

<b>Matter of Stenbeck (Guy)</b>
2017 NY Slip Op 30571(U)
March 7, 2017
Surrogate's Court, Nassau County
Docket Number: 2015-383690/A
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**In the Matter of the Application of Henry L. Guy,  
as Executor of the Estate of**

**DECISION & ORDER**

**File No. 2015-383690/A  
Dec. No. 32516**

**ANDREAS M. STENBECK,  
a/k/a MAX STENBECK,  
a/k/a ANDREAS MAXIMILLIAN STENBECK,**

**Deceased,**

**and as Trustee of the AMS Revocable Trust,  
for Advice and Direction Pursuant to SCPA §2107(2).**

**PRESENT: HON. MARGARET C. REILLY**

The following papers were considered in the preparation of this decision:

Petition with Exhibits.....	1
Attorney Affirmation. ....	2
Copy of AMS Revocable Trust.....	3

Henry L. Guy, in his dual capacities as the executor of the will of Andreas M. Stenbeck and as the trustee of the revocable trust executed by Andreas M. Stenbeck during his lifetime, seeks advice and direction regarding the redemption of assets held in the estate of Andreas M. Stenbeck.

**BACKGROUND**

Andreas M. Stenbeck (the decedent) died on March 16, 2015. He was survived by his brother, Hugo Stenbeck; his sisters, Cristina Stenbeck and Sophie Stenbeck; and a half-brother, Felix Granander.<sup>1</sup> The decedent’s last will and testament, dated January 19, 2012 (the will), was admitted to probate by this court on September 10, 2015, and letters

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<sup>1</sup>Felix Granander is not an interested party in this proceeding.

testamentary issued to Henry L. Guy (the petitioner), who qualified and continues to serve as executor of the decedent's estate (the estate).

By an agreement executed on the same day as his will, the decedent created the AMS Revocable Trust (the trust), under which the petitioner was named as trustee, in which capacity the petitioner continues to serve.

Under Article Fourth of the will, the decedent's residuary estate passes to the trust, which is to be disposed of pursuant to Article Second of the trust. After some specific dispositions, 75% of the residuary estate received by the trust is to be paid over to a foundation (the foundation) to be established by the trustee in the decedent's name. Under the terms of the trust, the foundation is to be of perpetual duration under the applicable provisions of the Internal Revenue Code (IRC), so that transfers to the foundation will qualify as charitable deductions for tax purposes. Further, the foundation is to be treated as a private foundation under IRC § 509 (a) and will be subject to the restrictions found in IRC Chapter 42. The decedent named Henry L. Guy (the petitioner), as well as Cristina Stenbeck and Sophie Stenbeck, as initial potential trustees or directors of the foundation, and authorized them to appoint Hugo Stenbeck as an additional initial director by unanimous agreement.

Among the assets owned by the decedent at his death was a minority interest in Verdere S.à.r.l (Verdere), which is a private limited liability company established in 2010 under the laws of the Grand Duchy of Luxembourg. The balance of the interests in Verdere are held by Cristina Stenbeck and by trusts for the benefit of the decedent's siblings. Verdere was formed in 2010 with Class A shares of Kinnevik AB (Kinnevik), a Swedish public company. The shares were contributed by the decedent and Cristina Stenbeck and by trusts

for their respective benefits.

Each shareholder contributing to Verdere received an income sharing loan,<sup>2</sup> an interest-free loan,<sup>3</sup> and an interest in the balance of the Verdere equity. The estate owns 75 Class C shares of Verdere, equivalent to 10% of the corporate equity.

Veredre's sole assets are 29,600,000 shares of Kinnevik, of which 28,291,001 are Class A shares and 1,308,999 are Class B shares. The Class A shares each have 10 votes; these shares are thinly traded on the Nasdaq Stockholm exchange and are not considered to be liquid assets. The Class B shares each have one vote. These shares are also publicly traded on the Nasdaq Stockholm exchange, and are substantially more liquid than the Class A shares.

Under the corporate governance documents of Verdere, and under the laws of Luxembourg, the petitioner lacks the power to force a liquidation of Verdere, leaving him without direct access to the Kinnevik shares held in Verdere. At the same time, the estate lacks sufficient liquidity for the payment of estate taxes and other debts. In order to liquidate this estate holding, the petitioner sought redemption by Verdere of the estate's interests in Verdere.

In response to the petitioner's request, the management of Verdere made a proposal (the proposal) to distribute to the estate: (1) 1,066,680 Class B shares of Kinnevik in redemption of the estate's equity interest; and (2) 242,319 Class B shares of Kinnevik in

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<sup>2</sup>The income sharing loan is a loan obligation from Verdere which matures in 2020, from which the shareholder receives all net income earned by the shares contributed by that shareholder.

<sup>3</sup>The interest-free loan is a loan obligation which matures in 2020 but which earns neither interest or income.

satisfaction of the accrued but unpaid interest on the income sharing loan. The proposal does not include prepayment of the principal of the estate's income sharing loan or the principal of the interest-free loan. The number of Class B shares was determined by the accounting firm KPMG, which was retained by Verdere for this purpose.<sup>4</sup> The petitioner calculated that the amount to be received by the estate under the proposal would be sufficient to pay the estate taxes and administrative expenses. On June 21, 2016, an agreement was reached between a representative of Verdere and the petitioner (the redemption agreement), under which Verdere would redeem a portion of the estate's interest in Verdere, subject to the approval of this court.

While the trust does not directly address disposition of the estate's interest in Verdere, it does address disposition of interests in an entity owning shares of Kinnevik. If the decedent is not survived by any descendants, the trust provides that 25% of the trust principal shall be divided into equal shares for Hugo Stenbeck, Sophie Stenbeck and Cristina Stenbeck, and 75% shall be distributed to an exempt private charitable foundation to be established in the name of the decedent. Other sections of the trust, enumerated in paragraphs 24-32 of the petition, address other pertinent issues related to the disposition of Kinnevik shares.

Petitioner advises the court that the redemption agreement raises a significant tax issue that underlies his present petition for advice and direction. Pursuant to IRC § 4946 (a),<sup>5</sup>

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<sup>4</sup>The calculation of the fair value of the trust shares in Verdere was attached to the petition as exhibit E.

<sup>5</sup>In relevant part, IRC § 4946 (a) provides that a "disqualified person" with respect to a private foundation may include a member of the family of a substantial contributor to the foundation (IRC § 4946 [a] [1] [A]), or a member of the family of an owner of more than 20% (IRC § 4946 [a] [1] [C]) , or a trust in which a family member holds more than 35% of the

Veredere is potentially a “disqualified person” with respect to the foundation, as a result of which any redemption by Verdere of a portion of the estate’s interest in Verdere pursuant to the redemption agreement may constitute an act of indirect self-dealing under IRC § 4941, which taxes self-dealing between a foundation and a disqualified person.<sup>6</sup>

### **RELIEF REQUESTED**

Pursuant to SCPA § 2107 (2), the petitioner seeks advice and direction with respect to the proposed redemption of shares of Verdere, in order to avoid the imposition of self-dealing taxes under IRC § 4941. Specifically, the petitioner seeks the court’s approval of the redemption by Verdere, pursuant to the terms of the redemption agreement, of a portion of the estate’s interests in Verdere, consisting of:

(a) the estate’s 10% equity interest in Verdere, in exchange for 1,066,680 Class B shares of Kinnevik; and

(b) accrued but unpaid interest due the estate with respect to an income sharing loan obligation from Verdere to the estate, in exchange for 242,319 Class B shares of Kinnevik.

Class B shares of Kinnevik may be sold or transferred, as determined by the petitioner, in the best interests of the estate, the trust, and the foundation.

In the context of the relief sought, and the applicable sections of the IRC, the petitioner notes that he is not related to the decedent or to the decedent’s siblings.

On the return date of the citation, December 14, 2016, counsel for the petitioner advised the court that a condition of the redemption agreement is proof of the approval of

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beneficial interest (IRC § 4946 [a] [1] [G]).

<sup>6</sup>In brief, IRC § 4941 provides that taxes may be imposed on a disqualified person and a foundation manager who engage in self-dealing.

this court of the redemption agreement on or before March 31, 2017. Authorized notices of appearance were filed on behalf of Hugo Stenbeck, Cristina Stenbeck and Sophie Stenbeck, but none of the interested parties filed opposition to the relief requested. Citation was served upon the Attorney General of the State of New York, Charities Bureau, but the office did not appear or object.

### ANALYSIS

IRC § 4941 imposes taxes upon a disqualified person and a private foundation manager who engage in self-dealing. The director of a private foundation is by definition a disqualified person, under IRC § 4946. Each of Hugo Stenbeck, Cristina Stenbeck and Sophie Stenbeck are potential initial directors of the private foundation. On that basis, their direct and indirect holdings in Verdere could cause Verdere to be deemed a disqualified person in connection to the foundation. Under IRC § 4941 (d) (1), an act of self-dealing includes any direct or indirect sale or exchange of property between a disqualified person and a private foundation. A sale or an exchange of estate property between a disqualified person and an estate in which a private foundation has an interest or expectancy may be indirect self-dealing.

As a trust beneficiary, the foundation has an interest or expectancy in estate assets, which may include an interest in Verdere or its corporate assets. On that basis, if Verdere redeems corporate shares pursuant to the redemption agreement, the redemption may be deemed an act of indirect self-dealing under IRC § 4941.

An exception to the definition of indirect self-dealing is provided by Treasury Regulation 53.4941 (d)-1 (b) (3), which provides, in part:

“ (3) Transactions during the administration of an estate or revocable trust. The term "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if:

(i) The administrator or executor of an estate or trustee of a revocable trust either:

- (a) Possesses a power of sale with respect to the property,
- (b) Has the power to reallocate the property to another beneficiary, or
- (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to sec. 4947 [26 USCS § 4947]);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transactions occurring after April 16, 1973, the transaction either:

- (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
- (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
- (c) Is required under the terms of any option which is binding on the estate (or trust)” (26 CFR § 53.4941[d]-1[b]).

In order for the redemption of shares to qualify for this exception to indirect self-dealing, all five of the above requirements must be met. According to the petitioner, the

requirements have been, or can be, met as follows:

(i) The first requirement is met in that the executor possesses a power of sale or disposition with respect to the estate's interest in Verdere, and the trustee will have the power to allocate the trust's interest in Verdere or the Kinnevik shares to a beneficiary other than the foundation. The petitioner does not seek advice and direction with respect to this requirement.

(ii) The second requirement will be met if the redemption agreement is approved by this court, as requested in the present petition.

(iii) The third requirement will be met because the redemption will be completed before the estate administration has been concluded for federal income tax purposes, which will not occur until taxes and debts are fully paid. The petitioner does not seek advice and direction with respect to this requirement.

(iv) The fourth requirement is satisfied, as the redemption agreement reflects the fair market value of the shares, as determined by KPMG. The petitioner does not seek advice and direction with respect to this requirement.

(v) The fifth requirement will be met because the estate and the trust will receive assets that are more liquid than their equity interest, in the form of freely tradeable and marketable securities in exchange for the estate's interest in Verdere, which is a closely held company whose shares are not publicly traded and the transfer of which requires preapproval of at least 75% of shareholders. The petitioner does not seek advice and direction with respect to this requirement.

### **CONCLUSION**

The court has reviewed the petition, the exhibits, and the pertinent sections of the IRC and the applicable Treasury Regulation, and notes that no opposition to the relief was filed

by the Attorney General of New York or by counsel appearing on behalf of each of the parties interested in this proceeding. The court grants approval of the redemption agreement in order that the parties to the agreement may satisfy subparagraph (ii) of Treasury Regulation 53.4941 (d)-1 (b) (3), which requires the approval of the probate court having jurisdiction over the estate in order for the agreement to qualify for an exception to a determination of indirect self-dealing.

The petition is **GRANTED** in its entirety.

This constitutes the decision and order of the court and no additional order need be submitted.

Dated: March 7, 2017  
Mineola, New York

**E N T E R:**

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**HON. MARGARET C. REILLY**  
**Judge of the Surrogate's Court**

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