

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X
In the Matter of the Application of

_____,
as Guardian of

Index No.

PETITION

An Incapacitated Person,
To Discover Property.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____:

The Petition of _____, Guardian herein, with offices at _____, New York _____, respectfully shows:

1. That Pursuant to Mental Hygiene Law section 81.43, your Petitioner respectfully states to the Court that this proceeding is commenced to discover property of the incapacitated person in a sum in excess of \$_____, upon information and belief, being withheld by _____ and _____ and which property should be delivered to Petitioner as Guardian of _____; and, pursuant to Mental Hygiene Law section 81.23 and/or CPLR sections 6301 and 6313 for a temporary restraining Order and preliminary injunction to be granted by the Court in connection with the various accounts of _____ and _____ in which the incapacitated person's property is held by them.

2. That your Petitioner makes this application for an Order directing, *inter alia*, an inquiry be held regarding assets of the incapacitated person in the possession of _____ and _____ either individually, jointly or severally with any other person more particularly unknown to your Petitioner, and directing that said _____ and _____ attend the inquiry and be examined accordingly, and to deliver the property if in their control.

3. That your Petitioner was appointed Guardian of _____, by an Order of this Court granted the ___ day of _____, 20___, by Mr. Justice _____. A photocopy of the said Order is annexed hereto and made a part hereof, marked Exhibit "A." That pursuant to the aforesaid Order, she qualified to act as such Guardian by giving a bond with the _____ Surety Co. (Bond # _____) as surety thereon in the penal sum of \$_____. The surety is in as good financial standing as when the bond was given. That the Commission to Guardian issued from the Court on the ___ day of _____, 20___.

4. That your Petitioner has acted as Guardian since the aforesaid date of her qualification, to wit _____, 20___, and continues to so act.

5. That the incapacitated person has no known distributees.

6. That the interested parties in this matter are:

- a) [Name]
An Incapacitated Person
[Address]
- b) [Name]
Respondent
[Address]
- c) [Name]
Respondent
[Address]
- d) _____ Surety Company
Surety
Bond # _____
[Address]
- e) The Bureau of the Public Debt
United States Treasury
Washington, D.C. 20239
- f) _____ Savings Bank
[Address]
- g) _____ Savings Bank
[Address]

7. That the incapacitated person is confined to _____ Nursing Home since her physicians have determined that it is in the best interests of her health and welfare that she remain so confined rather than be returned to the community. That the costs of maintaining her at the said facility amount to the sum of approximately \$ _____ per month or \$ _____ per day. That your Petitioner has received correspondence from the said facility, a copy of which is annexed hereto and made a part hereof, marked Exhibit "B," that effective _____, 20____, its charges for services rendered to the incapacitated person will be increased to the sum of \$ _____ per day.

8. That the incapacitated person's only income is Social Security benefits in the approximate sum of \$ _____ per month and pension benefits in the approximate sum of \$ _____ per month.

9. That since the commencement of your Petitioner's service as Guardian herein, she has collected liquid assets of the incapacitated person in the approximate sum of only \$ _____.

10. That all of the aforesated assets and income are subject to the debts of the incapacitated person; and since the qualification of your Petitioner as Guardian hereunder, she has made

disbursements on behalf of the incapacitated person for administrative expenses, expenses for the care and maintenance of the incapacitated person, and expenses in connection with the maintenance of the incapacitated person's unproductive real property at _____, _____, New York, aggregating the total sum of approximately \$_____.

11. That your Petitioner is presently in possession of the balance of only \$_____, property of the incapacitated person, which sum is estimated to be sufficient to maintain the incapacitated person for a period of only 2 months.

12. That the incapacitated person is in desperate need of funds to assure her personal welfare and well-being.

13. That upon information and belief, _____ and/or her son _____, since on or about _____, 20__, had been, without legal authority, managing the affairs of the incapacitated person and her sister, _____, now deceased.

14. That annexed hereto and made a part hereof, marked Exhibit "C," is a listing of known accounts of the incapacitated person. At or about _____, 20__, when _____ began her management of the incapacitated person's assets, it is estimated that the said accounts contained the sum of at least \$_____; it is conservatively estimated that the simple interest earned on the aforesaid sum between _____, 20__ and _____, 20__, amounts to approximately \$_____; during the same period, the incapacitated person received Social Security and pension benefits estimated at approximately \$_____; all of which sums aggregate the total sum of \$_____ and should be chargeable to _____. (The accounts reflect that the total amount of withdrawals made therefrom during the same period amount to \$_____.) The Court Evaluator appointed in the proceeding for the appointment of a Guardian of _____, to wit, _____, accounted to the Court on behalf of _____ for disbursements made by _____ in the sum of \$_____, and your Petitioner collected assets amounting to approximately \$_____ as of _____, 20__. Annexed hereto and made a part hereof, marked Exhibit "D," is a photocopy of the Court Evaluator's accounting. Consequently, _____ may be credited with the total sum of \$_____. It is respectfully submitted to the Court that there is a shortfall in the sums delivered to your Petitioner by _____ in the sum of \$_____, all of which is property of _____, the incapacitated person herein, and all of which, together with accrued interest thereon, should be turned over to your Petitioner as Guardian of _____.

15. Upon information and belief, the incapacitated person and her sister, _____, had, on or about _____, 20__, executed a Power of Attorney to _____ over _____ Savings Bank accounts numbered _____, _____ and _____, entitled "_____." The incapacitated person's sister, _____, died on _____, 20__, and thus _____ became the sole owner of the said accounts. The sums present in the aforesaid accounts as of _____, 20__, and/or _____, 20__, are more particularly unknown to your Petitioner and the withdrawals from the said accounts are also unknown. Consequently, it is submitted to the Court that the sums withdrawn from the said accounts by _____ and/or _____, together with accrued interest thereon, are property of the incapacitated person and should be turned over to your Petitioner as Guardian of _____.

16. That _____ stated to both the Court Evaluator and your Petitioner on separate occasions that the incapacitated person was the owner of certain United States Treasury bills held in "Treasury Direct" account number _____, entitled "_____." The Court Evaluator in her accounting estimated the Treasury bills at \$_____. On or about _____, 20__, the account contained securities with a face value of \$_____. Despite her admission that the proceeds of the said account are not her property, _____ has failed and refused to execute the release required by the Bureau of the Public Debt to enable your Petitioner to collect the said sum which is property of the incapacitated person. Furthermore, contrary to what _____ stated to the Court Evaluator as set forth in her accounting, upon information and belief, the interest income from the said securities is being directly deposited to account number _____ at _____ Savings Bank held in the name of _____, either individually or jointly with another person, not the incapacitated person, and no part of said interest income is being received by the incapacitated person although same is legally hers. Upon information and belief, the account was opened by _____ in 20__ or 20__. Consequently, _____ is in possession and control of interest income, together with accrued interest thereon in a sum more particularly unknown to your Petitioner but estimated to be approximately \$_____. That the aforesaid interest sum and the principal of the account, to wit \$_____, together with interest thereon, is property of the incapacitated person and should be turned over to your Petitioner as Guardian of _____.

17. That your Petitioner is of the belief that _____ and _____ are in possession of the sum of approximately \$_____, which sum is property of the incapacitated person. That in the course of the investigation commenced by your Petitioner in connection with the collection of the assets and income of the incapacitated person, your Petitioner, by examining copies of federal income tax returns for certain of the years between 20__ and 20__, estimated that the incapacitated person, her deceased sister, _____, and her deceased brother, _____, were in possession of the sum of approximately \$_____ to \$_____. As a result of the examination of the aforesaid tax returns, your Petitioner made further inquiry and discovered that _____ and _____ maintain "Treasury Direct" account number _____, which account contained as of _____, 20__, securities in the face amount of approximately \$_____. The account has been in existence since 20__ or 20__. It is submitted that the principal of the said account and interest earned thereon, together with accrued interest to date, is the property of _____, the incapacitated person herein, and is not the property of _____ or _____. It is estimated that the interest paid against the said sum since 20__ amounts to approximately \$_____. That the aforesaid sums together with interest thereon are property of the incapacitated person and should be turned over to your Petitioner as Guardian of _____.

18. Furthermore, that _____ has, upon information and belief, on _____, 20__, _____, 20__ and _____, 20__, closed various "Treasury Direct" accounts, among which are those numbered _____ and _____ maintained in her name and in the name of the incapacitated person and/or the incapacitated person's deceased sister, _____, and has transferred the proceeds of said accounts to accounts in her name and/or in her name jointly with her son, _____. By reason of the foregoing, Petitioner is of the belief that Respondents may attempt to transfer the said funds, thereby impeding, obstructing and hindering these proceedings and causing irreparable harm to the incapacitated person.

19. That the passbook for _____ Savings Bank account number _____, entitled “_____,” had been delivered to your Petitioner by _____ on _____, 20___. On the said date, _____ stated to your Petitioner that the funds in the said account are property of the incapacitated person. That the said Bank has required a sworn release be executed by _____ so that the account can be closed and collected by your Petitioner and deposited to the Guardian’s account. That _____ has failed and refused to execute the affidavit required by _____ Savings Bank, thereby depriving the incapacitated person of assets which are rightfully hers. That the balance of the account is approximately \$_____, which sum is under the control of _____. That the aforesaid sum together with interest thereon is property of the incapacitated person and should be turned over to your Petitioner as Guardian of _____.

20. That on _____, 20___, your Petitioner met with the Court Evaluator and _____, attorney for _____, at which time Mr. _____ delivered to your Petitioner two passbooks of _____ Savings Bank for accounts numbered _____ and _____, entitled “_____” with an aggregate balance of approximately \$_____, which passbooks _____ had previously failed and refused to disclose to either the Court Evaluator or myself. The passbooks indicated that withdrawals had been made from the said accounts amounting to \$_____, none of which has been accounted for by _____. That the aforesaid sum together with interest thereon is property of the incapacitated person and should be turned over to your Petitioner as Guardian of _____.

21. That since the date of the Court Evaluator’s accounting, additional assets and withdrawals made therefrom, all of which were under the control of _____, have been identified. _____ failed and refused to disclose to either the Court Evaluator or your Petitioner the existence of various assets. At the commencement of your Petitioner’s service as Guardian hereunder, _____ failed and refused to deliver any assets to your Petitioner, and after correspondence and numerous telephone calls to _____, she agreed to meet with your Petitioner at her apartment premises on _____, 20___, to turn over various assets. On the said date, _____ failed and refused to turn over passbooks for several accounts of the incapacitated person; and upon information and belief, she is still in possession of same. In light of _____’s pattern of deceit and deception by withholding assets which are property of the incapacitated person, exhibited to both the Court Evaluator and your Petitioner, upon information and belief, _____ may be in possession of other accounts at other banking and/or financial institutions which are property of the incapacitated person and which she has failed and refused to turn over to your Petitioner, which accounts, together with accrued interest thereon, should be turned over to your Petitioner.

22. That your Petitioner respectfully requests that the Court grant an Order, pursuant to Mental Hygiene Law section 81.23 and/or CPLR sections 6301 and 6313, temporarily restraining _____ and _____ from making any withdrawals from the “Treasury Direct” accounts aforesaid or such other U.S. Treasury account into which, upon information and belief, the Respondents may have transferred the \$_____ of U.S. Treasury bills and over which one or both of them have authority; and from the _____ Savings Bank account numbered _____, which account _____ has stated is property of the incapacitated person; and from the _____ Savings Bank account numbered _____ in the

name of _____ into which account, upon information and belief, the interest income from the \$_____ U.S. Treasury bills, property of the incapacitated person, is directly deposited; and from _____ Savings Bank account numbered _____ in the name of _____, into which account, upon information and belief, the interest income from the \$_____ U.S. Treasury bills is directly deposited, on the grounds that since your Petitioner has been involved in this matter, Respondent _____ has failed to communicate with Petitioner in a straightforward and forthright manner, that she has suppressed assets of the incapacitated person, that she has failed to deliver to Petitioner property of the incapacitated person and that your Petitioner believes that _____ and/or _____ will attempt to secrete and conceal disposal of assets of the incapacitated person and unlawfully convert said assets to their own use, thereby causing the incapacitated person, _____, irreparable injury.

23. It is respectfully submitted to the Court that if a temporary restraining order and preliminary injunction are not obtained prohibiting _____ and her son from disposing of the proceeds of the abovestated accounts, thereby permitting the Respondents to continue dominion and control over the incapacitated person's assets and income during the pendency of this proceeding, there is a clear and immediate danger that considerable property of the incapacitated person will be dissipated to her detriment; and the welfare of the incapacitated person will be endangered since same will produce irreparable injury and loss to the incapacitated person, as she is in desperate need of the funds for her maintenance at _____ Nursing Home as aforesated.

24. Your Petitioner respectfully requests that the Court grant your Petitioner authority to serve subpoenae *duces tecum* upon _____ Savings Bank, _____ Savings Bank, the Bureau of the Public Debt, _____ Bank for Savings, and _____ Bank so that the records of the said institutions in connection with the assets of the incapacitated person and _____ and _____ may be produced at the hearing to be held hereunder.

WHEREFORE, your Petitioner prays that the Court:

a) Utilize its equitable powers and grant Petitioner a Temporary Restraining Order and Preliminary Injunction Pursuant to sections 81.23 of the Mental Hygiene Law and/or 6301 and 6313 of the CPLR, restraining and enjoining _____ and _____ from withdrawing or receiving or disposing of the proceeds of "Treasury Direct" accounts, _____ Savings Bank accounts, and _____ Savings Bank accounts, abovestated; and restraining _____ Savings Bank and _____ Savings Bank from releasing said proceeds to _____ or _____ pending the legal disposition of this proceeding; and further granting Petitioner subpoena *duces tecum* power upon all banking and financial institutions in which Respondents _____ and _____ maintain or maintained accounts in their names or with the incapacitated person or other persons; and

b) Grant an Order directing that an inquiry be held respecting the abovestated property, that _____ and _____ be ordered to attend the inquiry and be examined accordingly, and that they be directed to deliver the funds due and owing to the incapacitated person's estate to Petitioner as Guardian; and

c) Grant an order directing Respondents to pay reasonable attorney's fees and the costs of this proceeding; and

d) Grant such other and further relief as to the Court may seem just and proper.

Dated: _____, New York
_____, 20__

[Name of Petitioner]

s/_____
[Signing Attorney's Name]

[Certification pursuant to N.Y.C.R.R. tit. 22,
§ 130-1.1a(a)]

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