

Adjudication is dated 12/10/98

***COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION***

9 July 93

No. 302 of 1978

Estate of PAUL BIGGANS, Deceased

Sur account entitled: First and Final Account of Robert P. Biggans,
Administrator

Before PAWELEC, J.

This account was called for audit October 4 and December 6, 1993,
March 7, 1994, May 2 and 24, 1995, February 26 and 27, 1997,
and, May 22, 1997

Counsel appeared as follows:

MICHAEL J. KOROLISHIN, ESQ. - for the Accountant

CONSTANCE W. MAIER, ESQ., - for Patricia Ann Biggans,
Maureen Biggans, Ronald J. Biggans, Jr. and Kelli Biggans,
Objectants

Paul Biggans died on April 1, 1974, intestate, leaving to survive
him, as his heirs-at-law and next of kin under the intestate laws, his wife, Violet
Biggans, and, four children, namely, Patricia Ann Miller, Robert P. Biggans,
Edward P. Biggans and Ronald J. Biggans.

Letters of Administration were granted to Robert P. Biggans on February 5, 1976; proof of publication of the grant of same was submitted and is annexed hereto.

Ronald J. Biggans, son and intestate heir of Paul Biggans, died on July 29, 1975, intestate, leaving to survive him, as his heirs-at-law and next of kin under the intestate laws, his wife, Patricia Ann Biggans, and, three children, namely, Maureen Biggans, Ronald J. Biggans, Jr., and Kelli Biggans.

Violet Biggans, wife and intestate heir of Paul Biggans, died on February 24, 1988, leaving a will dated May 17, 1979, which was duly admitted to probate. Violet was unmarried at the time of her death, and, was survived: by three children, namely, Patricia Ann Miller, Robert P. Biggans and Edward P. Biggans; and, by the aforementioned children of her deceased son, Ronald J. Biggans, namely, Maureen Biggans, Ronald J. Biggans, Jr., and Kelli Biggans. Violet's surviving children are the duly appointed and qualified Executors of her estate. They are also named trustees of a trust of one-fourth (1/4) of the residue of Violet's estate for the benefit of the children of her deceased son, Ronald.

Robert P. Biggans was removed from his office of Administrator of the Estate of Paul Biggans, Deceased, by Decree of Lewis, A.J., dated April 23, 1993. On May 17, 1993, the Register of Wills granted Letters of Administration, D.B.N. to Patricia Ann Biggans and Maureen Biggans, Objectants herein.

It is stated that no payments have been made on account of inheritance tax.

It is stated that the family exemption has not been claimed and has not been paid.

Robert P. Biggans takes the position that his father left no assets which were subject to administration by a personal representative. While noting that Paul and Violet Biggans owned real property at 13010 Kelvin Avenue, Philadelphia, and 104 South Woodcrest Avenue, Longport, New Jersey, as tenants by entireties, Robert's account, stated for the period April 1, 1974 to May 11, 1993, indicates that he received neither principal or income belonging to Paul. The account may be termed a "nothing, nothing" account.

Acting as heirs of Ronald J. Biggans, and, as Administrators D.B.N. of the Estate of Paul Biggans, Deceased, Patricia Ann Biggans and Maureen Biggans have appeared by counsel and filed an Objection to the First and Final Account of Robert P. Biggans, former Administrator. Ronald J. Biggans and Kelli Biggans, also heirs of Ronald, have joined in said Objection.

Objectants contend that Paul Biggans was a building contractor whose estate should have included at least \$4,252,914.85 in assets, being: \$588,150.00 in alleged profits on sale of 150 homes in a development known as Kelvin Twin Homes; \$3,610,000.00 in alleged profits on rental and sale of 95 Townhouse Condominium Units in a development known as Edison Gardens; \$18,500.00 in principal allegedly due on a mortgage granted by William Di Francesco and Claire Di Francesco, his wife, to a corporation known as Biggans Associates, Inc., on October 2, 1972; and, \$36,264.85 in interest and principal allegedly due on a mortgage granted by a corporation known as Glendale

Center, Inc., to Paul Biggans, on August 10, 1968. In addition, Objectants contend that the Estate of Paul Biggans should have included an unspecified amount of cash representing: alleged profits on sale of a warehouse known as the Allengrove Warehouse; alleged profits on sales of 58 duplex buildings in a development known as the Allengrove Duplexes; proceeds of sale of premises 9035 and 9033 Ashton Road to New Ashton Pharmacy, Inc., by Biggans Associates, Inc., by deeds dated October 6, 1978 and October 16, 1980; and, interest and principal allegedly due on a mortgage which was granted by John R. McNulty, Edward P. Biggans and Richard E. Krager to Biggans Associates, Inc., on December 5, 1980.

He who would surcharge a personal representative for failure to marshal and administer property of a decedent must identify the missing property; prove that it was owned by the decedent at death; prove the value of said property at the time of death; prove that failure to marshal and administer the missing property constituted breach of a fiduciary duty; prove that said breach of fiduciary duty resulted in a loss to the estate; and, prove the amount of said loss. See Cutler's Estate, 225 Pa. 167 (1909), Schwartz Estate, 68 D.&C. 154 (O.C., Phila., 1949), Conway Estate (No. 2), 12 Fiduc. Rep. 283 (O.C., Montg., 1962), Dunn Estate, 54 D.&C.2d 760 (Mercer, 1972), Estate of Stetson, 463 Pa. 64 (1975), and, Miller's Estate, 345 Pa. 91 (1942).

Exhibit B-23 is a copy of the Deed whereby the site of the "Kelvin Twin Homes" development was conveyed to Kelvin Homes, Inc., a Pennsylvania corporation, on December 8, 1972. Said Deed recites that the premises was

conveyed by the Trainer brothers, namely Francis, Edward and Robert, and their spouses, for a consideration of \$505,000.00.

In support of their contention that Paul's estate should include alleged profits on sale of 150 homes in the "Kelvin Twin Homes" development, Objectants offered the testimony of Robert Trainer, Thomas J. Campbell, Patricia Ann Biggans, Robert P. Biggans, Patricia Ann Miller and Norman A. Rader. In addition, Objectants offered Exhibit B-30 and Exhibit O-9.

Called by Objectants, Robert Trainer testified that Paul Biggans approached his brother, Edward Trainer, and negotiated the purchase of the "Kelvin Twin Homes" site from the Trainers. The site was on Kelvin Avenue, near Pierce Street and north of Byberry Road, in Philadelphia. Settlement went smoothly, and, payment was made by a check of Kelvin Homes, Inc. While he could not put a number on it, Mr. Trainer testified that Paul built a lot of homes on the site.

Called by Objectants, Thomas J. Campbell, formerly of the firm of Granahan, Martin & Campbell, Realtors, testified that Paul Biggans hired his firm to sell the houses which were to be constructed on the "Kelvin Twin Homes" site. Mr. Campbell recalled about 135 houses being built in a period of three to four years, ending in 1977, and, being sold for prices in the vicinity of \$48,000.00. Although he did remember working with other people, Mr. Campbell stated that he was hired by Paul and dealt with Paul, and, that he never dealt with Violet Biggans. Mr. Campbell further stated that he did not attend the settlement on every "Kelvin Twin Homes" property, but, that the proceeds of all settlements

which he did attend were retained by the title insurance company and applied to loans and mortgages.

Patricia Ann Biggans, an Objectant, testified that her deceased husband worked as a plumber on the “Kelvin Twin Homes” project; that 150 houses were built on the Kelvin site; and, that about one-half of them were completed in the lifetime of her father-in-law, Paul Biggans. According to Patricia Biggans, Paul was the only person involved in Kelvin, in his lifetime, and, Violet Biggans took over the project on Paul’s death. Paul bought the site; got money from Frankford Trust Company; and, only let certain friends make very small investments in the project. Patricia Ann Biggans opined that, if there were any other investors in Kelvin, they had a very nominal interest. Patricia Ann Biggans testified that her mother-in-law, Violet Biggans, directed the completion of the “Kelvin Twin Homes” project on the death of Paul Biggans. Patricia Ann Biggans referred to Violet as the “Queen Bee” or “Head Honcho” who used the telephone to direct her children, Patricia, Robert and Edward, to attend various settlements. While admitting that she was not personally privy to his business affairs, and, that she never saw a deed or stock certificate in his name, Patricia Ann Biggans insisted that Paul Biggans was the only person who had any interest in the Kelvin project.

Called by Objectants, as of cross-examination, Robert P. Biggans testified that he was familiar with the name “Kelvin Twin Homes”, but, that he had no idea as to the identity of the owners or participants in the project. Robert recalled that the Kelvin houses were near Byberry Road, but, he did not know the

number of houses which were built. He recalled that his parents lived in one of the houses, and, that his sister, Patricia Ann Miller, lived in another. Robert did not recall signing Exhibit B-30, which is an Affidavit dated August 28, 1979, wherein he swore to the Internal Revenue Service that his mother bought 15 shares of the stock of Kelvin Homes, Inc., at the inception of the corporation on October 24, 1972; that the stock was held in the joint names of Violet and Paul Biggans, as tenants by entireties; that the investment was nominal; and, that his father took no active interest in the operation of the company.

Called by Objectants, Patricia Ann Miller testified that her father was one of many partners who were involved in the “Kelvin Twin Homes” project. Other partners included her brother, Edward P. Biggans, Dr. Martin Cooper, Walter Smith, and, a Mr. Ronis. Ownership of the stock in Kelvin Homes, Inc., could be determined by reference to the company’s corporate papers which were in Edward’s hands until they were destroyed by fire. Patricia Ann Miller was unsure of the number of houses which were built in the Kelvin project, but, stated her belief that the number was more than 100. Patricia Ann Miller stated that her parents lived in 13010 Kelvin Avenue while Patricia lived in 13008 Kelvin Avenue. Patricia Ann Miller recalled that her father was receiving some income from the Kelvin project at the time of his death.

Called by Objectants, Norman A. Rader testified that he had more than forty years experience as an appraiser of real estate who had worked with developers. Mr. Rader testified that 150 homes were built on the “Kelvin Twin

Homes” site between December of 1972 and 1976. Using an “Average Selling Price” of \$36,490.00, Mr.Rader opined that the owners of the Kelvin project enjoyed a profit on a per house basis of \$3,921.00, or, an overall profit of \$588,150.00. The “Average Selling Price” of \$36,490.00 was given to Mr.Rader by counsel for Objectants. Mr.Rader stated that he could not confirm said “Average Selling Price” because he had not checked the copies of each deed in the Department of Records; because computer records were unavailable for sales before 1981; and, because City personnel often made errors in data entry or failed to enter sales prices in the computers. While he believed that more than 32 or 33 houses were sold after Paul Biggans’ death, Mr.Rader could not be certain because of the lack of computer records of sales before 1981. Mr.Rader agreed that only the contractor would know the true profit on a project, and, that he never saw the corporate records of Kelvin Homes, Inc.

Exhibit O-9 includes three pages of a “Liability Ledger” which was maintained by Frankford Trust Company on Kelvin Homes, Inc. This Ledger indicates that, on December 8, 1972, the date of settlement on the purchase of the “Kelvin Twin Homes” site from the Trainers, the Bank loaned \$400,000.00 to Kelvin Homes, Inc. According to the Ledger, five persons assumed indirect liability as endorsers on the note of Kelvin Homes, Inc., namely Paul Biggans, Edward P. Biggans, Walter F. Smith, Herman A. Kiedaisch and James J. O’Neil. The Bank then loaned more than \$100,000.00 in additional monies to Kelvin Homes, Inc., all covered by the said endorsement of the said five individuals, including: \$25,900.00 on August 24, 1973; \$25,691.25 on July 31, 1974;

\$12,975.38 on August 12, 1974; \$24,480.00 on August 23, 1974; and, \$10,953.37 on January 3, 1975. All of said loans to Kelvin Homes, Inc., were fully repaid over time, with an initial payment of \$11,024.83 on October 25, 1973 and a final payment of \$11,475.17 on September 19, 1975.

This Court does not believe that Objectants' evidence will support a surcharge of the accountant in the amount of \$588,150.00, or in any other amount, in alleged profits on sale of 150 homes in the "Kelvin Twin Homes" project.

His active involvement in the Kelvin project does not prove that Paul Biggans ever owned a single share of stock in Kelvin Homes, Inc., a Pennsylvania corporation, in his own name. Being one of five persons to endorse the note of Kelvin Homes, Inc., does not prove that Paul was the only person who had any interest in the Kelvin project, or, that other investors had a very nominal interest. If Paul and his wife held stock in Kelvin Homes, Inc., as tenants by entireties, said stock would not be an asset of his estate. Paul could have derived income from Kelvin Homes, Inc., as an employee or as a stockholder. Objectants have simply failed to prove that Paul Biggans owned an interest in the "Kelvin Twin Homes" project at the time of his death. Nor have they proven the nature, size or extent of any interest which Paul may have had in the project.

The "Kelvin Twin Homes" project may have involved 135 or 150 houses. Those houses may have been sold for a price in the vicinity of \$48,000;

for an "Average Selling Price" of \$36,490.00; or, for prices which varied widely with each house. Because Mr. Rader did not check copies of each deed, his "Average Selling Price", which was provided to him by counsel for Objectants, remains unconfirmed in the mind of this Court. Only the contractor knows the true profit on a project, and, the corporate records of Kelvin Homes, Inc., are unavailable. On this record, Objectants have simply failed to prove the amount of the profit which was enjoyed by the owners of the Kelvin project. Other than the 15 shares mentioned in Exhibit B-30, they never offered any evidence of who were the actual shareholders and the amount of shares held by them. There was no evidence as to the actual profits, if any, and how and to whom they were distributed. I also must note that the sale of homes in the Kelvin tract was allegedly concluded years after the death of Paul Biggans. There is no evidence whatsoever that his estate received any money from the sale of the Kelvin tract properties.

Inssofar as Objectants seek a surcharge for alleged profits on the "Kelvin Twin Homes" project, their Objection is dismissed.

Exhibit B-15 is a copy of a Mortgage on the site of the "Edison Gardens" project, which is situate at the intersection of Edison Avenue and Prospect Street, in Philadelphia. Said Mortgage recites that the Reading Company leased the site to a Pennsylvania corporation known as "Edison Gardens, Inc.", on May 1, 1967, for a term ending not earlier than April 30, 2017, and, that "Edison Gardens, Inc." assigned its said lease to another Pennsylvania corporation known as "Edison Development Corporation, #1", on October 1,

1969. Said Mortgage, dated April 30, 1971, secures a loan of \$825,000.00 from Frankford Trust Company to "Edison Development Corporation, #1". Said Mortgage is signed by Edward P. Biggans in his capacity as President of the Mortgagor.

In support of their contention that Paul's estate should include alleged profits on rental and sale of 95 Townhouse Condominium Units on the "Edison Gardens" site, Objectants offered the testimony of Robert P. Biggans, Patricia Ann Miller and Norman A. Rader. They offered the Deposition of Isaac Abrahams. They offered the Federal Income Tax Returns of Paul and Violet Biggans (Forms 1040) for calendar years 1970, 1971, 1972 and 1973, which were marked as Exhibit B-25, Exhibit B-26, Exhibit B-27 and Exhibit B-37, respectively. And, they offered Exhibit Exhibit O-9.

Called by Objectants, as of cross-examination, Robert P. Biggans testified that the name "Edison Gardens, Inc." rang a bell, and, that his father probably had something to do with it. Robert had no specific recollection of "Edison Gardens, Inc.". He stated that he knew of the existence of "Edison Development Corporation,#1", but, that he had nothing to do with "Edison Development Corporation, #1" and knew nothing of the Mortgage which has been marked Exhibit B-15. Robert identified the signature of the Secretary of "Edison Development Corporation, #1", on the Mortgage, as that of Walter Smith. He stated that Mr.Smith owned a heating and air conditioning business and was now deceased.

Called by Objectants, Patricia Ann Miller testified that her brother, Edward, owned the corporation which was known as "Edison Gardens, Inc." and later became known as "Edison Development Corporation, #1". She stated that Edward built townhouses on the "Edison Gardens" site sometime in 1970 or 1972 or 1973.

Isaac Abrahams was deposed, on January 5, 1983, in litigation in the United States Tax Court which litigation was captioned "Estate of Paul Biggans, Deceased, Robert Biggans, Administrator, Petitioner, vs. Commissioner of Internal Revenue, Respondent". Said Deposition has been marked Exhibit O-1 and received into evidence. In said Deposition, Mr. Abrahams testified that he had been a practicing Certified Public Accountant for forty years. He had known Paul and Violet Biggans since 1958 or 1960. He had prepared tax returns for Paul and Violet, and, for several corporations which had been formed by Paul. On the subject of "Edison Gardens, Inc.", Mr. Abrahams stated that said corporation was not in existence when he first met Paul Biggans, and, that he had not done the tax returns for this corporation. Mr. Abrahams did not know when "Edison Gardens, Inc." was incorporated. He did not know who owned stock in said corporation. He did not know if it was still in existence on January 5, 1983. On the subject of "Edison Development Corporation, #1", Mr. Abrahams stated that he had heard the name of said corporation, but, that he had no further knowledge of it. He did not do the tax returns for "Edison Development Corporation, #1". He was unsure whether it was still in existence on January 5, 1983.

According to their Income Tax Returns for 1970 through 1973, Paul and Violet Biggans resided at 624 Edison Avenue in 1970, 1971 and 1972. When they filed their Return for 1973, they did so from an address at 13010 Kelvin Avenue. The Returns for 1970 and 1972 include Schedules "C" for a business which Violet conducted from premises 624 Edison Avenue. The Return for 1973 includes a Form W-2 which shows that "Biggans Associates, Inc.", located at 624 Edison Avenue, paid wages to Violet.

Called by Objectants, Norman A. Rader testified that he relied upon computer records from "Trend", a conglomerate of five County Multiple Listing Services, in determining that there were 95 Townhouse Condominium Units on the "Edison Gardens" site. Counsel for Objectants advised Mr.Rader that the Units had been built in 1973 or 1974; had then been rented for ten years; and, had thereafter been sold to individual owners at an "Average Selling Price" of \$38,000.00 per unit. Mr.Rader testified that he consulted with the owner of one Unit to reach a determination that the Units were rented for an "Average Rental" of \$450.00 per month, excluding utilities, which produced an annual income, per Unit, of \$5,400.00. Mr.Rader next determined that real estate taxes on each Unit, during the ten year period of rentals, averaged about \$500.00 per year. Mr.Rader applied an industry standard of 6% of gross income to determine annual management cost of \$325.00 per Unit. All of the foregoing led Mr.Rader to opine that each Unit produced an annual net income of \$4,575.00, or, an accumulated net income, over a ten year period, of \$45,750.00 per Unit.

Mr. Rader next opined that said figure of \$45,750.00 was sufficient to cover all costs of construction and other related costs. Finally, Mr. Rader opined that sales of 95 Units, at an "Average Selling Price" of \$38,000.00, produced a profit of \$3,610,000.00, over the ten year period, for the owners of the "Edison Gardens" project. Mr. Rader stated that he was not asked to identify the owners of the Edison project, and, that he made no attempt to do so. When asked whether the profits on "Edison Gardens" would have been subject to taxation, Mr. Rader testified that, theoretically, the profits would have been taxed, but, that this project presented a prime example of a situation in which a lot of builders used a long holding period to obscure their profits. Once again, Mr. Rader agreed that only the contractor would know the true profit on a project like "Edison Gardens".

Exhibit O-9 includes "Liability Ledger" sheets in the names of "Edison Gardens, Inc.", Paul Biggans and Edward P. Biggans. Exhibit O-9 does not include a Ledger in the name of "Edison Development Corporation, #1". Read in conjunction with the Mortgage which has been marked Exhibit B-15, the Ledgers of Frankford Trust Company reveal the following chronology of events.

1. On May 1, 1967, a Pennsylvania corporation known as "Edison Gardens, Inc." leased the "Edison Gardens" site from the Reading Company for a term ending not earlier than April 30, 2017.
2. From July 19, 1968 until February 4, 1969, three persons, namely Paul Biggans, Raymond W. Bopp and Rosann Boyce, assumed indirect liability as endorsers on loans totaling \$80,000.00 to "Edison Gardens, Inc."

3. From April 23, 1969 to August 8, 1969, two persons, namely Paul Biggans and Rosann Boyce, assumed indirect liability as endorsers on loans totaling \$19,000.00 to "Edison Gardens, Inc."

4. On October 1, 1969, "Edison Gardens, Inc." assigned its lease on the Edison site to another Pennsylvania corporation known as "Edison Development Corporation, #1".

5. From November 5, 1969 to March 24, 1970, two persons, namely Paul Biggans and Rosann Boyce, assumed indirect liability as endorsers on loans totaling \$16,000.00 to "Edison Gardens, Inc."

6. On April 30, 1971, Frankford Trust Company loaned \$825,000.00 to "Edison Development Corporation, #1". This loan was secured by a Mortgage on the Edison site. Said Mortgage is Exhibit B-15., and, was signed by Edward P. Biggans as President of the Mortgagor. This loan is not reflected in the Bank's Ledgers on Paul Biggans or Edward P. Biggans.

7. On June 11, 1971, a single payment of \$115,000.00 was made to pay, in full, all loans by Frankford Trust Company to "Edison Gardens, Inc.", which loans had been endorsed by Paul Biggans, Raymond W. Bopp and Rosann Boyce.

8. On September 29, 1972, Frankford Trust loaned \$120,000.00 to an entity which is identified on the Ledgers of Edward P. Biggans as "Edison Development Corporation". This loan was endorsed by Edward P. Biggans.

9. From December 13, 1972 to December 23, 1976, "Edison Development Corporation" and "Edison Development Corporation, #1" made payments totaling \$120,000.00 to Frankford Trust Company.

This Court does not believe that Objectants' evidence will support a surcharge of the accountant in the amount of \$3,610,000.00, or in any other amount, in alleged profits on rental and sale of 95 Townhouse Condominium Units in the "Edison Gardens" project.

Objectants have not proven that Paul Biggans owned the site of the "Edison Gardens" project. Nor have they proven that Paul owned a single share of stock in "Edison Gardens, Inc.", "Edison Development Corporation, #1", or "Edison Development Corporation". According to Robert P. Biggans, his father probably had something to do with the Edison project. According to Patricia Ann Miller, her brother, Edward, owned the corporations known as "Edison Gardens, Inc." and "Edison Development Corporation, #1", and, built the Units on the Edison site. Isaac Abrahams and the Income Tax Returns add nothing to Objectants' case on Edison. Being one of three persons to endorse notes of "Edison Gardens, Inc." does not prove that Paul Biggans was the only person who had any interest in the Edison project, or, that other investors had a very nominal interest. Paul's involvement with Edison, such as it may have been, seemingly ended well before his death, that is, on June 11, 1971, with the payoff of all loans which had been endorsed by Paul, Bopp and Boyce, and, the extension of new loans which they did not endorse.

Considering all of their evidence, Objectants have simply failed to prove that Paul Biggans owned an interest in the “Edison Gardens” project at the time of his death. Nor have they proven the nature, size or extent of any interest which Paul may ever have had in said project. Nor have they identified the parties, individual or corporate, who rented and eventually sold the Edison Units. Nor have they proven that the same parties, individual or corporate, both rented and sold the Units.

Because he did not check copies of each lease and deed, Norman A. Rader did not provide the names of lessors or sellers, dates of sale, or, actual selling prices of the Units in the Edison project. In his analysis of profits on the project, Mr.Rader made little or no mention of the costs of acquiring the site. He made no mention of vacancies, actual or estimated, over a ten year period. He did not consider income taxes in determining his \$45,750.00 figure for accumulated net income, over a ten year period, or, in determining his \$3,610,000.00 figure for profits on rentals and sales over said period. As Mr. Rader agreed, only the contractor knows the true profits on the Edison project. In fact, Mr.Rader testified that these properties had been built in 1973 or 1974. Then rented for ten years. And then sold. Paul Biggans died in 1974. On this record, Objectants have simply failed to prove that the owners of the Edison project enjoyed a profit of \$3,610,000.00, over a ten year period, on rentals and sales of Units in the “Edison Gardens” project. They did not prove what interest, if any, Paul Biggans had in the corporations involved. There was no evidence

that the estate of Paul Biggans received any money from this project after his death or was due any money.

Insofar as Objectants seek a surcharge for alleged profits on rental and sale of units in the "Edison Gardens" project, their Objection is dismissed.

Objectants' contend that Paul Biggans owned and managed a Pennsylvania corporation known as Biggans Associates, Inc., and, that he lived on the income which he derived from said corporation. These contentions are the bases of the claims that Paul's estate should include: \$18,500.00 in principal allegedly due on a mortgage granted to Biggans Associates, Inc., on October 2, 1972; \$36,264.85 in interest and principal allegedly due on a mortgage granted by a corporation known as Glendale Center, Inc., to Paul Biggans, on August 10, 1968; alleged profits on sale of a warehouse known as the Allengrove Warehouse; alleged profits on sales of 58 duplex buildings in a development known as the Allengrove Duplexes; proceeds of sale of premises 9035 and 9033 Ashton Road by Biggans Associates, Inc., by deeds dated October 6, 1978 and October 16, 1980; and, interest and principal allegedly due on a mortgage which was granted to Biggans Associates, Inc., on December 5, 1980. A reading of Objectants' documentary evidence reveals the following chronology of events in regard to these claims.

1. On July 14, 1961, a Pennsylvania corporation known as "Cottage Green Builders, Inc." conveyed premises known as 9033-35-41-43-45 Ashton Road, premises known as 2803-B Tremont Street, and, premises known as 2803-C Tremont Street, all in

Philadelphia and forming a site known as the Ashton Shopping Center, to another Pennsylvania corporation known as "Ashton Shopping Center, Inc.". See Exhibit O-5.

2. On August 3, 1964, a Pennsylvania corporation known as "G. & G. Development Company" conveyed premises at the intersection of Castor Avenue and Faunce Streets, in Philadelphia, to another Pennsylvania corporation known as "Franko Realty Corporation". See Exhibit B-14.

3. On November 28, 1966, a Pennsylvania corporation known as "Ashton Shopping Center, Inc.", acting by its President, Paul Biggans, and its Secretary, Nathan R. Feldsher, conveyed the site of the Ashton Shopping Center to the sole shareholders of "Ashton Shopping Center, Inc.", in complete liquidation and dissolution of said corporation. Said Deed of distribution and liquidation grants the subject premises in the following manner, to wit: one-half to Nathan R. Feldsher; one-eighth to Patricia Ann Biggans; one-eighth to Robert Paul Biggans; and the remaining one-quarter interest to Patricia Ann Biggans and Robert Paul Biggans as Trustees for Edward Paul Biggans and Ronald J. Biggans, Minors (each minor having a one-eighth interest). See Exhibit O-5.

4. December 9, 1966, a Pennsylvania corporation known as "Franko Realty Corporation" conveyed premises at the intersection of Castor Avenue and Faunce Street, in Philadelphia, to another Pennsylvania corporation known as "Glendale Center,

Inc.". On the final page of this Deed, Paul Biggans signed a certification that the address of the Grantee, "Glendale Center, Inc." was 1617 Gregg Street, Philadelphia. On the Philadelphia Transfer Tax Certification attached to said Deed, Paul Biggans certified that this transfer was from straw party to principal. See Exhibit O-6.

5. On December 15, 1966, the incorporators of the Pennsylvania corporation known as "Glendale Center, Inc." signed Articles of Incorporation of said corporation. Said Articles were approved by the Secretary of the Commonwealth on December 28, 1966. Said Articles identify three Directors, namely Robert P. Biggans, Raymond W. Bopp and Patricia Biggans. See Exhibit O-3.

6. On December 30, 1966, the site of the Ashton Shopping Center was conveyed to a Pennsylvania Corporation known as "Biggans Associates, Inc.". The Grantors in this Deed are Nathan R. Feldsher and his wife; Patricia Ann Biggans, Singlewoman; Robert Paul Biggans and his wife; and, Patricia Ann Biggans and Robert Paul Biggans, Trustees for Edward Paul Biggans and Ronald J. Biggans. The signatures of the Grantors are witnessed by Paul Biggans and Violet S. Biggans. On a page of this Deed, Paul Biggans signed a certification that the address of the Grantee, "Biggans Associates, Inc." was 1617 Gregg Street, Philadelphia. See Exhibit O-4.

7. On January 27, 1967, the incorporators of the Pennsylvania corporation known as "Biggans Associates, Inc." signed Articles of

Incorporation of said corporation. Said Articles were approved by the Secretary of the Commonwealth on January 30, 1967. Said Articles identify three Directors, namely Robert P. Biggans, Patricia Biggans and Violet P. Biggans. See Exhibit O-2.

8. On January 31, 1967, the corporation known as "Biggans Associates, Inc.", acting by its President, Robert P. Biggans, and its Secretary, Patricia Biggans, agreed to issue all one hundred of its authorized shares of capital stock in consideration of its acquisition of the site of the Ashton Shopping Center. Said stock was to be issued as follows, to wit: 25 shares to Robert P. Biggans; 25 shares to Patricia Ann Biggans; and, 50 shares to Robert P. Biggans and Patricia Biggans, Trustees for Edward Paul Biggans and Ronald James Biggans. See Exhibits O-11 and B-1.

9. On May 10, 1967, a Pennsylvania corporation known as "Allen Grove Development Corporation" conveyed premises known as 500 Allengrove Street, in Philadelphia, to another Pennsylvania corporation known as "Biggans Associates, Inc.". See Exhibit B-5.

10. On August 10, 1968, a Pennsylvania corporation known as "Glendale Center, Inc." , acting by its President, Robert P. Biggans, and its Secretary, Patricia Ann Biggans, granted a Mortgage on premises at the intersection of Castor Avenue and Faunce Street, in Philadelphia, to Paul Biggans. Said Mortgage secured an obligation of \$20,000.00, and, was

payable within twenty years from its date. Said Mortgage contains a sentence which reads as follows, to wit, "The Indebtedness due hereunder represents payment to the mortgagee of the Building Constructor's Fee arising from the construction of the building known as 'Glendale Center'". On the final page of this Mortgage, Paul Biggans signed a certification that the address of the Mortgagee was Glendale and Castor Avenues, Philadelphia. See Exhibit B-16.

11. On August 3, 1970, a Pennsylvania corporation known as "Biggans Associates, Inc.", acting by its President, Robert P. Biggans, and its Secretary, Edward P. Biggans, granted a Mortgage on premises known as 500 Allengrove Street, in Philadelphia, to Frankford Trust Company. Said Mortgage secured an obligation \$75,000.00, and, was payable on or before September 1, 1990. See Exhibit B-5.

12. On March 9, 1971, Paul Biggans assigned his Mortgage on "Glendale Center", at the intersection of Castor Avenue and Faunce Street, in Philadelphia, to the Pennsylvania corporation known as "Biggans Associates, Inc.". This Assignment of Mortgage was witnessed by Violet S. Biggans. See Exhibit B-16.

13. On August 1, 1972, the Pennsylvania corporation known as "Biggans Associates, Inc.", acting by its President, Robert P. Biggans, and its Secretary, Edward P. Biggans, granted a Mortgage on premises known as 9033 Ashton Road, being part of the Ashton Shopping Center, to Frankford Trust

Company. Said Mortgage secured an obligation of \$19,800.00, and, was payable on or before September 1, 1992. See Exhibit B-17.

14. On October 2, 1972, the Pennsylvania corporation known as "Biggans Associates, Inc." conveyed premises known as 2801-B Tremont Street, Philadelphia, being part of the Ashton Shopping Center, to William Di Francesco and Claire Di Francesco, his wife, taking back a Purchase Money Mortgage to secure an obligation of \$18,500.00 which Mortgage was payable in 240 equal monthly payments. See Exhibit B-10.

15. On October 6, 1978, the Pennsylvania Corporation known as "Biggans Associates, Inc.", acting by its President, Edward P. Biggans, and its Secretary, Patricia Ann Miller (nee Biggans), conveyed premises known as 9035 Ashton Road, Philadelphia, being part of the Ashton Shopping Center, to another Pennsylvania corporation known as "New Ashton Pharmacy, Inc." for a consideration of \$36,500.00. See Exhibit B-20.

16. On September __, 1980, Frankford Trust Company satisfied the Mortgage which had been granted by the Pennsylvania corporation known as "Biggans Associates, Inc.", on premises known as 9033 Ashton Road, Philadelphia, on August 1, 1972. This Mortgage Satisfaction Piece indicates that the mailing address of "Biggans Associates, Inc." is in care of Violet Biggans at 13010 Kelvin Avenue, Philadelphia. See Exhibit B-17.

17. On October 16, 1980, the Pennsylvania corporation known as "Biggans Associates, Inc.", acting by its President, Edward P. Biggans, and its Secretary, Patricia Ann Miller (nee Biggans), conveyed premises known as 9033 Ashton Road, Philadelphia, being part of the Ashton Shopping Center, to another Pennsylvania corporation known as "New Ashton Pharmacy, Inc." for a consideration of \$23,500.00. See Exhibit B-21.

18. On December 5, 1980, the Pennsylvania corporation known as "Biggans Associates, Inc.", acting by its President, Edward P. Biggans, and its Secretary, Patricia Ann Miller (nee Biggans), conveyed premises known as 2801 Tremont Street, Philadelphia, being part of the Ashton Shopping Center, to John R. McNulty, Edward P. Biggans and Richard B. Krager, for a consideration of \$25,000.00, taking back a Mortgage to secure an obligation of \$32,500.00 which Mortgage was payable on or before December 5, 2005. See Exhibits B-19 and B-18.

19. On February 3, 1984, the Pennsylvania corporation known as "Biggans Associates, Inc." conveyed premises known as 500 Allengrove Street, Philadelphia, to a Pennsylvania non-profit corporation known as "Philadelphia Authority For Industrial Development", for a consideration of \$165,000.00. See Exhibit B-22.

Patricia Ann Biggans, an Objectant, testified that her in-laws, Paul and Violet Biggans, were known to be millionaires. Paul was notorious for doing whatever he wanted in his business activities. At one point, while building a shopping center, Paul forged the signature of the head of the Department of Licenses and Inspections . On another occasion, Paul forged the signature of his son, Robert, on loan documents. Patricia Ann Biggans testified that her father-in-law received Christmas cards from President Kennedy, and, had frequent visits from Mayor James H.J. Tate. Patricia Ann Biggans recalled that Paul had once served as head of the Plumbing Advisory Commission.

Patricia Ann Biggans testified that the members of the Biggans family were known for duping the government in tax matters, and, spent a great deal of time in discussing ways of doing so.

Patricia Ann Biggans testified that she was familiar with all of Paul Biggans' construction projects. She acted as Paul's chauffeur, and, listened to him conduct business over lunch at the Hof Braus House Restaurant. According to Patricia Ann Biggans, Paul had no need of other investors in his projects because Frankford Trust Company would loan him all of the money that he needed.

Patricia Ann Biggans testified that Paul Biggans was the source, originator and driving force behind every corporation which he ever formed in the operation of his construction business. While she never saw a certificate of stock or deed in Paul's name, Patricia Ann Biggans was convinced that he owned and made his living from his corporations. According to Patricia Ann Biggans, no one

except Paul Biggans got a penny from any of his projects in his lifetime, and, Paul's children had no ownership interest in any of his projects. Patricia Ann Biggans stated that her brother-in-law, Edward P. Biggans, was in High School while his father developed many projects. Neither her deceased husband, Ronald, or her children ever received a certificate of stock in Biggans' Associates, Inc. Nor did they receive any income therefrom. Patricia Ann Biggans testified that a check of the state's computers, in Harrisburg, showed that Paul's home or office was the mailing address of every one of his corporations.

Patricia Ann Biggans testified that the Biggans' family refused to pay Federal Estate Taxes, on Paul's death, and, that this refusal led the IRS to bang on her door and interrogate her about Paul's assets and business activities. According to Patricia Ann Biggans, she was petrified by the conduct of the IRS Agents. She testified about a family meeting during which her brother-in-law, Robert, and her sister-in-law, Patricia Ann Miller, told her not to tell the IRS anything about Paul's beach house in Longport, New Jersey, or about Paul's business projects. Robert told Patricia Ann Biggans that he would hire a good attorney and an accountant to take care of this problem. Meanwhile, Patricia Ann Biggans was to be quiet. Patricia Ann Biggans testified that she followed Robert's instructions, and, to avoid ruining things for her children, she repeatedly told the IRS that she didn't know anything. However, Patricia Ann Biggans told this Court that she knew all about Paul Biggans' projects, and, that she was setting the record straight in her testimony before this Court.

Objectants' Exhibit B-24 is an Affidavit, dated October 16, 1996, wherein Norman G. Lefferts makes the following statements, to wit,

“ I, Norman G. Lefferts, former President and Officer of Frankford Trust Co. For approximately 46 years, knew and remember Paul Biggans as a very large builder, who would often come into the Bank for large Constructions Loans.”

Called by Objectants, Doris Fouser testified that she was an employee of the Frankford Trust Company for forty-five years. For fifteen of those years, Ms.Fouser served as a Mortgage Loan Officer at the Bank's office at 4400 Frankford Avenue, in Philadelphia. Ms. Fouser stated that she processed mortgage applications from individual buyers. She was not in the Construction Loan department. Ms. Fouser testified that Mr. Oliver Twist was the Vice President in charge of the Construction Loan department. Ms. Fouser often saw Paul Biggans come into the Bank to see Mr. Twist. Ms. Fouser was not involved in these meetings. Ms. Fouser testified that she couldn't recall the number of times she had seen Paul Biggans visit Mr. Twist. She couldn't testify about the size or amount of any mortgages which may have been discussed by Paul and Mr. Twist.

In his deposition of January 5, 1983, Isaac Abrahams testified that he had been a practicing Certified Public Accountant for forty years; that he had known Paul and Violet Biggans since 1958 or 1960; that he had prepared tax returns for Paul and Violet, and, for several corporations which had been formed by Paul; that he had prepared the tax returns of Biggans Associates, Inc.; and,

that he had possession of the accounting books and records, including cash receipts journals and checking account statements, of Biggans Associates, Inc., back to 1972. Mr. Abrahams stated that, as of January 5, 1983: Robert P. Biggans was forty years old, and, a practicing cardiologist; Edward P. Biggans was thirty-five or thirty-seven years old, and, a builder; Ronald Biggans had died of cancer, in 1975, at the age of twenty-six; and, Violet Biggans was seventy-five years of age.

In his deposition of January 5, 1983, Isaac Abrahams testified that Paul Biggans put very little of his own money into any construction project. Paul usually borrowed all of the monies, and, repaid the loans on the settlement of the sale of each building. Paul borrowed all of his construction monies from Frankford Trust Company. Mr. Abrahams stated that Paul dealt directly with the President of the Bank, Mr. Oliver Twist, and, that Paul had a good reputation with the Bank because he paid off all loans as he promised. Mr. Abrahams described Paul's borrowing practices in the following manner. Paul would submit a Financial Statement to the Bank. Said Financial Statement would include Assets and Liabilities of every member of the Biggans family. The Bank would make loans to corporations which were formed for specific projects. No loans were made to Paul as an individual. Mr. Abrahams stated that he was not involved in preparing any loan applications. According to Mr. Abrahams, he would be advised of the existence of a new corporation after it had been formed by Paul Biggans.

In his deposition of January 5, 1983, Isaac Abrahams testified that Paul Biggans was in the construction business when he and Paul first met. Violet Biggans was raising the couple's children and was not yet involved in the business. Mr. Abrahams stated that Paul started getting sick about ten to twelve years before he died on April 1, 1974. Emphysema ultimately incapacitated Paul and made him dependent on oxygen. Mr. Abrahams could not recall exactly when Paul withdrew from the construction business. However, Mr. Abrahams testified that Paul was pretty ill and retired by 1971, 1972 and 1973. According to Mr. Abrahams, Paul was not active in the construction business in the last few years of his life. Paul was not an officer or shareholder of any corporation towards the end of his life. Paul's activities were then restricted to guiding his sons, Edward and Ronald, in their conduct of the construction business. Mr. Abrahams stated that illness reduced Paul's activities to giving ideas to Edward and Ronald, and, helping them to get loans.

In his deposition of January 5, 1983, Isaac Abrahams testified that Violet Biggans began working in her husband's construction business, in 1967, when Paul's health started to fail. Violet had some bookkeeping experience. She was able to review invoices and pay bills. Mr. Abrahams stated that, by 1969 or 1970, Violet and three of the children, Edward, Ronald and Patricia Ann, were involved in running the business of Biggans Associates, Inc. According to Mr. Abrahams, Robert P. Biggans was a shareholder of Biggans Associates, Inc., but, Robert was never active in the business. Mr. Abrahams testified that the corporation's Federal Income Tax Return for the Fiscal Year ending March 31,

1974 was signed by Edward P. Biggans, as President, and Violet Biggans, as Secretary/Treasurer.

In his deposition of January 5, 1983, Isaac Abrahams was asked about a letter which he wrote to Paul Biggans on November 19, 1973. This letter included a Financial Statement of Paul Biggans as of September 30, 1973. Mr. Abrahams testified that Oliver Twist had requested a Financial Statement for the Bank's files. This Statement was offered in support of loans to Edward and Ronald Biggans, and, was needed to satisfy the Bank's examiners. Mr. Abrahams stated that the Statement was a compilation of the Assets and Liabilities of Paul and Violet Biggans, and, of all corporations which were then owned by the children of Paul and Violet. According to Mr. Abrahams, Oliver Twist knew that the Statement included Assets which did not belong to Paul Biggans. As submitted to the Bank, the Statement indicated that Paul had Assets totaling \$618,176.00 and Liabilities totaling \$54,550.00, leaving a Net Worth of \$563,626.00. These are the same figures which appear in Objectants' Exhibit B-34 which has been marked and received into evidence in the proceeding before this Court.

The aforementioned Financial Statement includes \$97,000.00 in cash on hand and in banks. In his deposition testimony, Mr. Abrahams broke this \$97,000.00 figure down into \$53,000.00 belonging to Paul and Violet Biggans, and, \$44,000.00 belonging to three corporations known as Longport Homes, Biggans Associates, Inc. and Kelvin Homes. Mr. Abrahams stated that Paul Biggans did not have an ownership interest in any of the said corporations as of

September 30, 1973. According to Mr.Abrahams, Paul and Violet's \$53,000.00 is broken down as follows: \$30,000.00 in a certificate of deposit in Violet's name; \$16,000.00 in a savings account in the names of Violet and Paul; \$4,500.00 in a joint checking account; and, \$2,000.00 in cash. During his deposition testimony, Mr.Abrahams reduced the amount of the joint savings account from \$16,000.00 to \$10,600.00.

The aforementioned Financial Statement includes \$265,000.00 in so-called "Investments At Market" which Mr.Abrahams broke down as follows, to wit: \$200,000.00 in value of the Ashton Shopping Center; \$20,000.00 in value of Kelvin Homes; and, \$45,000.00 in value of Glendale Center. According to Mr.Abrahams, Paul Biggans did not have an ownership interest in any of the said corporations as of September 30, 1973.

The aforementioned Financial Statement includes "Real Estate" at a value of \$125,000.00. In his deposition, Mr.Abrahams testified that this \$125,000.00 figure represented a house in Longport, New Jersey, which was owned by Paul and Violet Biggans.

The aforementioned Financial Statement includes \$112,400.00 in "Mortgages Receivable". In his deposition, Mr.Abrahams testified that this \$112,400.00 figure represented three Mortgages which were held by Biggans Associates, Inc. on properties in the Ashton Shopping Center. Mr.Abrahams stated that Paul Biggans did not have an ownership interest in Biggans Associates, Inc. as of September 30, 1973.

The aforementioned Financial Statement includes \$8,500.00 in "Loans Receivable". In his deposition, Mr.Abrahams testified that this \$8,500.00 figure represented loans which had been made by Paul Biggans. According to Mr.Abrahams, these loans were not collected following Paul's death because the amounts and debtors were unknown at that time.

The aforementioned Financial Statement includes \$10,000.00 in "Cash Surrender Value Of Life Insurance". In his deposition, Mr.Abrahams testified that Violet Biggans collected \$10,000.00 or \$15,000.00 in proceeds of two policies of insurance on Paul's life. Violet was the beneficiary of said policies.

The aforementioned Financial Statement includes a Liability of \$8,400.00 under the heading of "Notes Payable". In his deposition, Mr.Abrahams testified that this debt of \$8,400.00 was owed by Biggans Associates, Inc. to Frankford Trust Company.

The aforementioned Financial Statement includes a Liability of \$425.00 under the heading of "Accounts Payable". In his deposition, Mr.Abrahams testified that this debt of \$425.00 represented credit card bills of Paul and Violet Biggans.

The aforementioned Financial Statement includes a Liability of \$45,725.00 under the heading of "Mortgages Payable". In his deposition, Mr.Abrahams testified that this Mortgage debt of \$45,725.00 was owed by Biggans Associates, Inc. to Frankford Trust Company.

According to the aforementioned Financial Statement and deposition testimony of Isaac Abrahams, Paul and Violet Biggans had \$190,500 in Assets and \$425.00 in Liabilities on September 30, 1973. The Assets included: \$47,000.00 in cash which was in the name of Violet, alone, or, in the joint names of Violet and Paul; a house in the joint names of Paul and Violet, in Longport, New Jersey, valued at \$125,000.00; \$8,500.00 in loans by Paul which went uncollected on his death; and, \$10,000.00 in cash surrender value of policies of insurance on Paul's life. The Liabilities consisted of \$425.00 in credit card debt of Paul and Violet. In his deposition, Isaac Abrahams also testified that Paul and Violet Biggans purchased premises 13010 Kelvin Avenue on January 19, 1974.

Called by Objectants, as of cross-examination, Robert P. Biggans testified that he was born in 1943, graduated from college in 1965, married in 1966, and, graduated from medical school in 1969. Robert stated that his brother, Edward P. Biggans, was born in 1948.

Robert P. Biggans testified that his father was fifty-eight years old when he died on April 1, 1974. Paul Biggans was in his late thirties when he showed signs of the emphysema and diabetes which would eventually limit him to sedentary activities. Robert stated that his father started out as a plumber and ultimately made his living building houses and shopping centers in Northeast Philadelphia. Robert recalled that his father built several projects including: Patrician Homes, in the late 1950s or early 1960s; Ashton Shopping Center, in the 1960s; Glendale Center, sometimes called the Paul Biggans Center; and, the

Mayo Nursing and Convalescent Home, in the 1960s. Robert testified that his father was very friendly with President Oliver Twist of the Frankford Trust Company. Robert recalled that he ran errands for his father, and, sometimes accompanied his father on trips to the Bank.

Robert P. Biggans testified that Biggans Associates, Inc. was founded in 1966 or 1967, and, as of February 26, 1997, was owned by himself, Edward P. Biggans, Patricia Ann Miler, and, the children of his late brother, Ronald. Robert stated that he had been a director and shareholder of Biggans Associates, Inc. since its inception, but, that he was not involved in its day to day operations until after the death of his mother on February 24, 1988. According to Robert, he has never received any income from Biggans Associates, Inc.

Robert P. Biggans testified that his father was never an officer or shareholder of Biggans Associates, Inc., but, that his father ran the day to day operations of the business. At some point, Edward P. Biggans joined his father in the construction business. Near the end of his life, Paul Biggans was assisted in the business by his children, Edward and Patricia Ann Miller.

Robert P. Biggans testified that, from April 1, 1974 until February 24, 1988, Edward P. Biggans ran the business of Biggans Associates, Inc. as their father had done in his lifetime. Robert stated that he stayed out of the business because he assumed that Edward was running it. According to Robert, his mother was not involved in the business after his father's death.

Robert P. Biggans testified that he got more involved in the business of Biggans Associates, Inc. after the death of his mother on February

24, 1988. As of February 26, 1997, the assets of the corporation consisted of a two-thirds (2/3) interest in the Glendale Center, at 7601 Castor Avenue, in Philadelphia, and, one Mortgage on a pharmacy in the Ashton Shopping Center. Robert stated that it was after his mother's death that he learned that Edward had neglected the business of Biggans Associates, Inc. Robert and his wife were forced to loan \$132,000.00 to save Glendale Center. According to Robert, as of February 26, 1997, the firm of J.T. Jackson Realty was managing the Glendale Center and collecting the Mortgage payments on the pharmacy in the Ashton Shopping Center.

Robert P. Biggans testified that his father built the Ashton Shopping Center, being stores on Ashton Road, in the 1960s. Robert stated that Biggans Associates, Inc. sold all of the stores in the 1980s, and, took back Mortgages on many of them. According to Robert, all but one of the Mortgages were paid off in the 1980s, leaving a single monthly payment of \$600.00 which was being collected for Biggans Associates, Inc. by the firm of J.T. Jackson Realty. Robert could not recall the Deed and Acquisition Agreement whereby the Ashton Shopping Center was transferred to Biggans Associates, Inc. in return for the issuance of all of the stock of Biggans Associates, Inc. to himself and his siblings.

Robert P. Biggans testified that he did not sign the Mortgage, dated August 1, 1972, whereby Biggans Associates, Inc. granted a Mortgage on premises 9033 Ashton Road to Frankford Trust Company. Robert stated his belief that his father signed Robert's name, as President of Biggans Associates, Inc. on said Mortgage.

Robert P. Biggans testified that, as of February 26, 1997, Biggans Associates, Inc. was not receiving any payments on the Mortgage which it took from William Di Francesco and Claire, his wife, on premises 2801-B Tremont Street, on October 2, 1972.

Robert P. Biggans testified that 2801 Tremont Street, in the Ashton Shopping Center, was used as an office by his brother, Edward P. Biggans. Biggans Associates, Inc. took back a Mortgage when Edward and some partners bought the premises on December 5, 1980. Robert heard that there was a fire in Edward's said office. According to Robert, there were no payments on the Mortgage of December 5, 1980 until Edward collected proceeds of fire insurance and deposited same into the accounts of Biggans Associates, Inc. Robert testified that said fire insurance proceeds almost satisfied the Mortgage of December 5, 1980. Robert stated that Biggans Associates, Inc. had no interest in 2801 Tremont Street as of February 26, 1997.

Robert P. Biggans testified that the Glendale Center was an office building which his father built, at 7601 Castor Avenue, in the 1960s. Robert stated that the stock of Glendale Center, Inc. was owned as follows, to wit: one-third (1/3) by the late Raymond Bopp; and, two-thirds (2/3) by Biggans Associates, Inc. According to Robert, he had been President of Glendale Center, Inc. since its inception, in the late 1960s, but, he did not become involved in the day to day management of the building until after the death of his mother on February 24, 1988. Robert does not know what happened to the income of Glendale Center, Inc. from its inception to April 1, 1974.

Robert P. Biggans testified that, after the death of his mother on February 24, 1988, he learned that his brother, Edward, had neglected the business of Glendale Center, Inc. Robert then learned of many unpaid bills including a large amount of real estate taxes on the building. Robert stated that he and his wife loaned \$132,000.00 to Glendale Center, Inc. to avoid a Sheriff Sale of the building, and, took back a ten year Mortgage to secure said loan. According to Robert, said Mortgage was in its fourth year as of February 26, 1997. Robert testified that the firm of J.T. Jackson Realty was now collecting the rents on Glendale Center. Said rents are being added to the small Mortgage payment to Biggans Associates, Inc., and, used to pay the expenses of the building at 7601 Castor Avenue. Robert stated that the shareholders of Glendale Center, Inc. had not received a distribution from the corporation since he became actively involved in 1988. Robert testified that, since 1988, Glendale Center, Inc. had not made any payments to Biggans Associates, Inc. on the Mortgage of August 10, 1968 which was assigned by Paul Biggans to Biggans Associates, Inc., on March 9, 1971.

Robert P. Biggans testified that he did not learn of the sale of premises 500 Allengrove Street to the "Philadelphia Authority For Industrial Development" until after the death of his mother in 1988. Robert then learned that Edward had sold the property, in 1984, for \$165,000.00 of which \$75,000.00 was used to pay off a Mortgage to Frankford Trust Company and \$90,000.00 was deposited into the accounts of Biggans Associates, Inc. According to Robert, his brother, Edward, then used up said sum of \$90,000.00 over time.

Robert P. Biggans testified that his father did not have a net worth of \$563,626.00, as indicated in Objectants' Exhibit B-34, on September 30, 1973 or on April 1, 1974. Robert stated that his father did not really own the assets which appear on the aforementioned Financial Statement. According to Robert, he was unaware of any bank accounts, stock certificates, Mortgages or loans which were owned by his father on April 1, 1974. Robert testified that he believed his mother when she told him that all of his father's assets were held in joint names, with herself, as tenants by entireties.

Called by Objectants, Patricia Ann Miller testified that her father was in the business of building and selling houses and other developments. Her father's projects included Patrician Homes and Cottage Green Manor. Patricia Ann Miller stated that her father usually had partners in his building projects. According to Patricia Ann Miller, her father did not take back Mortgages, but, made the buyers get their own financing and pay off the builder at settlement. Patricia Ann Miller testified that she helped her father by running errands and typing corporate minutes. On some occasions, several years before his death, she drove her father to Frankford Trust Company.

Patricia Ann Miller testified that her father was not an officer or shareholder of Biggans Associates, Inc., but, that he ran or oversaw its business. On paper, the corporation was owned by Patricia Ann Miller and her siblings. The corporate officers were Robert P. Biggans, Patricia Ann Miller and Edward P. Biggans.

Patricia Ann Miller testified that she was not involved in the daily operations of Biggans Associates, Inc. She did not keep the corporate records. She typed corporate minutes and signed corporate documents when requested to do so by her father. Patricia Ann Miller stated that her mother was never actively involved in the business of Biggans Associates, Inc. At the time of her father's death, on April 1, 1974, her mother was not involved in the corporation's business.

Patricia Ann Miller testified that her father groomed her brother, Edward P. Biggans, to run Biggans Associates, Inc. when the father fell ill. Edward ran things after April 1, 1974. Patricia Ann Miller and Robert P. Biggans contributed money to the corporation when Edward said that he had tax problems. Otherwise, according to Patricia Ann Miller, she didn't ask questions until recently when she learned that lots of money was owed on the Glendale Center office building. Patricia Ann Miller testified that she now understands that all of the Ashton Shopping Center stores have been sold, and, that the bank which formerly occupied the ground floor of Glendale Center has moved out. Patricia Ann Miller states that she has been advised that the firm of J.T. Jackson Realty collects the payments on a single Mortgage held by Biggans Associates, Inc.; collects the rents on Glendale Center; and, reports to Robert T. Biggans.

Patricia Ann Miller testified that she has never received any income or property from Biggans Associates, Inc. She does not know whether her parents received any income from the corporation in her father's lifetime. She

did recall that her mother received a monthly payment of \$130.00 from the corporation for a time after her father's death. Said monthly payment stopped at some point in the lifetime of her mother. Patricia Ann Miller stated her understanding that there is now no money available for distribution to the shareholders of Biggans Associates, Inc., but, she hopes to eventually get some income from the corporation. According to Patricia Ann Miller, she and her surviving siblings have discussed the proposition that Ronald's children should get their share of Biggans Associates, Inc., but, that nothing has come of these discussions because there is no money available for distribution to shareholders of the corporation. She insists that no one has received any distributions from Biggans Associates, Inc.

Patricia Ann Miller testified that, although she did not know how it had been purchased, she knew that Biggans Associates, Inc. had once owned a building known as the Allengrove Warehouse. Patricia Ann Miller stated that she had recently learned that the warehouse had been sold by her brother, Edward, for \$165,000.00. According to Patricia Ann Miller, she never asked Robert or Edward to give her any of the proceeds of said sale.

Patricia Ann Miller testified that she helped her mother to settle her father's estate, and, that her father did not leave much of an estate. According to Patricia Ann Miller, her mother collected on a few insurance policies, and, Patricia Ann got a station wagon. Patricia Ann Miller stated that her parents held the following assets in their joint names, on April 1, 1974, to wit: their residence at 13010 Kelvin Avenue, in Philadelphia; their house on the beach in Longport,

New Jersey; and, some money in bank accounts. Patricia Ann Miller testified that she never knew the amounts of money in her parents' bank accounts.

Accountant's Exhibit A-3 is a copy of the Form 706 (United States Federal Estate Tax Return) which was filed by Violet Biggans on or about February 27, 1975. In said Form 706, Violet reported that the estate of her deceased husband, for Federal Estate Tax purposes, consisted entirely of property which was jointly held by husband and wife. Said property had a gross value of \$145,332.00, being: \$33,500.00 in value of premises 13010 Kelvin Avenue, Philadelphia; \$75,000.00 in value of premises 104 South Woodcrest Avenue, Longport, New Jersey; \$30,000.00 on deposit in a Frankford Trust Company certificate of deposit; and, \$6,832.00 in value of 854 shares of a corporation known as "Lapco Corp.". Schedule K of the Form 706 indicates that the Kelvin Avenue property was subject to a Mortgage of \$25,000.00 in favor of Frankford Trust Company. After taking a Marital Deduction of \$60,666.00, other deductions totaling \$33,547.13, and, an exemption of \$60,000.00, Violet's Form 706 results in there being no taxable estate and no federal estate tax on the death of her husband.

Objectants' Exhibit B-33 is a copy of a Notice of Deficiency in tax whereby the IRS notified Violet Biggans that they had taken the following actions, after an audit of her Form 706, to wit: increased the value of the Kelvin Avenue property from \$33,500.00 to \$41,000.00; increased the value of the Longport property from \$75,000.00 to \$89,000.00; and, added \$563,626.00 to the value of

the taxable estate. As a result of said "Adjustments", the IRS demanded that Violet pay \$78,007.34 in federal estate tax on the death of her husband.

The aforementioned demand for federal estate tax resulted in litigation in the United States Tax Court which litigation was captioned "Estate of Paul Biggans, Deceased, Robert Biggans, Administrator, Petitioner, vs. Commissioner of Internal Revenue, Respondent". In the course of said litigation: Isaac Abrahams, practicing Certified Public Accountant, submitted an affidavit which is dated April 23, 1979 and marked as Accountant's Exhibit A-6, and, Robert Biggans submitted an affidavit which is dated August 28, 1979 and marked as Objectants' Exhibit B-30. Said Litigation ended in a "Closing Agreement", on or about July 13, 1983, which Agreement is marked as Objectants' Exhibit B-4, and, includes the following, pertinent passages, to wit:

“ WHEREAS, the Commissioner of Internal Revenue has taken the position in a docketed Tax Court case that the value of such gross estate as of the date of the death of the decedent was under reported in an amount of \$585,126.00, resulting in a deficiency of estate tax in the amount of \$78,007.34;

WHEREAS, certain property sought to be included in the estate of the decedent by the Commissioner of Internal Revenue was transferred by the decedent to his beneficiaries before three years before his date of death and may have been subject to gift taxes which were not paid by the decedent or his spouse;

WHEREAS, the beneficiaries of the Estate of Paul Biggans are Violet

Biggans, Robert Biggans, Edward Biggans, and Patricia Miller (nee, Biggans);

* * * *

WHEREAS the docketed Tax Court case involving a deficiency in federal estate taxes owed by the Estate of Paul Biggans was settled by the parties for the amount of \$7,000.00;

WHEREAS, the parties hereto intend through this Closing Agreement to agree upon, determine, and set the amount of the deficiency in estate taxes, and provide for any potential liability for unpaid gift taxes;

NOW THEREFORE, it is hereby determined and agreed between the parties and signatories hereto:

That there is no liability for gift taxes for any gifts made by either Paul Biggans or Violet Biggans or Paul and Violet Biggans prior to the April 1, 1974 death of Paul Biggans.”

Said Closing Agreement is signed by Violet Biggans and her surviving children, Robert Biggans, Edward Biggans and Patricia Miller. It ends with a paragraph which states that it, “.....may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact”.

Called by Objectants, Norman A. Rader testified that the Allengrove Warehouse was sold for \$647,000.00, and, that “PAID” was involved in financing the sale. Mr. Rader did not identify the seller, the buyer, or, the date of the sale of the Allengrove Warehouse. Mr. Rader testified that fifty-eight duplexes were built on a piece of ground which was across the street from the Allengrove

Warehouse. From documents provided to him by counsel for Objectants, Mr. Rader determined that the Allengrove Duplexes were built in the period 1974 to 1977. However, because he did not research each duplex in City Hall, Mr. Rader could not determine when the original duplexes were sold. Mr. Rader did not identify the sellers or buyers of the duplexes.

This Court does not believe that Objectants' evidence will support a surcharge of the accountant, in any amount, regarding: the mortgage granted by William Di Francesco and Claire Di Francesco, his wife, to Biggans Associates, Inc., in connection with the sale of premises 2801-B Tremont Street, in the Ashton Shopping Center, on October 2, 1972; or, the mortgage granted by Glendale Center, Inc., to Paul Biggans, on August 10, 1968, and assigned by Paul to Biggans Associates, Inc., on March 9, 1971. Objectants' evidence will not support a surcharge of the accountant, in any amount, regarding: the sale of the Allengrove Warehouse by Biggans Associates, Inc., on February 3, 1984; or, the sales of the Allengrove Duplexes. Finally, Objectants evidence will not support a surcharge of the accountant, in any amount, regarding: the sales of premises 9035 and 9033 Ashton Road, in the Ashton Shopping Center, by Biggans Associates, Inc., on October 6, 1978 and October 16, 1980; or, the Mortgage granted by John R. McNully, Edward P. Biggans and Richard E. Krager to Biggans Associates, Inc., in connection with the sale of premises 2801 Tremont Street, in the Ashton Shopping Center, on December 5, 1980.

His active involvement in the affairs Biggans Associates, Inc., does not prove that Paul Biggans ever owned a single share of stock in this Pennsylvania corporation. The documentary evidence indicates that Paul's children acquired all of the stock of Biggans Associates, Inc., in connection with the acquisition of the Ashton Shopping Center site; that Violet, Robert and Patricia Ann served as the first directors of the corporation; that Robert and Edward served as President of the corporation; and, that Patricia Ann served as secretary of the corporation. Throughout his deposition testimony, Isaac Abrahams insisted that Paul Biggans did not have an ownership interest in Biggans Associates, Inc. Tax returns prepared by Mr. Abrahams do not include any dividends on stock of Biggans Associates, Inc. Both Robert P. Biggans and Patricia Ann Miller testified that their father was never an officer or shareholder of Biggans Associates, Inc. Employees of Frankford Trust Company testified that they dealt with Paul Biggans, but, gave no testimony concerning the ownership of Biggans Associates, Inc. Violet's Form 706 makes no reference to stock in Biggans Associates, Inc. The record in this matter contains no direct evidence in support of Objectants' contention that Paul Biggans received all of the income of Biggans Associates, Inc., in his lifetime. Nor is there any direct evidence in support of the contention that Paul's children had no ownership interest in Biggans Associates, Inc., in his lifetime. This Court does not regard Patricia Ann Biggans as a credible or convincing witness on the topic of Paul's ownership of Biggans Associates, Inc. Management does not necessarily connote ownership. In her brief, counsel for Objectants cites the definitions of "Dummy", "Dummy

Corporation”; “Dummy Director”; “Dummy Stockholder”; and, “Sham”. She does not, however, cite a single case in any Pennsylvania Court in support of the proposition that this Court should pierce the corporate veil of Biggans Associates, Inc. Nor does she cite any Pennsylvania case in support of the proposition that heirs-at-law have standing to pierce the veil of a corporation which has been raised by their ancestor. It is the holding of this Court that Objectants have simply failed to prove that Paul Biggans owned an interest in Biggans Associates, Inc., at the time of his death.

Robert P. Biggans testified that, as of February 26, 1997, Biggans Associates, Inc. was not receiving any payments on the Mortgage which it took from William Di Francesco and Claire, his wife, on premises 2801-B Tremont Street, on October 2, 1972. This is not surprising since said Mortgage was payable in two hundred and forty equal monthly payments. While the face amount of said Mortgage was \$18,500.00, the record in this matter contains no direct evidence of the principal balance due on April 1, 1974. On this record, Objectants have simply failed to prove the amount of any loss which may be sustained by the Estate of Paul Biggans, Deceased, in connection with the aforementioned Mortgage.

Robert P. Biggans testified that, since 1988, Glendale Center, Inc., had not made any payments to Biggans Associates, Inc., on the Mortgage of August 10, 1968 which was assigned by Paul Biggans to Biggans Associates, Inc., on March 9, 1971. This is not surprising since said Mortgage was payable within twenty years from its date. While the face amount of said

Mortgage was \$20,000.00, the record in this matter contains no direct evidence of the principal balance due on April 1, 1974. Furthermore, Robert stated that the stock of Glendale Center, Inc., is owned as follows, to wit: one-third (1/3) by the late Raymond Bopp; and, two-thirds (2/3) by Biggans Associates, Inc. On this record, Objectants have simply failed to prove the amount of any loss which may be sustained by the Estate of Paul Biggans, Deceased, in connection with the aforementioned Mortgage.

Objectants' Exhibit B-22 indicates that, on February 3, 1984, the Pennsylvania corporation known as "Biggans Associates, Inc." conveyed premises known as 500 Allengrove Street, Philadelphia, to a Pennsylvania non-profit corporation known as "Philadelphia Authority For Industrial Development", for a consideration of \$165,000.00. Robert P. Biggans testified that he did not learn of the sale of premises 500 Allengrove Street until after the death of his mother in 1988. Robert then learned that Edward had sold the property, in 1984, for \$165,000.00 of which \$75,000.00 was used to pay off a Mortgage to Frankford Trust Company and \$90,000.00 was deposited into the accounts of Biggans Associates, Inc. According to Robert, his brother, Edward, then used up said sum of \$90,000.00 over time. Norman A. Rader testified that the Allengrove Warehouse was sold for \$647,000.00, and, that "PAID" was involved in financing the sale. Mr.Rader did not identify the seller, the buyer, or, the date of the sale of the Allengrove Warehouse. Mr.Rader testified that fifty-eight duplexes were built on a piece of ground which was across the street from the Allengrove

Warehouse. From documents provided to him by counsel for Objectants, Mr.Rader determined that the Allengrove Duplexes were built in the period 1974 to 1977. However, because he did not research each duplex in City Hall, Mr.Rader could not determine when the original duplexes were sold. Mr.Rader did not identify the sellers or buyers of the duplexes. The record in this matter contains no direct evidence of the value of the Allengrove Warehouse, or, the value of the Allengrove Duplexes, on April 1, 1974. On this record, Objectants have simply failed to prove the amount of the loss which may have been sustained by the Estate of Paul Biggans, Deceased, on the sale of the Allengrove Warehouse, or, on the sales of the Allengrove Duplexes.

Objectants' Exhibit B-20 indicates that, on October 6, 1978, the Pennsylvania Corporation known as "Biggans Associates, Inc.", acting by its President, Edward P. Biggans, and its Secretary, Patricia Ann Miller, conveyed premises known as 9035 Ashton Road, Philadelphia, being part of the Ashton Shopping Center, to another Pennsylvania corporation known as "New Ashton Pharmacy, Inc." for a consideration of \$36,500.00. Objectants' Exhibit B-21 indicates that, on October 16, 1980, Biggans Associates, Inc., again acting by Edward, as President, and Patricia Ann, as Secretary, conveyed premises known as 9033 Ashton Road, Philadelphia, being part of the Ashton Shopping Center, to the same New Ashton Pharmacy, Inc. for a consideration of \$23,500.00. The record in this matter contains no direct evidence as to the values of premises 9035 and 9033 Ashton Road on April 1, 1974. The record likewise contains no direct evidence of what happened to the proceeds of the aforementioned sales.

On this record, Objectants have simply fail to prove the amount of the loss which may have been sustained by the Estate of Paul Biggans, Deceased, on said sales.

Objectants' Exhibits B-19 and B-18 indicate that, on December 5, 1980, the Pennsylvania corporation known as "Biggans Associates, Inc.", acting by its President, Edward P. Biggans, and its Secretary, Patricia Ann Miller, conveyed premises known as 2801 Tremont Street, Philadelphia, being part of the Ashton Shopping Center, to John R. McNulty, Edward P. Biggans and Richard B. Krager, for a consideration of \$25,000.00, taking back a Mortgage to secure an obligation of \$32,500.00 which Mortgage was payable on or before December 5, 2005. Robert P. Biggans testified that 2801 Tremont Street was used as an office by his brother, Edward P. Biggans. Robert heard that there was a fire in Edward's said office. According to Robert, there were no payments on the Mortgage of December 5, 1980 until Edward collected proceeds of fire insurance and deposited same into the accounts of Biggans Associates, Inc. Robert testified that said fire insurance proceeds almost satisfied the Mortgage of December 5, 1980. Robert stated that Biggans Associates, Inc. had no interest in 2801 Tremont Street as of February 26, 1997. The record in this matter contains no direct evidence of the value of premises 2801 Tremont Street on April 1, 1974. On this record, Objectants have simply failed to prove the amount of the loss which may have been sustained by the Estate of Paul Biggans, Deceased, on the aforementioned Mortgage of December 5, 1980.

Insofar as Objectants seek a surcharge regarding: the mortgage granted by William Di Francesco and Claire Di Francesco, his wife, to Biggans Associates, Inc., in connection with the sale of premises 2801-B Tremont Street, in the Ashton Shopping Center, on October 2, 1972; the mortgage granted by Glendale Center, Inc., to Paul Biggans, on August 10, 1968, and assigned by Paul to Biggans Associates, Inc., on March 9, 1971; the sales of the Allengrove Warehouse and Allengrove Duplexes; the sales of premises 9035 and 9033 Ashton Road, in the Ashton Shopping Center, by Biggans Associates, Inc., on October 6, 1978 and October 16, 1980; or, the Mortgage granted by John R. McNully, Edward P. Biggans and Richard E. Krager to Biggans Associates, Inc., in connection with the sale of premises 2801 Tremont Street, in the Ashton Shopping Center, on December 5, 1980, their Objection is dismissed.

AND NOW, _____, unless exceptions are filed to this adjudication within twenty (20) days, the account, stated for the period April 1, 1974 to May 11, 1993, and, showing a balance of principal and a balance of income, before distributions, of \$ 000,000.00 meaning that there are no assets for distribution, is confirmed absolutely.

J.