-farm income are excluded, the Administrator calculates that from 2013 to 2020 Ms. Brassard incurred $584,084 in farming expenses to generate total hay sales of only $196,620 and other farm income of $47,556, resulting in an average annual loss of $42,489 to sustain a business that provided no benefit to Ken Blaisdell while greatly benefitting the Brassard family. The entire arrangement was fraught with conflict of interest, self-dealing and comingling of assets.

We believe your client's fiduciary duty in this situation was to cease operating an unprofitable business, liquidate or lease out the machinery and equipment, and lease out the farmland for income. By choosing to continue a losing business, Ms. Brassard brazenly placed her personal and family's interests above Ken's interests while at the same time greatly depleting the value of her brother Thad's share of Ken's estate.

Per the enclosed Lease Agreement, the Administrator has now leased all of Ken's hayfields for the coming season to Sprague Ranch, LLC. All farming operations on Estate property have now ceased. The Administrator intends to liquidate the remaining hay inventory by arranging sales and deliveries directly with the buyers. Accordingly, ***Ms. Brassard and her entire family are hereby prohibited from using, for any purpose, all vehicles, machinery, equipment, hay, and other farming-related property belonging to the Estate of Kenneth Blaisdell.*** This includes the skid steer and hay wagon that were purchased with Ken's money but apparently placed in joint title with Trini Brassard. The Administrator will arrange to secure and collect all such property forthwith and will be requesting a license to sell from the Probate Court. Family members will be given priority to purchase estate items at fair value before public sale.

The Administrator must now put as much toothpaste back in the tube as possible, i.e., identify all improper transactions, reverse as many of them as possible, and otherwise make the Estate whole as if Ken's affairs had been properly administered from the beginning. This will require court intervention unless we receive your client's complete acquiescence and cooperation, beginning with reversing the unauthorized conveyance to Courtney. If Ms.

Brassard does not voluntarily make the Estate whole, we will ask the Court to impose a constructive trust over all improperly transferred assets. <u>In re: Mahoney's Estate</u>, 126 Vt. 31 (1966)(When property is acquired under circumstances where it would be inequitable to allow the legal title holder to retain the beneficial interest, a constructive trust should be imposed). Substantial monetary restitution will also be required from Daniel Brassard.

Because the haying scheme and other improper transactions appear to have continued after Ken Blaisdell's death, there may also be separate remedies including double damages under 14 V.S.A. §1551, *et seq.* "for recovery of property embezzled or fraudulently conveyed." Again, it will be incumbent upon your client to work with us to explain many of her actions if she wishes to avoid direct court scrutiny.

Under these circumstances we believe it is premature to adjudicate your client's claim for personal compensation. Many of the facts surrounding Ms. Brassard's management of Ken's money under the POA are equally relevant to her compensation claim and will be the subject of further investigation and discovery. Even if Ms. Brassard's compensation claim had merit, it now represents at most an offset to the Estate's claims against herself and her family. The Estate will therefore be making no distributions or reimbursements to the Brassard family pending further determination of damages and restitution due to the Estate. In the meantime, we propose a joint motion to the Court to continue the hearing on Ms. Brassard's claim pending discovery.

If judicial intervention is necessary, we are prepared to move forthwith in the Probate Division seeking orders for:

(a) a formal accounting to the Court for all POA activity (14 V.S.A. §3510(a)) and for all activity immediately following Ken Blaisdell's death (14 V.S.A. §1551-1552);
(b) deposition discovery as to fiduciary breaches, post-death intermeddling, and your client's claim for personal services compensation;
(c) a license to sell all vehicles, machinery and equipment;
(d) continuance of the May 27 hearing on your client's claim for personal compensation, possibly accompanied by a motion for summary judgment; and
(e) prejudgment attachment of Brassard family assets if necessary to secure recovery of a judgment should the claims against them exceed the value of their entitlement from the Estate.

Before taking these steps, John Durkee and I want to meet with you to understand your client's intentions going forward and to discuss how to proceed. ***If your client acknowledges the problem she has created and is completely cooperative and forthcoming, she may be able to avoid the expense and personal toll of litigation. If she wants to fight, please remind her that she will be liable for the Estate's attorneys fees in any litigation to recover improperly transferred assets.*** We need to decide how to proceed within the next few weeks, so please discuss this with your client and let me know when we can get together.

Very truly yours,

John C. Page

Cc: John Durkee, CPA