

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION  
Trust of Christopher Young, Settlor, Under the Trust  
Indenture dated April 12, 1973  
(Residuary Trust)  
No. 255 of 1982  
Control No. 055009

Sur account entitled First and Partial Account of Mellon Bank, N.A. Trustee

The account was called for audit February 7, 2005 **Before: Herron, J.**  
Counsel appeared as follows:  
Christopher H. Gadsden, Esquire - for the Accountant  
Mary Jane Barrett, Esquire – Guardian ad litem

ADJUDICATION

Christopher Young, a resident of Connecticut, died on December 1, 1975. Prior to his death he executed a will and a revocable trust that were each dated April 12, 1973. Girard Trust Bank was named as one of the executors under his will and as sole trustee of the April 12, 1973 trust indenture (hereinafter “1973 Trust”).<sup>1</sup> On January 5, 2005, Mellon Bank, N.A., as successor by merger to Girard Bank, filed a first and partial account for the Residuary Trust covering the period May 17, 1983 through June 4, 2004. On October 17, 2006, the Trustee filed an Amended Account covering the period June 5, 2004 through September 5, 2006.

The April 12, 1973 Trust Indenture of Christopher Young provided that upon the death of the settlor, the trust should be divided into a marital and residuary trust.<sup>2</sup> Under Article III of the trust indenture, the Trustee was directed to hold the Residuary Trust as a separate trust and pay the net income to the settlor’s wife, Mary Bird Young, (hereinafter “Mary”) at least

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<sup>1</sup> Stipulation, ¶¶ 1-4. The testator’s wife, Mary Bird Young, and his brother, Arthur M. Young, were also appointed co-executors under Christopher Young’s will.

quarterly throughout her lifetime. After her death, which occurred on November 3, 2002, the Residuary Trust continued for the benefit of the settlor's nephew, Brinton O.C. Young. The Trustee is directed to pay him the net income quarterly and principal as needed for his support, comfort and welfare. The Trustee also has discretion to expend principal for the education and medical expenses of the nephew's children. Upon Brinton Young's death, the Trust will be divided into separate trust shares for his children and those trusts will continue for a 20 year period. At that point, the remaining assets of each trust share will be distributed to the child or, if a child is deceased, to his or her descendants.

In filing its first account, the Trustee raised an issue for adjudication concerning disposition of 40 paintings by Charles Morris Young, the settlor's father. In his Will, Christopher Young (hereinafter "Christopher") gave his wife, Mary a life estate in 40 paintings by Charles Morris Young. When Mary died on November 3, 2002, only 24 of the 40 paintings were delivered to the Trustee. In an effort to retrieve the missing paintings, the Trustee filed a claim in the Probate Court of Sharon, Connecticut against the estate of Mary Bird Young, whose will had been probated in Connecticut.<sup>3</sup>

When alerted to this pending claim, this court by decree dated February 22, 2005 appointed Mary Jane Barrett, Esquire, Guardian ad litem (hereinafter "Guardian ad litem") to represent the interests of the three minor children of Brinton Young, who are Elise Katrina Young, Miranda Coxe Young and Arthur Brinton Young and as Trustee ad litem for all unborn and unascertained persons who may be interested in the income and principal of the Residuary Trust.

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2 An account was filed for the Marital Trust on January 5, 2005, and was confirmed by Adjudication dated

In the meanwhile, the first account was rescheduled for various subsequent audit lists while efforts were made to recover the paintings. On October 17, 2006, the Trustee filed an Amended Account and petition for adjudication after it had reached a settlement agreement with Mary's estate. Under the terms of this agreement, Mary's estate agreed to pay the sum of \$58,977.50 to the Residuary Trust of her husband. The Guardian ad litem filed objections to the Amended Account, challenging the \$49,639 that was claimed in the Amended Account as attorney and expert fees incurred in the pursuit of the missing paintings.<sup>4</sup> As a remedy, she requested that fifty percent of the fees be surcharged to the Trustee, Mellon Bank, N.A., "due to the Trustee's failure to take steps which would have prevented the loss of 11 paintings by Charles Morris Young to the trust, and its inability to adequately identify and value the missing paintings, which caused additional loss to the trust in legal and expert fees."<sup>5</sup> In addition to these objections, the Guardian/trustee ad litem filed a comprehensive, extremely thoughtful ad litem report, providing, inter alia, background as to the paintings and settlement agreement.

### *Stipulated Facts*

To expedite resolution of this surcharge dispute, the parties filed a joint stipulation of facts as well as memoranda of law. The parties stipulated that at the time of his death on December 1, 1975, Christopher owned 40 paintings by his father Charles Morris Young, all of which were displayed in Christopher's home in Sharon, Connecticut.<sup>6</sup> Six years later in January 1981, the executors filed an account for Christopher's estate covering the period December 20,

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February 22, 2005.

3 1/5/04 Petition for Adjudication and Statement of Proposed Distribution, paragraph 4.

4 In their stipulation of facts the parties agreed that the legal and appraisal fees incurred in seeking to recover the paintings was the lower amount of \$33,462.91. Stipulation, ¶ 39.

5 11/6/06 Guardian and Trustee ad litem Objections.

6 Stipulation, ¶¶ 10-11.

1975 to January 21, 1981 with the Probate Court in Sharon, Connecticut. The inventory annexed to that account contained a single entry for “Paintings by Charles Morris Young” which it valued at \$10,355. An appraisal of the paintings had been obtained from Larom B. Munson of New Haven who gave an aggregate value of \$10,355.<sup>7</sup> The account indicated that these paintings had been distributed to Mary Bird Young. By decree dated May 27, 1981, Judge Esther Clark approved the account.<sup>8</sup>

Girard Bank served not only as a co-executor under Christopher’s will but as Trustee under the 1973 Trust Indenture. As Trustee, Girard Bank was awarded the residue of the estate by the Connecticut Probate Court. It thereafter filed an account of its administration of the Trust with the Philadelphia Orphans’ Court, which was confirmed by adjudication dated September 21, 1982 by Judge Bruno. The adjudication noted that Christopher Young had been a film maker whose will had directed that an uncompleted film entitled “Nature is My Mistress” be completed and bequeathed \$20,000 to accomplish this, yet it made no mention of the will’s provisions relating to the paintings. Girard Bank as Trustee filed a schedule of distribution in April 1983 which also did not mention the Charles Morris Young paintings. The schedule of distribution was approved April 18, 1983.<sup>9</sup>

Girard Bank at no time inquired of Mary Bird Young as to the locations of the painting or whether any of them had been sold. During the period of Mary’s lifetime, Girard Bank, and then its successor, Mellon Bank, held other paintings by Charles Morris Young in trust for other members of the Young family.<sup>10</sup> After Mary died on November 3, 2002, only 16 paintings by

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7 Stipulation, ¶¶ 13-14 & 10.

8 Stipulation, ¶¶ 14-15.

9 Stipulation, ¶¶ 17-18.

10 Stipulation, ¶¶ 19-20.

Charles Morris Young were found in her residence. Seven paintings were traced to the Four India Gallery in Nantucket, Massachusetts. One painting had been sold by that gallery in 1995.<sup>11</sup>

The parties stipulate that Christopher's will contained no express direction for the disposition of his father's paintings after Mary's death. They agreed that under Connecticut law, the paintings should be distributed in accord with the residuary provision in section TWELFTH of Christopher's will. In September 2004, Mellon Bank, as Trustee for the Residuary Trust, asserted a claim against Mary's estate to recover sixteen Charles Morris Young paintings that had not been returned to the trust.<sup>12</sup>

Despite efforts to locate all the paintings, a total of eleven paintings have not been found.<sup>13</sup> These missing paintings have been appraised for differing values. Regina Madigan of Unionville, Connecticut appraised them at \$58,910, while Ronald Varney gave an appraisal of \$137,000.<sup>14</sup> Mellon Bank, as trustee of the Residuary Trust, agreed to settle its claim for the missing paintings for the sum of \$58,977 to be paid to the Residuary Trust. It is claiming legal expenses and appraisal fees incurred by the Trust to recover five missing paintings and to assert the trust's claim against Mary Bird Young estate in the amount of \$33,462.91<sup>15</sup>

### ***Objections to Attorney and Expert Fees Incurred in Pursuit of Missing Paintings***

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11 Stipulation, ¶ 22.

12 Stipulation, ¶¶ 23-24 & 26. The parties agree that counsel for Mary's estate advised that under Connecticut law, the paintings should pass under the residuary clause of Christopher's will to the trustee of his revocable trust.

13 Stipulation, ¶ 33. Twenty-four paintings were included in the Trustee's First and Final Account. After the Account was filed, five paintings were located. One of the paintings listed in the first account had been sold. 11/06/06 Ad Litem Report at 5-6.

14 Stipulation, ¶ 33.

15 Stipulation, ¶¶ 38-39.

The Guardian ad litem does not object to the general administration of the Residuary Trust. In fact, she praises the “admirable investment performance” reflected in the First Account indicating that the Trust realized capital gains over the initial accounting period of \$515,877.29 with losses of only \$12,739.56”<sup>16</sup> The Guardian ad litem also does not object to the monetary settlement of \$58,977.50 from Mary’s estate as compensation for the missing paintings in light of the difficulty in assessing the value of those paintings and the expense of continuing litigation.<sup>17</sup> She specifically concurs with the ancillary provisions of the settlement agreement that would allow Brinton Young, the income beneficiary, to hang the remaining paintings in his primary residence or in the home of his mother, Hilda Young, because they will be protected by a fine arts insurance rider based on an appraisal of fair market value, a label identifying each painting as trust property, and a requirement that the beneficiary report any change in the condition of the paintings to the Trustee. In fact, the Guardian ad litem affirmatively believes that the paintings should “be displayed and enjoyed by the family members of the artist and my minor clients, the children of Brinton O.C. Young, (who) will be enriched by exposure to these paintings in their home.”<sup>18</sup>

The Guardian ad litem is, however, critical of the Trustee’s negligent supervision of the paintings, since, her report emphasizes, it was in a unique position to take steps that would have minimized the costs in locating the paintings after Mary’s death.<sup>19</sup> She notes that Charles Morris Young was an “acclaimed Philadelphia artist” who trained at the Pennsylvania Academy of Fine Arts where he studied with Thomas Eakins. His paintings are presently displayed in museums

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16 11/6/06 Ad Litem Report at 4.

17 11/6/06 Ad Litem Report at 8.

18 11/6/06 Ad Litem Report at 10 & 9.

19 11/6/06 Ad Litem Report at 11.

and private art collections, and 12 painting sold at Sotheby's in October 2004 for an average price of \$30,000.<sup>20</sup> In fact, she states that in "the course of proceedings to recover the missing paintings and estimate their value, Christie's in October 2005 prepared an estimate of the preliminary price range of the 23 paintings on hand if offered for sale at auction" in the range from "\$355,000 to \$483,000."<sup>21</sup>

Obtaining an accurate or fair valuation of the missing paintings was severely handicapped by the lack of photographs or detailed descriptions of them. The appraisals obtained by both the Trustee and Mary's estate thus could not assess the condition or artistic merit of the missing paintings. Instead, "the experts considered the size, medium and subject of the paintings as gleaned from fairly vague titles given them."<sup>22</sup>

The Guardian ad litem therefore suggests that the Trustee should be surcharged for the attorney and expert fees that were incurred in pursuit of the missing paintings. In her formal objections to the First and Amended Accounts, she notes that the Amended Account sought \$49,639 in attorney and expert fees and suggested that fifty percent of those fees be surcharged to Mellon Bank.<sup>23</sup> She subsequently modified this claim. The parties stipulated that \$33,462.91 had been incurred as legal and appraisal fees in pursuit of the paintings. Because Mellon did not accept the compromise presented in the Ad Litem report, she suggests that the trustee be surcharged the full amount of stipulated fees and costs of \$33,462.91.<sup>24</sup>

### *Legal Analysis*

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20 11/6/06 Ad Litem Report at 6.

21 11/6/06 Ad Litem Report at 6.

22 11/6/06 Ad Litem Report at 7.

23 11/6/06 Objections.

24 See 4/3/08 Ad Litem Memorandum at 15. In their stipulation, the parties agreed that the "[l]egal expenses and appraisal fees incurred by the trust in connection with the recovery of five missing paintings and the claim against

The terms of the April 12, 1973 Trust Indenture must be the starting point of any effort to determine whether Mellon Bank, as trustee, should be surcharged for the attorney and expert fees incurred in pursuit of the missing paintings of Charles Morris Young. A surcharge is a “penalty imposed for failure of a trustee to exercise common prudence, skill, and caution in the performance of its fiduciary duty, resulting in the want of due care.” Estate of Scharlach, 809 A.2d 376, 384 (Pa. Super. 2002)(citation omitted). Under Pennsylvania law, the “nature and extent of the duties of a corporate trustee are primarily to be ascertained from the trust instrument.” Estate of Niessen, 489 Pa. 135, 139, 413 A.2d 1050, 1052 (1980). The intent of the settlor—or testator—is paramount:

It is still hornbook law that the pole star in every trust (and in every will) is the settlor’s (or testator’s) intent and that intent must prevail. It would certainly be unreasonable to construe the proviso as intending to destroy or effectually nullify what has always been considered the inherent basic fundamental right of every owner of property to dispose of his own property as he desires, so long as it is not unlawful. Estate of Pew, 440 Pa. Super. 195, 220, 655 A.2d 521, 533 (1994)(citations omitted).

In the trust indenture, Christopher named Girard Trust Bank as sole trustee to hold and administer the trust corpus. He also named Girard Trust Bank as a co-executor under his will charged with administration of his estate. As the parties stipulate, the assets of the estate and trust were intimately linked by virtue of the residuary clause of section Twelfth of the Will which provided:

All the rest, residue and remainder of my estate, whether real, personal or mixed and wheresoever situate, I give, devise and bequeath to the GIRARD TRUST BANK at One Girard Plaza, Philadelphia, Pennsylvania, as Trustee under a Trust Indenture of even date, between myself as Grantor and the Girard Trust Bank, to be held and administered by said Trustee, as if the same had originally formed a part of said Trust Estate.<sup>25</sup>

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the estate of Mary Bird Young totaled \$33,462.91.” Stipulation, ¶ 39.  
25 Stipulation, ¶ 3.

In analyzing the intent of a testator under a will or settlor under a trust, it is “axiomatic” that “the intent is determined from a consideration of the language within the four corners of the document, and , in an appropriate case, the facts and circumstances surrounding the will’s execution.” Estate of Hewitt, 554 Pa. 486, 491, 721 A.2d 1082,1084 (1998). In this case, it is significant that Christopher’s Will and trust indenture have the same date. By appointing the same Bank to serve as both Trustee and then executor under a Will whose residuary assets went to the Trust, Christopher’s intent concerning long-term disposition of his father’s paintings can be discerned in the interrelationship between the Will and the trust indenture. The parties stipulate that the Will explicitly bequeathed to Mary Bird Young “for her life, any paintings I may own at the time of my death which were painted by my father, Charles Morris Young.”<sup>26</sup> The will also stated that Mary “may sell some of these paintings with the agreement and concurrence of my brothers and the proceeds from any sales affected are to be divided as follows: one-half (1/2) to my wife and one-half (1/2) to be shared by my brothers.”<sup>27</sup>

With this language, Christopher gave Mary a life estate in those paintings of his father that Christopher owned at his death which, the parties stipulate, totaled 40 paintings.<sup>28</sup> While he gave Mary the right to sell “some” of the paintings, he also required the “agreement and concurrence” of his brothers to do so. The parties stipulate that “Christopher’s will contained no express provision as to the disposition of the Charles Morris Young paintings after Mary’s death,” yet at the time of Mary’s death, there was no dispute that those paintings should pass to

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26 Stipulation, ¶ 12.

27 Stipulation, ¶ 12 (emphasis added).

28 Stipulation, ¶ 10.

the Residuary Trust under section Twelfth of Christopher's will.<sup>29</sup>

The common link between the estate assets and the trust was the corporate fiduciary, Girard Trust Bank, which served as Trustee for both the marital trust for Mary throughout her lifetime and as the Trustee of the residuary trust.. By selecting a corporate fiduciary such as Girard Trust Bank to serve as both executor under his Will and Trustee of his Trust, Christopher manifested his intent to assure long-term supervision of the assets flowing from the estate to the trust. This role was particularly critical for the proper administration of Mary's life estate in the forty paintings. As the Ad Litem suggests, the "many roles played by Girard in the Christopher Young estate and trust enhanced its knowledge and responsibility."<sup>30</sup> At various key points, however, Girard in its dual capacities as executor and trustee failed to take simple steps that would have simplified the ultimate task of locating and transferring the paintings to the Trust upon Mary's death. Most significantly, it failed assure the future identification of these assets by obtaining photographs or a workable inventory of them. The estate appraisal of the forty paintings owned by Christopher Young at the time of his death by Larom B. Munsom, for instance, was extremely limited: it merely gave a vague description of the subject matter of the painting, its size and an estimated price for the painting. As the Ad Litem emphasizes, it failed to give such significant information as its age, condition, artistic significance or more concrete descriptions that might help identify, value, or locate those paintings upon Mary's death many years later.<sup>31</sup>

The Trustee essentially seeks to escape responsibility for the loss of these paintings or the difficulty in establishing their status after Mary's death by "taking the position that Mary had

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<sup>29</sup> Stipulation, ¶¶ 23-24.

sole responsibility.”<sup>32</sup> It argues that fiduciary responsibility for the fate of these paintings should be divided into 3 periods: in the first phase, the three executors held title to the paintings; in the second phase, Mary held title to them in the fiduciary capacity as a life tenant, and; only in the final phase was Mellon, as Trustee of the Residuary Trust, “entitled to possession of the paintings and its duties as trustee for the paintings began.”<sup>33</sup> Mellon’s argument, however, is at odds with the dual, comprehensive role that Christopher Young assigned to Mellon’s predecessor, Girard Bank, in both his Will and his trust indenture. It fails to acknowledge Christopher’s implicit intent for long term oversight over both his estate and trust assets as reflected in his choice as Trustee of a bank with the promise of longevity (through successors in interest) as opposed to an individual whose lifespan is inevitably shorter.

A related argument proffered by Mellon to escape liability for the lost paintings is that the trust had only an “expectancy or expectation of future distribution” which did not create fiduciary duties “until the trustee is entitled to possession.”<sup>34</sup> The Guardian ad litem persuasively argues, however, that “the Trust’s interest in the paintings did not spring into existence at the death of Mary Bird Young, but had been in existence from the date of Christopher Young’s death, subject to deferred possession until the death of the life tenant and possible divestment of ‘some of the paintings.’”<sup>35</sup> In more technical terms, she characterizes the Trust’s interest in the paintings during Mary’s lifetime as “a vested interest subject to

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30 4/3/08 Ad Litem Memorandum at 7.

31 See Stipulation, Ex. A; 4/3/08 Ad Litem Memorandum at 7.

32 4/2/08 Mellon Memorandum at 1 (“It is Mellon’s position that Mary had sole responsibility”).

33 4/2/08 Mellon Memorandum at 4-5.

34 4/2/08 Mellon Memorandum at 7.

35 4/3/08 Ad Litem Memorandum at 8-9.

divestment” which can be held in trust with the attendant fiduciary obligations.<sup>36</sup> This analysis is supported by Pennsylvania precedent. The Pennsylvania Supreme Court has ruled that where the language of a will is ambiguous as to whether a remainder interest is vested or contingent, there is a “presumption of the vesting of interests when dealing with ambiguous language.” In re Horvath, 446 Pa. 484, 288 A.2d 725, 726 (1972) (finding that a remainder interest vested at the time of the death of the testator based on the language of the will). See also In re Newlin’s Estate, 367 Pa. 527, 80 A.2d 819, 824 (1951)(“The law leans to vested rather than to contingent estates, and the presumption is that a legacy is vested” if the language of a will is ambiguous).

The parties stipulated that Christopher’s will was ambiguous as to the ultimate disposition of the Charles Morris Young paintings since it “contained no express provision as to the disposition of” those paintings “after Mary’s death” although counsel for Mary’s estate concluded that at that point they should go to the Trust under the residuary clause of Christopher’s will.<sup>37</sup> Moreover, counsel for the Trust asserted a claim for these paintings in a claim against Mary’s estate.<sup>38</sup> It is thus disingenuous for the Trustee to now disavow any duty in monitoring those paintings during the pendency of the Trust.

There are various ways in which Girard Trust Bank (now known as Mellon Bank) breached its duty as to the paintings. Section 7779 of the PEF, for instance, provides that a “trustee shall take reasonable steps to take control of and protect the trust property.” 20 Pa.C.S. §7779. Courts have likewise observed that a “primary duty of a trustee is to preserve the trust assets and to ensure the safety of the trust principal.” Estate of Campbell, 692 A.2d 1098, 1102 (1997). In the first instance, in its combined capacity as trustee and executor, Girard Bank should

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<sup>36</sup> 4/3/08 Ad Litem Memorandum at 9.

have taken simple, expedient measures to document the paintings that were present in Christopher's home at the time of his death since they constituted a vested interest of the Trust that was subject to divestment if Mary opted to sell them pursuant to the terms of the Will. Photographs and a more detailed inventory at that point would have mitigated the expenses that were later incurred in trying to locate the paintings after Mary's death. The Trustee also failed to include the paintings in either the account or the schedule of distribution filed with the Philadelphia Orphans' Court in 1982 and 1983.<sup>39</sup> As the Guardian ad litem observes, the trustee in this case had a unique opportunity to make periodic inquiries as to the location and condition of the paintings and to assure that any sale was in accordance with the terms of the will in light of its multiple roles as executor and trustee for Christopher, and then as Trustee for Mary, as the beneficiary of the marital trust. Based on this long term relationship with Mary, the Trustee "could easily have communicated with her to ascertain the location and condition of the paintings."<sup>40</sup>

In concluding that the Trustee should be surcharged, the limited nature of the surcharge requested by the Guardian ad litem must be underscored. She is not suggesting that the Trustee be penalized based on the value of the eleven lost paintings. She is not suggesting that the Trustee be charged based on the appraisal by one expert that was considerably higher than the \$58,977.50 settlement agreement.<sup>41</sup> Instead, she is merely asking that the Trustee be surcharged for the legal expenses and appraisal fees incurred by the Trust in asserting the claim against

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37 Stipulation, ¶ 23.

38 Stipulation, § 24.

39 Stipulation, ¶ 18.

40 4/3/08 Ad Litem Memorandum at 12.

41 See Stipulation, §§ 33 & 38. The missing paintings were appraised as having a value of \$58,910 by Regina Madigan and a value of \$137,000 by Ronald Varney. Stipulation, § 33.

Mary's estate and recovering five missing paintings which the parties stipulate as \$33,462.91.<sup>42</sup> Surcharging the trustee for these general expenses makes eminent sense because they were directly traceable to the trustee's failure to take the basic, common sense steps to establish an adequate inventory of these assets. If adequate records of the paintings had been maintained, it would not have been necessary to bring litigation in Connecticut against Mary's estate because the exact number of remaining paintings could have been readily ascertainable. See generally Estate of Geniviva, 450 Pa.Super. 54, 69, 675 A.2d 306, 313 (1996)(Fiduciary surcharged for services of a second attorney which would not have been necessary if estate had been properly administered).

But rather than charge the Trustee with the entirety of these expenses, the remedy initially suggested by the Guardian ad litem of imposing a surcharge based on one-half of these expenses seems just. As the Guardian ad litem concedes, the Trust "had no absolute expectation of receiving the paintings at the death of Mary Bird Young," since Christopher's will gave Mary authority to sell the paintings during her lifetime with the agreement of his brothers.<sup>43</sup>

For these reasons, the Trustee shall be surcharged one-half of the \$33,462.91 amount stipulated as expenses incurred in the recovery of the missing paintings or a total surcharge in the amount of \$16,731.45. The settlement agreement reached by the parties is approved, except for one point raised by the Guardian ad litem who observed that the Amended Account covering the period June 5, 2004 to September 5, 2006 raised an issue concerning paintings in possession of Hilda Young. She notes, for instance, that the five Charles Morris Young paintings in Hilda Young's possession are not included in the principal balance on hand. As she suggests, an

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<sup>42</sup> Stipulation, ¶ 39.

appraisal of the fair market value of those paintings should be obtained in accordance with the terms of the settlement agreement.<sup>44</sup>

According to the accountant, no Pennsylvania Transfer Inheritance Tax and Estate Tax is due for the Residuary Trust because the settlor was a resident of Connecticut at the time of his death. The request by the Guardian/Trustee Ad Litem for a fee of \$9,600<sup>45</sup> is approved.

The Amended Account shows a balance of principal before distribution in the amount of \$1,093,913.24, a balance of income before distribution of \$ 111,811.08 and a surcharge assessed against the trustee of \$16,731.45 for a total sum of \$1,222,455.77. This sum, composed as set forth in the Amended Account, subject to distributions already properly, the fee for the Guardian/Trustee Ad Litem of \$9,600 and any transfer inheritance tax which may be due and assessed with, is awarded as set forth the petition for adjudication and statement of proposed distribution as follows:

***A. Income***

| <u>Proposed Distributee(s)</u> | <u>Amount/Proportion</u> |
|--------------------------------|--------------------------|
| Brinton O.C. Young             | Balance of Income        |

***B. Principal***

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|----------------------------|--|
| Mellon Bank, N.A., Trustee | Balance of principal for the continuing uses and purposes of the trust |
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Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this \_\_\_\_\_ day of MARCH 2009, the account is confirmed absolutely.

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43 11//06 Ad Litem Report at 8.

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

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John W. Herron, J.

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44 11/6/06 Ad Litem Report at 10-11.  
45 4/3/08 Ad Litem Memorandum at 15.