

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
ORPHANS' COURT DIVISION

Patricia Sankey, Special Needs Trust  
O.C. No. 1896 SN of 2014  
Control No. 182398

Patricia Sankey, Special Needs Trust



DECREE

AND NOW, this <sup>29<sup>th</sup></sup> day of August 2018, upon consideration of the Petition filed by Patricia Sankey to Remove Life Enrichment Trust, Inc. as Trustee and Appoint Achieva Family Trust as Successor Trustee, the Answer with New Matter filed by Life Enrichment Trust, Inc., and the Response to the New Matter filed by Patricia Sankey, it is hereby ORDERED and DECREED that the Petition is GRANTED:

1. Life Enrichment Trust, Inc. is hereby removed as Trustee of the Patricia Sankey Special Needs Trust;
2. Achieva Family Trust is hereby appointed as Trustee of the Patricia Sankey Special Needs Trust; and
3. The application for fees and costs incurred by Dilworth, Paxson, LLP for the preparation and filing of this present petition and all outstanding legal fees including income tax preparation in the amount of four thousand four hundred and thirty six dollars and fifty cents (\$4,436.50) is approved from principal of the Patricia Sankey Special Needs Trust.

*Legal Analysis.*

In her petition, Patricia Sankey seeks to remove Life Enrichment Trust, Inc. as the corporate trustee of her Special Needs Trust and to replace it with Achieva Family Trust. The express terms of her Special Needs Trust Agreement give her the authority to remove a corporate trustee **for any reason** with court approval. This removal authority is set forth as follows in paragraph 3.5 of the Trust Agreement:

POWER TO REMOVE AND REPLACE CORPORATE TRUSTEE

Beneficiary, upon approval of the Orphans' Court Division of the Court of Common Pleas of Philadelphia County, Commonwealth of Pennsylvania, may remove from office any Corporate Trustee of the Trust for any reason whatsoever, and may replace such Trustee with another Corporate Trustee who is not related to or subordinate to PATRICIA (within the meaning of Internal Revenue Code ("Code") § 672(c) to act in place of Trustee so removed. Any successor trustee shall be a bank or trust company that either (i) has at least \$20,000,000 in trust assets in their management, or (ii) is obligated by law or

obligates itself to post and maintain a fidelity or fiduciary bond sufficient to insure fully the value of the trust property at the expense of the successor trustee.

It is long-standing Pennsylvania law that the “polestar” for interpreting any trust agreement is the settlor’s intent. Trust of Hirt, 2003 Pa. Super. 287, 832 A.2d 438, 448 (2003) This principle is recognized in the Pennsylvania Uniform Trust Act (“UTA”) which clearly provides that the terms of a trust instrument control “over any contrary provisions of this chapter” except for the mandatory rules set forth in 20 Pa.C.S.A. § 7705(b). See 20 Pa.C.S.A. §7705(a).

Respondent Life Enrichment argues, in contrast, that its removal as trustee of the Patricia Sankey Special Needs Trust should be controlled not by the express terms of the trust document but by 20 Pa.C.S.A. § 7766 which requires court approval and a showing of a number of causes for the removal of a trustee such as that the trustee has committed a serious breach of trust, there is a lack of cooperation among corporate trustees, the trustee has not effectively administered the trust or there is a substantial change in circumstances. 20 Pa.C.S.A. § 7766. Section 7766, however, is not listed among the mandatory rules that would override the express provisions of a trust document under 20 Pa.C.S.A. §7705. Hence, the express provisions of Paragraph 3.5 of the trust document give Patricia Sankey the authority to remove Life Enrichment with court approval.

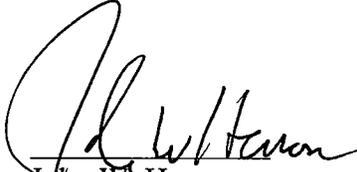
Equally inapposite is Life Enrichment’s invocation of the Pennsylvania Supreme Court precedent of Trust Under Agreement of Taylor, 640 Pa. 629, 164 A.3d 1147 (2017). Life Enrichment cites Taylor to support its argument that “for noncharitable, irrevocable trusts such as the Trust at issue, ‘the UTA does not permit the removal and replacement of a trustee without Orphans’ Court approval in accordance with section 7766 [of the UTA]’” which requires an allegation of adequate grounds for removal.<sup>1</sup> This argument ignores the key factual differences between the Taylor Trust analyzed by the Pennsylvania Supreme Court in Taylor and the Patricia Sankey Special Needs Trust. The Pennsylvania Supreme Court emphasized in its Taylor opinion that in that case “the Agreement of Trust does not expressly provide the beneficiaries with any power to remove the corporate trustee.” Taylor, 640 Pa. at 636, 164 A.3d at 1151. In fact, it was because the Taylor Trust Agreement lacked this broad removal provision that the beneficiaries of

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<sup>1</sup> 7/12/18 Life Enrichment Trust, Inc. Answer with New Matter, ¶¶ 6 &10.

the Taylor trust sought court permission to modify the trust to add a “portability” provision giving them the right to remove the trustee without court approval from time to time and without cause. No such quest is required in this case. Instead, the express terms of the Patricia Sankey Special Needs Trust gives the petitioner authority to remove Life Enrichment Trust and to replace it with Achieva Family Trust. For these reasons, her petition was granted.

BY THE COURT:



John W. Herron

Kristen Behrens, Esquire  
Marie-Theres DiFillippo, Esquire  
John Bench, Esquire