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8
9 **BEFORE THE**
PROFESSIONAL FIDUCIARIES BUREAU
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

Case No. PF-2013-83

13 **MELODIE JO SCOTT**
14 **P.O. Box 7890**
Redlands, CA 92375

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

15 **Professional Fiduciary License No. PF 545**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Julia Ansel (Complainant) brings this First Amended Accusation and Petition to
21 Revoke Probation solely in her official capacity as the Bureau Chief of the Professional
22 Fiduciaries Bureau, Department of Consumer Affairs.

23 2. On or about May 18, 2011, the Professional Fiduciaries Bureau (Bureau) issued
24 Professional Fiduciary License Number PF 545 to Melodie Jo Scott (Respondent). The
25 Professional Fiduciary License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on April 30, 2016, unless renewed.

27 3. In a disciplinary action entitled *In the Matter of the Statement of Issues Against*
28 *Melodie Jo Scott*, Case No. A1-2008-01, the Bureau issued a Decision and Order effective May 1,

1 2011, in which Respondent's Professional Fiduciary License was revoked. However, the
2 revocation was stayed and Respondent's Professional Fiduciary License was placed on probation
3 for three (3) years with certain terms and conditions. A copy of that Decision and Order is
4 attached as Exhibit A and is incorporated by reference.

5 **JURISDICTION**

6 4. This First Amended Accusation is brought before the Bureau under the authority of
7 the following laws. All section references are to the Business and Professions Code (Code)
8 unless otherwise indicated.

9 5. Section 118, subdivision (b), of the Code provides that the expiration or surrender of
10 a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during
11 the period within which the license may be renewed, restored, reissued or reinstated.

12 **STATUTORY PROVISIONS FOR ACCUSATION**

13 6. Section 6538 of the Code states:

14 (a) To qualify for licensure, an applicant shall have completed 30 hours of
15 prelicensing education courses provided by an educational program approved by
the bureau.

16 (b) To renew a license, a licensee shall complete 15 hours of approved
17 continuing education courses each year.

18 (c) The cost of any educational course required by this chapter shall not be
borne by any client served by a licensee.

19 7. Section 6580 of the Code states:

20 (a) The bureau may upon its own, and shall, upon the receipt of a complaint
21 from any person, investigate the actions of any professional fiduciary. The bureau
22 shall review a professional fiduciary's alleged violation of statute, regulation, or
the Professional Fiduciaries Code of Ethics and any other complaint referred to it
23 by the public, a public agency, or the department, and may impose sanctions upon
a finding of a violation or a breach of fiduciary duty.

24 (b) Sanctions shall include any of the following:

25 (1) Administrative citations and fines as provided in Section 125.9 for a
violation of this chapter, the Professional Fiduciaries Code of Ethics, or any
26 regulation adopted under this chapter.

27 (2) License suspension, probation, or revocation.

28 (c) The bureau shall provide on the Internet information regarding any
sanctions imposed by the bureau on licensees, including, but not limited to,

1 information regarding citations, fines, suspensions, and revocations of licenses or
2 other related enforcement action taken by the bureau relative to the licensee.

3 8. Section 6582 of the Code states:

4 All proceedings against a licensee for any violation of this chapter or any
5 regulations adopted by the bureau shall be conducted in accordance with the
6 Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of
7 Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted
8 by the Attorney General's office, and the bureau shall have all the powers granted
9 therein.

10 9. Section 6584 of the Code states, in pertinent part:

11 A license issued under this chapter may be suspended, revoked, denied, or
12 other disciplinary action may be imposed for one or more of the following causes:

13 ...

14 (d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence
15 or incompetence in practice, or unprofessional conduct in, or related to, the
16 practice of a professional fiduciary. For purposes of this section, unprofessional
17 conduct includes, but is not limited to, acts contrary to professional standards
18 concerning any provision of law substantially related to the duties of a professional
19 fiduciary.

20 ...

21 (h) Violation of this chapter or of the applicable provisions of Division 4
22 (commencing with Section 1400), Division 4.5 (commencing with Section 4000),
23 Division 4.7 (commencing with Section 4600), or Division 5 (commencing with
24 Section 5000) of the Probate Code or of any of the statutes, rules, or regulations
25 pertaining to duties or functions of a professional fiduciary.

26 10. California Probate Code section 3605 states, in pertinent part:

27 ...

28 (b) While the special needs trust is in existence, the statute of limitations
otherwise applicable to claims of the State Department of Health Care Services,
the State Department of State Hospitals, the State Department of Developmental
Services, and any county or city and county in this state is tolled. Notwithstanding
any provision in the trust instrument, at the death of the special needs trust
beneficiary or on termination of the trust, the trust property is subject to claims of
the State Department of Health Care Services, the State Department of State
Hospitals, the State Department of Developmental Services, and any county or city
and county in this state to the extent authorized by law as if the trust property is
owned by the beneficiary or is part of the beneficiary's estate.

(c) At the death of the special needs trust beneficiary or on termination of the
trust, the trustee shall give notice of the beneficiary's death or the trust termination,
in the manner provided in Section 1215, to all of the following:

///

1 (1) The State Department of Health Care Services, the State Department of
2 State Hospitals, and the State Department of Developmental Services, addressed to
the director of that department at the Sacramento office of the director.

3 11. California Probate Code section 15410 states, in pertinent part:

4 At the termination of a trust, the trust property shall be disposed of as follows:

5 ...

6 (d) In any other case, as provided in the trust instrument or in a manner
7 directed by the court that conforms as nearly as possible to the intention of the
settlor as expressed in the trust instrument.

8 12. California Probate Code section 16000 states:

9 On acceptance of the trust, the trustee has a duty to administer the trust
10 according to the trust instrument and, except to the extent the trust instrument
provides otherwise, according to this division.

11 13. California Probate Code section 16062 states, in pertinent part:

12 (a) Except as otherwise provided in this section and in Section 16064, the
13 trustee shall account at least annually, at the termination of the trust, and upon a
change of trustee, to each beneficiary to whom income or principal is required or
14 authorized in the trustee's discretion to be currently distributed.

15 REGULATORY PROVISIONS FOR ACCUSATION

16 14. California Code of Regulations, title 16, section 4442, states, in pertinent part:

17 (a) Annual time requirements.

18 (1) To renew a license, a licensee shall earn during each annual renewal
19 period a minimum of fifteen (15) hours of continuing education credit from
approved education courses as defined in Section 4444 subject to the conditions of
20 this Article.

21 (2) Courses qualifying for continuing education credit must be completed
following licensure and within the one-year renewal period each cycle.

22 (3) A licensee who serves as an instructor in an approved education course
23 for continuing education as provided for in subdivision (a) of Section 4444, may
receive 1.5 hours of continuing education course participation credit for each hour
24 of new course instruction presented. A maximum of 6 of the fifteen (15) hours of
continuing education credit may be earned under this paragraph.

25 (4) A maximum of 4 of the fifteen (15) hours of continuing education credit
26 may be earned through independent study under the supervision of an approved
education provider pursuant to Section 4446 that supplies evidence of completion.

27 (b) Annual subject topic requirements.

1 (1) Continuing education credit shall be earned by taking approved
education courses in at least one of the subject topics as provided for in Section
2 4444.

3 (2) At least 2 hours of continuing education credits each year shall be in
ethics for fiduciaries.

4 15. California Code of Regulations, title 16, section 4452, states, in pertinent part:

5 Each applicant is responsible for ensuring compliance with the continuing
6 education requirements of this Article.

7 (a) To demonstrate compliance a licensee shall sign under penalty of perjury
8 on an annual renewal application form provided by the Bureau that they have
completed fifteen (15) hours of approved continuing education courses.

9 (b) A licensee shall maintain documentation of completion of continuing
education courses for a period of at least three years from the date of renewal.

10 (c) Each licensee shall provide any information requested by the Bureau
11 within ten (10) business days of the request, to determine compliance with the
continuing education requirements for license renewal.

12 16. California Code of Regulations, title 16, section 4470, states, in pertinent part:

13 ...

14 (b) The licensee shall comply with all local, state, and federal laws and
15 regulations, and requirements developed by the courts and the Judicial Council as
a minimum guide for the fulfillment of the fiduciary duties recognized under this
16 Article.

17 17. California Code of Regulations, title 16, section 4482, states, in pertinent part:

18 (a) The licensee shall protect the assets of the estate.

19 ...

20 (e) Consistent with the licensee's fiduciary duties, the licensee shall manage
21 the assets of the estate in the best interest of the consumer.

22 (f) The licensee shall manage the estate with prudence, care and judgment,
maintaining detailed fiduciary records as required by law.

23 **COST RECOVERY**

24 18. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 ///

1 **FACTS**

2 19. On December 8, 2004, in connection with a money judgment in favor of AM, a
3 disabled minor (Beneficiary), the Riverside County Superior Court (court) authorized the
4 establishment of a Special Needs Trust (SNT) in accordance with Probate Code Sections 3604
5 and 3605. The court appointed Respondent as the Trustee of the SNT. On December 8, 2004,
6 Respondent executed the SNT and deposited \$221,423.40 in the SNT.

7 20. During the time Respondent administered the SNT, she made discretionary payments
8 on behalf of the Beneficiary and paid costs of administration, including the payment of trustee
9 fees to herself.

10 21. On January 13, 2012, Respondent unilaterally elected to terminate the SNT and pay
11 the remaining SNT balance to the Beneficiary's mother. Respondent did not seek court authority
12 to terminate the SNT. Respondent did not give proper notice to the public agencies that had
13 provided services to the Beneficiary of her intention to terminate the SNT and pay the remaining
14 SNT corpus to the Beneficiary's parent.

15 22. Respondent did not file an accounting for the SNT during the 7 year period that she
16 was Trustee.

17 23. On April 25, 2012, the court ordered Respondent to file an accounting regarding the
18 SNT.

19 24. On July 18, 2012, Respondent filed a "First and Final Account and Report of Trustee
20 and Petition for its Settlement and Termination of Trust with Uneconomically Low Principle"
21 with the court. The court appointed attorney DM to represent the Beneficiary in the matter.

22 25. On October 25, 2012, DM filed objections to Respondent's accounting.

23 26. The final accounting matter went to hearing on the afternoons of November 12, 13,
24 and 14, 2013. Respondent testified that she did not have a recollection of ever reading the SNT.
25 Written closing arguments were submitted and the court took the matter under submission on
26 January 30, 2014.

27 ///

28 ///

1 27. On April 18, 2014, the court rendered a tentative decision expressing an intention to
2 surcharge Respondent the sum of \$93,036.75 and suspended Respondent as Trustee. On April
3 28, 2014, Respondent submitted a Request for Statement of Decision.

4 28. On June 23, 2014, the court entered a Statement of Decision finding that
5 Respondent's accounting is approved, that Respondent had abused her discretionary authority,
6 and had breached her duties as a Trustee. The court imposed a surcharge on Respondent in the
7 following amounts:

- 8 1. \$1,250 paid for family rent
- 9 2. \$34,229.55 paid for trustee fees
- 10 3. \$17,577.85 of the "living expense" total set forth on page 4 of Schedule C
4. \$15,574.85 "final distribution"
5. \$24,404.50 vehicle expenses

11 The court ordered Respondent to reimburse the SNT in the amount of \$93,036.75 and continued
12 Respondent's suspension as Trustee. The court found Respondent had breached her fiduciary
13 duty by failing to notify the court of her unlicensed status from 2008 to 2010.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Incompetence)

16 29. Respondent is subject to disciplinary action under Code section 6584(d) in that she
17 was incompetent when she demonstrated a lack of knowledge or ability to perform her
18 professional obligations to the Beneficiary. The circumstances are set forth in detail in
19 paragraphs 19 through 28, above, and are incorporated herein as though fully set forth, and as
20 follows:

21 a. Respondent failed to read the SNT instrument and failed to refer to the SNT's
22 terms prior to taking actions as Trustee.

23 b. Respondent failed to refer to pertinent Probate Code sections and took numerous
24 actions which were contrary to the specific terms of the trust instrument as well as the laws
25 of the State of California.

26 c. Respondent failed to follow the terms of the SNT and the laws of the State of
27 California which resulted in a loss to the Beneficiary for whom the SNT was established.

28 d. Respondent failed to administer the SNT pursuant to its terms.

- 1 e. Respondent failed to seek court authority prior to compensating herself as Trustee.
2 f. Respondent failed to file accountings with the court as required under the SNT.
3 g. Respondent failed to seek court authority prior to electing to terminate the SNT.
4 h. Respondent failed to distribute the remaining SNT assets as set forth in the SNT.
5 i. Respondent failed to give notice to health agencies that had provided benefits to
6 the Beneficiary that she was terminating the SNT.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct)

9 30. Respondent is subject to disciplinary action under Code section 6584(d) in that she
10 failed to meet the standards of conduct of a Professional Fiduciary in the manner she handled the
11 Beneficiary's SNT. The circumstances are set forth in detail in paragraphs 19 through 28, above,
12 and are incorporated herein as though fully set forth, and as follows:

- 13 a. Respondent failed to read the SNT instrument and failed to refer to the SNT's
14 terms prior to taking actions as Trustee.
- 15 b. Respondent failed to refer to pertinent Probate Code sections and took numerous
16 actions which were contrary to the specific terms of the trust instrument as well as the laws
17 of the State of California.
- 18 c. Respondent failed to follow the terms of the SNT and the laws of the State of
19 California which resulted in a loss to the Beneficiary for whom the SNT was established.
- 20 d. Respondent failed to administer the SNT based on its terms.
- 21 e. Respondent failed to seek court authority prior to compensating herself as Trustee.
- 22 f. Respondent failed to file accountings with the court as required under the SNT.
- 23 g. Respondent failed to seek court authority prior to electing to terminate the SNT.
- 24 h. Respondent failed to distribute the remaining SNT assets as set forth in the SNT.
- 25 i. Respondent failed to give notice to health agencies that had provided benefits to
26 the Beneficiary that she was terminating the SNT.

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THIRD CAUSE FOR DISCIPLINE

(Obey all Laws- Violation of State Law and Regulations)

31. Respondent is subject to disciplinary action under Code section 6584(h) and California Code of Regulations, title 16, section 4470(b), in that she failed to comply with all state laws and regulations governing a Professional Fiduciary. The circumstances are set forth in detail in paragraphs 19 through 28, above, and are incorporated herein as though fully set forth, and as follows:

a. Respondent failed to comply with Probate Code section 16000 in that she failed to administer the SNT in accordance with its terms.

b. Respondent failed to comply with Probate Code section 16062 in that she failed to provide annual accountings to the Beneficiary.

c. Respondent failed to comply with Probate Code section 3605 in that on the termination of the SNT, she failed to give proper notice of her intention to terminate the SNT to the State Department of Health Care Services, the State Department of State Hospital, and the State Department of Developmental Services.

d. Respondent failed to distribute the remaining SNT principal as directed under Probate Code section 15410 and the terms of the SNT.

e. Respondent failed to comply with California Code of Regulations, title 16, section 4482, when she failed to protect the assets of the SNT and ended up causing a loss to the Beneficiary for whom the SNT was established.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Complete and Prove Continuing Education)

32. Respondent is subject to disciplinary action under Code sections 6538(b), 6580(a) and 6584(h), and under California Code of Regulations, title 16, sections 4442(a)(1) and 4452, in that she violated the law by failing to complete 15 hours of approved continuing education courses, and by falsely stating under penalty of perjury that she had completed said hours, and/or by failing to maintain documentation of completion of said hours, as follows:

///

1 33. On or about April 13, 2013, Respondent signed and submitted to the Bureau an
2 application for renewal of her professional fiduciary license. In the application Respondent
3 stated, under penalty of perjury, that she had completed 15 hours of continuing education courses
4 during the last year.

5 34. On or about February 6, 2014, the Bureau audited Respondent, requesting
6 documentation of Respondent's completion of 15 hours of continuing education courses.
7 Respondent failed to provide the required documentation.

8 **JURISDICTION FOR PETITION TO REVOKE PROBATION**

9 35. The allegations of paragraphs 1 through 34 of the First Amended Accusation and
10 Petition to Revoke Probation are incorporated herein by reference and are realleged as if fully set
11 forth.

12 36. This Petition to Revoke Probation is brought before the Bureau under Probation Term
13 Number 7 of the Decision and Order, *In the Matter of the Statement of Issues Against Melodie Jo*
14 *Scott*, Case No. A1-2008-01. Condition 7 states:

15 **Violation of Probation.** If Respondent violates the conditions of her
16 probation, the bureau, after giving respondent notice and an opportunity to be
17 heard, may set aside the stay order and impose the stayed revocation of
18 respondent's license.

19 If during the period of probation, an accusation or petition to revoke
20 probation has been filed against respondent's license or the Attorney General's
21 Office has been requested to prepare an accusation or petition to revoke probation
22 against respondent's license, the probationary period shall automatically be
23 extended and not expire until the accusation or petition has been acted upon by the
24 bureau.

25 **FIRST CAUSE TO REVOKE PROBATION**

26 (Obey all Laws-Incompetence)

27 37. At all times after the effective date of Respondent's probation, Condition 1 stated, in
28 pertinent part:

29 **Obey All Laws.** Respondent shall obey all federal, state and local laws, and
30 all rules and regulations governing the practice of a professional fiduciary in
31 California. A full and detailed account of any and all violations of law shall be
32 reported by respondent to the bureau in writing within 72 hours of occurrence. If
33 respondent is under criminal court orders, including probation or parole, and the
34 order is violated, this shall be deemed a violation of these probation conditions,
35 and may result in the filing of an accusation and/or petition to revoke probation.

1 38. Respondent's probation in Case No. A1-2008-01 is subject to revocation because she
2 failed to comply with Probation Condition 1, in that she violated the law by being incompetent in
3 performing her professional obligations to the Beneficiary in the SNT pursuant to Code section
4 6584(d), and as more specifically set forth in paragraphs 19 through 29, above, and incorporated
5 herein as though fully set forth.

6 **SECOND CAUSE TO REVOKE PROBATION**

7 (Obey all Laws-Unprofessional Conduct)

8 39. Respondent's probation in Case No. A1-2008-01 is subject to revocation because she
9 failed to comply with Probation Condition 1, in that she violated the law by engaging in
10 unprofessional conduct in performing her professional obligations to the Beneficiary in the SNT
11 pursuant to Code section 6584(d), and as more specifically set forth in paragraphs 19 through 30,
12 above, and incorporated herein as though fully set forth.

13 **THIRD CAUSE TO REVOKE PROBATION**

14 (Obey all Laws-Violation of State Law and Regulations)

15 40. Respondent's probation in Case No. A1-2008-01 is subject to revocation because she
16 failed to comply with Probation Condition 1, in that she violated the law by failing to comply
17 with all state laws and regulations governing a Professional Fiduciary, including the Probate
18 Code, as more specifically set forth in paragraphs 19 through 31, above, and incorporated herein
19 as though fully set forth.

20 **FOURTH CAUSE TO REVOKE PROBATION**

21 (Obey all Laws-Continuing Education)

22 41. Respondent's probation in Case No. A1-2008-01 is subject to revocation because she
23 failed to comply with Probation Condition 1, in that she violated the law by failing to complete 15
24 hours of approved continuing education courses, and by falsely stating under penalty of perjury
25 that she had completed said hours, and/or by failing to maintain documentation of completion of
26 said hours, as set forth in paragraphs 32 through 34, above, and incorporated herein as though
27 fully set forth.

28 ///

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
3 First Amended Accusation and Petition to Revoke Probation, and that following the hearing, the
4 Professional Fiduciaries Bureau issue a decision:

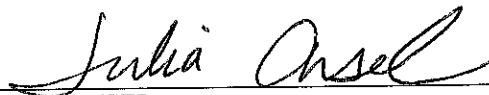
5 1. Revoking the probation that was granted by the Professional Fiduciaries Bureau in
6 Case No. A1-2008-01 and imposing the disciplinary order that was stayed thereby revoking
7 Professional Fiduciary License No. PF 545 issued to Melodie Jo Scott;

8 2. Revoking or suspending Professional Fiduciary License No. PF 545, issued to
9 Melodie Jo Scott;

10 3. Ordering Melodie Jo Scott to pay the Professional Fiduciaries Bureau the reasonable
11 costs of the investigation and enforcement of this case, pursuant to Business and Professions
12 Code section 125.3; and

13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: September 11, 2015



JULIA ANSEL
Bureau Chief
Professional Fiduciaries Bureau
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Professional Fiduciaries Bureau Case No. A1-2008-01

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE PROFESSIONAL FIDUCIARIES BUREAU
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MELODIE JO SCOTT,

Respondent.

Case No. A1-2008-01

OAH No. 2009030280

**DECISION PURSUANT TO ORDER OF COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 26 and 27, October 20, 21, 22, and October 29, 2009.

Deputy Attorney General Jonathan D. Cooper represented complainant.¹

Steven L. Simas and Hugh R. Slayton, Attorneys at Law, represented respondent Melodie Jo Scott, who was present. The record was left open for submission of closing briefs. Respondent's Closing Argument and Lodging of Non-California Authorities, was marked as a group Exhibit RRRR; complainant's Closing Argument was marked as Exhibit 65; and respondent's Reply Brief was marked as Exhibit SSSS. The record was closed and the matter submitted for decision on December 14, 2009.

The Proposed Decision of the Administrative Law Judge was submitted to the Director ("Director") of Consumer Affairs' designee, the Deputy Director of Legal Affairs ("Deputy Director"), on February 22, 2010. After due consideration thereof, the Deputy Director declined to adopt said Proposed Decision and on February 24, 2010 issued an Order of Nonadoption. On April 5, 2010, 2010, the Bureau received the complete transcript of the hearing and thereafter, on April 12, 2010, the Deputy Director issued an Order Fixing Date for Submission of Written Argument. On July 7, 2010, the Deputy Director issued an Order, pursuant to Government Code section 11517, delaying the issuance of its decision until August 13, 2010. Written arguments were received from

¹ Mellonie Yang was Chief of the Professional Fiduciaries Bureau when the Statement of Issues was filed. Gil DeLuna is the current Interim Chief.

Complainant and Respondent and the time for written argument in this matter expired, the entire record, including the transcript of said hearing, was read and considered pursuant to Government Code Section 11517, the Deputy Director decided to deny the application of Melodie Jo Scott for a Professional Fiduciary License.

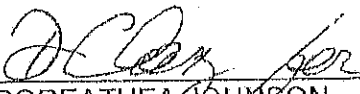
Subsequently, Ms. Scott filed administrative and traditional writs of mandate with the Superior Court for Sacramento County. On or about January 14, 2011, the Superior Court issued a Peremptory Writ requiring the Director of the Department of Consumer Affairs to set aside its Decision after Nonadoption denying respondent's application for a professional fiduciary license and adopt the decision of the administrative law judge sequentially granting the respondent's application for a professional fiduciary license, revoking the license, staying the revocation and placing the license on probation for three years subject to specified terms and conditions. The Superior Court's Peremptory Writ ordering issuance of the license was stayed pending appeal by the Director to the Court of Appeal of the State of California, Third Appellate District. Respondent requested the Court of Appeal to lift the stay and order the Peremptory Writ to take effect during the pendency of the appeal. On May 5, 2011, the Court of Appeal granted respondent's Motion to Require Issuance of a Professional Fiduciary License under the terms and conditions imposed by the Administrative Law Judge in the proposed decision dated January 29, 2010. This order is to remain in effect pending the appeal and further order of the court.

ORDER

The Decision after Nonadoption denying respondent's application for a professional fiduciary license is hereby set aside. In accordance with the order of the Court of Appeal of the State of California in and for the Third Appellate District, the respondent shall be issued a professional fiduciary license subject to the terms and conditions imposed by the Administrative Law Judge in the proposed decision dated January 29, 2010.

This Order is effective immediately.

DATED: May 10, 2011



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DIRECTOR OF THE DEPARTMENT OF CONSUMER AFFAIRS
FOR THE PROFESSIONAL FIDUCIARIES BUREAU
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

MELODIE JO SCOTT,

Respondent.

Case No. A1-2008-01

OAH No. 2009030280

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on May 26 and 27, October 20, 21 and 22, and October 29, 2009.

Deputy Attorney General Jonathan D. Cooper represented complainant.¹

Steven L. Simas and Hugh R. Slayton, Attorneys at Law, represented respondent Melodie Jo Scott, who was present.

The record was left open for submission of closing briefs. Respondent's Closing Argument and Lodging of Non-California Authorities, was marked as a group Exhibit RRRR; complainant's Closing Argument was marked as Exhibit 65; and respondent's Reply Brief was marked as Exhibit SSSS. The record was closed and the matter submitted for decision on December 14, 2009.

FACTUAL FINDINGS

1. On April 9, 2008, the Professional Fiduciaries Bureau, Department of Consumer Affairs, received an application for a Professional Fiduciary License from respondent Melodie Jo Scott. Respondent signed the application on March 31, 2008, certifying under of penalty of perjury that all statements, answers, and representations made in the application were true and accurate.

¹ Mellonie Yang was Chief of the Professional Fiduciaries Bureau when the Statement of Issues was filed. Rick Wallinder is the current Interim Chief.

2. By letter dated August 7, 2008, the bureau informed respondent that her application was denied. Respondent filed a timely notice of defense.

Background

3. The Professional Fiduciaries Act (Bus. & Prof. Code, § 6500 et seq.) was enacted by the legislature effective January 1, 2007. In order to act or hold oneself out to the public as a professional fiduciary after January 1, 2009, a license issued by the bureau was required. (Bus. & Prof. Code, §§ 6502 & 6530; see also Prob. Code, § 2340 [a superior court may not appoint a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless that person holds a license issued by the bureau].)

4. A professional fiduciary is defined by the Act in Business and Professions Code section 6501, subdivision (f). It provides:

a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee, agent under durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership.

5. Prior to the creation of the bureau, and commencing in January 2000, persons who acted as a private conservator or guardian were required to hold a registration obtained through application to the Statewide Registry of Private Conservators and Guardians, operated by the Department of Justice. (See former Prob. Code, §§ 2850 to 2886, & former Cal. Code Regs., tit. 11, §§ 313-319.) Some counties also required persons serving as private conservators and guardians in their county to file information with the county clerk. (See former Prob. Code, § 2340.)

First Cause for Denial (License Application)

6. In her application for licensure, respondent answered "no" to questions regarding whether she had ever "resigned" or "settled" as a fiduciary in a matter in which a "complaint" had been filed with the court. The application directed that if either question is answered in the affirmative, the applicant must provide requested information, including the case name, number, court location and date, a written statement of the issues and facts regarding the case, and copies of court orders.

7. The statement of issues alleges that respondent knowingly made a false statement of fact required to be revealed on the application (Bus. & Prof. Code, § 480, subd. (c)), and that she engaged in fraud or misrepresentation in applying for the license (Bus. & Prof. Code, § 6536, subd. (c)). It alleges that in two cases she settled a matter which involved complaints made to the court regarding her actions as a fiduciary; that in one case she resigned as conservator in a matter after complaints were made to the court regarding her actions as a fiduciary; and that in one case, she settled a matter and resigned as conservator after complaints were made against her to the court regarding her actions as a fiduciary.

8. The application form used by respondent was issued by the bureau in December 2007. The application did not define the term "complaint." The term "complaint" was not defined by bureau regulation at that time.

9. The term complaint had a meaning in the context of the operation of the Statewide Registry. Former Probate Code section 2850, subdivision (e), provided:

Each court clerk shall forward a copy of any complaint filed with that court, and found to be meritorious by that court, against a conservator or guardian in his or her capacity as a conservator or guardian for inclusion in the Statewide Registry. The Statewide Registry shall place any copies of those complaints in the file of that conservator or guardian.

In the regulations adopted by the Department of Justice for the Statewide Registry, it defined the term complaint by simply referencing former Probate Code section 2850, subdivision (e). (See former Cal. Code Regs., tit. 11, § 314, subd. (d).)

10. The bureau issued a new application form in March 2008. This application contained an asterisk next to the word "complaint," and defined the term as follows:

A complaint means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee alleging the licensee has not properly performed the duties of a fiduciary.

Applicants like respondent who had completed and submitted the earlier version of the application form were not notified that the bureau had re-issued the application with the term complaint defined.

11. In May 2008 the bureau adopted in regulatory form the requirements for disclosure in an application for licensure as a professional fiduciary. The regulation, which is set forth in California Code of Regulations, title 16, section 4422, defines in subdivision (c) the term "complaint." It provides:

As used in this section "complaint" means a civil complaint, a petition, motion, objection, or other pleading filed with the court against the licensee alleging the licensee has not properly performed the duties of a fiduciary.

12. Respondent testified that when she completed the December 2007 version of the application, she answered the questions in the negative because she had never resigned or settled a matter in a case in which a complaint which had been found to be meritorious by a court and which had been reported to the Statewide Registry. Respondent had never been reported to the Statewide Registry by any court for any reason. Respondent was not aware that the bureau was using a different definition of the term complaint. Had she known that the bureau was expanding the definition from that used in the Statewide Registry process, she would have answered the questions differently. And, had she been given the opportunity to supplement her application after the bureau had defined the term, she would have done that as well. Respondent's testimony in this regard was found to be credible and persuasive.

13. Much evidence was presented regarding whether there was a common understanding in the trade of the word "complaint" at the time respondent completed her application. It was not established that the term had only the meaning now attributed to it by the bureau. Because there was not a common understanding of the term, the bureau, as established through the testimony of its then Chief, Mellonie Yang, decided to define the term by regulation, which was proposed in the end of February 2008, and not adopted until two months after respondent filed her application.

14. Under the circumstances presented here, respondent's interpretation of the application form cannot be found to be unreasonable. As such, it is not necessary to decide whether respondent had an obligation to disclose the four cases the bureau charges her with failing to disclose. Assuming for purposes of argument that she did have an obligation to disclose them, it is concluded that her failure to do so does not amount to fraud or a knowing failure to disclose.

Second Cause for Denial (Unprofessional Conduct)

15. The statement of issues alleges that respondent acted unprofessionally on December 11, 2008, by driving her vehicle in violation of Vehicle Code sections 23152, subdivision (a) (driving while under the influence of alcohol/drugs), and 23152, subdivision (b) (driving with a blood alcohol level in excess of the legal limit of 0.08 percent).

16. The evidence established that respondent drove her vehicle after having an unknown number of glasses of wine at a restaurant. Respondent fully admits to being intoxicated and to driving while intoxicated. Respondent was arrested and charged with driving under the influence; her blood alcohol level was 0.18 percent. Respondent has not yet been criminally convicted.

17. Respondent regrets her conduct and is embarrassed by it. She attended a four-month class on alcohol awareness through Jackson-Bibby Awareness Group. The class focused on the effects of drinking alcohol and driving, and she has a heightened awareness of the risks and pitfalls of drinking and driving. She now has a plan in place so that she does not drive a vehicle after drinking alcohol. She concedes that she exercised poor judgment by driving while intoxicated.

18. At the time that she drove her vehicle while intoxicated, respondent was not at work as a professional fiduciary. She had taken the day off in order to deal with personal matters relating to a close family member, and she had made arrangements for her clients to be served by a case manager. It was a stressful day for respondent, and she did not eat the entire day.

19. Daniel Stubbs testified that a professional fiduciary is required to be available to address an emergency with a client at any hour, and for that reason, it is always unprofessional conduct to drink alcohol to excess. This testimony is found unpersuasive. It was not established that respondent has an alcohol abuse problem in her private life that affects or could affect her fitness to be a professional fiduciary. This is the first time that she has been arrested for driving under the influence of alcohol. While it gives one pause to see a 0.18 percent blood alcohol level, there was no expert evidence presented to interpret the meaning of such a high blood alcohol level with respect to alcohol abuse.

Third Cause for Denial (Unlicensed Practice)

20. The evidence establishes that respondent continued to act as a professional fiduciary after January 1, 2009, in both Riverside and San Bernardino counties. Although respondent did not take on any new clients, she continued to act as a professional fiduciary in more matters than allowed by law. It was not established that she so acted to flaunt the authority of the bureau or to harm the public.

21. Respondent was caught off guard when the bureau denied her application, a license she fully expected to obtain. She decided to keep two conservatorships, and to step down from all the others. Respondent mistakenly believed that she could retain two conservatorships and three trusteeships without licensure.

22. Respondent also continued to act as a professional fiduciary in a large number of other matters until she was finally released from those obligations by the probate court. The process started with a meeting with Probate Court Judge Welch on December 8, 2008, to decide how to handle the appointment of successors to respondent in the numerous cases she had. In each case, the court issued an order to show cause re vacancy in the office, and sent notices to the private professional fiduciaries of the opportunity to petition to be the successor conservator. The court set a date for a hearing on the appointment of successor conservators in each case. For some of the cases, there were competing professional fiduciaries that were interested. In other cases, there were not. Respondent continued to

fulfill obligations to ensure that no harm was done to the beneficiary and the assets. Once respondent's resignation was accepted by the court, she was still required to file final accountings through the date of the appointment of the successor trustee, and then to be followed by a discharge hearing and order by the court. These proceedings took time.

Other Matters

23. Respondent has been a professional private fiduciary since 1982. She has acted as a Conservator, a Guardian, and an Agent under Durable Power of Attorney. She has expertise in asset recovery, with a focus on locating missing assets of elderly clients. Since 1993, respondent has operated under the business name of Conservatorship and Resources for the Elderly, Inc., in Redlands, California. The types of client she has represented over the years are the mentally ill, indigent, and victims of elder abuse. She has taken on many cases pro bono.

24. Respondent has a bachelor's degree from the University of Redlands. Respondent has been a member of the Professional Fiduciary Association of California (PFAC) for over 12 years. She was the president of PFAC in 1999, and its member of the year in 2004. She has served on its Ethics Committee, which developed the first ethical standards for fiduciaries in California. She has many other noteworthy professional and educational achievements. The evidence establishes that respondent has worked for many years to professionalize the industry and to develop ethical and professional standards.

25. Respondent presented evidence from two attorneys who practice with her. Attorney David Horspool has had a probate practice for some 25 years. He is a certified specialist in estate planning, trusts and probate law. He has known respondent for 26 years, and has worked with her on hundreds of cases. In his opinion, respondent has a reputation for truthfulness and honesty. She is not always well-liked, as she can be too direct and too truthful. He believes that her standard of practice is professional and that she is passionate about her cases.

26. James Church is an attorney who specializes in the areas of probate, guardianship, conservatorship, trust administration, and estates in the Redlands area. He has known and worked with respondent for more than ten years, and they have worked together in over 20 cases. She has a reputation for truthfulness and honesty. In Church's view, respondent is competent, professional and compassionate.

27. Joan Elizabeth Roberts is the owner and director of Visiting Angels of Riverside, a large home care agency that provides non-medical care for seniors in Riverside and San Bernardino Counties. In her opinion, respondent is the "best of the best" as a conservator.

28. Not everyone thinks highly of respondent as a fiduciary. The bureau introduced declarations from three family members, Steven L. Price, Sr., Gina Rilke, and

Joseph Quattrochi, Jr., who were not happy with respondent as a fiduciary and who do not think that respondent is ethical or honest as a fiduciary.

LEGAL CONCLUSIONS

First Cause for Denial

1. Pursuant to Business and Professions Code section 480, subdivision (c), an application for licensure as a professional fiduciary may be denied if the applicant has knowingly made a false statement of fact required to be revealed in the application for licensure.

Pursuant to Business and Professions Code section and 6536, subdivision (c), an application for licensure as a professional fiduciary may be denied if the applicant has engaged in fraud or misrepresentation in applying for a license.

By reason of the matters set forth in Factual Findings 6 to 14, cause for denial under these sections was not established. In order to find cause for denial, it must be shown that respondent knew what the bureau meant by the term "complaint filed with the court," and respondent's testimony established that she did not. The term complaint did not have an ordinary meaning in the trade, as evidenced by the need to define the term by regulation and on the revised application form the bureau released. There is no question that the term "complaint" as currently defined by bureau regulation is different than how the term was used in the State Registry process which preceded the creation of the bureau. Respondent may be faulted for rushing through her application; but on this record, she cannot be found to have knowingly made a false statement of fact or to have engaged in fraud in the attempt to obtain a license.

Second Cause for Denial

2. Pursuant to Business and Professions Code section 480, subdivision (a)(3), an application for licensure as a professional fiduciary may be denied if the applicant has done an act which if done by a licentiate would be grounds for license suspension or revocation. Pursuant to Business and Professions Code section 6584, a license issued under the Act may be suspended or revoked for "unprofessional conduct in, or related to, the practice of a professional fiduciary." Unprofessional conduct under the Act "includes, but is not limited to, acts contrary to the professional standards concerning any provision of law substantially related to the duties of a professional fiduciary."

By reason of the matters set forth in Factual Findings 15 to 19, cause for denial under these sections was not established. There is no question that abuse of alcohol may constitute unprofessional conduct by a professional fiduciary. And there is no requirement, as respondent argues, that alcohol abuse be established by a criminal conviction. But respondent's single act of driving while intoxicated, under the circumstances presented here,

does not establish that she has a problem with alcohol in her private life. (Cf. *In re Kelley* (1990) 52 Cal.3d 487, 495 [two DUI convictions within a short period of time may indicate alcohol abuse].) Nor does it in and of itself establish a basis for finding unprofessional conduct in, or related to, the practice of a professional fiduciary. Cause for denial pursuant to Business and Professions Code section 480, subdivision (a)(3), read together with section 6584, was not established.

Third Cause for Denial

3. Pursuant to Business and Professions Code section 6584, subdivision (h), an application for licensure as a professional fiduciary may be denied if the applicant acts as a professional fiduciary without having a license to so act. A professional fiduciary license is required in order for a person to act as a conservator for two or more people or for three or more trusts. (Bus. & Prof. Code, § 6501, subd. (f).) The Professional Fiduciaries Act became effective January 1, 2009. As set forth in Factual Findings 20 to 22, respondent continued to act as a professional fiduciary after January 1, 2009, notwithstanding that she did not have a license to do so. Cause for denial exists pursuant to Business and Professions Code section 6584, subdivision (h).

Licensing Considerations

4. As set forth in Business and Professions Code section 6516, the protection of the public is the highest priority of the bureau in exercising its licensing functions. "Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (*Ibid.*) Although it is true that respondent continued to act as a professional fiduciary after the law required her to have a license, the extenuating circumstances are such that her conduct does not demonstrate a serious breach of professional integrity. The public will be adequately protected by the following order, which allows respondent to obtain a professional fiduciary license on a probationary basis.

ORDER

The application of Melodie Jo Scott for a Professional Fiduciary License is granted. Upon successful completion of all licensing requirements, a Professional Fiduciary License shall be issued to respondent. The license shall immediately be revoked, the order of revocation stayed, and respondent shall be placed on probation for three (3) years subject to the following terms and conditions:

1. OBEY ALL LAWS: Respondent shall obey all federal, state and local laws, and all rules and regulations governing the practice of a professional fiduciary in California.

A full and detailed account of any and all violations of law shall be reported by respondent to the bureau in writing within 72 hours of occurrence. If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **COMPLY WITH PROBATION:** Respondent shall fully comply with the terms and conditions of probation imposed by the bureau and shall cooperate with representatives of the bureau or its designee in its monitoring and investigation of respondent's compliance with probation terms and conditions.
3. **SUBMIT WRITTEN REPORTS:** During the period of probation, respondent shall submit written quarterly reports, under penalty of perjury, as required by the bureau. These reports shall contain statements relative to respondent's compliance with all the conditions of probation, and other information as required by the bureau.
4. **TOLLING OF PROBATION:** In the event respondent should leave California to reside or practice outside of the state, respondent must notify the bureau in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period. No obligation imposed as a condition of probation shall be suspended or otherwise affected by such period of out-of-state residency or practice except with the written permission of the bureau.
5. **MAINTAIN VALID LICENSE:** Respondent shall, at all times, maintain an active current license with the bureau including any period of suspension or period in which probation is tolled.
6. **LICENSE SURRENDER:** During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the bureau. The bureau reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license respondent will no longer be subject to the conditions of probation.

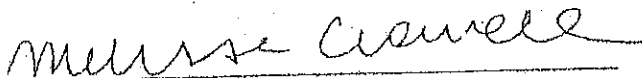
Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the bureau.

7. VIOLATION OF PROBATION: If respondent violates the conditions of her probation, the bureau, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the bureau.

8. COMPLETION OF PROBATION: Upon successful completion of probation, respondent's license shall be fully restored.

DATED: January 29, 2010



MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings