

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Willa Mae Hampton Cooper,
An Incapacitated Person
O.C. No. 480 IC of 1998
Control No. 040027

Sur First and Final Account of Sheila Lewis, Guardian of the Estate of Willa Mae Hampton Cooper, an Incapacitated Person

The account was called for audit March 1, 2004
Counsel appeared as follows:

By: **HERRON, J.**

Leon W. Tucker, Esquire- for accountant
Joseph S. Mitchell, III, Esquire – for accountant
Mary Jane Barrett, Esquire – Successor Guardian
Nathaniel Gaddy, pro se

ADJUDICATION

The account in this case was filed by court order due to concerns that the guardian had negligently invested—and lost—more than \$150,000 of an incapacitated person's estate. On June 17, 1998, Willa Mae Cooper Hampton was adjudicated an incapacitated person after a hearing before the Honorable Frank O'Brien. Her niece, Sheila Lewis, was appointed plenary guardian of Ms. Hampton's person and estate. At the time of her appointment, the guardian was required to post security in the amount of \$60,000. She was subsequently required to file an additional bond of \$229,500 after Judge O'Brien approved a petition for the sale of real estate in March 1999.

Ms. Lewis filed an inventory on February 18, 1999, listing total assets in the Estate of Willa Mae Cooper Hampton at \$223,090.19, consisting of real estate valued at \$160,000, a Mellon bank certificate of deposit for \$44,616.23, a checking account for \$7,991.63 and a savings account totaling \$10,482.23. On May 29, 2003, Ms. Lewis filed a petition "to ratify

expenses and expend principal of the incapacitated person's estate." In this petition, she sought court approval of prior expenditures of principal on behalf of her 85 year old incapacitated aunt as well as for future expenditures.¹ More ominously, Ms. Lewis also raised an issue about investments she had made with Nathaniel Gaddy of Tri-Star Consultants, Inc. She admitted that she had given a "total of \$176,928.37 to Nathaniel Gaddy of Tri-Star Consultants, Inc. ... to invest. These funds were from the sale of the incapacitated person's home and her savings. See Check #376 for \$31,591.66, March 7, 2000. The settlement check for real estate was also endorsed over to Tri-Star."² Ms. Lewis noted that she had been unable to communicate either with Tri-Star or Nathaniel Gaddy and that she had reported Tri-Star to the Pennsylvania Attorney General's office and the Pennsylvania Securities Commission.

Alarmed by the alleged misappropriation of an incapacitated person's funds, this court by order dated July 14, 2003 scheduled a hearing to show cause why the guardian's petition should be granted. The guardian subsequently filed a petition seeking a citation directed against Nathaniel Gaddy and Tri-Star Consulting to give an accounting of funds received on behalf of the Willa Mae Cooper Hampton Estate, which was granted by order dated August 4, 2003. This court subsequently removed Sheila Lewis as guardian of the Hampton Estate while retaining her as guardian of Ms. Hampton's person by decree dated September 9, 2003. Mary Jane Barrett, Esquire, was appointed guardian of the Hampton Estate and Ms. Lewis was ordered to turn over all financial records to Ms. Barrett. Ms. Lewis was barred from making any additional disbursements of principal or income. She was also ordered to file an account of her

1 Ms. Lewis sought court approval of her prior expenditure of \$138,101.84 for her aunt's care and maintenance as well as \$28,132.42 to Alterra Healthcare Corp in future expenses. See Petition to Ratify Expenses, ¶ 24 and Proposed Order.

2 5/28/2003 Petition to Ratify Expenses, ¶ 21.

administration of the Estate.³

On January 6, 2004, Ms. Lewis filed her First and Final Account as former guardian of the Estate of Willa Me Cooper Hampton for the period of June 8, 1998 through September 9, 2003. The account listed “total receipts” of \$110,026.18, with a balance before distribution of - \$51,313.53. It listed under “disbursement of principal,” the following “investments,” totaling \$176,928.37:

3/31/99	\$145,336.71 (to Tri-Star Consultants, Inc.)
3/8/00	\$ 31,591.66 (to Tri-Star Consultants, Inc.) ⁴

Mary Jane Barrett, as successor guardian, filed objections as to the account’s form in failing to conform with Pennsylvania Orphans’ Court Rule 6.1. She also objected, inter alia, to the account’s failure to identify the investments made with Nathaniel Gaddy of Tri-Star Consultants. In addition, she stated that based on analysis of cancelled checks and Ms. Lewis’s prior petition to ratify expenses “at least \$201,691.32 appears to have been paid to Tri-Star Consultants.”⁵ Ms. Lewis subsequently filed a Restated Account on July 15, 2004 for the period June 17, 1998 through September 9, 2003. This account listed total receipts of \$240,339.55, with a balance after disbursements of - \$130,020.38. The sum of \$201,691 was listed as investments.⁶ Once again, the successor guardian filed objections, stating that the restated account should show a balance on hand of \$27,526.90. She also asserted that the restated account should show a balance of funds in the possession of Nathaniel Gaddy and Tri-Star Consultants of \$157,841.26 and sought a surcharge against Shelia Lewis to “the extent that the

3 The substitute guardian filed an inventory on November 11, 2003, listing total assets in the Estate of Willa Mae Hampton Cooper of \$4,711.20 with a claim of \$176,928.37 against Tri-Star Consultants and Nathaniel Gaddy.

4 1/6/2004 Account at 4.

5 3/1/2004 Successor Guardian’s Objections, ¶ 5.

6 See 7/15/2004 Lewis Restated Account, Summary of Account. Under “investments,” the account stated

balances do not exist and have not been accounted for.”⁷

The successor guardian also took steps to compel an accounting by Nathaniel Gaddy,⁸ and on July 23, 2004, Nathaniel Gaddy filed his First and Final Custodian’s Accounting for funds held on behalf of Willa Mae Hampton Cooper. The summary of account noted the following amounts:

Principal receipts	\$201,621.46
Fees	\$ 15,228.00
Distributions	\$148,794.00
Balance on hand	\$ 37,599.46 ⁹

The Gaddy account indicated that Sheila Lewis had given Nathaniel Gaddy \$201,621.46, broken down as follows:

Estate of Willa Me Cooper Hampton Sheila Lewis Guardian, Received December 1, 1998	\$18,562.89
Estate of Willa Mae Cooper Hampton Sheila Lewis Guardian, Received February 8, 1999	\$ 4,200.00
Estate of Willa Mae Cooper Hampton Shelia Lewis Guardian, Received March 31, 1999	\$ 2,000.00
Estate of Willa Mae Cooper Hampton Sheila Lewis Guardian, Received March 7, 2000	\$ 31,591.66
Continental Search & Abstract Company Received April 12, 1999	\$145,366.91
Receipts	<u>\$201,621.46</u> ¹⁰

Objections were filed to the Gaddy Account by both the successor guardian, Mary Jane Barrett, and by the former guardian, Sheila Lewis. Ms. Lewis objected that while Nathaniel

\$56,354.55 had gone to Tri-Star or Tri-Star Consultants.

7 8/17/2004 Successor Guardian’s Objections.

8 On November 17, 2003, for instance, the successor guardian filed a petition seeking the filing of an account by Tri-Star or Nathaniel Gaddy.

9 7/23/2004 Nathaniel Gaddy Account

Gaddy's account indicated that \$65,930 had been paid back to Willa Mae Cooper Hampton or her guardian, Ms. Lewis acknowledged receipt of only \$48,500 and noted that Mr. Gaddy managed other accounts for Sheila Lewis. She contended that Tri-Star and Nathaniel Gaddy were accountable for approximately \$157,000 in outstanding estate funds.¹¹

A hearing on these accounts and objections was subsequently held on September 23, 2004, October 6, 2004, and November 15, 2004. In the course of the hearing, Nathaniel Gaddy and Sheila Lewis testified as to the accounts they had filed and their handling of the various funds of the estate of Willa Mae Hampton Cooper. Both Mr. Gaddy and Ms. Lewis agreed that Mr. Gaddy had provided financial services not only to the Willa Mae Hampton Cooper Estate but also to Sheila Lewis.¹² In addition, Ms. Lewis testified that Gaddy had handled funds for her mother, niece and children.¹³ Gaddy's involvement with the Lewis family began when he was an insurance agent for Sheila Lewis's father,¹⁴ and Ms. Lewis recalled that her father had always spoken highly of him.¹⁵ In fact, Ms. Lewis felt so much confidence in Gaddy's financial prowess that she entrusted nearly \$200,000 of her incapacitated aunt's funds with him as well as her own divorce settlement funds of nearly \$250,000 and her children's funds totaling approximately \$8,000.¹⁶ When asked whether she had gotten any of her own money back, Ms. Lewis replied no.¹⁷

Gaddy testified that after 1999 he no longer served as an investment advisor.

Although vague as to why he no longer practiced as an investment advisor, he conceded that in

10 7/23/2004 Nathaniel Gaddy Account

11 9/3/2004 Objections by Sheila Lewis.

12 10/6/2004 N.T. at 7-8; 11/15/2004 N.T. at 93-94.

13 11/15/2004 N.T. at 96 & 101-02.

14 10/6/2004 N.T. at 72-73

15 11/15/2004 N.T. at 67 & 72.

16 11/15/2004 N.T. at 93-94, 101-102

2000 he had entered into a consent order with the National Securities Board concerning his license after allegations of unauthorized withdrawals from the variable annuity contract of a public customer.¹⁸ Gaddy was equally evasive when questioned about the funds he had been given by Sheila Lewis for the Hampton Estate. He conceded that the account he had formally filed indicated that he had received \$201,621.46 on behalf of the Estate,¹⁹ but then in a transparent effort to evade responsibility Gaddy launched into a flight of double-speak to shift responsibility for that account to either his attorney—or —the substitute guardian, noting “[t]hose were your figures, not mine.”²⁰ With his various verbal acrobatics to evade and obfuscate, Mr. Gaddy emerged through his testimony as the archetypal con man, shifting and weaving conflicting figures and documents with abandon. After conceding that the account he filed was not accurate,²¹ Gaddy indicated initially that the correct figure for the money he had received for the Hampton estate was \$168,491.26.²² However, when asked to document this figure, Gaddy backed off and contradicted himself by stating that he had received \$195,491.26.²³ Gaddy’s testimony as to the amount of money he had returned to the Hampton Estate was equally confusing and contradictory. Although his formally filed July 2004 account stated that he had distributed \$148,599.46,²⁴ at the hearing Gaddy maintained that he had distributed \$181,972 back to the Hampton estate.²⁵ His efforts to document this amount were likewise confusing and inconclusive.

17 11/15/2004 N.T. at 102.

18 9/23/2004 N.T. at 10-11. See generally Exs. O-1 & O-2.

19 9/23/2004 N.T. at 21.

20 9/23/2004 N.T. at 22.

21 9/23/2004 N.T. at 24 & 28.

22 9/23/2004 N.T. at 31.

23 9/23/2004 N.T. at 35-36.

24 7/23/2004 Nathaniel Gaddy Account, “Summary of Account.”

25 9/23/2004 N.T. at 29. See also Ex. Gaddy 1.

Perhaps not surprisingly, Gaddy conceded that he had failed to keep accurate records of his financial dealings regarding the Hampton Estate other than canceled checks.²⁶ Not only did he fail to open a separate account for the Hampton Estate, but it was also not his practice to give Ms. Lewis formal invoices.²⁷ There was no need for formal invoices, he intimated, given his personal relationship with Ms. Lewis, alternatively emphasizing that they were like “family” and that they “did things differently as a couple.”²⁸ He saw his role not as an investment advisor but more as a repository of the funds given to him by Ms. Lewis.²⁹ Thus, Gaddy suggested that he did not serve as an investment broker for Ms. Lewis because “the arrangement that I had with Miss Lewis was to distribute to her funds upon her request.”³⁰ Astoundingly, between 2000 and 2003, Gaddy maintained the funds for the Hampton Estate in a non-interest bearing account.³¹

Disingenuously, Gaddy explained the reason for this choice:

Why I put in it in a noninteresting-bearing (sic) account is because of the fact that it was being distributed regularly and the amount that I did put in the interest-bearing account we thought would be delayed and we would need it later, the annuity amount. So part of it did go into an interest-bearing account. But the other part was, give it to her as she needed—as she requested. 11/15/2004 N.T. at 32.

In holding the funds given him by Ms. Lewis, Gaddy made no effort to maintain a separate account for the Willa Mae Cooper Hampton Estate.³² When asked what he did with the funds that Ms. Lewis gave to him, Mr. Gaddy responded:

26 9/23/2004 N.T. at 41.

27 9/23/2004 N.T. at 39-40.

28 11/15/2004 N.T. at 18 & 26.

29 9/23/2004 N.T. at 10.

30 9/23/2004 N.T. at 10.

31 11/15/2004 N.T. at 32.

32 11/15/2004 N.T. at 42. When asked why he did not keep separate accounts for the funds of the Hampton Estate and the funds of Sheila Lewis, Gaddy responded:

Q: So you know whether that (i.e. a \$2,500 distribution) was for her divorce or whether that was for the estate?

A: It didn't matter to us. 11/15/2004 N.T. at 42.

Q: What did you do with the funds that were turned over to you?
A: Just deposited them in the bank.
Q: In what account?
A: Tri-Star account.
Q: You deposited them into your company's general account?
A: Yes.
Q: Did you have a separate set of ledgers for Willa Mae Cooper Hampton?
A: No, just checks basically I used as a receipt.
It was negligence on my part, as I can see now.
Q: So you never had a mechanism of segregating either physically through separate bank accounts or through bookkeeping entries the moneys that were turned over to you for Willa Mae Cooper Hampton?
A: No, nothing but a track record of the checks that was going out, and cash, no.²²

When questioned as to the nature and organization of Tri-Star, Mr. Gaddy bluntly stated "I was Tri-Star."³⁴ It was neither a corporation nor a partnership but a "fictitious name" for Gaddy's business.³⁵ The inherent flaws in Gaddy's method of tracking funds by a trail of checks was illustrated when he was asked to document his accounts as to the amounts received and distributed back to the Hampton Estate. In his effort to document his claims as to the amounts returned to the Hampton Estate, Gaddy relied on a list of checks as well as copies of checks and deposit slips.³⁶ These documents, however, contain checks and deposits not only to Willa Mae Cooper Hampton but also to Sheila Lewis, Nathaniel Gaddy and Enzie Simpson.³⁷ When subsequently asked why he made distributions directly to Ms. Lewis and not just to the Hampton Estate, Gaddy responded: "Because that's what she requested."³⁸ When further asked whether he knew the source of the money distributed, Mr. Gaddy explained: "The source was me, coming from me."³⁹ According to Gaddy, neither he nor Ms. Lewis felt a need to maintain clear distinctions or records, since "the way

33 9/23/2004 N.T. at 41 (emphasis added).

34 9/23/2004 N.T. at 39.

35 9/23/2004 N.T. at 40.

36 9/23/2004 N.T. at 52 and Ex. G-3.

37 See generally Ex. G-3.

38 10/6/2004 N.T. at 34. These questions relied on Ex. G-3. See 10/6/2004 N.T. at 28.

I did business with Ms. Lewis is we never discussed too much about where the checks was coming from, just that to give her a check for x amount of dollars.”⁴⁰

In explaining her role in these transactions, Sheila Lewis emphasized the trust she had been encouraged to place in Gaddy by her family experiences⁴¹ as well as her ignorance as to certain crucial facts about his professional qualifications and behavior. She professed not to know, for instance, that the money that she gave to Gaddy had not been invested even though she asserted that her purpose in giving the funds to him “was to invest so that my aunt—she was—at that point, she was only 80 years old and my family had a history of longevity in terms of living. So I knew that I had to stretch her money and make it grow and do as well as it could possibly do for a long period of time.”⁴² Her ignorance as to his practices, unfortunately, was self-inflicted. She never received—nor presumably asked—for any receipts from Gaddy. She never entered into any written custody or investment agreement with him.⁴³ Although she was aware that Gaddy was holding funds for various family interests, she never specified the account from which a disbursement for her aunt should be drawn.⁴⁴ In fact, it was not until 2003, when the checks to her aunt’s assisted living facility began to bounce, that Ms. Lewis became concerned about the money she had given to Mr. Gaddy. She testified: “I went to him because I was really concerned—getting scared, what’s going on, because it also affected the money that he was placing in my account. It affected me, too.”⁴⁵

Mary Jane Barrett, the guardian who was appointed to replace Ms. Lewis (hereinafter “substitute guardian”), was confronted with the extremely difficult task of unraveling the trail of

39 10/6/2004 N.T. at 34.

40 10/6/2004 N.T. at 35.

41 11/15/2004 N.T. at 72.

42 11/15/2004 N.T. at 74.

43 11/15/2004 N.T. at 74-75.

44 11/15/2004 N.T. at 81.

45 11/15/2004 N.T. at 88.

checks and deposit slips left behind by Mr. Gaddy's cavalier indifference to record-keeping and Ms. Lewis's somnambulist failure to perform her duties as guardian of her aunt's estate. After a careful review of the documents and testimony, the substitute guardian recommends that Mr. Gaddy, Tri-Star Consultants and Ms. Lewis be surcharged in the amount of \$157,637.49.⁴⁶ The service performed by the substitute guardian in analyzing the various accounts and documents cannot be overstated. This court adopts her general methodology and conclusion that a surcharge is mandated, with only minor tinkering as to the amount.

In Pennsylvania, courts have emphasized that a guardian has a fiduciary relationship with a ward. In re Olga Adler, an Incapacitated Person, 23 Fid. Rep.2d 340, 343 (Phila.O.C. 2003). The Probate, Estates and Fiduciaries Code likewise includes guardians and trustees within the definition of fiduciaries. 20 Pa.C.S.A. §7201. A person acting as a trustee or fiduciary is charged with keeping itemized books and accounts. Mintz v. Brock, 193 Pa. 294, 44 A. 417,***8 (1899). In making investments, a fiduciary must exercise "common prudence, common skill and common caution." Lentz Estate, 364 Pa. 304, 308, 72 A.2d 276, 278 (1950). The Pennsylvania Supreme Court has observed that a fiduciary must "exercise such prudence and diligence in conducting the general affairs of the trust as men of average diligence and discretion would employ in their own affairs." Musser's Estate, 341 Pa. 1, 9-10, 17 A.2d 411, 415 (1941). Similarly, the PEF code mandates that a fiduciary "shall exercise reasonable care, skill and caution in making and implementing investment and management decisions." 20 Pa.C.S.A. § 7212.

In the instant case, Ms. Lewis essentially delegated investment functions to Nathaniel Gaddy. While the PEF code suggests that delegation of such functions is permissible, it sets forth certain criteria which were not heeded by Ms. Lewis. Thus, while section 7206 provides that a "fiduciary

46 See 3/1/2005 Substitute Guardian's Post-Trial Memorandum at 19.

may delegate investment and management functions that a prudent investor of comparable skills might delegate under the circumstances,” it sets forth the following duties of a fiduciary when delegating these functions:

DUTIES OF FIDUCIARY – A fiduciary shall not be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated if the fiduciary exercises reasonable care, skill and caution in selecting the investment agent, in establishing the scope and specific terms of the delegation and in reviewing periodically the investment agent’s actions in order to monitor the investment agent’s performance and compliance with the scope and specific terms of the delegation. 20 Pa.C.S.A. § 7206(b) (emphasis added).

Unfortunately, Ms. Lewis apparently selected Nathaniel Gaddy to safeguard her incapacitated aunt’s funds primarily because of her father’s favorable comments about him. Moreover, she was woefully remiss in establishing “the scope and specific terms of the delegation and in reviewing periodically the investment agent’s actions in order to monitor the investment agent’s performance and compliance with the scope and specific terms of the delegation.” 20 Pa.C.S. A. §7206(b). Ms. Lewis conceded in her testimony that she never entered into any formal investment agreement with Gaddy, she never received any receipts for the Hampton estate funds that she turned over to him, she never discussed any of the specifics of any investment strategy,⁴⁷ she had no written fee agreements with Gaddy and no knowledge of any investments that he may have entered into on behalf of her aunt’s estate. Lewis did not receive—nor did she ask for any monthly statements of the assets that Gaddy was holding for her aunt, Willa Mae Cooper Hampton.⁴⁸ Although Ms. Lewis acknowledged that she had been generally aware that as a guardian she had to obtain court approval to invade the estate’s principal, she nonetheless did so due to the day-to-day exigencies of managing her aunt’s

⁴⁷ 11/15/2004 N.T. at 75.

⁴⁸ 11/15/2004 N.T. at 76-77.

affairs.⁴⁹ Ms. Lewis appeared to genuinely care for her aunt's well-being, but naïve as to the responsibilities involved in managing the finances. As she explained, “[i]t certainly has turned out to be a larger responsibility than I had anticipated, because I didn't really know what it involved.”⁵⁰

Despite her professed good intentions, Ms. Lewis was shockingly negligent in overseeing the funds that she handed over to Nathaniel Gaddy. As the Pennsylvania Supreme Court observed in an early case involving the guardian-ward relationship:

A fiduciary relation requires vigilance as well as honesty. A dead and sluggish calm, a supine negligence-- is full of peril to the minor; it is often as fatal as positive dishonesty.⁵¹

Sheila Lewis, as a guardian, clearly suffered a “deadly and sluggish calm, a supine negligence full of peril” for her aunt. Fortunately, bonds were required which presumably will protect Ms. Hampton from her guardian's negligence. It is, of course, well established that the party seeking a surcharge has the burden of proving the surchargeable breach. Estate of Feinstein, 364 Pa. Super. 221, 230, 527 A.2d 1034, 1038 (1987). Clearly, the substitute guardian in this case has met this burden as to Sheila Lewis.

A more complex issue is presented by the substitute guardian's suggestion that Nathaniel Gaddy be held jointly liable for the losses to the Hampton Estate. The PEF code provides for Orphans' Court jurisdiction over “an investment agent who accepts the delegation of a fiduciary's function from a fiduciary who is subject to the jurisdiction of a court of this Commonwealth” because he shall be “deemed to have submitted to the jurisdiction of the court

49 11/15/2004 N.T. at 66.

50 11/1/2004 N.T. at 63.

51 Appeal of Samuel Royer, Guardian of the Children of James Mc'Namara, 11 Pa. 36, *41 (1836).

even if the delegation agreement provides for a different jurisdiction or venue.”⁵² Admittedly, in the instant case, there was no evidence of a delegation agreement. Moreover, in his testimony, Mr. Gaddy denied that he had been an investment advisor—at least after 1999—since in his mind his role was merely to hold and then distribute funds to Ms. Lewis rather than invest them for her aunt.⁵³ Ms. Lewis, in contrast, clearly believed that Gaddy was investing her aunt’s funds to help them “grow” and provided resources throughout her lifetime. Moreover, the accounts suggest that the Ms. Lewis gave the bulk of the funds to Gaddy either in 1998 or 1999⁵⁴—in a period prior to the time when he stated he was no longer serving as in investment advisor. Finally, Mr. Gaddy did file a formal account of his custody of the funds for the Hampton Estate and he appeared at the hearings to testify. The act of filing the account and appearing to testify suggest a voluntary submission to this court’s jurisdiction—and to the imposition of the surcharge that is properly due.

The next task is to determine the amount of the surcharge that should be charged. The first step in determining the appropriate surcharge in this case is to come up with the amount of money from the Hampton Estate that Ms. Lewis gave to Nathaniel Gaddy. The July 2004 formal account filed by Nathaniel Gaddy conceded receipts of \$201,621.46. After the hearing, Ms. Lewis submitted a Revised Final Account with the assistance of counsel she employed after her first attorney ceased representing her due a potential conflict of interest with Nathaniel Gaddy. This revised final account is a distinct improvement over her first two accounts both in form and substance. It concludes that Sheila Lewis had given a total of \$244,307.49 to Nathaniel Gaddy for investment based on the following:

⁵² 20 Pa.C.S.A. § 7206(d).

⁵³ 9/23/2004 N.T. at 10.

7/10/1999 – Proceeds from redeemed certificate of deposit	\$ 44,616.23
Proceeds check from sale of residence April 9, 1999	\$145,336.71
Annuity Gain Check #293 12/1/98	\$ 18,562.89
Check for Sale of personal Propertcheck # from House Check #312 2/8/99	\$ 4,200.00
Proceeds from Sale of Annuity Check #376 3/7/00	\$ 31,591.66 ⁵⁵

Significantly, the formal account filed by Gaddy and the final revised account filed by Lewis include the same figures for four of the above entries. They differ as to the following entries and amounts:

- (1) The Lewis final revised account lists \$44,616.23 for proceeds from a redeemed certificate of deposit (7/10/1999) which was not included in Gaddy’s July 2004 formal account, and;
- (2) The Gaddy July 2004 formal account included a \$2,000 figure for March 31, 1999.

The Lewis final account provides documentation for the amount given to Gaddy or Tri-Star in the following three forms: (1) checks bearing the name of the “Estate of Willa Mae Cooper-Hampton” that were signed by Sheila Lewis; (2) a check from the Continental Search and Abstract Company made out to Sheila Lewis, Guardian of the Estate of Willa Mae Lewis and endorsed to Tri-Star; and (3) a certificate of deposit receipt in the amount of \$44,616.23 that ostensibly was redeemed into a cashier’s check that was then endorsed over to Tri-Star Consultants. The substitute guardian generally agrees with the calculations in the final Lewis account that \$244,307.49 from the Hampton Estate had been given to Nathaniel Gaddy.⁵⁶ This court concurs with this conclusion.

54 See, e.g., 7/23/2004 Nathaniel Gaddy Account at 2 (listing receipts of principal from Sheila Lewis between December 1998 through March 2000. The bulk of the transfers occurred in 1998-1999).

55 See 1/19/2005 Lewis Final Revised Account.

56 See 3/1/2005 Substitute Guardian’s Memorandum at 14. The substitute guardian stated that \$244,337.49 had been given to Gaddy and Tri-star but when the various documents are added the figure should be \$244,307.49. In

The next step in the analysis of the surcharge is to compute the amount that Gaddy returned to the Hampton Estate. This is where the substitute guardian's painstaking analysis of the various checks and deposit slips⁵⁷ is invaluable. In her questioning of Gaddy at the hearing and subsequent memorandum, she helped isolate the payments that went to the Hampton Estate and those which were given to Sheila Lewis or Nathaniel Gaddy individually. This court adopts her analysis that the following sums were returned to the Hampton Estate by Gaddy:

1999	\$19,500
2000	\$12,500
2002	\$ 6,300
2003	\$ 3,400 ⁵⁸

For the year 2001, the documents indicate that Gaddy returned \$23,000 rather than the \$24,000 listed by the substitute guardian. In addition to these sums documented by G-3, the substitute guardian concludes that an additional sum in the amount of \$21,000 was returned to the Hampton Estate by Gaddy as documented by the deposit slips in Ex. G-4-A. Although the Lewis Final account does not include this additional \$21,000 in its calculation of the amounts returned to the estate,⁵⁹ the documentary support of Ex. G-4-A is persuasive. Hence, this court concludes that Gaddy returned \$85,700 to the Hampton Estate. The surcharge would therefore be \$158,607.49, based on the total of \$244,307.49 given to the Hampton Estate minus the total returned to the estate of \$85,700.00. No fees should be paid to Nathaniel Gaddy for his purported financial services to the Estate of Willa Mae Hampton Cooper.

According to the final revised account that was filed by Ms. Lewis on January 19, 2005, the total receipts for the Estate were \$379,746.88 with disbursements of \$183,777.49 and investments of

reaching this figure, the substitute guardian did not include the \$2,000 check to Nathaniel Gaddy as a finder's fee since this constituted a separate payment to him for services rendered.

⁵⁷ See Exs. Gaddy-3, Gaddy 4, and Gaddy 4.A.

⁵⁸ See 3/1/2005 Substitute Guardian Memorandum at 10-11; Ex. G-3.

\$192,466.69 for a balance after disbursements of \$3,502.70. To this amount shall be added a surcharge as against Sheila Lewis, former guardian and Nathaniel Gaddy of \$158,607.49, which shall be awarded to the substitute guardian, Mary Jane Barrett for the benefit of Willa Mae Hampton Cooper, an incapacitated person. This award is subject to payment of any transfer inheritance tax as may be due as well as to all distributions already properly made.

Leave is hereby granted to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this ____ day of JUNE 2005, the final revised account of Sheila Lewis, former guardian, as modified by this Adjudication and surcharge, is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of this Adjudication. An appeal may be taken to an appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and Pa.R.A.P. 902 and 903.

John W. Herron, J.

59 See Lewis 1/19/2005 Revised Final Account at 1.