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Gerald M. Hing, Trustee

ENDORSED FILED
SAN MATEO COUNTY

SEP - 9 2004

Clerk of the Superior Court
By LINDA C. KINNEY
DEPUTY CLERK

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In re the Matter of the	Case No. 110658
OH THIAM HOCK/ HELEN HING OH SCHOLARSHIP TRUST FUND B,	PETITION FOR INSTRUCTIONS
______________________________/	[Prob. Code §§ 17200(6)]
	Date: OCT 14 2004 Time: 9:00 am Dept.: Probate

Petitioner, Gerald M. Hing, as Trustee of the Oh Thiam Hock/ Helen Hing Oh Scholarship Trust Fund B (hereinafter referred to as the "Trust") hereby alleges as follows:

BACKGROUND

1. Trust Creation and Initial Funding. The Trust was created under the Last Will and Testament of Helen Hing Oh. Helen Hing Oh was Singaporean resident at the date of her death. A true and correct copy of the Will is attached herewith as Exhibit 'A'. The Will provided for funding of the Trust in the "sum of Singapore Dollars One Million (S$1,000,000.00) free of duty."[1] Pursuant to the request of Singaporean counsel representing the executors and subsequent to the resignation of a nominated co-trustee, this Court confirmed Petitioner as the sole successor trustee on March 5, 2003. At all times since, Petitioner has acted and continues to act as the sole trustee of the Trust.

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[1]The trust is presently funded and as of August 31, 2004, the value of Trust assets was $532,536.58.

2. Trust Beneficiaries. The terms of the Trust create a dynasty trust benefitting multiple generations of descendants of Dr. Toy Wah Hing. The Trust terms provide for distribution in the "absolute discretion" of the trustee. Subparagraph (b) of Paragraph 5 of the Trust specifically states:

> to apply the income and capital of Trust Fund B for the benefit of any descendant (which expression shall mean a child, the child's child or children and their children to any degree) of Dr. Toy Wah Hing (deceased) who is living before and at the Perpetuity Date (hereinafter defined) and who has been admitted into a course at an institution of higher learning or other like institution whether in Singapore or elsewhere for the purposes of his or her education or training as the B Trustees shall in their absolute discretion think fit. For the avoidance of doubt, it is hereby declared that the B Trustees shall be entitled to make payments or loans to any person for his or her living expenses whilst undergoing such education or training.

3. Management of Trust Funds. The Trust terms provide for management and preservation of the Trust corpus as follows:

a) Subparagraph (a) of Paragraph 5 of the Trust charges the trustee "to invest Trust Fund as if they were beneficially entitled to it."

b) Subparagraph (c) of Paragraph 5 of the Trust instructs the trustee "to add any undistributed income to the capital of Trust Fund B."

c) Subparagraph (d) of Paragraph 5 of the Trust provides that the trustee:

> may exercise their discretionary powers when and how they think fit and shall not be under any obligation to make payments or loans to or for the benefit of any person who shall be a descendant of Dr. Toy Wah Hing (deceased) nor to ensure equality among those who are benefitted.

4. Successor Trustees. Subparagraph (g) of Paragraph 5 of the Trust provides in relevant part that the trustee "shall be entitled to appoint a professional person or trust corporation." In the event that Petitioner is unable or fails to serve, Petitioner desires to nominate a successor trustee to serve in his stead.

REQUEST FOR INSTRUCTION

5. Court Ratification of Investment Strategy and Website Development; Confirmation of Nomination of Successor Trustee. In light of (i) the dynastic nature of the trust and number of potential beneficiaries; and, (ii) Petitioner's discretionary powers regarding distribution, Petitioner seeks this Court's ratification of both Petitioner's proposed investment strategy, and Petitioner's proposed website by which trust information will be disseminated to and accessible by potential beneficiaries. Petitioner also seeks this Court's confirmation of his nomination of successor trustee to the Trust.

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INVESTMENT STRATEGY

6. Duty to Administer Trust According to Instrument Terms. Probate Code §16000 provides in relevant part that "the trustee has a duty to administer the trust according to the trust instrument." As discussed above in Paragraphs 2 and 3, the Trust terms provide Petitioner with direction to invest as if he were a Trust beneficiary and to add any undistributed income to principal and to exercise discretion in making distributions.

7. Statutory Standard of Care. The standard of care pursuant to the Uniform Prudent Investor Act and Probate Code §16047(a) requires that:

> a trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.
>
> [Probate Code §16047(a)]

Probate Code §16052(a) permits the delegation by a trustee of investment and management functions. Petitioner has not, nor does he plan to delegate management of the Trust. However, Petitioner has retained the firm of Emery and Howard and delegated investment responsibilities to them. Emery and Howard is a local company that has provided portfolio management services to residents of San Mateo County since 1969.

8. Proposed Investment Strategy (Conservative, Preserve Trust Corpus) . Attached herewith as Exhibit "B" is the proposed investment portfolio. Emery and Howard Portfolio Management allocated the Trust for conservative growth with investments in stocks, bonds, money market and REITs. Thirty-three and eight tenths percent (33.8%) of the Trust is invested in money market/short term fixed income investments. These investments are held as mutual funds and it is the composition of the funds themselves that provide the appearance of a high cash position. Thirty seven percent (37%) of the Trust is invested in bonds, while twenty three and four tenths percent (23.4%) is invested in common stocks, specifically mutual funds. The remaining five and nine-tenths percent (5.9%) is invested in "other". This classification is a product of the mutual fund, and this portion of the portfolio is more accurately characterized as being associated with the bond investments. The investment goal for the Trust is to provide for the preservation of capital while generating sufficient income to provide for administrative expenses of the Trust. Petitioner proposes that rather than invade capital to make distributions from the Trust to qualified beneficiaries, he

will make loans in no amount smaller than five hundred dollars ($500.00). Furthermore, Petitioner proposes to make loans to beneficiaries totaling five thousand dollars ($5,000.00) per year.

WEBSITE DEVELOPMENT

9. Previous Notice Given By Publication. Petitioner previously obtained an Ex Parte Order Altering Notice to Allow Notice by Publication in the interests of judicial expediency and economy as part of his Petition for Confirmation of Successor Trustee filed with this Court on January 14, 2003. This Court's order altering notice was necessary due to the complexity and cost of providing written notice to all persons entitled to it. The family tree of Dr. Toy Wah Hing spans five known generations and covers several countries including Malaysia, China and the United States. Dr. Hing had two (2) wives and sixteen (16) children. Dr. Hing's children had children of their own, and so on. There are 136 persons entitled to notice and of that total, 47 are descendants with unknown addresses. Petitioner alleged that to expend Trust resources to locate those 47 descendants who may reside outside the United States would incur unduly burdensome expense. As an alternative, Petitioner requested this Court's permission to provide notice by publication.

10. Cost of Giving Notice. In providing notice to all entitled persons, Petitioner expended the following sums:

a) Copying Costs to Reproduce the Petition for Confirmation of Successor Trustee and attachments: $518.95

b) Mailing Costs to Mail Notice of Hearing and copy of Petition: $292.90

Total Costs: $811.85

Petitioner alleges that to provide ongoing written notice as required by statute will deplete Trust assets. And as discussed above, Petitioner's primary goal for this dynastic trust is asset protection. Therefore, Petitioner proposes that he be permitted to set notice of Trust activities through a website developed specifically for the Trust.

11. Efficiency and Ease in Disseminating Information to Trust Beneficiaries through Website. Pursuant to the authority in Code of Civil Procedure §1010.6 *et seq.*, Petitioner seeks this Court's allowance of electronic service of documents through a website for those persons entitled to notice who agree in writing to receive notice electronically. Given the dynastic nature of the trust and

the possibility and likelihood of future generations, Petitioner proposes the use of a website as the most efficient and economical method to avail potential beneficiaries of pertinent information regarding the Trust. Similar to Code of Civil Procedure §1013(e) regarding service by facsimile, Petitioner proposes that persons entitled to notice would stipulate to receive notice and service via the website, rather than service by mail. A sample letter to beneficiaries regarding notice and service and the option to voluntarily select notice provided through the website is attached herewith as Exhibit "C". Those parties unwilling to stipulate to electronic notice and service would receive notice and service by mail as provided by statute.

Attached herewith as Exhibit "D" are samples of the proposed website. Petitioner proposes that the website will communicate information regarding the establishment and purpose of the Trust through a mission statement. The site will also contain details identifying qualified beneficiaries pursuant to the terms of the Trust as discussed in Paragraph 2, above. A family tree will also be displayed on the site. Instructions on the application process for qualified beneficiaries will be delineated.

SUCCESSOR TRUSTEE

12. Vacancy in the Office of Trustee. Probate Code §15643 provides that a vacancy in the office of trustee exists when a trustee resigns, is removed, dies, or when a conservator of the person or estate is appointed. Presently, Petitioner is capable and continues to serve as sole trustee of the Trust. However, in the event that Petitioner is unable or unwilling to serve, he desires to ensure that appropriate measures are taken and a successor is nominated to facilitate a smooth transition in the office of the trustee.

13. Filling a Vacancy in the Office of Trustee; Petitioner's Nominated Successor Trustee. Probate Code §15660(b) provides that:

> If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.
>
> [Probate Code §15660(b)]

Subparagraph (f) of Paragraph 5 of the Trust states that:

> the B Trustees shall be entitled to appoint a professional person or trust corporation at such renumeration and on such terms as shall be agreed between the B Trustees and the professional person or trust corporation to administer Trust Fund B. Provided always that the purpose and objects of the trust shall not in any manner be varied.

Petitioner desires to avoid any vacancy in the office of trustee. Toward that end and pursuant to the authority provided by the Trust in Subparagraph (f) of Paragraph 5, Petitioner nominates Jim M. Hing, CPA (hereinafter referred to as "Jim Hing") to serve as successor trustee of the Trust. Jim Hing possesses a bachelor's degree in accounting and a master's degree taxation. Jim Hing has been a practicing accountant for fifteen (15) years. He has previously served in a fiduciary capacity as trustee. In addition to Jim Hing's professional qualifications, he is also a descendant of Dr. T. Wah Hing. Petitioner alleges that based upon Jim Hing's qualifications, experience and family ties, Jim Hing is an appropriate candidate to be nominated as successor trustee.

NOTICE REQUIREMENTS

14. Special Notice. No one has filed a request for special notice in this matter.

15. Persons Entitled to Notice. The names, addressees and relationship of each person entitled to notice of the petition are attached herewith in Exhibit "E."

WHEREFORE, Petitioner prays for the following findings and orders:

1. Approval by this Court of Petitioner's proposed investment strategy for the Trust;

2. Approval by this Court of Petitioner's proposed website for the Trust and use of the website to provide statutory notice in lieu of written notice at the discretion of the beneficiary;

3. Confirmation of Petitioner's nomination of Jim Hing, as successor trustee of the Trust; and,

4. For such relief as to this court deems just and proper.

Dated: 9/02, 2004.

Gerald M. Hing, Petitioner

Barulich Law Group, Inc.

Dated: 8 September, 2004.

Paul J. Barulich, Esq.
Attorney for Petitioner

VERIFICATION

I declare that:

I am the Petitioner in the above entitled action; I have read the foregoing Petition for Instructions, and know the contents thereof; the same is true of my own knowledge, except as those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on September 01, 2004, at San Mateo, California.

Gerald M. Hing, Petitioner

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