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8 Attorneys for Proposed Conservatee,
9 Ellen Frenkel

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13

14 In re the) Case No. BP 168417
15)
16 CONSERVATORSHIP OF THE PERSON) **Report of PVP Attorney**
17 AND ESATE OF ELLEN FRENKEL,)
18) Date: November 30, 2015
19 Proposed Conservatee) Time: 10:30 a.m.
20) Dept: 9
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1 **1. Appointment.** I was appointed on November 25, 2015 to serve as the PVP
2 attorney for the proposed conservatee, Ellen Frenkel (the "proposed conservatee").

3 **2. Disclosures.** I am an active member of the State Bar of California. No
4 disciplinary action against me is now pending and none has ever been filed against me.
5 I have professional liability insurance coverage. I have never represented any party to
6 this proceeding.

7 **3. Background**

8 **a. The Other Players**

- 9
- 10 • Michelle Frenkel – The proposed conservatee's adult granddaughter, who is the
11 petitioner herein and one of the two alternate proposed conservators. Michelle is a
12 resident of Australia and lives about a 2-1/2-hour drive away from where the
13 proposed conservatee lived when she was in Australia.
14

- David Frenkel – The proposed conservatee’s adult son (and Michelle’s father), who lives in Boston, Massachusetts, and whose interests are 100% aligned with Michelle.
- Miriam Fehring – The proposed conservatee’s adult daughter, who lives in Topanga, Los Angeles County. For about three years, until a just a few months ago, Miriam lived with the proposed conservatee in Australia and was her self-appointed caretaker.
- Monique Cain – A professional fiduciary, and the other alternative proposed conservator.

b. The Proposed Conservatee

The proposed conservatee is an 89-year-old female who is currently residing with Miriam. Until very recently, the proposed conservatee was a resident of Australia, living in or around Melbourne since 1939. A few months ago, Miriam brought the proposed conservatee to California to live with her, her husband and their 23-year-old son in Topanga. The proposed conservatee has limited mobility and is dependent on others for all activities of daily living. She is also suffering from moderate to severe Alzheimer’s Disease.

4. Interview of Proposed Conservatee and Miriam

a. Miriam. I met with Miriam and the proposed conservatee at their residence in Topanga on Friday, November 27th. I first met alone with Miriam, who, not unexpectedly, told me a story that was diametrically opposed to that told by Michelle. To make a long story short and to the point, each side (Michelle/David vs. Miriam) is accusing the other of lying, and each side claims to be able to offer the best care for the proposed conservatee.

b. The Proposed Conservatee. I next met with the proposed conservatee semi-alone. I attempted to meet with her alone, but she became agitated in speaking to a stranger without anyone familiar around, so I invited Miriam’s husband back into the room, which calmed the proposed conservatee down considerably. Miriam

1 was not present until the end of the interview. A cup of coffee and a peanut butter
2 sandwich on raisin bread greatly improved the proposed conservatee's memory and
3 ability to converse with me, and I was able to learn the following from my conversation
4 with and observation of the proposed conservatee:

- 5 • She is a poor historian, both long-term and short-term, although she was able to
6 accurately recount her exact date of birth and the country where she was born and
7 raised (Germany). She could not tell me in which country she was presently.
- 8 • She knew the names of her two children (Miriam and David), but only with
9 prompting. Ditto for her granddaughter, Michelle.
- 10 • When I asked the proposed conservatee if she wanted to move back to her home
11 in Australia, but without Miriam, she became visibly agitated and was shaking.
- 12 • When I asked her if she wanted to live with Miriam, she replied yes and calmed
13 down considerably.
- 14 • At the end of the interview, Miriam returned and asked her mother where she
15 wanted to live. The proposed conservatee replied, "Wherever you [Miriam] are." I
16 took that with a large grain of salt as it appeared to be a programmed response.
- 17 • The proposed conservatee appears adequately cared for, fed properly and
18 appropriately groomed and dressed, and her room appears suitable, if a bit
19 cluttered and untidy.

20 **5. Voluminous Documentation and Correspondence.** In the 96 hours
21 since my appointment, I had a lengthy phone conversation with Marc Hankin (Michelle's
22 attorney of record) and a long talk with Miriam. I have also been bombarded with not less
23 than more than 60 e-mails from the parties and their various supporters, together with
24 nearly 1,000 pages of documentation. And counting.

25 **6. Prior Conservatorship Proceedings in Australia**

26 **a. VCAT Proceedings and Decision.** This is not the first go-around
27 for the parties. Back on May 5, 2014, David initiated proceedings vis-à-vis the proposed
28 conservatee with the Victorian Civil and Administrative Rights Tribunal (VCAT) in

1 Melbourne, Australia. Based on my review of the documents, this appears to be in many
2 ways similar to the current proceedings, albeit an administrative, non-judicial, proceeding.
3 On June 25, 2015, VCAT issued a lengthy, thorough and detailed written decision that
4 affirmed its prior order appointing the State Trustees (akin to our Public Guardian) as, in
5 effect, guardian of the estate of the proposed conservatee. No guardian (aka
6 conservator) of the person of the proposed conservatee was appointed, leaving Miriam in
7 de facto control of that aspect of the proposed conservatee's life. Here are some selected
8 tidbits from VCAT's written decision that are relevant to the current proceeding:

- 9 • It was evident to [the VCAT investigator] that, while Mrs. Frenkel was currently
10 comfortable and well cared for in her home with her daughter [Miriam] there, there
11 was a high degree of conflict and hostility associated with financial decisions and
12 future accommodation decisions. She noted that this conflict was causing some
13 limitation in the contact Mrs. Frenkel had with other family members and friends.
14 (Para. 6.)
- 15 • This [Mrs. Frenkel's capacity to make reasonable judgements about her personal
16 circumstances] was the most contentious issue. It is also an issue to which there is
17 no easy answer. In conducting this hearing I have become well aware that
18 Mrs. Frenkel's family hold very different ideas about what is in her best interests,
19 and different views as to the key decision before her, that of whether or not she
20 travels to the USA to live for the time being with her daughter. Much of the medical
21 and psychological evidence went to this question. Indeed much of it was sought
22 specifically as to this question. (Para. 39.)
- 23 • By order dated 6 November 2014, I appointed State Trustees Limited (STL) as
24 administrators. STL submitted a report to the hearing . . . [that] set out steps taken
25 since appointment to make arrangements for appropriate payments for household
26 and other expenses. Mr. Jason Molik, Senior Consultant for STL, said at the
27 hearing . . . that there would be some difficulties in acting as administrator for
28 someone who was not living in Australia, but that these were not insurmountable

1 in this age of electronic banking. Mrs. Frenkel's main asset is in Victoria, she has a
2 regular and ample income from the combination of her Centrelink benefit and her
3 overseas pension, and money could be made available to her according to an
4 agreed budget. Any additional expenditure would be approved by STL on the
5 basis of invoices forwarded to STL before payment was made. Mr. Molik
6 confirmed . . . that the arrangement would work, and that an agreement could be
7 made with [Miriam] about an appropriate regular amount for board, or fortnightly
8 expenses. (Para. 86.)

9 **b. Denial of Rehearing.** VCAT denied David's petition for rehearing by
10 written decision issued on August 15, 2015.

11 **c. Aftermath.** Just prior to August 15th, fearing that VCAT would issue
12 a restraining order preventing her from moving the proposed conservatee to California,
13 Miriam did just that and moved back home to Topanga, taking her mother with her.

14 Miriam and the proposed conservatee continue to receive a monthly stipend from the
15 State Trustees of about \$2,100 - \$2,200 (U.S.) per month, depending on the exchange
16 rate with the Australian dollar.

17 **7. Proposed Conservatee's Attendance at Hearing.** It is unclear if the
18 proposed conservatee desires to attend the hearing. I asked Miriam to bring her mother
19 to the hearing, if at all possible. Nonetheless, if the proposed conservatee is not present,
20 then her appearance should be waived.

21 **8. Overview and Basis for Recommendation**

22 **a.** The proposed conservatee's finances and assets are under the
23 control of the State Trustee in Australia,¹ and will remain so for two more years. (The
24 order appointing the State Trustee will expire on November 5, 2017.) Having the State
25 Trustee control the proposed conservatee's finances is a good thing, as it is fairly clear
26 that Miriam took some \$125,000 (AUS) from her mother during the three years they were

27 ¹ Attached hereto as **Exhibit A** is a copy of the State Trustee's annual report for the
28 fiscal year ended November 5, 2015.

1 living together in Melbourne, which including a significant period of time after the
2 proposed conservatee's initial dementia/Alzheimer's diagnosis.

3 **b.** Miriam receives a monthly stipend and can, and does, submit
4 invoices for extraordinary expenditures to the State Trustee for approval and payment. In
5 fact, the State Trustee has declined to pay some of the invoices that Miriam submitted,
6 much to her chagrin.

7 **c.** When VCAT's order appointing the State Trustee as, in effect,
8 conservator of the proposed conservatee's estate expires in November 2017, Michelle
9 and David are free to re-file a conservatorship petition with this Court, if they wish to
10 continue to restrict Miriam's access to the proposed conservatee's funds.

11 **d.** The proposed conservatee can communicate a little bit verbally, but
12 understands little of what is said to her. She also has significant impairment to her
13 memory, both long-term and short-term.

14 **e.** The proposed conservatee is unable to function without assistance,
15 has lost most of her mobility and needs assistance with all activities of daily living. She
16 has absolutely no ability to make any medical or financial decisions for herself.

17 **f.** The proposed conservatee has no understanding of the proposed
18 conservatorship and is incapable of either approving or opposing it.

19 **g.** The proposed conservatee has no Advance Health Care Directive in
20 place,² no medical insurance and no one with the authority to make medical decisions for
21 her. According to Miriam, all this will change when the proposed conservatee's
22 immigration application is approved "in a few months." At that time, according to Miriam,
23 she will be able to enroll the proposed conservatee with Kaiser Permanente. In the
24 meantime, the proposed conservatee has had several emergency room visits and at least
25 one several-day hospital stay.

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28 ² The proposed conservatee executed an Advance Directive on August 31, 2001, but it is
in the nature of a POLST, and does not name a health care agent.

1 **h.** Whatever else may happen, there is no reason to appoint Michelle
2 as the proposed conservatee's conservator. She has a husband and young child in
3 Australia and has returned there. It would be nigh impossible for Michelle to take care of
4 her grandmother from the other side of the International Date Line.

5 **i.** The proposed conservatee is not a citizen of the United States and
6 thus the issue of her ability to complete an affidavit of voter registration with assistance is
7 moot.

8 **7. Conclusion and Recommendations**

9 **a.** Although she is capable of attending the hearing, and I have
10 requested Miriam to bring her mother to the hearing, the proposed conservatee's
11 appearance at the hearing should be waived.

12 **b.** The proposed conservatee is unable to approve or oppose the
13 petition.

14 **c.** A temporary conservatorship is necessary at this time because the
15 proposed conservatee has no ability to attend to her health care needs and is uninsured,
16 and there is no less restrictive alternative.

17 **d.** In light of the proposed conservatee's uninsured medical status, I
18 recommend that Monique Cain be appointed as her temporary conservator (person only)
19 to oversee the proposed conservatee's health care, attempt to obtain medical insurance
20 for the proposed conservatee (or, alternatively, determine if she can be enrolled with
21 Kaiser Permanente), and oversee the proposed conservatee's application for permanent
22 resident status here in the U.S.³

23 **e.** The petition to appoint a temporary conservator of the proposed
24 conservatee's estate should be dismissed without prejudice.

25 **f.** JTDs no. 10 and 11 should be denied as moot if only a
26 conservatorship of the person is ordered.

27 _____
28 ³ I have worked with Ms. Cain in the past and find her suitable and qualified.

1 **g.** JTDs no. 12 – 19 and 22 – 24 should be denied as either an
2 impermissible interference with the temporary conservator’s discretion and authority, an
3 unnecessary and ill-advised attempt to relitigate the proceedings held before and the
4 decision made by VCAT, or both.

5 **h.** JTD no. 25 should be denied as an impermissible interference with
6 the PVP attorney’s discretion and authority.

7 **8. Request for PVP Fees and Discharge**

8 I am neither requesting PVP fees nor a discharge at this time.

9
10 Dated: November 29, 2015

DUSHKES LAW CORPORATION

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13 By: /s/ Larry S. Dushkes
Larry S. Dushkes, Esq.

14 Attorneys for Proposed Conservatee,
15 Ellen Frenkel
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Executed this 29th day of November, 2015, at Westlake Village, California.

LARRY S. DUSHKES

EXHIBIT A

Mrs Ellen Frenkel
179 Comanche
TOPANGA CALIFORNIA 90290 UNITED STATES

OUR REFERENCE
4709047-521-STRAUD

YOUR REFERENCE
CONTACT
David Straughair

TELEPHONE
9667 6444

DATE
6 November 2015

Dear Mrs Frenkel

We are pleased to enclose a financial statement that discloses the income and expenditure on this account between 06/11/2014 and 05/11/2015.

The first page of the enclosed statement details assets and shows the closing balance of the common fund account(s). The remaining pages detail the receipts and expenses during this period.

Statement Overview (from 06/11/2014 to 05/11/2015)

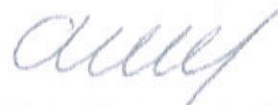
Plus total income	\$130,156.03
Minus total expenditure	\$79,890.51
Closing balance of the common fund	\$50,265.52

Interest is calculated daily on the total balance of common fund accounts and is credited monthly.

Need assistance?

If you have any questions or would like more information, please call (03) 9667 6444 between 8:30 am and 5:00 pm, Monday to Friday. Alternatively, you can email us at pfaexternal@statetrustees.com.au

Yours sincerely



Nes Aliu on behalf of
David Straughair

Personal Financial Consultant

To obtain a copy of State Trustees' Privacy Policy Statement please contact us on (03) 9667 6444 or view the Statement on our website at www.statetrustees.com.au

Ellen Frenkel (Plenary) - 4709047
Asset and Liability Statement as at 5 November 2015

DETAILS	VALUATION DATE	UNITS	LIABILITIES	ASSETS	BALANCE
INTEREST BEARING HOLDING					
Bank Account Holding					
WBC 033-034 **5528				26.85	
	22-DEC-14				
WBC 033-034 **0379				1,000.00	
	07-AUG-15				
WBC 733-126 **9242				512.50	
	22-DEC-14				
WBC 733-305 **8707				50.00	1,589.35
	03-FEB-15				
PERSONALTY					
Furniture and Effects Holding					
F/E @ 47 Deakin St BENTLEIGH EAST VIC 3165				5,719.00	5,719.00
	20-JUL-15				
Motor Vehicle Holding					
2006 Mazda 2 Hatchback reg. UMK219				3,000.00	3,000.00
	22-JUL-15				
REALTY					
House and Land Holding					
47 Deakin St BENTLEIGH EAST VIC 3165				705,000.00	705,000.00
	10-DEC-14				
STATE TRUSTEES - COMMON FUNDS					
Cash Common Fund Total					
Common Fund				50,265.52	50,265.52
	05-NOV-15				
Totals			\$0.00	\$765,573.87	\$765,573.87

Ellen Frenkel (Plenary) - 4709047
Statement of Account for the period 06 November 2014 to 05 November 2015

DETAILS	DEBITS	CREDITS	BALANCE
RECEIPTS			
Interest On Common Fund No 2		372.78	372.78
Income From Real Estate		5,214.00	5,214.00
Annuity / Allocated Pension		24,134.61	24,134.61
Pension - Department Veteran's Affairs		19,655.53	19,655.53
Totals		\$49,376.92	\$49,376.92
CAPITAL RECEIPTS			
Refund of Overpaid Account		894.17	894.17
Bank Accounts (Cheque & Savings etc.)			
WBC 733-305 **8707			
09/02/15		3,191.61	
WBC 033-034 **0379			
24/02/15		10,000.00	
28/04/15		10,000.00	
14/08/15		56,693.33	79,884.94
Totals		\$130,156.03	\$130,156.03
EXPENSES			
Insurance - Motor Vehicle	912.57		912.57
Repairs And Maintenance - Motor Vehicle	983.95		983.95
Running Costs - Motor Vehicle	206.65		206.65
Accountancy Fees	1,500.00		1,500.00
Bank Fees	48.00		48.00
VCAT Annual Administration Fee	122.40		122.40
State Trustees Income Commission	2,372.92		2,372.92
State Trustees Capital Commission	4,038.96		4,038.96
State Trustees Management Fee	151.01		151.01
Legal Fees - External	6,249.61		6,249.61
Attendant Care Fees	207.20		207.20

Ellen Frenkel (Plenary) - 4709047
Statement of Account for the period 06 November 2014 to 05 November 2015

DETAILS	DEBITS	CREDITS	BALANCE
EXPENSES			
Chemist (Medical)	2,264.97		2,264.97
Mobility Aides & Equipment	857.78		857.78
Podiatry	79.95		79.95
Hospital Fees	3,566.43		3,566.43
Medical Fees - Deductable	350.37		350.37
Medical Fees - Non Deductable	787.00		787.00
Board & Lodging Fees	2,308.00		2,308.00
Holiday/Travel Expenses	15,609.53		15,609.53
Living Expenses	22,500.00		22,500.00
Home Help/Meals On Wheels Expenses	1,590.50		1,590.50
Home Help	54.90		54.90
Meals on Wheels	229.10		229.10
Meals	600.60		600.60
Insurance - Contents	429.79		429.79
Reimbursement Of Expenses	153.86		153.86
Infringement Notices	28.14		28.14
Agents Commission On Income	344.13		344.13
Council Rates	1,125.95		1,125.95
Letting Fees	440.00		440.00
Building & Contents Insurance	407.59		407.59
Property Repairs/Maintenance	3,322.35		3,322.35
Solicitors Fees & Expenses	1,162.00		1,162.00
Rubbish Removal	1,220.10		1,220.10
Cleaning Expenses	165.00		165.00
Gardening	400.00		400.00
Sundries Taken By Agent	15.60		15.60
Title Search Fees	72.10		72.10

Ellen Frenkel (Plenary) - 4709047
Statement of Account for the period 06 November 2014 to 05 November 2015

DETAILS	DEBITS	CREDITS	BALANCE
EXPENSES			
Valuation Fees	823.75		823.75
Water And Sewerage Rates	596.00		596.00
Electricity Expenses	452.28		452.28
Gas Expenses	111.55		111.55
Telephone Expenses	315.61		315.61
Delivery Charges	56.05		56.05
GST Expense on STL Fees	656.26		656.26
Totals	\$79,890.51	\$130,156.03	\$50,265.52