

Guardianship – Stopping Financial Exploitation in its Tracks

Ruby Slater was a 67-year-old widow suffering from many chronic maladies. Her two home health aides were “very good” to her – so “good” that after their services for Ruby were terminated they continued to visit her, at which point they went straight from “very good” to “best.” They convinced Ruby to appoint them her agents under a power of attorney in order to “help” with her financial affairs. They transferred the title of her home from Ruby’s late husband to Ruby so that they could obtain a reverse mortgage on the property. Finally, they convinced Ruby to leave them her entire estate in her Will.¹

Incidences of financial exploitation of vulnerable adults like Ruby Slater are all too common. Older adults who are suffering from mental and physical problems and whose family and friends have predeceased them or live far away often come to rely on strangers, like Ruby’s aides, to whom they entrust intimate financial information and affairs. A single older adult suffering from dementia is a particularly vulnerable target because not only does she rely on the stranger for assistance but her dementia leaves her unable to comprehend that she is being exploited. Her reliance comes at a terrible price and the results are sadly predictable – a lifetime’s savings feather someone else’s nest.

While guardianship should be regarded as the last resort in addressing the needs of vulnerable adults because it is an extraordinary intrusion in an individual’s life, guardianship is a means to rescue the vulnerable from exploitation. Indeed, a guardianship proceeding often brings to public attention financial abuse of an older adult by family and “friends.” Several recent New York cases reflect that unfortunate reality. In one, Jennie, an elderly woman, gave her two great-nieces power of attorney. As she became more confused, the agents spent close to \$600,000 of Jennie’s money. When only a pittance was left, one niece dropped Jennie off at a hospital because she thought it was “an easy method to get her aunt transferred to a nursing home.” During a guardianship proceeding brought by the hospital, the nieces were unable to account for Jennie’s assets and the court referred their conduct to the district attorney.²

In another, a son holding a power of attorney for his father, Albert, who was hospitalized with a stroke, refused to cooperate with the hospital in completing a Medicaid application for Albert. In the subsequent guardianship proceeding that the hospital brought because of the son’s refusal, the son was unable to account for the assets of Albert’s business.³

In a third, an old high school “sweetheart” took advantage of Dorothy’s dementia and depression to isolate her from friends, marry her and use a power of attorney to deplete her assets. In a subsequent guardianship proceeding, the court annulled the marriage and voided the power of attorney.⁴

Discovery of exploitation is often difficult because it occurs in isolation and secrecy. It may only come to light when the signs of exploitation emerge – routine banking activities change or cease, utility bills, mortgages and rent are left unpaid, the condition of the victim’s house or apartment deteriorates – and third party intervenes out of concern for the victim. In the cases of Jennie and Albert, a hospital discovered the exploitation and brought it to the court’s attention. Dorothy’s nieces grew concerned that their aunt’s new husband was taking advantage of her condition. In Ruby’s case, a neighbor suspicious of the former aides reported them to the

¹ *Matter of Ruby Slater*, 2/11/2002 NYLJ 28 (col. 3).

² *In re Jennie Fanelli*, N.Y.L.J. Feb. 23, 1998.

³ *In re Rochester Hospital (Levin)*, 158 Misc.2d 522 (1993).

⁴ *In re Johnson*, 172 Misc.2d 684 (1997).

Adult Protective Services (APS) department of the local county department of social services who in turn commenced the guardianship proceeding. Each county in New York has an APS department which provides services to prevent or remedy abuse and exploitation on behalf of adults who are unable to protect themselves. A large number of guardianship proceedings are brought by APS acting on the report of a landlord, a bank, a neighbor, or a police officer that a vulnerable adult has been the subject of abuse and exploitation.

A guardianship proceeding invokes the court's protection of victims like Ruby, Jennie, Albert, and Dorothy, and allows the court to expedite a hearing about how to safeguard them. Before the hearing, the court can protect a victim by denying the exploiter further access to the victim and her assets, appointing a temporary guardian to guard against further misappropriation of the victim's property, and notifying the county clerk that the victim's real property is under court protection. The court appoints a court evaluator who assists it by investigating the victim's situation. The court evaluator is in an excellent position to uncover improper behavior and so advise the court.

When the investigation is concluded, the court holds a hearing. During the hearing, it can further protect the victim by closing the courtroom to witnesses, so that the victim can testify without fear of intimidation by the exploiter.

At the conclusion of the hearing, the court has numerous options. It can, for example, revoke a power of attorney and a Last Will and Testament such as the ones Ruby executed. It can also appoint a guardian to manage the person's financial affairs, attempt to recover any assets taken from the victim, and prevent further exploitation of victims like Ruby Slater.

Rose Mary Bailly, Esq. is the Executive Director of the New York State Law Revision Commission and Special Counsel to the Aging Law & Policy Program of the Government Law Center of Albany Law School. She is the co-author with Elizabeth Loewy, J.D., of *FINANCIAL EXPLOITATION OF THE ELDERLY* (Civic Research Institute, Inc., 2007) and an Adjunct Professor of Law at Albany Law School teaching Guardianship Practice, New York Administrative Practice and Procedure, and Elder Law.