



appointed as court evaluator herein and having duly appeared as same and Larsen E. Cooper having been appointed as counsel for the alleged incapacitated person and having appeared for on behalf of the incapacitated person, and Constance Stewart having appeared for the petitioner and this matter having regularly come on for a hearing on the ( date of hearing ), and the parties having adduced their proof and it appearing therefrom to the satisfaction of the court by clear and convincing evidence that the alleged incapacitated person is likely to suffer harm because the alleged incapacitated person is unable to provide for personal needs and property management and cannot understand and appreciate the nature and consequences of such inability, and the court having made the findings required by Section 81.15 of the Mental Hygiene Law in a decision made on the record on the ( date of Courts decision ), and upon all the pleadings and proceedings heretofore had herein ,and due deliberation having been had, on motion of Whitelipt and Trembling, attorneys for the petitioner, it is

ORDERED AND ADJUDGED, that John Wilson be and hereby is determined to be a person requiring the appointment of a guardian for personal needs and property management as the court has found that said incapacitated person is likely to suffer harm because of inability to provide for personal needs and property management and is unable adequately to understand and appreciate the nature and consequences of such inability; and it is further

ORDERED AND ADJUDGED, that \_\_\_\_\_ of \_\_\_\_\_ is hereby appointed guardian for personal needs and property management of John Wilson, upon filing with this court, pursuant to Mental Hygiene Law Section 81.25, a bond in the sum of \$ \_\_\_\_\_ with sufficient sureties, conditioned that the said guardian will in all things faithfully discharge the trust imposed

herein, obey all the directions of the court in respect to the trust, make and render a true and just account of all monies and other properties received pursuant to the authority granted herein and the application thereof, and of all acts performed in the administration of the trust imposed herein whenever required to do so by the court, and will file the oath and designation required by section 81.26 of the Mental Hygiene Law; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.27 of the Mental Hygiene Law, upon the filing of such oath, bond and designation as required by statute, a commission in due form of law shall be issued by the clerk of the court which shall state 1) the title of the proceeding and the name, address and telephone number of the incapacitated person; and 2) the name, address, and telephone number of the guardian and the specific powers of such guardian 3) the date when the appointment of the guardian was ordered by the court; and 4) the date on which the appointment terminates if one has been ordered by the court, **and the commission shall be filed within 15 days of entry of this Order / Judgment**, and it is further

**ORDERED AND ADJUDGED, that the attorney for the petitioner shall serve upon the court appointed guardian a copy of this Order and Judgment, assist in the preparation of the commission, oath and designation and obtain, if necessary, the bond, assist the guardian in obtaining the required training and the certified and executed commission from the Clerk of the Court; and it is further**

ORDERED AND ADJUDGED, that the authority of the guardian for property management shall extend to all the property of the incapacitated person, both real and personal, and

it is further

ORDERED AND ADJUDGED, that the duration of this guardianship shall be indefinite; and it is further

ORDERED AND ADJUDGED, that all persons are hereby directed and commanded to deliver to the guardian for property management, upon demand and presentation of a certified copy of the commission, all property of the incapacitated person, of every kind and nature, which may be in their possession or under their control; and it is further,

ORDERED AND ADJUDGED, that the guardian for property management may, without prior authorization of the court, make reasonable expenditures for the purpose of providing the incapacitated person with necessities or preserving the property of the incapacitated person, and it is further

ORDERED AND ADJUDGED, that the guardian for property management may, without prior authorization of the court, invest surplus funds in investments eligible by law for the investment of trust funds and may dispose of investments so made and reinvest the proceeds as so authorized. Except as herein provided, no investment shall be made by the guardian other than pursuant to an order of the court authorizing such investment. Nothing herein contained shall be deemed to limit the power of the court to approve any investment made without its authorization, or to control the disposition of the property of the incapacitated person or investment or reinvestment of the incapacitated person's funds, or to make a new order respecting investments at any time; and it is further

ORDERED AND ADJUDGED, that the guardian for property management may not alien, mortgage, lease or otherwise dispose of real property without special direction of the court obtained upon proceedings taken for that purpose as prescribed in Article 17 of the Real Property Actions and Proceedings Law, provided, however that without instituting such proceedings, the guardian for property management may with authorization of the court lease real property for a term not exceeding five years and may, without further authorization of the court, lease a primary residence for the incapacitated person for a term not to exceed three years; and it is further

ORDERED AND ADJUDGED, that the guardian for property management may, without prior authorization of the court, maintain in his or her own name and official title any civil judicial proceeding which the incapacitated person might have maintained were he or she competent; and it is further

**ORDERED AND ADJUDGED, that the guardian may make any secondary appointments without the prior approval of the Court, and that the guardian shall comply with Part 36 of the Rules of the Chief Judge, and it is further (for appointees not subject to Part 36 rules)**

**OR**

**ORDERED AND ADJUDGED, that the guardian shall not make any secondary appointments without the prior approval of the Court, and that the guardian shall comply with Part 36 of the Rules of the Chief Judge, and it is further (for appointees subject to Part 36 rules)**

**ORDERED AND ADJUDGED, that the guardian shall not pay any fees without prior approval of the court, and it is further**

ORDERED AND ADJUDGED, that if the incapacitated person has a safe deposit box in any bank, then the guardian be and is hereby directed to take an inventory of the contents of such safe deposit box in the presence of a representative of the surety on the bond (unless the surety waives his presence in writing) and an officer of the bank, and that a list of the contents of such safe deposit shall be certified by all present, and a copy thereof shall be promptly filed by the guardian with the court; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.36(e) of the Mental Hygiene Law, upon the death of the incapacitated person, the guardian shall have the authority to pay for the reasonable funeral expenses of the incapacitated person ; and it is further

ORDERED AND ADJUDGED, that upon the death of the incapacitated person, the guardian shall have the power to pay the bills of the incapacitated person which were incurred prior to the death of the incapacitated person, provided the guardian would otherwise have had the right to pay such bills; and it is further

ORDERED AND ADJUDGED, as it is anticipated that during the pendency of this proceeding, care and treatment for the incapacitated person may be paid for by the New York City Medical Assistance Program, it is ordered that the guardian appointed herein repay the Medicaid Program for funds so expended to the extent that the income and resources of the incapacitated person exceeded the Medicaid eligibility level at the time such assistance was granted, and it is further

ORDERED AND ADJUDGED, that the guardian for property management shall

have the authority to pay for the care and maintenance of the incapacitated person in accordance with the following plan: ( **If a plan has been formulated and approved** )

and it is further,

ORDERED AND ADJUDGED, that the guardian for property management shall have such authority as may be granted by any statute of the United States of America or the State of New York to a guardian for property management, conservator or committee of the property and the guardian for personal needs shall have such authority as may be granted by any statute of the United States of America or the State of New York to a guardian for personal needs or a committee of the person unless any such statute specifically requires the permission of the court before the exercise of such power granted therein; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.20 of the Mental Hygiene Law the guardian shall:

(a) exercise only those powers that the guardian is authorized to exercise by order of the court;

(b) exercise the utmost care and diligence when acting on behalf of the incapacitated person;

(c) exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person;

(d) visit the incapacitated person not less than four times per year;

(e) afford the incapacitated person the greatest amount of independence and self determination with respect to property management and personal needs in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal

wishes, preferences and desires with regard to managing the activities of daily living; and it is further

ORDERED AND ADJUDGED, that pursuant to section 81.20 of the Mental Hygiene Law the guardian shall:

(a) preserve, protect and account for the incapacitated person's property and financial resources faithfully;

(b) determine whether the incapacitated person has a will, determine the location of any will and the appropriate persons to be notified in the event of the death of the incapacitated person and, in the event of the death of the incapacitated person, notify those persons;

(c) at the termination of the appointment, deliver the property of the incapacitated person to the person legally entitled to it;

(d) file with the recording office of the county wherein the incapacitated is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person, identifying the real property possessed by the incapacitated person, and the tax number of the property, and stating the date of adjudication of incapacity of the person regarding property management and the name, address and telephone number of the guardian and the guardian's surety;

(e) perform all other duties required by law; and it is further

ORDERED AND ADJUDGED, that to the extent of the net estate available therefor, the guardian shall provide for the maintenance, support and personal well-being of the incapacitated person and then may, without further Order of the court, provide for the maintenance and support of persons legally dependent upon the incapacitated person; and it is further

with the court; and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.22 of the Mental Hygiene Law, the guardian for personal needs shall have the authority to make the following decisions concerning the personal needs of the incapacitated persons:

(a) determine who shall provide personal care and assistance to the incapacitated person.

(b) make decisions regarding social environment and other social aspects of the life of the incapacitated person

(c) determine whether the incapacitated person should travel.

(d) determine whether the incapacitated should possess a license to drive

(e) authorize access to or release of confidential records

(f) apply for government and private benefits

(g) consent to or refuse generally accepted routine or major medical or dental treatment provided that the guardian for personal needs shall make treatment decisions consistent with the findings herein and section 81.15 of the Mental Hygiene Law and in accordance with the incapacitated person's, without regard of and respect for the incapacitated person's wishes, including the patient's religious and moral beliefs, or if the incapacitated persons's wishes are not known and cannot be ascertained with reasonable diligence, in accordance with the incapacitated person's best interest, including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving the incapacitated person's life, the preservation, improvement or restoration of the incapacitated person's health or functioning, the relief of the incapacitated person's suffering, the adverse side effects associated with the treatment, any less intrusive alternative treatments, and such other concerns and values as a reasonable person in the incapacitated person's circumstances would

wish to consider

(h) choose the place of abode of the incapacitated person, provided that the choice of abode must be consistent with the findings herein pursuant to Mental Hygiene Law Section 81.15, the existence of and availability of family, friends and social services in the community, the care, comfort and maintenance, and where appropriate, rehabilitation of the incapacitated person, the needs of those with whom the incapacitated person resides; and provided further that based upon the findings made by this court, the guardian for personal needs (**shall , shall not**) have the authority to place the incapacitated person in a nursing home or residential care facility as those terms are defined in Section 2801 of the Public Health Law without the consent of the incapacitated person; and it is further

**ORDERED AND ADJUDGED, that pursuant to Section 81.39 of the Mental Hygiene Law, the guardian shall attend a training program approved by the Chief Administrator of the Courts and obtain proof that the training was completed and furnish proof of such with the Guardianship Clerk; and it is further**

ORDERED AND ADJUDGED, that pursuant to section 81.30 of the Mental Hygiene Law, no later than ninety days after the issuance of a commission to the guardian, **the guardian shall file with the Guardianship Department of Bronx Supreme Court, Room 217, an initial report and shall mail a copy to the court examiner assigned herein ;** and it is further

**ORDERED AND ADJUDGED, the guardian shall file during the month of May of each year with the Guardianship Department of Bronx Supreme Court, Bronx County, the county in which the incapacitated person last resided before the appointment of a guardian, an annual report** in the form required by Section 81.31 of the Mental Hygiene Law and shall mail a

copy of said report to the court examiner assigned herein; and it is further

ORDERED AND ADJUDGED, that if the initial or annual report sets forth any reasons for a change in the powers authorized by the court, the guardian shall make application within ten days of the filing of such report for a change in powers on notice to the persons entitled to such notice, and it is further

**ORDERED AND ADJUDGED, that upon the guardian's failure to file the initial report within ninety days after the issuance of the commission, the court examiner shall serve the guardian with a demand letter by certified mail, and upon the guardian's failure to comply, move the court by order to show cause to remove the guardian; and it is further**

**ORDERED AND ADJUDGED, that the guardian shall notify the Court and the Court Examiner immediately upon any change of address of the guardian or the incapacitated person, and it is further**

**ORDERED AND ADJUDGED, that in the event of the death of the incapacitated person, the Guardian shall within 20 days of the date of death serve a copy of a Statement of Death on the Court Examiner and upon the Representative of the Estate of the Incapacitated Person stated in the will or Trust Instrument if known, and upon the Public Administrator of the County of the Bronx, and file a copy of this Statement of Death with the Fiduciary Department, Room 221 of this Court, within the same 20 day period, and it is further**

**ORDERED AND ADJUDGED** that in the event of the death of the incapacitated person, the Guardian shall within 150 days of the date of death serve a Statement of Assets and Notice of Claim upon the Representative stated in the Will or Trust Instrument if known, or if there be none, upon the Public Administrator of the County of the Bronx, and file a copy of this Statement of Assets and Notice of Claim with the Fiduciary Department, Room 221 of this Court, within the same 150 day period, and it is further

**ORDERED AND ADJUDGED** that in the event of the death of the incapacitated person, the Guardian within 150 days of the date of death shall deliver all Guardianship assets, except for property retained by the Guardian to secure any known claim, lien or administrative costs of the Guardianship, to the duly appointed personal representative, or to the Public Administrator or Chief Fiscal Officer given notice of the filing of the Statement of Death where there is no personal representative, and it is further

**ORDERED AND ADJUDGED** that in the event of the death of the incapacitated person, the Guardian shall within 150 days of the date of death, unless extended by order of the Court, file the Final Report with the Fiduciary Department, Room 221 of this Court and thereupon proceed to judicially settle the final report with due notice, including notice to the person or entity to whom the property was delivered, and it is further

ORDERED AND ADJUDGED, that the compensation of the guardian shall be at the

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and it is further

ORDERED AND ADJUDGED, that the guardian shall take no annual

commissions/compensation for any year until that year's annual account is filed, reviewed by the Court Examiner, and approved by the court; and it is further

**ORDERED AND ADJUDGED, that upon receipt of the commission from the Clerk of the County of th Bronx,** the guardian shall make the following disbursements from the funds of the incapacitated person:

(a) To \_\_\_\_\_ the sum of \$ \_\_\_\_\_ as and for a legal fee for serving as attorney for the Petitioner and \$ \_\_\_\_\_ for disbursements.

(b) To \_\_\_\_\_ the sum of \$ \_\_\_\_\_ for services rendered as court evaluator.

(c) To \_\_\_\_\_ the sum of \$ \_\_\_\_\_ for services rendered as attorney for the incapacitated person.

(d) To \_\_\_\_\_ M.D. the sum of \$ \_\_\_\_\_ for expert services rendered herein; and it is further

**ORDERED AND ADJUDGED, that none of the above authorized fees shall be paid until the guardian(s) has filed the bond (if So Ordered), oath and designation and received the commission from the Clerk of th County of the Bronx, and it is further**

ORDERED AND ADJUDGED, that pursuant to 81.16(c)(3) of the Mental Hygiene Law notice of all further proceedings with regard to this matter shall be given to: ( list names of persons and entities, include examiner and surety, also administrator of facility and NYCHRA/OLA if IP resides in a facility) and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.16(e) of the Mental Hygiene Law a copy of this order and judgment shall be personally served upon and explained to the incapacitated by the guardian ; and it is further

ORDERED AND ADJUDGED, that pursuant to Section 81.38 of the Mental Hygiene Law, \_\_\_\_\_ (**if applicable**) of \_\_\_\_\_ is hereby appointed standby guardian for personal needs and property management of the incapacitated person and that upon qualification, the standby guardian for personal needs and property management shall have all the duties, powers and responsibilities of the original guardian for personal needs and property management appointed herein; and it is further

ORDERED AND ADJUDGED, that upon the filing with the court by the standby guardian of a bond, oath and designation, and in addition, upon the filing of an acknowledged statement of resignation signed by the original guardian appointed herein, a certified death certificate of said guardian, or a copy of a judicial order indicating that said guardian has been removed, discharged, suspended, or become incapacitated, the Clerk of the Court shall issue a commission in the due form of law which shall state that it is valid for sixty days from its issuance; and it is further

ORDERED AND ADJUDGED, that \_\_\_\_\_ of \_\_\_\_\_, appointed Court Examiner by Order of the Presiding Justice of the Appellate Division, First Department, dated May 11, 1993, is assigned to examine the initial and annual reports of the guardian(s) named herein; and it is further

ORDERED AND ADJUDGED, that the petitioner's attorney herein, within thirty

(30) days of the signing of this Order and Judgment, serve upon the Court Examiner a copy of this Order and Judgment together with notice of entry; and it is further

ORDERED AND ADJUDGED, that the said guardian, before taking possession of any personal property valued in excess of the above mentioned bond, file an additional bond to be fixed and approved by a Justice of this court pursuant to Article 81 of the Mental Hygiene Law, and it is further

ORDERED AND ADJUDGED, that any appointee herein shall comply with Part 36 of the Rules of the Chief Judge by filing OCA form 872 with the Fiduciary Clerk in Bronx Supreme Court. Any subsequent affidavit or affirmation of service submitted to this court must contain a statement indicating such compliance and be accompanied by a properly completed 875 and it is further.

**ORDERED AND ADJUDGED, that Guardian(s) shall appear for a compliance conference on the            day of            2009 in Room 402 at 9:30 AM** and it is further

It is hereby deemed that all service has been properly completed.

ENTER:

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J. S. C .