

2011 WL 2604458 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.

In the matter of the Estate of G. James SEPPI, deceased.

No. 3189-MA.
June 29, 2011.

**Petitioner Henry Seppi's Opening Memorandum in Response
to the Issues Raised By this Court's November 10, 2010 Letter**

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INTRODUCTION

This is a Caveat to the admission to probate of a purported Last Will and Testament of G. James Seppi, dated March 2, 2006 and Complaint to Invalidate Transfers of Property, and Rescind Trust Agreement and Invalidate Transfers to Same brought by Henry J. Seppi ("Petitioner") against Bruno Seppi ("Respondent"). A trial was held in front of Master Ayvazian on four days -- February 2-4, 2009, and March 31, 2009. Henry filed his Post-Trial Opening Brief on May 28, 2009 (D.I. 52). Bruno filed his Post-Trial Opening Brief on June 17, 2009 (D.I. 54), and Henry filed his Post-Trial Reply brief on July 1, 2009 (D.I. 56).

Master Ayvazian issued her Final Report on March 30, 2010 in which she held that the 2006 Estate Documents, 2004 POA, and all transfers of Gino Seppi's ("Seppi" or "Mr. Seppi") property and beneficiary changes after December 15, 2004 were void because they were the products of undue influence. *See In re Seppi*, Del.Ch., C.A. No. 3189, Ayvazian, M. (Mar. 30, 2010) (Report). The Master also concluded that the 1983 Will should be admitted to probate and that Henry, as personal representative of his father's estate pursuant to the 1983 Will, should be entitled to an accounting from Bruno and to surcharge Bruno for any assets unrecoverable by the estate.

On April 6, 2010, Bruno filed his Notice of Exceptions (D.I. 66), and Filed his Opening Brief in Support of His Exceptions to the Master's Final Report ("Respondent's Opening Brief") on April 26, 2010 (D.I. 67). Henry filed his Answering Brief to Respondent's Exceptions to the Master's Final Report on May 17, 2010 (D.I. 68), and Bruno filed his Reply Brief in Support of His Exceptions to the Master's Final Report on June 1, 2010 (D.I. 69). Oral argument on Respondent's Exception was heard by this Court on August 18, 2010. On November 10, 2010, the Court issued a letter in which it concluded that there may be dispositive credibility issues relating to the testimony of Henry and Bruno, and requested further testimony relating to the following five topics:

- (1) Whether Henry wanted to, and to what extent he did, take care of Seppi after moving to Delaware in 2000;
- (2) Whether Seppi actually met with attorney Stephen Parsons to sign a Durable Power of Attorney in December, 2004;
- (3) Why, by the end of 2005, Henry had stopped calling and visiting his father and, in 2006, did not invite his father to his wedding;
- (4) Why Henry withdrew \$65,000 from the PNC accounts jointly titled in his and Seppi's name; and,
- (5) Why, after about December 2004, Bruno believed that Seppi wanted him to remove Henry's name from Seppi's joint accounts with Henry and execute new Estate Documents.

The Court conducted a three-day hearing to address the above-referenced issues on May 4-5, 2011, and June 16, 2011 (the "2011 Hearing"). This is Petitioner's Opening Memorandum in response to the issues raised by this Court's November 10, 2010 Letter. This Memorandum will focus primarily on the testimony presented at the 2011 Hearing as it relates to the five issues identified by the Court in its November Letter. As set forth above, the Petitioner has previously filed substantial briefs in this case, and the recitation of facts and law contained in those submissions, while incorporated herein, will not be repeated within this pleading. For additional background, facts, and arguments of law, the Court is respectfully directed to Petitioner's prior submissions identified above.

A. Whether Henry wanted to, and to what extent he did, take care of Seppi after moving to Delaware in 2000.¹

The Court requested further testimony regarding whether Henry wanted to, and to what extent he did, take care of his father after Henry moved to Delaware. In her report, the Master found that Henry and Kathy had specifically moved to Delaware in order to care for Mr. Seppi. The Master found:

The record shows that neither Henry nor Kathy had any ties to Delaware. They had no apparent reason for moving to Delaware other than the fact that Henry's father lived in Delaware. In light of the undisputed close and affectionate relationship between father and son, I am not persuaded that Henry would have ignored his **elderly** father and rebuffed his godmother's and uncle's requests to care for his father after Henry moved to Georgetown. As a result, I find Henry's testimony more credible than the testimony of Bruno, Martha, and Vernice regarding this issue.

In re: Seppi, Del. Ch., C.A. No. 3189, 8, Ayvazian, M. (March 30, 2010) REPORT. Both Henry and Kathy confirmed the Master's conclusions on this issue at the 2011 Hearing. Henry testified on this issue as follows:

Q. Now, you've touched on this a little bit, but prior to 2004, describe for the court your relationship with your father.

A. The relationship was excellent. We always discussed everything, from taxes to his finances, to my finances, to traveling arrangements, to hobbies. It was an excellent relationship. He was a very independent man.

Q. Now, eventually you moved to Delaware, is that correct?

A. Correct.

Q. Tell me the progression of where you lived and how that came to be that you lived in Delaware or moved to Delaware.

A. In 2001, my wife and I noticed that my father was starting to decline, so we discussed retiring early and moving to Delaware to take care of him. We decided to do that. I talked to my father about that, and he was very excited about it. He said if my finances were in order, and I could afford to do that, he would appreciate my help in moving close to him, and he would appreciate helping me find a property and watching the house being built.

Q. Did that, in fact, happen?

A. Yes, it did....

Q. Now, do you have any other ties to Delaware? Do you work here, any other family members, things like that?

A. Nothing at all. Except for my father, and I could have retired anywhere in the world.

2011 Hearing Transcript, pp. 9-12. Kathy Seppi testified similarly at the 2011 Hearing:

Q. Why did you move to Delaware?

A. We were both retired. Henry had bought the property... Well, Henry and dad found the property and bought it, and we were starting to see the little decline in dad and with his physical and mental abilities and things, and we were concerned so we knew we wanted to move out of Maryland, so we came up here and started to look around...

Q. Did you consider any other places to retire, any other geographic locations to acquire?

A. When we first thought about retiring, we had thought of a couple of other places, but after seeing how things were going with dad, we thought- I'd lived here before. Henry was familiar with the area, and just over all it was a good move for us and to be able to help dad at the same.

Id. at pp. 166-167. In short, the evidence overwhelmingly supports the Master's finding that Henry's sole purpose in moving to Delaware was to care for his ailing father. More importantly, the Master specifically found that, after Henry and Kathy moved to Delaware, Henry *wanted* to care for his father.

A significant factual issue underlying the dispute between the parties is whether Henry wanted to take care of his **elderly** father or whether Henry **neglected** Seppi after moving to Delaware. Henry testified that soon after he moved permanently to

Georgetown, he realized his father needed 24-hour care, and he told Vernice he would like to be fully responsible for his father's needs. According to Henry, he requested Vernice's help in easing Seppi's transition from relative independence to being assisted by his son, but she refused to let him take more responsibility for his father's affairs. Vernice refused to relinquish control over his father's checkbook, bank statements, or medications, and she took Seppi's mail before Henry could see it...

During 2004 and 2005, Henry tried to take care of his father. Henry invited his father to stay overnight with him in Georgetown for several days each month, and arranged a downstairs room with a futon, dresser and lamp as a bedroom for his father so Seppi would not have to climb stairs to a second-floor bedroom. Seppi usually preferred to sleep on Henry and Kathy's couch near their first-floor master bedroom. Seppi enjoyed Kathy's cooking, and Henry frequently visited his father in Dagsboro, and helped with anything that needed to be done around his father's house. Henry asked Vernice for a list of Seppi's medications; instead, she gave Henry a small pill box containing a day's worth of unidentified pills. Only after repeated requests did Vernice eventually provide Henry with a list of medications and information about their use. Henry also accompanied Vernice and Seppi to doctor's appointments. Henry was surprised when Vernice decided to transfer Seppi's medical care to her own physician, Dr. Kevin Wallace, without first informing him. However, Henry did not oppose the transfer, and he accompanied Vernice and his father to Seppi's first appointment with Dr. Wallace on September 28, 2004. Eventually, Vernice gave Seppi's checkbook and mail to Henry so he could pay his father's bills, but after a month she took the checkbook back into her control. Another time, Vernice accused Henry of breaking into her house and stealing the checkbook. She threatened to call the police, and Seppi became very upset. Whenever Seppi stayed overnight at Henry's house, Vernice spoke with Seppi by telephone, and told him that he should be home in his own bed. Seppi became so upset by these calls that Henry and Kathy had to calm him down.

In re Seppi at 7-9. The Court's factual finding on this issue was again confirmed by the testimony of both Henry and Kathy Seppi at the 2011 Hearing. Henry testified as follows:

Q. Now, would your father ever stay at your house once it was built and once you came to Delaware?

A. Yes, he would.

Q. How often?

A. On a regular basis, he would come out and hunt or visit, walk the property, watch the house being built, and after the house was built, he would come out just for a visit.

Q. Did you ever have any kind of set up for your father at your house?

A. I have several bedrooms in my house, and my father was allowed to use any bedroom that he wanted to stay at, but most of the time he was comfortable sleeping on the couch. He did that in his own house, and he did that at Vernice's house. Finally, in the end of 2005, I made arrangements for a bedroom to be put in, changed in my house, so that my father could use it if he wanted to, or move in if he ever wanted to.

Q. Tell the court about that, what you did there.

A. Basically, I realized that my father was going to need 24-hour care, so I converted my downstairs into a bedroom, and it was very comfortable. He enjoyed it, but he did not understand why it was needed because he felt that he could completely take care of himself with no assistance. This was a problem of the disease, is what I realized after talking to his doctors. He had **dementia** and Alzheimer's, and from what I was told and what I read, you need a **transition** time which was very important between the disease and getting the person help and basically taking over his everyday needs. And it's hard to convince somebody of that that has this disease because they don't see it. So I was in that transition period.

2011 Hearing Transcript, pp. 23-25.

Q. Now, were there concerns, was there ever a time when you had concerns regarding the care Vernice was providing to your father?

A. Yes. My main concern was that she was also **elderly** and having trouble, and I was already there and moved to Delaware to take over my father's documents and everyday needs. At that time period, Vernice would not allow it at all. She said that she was going to handle it, there was no need for me to do it, and it would never happen as long as she was alive

Q. Did she offer you resistance in your attempts to care for your father?

A. Yes.

Q. How so?

A. Several times I would ask for the checkbook, she would say, "No, I'm not giving you the checkbook," even though this was a joint checkbook with my name on it and my father's name on it. It was a joint account. She accused me at one time of breaking into her house and stealing my checkbook. I said, "No, I didn't do that." She said that she would take me to court. I said, "Well, you do what you have to do. I have approximately 15 to 20 working and retired police officers that can say where I was on that date." And she didn't do anything about it.

Q. What other resistance, if any, did she provide in you attempting to provide care for your father. She would also remove the mail from the mailbox before I would get a chance to go over it so that I couldn't see his documents. She would also tell him that there is nothing wrong with his driving ability. I am just trying to interfere with his life. She would also tell him that there is no reason for him to move into my house, so don't do it.

Id. at pp. 28-29.

Q. Now, in 2004, were you trying to work with Vernice Lee at all in arranging for your father's care?

A. Very much so. I came up with an arrangement that my father could live in his house and I would stay with him, he would have 24 hour care, that he could live at Vernice's house as long as she would be there and have 24 hour care and then he could live at my house and have 24 hour care. I thought this was very good transition until we figured out a more permanent arrangement. That never materialized. She said there's no way, she's not going to let that happen, and the arrangement she has living with him at his house part time and him living at her house part time is fine with her, and that's all there is to it.

Q. Now, you testified earlier that, prior to 2004, you had an excellent relationship with Vernice Lee?

A. Yes.

Q. Did that change?

A. Yes. It changed when I moved there and I realized how bad my father was and that I needed to take responsibility for him because she was not caring for him adequately. She wasn't giving him 24 hour care. She was handling medications in a wrong way. That was a major battle. She would give me the medications, but in a pill box. I had no idea what they were. She would keep the medication prescriptions and all that. It was just very confusing to me.

Id. at pp. 29-30.

Q. Now, for a period of time, it was now you, Vernice and Bruno trying to care for your father. Is that a fair statement? How did that work, if at all?

A. First it was only me trying to take care of my father. When I realized I had to come back Vernice and Bruno- I tried to come up with an arrangement that would be healthier for my father even though I didn't agree with it.

Id. at p. 34.

Q. Now you talked about some difficult decisions you had to make regarding removing the keys...

A. I had to take my father's car keys away from him in order to stop him from driving. At every turn, anything positive I tried to do to protect my father, Bruno would turn it around. He said, "Well, why is your son taking your keys?" Or my father would tell me, you know, "They don't see why I can't drive. I'm not doing that much driving," and I would try to say it's just what I think is best.

Id. at pp. 34-35.

Q. Did you discuss your father's care with Dr. Sharman when you moved to Delaware?

A. Yes, I did, and I had several other doctors after that that I talked with and they all said the same thing; that, yes, this is a very threatening disease mentally and it can affect you physically, also, and you have to handle it very delicately or it can snowball out of control.

Id. at p. 25.

Q. Now, did your father change physicians at some point in time?

A. I believe he did not change physicians. I believe Vernice Lee changed his physician.

Q. How did you respond to that change?

A. I did not like it, but my father was very unstable at that point, so I had to go with it because he said this is his new doctor according to Vernice, "and she says I have to go there, so that's where I went." I talked to Dr. Wallace as his new doctor.

Q. Now, at this point in time in 2005, was it working, the three of you working together and caring for your father or was it not working?

A. It was not working at all.

Id. at p. 36.

Likewise, Kathy Seppi's testimony on this issue at the 2011 Hearing confirmed the Master's conclusions. Kathy corroborated Henry's testimony that they both loved Mr. Seppi, and did all that they could to take care of him after they moved to Delaware, but were prevented from doing so by Vernice and Bruno. She testified, in relevant part:

Q. Now, after you moved to Delaware in 2004, did you and/or Henry provide assistance to Mr. Seppi?

A. We tried to. We would go over to his house and visit, and Henry would help with him cleaning things up. He would come over to our house and stay for a couple of days.

Q. Now, would he ever stay over at your house?

A. Yes.

Q. I am talking, just to be clear, post-May 2004, 2005 how often would he stay at your house?...

A. He'd come over maybe once a month or something and spend the night or a couple of nights. But we saw him a lot other than that. He liked my cooking. He'd come over to have dinner and then spend the night.

Q. Did you have any set up or arrangements at your house for when Mr. Seppi would stay there?

A. Yes. Henry and I had talked about it. We had planned to redo the dining room into a complete bedroom for dad. We ended up putting a futon in there for him, and he had a dresser and lamp and table and everything and a bathroom right outside. So we made that available to him. He could use it whenever he wanted. But he seemed to always want to sleep on the couch, which was right outside of our bedroom door. But as things got worse with his health, he'd wake up crying and yelling and having nightmares, and I would get up because it would scare me. It was like a mother with a child, the crying that he was doing. I had to go in there and sit on the couch with him and hold him and talk to him and calm him down, and then he would go back to sleep. But I think he liked being there because he knew someone was there if he woke up like that.

Id. at pp. 171-173.

Q. All of those things that you talked about that you were doing for Mr. Seppi, the visits, the cakes, the errands, things like that, did that decline over time?

A. For me doing it for him?

Q. Yes.

A. Not until we got up into 2005 and 2006.

Q. What happened?

A. That was when everything kind of just stopped. We had contact with dad in 2005, and we'd still have him over at the house and we were still feeding him. The end of 2004, I'm still not sure what exactly happened, but for some reason, Vernice got Bruno to come up and help take care of dad. Now, we'd been up there three years at that time, and we lived in Bowie 10 minutes from Bruno's house and at that time I had met him four or five times maybe. He was never around. He didn't help take care of dad up to that point. But I still took food over to him. We still helped him with some of his housework. But Vernice was always there, and whatever had transpired had made it very, very uncomfortable for all of us, especially dad.

Id. at pp. 174-175.

Q. How would Vernice Lee or Bruno Seppi respond to any efforts you or Henry would put into place for the safety of Mr. Seppi?

A. "He doesn't need that, he doesn't need that to happen to him, and he doesn't need anybody there watching him 24/7." He was supposedly sleeping down at Vernice's house at night but she was bringing him back home, and he was spending the whole day down there, and meals down there but he was coming back home. So nobody was taking care of him 24/7. His house -- he let his house completely go. It was filthy when we finally got over there after the guardianship, and when Henry -- the first month that Henry had to take care of him, I spent the first week scrubbing. Dad would have never let his house get in that condition. He was wearing dirty clothes. He was wearing the same clothes days in a row. Even when Henry got there, Henry had a lot of problems getting him to get in the shower every day and put clean clothes on. His hygiene habits just hadn't been kept up.

THE COURT: Now to you did it seem like that was partly because he just couldn't do it?

THE WITNESS: Yeah, he couldn't do it by himself, no. Henry, every day when he was staying there, would make him do it. His ears were bad, his teeth were bad.

Id. at pp. 183-185

Countless other witnesses testified as to Henry's relationship with his father after his move to Delaware. Perhaps the most convincing evidence on this issue came from the testimony of Shannon Carmean. Ms. Carmean was the attorney *ad litem* for Mr. Seppi in a prior guardianship matter regarding Henry's father. *See* Deposition of Shannon Carmean, Esq., January 23, 2008, p.7.² As attorney *ad litem*, Ms. Carmean's duty was to protect the interests of Mr. Seppi; she did not staunchly advocate for either Bruno's or Henry's position during these proceedings. *Id.* at p. 12. At her deposition, Ms. Carmean testified with respect to this issue as follows:

Q. How did you view Henry Seppi's relationship with his father?

A....Henry adored his father. Wanted to take care of his father. As a son, believed it was his responsibility to take care of his father. I think he moved there to do so. I think I mentioned that in my report. I'm not positive. But I sensed genuine concern and care for his father.

Id. at p. 28. Thus, the record clearly establishes that Henry's sole purpose in moving to Delaware was to care for his father, that he attempted to take care of his father, but was prevented from doing so by Vernice and Bruno's actions.

B. Whether Seppi actually met with attorney Stephen Parsons to sign a Durable Power of Attorney in December, 2004.

The second issue for which this Court sought testimony is whether Mr. Seppi actually met with attorney Stephen Parsons to sign a Durable Power of Attorney in December, 2004. The Master had concluded that, in fact, Mr. Seppi never met with Mr. Parsons, reasoning:

In his deposition testimony, Parsons did not remember meeting or talking with Seppi. His notes reflected that Vernice called him on December 13, 2004, and the record shows that the power of attorney Parsons drafted was executed on December 15, 2004. Parsons testified that he did not normally prepare documents the same day he was called. Parsons also testified that his preferred practice was to execute a power of attorney in his office, but on occasion he drafted a power of attorney for someone to take to a hospital patient, and that person took care of obtaining a witness and notary. Parsons recognized the name of the individual who notarized Seppi's power of attorney. The notary was a long-time employee of the Wilmington Trust branch in Millsboro.

According to Vernice's deposition testimony, Seppi wanted to change his power of attorney. Vernice suggested her own lawyer, and called Parsons and told him what Seppi wanted. Vernice subsequently drove Seppi to Parsons' office, and waited in the reception area while the two men talked privately for about ten or fifteen minutes. The lawyer then came out with Seppi and suggested that they go to his bank's notary. The other individual who witnessed the 2004 POA was Vernice's neighbor, but Vernice could not recall how her neighbor got to the bank.

I find it highly unlikely that Parsons sent Seppi and Vernice out of his office with a draft and explicit directions to have the document notarized at a Millsboro bank when his preferred practice was to execute documents in his office. I find it more probable, given Parsons' inability to remember Seppi, that: (1) Parsons never met or talked with Seppi about his power of attorney; (2) the power of attorney was drafted pursuant to Vernice's instructions; and (3) Vernice picked up the draft document at Parsons' office, and took it to the Millsboro bank where Seppi's signature was notarized.

In re Seppi at 10-11.

Mr. Parsons' testimony at the 2011 Hearing was consistent with the Master's conclusion on this issue. He testified as follows:

Q. As you sit here today, do you have any independent recollection of Mr. G. James Seppi having come to your office to have a power of attorney provided?

A. No, sir.

2011 Hearing Transcript, p. 452.

Q. You have no recollection of assessing whether or not he was competent to sign any estate documents; correct?

A. That's correct.

Q. You have no recollection of assessing whether or not Mr. G. James Seppi was free from undue influence to sign any estate documents; correct?

A. That's correct.

Q. You do have a record, though, of a phone call from Vernice Lee saying she wanted a power of attorney done on December 13, 2004; is that correct?

A. That's correct.

Q. And your practice generally is someone comes in, you meet with them, you prepare the power of attorney, and then they sign it and go on their way. Is that, generally speaking, how you proceed with a power of attorney?

A. Yes.

Q. But in this case, as you recognized, this power of attorney was signed at a Wilmington Trust bank two days later after that phone call from Vernice Lee; is that correct?

A. That's correct.

Id. at pp. 458-459

Q. And just to clarify, Mr. Parsons, the only notes you have in the file are directly from Vernice Lee and that she called and wanted the power of attorney done; is that correct?

A. That, and power of attorney.

Id. at p. 469.

Mr. Parsons' testimony echoed the testimony he gave at his deposition two years earlier. The only evidence that the Respondent can possibly submit that Mr. Parsons ever met with Mr. Seppi comes from Vernice's testimony. Vernice testified in her deposition that possibly Mr. Seppi went back into Mr. Parson's office and met with a technician, and then possibly with Mr. Parson. *See* Deposition of Vernice Lee, November 30, 2006, pp. 70-71. She then indicates that she was instructed to take the document to a Wilmington Trust branch to be witnessed and executed properly. *Id.* at 71. Vernice's testimony on this point is not plausible: Why would Mr. Parsons have sent Mr. Seppi to Wilmington Trust to get the Power of Attorney notarized? Mr. Parsons testified that it would be unusual for him to send a client out to have a legal document executed formally. 2011 Hearing Transcript at p. 460. Further, he has no shortage of notaries in his office. *Id.* at pp. 459-60. Moreover, even if Vernice's testimony is to be believed, Mr. Parsons would have spent 10 to 15 minutes with Mr. Seppi, at best. Even if this were true, pursuant to her testimony, this would not have been enough time for Mr. Parsons to fully evaluate Mr. Seppi's cognitive ability or relationship with Vernice, and would not have afforded Mr. Seppi adequate protection. In summary, there is no credible evidence indicating that Mr. Parsons ever met with Mr. Seppi in connection with the 2004 Power of Attorney.

C. Why, by the end of 2005, Henry had stopped calling and visiting his father and, in 2006, did not invite his father to his wedding.

The next issue on which the Court wished to hear additional testimony was why Henry stopped calling his father by the end of 2005, and why Henry did not invite his father to his wedding in 2006. These two issues are interrelated -- in short, Henry decided that the tug of war between he and Bruno and Vernice was detrimental to his father's well-being. Henry, having filed a petition for guardianship in September of 2005, felt that the best course was to rely on the court system, even though it greatly pained him to cut off contact with his father. Henry testified, in relevant part:

Q. Now, at this point in time in 2005, was it working the three of you working together in caring for your father, or was it not working?

A. It was not working at all.

Q. What did you do at this point?

A. At this point, I decided to find counsel and find out what my options were, and I showed my attorney the power of attorney that I had. I told my attorney that my father had dementia and Alzheimer's and what his mental and physical capability was. I told her that I believe that Bruno or Vernice were going to financially change my father's arrangements, and my father was in danger physically by not having somebody around 24 hours a day, and financially by having documents changed possibly. My attorney said, "Well, with being the power of attorney, you have the right to protect your father." I asked if I could file for guardianship, and she said that's a very good idea, and I asked about removing money to take care of my father and protect my father in the future with anything that he needed with a joint account. She said, "That's perfectly fine to do as long as you're using that money for him or for the guardianship or anything along that line."

2011 Hearing Transcript, pp. 36-37.

Q. Now, you filed a guardianship petition, right?

A. Yes.

Q. Why did you do that?

A. Because my father needed 24-hour care, and I was unable, through the turmoil of Vernice and Bruno, to take care of him 24 hours. So I wanted to rely on the court system, and asked for guardianship to protect my father.

Id. at p. 39.

Q. Now, at a certain point, your relationship with your father ceased essentially. Is that a fair statement?

A. Yes.

Q. Was that around 2006, the end of 2005?

A. Yes.

Q. Why?

A. When it was obvious to me that I was not going to get anywhere with Vernice and Bruno on taking care of my father, and it was in the court system, I made a decision on my own to not put my father through any more turmoil, or a least amount of turmoil as possible, and rely on the court system because he was being used as a tug of war between Bruno and myself, and he did not understand that. I absorbed the pain so that he could have a little bit of comfort, and relied on the court system to make a decision.

Q. What do you mean "turmoil, tug of war"?

A. Well, just like the saw horse, just like the \$65,000, just like changing the locks on the house, just like the telephone answering service being changed, all of these things were what my father was being used as a tug of war between Bruno and myself to fight for his estate. I just did not want to allow that anymore. It came to a point that I had to send my father a registered birthday card to see that he even got something from me. I did get it back that he received it.

Q. What about phone calls to the house at this period of time?

A. I would make phone calls, and my phone calls would not get returned. I believe they were being screened, and my father did not like talking on the telephone. He had trouble understanding anyway, and he had trouble hearing. So even when I was

there, I would answer the phone and tell him what the phone call was about or just handle it, whatever it might be if I could. I never got any feedback.

Q. Why didn't you drive over there?

A. The same thing. When I showed up my father would be totally nervous and upset because he told me that "Bruno and Vernice said I'm not to see you, I'm not to talk to you because this situation is bad," and I have nothing but harm to give him. At one time, he was alone in Vernice's house and he called me several time during this period and said, "Son, I don't know what's going on. I miss seeing you. I miss talking to you. But they said I'm not allowed to talk to you," and then he said, "I have to go. I think somebody is coming," and he would hang up.

Q. How did this make you feel, not being able to see or talk to your father?

A. Very upset, but I felt it was up to me to take this pain and just rely on the court system.

Q. What were you hoping to gain from the court system?

A. Guardianship so that I could protect my father and take care of him 24 hours a day.

Id. at pp. 46-49.

Once more, Kathy Seppi's testimony illustrated both the reason why she and Henry stopped attempting to communicate with his father, and the effect this self-imposed communication embargo had upon them, and especially Henry:

Q. All of those things that you talked about that you are doing for Mr. Seppi, the visits, the cakes, the errands, things like that, did that decline over time?

A. For me doing it for him?

Q. Yes.

A. Not until we got up into 2005 and 2006.

Q. What happened?

A. That was when everything just kind of just stopped. We had contact with dad in 2005, and we'd still have him over at the house and we were still feeding him... Vernice was always there and whatever had transpired it made us very uncomfortable for all of us. Especially dad.

Q. How so?

A. It was just so much tension and animosity, mainly towards Henry. When Vernice was there, she was there all the time, and then there were times when Bruno was there but it was just so uncomfortable for dad, you could see it in his face. He's going on, "I want to talk. I can't talk. What's going on? I don't understand what's happening." So Henry and I kind of decided then- it was mainly Henry's idea, that we'd kind of back off a little bit, not causing dad so much discomfort and anxiety. You could see it in his face.

Id. at pp. 174-175.

Q. Now, in late 2005 and maybe 2006, did you have minimal contact with Mr. Seppi?

A. Yeah, we cut off contact.

Q. How did that affect you?

A. I was very upset about it. I enjoyed having dad around. We always had good conversations. Even when he started to decline.

Q. How did it affect Henry not being able to see his father in 2006?

A. He was very upset; very, very upset. He missed him terribly. And by the time everything was said and done, and he finally got back to see his dad in '07, he said he felt like he lost his dad, because when he got back to dad, he was not the same dad that he was in 2004 when we moved up there.

Id. at pp. 186-187.

Henry decided not to invite his father to his wedding in 2006 for precisely the same reasons. Henry was afraid that Bruno and Vernice would not permit Mr. Seppi to attend, which could potentially distress Mr. Seppi. Henry was devastated that his father did not attend the wedding, but felt that he had no choice but to let the courts sort the matter out. Henry did ask his cousins Robert and Garnet Bowman to evaluate whether they thought it would be a good idea to invite Mr. Seppi while visiting him. Neither felt that it was in Mr. Seppi's best interests to be informed of his son's upcoming wedding. Mrs. Bowman testified:

Q. Now, did Mr. Seppi attend Kathy and Henry's wedding?

A. No.

Q. Do you have any personal knowledge as to why he did not attend?

A. I asked Henry- we were going to go visit Jimmy, and I asked Henry, Does Uncle Jimmy know about the wedding? And he said No... And I asked Henry how he wanted us to handle it. And Henry said to us, You can tell Uncle Jimmy if you think it's in his best interest. If you don't think it's in his best interest, don't tell him.

Id. at pp. 283-284. Mr. Bowman testified about the effect that Mr. Seppi's failure to attend the wedding had on Henry:

Q. Did you observe how this affected Henry, meaning Uncle Jimmy not being able to attend the wedding?

A. He was very disappointed. He was hurt by the fact that, you know, he was estranged and he couldn't invite- he didn't feel like he could invite his father.

Q. And, generally, what was the understanding of the problems at that time?

A. We- I wasn't too familiar with them, although we had received a Christmas card from Vernice the year before, that Christmas sometime, and me and my wife just couldn't believe when we read the Christmas card. We opened it up and there was no "Merry Christmas" or no nothing in it. It just started out with she said that Henry is turning into a money-grabbing little something-something, and it just went on ranting and raving about Henry. And then me and my wife both looked and said, Has Vernice lost it or what? And then we started hearing other things, that they were accusing Henry of stealing money from him. And our thought was, you know, it's his son, and they've always worked their finances together, so we didn't really know what was happening.

Id. at 264-65.

In summary, although it greatly pained Henry to do so, he had to cut off contact with his father at the end of 2005 in order to save Mr. Seppi from any more turmoil. Rather than subject his father to an emotional tug-of-war, Henry instead relied upon the courts to resolve the matter. Eventually, the guardianship was resolved and Henry and his father were finally able to resume their relationship, albeit at great cost.

D. Why Henry withdrew \$65,000 from the PNC accounts jointly titled in his and Seppi's name.

The Court sought testimony regarding the reasons why Henry withdrew \$65,000 from PNC accounts jointly titled in his and his father's name. Henry testified that he withdrew these funds solely in order to protect his father. Specifically, Henry, acting on the advice of counsel, wanted to ensure that he would be able to have the necessary funds to protect his father, as his father had previously requested of his son. Henry testified as follows, in relevant part:

Q. Did you withdraw money from a joint account?

A. Yes, I did. In the end of 2005, I withdrew \$65,000 from a joint account and I used it for legal fees for the guardianship to try to take care of my father that I was so concerned about his health.

Q. Did you spend that money on anything other than legal fees?

A. Not one dime.

Q. Did you let your attorney know that you withdrew that money?

A. Yes, I did.

Q. Did you talk to your father about withdrawing that money?

A. Yes, I did.

Q. Describe those conversations, please.

A. My father, in the state of mind that he was in, had a lot of trouble trying to understand, so I worded it briefly. I said, "If somebody- If I believe that somebody was going to steal your money, would you want me to protect it," and he said, "I would expect you to protect it."

Q. Did you have a specific conversation with him saying, "I'm going to withdraw \$65,000 from X specific account"?

A. No, I didn't.

Q. Why not?

A. If my father was in his right mind and did not have this disease, dementia and Alzheimer's, I would not have needed to take the \$65,000 at all because he would have been able to keep trouble at bay on his own. But because he was in this state of mind, that's why the power of attorney was drawn up, and that's why he expected me to act in his behalf.

Id. at 37-39.

It is undisputed that Henry did not use any of these funds for anything other than legal expenses in connection with his father's guardianship. Henry provided a full accounting to Jim Reynolds of Senior Partner, who had been appointed to act as Mr. Seppi's guardian after the parties participated in mediation. *Id.* at 42-43. Mr. Reynolds had no questions regarding Mr. Seppi's accounting of the \$65,000. *Id.* Ms. Carmean's testimony on this issue is particularly compelling. Again, Ms. Carmean was appointed as Mr. Seppi's attorney *ad litem* in September of 2005, after Henry filed the guardianship petition. Ms. Carmean was aware that Bruno had made allegations that Henry had stolen money from his father. Thus, she specifically investigated these actions in her capacity as Mr. Seppi's attorney *ad litem*. Her testimony is revealing:

Q. The allegations that were made regarding the misappropriation of funds, or I believe your testimony was dissipation of assets-

A. Yes.

Q. -- Did you investigate that with Henry?

A. Yes, I did.

Q. And what was your general conclusion as to was there any real threat of financial injury to Mr. Seppi?

A. I didn't believe that there was.

Q. Did you dismiss those allegations to be the kind of standard attacks that are made in these guardianship cases and nothing more than that?

A. I did. Based on the fact that the accounts were jointly held for, I think it was, looking at my report, more than 10 years. Henry produced all types of documentation when I was there. I didn't really see anything that was inappropriate.

Q. And if there was something inappropriate, you would have taken action; is that correct?

A. That's correct, and I would have noted it in my report ...

Q. You would have informed the court or sought some sort of relief to protect Mr. Seppi; is that correct?

A. Correct, yes.

Q. You maybe would have informed the Attorney General's Office?

A. I would have, yes.

Q. But none of that was necessary, because-

A. No. I didn't see any- I thought they were baseless allegations. I didn't see any support for them. And when I spoke with Jim about them, he just kept saying, he's stealing my money, but he wasn't really sure. He didn't know from which account or when it happened or anything like that so I wasn't sure if someone else was telling him that Henry was stealing his money or that he told Henry that he could have x number of dollars and then just didn't recall. I mean, I could find no support for the allegations, that's all.

Carmean Deposition, pp. 22-24.

It is worth mentioning that, like Henry, Bruno utilized Mr. Seppi's funds in connection with his own attorney's fees. Bruno eventually conceded as much at the 2011 Hearing:

Q. Right? Now, as part of this settlement you filed a fee application. Your attorney, Kashif Chowdhry of Moore & Rutt filed a fee application seeking approval of your fees to be paid out of Mr. Seppi's funds, do you recall that?

A. Right.

Q. And, in fact, an Order was entered by this Court on July 31, 2007, indicating that attorneys fees and costs in the amount of \$54,000 are approved to the law firm of Moore & Rutt representing the fees and costs of the respondent, that's you, in the guardianship matter, is that correct?

A. Correct.

Q. And before this order was ever entered, your attorneys fees were being paid out of Mr. Seppi's account; correct?

A. Okay. It was always under my interpretation that it was for Gino, okay, that's the way that I looked at it.

THE COURT: This is pretty important. So you understand that you hired Mr. Chowdhry to be your attorney, don't you?

THE WITNESS: No, I never did understand it that way, Judge. I always thought that Gino was doing the hiring of it and that was my interpretation of it all the time. Okay?

Q. You talked about it before and you were pretty clear about it. If you go to your old deposition, which is your deposition from January 10, 2007... at the bottom of page 127, I asked you: "Now, who is Moore & Rutt?" And you say, "That's our attorney." And I say, "And that's your attorney; correct?" And you say, "Right." And we were talking about a payment. "And so this is a payment out of your brother" account for your attorney; is that correct?"

A. You say I say, "Right," but I said... you say, "but you're not sure?"

Q. Just a minute, if I misread it, I apologize. We're at the bottom of page 127.

A. Right. What paragraph are you talking about?

Q. Line 24.

A. Okay.

Q. I asked you the question: "Who was Moore & Rutt?" Okay? We go to the next page and you say, "That's our attorney."

A. Mm-hmm.

Q. And I said, "And that's your attorney, correct?" And you said, "Right." And then I asked you the question, "And so this is a payment out of your brother's account for your attorney, is that correct?" And your response was, "Right. Right." And then I got more specific. "PNC No. 186 is a check in the amount of \$5,000 made payable to Moore & Rutt. Do you have any reason to doubt that this is a PNC check?" "No." And again, this is a \$5,000 payment from your brother's account for your attorney. Is that correct?" "Right, right." Was that your testimony on that date?

A. Yes.

Q. Now when you sign up for depositions in this case, Kashif Chowdhry was sitting right next to you in Lewes, Delaware when I took your deposition. Isn't that correct?

A. I don't know if he was. If you say so.

2011 Hearing Transcript at 321-26.

Even Bruno eventually conceded that Henry had, in fact, not stolen these funds:

Q. And you were in agreement that -- and it's your contention that Henry stole this money even though you were fully aware and understood that Henry's name was on that joint account and he was legally authorized to make that withdrawal. Correct?

A. Correct.

Q. And you knew that Shannon Carmean, the attorney ad litem who is appointed in this case, had investigated these allegations and found them baseless, but yet you still contended that he stole this money? Correct?

A. No. I didn't -- I didn't intend to say that he stole the money. I just said that he took the money.

Id. at 307-08.

Thus, there is no dispute that Henry withdrew the \$65,000 solely to protect his father, pursuant to Mr. Seppi's wishes. Moreover, there is no dispute that Henry only used the funds for expenses related to his father' guardianship, and fully accounted for every penny.

E. Why, after about December 2004, Bruno believed that Seppi wanted him to remove Henry's name from Seppi's joint accounts with Henry and execute new Estate Documents.

The final issue on which the Court wished to hear testimony is why Bruno believed that Mr. Seppi wanted him to remove Henry's name from Seppi's joint accounts, and to create new Estate Documents solely benefitting Bruno. Bruno's position on this matter is that he was only acting pursuant to Mr. Seppi's wishes, and that he took no active role in changing the documents at issue. Bruno's testimony with respect to this issue is simply not credible. As a preliminary matter, Bruno was well aware that, as early as 2003, Mr. Seppi was suffering from a cognitive decline. When questioned at the 2011 Hearing, Bruno testified as follows:

Q. Mr. Seppi, I asked you these questions. "You're aware that your brother was diagnosed with **dementia** and Alzheimer's, correct?" And you answered, "Right." And I said, "And that diagnosis goes back as far as 2003, is that correct?" And you said, "Correct." Was that your truthful testimony on that date?

A. Yes.

Q. Now, you agree that Mr. Seppi suffered a cognitive decline in the later years of his life up until his death, correct.

A. Right.

Q. And this decline of Mr. Seppi's cognitive impairments was first noticed by you in 2003, correct?

A. Correct.

Id. at pp. 234-235

Q. As of the summer of 2004, every day Mr. Seppi was having forgetfulness about medical appointments, correct?

A. Correct.

Q. You agree that you stated about 18 months prior to October 25, 2005, Mr. Seppi was having cognitive difficulties, correct?

A. Correct.

Q. And these difficulties that he was having included difficulties with his finances, trouble with his investments and balancing his bank statements, correct?

A. Correct.

Id. at 236-37.

Notwithstanding Bruno's knowledge of Mr. Seppi's cognitive decline, as well as his knowledge that a guardianship action was pending, Bruno proceeded to take the steps necessary to change Mr. Seppi's estate documents. In a letter to Seppi's attorney *ad litem* dated December 21, 2005, Bruno's attorney, Kashif Chowdhry, wrote that his client had informed him that Seppi wanted to make changes to his will.³ See Exhibit FF. Chowdhry's letter stated that he had informed his client to take no action due to the contested nature of the guardianship. *Id.* Chowdhry, however, referred the matter to Carmean to discuss with her client, and to determine whether Seppi had the capacity to execute a new will or codicil. *Id.* In her deposition, Carmean testified that she was surprised by Chowdhry's letter because Seppi had never indicated a desire to change his will. Carmean immediately called Chowdhry and told him that she thought it was inappropriate to execute any estate planning documents while the guardianship was pending. Ms. Carmean testified as follows:

Q. Do you recall what you said to Kashif? And you may have already said that, I'm sorry, but if you could just tell me again.

A. Just that I thought that it was inappropriate to execute any estate planning documents when the guardianship proceedings pending, especially in light of my report. And I believe prior to the filing of my report, I spoke with Kashif so he was aware of what my recommendation was going to be. I don't think he was aware of who I would recommend to be the guardian, but he was aware that I had determined that Mr. Seppi was disabled under Delaware law and I believe that's why he told his client, he advised his client not to take any action with regard to changing anything. Plus, my client never indicated any intent to do so.

Carmean Deposition, pp. 33-34. Bruno, upon being questioned on this issue at the 2011 Hearing, could only respond: "I recall that this discussion went on with Chowdhry, but I don't know the time frame of it and I thought that, at that time, it was delayed, but then at a later date, sometime later than that, they, being the counsel's decided it would be okay to do that and- you know, I didn't make that determination to go into it." 2011 Hearing Transcript at 332.

In any event, mere days after Mr. Chowdhry sent his letter to Ms. Carmean, Bruno made the call to David Baker in order to have new Estate Documents drafted for Mr. Seppi. Mr. Baker was never informed that Mr. Chowdhry was actually Bruno's attorney. Bruno's testimony at the 2011 hearing is as follows:

Q. You, Bruno, made the telephone to David Baker's office-

A. Right.

Q. -- to start the process for Mr. Seppi's new estate plan; correct?

A. Correct.

Q. And your first meeting with Mr. Baker was January 10, 2006, less than two weeks or three weeks after this December 21st, 2005 letter-

A. Okay.

Q. -- from Shannon Carmean, correct?

A. Yes.

Q. If we go to line 10, this is David Baker testifying. He was asked the question: "It's your understanding that Chowdhry represented both Jim Seppi and Bruno Seppi; is that correct?" And his answer was, "No. I mean, my understanding was that he was representing Jim Seppi." And I asked him the question: "And you have no information that leads you to believe that Kashif Chowdhry was representing Bruno Seppi, the brother of the decedent; is that correct?" And, "That's correct." Does that refresh your memory of what representations were made to Mr. Baker about who Kashif Chowdhry represented?

A. There's no question now, after I read this.

Q. It was represented to Mr. Baker that Kashif Chowdhry represented Mr. Jim Seppi; correct?

A. Correct.

Id. at pp. 332-333; 335-36.

Bruno also contacted David Humes in order to attempt to change the beneficiary designation of Mr. Seppi's Morgan Stanley account. It is telling that Mr. Humes, who was Mr. Seppi's longstanding financial advisor at Morgan Stanley, refused to honor Bruno's instructions because he was extremely skeptical of his actions, and required authorization from Henry before he would agree to re-title the accounts. *See* Trial Transcript ("TR") at 423-426. Mr. Humes had been the account manager for Mr. Seppi's Morgan Stanley account since 2000, after his mother, Mr. Seppi's previous financial advisor, began to transition herself out of the business. TR 419. Mr. Seppi and Mr. Humes would speak about Mr. Seppi's Morgan Stanley account approximately two times a year about routine account administration issues, such as reinvestment of maturing bonds. TR 419-20. Mr. Humes has testified that the Morgan Stanley account was explicitly created in May, 1990 to be joint with Henry Seppi, with rights of survivorship, pursuant to the underlying documents. TR 418-19.

However, in April, 2006, Mr. Humes received an anxious call from Bruno indicating that he wanted to meet on that same day. TR 421-22, 429. Mr. Humes accommodated this request and later that afternoon, Mr. Humes met with Bruno, his wife, Vernice, and Mr. Seppi. *Id.* The aforementioned meeting lasted about 20 minutes and consisted of Bruno doing the majority of the talking, which centered around the unfounded allegations that Henry was stealing Mr. Seppi's assets, and, as a result, Bruno requested that Henry's name be removed from ownership of the Morgan Stanley account. TR 424-26, 430. Mr. Humes felt that this was Bruno's request, as opposed to a request by Mr. Seppi and was concerned by Bruno, being a third party with no ownership in the account, making such a request in a virtually bullying fashion. TR 427-28. Mr. Humes, despite Bruno's aggressive behavior, refused to oblige Bruno's request. TR 425-26. This was the one account Bruno had to change in person, and, therefore, he was unable to do so. Unfortunately, Bruno was able to complete changes to many other accounts by phone and by letter.

Perhaps the most incredulous testimony by Bruno at the 2011 Hearing was his testimony that he had no understanding that, by making the changes to Mr. Seppi's financial accounts and Estate Documents, he in effect became Mr. Seppi's sole heir. Bruno testified:

Q. You assisted your brother- by your testimony, you assisted your brother in retitling of assets owned by Jim Seppi; correct?

A. Correct.

Q. Now, you're certain that your brother wanted to avoid probate in his estate plans if he could; correct?

A. Correct.

Q. This was very important to him; correct?

A. Correct.

Q. You made lots of references on his financial statements within his files that he wanted to avoid probate; correct?

A. Right.

Q. And you agree that by removing POD and TOD designations, these assets are now going to be estate assets; correct?

A. Correct.

Q. Contrary to what Mr. Seppi had so adamantly wanted for his estate plans; correct?

A. He's the one that wanted to do this. It wasn't me who wanted to do it this way. I didn't make that decision.

Q. And you gave testimony yesterday that your name was never put on these accounts. Do you remember that testimony?

A. Right.

Q. But, in reality, Mr. Seppi, you're well aware that there was a will and a trust that was executed in March 2006 making you the beneficiary of Mr. Seppi's estate; correct?

A. Correct.

Q. And when you remove a TOD and a POD for Henry Seppi and there is no POD or TOD anymore, it now becomes an estate asset; correct?

A. Yes, I guess it- I guess. I am not aware of all of the steps.

THE COURT: No. Wait a minute. Wait a minute. I can't sit here and listen-you're under oath. You are under oath.

THE WITNESS: Right.

THE COURT: And is it your testimony that you did not understand that it would benefit-could benefit you, if after March of 2006 Henry Seppi's name was removed from a POD joint account so that it was just James Seppi's account. Did you have an understanding that that kind of a change-

THE WITNESS: No, Judge, I never had that understanding. I wasn't that knowledgeable about how these laws work in that. I had nothing really- never thought- entered my mind.

THE COURT: Alright.

2011 Hearing Transcript at pp. 346-347

Q. But as early as December 2005, you had already started the process of trying, of assisting, using your words, assisting your brother in doing his estate planning, is that correct?

A. Yes.

Q. And that estate plan eventually benefitted you wholly; correct? You were the sole beneficiary of his estate by virtue of those documents that were executed in March 2006; correct?

A. By those documents, I guess I was, but, you know, but, that never, but you know, that never entered my mind about that, that I was doing anything that could be wrong or anything like that, okay?

Id.

In light of the foregoing, it is clear that Bruno's actions with respect to Mr. Seppi's financial accounts and Estate Documents were contrary to Mr. Seppi's expressed wishes; Bruno's actions were in nobody's best interests but his own.

CONCLUSION

In conclusion, Henry respectfully requests that the Court confirm and uphold Master Ayvazian's findings invalidating the 2006 Estate Documents and rescinding and invalidating the Questioned Transactions undertaken by Bruno, and award damages and such other relief as may be granted as a result.

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June 29, 2011

Footnotes

- 1 Henry and Kathy Seppi moved to Delaware in 2004.
- 2 All deposition transcripts cited in the Memorandum have previously been provided to the Court. In the interests of efficiency, these deposition transcripts have not been submitted again in conjunction with this Memorandum, but if the Court so requests, Petitioner is happy to do so.
- 3 At the 2011 Hearing, Bruno incredibly initially testified that Mr. Chowdhry was not his attorney. Only after being prodded with his prior testimony in these proceedings did he concede that Mr. Chowdhry was, in fact, his attorney. *See* Section D, *supra*.

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