



## ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

**1 Theola Louise Baker (Estate)**

**Case No. 03CEPR01573**

**Atty Lee, Curtis (former Administrator)**

**Atty Kruthers, Heather H (for Petitioner/Successor Administrator/Public Administrator)**

**Petition for Surcharge Against Former Administrator for Breach of Fiduciary Duty  
[Prob. C. 9600 et seq; 11050]**

<b>DOD: 10/19/1987</b>	<p><b>PUBLIC ADMINISTRATOR</b>, successor Administrator, is Petitioner.</p> <p><b>Petitioner states</b> according to the Court file former Administrator Curtis Lee entered into a sale agreement for \$13,000.00 for the real property, the only asset of the estate. Chicago Title provided a Seller's Statement dated October 8, 2004. One line reads, "REIMBURSEMENT OF FEES PAID TO CURTIS LEE." The amount was \$7,415.00. According to an e-mail written by a woman named Cindy Lee, also provided by Chicago Title, the breakdown of the reimbursements were for attorney's fees, taxes, garbage bins, tractor rental and fines from the County. Of obvious concern to petitioner is money paid to an attorney before any fees were approved by this Court. Unfortunately, he is not aware of which attorney received the money from Mr. Lee, if any.</p> <p>After all the fees, commissions, and other sale expenses were paid out of escrow, Mr. Lee received the remaining \$3,349.16. This is what he should have received in his capacity as personal representative. Instead he kept that money too.</p> <p>Mr. Lee did not file an accounting of his tenure as administrator. Therefore, he should be surcharged for the total amount of the estate not accounted for. The sale of the sole asset was for \$13,000. Mr. Lee should be surcharged for the \$7,415.00 he took from escrow as "reimbursements". He should also be surcharged for the \$3,349.16 that was turned over to him as personal representative.</p> <p style="text-align: center;"><b>Please see additional page</b></p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p>
<b>Cont. from 112013, 011514, 021914</b>		
<input type="checkbox"/> <b>Aff.Sub.Wit.</b>		
<input checked="" type="checkbox"/> <b>Verified</b>		
<input type="checkbox"/> <b>Inventory</b>		
<input type="checkbox"/> <b>PTC</b>		
<input type="checkbox"/> <b>Not.Cred.</b>		
<input checked="" type="checkbox"/> <b>Notice of Hrg</b>		
<input checked="" type="checkbox"/> <b>Aff.Mail</b> W/		
<input type="checkbox"/> <b>Aff.Pub.</b>		
<input type="checkbox"/> <b>Sp.Ntc.</b>		
<input type="checkbox"/> <b>Pers.Serv.</b>		
<input type="checkbox"/> <b>Conf. Screen</b>		
<input type="checkbox"/> <b>Letters</b>		
<input type="checkbox"/> <b>Duties/Supp</b>		
<input type="checkbox"/> <b>Objections</b>		
<input type="checkbox"/> <b>Video Receipt</b>		
<input type="checkbox"/> <b>CI Report</b>		
<input type="checkbox"/> <b>9202</b>		
<input checked="" type="checkbox"/> <b>Order</b>		
<input type="checkbox"/> <b>Aff. Posting</b>		
<input type="checkbox"/> <b>Status Rpt</b>		
<input type="checkbox"/> <b>UCCJEA</b>		
<input type="checkbox"/> <b>Citation</b>		
<input type="checkbox"/> <b>FTB Notice</b>		
		<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 2/13/14</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 1 – Baker</b></p>

Mr. Lee was sanctioned \$1,000 by the Court for failure to appear. He has not paid the sanction, and therefore, it should also be part of the surcharge against him.

The total surcharge against Curtis Lee, former administrator, is \$11,764.16. The Public Administrator and his attorney, County Counsel, will also see fees for their services in bringing the surcharge action. The underlying surcharge is more than the bond, proof of which, was posted on 2/19/2004 in the amount of \$9,000.00.

Petitioner requests that the bond company, Surety Bonding Company of America (SBCA), be ordered to pay to the successor administrator the full amount of the bond, \$9,000.00 as a surcharge against Curtis Lee, for breaching his fiduciary duty to the beneficiaries and creditors of the estate by misappropriating funds.

The Public Administrator reserves his right to seek payment for his and his attorney's services.

**Wherefore, petitioner prays that,**

1. The Court find that the former administrator, Curtis Lee, breached his fiduciary duty to the beneficiaries and the creditors of the estate.
2. The Court find that the actual loss to the estate is a minimum of \$11,764.16, and make an order of surcharge against the former administrator in that amount.
3. The bond company, SBCA, be ordered to pay the successor administrator the full amount of the bond, \$9,000.00.

**Declaration of David A. Roberts regarding Petition for Surcharge.** Mr. Roberts states he is a partner in the law firm of Caswell, Bell & Hillison, LLP (CBH). In 2003, Curtis Lee retained the law firm to probate his mother's will. Mr. Lee gave CBH an initial retainer and reimbursed them for costs incurred during the probating of the estate. Shortly after the court granted Mr. Lee's petition to sell the real property, CBH lost contact with him. The attorney who originated and was handling the matter left CBH. Upon review of the matters he left behind, CBH discovered this probate. CBH attempted to reestablish contact with Mr. Lee and upon failing to do so, file a motion and the court allowed them to withdraw from the case.

Only costs incurred in this probate proceeding in the amount of \$748.00 were paid to CBH by Curtis Lee. There were no attorney's fees paid. The attorney's fees in the amount of \$1,875.00 referenced in the Petition for Surcharge were never received by CBH.

**Please see additional page**

**Declaration of Curtis Lee Regarding Petition for Surcharge Against Former Administrator filed on 1/13/14.** Mr. Lee states he had maintained the property since his mother's death in 2003. He realized that it cost too much money to maintain and decided to sell the real property. The real property was run down with an old shack-type structure and out buildings on it. It was necessary to demolish all buildings on the property, clean up trash deposited by vagrants and keep the weeds cleared from the property so that his mother's estate would not receive a fine from the County.

Mr. Lee states his sister lived in Central Mexico with her husband. Mr. Lee nor any of his siblings have heard from her since their mother's funeral and some family members told him that they believed she died in Mexico a few years ago.

Mr. Lee states when he began the probate process it had been 9 years since he had heard from his brother Willie Lee. At their mother's funeral Willie told him he didn't want anything from their mother's estate. Mr. Lee states Willie told him that he wanted to give up his rights to any property or money he would inherit. He signed a document stating that he gives up his interest in the estate (exhibit A to the declaration). He did ask for \$30.00.

Mr. Lee states his brother Billie Lee, has been in and out of jail, and has had many run ins with the law over the years. He has been a vagrant for many years and the family did not know how to contact him. None of the siblings helped to maintain the property or pay any bills pertaining to the probate.

During the course of the probate the court signed an order confirming the sale of the real property for \$13,000.00. Mr. Lee states his attorney told him that he would be reimbursed for any costs that he advanced on behalf of his mother's estate so his wife Cindy sent an e-mail to the escrow officer telling her to provide Mr. Lee with a check for \$7,415.00 directly from the escrow account. The balance of the escrow funds in the amount of \$3,349.16 were paid to the estate.

Mr. Lee states the reimbursement to him in the amount of \$7,415.00 was for his actual out-of-pocket expenses and estimated attorneys' fees, administrator's commissions and costs advanced paid by Mr. Lee and future costs. The attorney fees were never paid to Mr. Lee's attorney and the commissions were never distributed to Mr. Lee. The sum of \$1,040.00 is still in a bank account. It is not in the estate bank account that was initially set up because after a period of inactivity, the bank said they would no keep the account open and would have to turn the funds over to the State of California Unclaimed Property.

Mr. Lee provides an itemized list of out-of-pocket costs paid by him totaling \$1,074.00 for filing fees, publication, certified copies, bond, and for the probate referee.

Mr. Lee also provides an itemization of funds paid by him in connection with the real property totaling \$6,047.75 and also includes copies of receipts.

Mr. Lee states he wanted to make sure both his brother's received something from his mother's estate so on 6/10/05, when his brother surfaced, Mr. Lee states he gave him \$1,000.00 as his share of the estate. Mr. Lee states he also paid his brother Willie, the sum of \$1,000.00 even though he signed his rights away. Evidence of payment to his brother's is attached as Exhibit E.

**Please see additional page**

**Declaration of Curtis Lee Regarding Petition for Surcharge Against Former Administrator filed on 1/13/14 (cont.):** Mr. Lee states, in summary he is responsible for the accounting to the \$7,415.00 that was disbursed to him through the escrow, plus the \$3,349.16 payable to the estate for a total of \$10,764.16. Mr. Lee's total out of pocket costs were \$9,351.75. There is still \$1,406.41 left in the account for payment of attorneys' fees and costs. Mr. Lee notes that Willie Lee and Billie Lee have already been paid \$1,000.00 each. If his sister Bertha Louise Lee resurfaces or is found to be alive, Mr. Lee states he will make sure that she receives the sum of \$1,000.00, even if it is paid from his own funds.

**Response to Declaration of Curtis Lee Regarding Petition for Surcharge Against Former Administrator for Breach of Fiduciary Duty filed on 2/25/14 states** according to Mr. Lee's declaration and escrow statement, he was paid \$7,415.00 for reimbursement of actual out of pocket expenses. However the costs are \$1,074.00 and the real property expenses are 6,047.75. This totals \$7,121.75, which is a difference of \$293.25.

The \$7,415.00 covered more than Mr. Lee's expenses. The remaining funds of \$3,349.15 were paid to the estate. Mr. Lee admittedly paid his two brothers \$1,000.00 each, without filing a final account or request for distribution.

The Law Firm of Caswell, Bell & Hillison LLP waives any statutory fee. The Public Administrator has expended \$914.20 worth of time and County Counsel (attorney for the Public Administrator) has incurred \$1,100.00 in extraordinary fees to prepare and file the surcharge petition and response to Mr. Lee's declaration. This total, \$2,024.20 exceeds that amount on hand (\$1,406.41).

Because there was no property on hand when the Public Administrator filed his surcharge petition, a fee waiver was granted. If the Court vacates that order the fee, \$435.00 would be added to the total above to be surcharged.

Although Mr. Lee was entitled to reimbursement of costs and expenditures, he did not have the authority to make distributions of \$2,000.00; therefore, he should still be surcharged that amount to cover outstanding fees and costs.

The Public Administrator requests the bonding company be ordered to pay the Successor Administrator the outstanding amount of \$2,459.00, (\$2,024.00 plus the filing fee of \$435.00) as a surcharge against Curtis Lee, for breaching his fiduciary duty.

Petitioner prays for an Order:

1. The Court find that the former administrator, Curtis Lee, breached his fiduciary duty.
2. The Court find that the actual loss to the estate is a minimum of \$2,459.00, and make an order of surcharge against the former administrator in that amount.
3. The bond company, SBCA, be ordered to pay the successor administrator the full amount of the bond, 2,459.00.

(1) Third and Final Account and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorney

<b>DOD: 09/20/13</b>		<b>PUBLIC GUARDIAN</b> , Conservator, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		Account period: <b>04/15/12 – 09/20/13</b>	
		Accounting - <b>\$50,401.48</b>	
		Beginning POH - <b>\$3,813.19</b>	
		Ending POH - <b>\$4,562.62</b>	
<b>Cont. from</b>		Subsequent account period: <b>09/21/13 – 01/07/14</b>	
<input type="checkbox"/>	<b>Aff.Sub.Wit.</b>	Accounting - <b>\$9,694.40</b>	
<input checked="" type="checkbox"/>	<b>Verified</b>	Beginning POH - <b>\$4,562.62</b>	
<input type="checkbox"/>	<b>Inventory</b>	Ending POH - <b>\$9,694.40</b>	
<input type="checkbox"/>	<b>PTC</b>	Conservator - <b>\$1,992.48</b> (9 staff hours @ \$76/hr and 13.63 Deputy hours @ \$96/hr.)	
<input type="checkbox"/>	<b>Not.Cred.</b>	Attorney - <b>\$1,250.00</b> (less than allowed per Local Rule)	
<input checked="" type="checkbox"/>	<b>Notice of Hrg</b>	Bond fee - <b>\$132.72</b> (ok)	
<input checked="" type="checkbox"/>	<b>Aff.Mail</b> w/	Costs - <b>\$435.00</b> (filing fees)	
<input type="checkbox"/>	<b>Aff.Pub.</b>	Petitioner states that after payment of court-ordered fees and commissions totaling \$3,810.20 and reimbursement to Medi-Cal of the remaining \$5,884.20, there will be no assets remaining to distribute to the decedent's heirs.	
<input type="checkbox"/>	<b>Sp.Ntc.</b>	<b>Petitioner prays for an Order:</b>	
<input type="checkbox"/>	<b>Pers.Serv.</b>	1. Finding that the conservatorship of the person and estate terminated on 09/20/13, the Conservatee's date of death;	
<input type="checkbox"/>	<b>Conf. Screen</b>	2. Approving, allowing and settling the third and final account;	
<input type="checkbox"/>	<b>Letters</b>	3. Authorizing the conservator and attorney fees and commissions; and	
<input type="checkbox"/>	<b>Duties/Supp</b>	4. Authorizing payment of the bond fee.	
<input type="checkbox"/>	<b>Objections</b>		
<input type="checkbox"/>	<b>Video Receipt</b>		
<input type="checkbox"/>	<b>CI Report</b>		
<input type="checkbox"/>	<b>2620(c)</b> n/a		
<input checked="" type="checkbox"/>	<b>Order</b>		
<input type="checkbox"/>	<b>Aff. Posting</b>		
<input type="checkbox"/>	<b>Status Rpt</b>		
<input type="checkbox"/>	<b>UCCJEA</b>		
<input type="checkbox"/>	<b>Citation</b>		
<input type="checkbox"/>	<b>FTB Notice</b>		
			<b>Reviewed by:</b> JF
			<b>Reviewed on:</b> 03/10/14
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 3 – Neal</b>

**5A In Re: The Bartimore Family Trust**

**Case No. 13CEPR00534**

**Atty Forry, Craig (of Mission Hills, for Petitioners Virginia Chenier, Leslie Bartimore, Lori Johnson and Lynn Feathareston**

**Atty Standard, Donna M. (for John Welsh, Trustee)**

**Amended Petition to 1) Compel Accounting; 2) Suspend and Remove John M. Welsh as Trustee of the Bartimore Family Trust; 3) Compel Distribution; 4) Conversion; 5) Constructive Trust; 6) Breach of Fiduciary Duty; and 7) Return of Property to Trust [Prob. C. 859, 15642, 17000, 17200; Civ. C. 2224 & 3294]**

		<p><b>VIRGINIA CHENIER, LESLIE BARTIMOR, LORI JOHNSON and LYNN FEATHERSTON</b>, beneficiaries, are petitioners.</p> <p>Petitioners states Grantors and original Co-Trustees, <b>Charlotte V. Bartimore</b> and <b>Leonard D. Bartimore</b>, executed the Trust on 10/28/2008. Grantor Charlotte V. Bartimore died on 2/1/2011 and Grantor Leonard D. Bartimore died on 9/5/2009.</p> <p>Charlotte V. Bartimore signed the First Amended and Restated Trust Agreement on 8/31/2010.</p> <p><b>John M. Welsh</b> is the current Trustee of the Trust.</p> <p>Pursuant to Paragraph 3.3.2(b), page 3 of the Trust, the trust was to divide the trust into two equal shares. 50% of the estate was to be allocated to the issue of Charlotte and the remaining 50% was to be allocated to the issue of Leonard.</p> <p>Each of the Petitioners are the issue of Settlor Charlotte V. Bartimore, and they are each entitled to an equal share with John Welsh.</p> <p>On 5/26/2011 Petitioner Lynn Featherston sent a letter requesting that John M. Welsh provide and accounting as required by Probate Code § 16063.</p> <p style="text-align: center;"><b>Please see additional page</b></p>	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>Continued from 1/22/14. Please see page 5C re: Status of Settlement Agreement.</b></p>	
Cont. from 080113, 082813, 100313, 102413, 111213, 120313, 012214				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
<input type="checkbox"/>	PTC			
<input type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
<input checked="" type="checkbox"/>	Aff.Mail			W/
<input type="checkbox"/>	Aff.Pub.			
<input type="checkbox"/>	Sp.Ntc.			
<input type="checkbox"/>	Pers.Serv.			
<input type="checkbox"/>	Conf. Screen			
<input type="checkbox"/>	Letters			
<input type="checkbox"/>	Duties/Supp			
<input checked="" type="checkbox"/>	Objections			
<input type="checkbox"/>	Video Receipt			
<input type="checkbox"/>	CI Report			
<input type="checkbox"/>	9202			
<input type="checkbox"/>	Order			X
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			
		<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 3/10/14</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 5A – Bartimore</b></p>		

**5A (Additional page 1 of 3) In Re: The Bartimore Family Trust Case No. 13CEPR00534**

On 2/5/2013, Petitioner's attorney sent a letter to John Welsh requesting he provide an accounting as required by Probate Code §16063.

On 2/20/2013, Petitioner's attorney sent an additional letter to John Welsh requesting that he provide an accounting.

After representing that he would provide an accounting, John Welsh has failed and refused to provide an accounting, and no accounting has ever been provided to Petitioners.

Petitioners believe that pursuant to Probate Code §15642 John Welsh's refusal to provide an accounting to Petitioners is a breach of the Trust. Furthermore, John Welsh's conduct demonstrates recalcitrance with regards to dealing with Petitioners, and renders John Welsh unfit to act as Trustee.

John Welsh while wrongfully acting as Trustee, and controlling the Trust, failed to comply with the terms of the Trust to distribute equal shares of the Trust estate to Petitioners.

Petitioners allege that John Welsh has failed to distribute to them their rightful shares of the Trust estate. Such failure constitutes a wrongful act made in bad faith to deprive the proper beneficiaries of the property in the Trust estate. As such John Welsh should be compelled to provide an accounting of the Trust estate at the time of Charlotte's death, and should be compelled to pay double damages as a consequence of such a wrongful appropriation of the Trust estate.

A Constructive Trust should be imposed on the real property of John Welsh located at 46910 Dunlap Road, Miramonte, California 93641 under Civil Code §2224. Petitioners allege that John Welsh has used a portion of the Trust estate to maintain, repair, improve or otherwise benefit the Miramonte property sufficient to support a constructive trust being imposed on the Miramonte property for the benefit of Petitioners.

A Constructive Trust should also be imposed on Bank of America Account no. 23416-31370 and Wells Fargo Bank Account no. 10110221047174 that have been used by John Welsh in the handling of the Trust Estate. Petitioners believe John Welsh has used those accounts for his personal benefit sufficient to support a constructive trust being imposed on them for the benefit of Petitioners.

Previous paragraphs allege wrongful acts which are a breach of the Trust, a mistake, accident, or outright fraud. Because John Welsh has deprived Petitioners of their rightful distributions and property, John Welsh should be deemed to be holding said property as Constructive Trustee for Petitioners.

John Walsh's acts of depriving Petitioners of their rightful property and withholding all authorized distributions constitutes the tort of conversion.

John Welsh must pay double damages for the wrongful appropriation of Trust assets in clear violation of the Trust.

Pursuant to Civil Code §3294, an award of punitive damages against John Welsh should be awarded to Petitioners as a result of John Welsh's acts of fraud, oppression, or malice arising out of his breach of fiduciary duty as acting as Trustee and as a result of the fraudulent concealment and conversion of Trust assets.

**Please see additional page  
Dept. 303, 9:00 a.m. Wednesday, March 12, 2014**

**Wherefore, Petitioners pray for an Order of this Court:**

1. Compelling John Welsh to render an account for the Trustee since the date of Charlotte V. Bartimore's death on 2/1/2011 through the present;
2. Removing John Welsh as successor Trustee of the Trust, or in the alternative, suspending his powers as Trustee and delivering the Trust estate to the Successor Trustee Dale R. Welsh, pending the filing of said account with this Court;
3. Compelling the distribution of Petitioners' share of the Trust estate as allocated to them under the Trust;
4. Surcharging John Welsh at the legal rate for improper payments made out of the Trust assets and for the lost value of the Trust as a consequence of their failure to make the Trust productive for beneficiaries;
5. Imposing a Constructive Trust over the wrongfully held assets by John Welsh, including but not limited to, the real property located at 46910 Dunlap Road, Miramonte, California 93641, in an amount determined at trial;
6. For double damages pursuant to Probate Code §859 in an amount to be determined at trial;
7. For punitive damages against John Welsh, in an amount determined at trial; and
8. For such other and further Orders and relief as the Court deems just and proper.

**Successor Trustee's Opposition to Petitioner's Amended Petition to Compel Accounting, Suspend and Remove John M. Welsh as Trustee and Answer to Allegations of Constructive Trust filed by Trustee, John Welsh on 8/26/2013.** Trustee John Welsh states filed concurrently is an accounting from February 1, 2011, the date of death of Settlor, Charlotte V. Bartimore, through July 31, 2013.

John Welsh, Successor Trustee, Respondent objects to removal of him as Trustee, as his actions of a late accounting do not rise to the level of a breach of fiduciary duty. Respondent states he provided an initial accounting to the beneficiaries on or about March 15, 2011. The next accounting would have been due after February 1, 2012. John Welsh states he has had several personal crisis situations occur during this period and was unable to provide the accounting due to circumstances out of his control. Both of his eldest children were hospitalized on different occasions with severe injuries and he also has a child with developmental disabilities who resides with him on a full time basis.

John Welsh states he made some distributions, however, due to the uncertainty surrounding the "Mariner Note", which is a not an deed of trust held against the property, payable to the Trust, which is undervalued at this time, John Welsh, Trustee has not terminated the Trust and made full distribution. John Welsh contends that funds may be necessary should it become necessary to foreclose on the note. Should foreclosure become necessary, to would require John Welsh, Trustee, to assume a large first trust deed, which is ahead of the note payable to the Trust and would require the Trust to assume those payments until the property could be sold. Presently the property is valued at \$725,000.00. The First Trust Deed Note is in the amount of \$820,000.00

**Please see additional page**

**Successor Trustee's Opposition to Petitioner's Amended Petition to Compel Accounting, Suspend and Remove John M. Welsh as Trustee and Answer to Allegations of Constructive Trust filed by Trustee, John Welsh on 8/26/2013 (Cont.):** John Welsh, Trustee, objects to Petitioner's request to remove him, based on the terms of the Trust, which states any successor Trustee "must be a trust company or bank qualified to do a trust business." No such designation has occurred. If the Court should consider Petitioner's request, which John Welsh, Trustee, does not consent, then the Court only has the power to appoint a trust company or bank qualified to do a trust business. The Court has no authority pursuant to the terms of the trust, to appoint the Alternate Successor Trustee, Dale M. Welsh.

John Welsh, Trustee, contends it is within his discretion to make distributions to administer the terms of the Trust. Because the issue regarding the "Mariner Note", further distribution should not be made at the present time until it is determined the course of action necessary regarding the note held by the Trust. The borrower has only recently finalized his transaction with the First Deed holder and the Successor Trustee was waiting for an appraisal of the property before entering into any final negotiations.

**Wherefore, John M. Welsh, Successor Trustee prays:**

1. That Petitioner's request to remove Successor Trustee, John Welsh, be denied;
2. That Petitioner take nothing by way of this Amended Petition;
3. For costs of suit and any other relief as may be just and appropriate.

**5B In Re: The Bartimore Family Trust**

**Case No. 13CEPR00534**

**Atty Forry, Craig (of Mission Hills, for Objectors Virginia Chenier, Leslie Bartimore, Lori Johnson and Lynn Feathareston**

**Atty Standard, Donna M. (for Petitioner/trustee, John Welsh)**

**First and Formal Account and Report of Status of the Bartimore Family Trust**

		<b>JOHN WELSH</b> , Trustee, is petitioner.	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p>Continued from 1/22/14. Please see page 5C re: Status of Settlement Agreement.</p> <p>1. Need Order</p>
		Account period: 2/1/11 – 7/13/13	
		Accounting - <b>\$359,826.23</b>	
		Beginning POH - <b>\$355,755.94</b>	
		Ending POH - <b>\$ 83,405.49</b>	
<b>Cont. from 102413, 111213, 120313, 012214</b>		Trustee - <b>\$17,286.06</b>	
	<b>Aff.Sub.Wit.</b>	(petition states trustee has already paid himself \$115,500.00)	
✓	<b>Verified</b>		
	<b>Inventory</b>		
	<b>PTC</b>	<b>Petitioner states</b> he has performed all duties of the Trust to date. The Successor Trustee is delinquent on the accounting, however, the Successor Trustee has been attempting to negotiate with the debtor on a note secured by Deed of Trust on real property located at 15940 Mariner Drive in Huntington Beach.	
	<b>Not.Cred.</b>		
✓	<b>Notice of Hrg</b>	<b>Petitioner prays for an Order:</b>	
✓	<b>Aff.Mail</b>	1. That the First and Final Account and Report of Trustee be allowed and approved as filed.	
	<b>Aff.Pub.</b>		
	<b>Sp.Ntc.</b>		
	<b>Pers.Serv.</b>		
	<b>Conf. Screen</b>		
	<b>Letters</b>		
	<b>Duties/Supp</b>		
	<b>Objections</b>		
	<b>Video Receipt</b>		
	<b>CI Report</b>		
	<b>9202</b>		
	<b>Order</b>	X	
	<b>Aff. Posting</b>		
	<b>Status Rpt</b>		
	<b>UCCJEA</b>		
	<b>Citation</b>		
	<b>FTB Notice</b>		
			<b>Reviewed by: KT</b>
			<b>Reviewed on: 3/10/14</b>
			<b>Updates:</b>
			<b>Recommendation:</b>
			<b>File 5B – Bartimore</b>

**Objections to First Formal Account and Report of Status of the Bartimore Family Trust filed by Virginia Chenier, Leslie Bartimore, Lori Johnson and Lynne Featherston on 9/19/13.** Objectors state the original trust executed on 10/28/2008 has not been disclosed to Objectors and they have again requested a copy from John Welsh ("Welsh"). Objectors question whether or not the original trust authorized changes after the death of Leonard D. Bartimore.

- By his own admission during the hearing on 8/28/13, Welsh did not collect any payments on the Mariner Note for the past 2 years. To date, Welsh has not justified his failure to collect all of the payments due on the Mariner Note.
- Objector and their counsel have made repeated meet and confer attempts to have Welsh perform his fiduciary duties to them and make a property accounting. It was only after Objector's filed their Petition that Welsh provided Objectors with a formal accounting.
- Welsh has not reasonably performed his fiduciary duties under the trust and provides no support for his claim of trustee's fees and compensation in the amount of \$17,286.06. Such fees and compensation is unreasonable under the facts of this case that involves a small estate with limited duties, and in light of the breaches by Welsh of his fiduciary duties.
- The accounting shows Welsh paid himself the sum of \$15,500.00 as Successor Trustees fees and compensation. He claims his total is based upon 2%, 3% or 4% of the alleged value of the estate for various periods of time. Such a rate is not reasonable. The Trust provides that the trustee shall be entitled to a "reasonable compensation" for services performed in the administration of the trust. The sum of \$17,286.06 is not "reasonable for administering an estate that consisted of one residence sold by real estate agents, a Mariner Note that Welsh paid little attention to until recently, two small bank accounts and assorted furniture.
- The accounting shows payments to Attorney Dawn Thorston in the sum of \$4,723.75. To date, Welsh has not provided any support or justification for these payments.
- The accounting lists expenses for which Welsh had not provided a reasonable accounting:
  - a. AT&T - \$302.21
  - b. Public Storage - \$3,324.70
  - c. William Foster - \$450.00

In the absence of a reasonable explanation, Welsh should be surcharged for these expenses.

- The accounting includes service charges for the Bank of America checking account in the amount of \$365.79. There is no explanation why the Bank of America checking account was not closed and all of the deposits consolidated into the Wells Fargo account that did not require service charges. This caused the estate to lose \$365.79 for which Welsh should be surcharged.
- Documents provided by Welch show a check no. 109 from the Wells Fargo Bank account controlled by Welsh for \$5,000 on 1/31/11, the day before the Trustor Charlotte Bartimore died, but this check and disbursement has not been accounted for by Welsh.
- The accounting shows a disbursement on 2/2/11 as "Expenses for grandchildren (expended at the request of Charlotte Bartimore prior to death)" for \$600.00, but Welsh does not provide any substantiation or explanation of this disbursement.
- The accounting shows a disbursement on 3/4/11 as "John Welsh (catering and funeral expenses)for \$1,970.93, but Welsh had failed to provide any substantiation for this disbursement.
- Wells Fargo Bank statement shows the balance in that account on 7/19/13 us \$8,589.80 but the accounting shows that balance on that date as \$6,545.49, leaving a discrepancy of \$2,044.31 that is not explained.

**Please see additional page**

**Objections Continued:**

- The accounting states that the "balance on hand in the estate" as of 7/31/13 is \$83,405.49 and after subtracting the cash of \$6,545.46 and the Mariner Notes of \$74,000.00, the sum of \$2,860.00 remains unaccounted for.
- During the escrow for the sale of the residence of the Trustor at 200 Afenida Marjorca, Unit A, Laguna Woods, CA, the buyers paid rent to Welsh that he has not accounted for in the Accounting.
- Welsh informed Objectors that he was selling the Residence below its fair market value as it was being sold by the owner, but the agents' commissions totaled \$15,600.00 and there is no explanation for why agents were paid such commissions when the sale was below market value.
- No appraisal was provided to Objectors for the value of the Residence when it was sold on 3/31/11.
- Welsh has failed to disclose whether the personal property in the residence was included in the sale price or paid for separately by the buyer, and such personal property had a value in excess of \$3,000.00
- Welsh failed to collect payments for 21 months on the Mariner Note in the sum of \$9,065.07
- After the death of the Trustor, Welsh took possession of the personal property of the Trustor that had a value in excess of \$45,000.00, and Welsh has failed to fully account for all of the personal property in his possession.

**Wherefore, Objectors request that the Court make the following orders:**

1. Surcharge John Welsh in the amount of \$15,500.00, plus interest at the legal rate, for excessive fees and compensation;
2. Surcharge John Welsh in the amount of \$4,723.75, plus interest at the legal rate, for unsupported payments to Dawn Thorston;
3. Surcharge John Welsh in the amount of \$4,076.91, plus interest at the legal rate, for unjustified payments to AT&T, public storage, and William Forster;
4. Surcharge John Welsh in the amount of \$3,65.79, plus interest at the legal rate, for unnecessary payments to Bank of America for service charges;
5. Require John Welsh to account for the unexplained disbursements set forth in paragraph 11 of the petition;
6. Require John Welsh to account for the sales price for the Residence of the Trustor that was below fair market value and surcharge him for the difference between the fair market value and the final sales price;
7. Surcharge John Welsh in the amount of \$9,065.07, plus interest at the legal rate, for his failure to collect on the Mariner Note;
8. Require John Welsh to account for all the personal property in his possession after the death of the Trustor;
9. Award Objectors attorney fees and costs incurred in this action;
10. That the Accounting not be approved;
11. That John Welsh pay double damages pursuant to Probate Code §859 for, in bad faith, wrongfully taking, concealing, and/or disposing of property belonging to Objectors;
12. For such other relief that he Court deems just and proper.

**Please see additional page**

**Dept. 303, 9:00 a.m. Wednesday, March 12, 2014**

**Response to Objections filed on 9/30/13 by Trustee John Welsh.** Petitioner states Objectors are requesting the Trustee to produce a copy of the original Trust instrument that was amended and restated by the surviving Settlor, when the authority for the action is stated in the Amended and Restated Trust Agreement in the first paragraph. There is no relevance to such a request as the operative Trust Instrument states within the document that the settlor has such authority, which was prepared by Settlor's attorney. The original Trust document is in the possession of Dawn Thorston and the Successor Trustee does not have it in his possession. To obtain said document will require Trustee to incur fees to obtain a copy of said document. Successor Trustee objects to said request as it is not relevant, material or necessary in this proceeding. It appears Objectors are attempting to challenge the terms of the trust, without so stating. Article XX of the Trust instrument provides for a "No Contest" clause. If the beneficiaries are in fact challenging the validity of the Trust Instrument their complaint does not reflect that and therefore the Successor Trustee sees no purpose to providing a copy of a Trust instrument that is no longer in effect.

The Trust provides specific powers to the Trustee and the Successors thereto. The Trust give specific authority to undertake action regarding the Mariner Note. The reason the Successor Trustee has not collecting the interest, as of yet, was due to the possibility of the property going into foreclosure on the First Deed of Trust which is ahead of the note to the Trust. The Successor Trustee was trying to avert such action as it would create a huge expense to the Trust.

Successor Trustee did not receive repeated "meet and confer attempts." The Successor Trustee received one letter from Mr. Forry before Objector's filed their complaint.

The Successor Trustee had no breached his fiduciary duties to the beneficiaries and is authorized under the Trust instrument to compensation. The Successor Trustee fees were calculated based on the statutory compensation, pursuant to Probate Code §10800 (a). How can the fees be unreasonable when they are based upon the statute?

The AT&T debt was an automatic deduction on his mother's account. AT&T would not stop the deduction, which is the only reason the Successor Trustee closed the account and opened a new one for the Trust.

Public Storage was utilized because the Successor Trustee attempted to sell the property while it was located in Orange County by placing items on Craig's List. Successor Trustee made numerous trips to Orange County to show the property to prospective buyers, but no offers were made.

The charge to Mr. Foster was to move furniture from the storage facility to Trustor's home in Miramonte were it is now being stored, pending sale. The successor Trustee believed he would be more successful selling the property in Orange County and would obtain a higher price. It addition, it was difficult at first to think about selling the property his mother's furniture. It smelled like her. So, admittedly the Successor Trustee had difficulty parting with her memory. Nevertheless, the Trust give Trustor the authority to retain such assts.

**Please see additional page**

Probate Code §1060 governs all accounts to be filed with the court stating except as specifically provided elsewhere in code, or unless good cause is show therefore, no information in addition to that required in this chapter need be in an accounting.

**5C In Re: The Bartimore Family Trust**

**Case No. 13CEPR00534**

**Atty Forry, Craig (of Mission Hills, for Virginia Chenier, Leslie Bartimore, Lori Johnson and Lynn Feathareston**

**Atty Standard, Donna M. (for John Welsh, Trustee)  
Status Hearing**

	<b>VIRGINIA CHENIER, LESLIE BARTIMOR, LORI JOHNSON and LYNN FEATHERSTON</b> , beneficiaries, filed a Petition to Compel Accounting; Suspend and Remove John M. Welsh as Trustee of the Bartimore Family Trust; Compel Distribution; Conversion; Constructive Trust; Breach of Fiduciary Duty; and Return of Property to Trust.	<p><b>NEEDS/PROBLEMS/COMMENTS:</b></p> <p><b>Continued from 1/22/14.</b></p>
<b>Cont. from 120313, 012214</b>		
<b>Aff.Sub.Wit.</b>		
<b>Verified</b>		
<b>Inventory</b>		
<b>PTC</b>	<b>JOHN WELSH</b> filed a First and Formal Account and Report of Status of the Bartimore Family Trust.	
<b>Not.Cred.</b>		
<b>Notice of Hrg</b>	<b>VIRGINIA CHENIER, LESLIE BARTIMOR, LORI JOHNSON and LYNN FEATHERSTON</b> filed objections to <b>JOHN WELSH'S</b> First and Formal Account and Report.	
<b>Aff.Mail</b>		
<b>Aff.Pub.</b>		
<b>Sp.Ntc.</b>		
<b>Pers.Serv.</b>	<b>A Settlement Conference was held on 11/12/13.</b> Minute Order from the Settlement Conference states the Court notes for the minute order that Mr. Forry has the authority to engage in settlement discussions for Virginia Chenier. Parties engage in settlement discussions with the Court. A proposal is reached by the parties. Offer to remain open for seven days from today's date that being 11/19/13. The Court set this status hearing at that time.	
<b>Conf. Screen</b>		
<b>Letters</b>		
<b>Duties/Supp</b>		
<b>Objections</b>		
<b>Video Receipt</b>		
<b>CI Report</b>		
<b>9202</b>		
<b>Order</b>		
<b>Aff. Posting</b>		
<b>Status Rpt</b>		
<b>UCCJEA</b>		
<b>Citation</b>		
<b>FTB Notice</b>		
	<b>Please see additional page</b>	<p><b>Reviewed by: KT</b></p> <p><b>Reviewed on: 3/10/14</b></p> <p><b>Updates:</b></p> <p><b>Recommendation:</b></p> <p><b>File 5C – Bartimore</b></p>

**Status Report Regarding Settlement Agreement and Mutual Release filed on 3/6/14 states** the settlement is confirmed by the Declaration of John M. Welsh dated 1/20/14 and the Settlement Agreement and Mutual Release attached as exhibit "A". The Settlement Agreement is also confirmed by the declarations of Virginia Chenier, Leslie Baltimore, Lori Johnson and Lynne Featherstone that are also attached.

**Therefore, it appears appropriate for the Court to:**

1. Confirm the Settlement Agreement and Mutual Release attached;
2. Appoint Petitioner Leslie Bartimore as successor Trustee in place of Respondent John Welsh; and
3. Provide other and further relief that the Court may deem proper.