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Date: 11/27/19 10:33 AM (GMT-08:00)

To: Charles Lee <clee@roseburglawyers.com>, 'Thomas Crawford' <attorneytwc@live.com>

Cc: "Debra J. Sigvartsen" <Debra.J.Sigvartsen@ojd.state.or.us>

Subject: In the Matter of the Estate of Harriet Rene'e Stanley 17PB06229

Mr. Lee and Mr. Crawford:

My decision in the matter of the claim against Ms. Hammett's bond follows:

There is little doubt in this case that Sherry Hammett acted in bad faith when she filed her petition seeking to be appointed Personal Representative of her mother's estate. When combined with her lack of relationship with her mother and her siblings, Ms. Hammett's knowledge that Kim Sullivan considered herself to be the executor of the estate, lack of any effort whatsoever to determine whether her mother had left a will, and the intentionally misleading representation to the Court regarding the lack of existence of a will are sufficient for me to make a finding of bad faith by any applicable standard.

There is also little doubt that Ms. Hammett caused harm to the estate by her actions. What is unfortunate in this case is that the emotions and animosity between the parties appears to have left all members of the family unable to differentiate between the facts and proof that are needed for me to award damages, as opposed to the large amount of emotion, speculation and conjecture that was presented.

Missing Personal Property:

With respect to items alleged to have been removed from the home, either by Ms. Hammett, or as a result of her negligence, the estate's evidence is unconvincing. Despite surveillance cameras and a very attentive neighbor, there is not one shred of evidence that Ms. Hammett made entry to the home or removed any item therefrom prior to making entry with the locksmith. There is, however, ample evidence that other members of the family were going in and out of the home. Ms. Duarte claimed to have never removed anything from the home prior to Ms. Hammett being appointed Personal Representative, but upon being confronted by photographic evidence and eyewitness testimony to the contrary, admitted that she had taken out some canned food and trash, but nothing else. Further, there was testimony that Mr. Duarte had discussed removing items and placing them in storage.

Once Ms. Hammett made entry to the house, Ms. Sullivan and Ms. Hamrick set up surveillance of the home, going so far as to set up a trailer on the neighboring property so that they could monitor the property overnight. Despite this, they cannot point to one instance in which Ms. Hammett either entered the home or removed property between the date that Ms. Hammett made entry with the locksmith and the day that Ms. Sullivan regained control of the property.

Exhibit 15 pgs 1-4



When then, did Ms. Hammett purportedly load and remove items such as a leaf blower, generator, jewelry and photographs? The estate has gone to great effort to explain how it was possible that Ms. Hammett removed those items before Kathy Smith returned with her camera, but possibility and speculation are not evidence. It seems unlikely that the items could have been removed on the day that the locksmith made entry to the home. Even if I believe that there was a white SUV with the hatch raised in the driveway that was somehow removed from the property when the locksmith arrived and parked in the same location with his hatch raised, I do not believe that Ms. Hammett could have removed the items that are alleged to be missing without detection. The locksmith had not yet made entry to the home when Ms. Hammett arrived, and witnesses presented when she made entry confirm that she did not remove property.

Even if I were able to conclude that Ms. Hammett removed items, thereby causing a loss to the estate, the value of the photographs and genealogy materials has not been proven to be the fair market value of the items, and appears to include some measure of sentimental value, which is not the measure of damages upon a loss.

Based upon the failure of the Personal Representative to prove by a preponderance of the evidence that Ms. Hammett is responsible for the disappearance of the items alleged to be missing, either by her intentional acts or negligence, all claims for such items are denied.

#### Trailer Rental and Trailer Parking:

Despite having access to surveillance or trail cams that could be used to monitor the property, and have a neighbor willing to keep an eye on the property, Ms. Sullivan and one or more of her sisters undertook to conduct personal surveillance on the property. In order to make the surveillance more comfortable, Ms. Duarte offered the use of her camp trailer, which was parked on Ms. Smith's property. Ms. Sullivan seeks \$4,030.74 for the use of the trailer so that she may pay Ms. Duarte. Ms. Duarte, however, indicates that she has not been paid, did not ask to be paid, and had no involvement in arriving at the rental value that was proposed.

I do not find that it was reasonably necessary to set up personal surveillance on the property, nor do I find that the request for rental value of the trailer is supported by the evidence, so the request for both rental value of the property and the \$100 that Ms. Sullivan volunteered to pay Ms. Smith are denied.

#### Door and Locks:

Ms. Hammett is responsible for the cost related to replacing the locks on the property, and I find in favor of the Estate in the amount of \$198.05. I do not find by a preponderance of the evidence that she is responsible for the damage to the door. There is evidence that the door had damage related to age, was a hollow core wooden door, and was not trusted by the family to be secure for many years. In addition, there is no evidence that the damage occurred when Ms. Hammett's locksmith changed the locks, but rather that it may have occurred when Ms. Sullivan replaced the locks. Having no evidence regarding the manner in which the replacement locks were installed by Ms. Sullivan or her agent, I cannot conclude that the damage was not the fault of the person installing the locks.



Lost wages and mileage:

For the reasons stated above in my discussion regarding trailer rental, I do not believe that Ms. Sullivan is entitled to lost wages and mileage for trips made to conduct surveillance.

Further, it is difficult to attribute responsibility to Ms. Hammett for all travel to see the attorney, as that would have had to have occurred to some degree in order to open probate in the normal course.

I do, however, believe that Ms. Hammett is responsible for lost wages and mileage that resulted from the incidents surrounding Ms. Hammett taking control of the home, which I find to be extraordinary responsibilities of Ms. Sullivan as personal representative, payment for which would fall outside of her normal fees as personal representative. The estate is entitled to recover for the cost of reimbursing Ms. Sullivan for 14 hours at \$30 per hour, for a total of \$420. Mileage has not been itemized by the day, so I will award one round trip to the Lawson Bar address at 264 miles round trip, plus three trips to Ms. Daly's office at 24.8 miles round trip, for total mileage of 338.4. I believe that the IRS rate is \$0.58 per mile, so I calculate the total mileage award to be \$196.27.

Remaining claims:

In addition to amounts awarded to the Estate above, I do find that Ms. Hammett's decision to file a probate in this matter without making any effort to determine whether a will existed, and whether any such will may have given her standing to petition to be the personal representative, caused harm to the estate in the form of additional expenses. Ms. Hammett is therefore responsible for repayment of the following amounts:

Attorney fees in the amount of \$4,118.00 (This excludes Mr. Lee's invoice #20738, which is for legal services prior to Ms. Hammett's appointment.)

Mobile Notary in the amount of \$30.00

Printed pictures in the amount of \$73.90

All sums chargeable against bond:

For the sake of clarity, I find that all amounts awarded herein are due to breaches of Ms. Hammett's duties as personal representative and are properly charged against her bond. While the decision to apply to be appointed predates the bond, it was her acts taking control of the assets under the authority of an appointment that was obtained based upon intentionally incomplete and misleading information to the Court that led to each loss awarded herein.

Mr. Lee to prepare the appropriate orders and/or judgment necessary to effectuate such claim.