2009 WL 434246 (Del.Ch.) (Trial Pleading)
Chancery Court of Delaware.

Frank SLOAN and Jack Sloan, Petitioners,

v.

LOUIS RESPONDENT and Delaware Trust Company, Respondents.

No. 2319-VCS.
February 19, 2009.

Petitioners' Response Post Trial Brief

Carucci Butler, LLC, Matthew M. Carucci, Esq. (4529), 1216 N. King Street, Wilmington, DE 19801, P: 302.654.5083, F: 302.654.5084, mcarucci @caruccibutler.com.

1.

***RESPONDENT'S PERJURY, FALSE TESTIMONY, MONEY LAUNDERING,* DECEIT, MISUSE OF THE COURTS, SELF-DEALING, AND THE WHOLESALE FINANCIAL EXPLOITATION OF PATRICIA MUST NOT BE IGNORED BY THIS COURT OF EQUITY.**

In his brief Respondent makes it clear that the testimony of Respondent is important to a number of issues. For example,

> "Respondent urges that the medical proof and testimony, including the undisputed testimony of Louis, Deborah, and Mr. Patrick Peduto, prove there was no clear and convincing evidence of a diminished mental capacity of Mrs. Sloan through October 18, 2002." [1]

And:

> "Dr. Tavani also relied upon Patrick Peduto's deposition and Louis Segal and Deborah Peduto's depositions concerning her continued independent mental outlook. (TT - 340, 343, 344)" [2]

On the other hand, Respondent asserts that Respondent's financial exploitation of his mother is not really material:

> "Yet, here they try to thwart their mother's wishes, brought on by their actions, by taking advantage of a possible technical mistake of Louis Segal. This does not mean that Louis Segal should have lived off his mother's income and money, but it is immaterial to the actions of Jack and Frank." [3]

In his brief Respondent fails to address his perjured application to the Florida probate court in early 2003, his deceptions, self-dealing, misuse of this Court, and false testimony. These issues go well beyond mere credibility choices. They are essential to the determination of this case. This is not a simple case about whether Patricia was competent on July 1, 2003. The corrupt words and deeds of Respondent permeate this case. This case has everything to do with whether this Court will confront these abuses and, if so, to what measure.

In a prior opinion, Chancellor Chandler stated that Chancery Court will not reward misbehavior by rigidly enforcing strictly legal rights:

"They have practiced fraud upon people who trusted them as well as upon the courts to which they took their marital disputes and the clerks of the peace from whom they sought permission to marry again. In all of this, the one person who seems to have been free from participation in or knowledge of these fraudulent activities is Sylvia. When a person engages in conduct that creates a situation in which misbehavior will be rewarded if a court rigidly and uncritically enforces strictly legal rights, a court of equity ought not to lend its assistance to the obtaining of such a result. Cf. *Loper v. Loper, Del.Super., 170 A. 804 (1934).*" [4] [Emphasis added.]

The quote above is entirely consistent with the Clean Hands Doctrine.

"Reprehensible conduct on the part of a party litigant which violates the fundamental concepts of equity jurisprudence will not be tolerated. A court of equity is a court of conscience. Righteous conduct and fair dealing by the litigants is the very backbone of the maxim. Litigants seeking the aid of the court must not only do so with clean hands, but must keep them clean after entry and until the final determination of the cause. When one files a bill of complaint seeking to set the judicial machinery in operation and to obtain some remedy has violated conscience or good faith or other equitable principles in his conduct, then the doors of the court of equity should be shut against him. The court should refuse to interfere on his behalf to acknowledge his right or to award him a remedy. 2 Pomeroy Equity Jurisprudence, (5th Ed.) Sec. 397; 1 Story Equity Jurisprudence, (14th Ed.) Sec. 98; *Gluck v. Rynda Development Co.,* 99 N. J. Eq. 788, 134 A. 363, affirmed 100 N. J. Eq. 554, 135 A. 917; *Sharpless-Hendler Ice Cream Co. v. Davis,* 17 Del. Ch. 161, 151 A. 261.

The mere fact that a respondent has not in his answer alleged the delinquency, fraud or misconduct of a complainant does not preclude the court from granting relief. The court is so jealous in guarding itself against such misuse that it will *sua sponte* apply the maxim whenever it discovers the unconscionable conduct. The application of the maxim is not a matter primarily of defense. It is not applied to favor a party litigant; rather, it is a rule of public policy. *Sharpless-Hendler Ice Cream Co. v. Davis,* 17 Del. Ch. 321, 155 A. 247; *Bell & Howell Co. v. Bliss,* (7 Cir.) 262 F. 131." [5]

A similar approach is to treat perjury, falsehoods and other frauds as creating the inference that the offending party's cause lacks merit. As Chancellor Chandler stated:

"When a witness reveals that a lie has been told, the trier of fact is forced to decide when the witness is or was lying, and when not. There is the added consideration that our Supreme Court has held that once a witness has been shown to have lied, the taint pervades the witness's entire testimony.

It has always been understood--the inference, indeed, is one of the simplest in human experience--that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the case, but operates indefinitely though strongly, against the whole mass of alleged facts constituting his cause.

Wigmore, *Wigmore on Evidence* ?? 278(2) (Chadbourn Rev. 1979), quoted with approval in *McCool v. Gehret, Del.Supr., 657 A.2d 269, 276 (1995)* (emphasis in original). This is what I am faced with in evaluating the testimony as to the assets of David Fooks's estate that were concealed from the authorities: if Dale conspired with her mother to perpetrate a fraud by on the government by perjured testimony 2, why should I believe that she is truthful in her testimony in this case since it now serves her purpose to say what she has said? The way to handle this awkward situation is to hold that the record made by Mrs. Fooks in 1980 is no longer subject to attack, and on that basis Dale's testimony that her father's estate was larger than admitted at the time must be disregarded. While this approach disposes of the immediate problem of deciding whether Mr. Fooks's estate was large or modest, it also raises the issue of Dale's credibility over all, and that issue will not go away.

2 Undeniably it is perjury because at least some of the documents that must be filed in administering an estate are under oath." [6]

A. THE UNDENIABLE PERJURY OF RESPONDENT

Early in 2002 Respondent retained the services of his Florida attorney, Daniel Probst, to draft and file a Petition for a Voluntary Guardianship. The petition was signed by Patricia. It asked that Respondent be appointed the limited guardian of the property of Patricia. The petition asserted that Patricia was mentally competent but "by reason of age or physical infirmity" was petitioning the court for the appointment of Respondent as her limited guardian. Although she was the petitioner, Probst never met with her or spoke to her regarding these guardianship proceedings. He got all the information for the petition from Respondent. Respondent omitted telling Probst where Patricia was residing and why. Probst testified that he was not aware that Patricia was in the Alzheimer' s wing of an assisted living care facility, and that if he had known that fact he would have met with her before filing the petition. [7]

The guardianship proceedings were designed to give Respondent Letters of Limited Guardianship of the Property from a Florida probate court authorizing him to bring suit to recover assets including but not limited to "...any claims or causes of action relating to the property of Martin Sloan, the estate of Martin Sloan, or any trust established by Martin Sloan, and any other claims or causes of action." [8] Respondent provided a copy of the letters to Peter Gordon at the time Respondent retained Mr. Gordon to represent Patricia in the earlier proceeding in this Court. [9] Mr. Gordon explained that he did not deal directly with Patricia. "...I dealt directly with her son, Louis Segal, who was the Court-appointed limited guardian for Mrs. Sloan." [10] Thus, the letters served to keep Mr. Gordon from discovering that Respondent was financially exploiting Patricia. In fact, Respondent did everything he could to keep anyone associated with the earlier Chancery Court proceedings from having any contact with Patricia, learning that she was in the Alzheimer's wing of an assisted living care facility in Florida, and discovering that he had retired and was living exclusively off of Patricia's bank accounts.

As part of the documents required for his appointment as the limited guardian of Patricia, Respondent filled out an Application for Appointment as Guardian. [11] At trial it became obvious that Respondent had repeatedly misrepresented on the Application for Appointment as Guardian that he was self-employed when the actual truth was that he had retired and was living on funds he obtained by exploiting Patricia. Notably, there is a pattern of Respondent giving evasive answers and a complete failure to provide an honest explanation why he falsified the Application for Appointment as Guardian.

"Q. Now, you retired at the end of 2002, is that right?

A. For a period of time, yes.

Q. In a letter from your counsel last night, it's indicated that in 2002 you earned, at most, $10,000. In 2003, 2004 and 2005, you did not earn any income.

A. I don't believe so, no.

Q. You testified in your deposition that you were retired at that point. Is that accurate?

A. For that period of time, yes.

Q. If you flip to Tab 3 of that same binder, this is your application for appointment as guardian, and if I am correct, this is a document that was drafted by Mr. Probst to go along with the petition for the guardianship.

A. Yes.

Q. Did Mr. Probst draft this based on information you gave him?

A. Yes.

Q. Number seven states “Employer's name and address, self.” How do you reconcile that with your letter here saying that you were not making any income in 2003 and your prior testimony that you were retired in 2003?

A. Because if I was to do anything, it would be as self employment.

Q. Did you tell Mr. Probst that you were retired?

A. We didn't discuss it, no.

Q. When he asked you about your plight [sic - counsel said “employment”] in order to fill out this form, did you tell him you were retired?

A. I don't believe I specifically mentioned it, no.

Q. Did you tell Mr. Probst that the only income you had in 2003 was the money you obtained from checks written on your mother's accounts?

A. No. It was not discussed.

Q. Now, you signed this application, am I right?

MR. JACOBS: Your Honor, can I understand what exhibit or what paper?

MR. CARUCCI: We're still on Exhibit 3.

A. Yes.

Q. Is it fair to say you would have reviewed it before you signed it?

A. Pretty much.

Q. When you signed this, you are representing that everything in here is accurate.

A. Yes.

Q. “Under penalty of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.” So when you signed this, you felt you had given Mr. Probst accurate information.

A. Yes.

Q. Let's flip to the second page of this exhibit, Exhibit 3, the second page of the application, and at the top, number nine lists your home telephone number, and it says work telephone number, same. If Mr. Probst asked you what's your work telephone number, you said it's the same number. You gave him the same number.

A. I think that goes hand in hand with self employment or retirement, either one.

Q. At least two different items here, Mr. Probst asked you about your employment, and you did not tell him you were retired.

A. That's correct, yes.

Q. If you flip to page five of this exhibit, item 28, Mr. Probst asked you to list your employment experience. You listed "self-employed 5/95 to present. Reason for leaving, not applicable." You signed this document stating that that was accurate as well.

A. Yes." [12]

Respondent's perjury about being self-employed was designed to preclude his attorney or the Florida probate court from discovering that his retirement was financed through his criminal exploitation of Patricia. The letters of guardianship were obtained likewise to preclude anyone involved in the earlier proceeding in this Court from having any direct contact with Patricia.
"Q. Did you ever make known, in that prior proceeding, that your mother was in an Alzheimer's unit in Courtyard Gardens in Florida?

A. No.

Q. Did you ever reveal, in that prior proceeding to this Court, that you had retired and that you were living off of the money you were taking from your mother's checking accounts, the back and PNC accounts we discussed?

A. No. It never came up." [13]

The reason it never came up is because Respondent deceived everyone involved in the earlier proceeding, including this Court, into believing that, acting with his mother's blessing, he was a zealous protector and advocate for his mother's financial affairs. If either the Florida probate court or this Court had learned that Respondent was financially exploiting Patricia, an independent guardian would have been appointed. This would have created severe problems for Respondent. He would have been prevented from acting as Patricia's attorney and thereby prevented from preparing the codicil or any other legal documents. So Respondent did then what he has done throughout this litigation, claimed that everything he did was what Patricia wanted him to do.

B. THE UNDENIABLE EXPLOITATION OF PATRICIA

The crime of exploitation of the elderly came about because the crime of theft could be easily be defended by the claim that the elderly or disabled person willingly gave the property and/or funds away. In this case, Respondent made the unsubstantiated claim that Patricia "...wanted to support me so that I wouldn't have to work and I could spend more time to be with her and take care of her affairs." [14] Even this self-serving testimony fails to explain why Respondent took virtually everything Patricia owned. Respondent took a great deal more than he required to support himself.

Respondent admitted that he retired in late 2002 and did not have any income from 2003 through 2005. [15] From July 17, 2002, forward, every check written on Patricia's PNC account was written and signed by Respondent. [16] During his retirement

Respondent wrote approximately $80,000 worth of checks for his own benefit on Patricia's PNC account [17], wrote in excess of $193,000 in checks to cash [18] for his own benefit on Patricia's PNC account, and $49,000 in checks to himself on Patricia's PNC account. [19] These amounts do not include any of Patricia's valuables and other property Respondent converted before Patricia died. It also does not include the funds he took from Patricia's trust account, a good deal of which was in the form of gifts to Deborah Peduto and her two adult children. He also claimed that this is what Patricia wanted:

Q. "With respect to the gifts that were given to Deborah's children, were those your idea?"
A. " No. Mom said she wanted to give gifts, and I said, 'Well, if you want, you know, there's an $11,000 limit that you can give without having them to have to pay any taxes. It's up to you. Would you rather leave more money to charity or give to people that you love while you're here,' and she said she wanted to give it to people that she loved while she was here to enjoy it." [20]

Respondent also testified that Peter Gordon or a member of his firm had advised him that he could write checks to Deborah Peduto and her family members from Patricia's checking accounts. [21] Peter Gordon testified that he never got into a discussion with respondent about how respondent should handle Patricia's affairs. [22] Plainly, no competent attorney would have advised Respondent to deplete Patricia's trust through gifts. Respondent simply made it up.

Respondent was forced to admit that he withheld information regarding Patricia's weakened mental condition and Respondent's exploitation of her from the two attorneys he hired to represent Patricia, Thomas Pulsifer and Peter Gordon. [23]

The deposition testimony of Deborah Peduto is quite interesting as it relates to Respondent's wholesale exploitation of Patricia. Generally, Ms. Peduto's testimony enthusiastically supported Respondent's claims. She described Respondent as her husband. [24] However, when it came to any questions about how Respondent supported himself she testified that she had no idea:

"Q. And before she passed, did you understand whether or not Lou was -- were any of those funds being used by Lou before she passed away for her own support?
A. Her funds were used for her, for her care at Courtyard Gardens.

Q. Okay. So you didn't -- you don't understand whether Lou ever used any of that to help support you and he before she passed?

A. You know, he worked. So -- you know, Lou takes care of the finances for his house. And I collect alimony.

Q. So you basically do it separately and --

A. Yeah.

Q. -- both contribute toward --

A. Right.

Q. -- your joint house?

A. Right." [25]

Plainly, Ms. Peduto was well aware that Respondent had retired and the explanation she gave didn't sufficiently explain why:
"Q. Did Mr. Segal have any medical problems or conditions that caused him to retire in 2002?

A. No.

Q. Do you know why he decided to retire at that point?

A. I know he was spending a lot of time helping his mom, you know, with doctors and, you know, appointments and -" [26]

Ms. Peduto also had no idea that Respondent wrote checks out to cash and no idea where the checks that paid for her surgery and car came from:
"Q. Were you aware that Mr. Segal wrote checks on Mrs. Sloan's account out to cash?

A. I don't -- I didn't know what he did with the checkbook. I didn't take care of it.

Q. Did Mrs. Sloan pay out of her account for plastic surgery for you?

A. I don't know where the money came from.

Q. Okay. Did she pay out of her account for -- to a company called Braman Honda for an automobile for you?

A. I don't know where that money came from." [27]

Interestingly, the checks for eleven thousand dollars that were allegedly gifts from Patricia to Ms. Peduto were another story. Because the checks were actually made out to Ms. Peduto and her children on the trust checking account, she couldn't easily claim that she had no idea where they came from. According to Ms. Peduto, with Patricia present: "She and Lou were together. She asked Lou to give them to us." [28] It is difficult to believe that Ms. Peduto didn't know where the money came from. It is easier to believe that she had been warned not to implicate herself in Respondent's exploitation of Patricia any more than absolutely necessary. The Florida exploitation of the elderly statute includes persons who conspire and/or use an elderly or disabled person's funds. [29] This law also explains why Ms. Peduto and Respondent both claim that Patricia only suffered from mild memory loss until the end of 2005. Both Ms. Peduto and Respondent are well aware that the wholesale looting of Patricia had to be concealed and that the fiction that Patricia was mentally alert, loving and generous had to be maintained at all costs.

C. INCOME TAX EVASION AND MONEY LAUNDERING

Respondent has violated two federal tax laws. First, he has willfully sought to evade paying any federal taxes on the approximately two million dollars he took from Patricia before she died, a federal felony. [30] Respondent testified he did not have any income from 2003 through 2005. [31] Respondent admitted that he never filed a gift tax return for Patricia. [32] This means that the money he took from Patricia was never reported as either a gift or as income. Second, he has engaged in money laundering at least to the extent of the checks Respondent wrote to cash totaling $193,675. He cashed these checks totaling nearly two hundred thousand dollars and failed to provide any explanation at trial for this unusual activity. Plainly, Respondent cashed these checks to conceal the source of the funds as being obtained in violation of Florida's **exploitation** of the **elderly** criminal statute and the fact that he was avoiding paying federal taxes on any of it. This constitutes a violation of the federal Money Laundering criminal statute. [33]

D. MISUSE OF THE COURTS

The Florida probate court was misused by the perjured Application for Appointment as Guardian filed on behalf of Respondent. That perjury as well as a discussion of how the Florida guardianship letters were used to conceal Respondent's criminal **exploitation** of Patricia in this Court are presented on pages 4-8 of this brief.

E. FALSE TESTIMONY

1. Respondent did not want to admit that Patricia's dementia was terminal on March 24, 2004, the day he signed the Do Not Resuscitate Order. [34] After all, this was before he had even begun taking all of the funds out of Patricia's trust account. On questioning by counsel for Petitioners, Respondent was forced to admit that Patricia's Advance Care directive only gave Respondent the authority to sign a Do Not Resuscitate Order if Patricia was unconscious or terminally ill. In order to avoid admitting that Patricia was terminal, he concocted a story that he signed it because Patricia asked him to.

"Q. So you, as her agent, were permitted to withhold or withdraw life-sustaining treatment only if she was terminally ill or permanently unconscious.
A. Yes.

Q. Did that then give you authority to sign a do not resuscitate order in March of 2004?

A. The authority for that is in this health care directive and was in the previous health care directive as I mentioned previously, and if you want, as I said, I will bring a copy of the previous one in.

Q. Where in that health care directive does it give you the authority to sign the do not resuscitate order?

A. It's not listed specifically, but since that is what mom wanted, that's what we did.

Q. So I can understand your testimony, it was that your authority came from the fact that your mother wanted a do not resuscitate order signed?

A. Absolutely.

Q. Why did she not sign the do not resuscitate order?

A. She wanted me to do it. She had me sign a lot of things for her.

Q. Now, this was March 24th of 2004. On 14 May 4th, 2004, am I correct you prepaid for your mother's funeral with a check in the amount of $7,315?

A. I believe so. I don't know. I don't have the documents in front of me.

Q. Do you need to see it to verify it?

A. If what you say is true, then it's true. If you have the documents.

Q. Soon after the do not resuscitate, March 27th of 2004, you opened a Patricia Sloan Trust account at Wachovia Bank, is that right?

A. That's correct, yes." [35]

Apparently Respondent decided that the above testimony needed some work. So for the second day of trial Respondent concocted the claim that Patricia needed wound care but in order to have a hospice nurse tend to Patricia's wounds, a Do Not Resuscitate Order had to be in place. Respondent never explained why he didn't simply hire a private nurse to tend to Patricia's wounds. This story was brought out by Respondent's attorney's prepared questions.
"Q. To get her back to Courtyard Gardens, did you have to have some type of additional help so she could stay at Courtyard Gardens?

A. Yes. The reason she couldn't go back there before was because of the wound care.

Q. By "wound," you mean the decubitus ulcers?

A. The decubitus ulcers on the back of the heels, and she had another one at the base of the little toe on the right foot while she was at the Waterford, and we found out from the hair dresser, who had a similar problem with her mom, that hospice is not only there just if you're dying or we think you're going to die within the next six months or a year, but they also could be there to take care of the wound care, and that's what was keeping mom from going back to Courtyard Gardens where she would have been happy and she was familiar with everything.

So we contacted a hospice group and got them to come in and be dressing the wound so that she could be at Courtyard Gardens again instead of another nursing home.

Q. Do you recall whether part of the requirement for hospice was to have a do not resuscitate?

A. Yes. They had to know whether or not she was going to -- she would be resuscitated if her heart stopped, if she stopped breathing.

Q. Is that how that do not resuscitate in 2004 came about?

A. Yes. It was required one way or the other.

Q. Did they take care of your mother's decubitus ulcer?

A. They did some, and the podiatrist, Doctor DiStefano, was coming in once a month to make sure that things were done right." [36]

On cross examination Respondent claimed he was told by the hospice to either sign the Do Not Resuscitate Order or they wouldn't treat Patricia's wounds: "I know I was told by them 'Do it or we don't take care of your mom.'" [37]

In Respondent's initial trial brief both incredible claims are melded together in this assertion:

> "In 2004, after Mrs. Sloan broke her hip, a Do Not Resusitate Order was executed by Louis in order to get hospice into Courtyard Gardens to care for her decubitus ulcers. The Do Not Resusitate Order was at Mrs. Sloan's wishes [sic], and Louis specifically indicated that his mother did not want to "become a vegetable." [38]

The treating physician who signed the Do Not Resuscitate Order plainly signed it in the belief that Patricia's condition was terminal. Instead of admitting the obvious truth, Respondent concocted one ridiculous story for the first day of trial and an even more ridiculous story for the second day of trial. These are desperate lies.

2. Respondent testified that Peter Gordon or a member of his firm had advised him that he could write checks to Deborah Peduto and her family members from Patricia's checking accounts. [39] Peter Gordon testified that he never got into a discussion with Respondent about how Respondent should handle Patricia's affairs. [40] Plainly, no competent attorney would have advised Respondent to deplete Patricia's trust through gifts. Respondent simply made it up.

3. In what was clearly planned testimony, in response to a question from his attorney, Respondent explained how he overcame Peter Gordon's objections about returning funds that Respondent had been instrumental in taking from the Martin Sloan Trust in 2002. This contrived, false testimony was plainly designed to misrepresent Respondent as being an upstanding individual:
"Q. The Dimensional Fund assets, what happened when you found out that it was part of a Martin Sloan Trust and wasn't your mother's trust?

A. Initially, we didn't do anything. In the beginning, Dave Craig and Louis had demanded that the money be returned to the trust, and when they mentioned that it was part of the trust because of the tax I.D. number or whatever it was, when we checked, which was after we got some of the information from the Martin Sloan Trust where we could verify it, yes, that was the case.

But they just sort of let go of that for a while, and when it came time to dismiss the case, I mentioned to Peter Gordon, I said, "Well, at this time, we should put the $75,000 back into mother's trust," and he said, "Well, it's not really necessary, and I don't know if the other side will go for it."

I said, "Well, they're the ones that asked for it near the beginning of the case. I don't think they'll have a problem with it."

So they discussed it. They put it in, and that was in the final order, and the money was returned to the Martin Sloan -- the revocable trust agreement of Martin Sloan." [41]

However, when Mr. Gordon appeared the next day to testify, Respondent's counsel attempted to prevent him from testifying by asserting the attorney-client privilege. After the privilege claim was disallowed by the Court, Mr. Gordon explained what really happened.
"Q. Did Mr. Segal come to you and ask if he should return the $75,000 that were mistakenly disbursed from that trust?

A. I'm not sure if this is exactly the issue that came up, but I do recall having a discussion with Mr. Segal during which he explained to me that a trust that had been created for the benefit of his mother, either it was terminated or some money was taken out of the trust rather than Mrs. Sloan spending her own funds, and I believe I explained to Mr. Segal that these trusts had certain tax advantages to them, and it might be better if she took her own funds and put them back into the trust because the trust wouldn't be taxed when Mrs. Sloan died, but her personal funds would.

Q. So, if I can understand, did you advise Mr. Segal to replace those funds?

A. I'm not sure if this 75,000 is the same money that we were talking about, but I do recall that Lou Segal informed me that certain funds had come out of a trust, and I advised him that they should go back in for tax purposes." [42]

The significance of this false testimony is that it plainly was concocted in advance of the trial. Respondent hadn't counted on the fact that his very testimony effectively waived any attorney-client privilege he thought he had.

4. When Ms. Peduto was asked how often she and Respondent visited Patricia at Courtyard Gardens, she answered that they visited Patricia at least once a week:
"Q. And how often would you think you or Lou would see her?

A. I was there at least once a week.

Q. And Lou?

A. He was there once a week, sometimes more." [43]

On the first day of trial Respondent testified that: "We paid her [Angela Hendricks] to spend time with mom and once a week take her out to dinner." [44] However, on the second day of trial Respondent embellished this answer:

"Q. In the time that your mother lived at Courtyard Gardens, what were your interactions with her at Courtyard Gardens?
A. Well, sometimes just come to visit. Once a week we would take her out to dinner, Deborah and I, and once a week we had a Angela Hinricks come and take her out to dinner..." [45]

5. After Patricia died Respondent consulted with his Florida attorney, Daniel J. Probst. Mr. Probst's practice is mainly wills, trusts, and estates. [46] Mr. Probst testified that he did not know any reason why Patricia's will would not be probated. He recommended that Respondent have the codicil "...admitted in Florida probate proceedings and proved through that process to be, you know, her codicil to her will." [47]

Apparently because he had already taken virtually everything from Patricia before she died, Respondent did not probate the Florida will. Despite consulting with Mr. Probst, Respondent made up the story that he is not permitted to probate the will.
"Q. After your mother's death. You never actually probated that will and/or its codicil in Florida, did you?

A. No, because I was not permitted to.

Q. Did you ever attempt to?

A. I called to find out. Unless there is real property in the name of the deceased that needs to be transferred to the name of a beneficiary, or the will is contested, it does not get probated. And since there was no real property that was in mom's name that needed to be transferred, and nobody had contested the will, there was no justification for probate.

Q. Now I'm confused. You say no justification, or you weren't permitted to.

A. Not permitted to. You have to have justification to be permitted to.

Q. It's your testimony that the State of Florida -- in the State of Florida, you were not allowed to probate that will?

A. That's true."

Q. Were you ever advised to probate that will?

A. No." [48]

Through his trial testimony Respondent has revealed himself to have little regard for the truth and the law. Respondent simply makes things up when the truth doesn't suit his purposes. Respondent's trial testimony was made under oath and recorded by the court reporter. There is no way of knowing what Respondent told Patricia when no one else was there. It is fair to assume that he told her whatever he felt would motivate her to sign the documents he prepared for her.

2.

PATRICIA'S 2001 CODICIL HAD NOTHING TO DO WITH THE MARTIN SLOAN REVOCABLE TRUST

In his brief Respondent argues that Patricia's September 26, 2001, codicil to her 1993 will had the effect of "excluding Frank and Jack and their issue entirely, both from her Will and from any exercise of the Power of Appointment therein." [49] This argument fails both on the facts and on the law. Patricia's codicil was not intended and could not operate as an amendment to the Martin Sloan Revocable Trust. The trust did not authorize Patricia to amend it in any way. Further, Jerome K. Grossman, the attorney who drafted the codicil executed on September 26, 2001, was questioned by counsel for Respondent at trial on this very issue.

"Q. What were you trying to do by that subparagraph with respect to anything that she had the power to leave to anybody?
A. This was clarifying that in the definition of "issue" in her will, that the definition of "issue" was to exclude, for all purposes, Frank Sloan and all of his issue, and Jack Sloan and all of his issue.

Q. When you say "for all purposes," would that also include a power of appointment that might have been in the original will?

A. That was not specifically discussed with her. It was really her will, so the way the -- when you can exercise a power of appointment over somebody else's will or trust, you have to usually specifically exercise it. In this particular case, it's a more general definition, and it applied to her will.

Q. Do you know if her intent was to apply to everything it was possible that she would give to her sons Jack and his heirs and Frank and his heirs?

A. My recollection is that that was consistent with her wishes." [50] [Emphasis added.]

In the final question above, counsel for Respondent uses the verb "give" which suggests a bequest, not the exercise of the power of appointment. Because Patricia was never the owner of the Martin Sloan Revocable Trust it was not hers to give.

3.

PATRICIA DEMONSTRATED LITTLE INTEREST IN EXERCISING THE POWER OF APPOINTMENT GRANTED HER IN THE THE MARTIN SLOAN REVOCABLE TRUST

Prior to the July 1, 2003, codicil that is in dispute, the last indication that Patricia had any interest in exercising her power of appointment was in her 1993 will. There is a total absence of any testimony from anyone, including the unexplained failure of Respondent, that Patricia had communicated anything to anyone about the exercise of the power of appointment. Jerome Grossman testified that the exercise of the power of appointment was not specifically discussed with Patricia in 2001. [51] In his meetings with Patricia in which he went over her August 28, 2002, will they never discussed the Martin Sloan trust. [52] There is likewise no basis for assuming that Patricia ever had any real understanding of what the power of appointment was.

Attempting to turn this lack of evidence into a positive, Respondent has persisted in arguing that wills and a codicil that are completely silent regarding the exercise of the power of appointment should be "interpreted" as if they included an exercise of the power of appointment in favor of Respondent. Petitioners' Opening Post Trial Brief addressed this claim on pages 4-7. There is absolutely no evidence that Patricia intended to exercise the power of appointment in her 2001 codicil, or in either of her 2002 wills. However, in an attempt to provide authority for his argument, Respondent relies upon the case of *Norment v. Hanson.* [53] Respondent failed to advise the court that this case was an unpublished opinion, that the portion quoted in Respondent's brief was *dicta*, or that the facts of that case are easily distinguished from this case. In particular, the case involved a will that contained an exercise of a power of appointment over a specified trust and language exercising "...any and all Power(s) of Appointment which I may have and which I may exercise by Will." [54] In this case neither of the 2002 wills mentions a power of appointment or a trust.

4.

PETITIONERS HAVE PROVEN THAT PATRICIA WAS OF WEAKENED INTELLECT AT THE TIME SHE SIGNED THE OCTOBER 18, 2002, WILL AND THE JULY 1, 2003, CODICIL.

Respondent advances the bad faith arguments that he was not in a confidential relationship with Patricia, and that he did not receive a substantial benefit under the July 1, 2003, codicil. These "issues" are discussed on pages 22-23 of Petitioners' Opening Post Trial Brief.

Respondent has misrepresented that: "This Will was executed within a day after her appointment with Dr. Altshuler, when he found her competent. (TT - 93-94, TT - 149-150)" [55] The will was executed on October 18, 2002. Dr. Altshuler testified at his deposition that Patricia's last visit to his office was on August 14, 2002, and that she was seen by his associate on that day. She had complaints of an eye hemorrhage. [56] Dr. Altshuler further testified that the last time he saw Patricia was on August 8, 2002. He said that on that date he saw no change in her mental status. [57] The citations to the trial transcript indicating record support for the assertion are references to the testimony of Respondent. In any event, there was nothing in the cited portions of Respondent's testimony that could arguably be interpreted to mean that Dr. Altshuler had found Patricia competent on October 17, 2002. The misrepresentation filled a void in Respondent's case. The was no testimony from any witness about Patricia's condition, behavior, or anything she might have said on the day she signed the Florida will, October 18, 2002. Indeed, the unexplained failure of Respondent to testify about the circumstances surrounding his drafting and the execution of the Florida will and codicil necessarily creates the inference that such testimony would have been adverse to his interests.

"The defendants' unexplained failure to produce and identify the original Merger Agreement permits the logical inference that the instrument would not support their assertions in this regard. *Wilmington Trust Co. v. General Motors Corp.*, Del. Supr., 29 Del. Ch. 572, 51 A.2d 584, 593 (1947); II Wigmore on Evidence § 291 (3d ed. 1940). It is a well established principle that the production of weak evidence when strong is, or should have been, available can lead only to the conclusion that the strong would have been adverse. *Interstate Circuit v. United States,* 306 U.S. 208, 226, 59 S. Ct. 467, 83 L. Ed. 610 (1939); *Deberry v. State,* Del.Supr., 457 A.2d 744, 754 (1983)." [58]

This is not a situation where, through discovery, a piece of evidence was readily available to both parties. Respondent is a party to this action. He was present when both the Florida will and codicil were executed. He testified at the trial of this case. His complete silence surrounding his drafting and the execution of the Florida will and codicil is quite unusual and completely unexplained. Instead of testifying about these events and subjecting himself to cross examination, Respondent said nothing other than his unsubstantiated claim that the reason Patricia didn't use a real attorney to prepare the documents was because she wanted Respondent to do it. Given the amount of Respondent's self-serving testimony at trial, it is clear that Respondent was anything but bashful about testifying.

The evidence of Patricia's dementia and episodes of confusion are plain on the face of her medical records. For example, the registered nurse who treated Patricia noted on February 24, 2003, that Patricia was forgetful and disoriented and had a limited ability to follow basic instructions due to her "degenerating mental status."[59] A discussion of the testimony regarding her episodes of confusion appears on pages 16-18 of Petitioners' Opening Post Trial Brief. There is other evidence as well of her weakened intellect even before she was taken to Florida against her will.

George R. Sturgis, Jr., worked as a security officer at Park Plaza, the building where Patricia's condo was located. He testified to an unusual pattern of behavior that predated his employment at Park Plaza:
"Q. Did she ever make any requests of you in your capacity as a security guard?

A. When she'd come back in from dinner, people from the University & Whist Club would bring her back and drop her off at the door. She'd ask us to escort her upstairs.

Q. Did she give any reasons for that?

A. She wanted her unit checked before she locked her doors.

Q. What would you do? You would go up and -

A. She'd unlock her unit, I would go in and check closets, behind the draperies, out on the balcony, under the bed, at her request.

Q. Those requests, were they ongoing since '97 when you met her, or was there a certain time when they started?

A. That started before I got there. I was told the other officers were doing that before I got there. It was a daily routine with her."[60]

"Q. Her personality remained the same?
A. Oh, yes; still humble, cheerful.

Q. Would that be true up until the date she moved to Florida?

A. No. I'm not going to say yes on that because she changed -- how can I put this. Mentally she had changed quite a bit before she went to Florida. Basically, last time speaking to her, she didn't want to go.

Q. When you say she changed, was it because she was more forgetful?

A. Yes, sir.

Q. Came down more often when she didn't have to come down?

A. Quite often.

Q. When you talked to her, did she seem alert and understand what she was doing?

A. Yes. She still seemed alert, but I could tell that it wasn't the same Mrs. Sloan I met when I first got there."[61] [Emphasis added.]

Mr. Sturgis later explained that that Patricia had complained to him that her son was coming to pick her up and take her to Florida and she didn't want to go.
“Q. Mr. Sturgis, you said Mrs. Sloan didn't want to go?

A. Those were her words.

Q. Can you elaborate on that?

A. She had mentioned to me one night, the gentleman from the Whist Club that was a waiter was coming to pick her up, and she was telling me that her son was coming to take her to Florida, and she didn't want to go.” [62] [Emphasis added.]

Respondent did not refute Mr. Sturgis' testimony:
“Q. Did your mother not want to move to Florida on that date?

A.. I was not aware of anything like that, but Mr. Sturgis said that she mentioned something like that to him, and I have no reason to think that he was lying.” [63]

Mr. Sturgis' testimony is important on several levels. It shows that Patricia was no longer in control of a major decision that had a significant impact on her life. It shows that Respondent was making the decision to move Patricia to Florida in spite of what Patricia wanted. Instead of simply telling Respondent that she refused to move to Florida, Patricia was reduced to bemoaning the fact that Respondent “...was coming to take her to Florida, and she didn't want to go.” [64]

Respondent has admitted that he had become concerned about Patricia's safety at Park Plaza because she was soliciting rides from strangers. He testified that he first learned about this in August of 2002. [65]

All the testimony from Dr. Dowie about how assertive Patricia was on small issues pales in comparison to the control Respondent was able to exercise over Patricia on this major issue. This shows without any doubt that Respondent was in a confidential relationship with Patricia. Before February of 2002, Respondent had no involvement Patricia's **financial** affairs and had never drafted so much as a letter for her to sign. However, from February of 2002, when Respondent first involved himself in Patricia's **financial** affairs and “estate planning” the evidence is overwhelming that Respondent gradually gained more and more control over Patricia and her wealth until he succeeded in placing her in Courtyard Gardens and taking total control of her **finances**, “estate planning” and over the litigation Respondent had initiated in this Court. According to Respondent, Patricia could have had a telephone installed in her unit in the Alzheimer's wing of Courtyard Gardens, but was alright not having a telephone:
“Q. Who decided that she should be placed in a locked Alzheimer's unit?

A. That was determined by the administrator or somebody under the administrator there at Courtyard Gardens.

Q. Decided that that's where she needed to be, that she was going to stay there?

A. Yeah, in the secure unit, yes.

Q. She didn't have a telephone in there?

A. That's correct.

Q. Why was she placed in a locked unit without a phone?

A. We wanted to put a phone in, and they said that it's not a good idea. If she really wants it, then fine, but if she doesn't demand it, then don't, because it gets abused sometimes.

Q. Was she okay with being put in a locked unit with no telephone?

A. Yes." [66]

Respondent also admitted that once Patricia was in Courtyard Gardens, all of Patricia's mail went to him. Respondent controlled Patricia's access to the outside world.

Dr. Weisberg testified that when he had examined Patricia she "...was a very decisive woman, somebody who knew what she wanted." [67] He said that he remembered her because "...she was such a resolute woman." [68] On August 28, 2002, he said that he didn't feel that Patricia had been coerced in any way. [69] Dr. Weisberg was quite certain that when he saw Patricia on August 28, 2002, there was no discussion about her moving to Florida and moving into an assisted living facility would not have been consistent with Patricia's intentions or desires. [70] Dr. Weisberg also testified that Patricia never indicated that she wanted to support respondent so that he could retire. [71] However, by the end of October, Respondent had moved Patricia to Florida and assumed virtually complete control over her. There is no reason to believe that Patricia was any longer capable of refusing to sign any document Respondent told her to sign.

Dr. Tavani offered opinions favorable to Respondent's case. However, there are many substantial problems with how Dr. Tavani arrived at her opinions. She relied upon a limited selection of testimony from interested parties. "Dr. Tavani also relied upon Patrick Peduto's deposition and Louis Segal and Deborah Peduto's depositions concerning her continued independent mental outlook. (TT - 340, 343, 344)" [72] She relied upon Respondent's deposition testimony instead of his trial testimony. She also relied upon things that counsel for Respondent told her. [73] She was unaware of a great amount of evidence and trial testimony. For example, she was completely unaware that Respondent had taken Patricia to live in Florida against Patricia's wishes. Without appreciating this single fact, Dr. Tavani could not possibly understand that by the time she was moved to Florida against her will, Patricia was not the strong-willed and resolute woman Dr. Tavani painted her as being.

"The other issue is that, again -- I feel like I'm repeating myself a little bit, but in terms of who this lady was, as indicated by various vignettes in the medical record, this was not a lady who was easily led. She is described by personality, characterologically, as a decisive, resolute person, who knows what she wants. She understands what she wants, and she seems to like to have control of things. That sort of a profile is not terribly easily led. As I understand it, her wishes remained pretty consistent over time. I don't know all the ins and outs of the legalities of the trusts and all that, but it sounds like she was pretty consistent with her wishes over time with regard to what she wanted." [74]

In addition to being completely unaware that Patricia did not want to move to Florida, Dr. Tavani also was unaware of Patricia's living circumstances at courtyard Gardens:
"Q. Would her not having a phone or way -- her not having a telephone to contact people change your opinion at all, that kind of change in living habits?

A. I can't even opine. I would have to know what that was about.

Q. Would moving to a state that she specifically stated that she didn't want to go - if you -- let me rephrase that. If Mrs. Sloan was moved to Florida and she said she did not want to go and was moved there anyway -- did you know that, that that occurred, and would that affect your opinion?

A. I was not aware, number one -- I will break down your question, if that is okay.

Q. Sure.

A. Number one, I was not aware that she said she didn't want to go to Florida. Number two, if she did say she didn't want to go to Florida, I would have to know what sort of discussion or dialogue transpired after that, and whether she changed her mind or she was dragged there screaming and yelling. I would have to have more information." [75] [Emphasis added.]

Dr. Tavani also "cherry-picked" the medical records to support her claim that Patricia had only mild memory problems and was a strong resolute woman who was therefore not susceptible to undue influence. She interpreted the medical records she selected in the light most favorable to Respondent. She ignored the second half of Dr. Weisberg's deposition testimony that included his unequivocal statement that Patricia did not want to move into an assisted living facility. She appears to have considered Respondent's claims as objective.
"Q. Doctor, based upon the deposition -- medical records, deposition of Doctor Weisberg, Altschuler and Dowie, and even Mr. Segal's deposition, do you have an opinion with reasonable medical probability of the neuropsychological ability of Mrs. Sloan to be unduly influenced on October the 18th of 2002?

A. Yes.

Q. What is that opinion?

A. Well, I don't think she was susceptible to undue influence. First of all, her cognitive deficit was mild. It was not so severe that she was easily led. This wasn't a person who was easily led in the first place. She clearly knew what she was doing. Doctor Altschuler thinks she is competent to sign anything. Doctor Weisberg thinks she is competent to sign the will or the codicil, or whatever it was. These are two people I know, who are respected people. Doctor Weisberg went into it, obviously, in a lot more detail, and on two separate occasions. He had no problem with this at all.

So that takes us to August the 28th, 2002. There is nothing in here to indicate that she has had any kind of a decline, any kind of a significant step downward in her cognitive abilities. And buttressing that is the fact that she gets to Courtyard Gardens, she has Doctor Dowie as a doctor, who evidently sees her pretty often, and knows her, and Doctor Dowie's opinion is that she can make her own decisions. And as I said, in my mind, these are the most objective assessments that we have, aside from what Louis says.

Q. That was as of October the 18th of 2002. Is that your -- do you have an opinion that -- is that opinion also with respect to July 1st of 2003?

A. It is. I think, really, when she went downhill some is when she broke the hip. But that wasn't until January 21st, 2004." [76] [Emphasis added.]

Pages 4-23 of this brief contain a laundry list of reasons not to trust the testimony of Respondent. Dr. Tavani never examined Patricia. Her opinions are based upon incomplete information and were compromised by her acceptance of biased information as if it were reliable.

Patricia suffered from a form of dementia that had progressed to the point that Respondent was able to take her to Florida against her will, to **exploit** her **financially** and to have her sign whatever document he drafted for her to sign. There was never any testimony from Respondent or anyone else that Patricia ever refused to sign a document Respondent took to her to sign.

In spite of the fact that Respondent prepared the Florida will and codicil and was present when they were signed, he chose to remain silent about what transpired.
"[T]he presumption of testamentary capacity does not apply and the burden on claims of undue influence shifts to the proponent where the challenger of the will is able to establish, by clear and convincing evidence, the following elements: (a) the will was executed by 'a testatrix or testator who was of weakened intellect'; (b) the will was drafted by a person in a confidential relationship with the testatrix; and (c) the drafter received a substantial benefit under the will." [77]

All three elements are plainly satisfied in this case. Delaware Courts define the elements of undue influence as "(1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect." [78] In this case the amount of influence goes beyond mere undue influence. The fact that Respondent was able to remove Patricia from her home, move Patricia to Florida against her will, place her in a secure facility against her wishes, usurp complete control of Patricia's wealth to the point of criminally **exploiting** her, and to have her sign every document respondent drafted for her to sign, moves this fact situation well beyond undue influence; this is a case of virtually unlimited control.

A strong case has been made that Respondent criminally **exploited** Patricia. A strong showing has been made that Respondent has misled and deceived the Florida probate court as well as this Court. There is no evidentiary basis for finding that Patricia ever read or understood either the Florida will or codicil. Dr. Tavani certainly never expressed an opinion whether Patricia could have read and understood either document. Neither did Dr. Dowie.

Throughout Respondent's brief the terms "competency," "weakened intellect" and "susceptible testator" are employed as if they were interchangeable concepts. Even more significantly, these are legal terms, not medical terms. This leads to misrepresentations such as this one:

> "On July 1, 2003, she was found to be fully alert and competent by Dr. Dowie as evidenced by Dr. Dowie's testimony and the medical record." [79]

In fact, nowhere in her deposition did Dr. Dowie ever offer an opinion on whether Patricia was competent. Dr. Dowie was asked by Respondent's counsel if on July 1, 2003, Patricia "...would have been able to understand the execution of wills or trusts, what they were if they were presented to her on that date?" [80]

"THE WITNESS: To be honest, I don't think it would be my decision to say that. I feel that she would have the ability to make a decision on her own care and her own properties, but to say that she would be able to --
BY MR. JACOBS:

Q. I just need to know if --

A. I mean to make any legal choices, I am not her --

Q. Lawyer?

A. -- lawyer. I mean, you know? You are kind of putting me in a comer.

Q. I wasn't looking for legally. I think you answered. She was able to make a decision --

A. Yes.

Q. -- about her own properties?

A. Yes." [81]

While Patricia may have been able to understand leaving property to someone in her will, there is no evidence that she was able to understand what her right to exercise the power of appointment meant. The exercise of such a right is a much more sophisticated and obscure concept than leaving property to a person in a will. Competency is relative to the complexity of the task at hand.

Respondent has made some unnecessary allegations against Petitioners. The charge that Frank attempted to tamper with Mr. Probst's testimony regarding Patricia's competency is false and defamatory. The letter was written well over a year before this action was commenced and speaks for itself. The testimony that Patricia told people that the reason she was not speaking to Petitioners was because they were angry about the amount of inheritance that they received from their step-father is almost certainly true. She would not have told people the truth as established in the correspondence between her and Petitioners in 1990 that Petitioners broke off the relationship because Patricia refused to agree to be treated by a competent psychiatrist. It also doesn't make much sense for Petitioners to be angry at Patricia over a generous bequest from their step father, Martin Sloan. Similarly, Patricia may well have made up the story about jewelry missing after Frank's daughter visited. This story positioned Patricia as a victim of outrageous conduct and explained why she had no relationship with her granddaughter.

5.

CONCLUSION

Respondent criminally **exploited** Patricia taking virtually everything she owned from her well before she died. There isn't a single good reason for this Court of equity to reward him with the remainder of the Martin Sloan Revocable Trust.

CARUCCI BUTLER, LLC

/s/ Matthew M. Carucci, Esq.

Matthew M. Carucci, Esq. (4529)

1216 N. King Street

Wilmington, DE 19801

P: 302.654.5083

F: 302.654.5084

mcarucci@caruccibutler.com

19 February 2009

Footnotes

1 Respondent's Opening Trial Brief, p. 16.

2 Respondent's Opening Trial Brief, p. 12.

3 Respondent's Opening Trial Brief, p. 33.

4 *In re Estate of Golden*, *4, 1997 Del. Ch. LEXIS 155 (Del. Ch. Oct. 17, 1997).

5 *Bodley v. Jones*, 30 Del. Ch. 480, 59 A.2d 463, 469; (Del. 1947).

6 *In re Estate of Fooks*, *4-5, 1997 Del. Ch. LEXIS 189 (Del. Ch. Aug. 30, 1999).

7 Deposition of Daniel Probst, page 28.

8 Joint Exhibit 19.

9 Trial Transcript, Vol. II, p. 186.

10 Trial Transcript, Vol. II, pp. 185-186.

11 Respondent's exhibit 3.

12 Trial Transcript, Vol. I, pp. 111-115.

13 Trial Transcript, Vol. I, p. 109.

14 Trial transcript, Vol. I, p. 54.

15 Trial transcript, Vol. I, pp. 54, 112.

16 Trial transcript, Vol. I, p. 54.

17 Trial transcript, Vol. I, p. 56.

18 Trial transcript, Vol. I, pp. 57-58.

19 Trial transcript, Vol. I, p. 58.

20 Trial transcript, Vol. I, p. 156.

21 Trial transcript, Vol. I, p. 102

22 Trial transcript, Vol. II, p. 193.

23 Trial transcript, Vol. I, pp. 99-101.

24 Deborah L. Peduto deposition, p. 4.

25 Deborah L. Peduto deposition, pp. 44-45.

26 Deborah L. Peduto deposition, p. 64.

27 Deborah L. Peduto deposition, pp. 73-74.

28 Deborah L. Peduto deposition, p. 46.

29 "Fla. Stat. § 825.103. *Exploitation of an elderly person or disabled adult; penalties.*

(1) "Exploitation of an elderly person or disabled adult" means:

(a) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult; or

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

(2) (a) If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult is valued at $ 100,000 or more, the offender commits a felony of the first degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(b) If the funds, assets, or property involved in the **exploitation** of the **elderly** person or disabled adult is valued at $ 20,000 or more, but less than $ 100,000, the offender commits a felony of the second degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(c) If the funds, assets, or property involved in the **exploitation** of an **elderly** person or disabled adult is valued at less than $ 20,000, the offender commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084." [Emphasis added.]

30 26 USC § 7201: *Attempt to evade or defeat tax.*

> "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $ 100,000 ($ 500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution."

31 Trial transcript, Vol. I, pp. 54, 112.

32 Trial transcript, Vol. I, p. 116.

33 18 USC § 1956: *Laundering of monetary instruments.* "(a)
(1) Whoever, knowing that the property involved in a **financial** transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a **financial** transaction which in fact involves the proceeds of specified unlawful activity--(A)
(i) with the intent to promote the carrying on of specified unlawful activity; or
(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986 [26 USCS § 7201 or 7206]; or
(B) knowing that the transaction is designed in whole or in part--
(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
(ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $ 500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a **financial** transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement."

34 Petitioner's Exhibit 1.

35 Trial transcript, Vol. I, pp. 125-126.

36 Trial transcript, Vol. II, pp. 213-214.

37 Trial transcript, Vol. II, p. 239.

38 Respondent's Opening Post Trial Brief, p. 9.

39 Trial transcript, Vol. I, p. 102.

40 Trial transcript, Vol. II, p. 193.

41 Trial transcript, Vol. I, pp. 148-149.

42 Trial transcript, Vol. I, pp. 188-189.

43 Deborah L. Peduto deposition, pp.15-16.

44 Trial transcript, Vol. I, pp. 131-132.

45 Trial transcript, Vol. II, p. 210.

46 Daniel J. Probst deposition, p.5.

47 Daniel J. Probst deposition, p.28.

48 Trial transcript, Vol. I, pp. 96-97.

49 Respondent's Opening Trial Brief, p. 4.

50 Trial transcript, Vol. II, pp. 181-182.

51 Trial transcript, Vol. II, p. 181.

52 Deposition of Dr. Jay G. Weisberg, p. 31.

53 1981 De. Ch. LEXIS 500, (Nov. 24, 1981). The result appears to have been affirmed in *Dutra De Amorim v. Norment,* 460 A.2d 511, (Del. 1983). Respondent's discussion of this case appears on pages 27-28 of Respondent's Opening Post Trial Brief.

54 *Norment v. Hanson, supra,* at page 3.

55 Respondent's Opening Trial Brief, pp. 7-8.

56 Deposition of Dr. Robert G. Altshuler, p. 4.

57 Deposition of Dr. Robert G. Altshuler, p. 7.

58 *Smith v. Van Gorkom,* 488 A.2d 858, 878-879, Fed. Sec. L. Rep. (CCH) P91921, 46 A.L.R.4th 821 (Del. 1985); over-ruled in part on unrelated issue, *Gantler v. Stephens,* 2009 Del. LEXIS 33 (Del. Jan. 27, 2009).

59 Home Health Certification and Plan of Care, Attached to the Deposition of Dr. Lori Lynn Dowie as Exhibit I.

60 Trial transcript, Vol. I, pp. 8-9. Perhaps the most significant portion of Mr. Strugis' testimony came out when he was cross examined by counsel for Respondent:

61 Trial transcript, Vol. I, pp. 15-16.

62 Trial transcript, Vol. I, p. 17.

63 Trial transcript, Vol. I, pp. 90-91.

64 Trial transcript, Vol. I, p. 17.

65 Trial transcript, Vol. I, pp. 70-71.

66 Trial transcript, Vol. I, pp. 103-104.

67 Deposition of Dr. Jay G. Weisberg, p. 5.
68 Deposition of Dr. Jay G. Weisberg, p. 7.
69 Deposition of Dr. Jay G. Weisberg, p. 9.
70 Deposition of Dr. Jay G. Weisberg, p. 27.
71 Deposition of Dr. Jay G. Weisberg, p. 28.
72 Respondent's Opening Trial Brief, p. 12.
73 Trial transcript, Vol. II, pp. 374-375.
74 Trial transcript, Vol. II, p. 348.
75 Trial transcript, Vol. II, pp. 363-364.
76 Trial transcript, Vol. II, pp. 386-388.
77 *Melson v. Melson (In Re Will of Melson)*, 711 A.2d 783, 788 (Del. 1998).
78 *Melson*, 711 A.2d at 787.
79 Respondent's Opening Trial Brief, p. 9.
80 Deposition of Dr. Lori Lynn Dowie, p. 26.
81 Deposition of Dr. Lori Lynn Dowie, p. 26.

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