



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.

Probate Status Hearing Re: Increase of Bond

| | | |
|---------------|--|--|
| Age: | | NEEDS/PROBLEMS/COMMENTS: <u>OFF CALENDAR</u> Bond filed 7-20-12 |
| DOB: | | |
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| Cont. from | | |
| Aff.Sub.Wit. | | |
| Verified | | |
| Inventory | | |
| PTC | | |
| Not.Cred. | | |
| Notice of Hrg | | |
| Aff.Mail | | |
| Aff.Pub. | | |
| Sp.Ntc. | | |
| Pers.Serv. | | |
| Conf. Screen | | |
| Letters | | |
| Duties/Supp | | |
| Objections | | |
| Video Receipt | | |
| CI Report | | |
| 9202 | | |
| Order | | |
| Aff. Posting | | |
| Status Rpt | | |
| UCCJEA | | |
| Citation | | |
| FTB Notice | | |
| | | Reviewed by: skc |
| | | Reviewed on: 7-20-12 |
| | | Updates: |
| | | Recommendation: |
| | | File 3 - Yell |

5 Ishii Family Trust 3/3/1992 (Trust)

Case No. 12CEPR00447

Atty Fanucchi, Edward L. (for Gerald Ishii – Beneficiary – Petitioner)

Atty Marshall, Jared (for Leslie Ishii – Co-Trustee – Respondent)

Petition of Beneficiary to Remove Successor Co-Trustees, Appoint Temporary Successor Trustee, and for Payment of Attorneys' Fees and Costs (Probate Code 15642, 16000, 16002, 16003, 16004, 16006, 16007, 16009, 16060, 16062, 17200, 17206)

| | | |
|---|---|--|
| <p>Frank K. Ishii DOD: 11-10-93</p> | <p>GERALD ISHII, Beneficiary and Co-Trustee, is Petitioner.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> |
| <p>Lily Y. Ishii DOD: 3-7-05</p> | <p>Petitioner states he and LESLIE ISHII (Respondent) were named successor co-trustees of the ISHII FAMILY TRUST DATED 3-3-92 (the "Trust"). The Trust consisted of interests in 8 parcels of real property, stocks, bonds, securities, cash, and other assets in Prudential-Bache Securities, and 300 shares of common stock in Frank K. Ishii & Sons, Inc., a California corporation owned by the Settlor.</p> | <p><u>Continued from 7-2-12 per joint request for continuance.</u></p> |
| <p>Cont. from 070212</p> | <p>At the death of Frank K. Ishii on 11-10-93, two irrevocable and one revocable sub-trusts were created:</p> | <p><u>As of 7-20-12, nothing further has been filed.</u></p> |
| <p><input type="checkbox"/> Aff.Sub.Wit.</p> | <ul style="list-style-type: none"> • The FRANK K. ISHII TRUST • The ISHII FAMILY MARITAL DEDUCTION TRUST • The ISHII FAMILY SUVIVOR'S TRUST (revocable) | <p><u>Examiner's Note Re format of Petitioner's documents: Please consider providing a larger top margin so that the top line of each page is readable without removing all documents from the Court file.</u></p> |
| <p><input checked="" type="checkbox"/> Verified</p> | <p>On 3-15-95, Lily Ishii, individually and as Trustee of the Trust, assigned a 36.44% interest to the FRANK K. ISHII TRUST, a 13.56% interest to the ISHII FAMILY MARITAL DEDUCTION TRUST, and a 50% interest to the ISHII FAMILY SUVIVOR'S TRUST of the assets listed on Exhibit F, including accrued rent payable from the corporation of \$105,548 as of 11-10-93, a receivable due from the corporation of \$26,089 as of 11-10-93, and a proprietorship known as Lily's Hair Stylists consisting of furniture and fixtures, cash, supplies, inventory and goodwill.</p> | <p>1. Need order.</p> |
| <p><input type="checkbox"/> Inventory</p> | <p>Lily Ishii died on 3-7-05 and he and LESLIE ISHII (Respondent) became Co-Trustees.</p> | <p>Reviewed by: skc</p> |
| <p><input type="checkbox"/> PTC</p> | <p>Pursuant to Section 5.02 of the Trust, the three sub-trusts were to be combined on the death of the surviving settlor and certain distribution was to occur:</p> <ul style="list-style-type: none"> • \$75,000.00 to Sharon J. Shoji (daughter) • One-half of the remaining balance to Gerald • One-half of the remaining balance to Leslie | <p>Reviewed on: 7-20-12</p> |
| <p><input type="checkbox"/> Not.Cred.</p> | <p>SEE PAGE 2</p> | <p>Updates:</p> |
| <p><input checked="" type="checkbox"/> Notice of Hrg</p> | | <p>Recommendation:</p> |
| <p><input checked="" type="checkbox"/> Aff.Mail w</p> | | <p>File 5 - Ishii</p> |
| <p><input type="checkbox"/> Aff.Pub.</p> | | |
| <p><input type="checkbox"/> Sp.Ntc.</p> | | |
| <p><input type="checkbox"/> Pers.Serv.</p> | | |
| <p><input type="checkbox"/> Conf. Screen</p> | | |
| <p><input type="checkbox"/> Letters</p> | | |
| <p><input type="checkbox"/> Duties/Supp</p> | | |
| <p><input type="checkbox"/> Objections</p> | | |
| <p><input type="checkbox"/> Video Receipt</p> | | |
| <p><input type="checkbox"/> CI Report</p> | | |
| <p><input type="checkbox"/> 9202</p> | | |
| <p><input type="checkbox"/> Order X</p> | | |
| <p><input type="checkbox"/> Aff. Posting</p> | | |
| <p><input type="checkbox"/> Status Rpt</p> | | |
| <p><input type="checkbox"/> UCCJEA</p> | | |
| <p><input type="checkbox"/> Citation</p> | | |
| <p><input type="checkbox"/> FTB Notice</p> | | |

PAGE 2

As to the corporation: Petitioner and Leslie each hold 300 shares individually and the Trust holds 300 shares. Petitioner and Leslie as individuals and as Co-Trustees may vote an equal number of shares, but have been in a deadlock as to the operation of the corporation since approx. 2007. As such, the corporation's status has become suspended with many tax liabilities remaining outstanding, which continues to decrease the value of the corporation.

A meeting of the directors of the corporation was noticed on 6-3-10 by Gerald, who is secretary; however, the meeting did not occur because Leslie found the principal place of business of the corporation to be an inconvenient meeting location, although it is approx. one mile from her home. No meetings have occurred since. Because the corporation is one-third owned by the trust, the deadlock between the Co-Trustees is impairing the administration of the Trust and causing trust assets to lose value.

Petitioner requests that the Court remove both Co-Trustees of the Trust and subtrusts because due to hostility and lack of cooperation among Co-Trustees, administration of the Trust and sub-trusts continue to be impaired and trust assets neglected. Probate Code §§ 15642(a)(3), 17200(b)(10). The Trust does not appoint a successor trustee in the event of removal; rather, it provides only the manner of successor appointments should one of the two become unable to perform. Petitioner requests appointment of **BRUCK BICKEL** as Successor Trustee with compensation to be approved by the Court. Mr. Bickel consents to act. Petitioner requests appointment without bond for one year to allow the corporate affairs to be brought to order, with authority to apply for an extension by Mr. Bickel should the corporate affairs remain unresolved and the Trust assets undistributed. Petitioner believes this appointment is in the best interests of the Trust and sub-trusts, and those persons interested in the Trust estate.

Petitioner requests that:

- 1. The Court temporarily and partially remove Gerald Ishii and Leslie Ishii as Co-Trustees of the ISHII FAMILY TRUST DATED 3-3-92;**
- 2. The Court appoint Bruce Bickel as temporary Successor Trustee to serve without bond for a period of one year, with the ability of Mr. Bickell to petition the Court for additional time should the corporate affairs remain deadlocked;**
- 3. The Court award reasonable compensation to the temporary Successor Trustee;**
- 4. The Co-Trustees to deliver the Trust assets to the temporary Successor Trustee within 30 days after issuance of an Order;**
- 5. The Court order Leslie Ishii to file an accounting with the Court detailing their respective acts as Co-Trustees no later than four weeks after the Court makes its order;**
- 6. The Court order Petitioner's attorneys' fees in the amount of \$1,000.00 and costs advanced to be paid to such attorneys directly from the Trust, to be charged 100% to income, and paid within 10 days after the Court makes its order; and**
- 7. Such further orders as the Court deems proper.**

SEE PAGE 3

PAGE 2

Objection of LESLIE ISHII states this probate proceeding is not the proper forum or vehicle to resolve such corporate issues. This lawsuit is premature at best and legally inapposite to the issues it proposes to resolve at worst. The corporation is deadlocked; however, the instant petition filed as a trust proceeding does not request any form of relief that will serve to end the shareholders' deadlock and restore the corporation to operational status. Specifically, the appointment of a neutral third party trustee will not resolve any issues with regard to the operation of the corporation. While a trustee may have the right to vote shares of stock held in trust, a trustee's paramount duty is to distribute trust property pursuant to the terms of the trust instrument. Here, the trust instrument requires the residue be distributed one-half each to Petitioner and Respondent. If a neutral third party trustee is appointed, he will be obligated to distribute the shares held in trust accordingly, not to vote the shares, and, in effect run the business of the corporation.

Respondent has no objection to the immediate equal distribution of the shares of the corporation currently held in trust. In the likely event that said distribution does not resolve the deadlock, however, Petitioner's only recourse will be to file a lawsuit for involuntary dissolution in the unlimited civil department of the Superior Court.

Respondent requests that the Court issue an order requiring the Co-Trustees to immediately distribute 150 shares of Frank K. Ishii & Sons, Inc., each to Petitioner and Respondent, and for reasonable attorneys' fees and costs incurred herein.

Alternatively, Respondent requests the Court issue an order removing Petitioner and Respondent as Co-Trustees, but only as to their fiduciary ownership of the Trust's 300 shares of Frank K. Ishii & Sons, Inc.; appointing Bruce Bickel as temporary successor trustee without bond solely for the purpose of administering the Trust's 300 shares of Frank K. Ishii & Sons, Inc.; authorizing Mr. Bickel to petition to continue to serve should it be in the best interests of the beneficiaries or the affairs of the corporation that he remain in such role; awarding reasonable compensation to the temporary Successor Trustee; requiring the Co-Trustees to deliver the shares of Frank K. Ishii & Sons, Inc., to the temporary Successor Trustee by a date certain; for reasonable attorneys' fees and costs incurred herein; and for any and all other relief the Court deems just and proper.

Status Hearing Re: Filing of the First Account or Petition for Final Distribution

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|-----------------------------------|---|--|---|
| DOD: 2-28-12 | | <p>CAROL LOPEZ, Daughter, was appointed Conservator of the Person and Estate on 2-9-11 with bond of \$75,000.00.</p> <p>Bond was filed on 4-26-11 and Letters issued on 4-27-11.</p> <p>On 6-8-11, the Court set this status hearing for the filing of the first account and sent notice to Attorney Fanucchi.</p> <p>Final Inventory and Appraisal filed 2-9-12 indicates \$70,000.00 cash.</p> <p>As of 4-27-12, a first account has not yet been filed.</p> <p>Court Investigator Dina Calvillo filed a review report on 3-1-12. The report states she visited Mrs. Eaton at The Harvest, an Assisted Living and Alzheimer's Care Facility in Fowler. The staff reports that the Conservator visits often and is very involved in her care, and the conservatorship appears to be warranted and in Mrs. Eaton's best interest.</p> <p><u>Notice of Death of Conservatee filed 5-3-12 states that Mrs. Eaton passed away on 2-28-12.</u></p> <p>At hearing on 5-8-12, the matter was continued to 6-12-12, then 6-29-12, then 7-27-12.</p> <p>Nothing further has been filed.</p> | <p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 5-8-12, 6-12-12, 6-29-12</u></p> <p><u>Minute Order 5-8-12: Attorney Michael Mahoney appeared. Matter continued to 6-12-12.</u></p> <p><u>Minute Order 6-12-12: Matter continued to 6-29-12.</u></p> <p><u>Minute Order 6-29-12: Counsel requests a continuance to complete the accounting and petition for final distribution.</u></p> <p><u>As of 7-20-12, no accounting or petition for final distribution has been filed.</u></p> <p>1. Need first account and final account pursuant to Probate Code §§ 2620(a) and (b).</p> <p><i>Note: The first account was due by 5-8-12 pursuant to Probate Code §2620(a); however, pursuant to Notice of Death filed 5-3-12, the Conservatee passed away on 2-28-12.</i></p> <p><i>If a first account is not already completed, the Court may wish to require that the accounting comply with Probate Code §2620(b) (an accounting for the period prior to her death and a separate accounting for the period subsequent to her death – both account periods typically presented in one petition) and continue this status hearing to an appropriate date.</i></p> |
| Cont. from 050812, 061212, 062912 | | | |
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| Inventory | | | |
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| Video Receipt | | | |
| CI Report | | | |
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| Aff. Posting | | | |
| Status Rpt | X | | |
| UCCJEA | | | |
| Citation | | | |
| FTB Notice | | | |
| | | Reviewed by: skc | |
| | | Reviewed on: 7-20-12 | |
| | | Updates: | |
| | | Recommendation: | |
| | | File 8 - Eaton | |