

**Ira K. Miller**  
Attorney at Law  
26 Court Street, Suite 400  
Brooklyn, New York 11242  
(718) 875-1888, 2191, 2192  
Fax: (718) 797-0558

August 3, 2009

Sandra N. Busell, Esq.  
Busell & Stier, PLLC  
98 Cutter Mill Road 395N  
Great Neck, N.Y. 11021

Via Fax: 516-829-9617

Ellen Flowers, Esq.  
Abrams Fensterman, et al.  
1111 Marcus Avenue, Suite 107  
Lake Success, N.Y. 11042

Via Fax: 516-368-9522

Re: Guardianship for Anita Liebowitz  
Supreme Court, Nassau County  
File #29428-1-09

Dear Ms. Busell and Ms. Flowers:

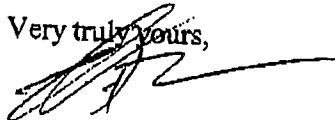
At the settlement conference held at the Court the 31<sup>st</sup> day of July, 2009 I put the following Settlement Agreement forward as Court Evaluator.

I have now put the agreement into writing and ask you to review same. Please let me know your positions on this proposal. **Of Course the final agreement is subject to the consent of all parties and subject to Court Approval.**

If we cannot come to an agreement or if the Court does not wish to retain jurisdiction pursuant to the Stipulation, I will need to inform the Court for the appointment of Counsel for the AIP, and to set a future date for the Guardianship hearing.

Please respond expeditiously, I remain,

Very truly yours,



Ira K. Miller

Fax: Justice Asarch-516-576-2555

SUPREME COURT: NASSAU COUNTY

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In the Matter of the Application of

ROBIN LIEBOWITZ,  
Petitioner

for the Appointment of a Guardian of

STIPULATION

ANITA LIEBOWITZ,

INDEX No:29428/09

an alleged incapacitated person,  
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After a Conference at the Courthouse on the 31<sup>st</sup> day of July, 2009, between SANDRA BUSELL, ESQ., as attorney for the Petitioner, ROBIN LIEBOWITZ, ELLEN FLOWERS, ESQ., as attorney for the respondent and cross petitioners, JANICE LIEBOWITZ and MERRIE LIEBOWITZ, and IRA K. MILLER, ESQ. as Court Evaluator, it is hereby Stipulated and Agreed between all parties as follows:

1. That the Health Care Proxy of JANICE LIEBOWITZ, will continue with the understanding, that the proxy, JANICE LIEBOWITZ, will share all medical information she received about her mother with her two sisters.
2. That Justice Asarch shall assign a Geriatric Care Manager to assist with the care of ANITA LIEBOWITZ, and all parties agree that the care manager will continue indefinitely, unless the ANITA LIEBOWITZ, required long term custodial care. The cost of the Geriatric Care Manager will paid by ANITA LIEBOWITZ. It is agreed by all parties that the Geriatric Care Manager will determine ANITA LIEBOWITZ's ability to travel and the level of care ANITA LIEBOWITZ

needs.

3. It is agreed that annual exclusion gifts of \$13,000.00, shall be given to each of ANITA LIEBOWITZ' children, they being, JANICE LIEBOWITZ, MERRIE LIEBOWITZ and ROBIN LIEBOWITZ. Annual gifts of \$6,000 shall be given to ANITA LIEBOWITZ's grandchildren, ARI SCHOENHOLTZ, DAVID SCHOENHOLTZ and NOAH SCHOENHOLTZ. Matching gifts of \$18,000 shall be given annually to ROBIN LIEBOWITZ and MERRIE LIEBOWITZ. Any gift or estate taxes due from the above gifts shall be paid by ANITA LIEBOWITZ. All gifting is subject to the financial abilities of ANITA LIEBOWITZ at that time. The Power of attorney may suspend gifting for the grandchildren and Robin and Merrie, if she deems it financially necessary.

4. It is agreed that college tuition for any of ANITA LIEBOWITZ's grandchildren, shall be paid for by ANITA LIEBOWITZ. Any payments for graduate school will be determined at a future date dependent on the cost of the graduate program and the financial abilities of ANITA LIEBOWITZ at that time.

5. All legal fees of the Petitioner's attorney, Cross Petitioner's attorney and the Court Evaluator, shall be set by Justice Asarch, in a short form Order, upon submission of Affidavits of Services Rendered.

6. It is agreed between all parties that MERRIE LIEBOWITZ, shall continue to serve as the sole attorney in fact, on the Charles Swab and Chase accounts, and be deemed the sole attorney in fact under any power of attorney. MERRIE LIEBOWITZ will continue to assist in the payment of

ANITA LIEBOWITZ's daily bills. That JANICE LIEBOWITZ and ROBIN LIEBOWITZ, will act as successor attorneys in fact, if MERRIE LIEBOWITZ, is unable or unwilling to serve as Power of Attorney.

7. That the Supreme Court, Nassau County, IAS Part 22 shall retain jurisdiction over the terms and conditions of this Stipulation.

8. That the Order to Show for Appointment of a Guardian and the Cross Petition are hereby withdraw without prejudice to renew.

Dated:

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ROBIN LIEBOWITZ-PETITIONER

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JANICE LIEBOWITZ-CROSS PETITIONER

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MERRIE LIEBOWITZ-CROSS PETITIONER

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SANDRA BUSELL, ESQ.-ATTORNEY  
FOR THE PETITIONER

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ELLEN FLOWERS, ESQ.-ATTORNEY  
FOR CROSS PETITIONERS

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IRA K. MILLER, COURT EVALUATOR

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SO ORDERED

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In the Matter of the Application of

Robin Liebowitz,

Petitioner,

HON. JOEL  
K. ASARCH

Index No.: 29428-I-09

For the Appointment of a Guardian of

Anita Liebowitz,

A Person Alleged to be incapacitated,

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**PRELIMINARY REPORT OF  
COURT EVALUATOR**

IRA K. MILLER, ESQ., an attorney duly admitted to practice before the  
Courts of the State of New York, hereby affirms under the penalties of perjury as  
follows:

**APPOINTMENT AND QUALIFICATIONS**

1. I was appointed the Court Evaluator in the above-entitled matter pursuant to an  
Order to Show Cause signed by this Court, on the 29<sup>th</sup> day of June, 2009 by the  
HONORABLE JOEL K. ASARCH.

2. In the fulfillment of my duties as Court Evaluator, my investigation included,  
but was not limited to: A thorough review of the following documents: (1) a copy of the

original Order to Show Cause dated the 29<sup>th</sup> day of May, 2009 (hereinafter OSC); (2) the Verified Petition/Affidavit of Robin Liebowitz sworn to the 19<sup>th</sup> day of May, 2009; (3) a copy of a property inspection for 19 Eagle Lane, Roslyn, N.Y. by Safe Harbor Inspections Inc., dated the 10<sup>th</sup> day of March, 2007, and numerous e-mail correspondence.

### NATURE OF PROCEEDINGS

3. This is a proceeding under Mental Hygiene Law, Article 81, to have a guardian appointed for ANITA LIEBOWITZ, an Alleged Incapacitated Person (hereinafter referred to as the AIP).

4. The Petitioner is ROBIN LIEBOWITZ, one of the daughters of the AIP.

5. The AIP is an eighty five year old women who suffers from onset dementia. She lives in the home with twenty four hour home care. Her daytime day caretaker is Nitza who has been with the AIP for over four years. It also appears that the AIP attended numerous day programs and is well taken care of. It is not disputed that the AIP had signed health care directives and a power of attorney giving her other daughters, certain financial and personal powers. It appears the question is whether those powers have been abused by Rose Merrie Liebowitz and Janice Liebowitz, as alleged by the petitioner, and is the AIP receiving the best care available.

6. The Petitioner is seeking the appointment of an independent Guardian for her mother's property management needs. The independent Guardian would also look into the actions of Rose Merrie Liebowitz and Janice Liebowitz, and to see if those actions breached their fiduciary responsibilities. She also asks to be her mother's personal needs Guardian, as she now lives closest to her mother.

7. The Petitioner is also asking that repairs be made to the home to make it more habitable for the AIP.

### JURISDICTION

8. The original OSC required personal service of the OSC and a copy of the Verified Petition upon the AIP, and service of said pleadings upon all interested parties not less than fourteen (14) days before the hearing date of July 31, 2009.

9. The OSC was timely served upon myself, as the Court Evaluator.

10. All copies of the affidavits of service have been provided to the Court Evaluator, and reviewed by me (See Exhibit A attached hereto).

### VENUE

11. The instant proceeding has been commenced in the Supreme Court of the State of New York, in and for the County of Nassau.

12. At the time of commencement of this action, the AIP resides at 19 Eagle Lane, Roslyn, New York.

13. Pursuant to the Mental Hygiene Law, Section 81.05, the venue of the instant proceeding is properly laid in the County of Nassau.

**FAMILIAL INFORMATION REGARDING THE AIP**

14. The AIP is 85 years of age, a widow with three daughters.

15. The AIP has three children, they being the Petitioner, ROBIN LIEBOWITZ, JANICE LIEBOWITZ and ROSE MERRIE LIEBOWITZ. She also has three grandchildren, they being ARI SCHOENHOLTZ, DAVID SCHOENHOLTZ, and NOAH SCHOENHOLTZ, children of JANICE LIEBOWITZ.

**MEETING WITH THE AIP**

16. On July 16, 2009, I visited the AIP at her home at 19 Eagle Lane, Roslyn, N.Y. Present at the time of the visit was the Petitioner, ROBIN LIEBOWITZ, the homecare worker, NITZA, and the AIP.

17. During my visit, I confirmed that the OSC, and the Petition had been delivered to the AIP.

18. I found sitting in a chair watching Television. She seemed a little apprehensive of who I was, but was willing to talk to me. I asked a series of questions with mixed



results. ANITA knew who the president was but was unable to name the Governor of New York or the Mayor of New York. She was forgetful and lacked short term memory. She asked who I was when I came in and ask me again ten minutes later. She knew she banked at Chase but was unable tell me her assets. She told me she was married and was able to give me her husband name. She knew her birthday and was able to give me her address. When I asked if she wanted counsel she told me she would decide later. I was told that with Nitza's assistance she would pay her own bills. She told me she was a doctor and was very proud of that. I explained this proceeding in detail and asked if she wanted or needed a Guardian. She asked me if I though it was a good idea and I told her it was her choice. I never got a clear answer to that question. I asked if she had a Power of Attorney or a Health Care Proxy, and she told me she was not sure. It was clear that she suffering from some diminished memory.

19. The home appeared very well kept and the AIP was appropriately dressed, groomed and appeared at the present time to very well taken care of. From the petition I expected that the home would be in disrepair but I did not see any indication of that. If anything the home was quite well taken care of. The petitioner told me that repairs were made recently and that it was only done upon her insistence.

**INTERVIEW WITH ROBIN LIEBOWITZ**

20. On my visit with the AIP, I had a chance to interview the petitioner, ROBIN LIEBOWITZ. This was done on the patio of the AIP's home in Roslyn. The petitioner felt that her parents always wanted their estate passed equally to the children. She objected to the yearly gifts to the grandchildren (children of Janice Liebowitz) done through the Power of Attorney given to Janice. She also objected to the fact that neither Janice or Merrie would give her information about their mother's medical situation. She told me that Janice refused to give her permission to take her mother to the New York City to see shows or plays which her mother really enjoyed. She told me she was even refused permission to take her mother out for dinner at a restaurant.

**INTERVIEW WITH NITZA-HOME CARE**

21. Again on my visit, I spoke with Nitza, a home care attendant who has been with the AIP for over four years. It was very clear from my observation that there was a close and personal bond between Nitza and the AIP. Nitza told me she had worked with the AIP for over four years. I was told she is forgetful but with help, pays her bills, signs her checks, and can be well taken care of with 24 hour assistance at home. She made it very clear she did not want to be put into the middle of a family squabble.

**TELEPHONE INTERVIEW WITH -ROSE MERRIE LIEBOWITZ**

22. On the 15<sup>th</sup> day of July, 2009, I spoke with Rose Merrie Liebowitz. She told me that her mother suffered from early stage dementia, but asked that I not mention same to her mother as it would greatly upset her. I told her that I would not mention same. She said her sister was angry that gifts went to the grandchildren and felt her parents wanted all the assets

equally split. She stated she though her parents would have wanted to make those gifts and had no objection to same.

### TELEPHONE INTERVIEW WITH JANICE LIEBOWITZ

23. Again on the 21<sup>st</sup> day of July, 2009, I spoke with Janice Liebowitz. She told me that she had the Power of Attorney and Health Care Proxy for her mother. She told me that there was approximately \$2.7 million dollars left in her mother's account along with the home which was worth approximately \$900,000 with no mortgage. She told me that her sister Robin was never left out of discussions but became aggravated when discussions of gifts to the grandchildren were mentioned. Janice told me that her mother and father, always gave to the grandchildren, and paid for their college costs. She stated her parents would have wanted to reduce their taxes as much as possible and would wanted to give gifts to their grandchildren.

### QUESTIONS OF LAW

24. After conversations with Sandra S. Busell, Esq., interesting points of law have been brought to bare. First, does the gifts given to the grandchildren and the daughter's husbands, breach the AIP's testamentary plan, giving grounds to revoke the Power of Attorney? Second, does the failure to give information to Robin, daughter the AIP, constitute a breach by Janice of her duties as Health Care Proxy, thereby giving grounds to revoke said Proxy?

### HEARING

25. The hearing will be conducted at the Supreme Court, Nassau County, 100 Supreme Court Drive, Mineola, New York.

26. If possible, I would like the AIP to attend the hearing so the Court can see the degree of her incapacity.

ASSETS OF THE ALLEGED INCAPACITATED PERSON

27. I requested from the petitioner and the attorney for Janice and Merrie a listing of the AIP's assets. On the 27<sup>th</sup> day of July, 2009, I received extensive documentation. It appears at the present time liquid assets are in excess of 1.6 million dollars at the Charles Schwab account and a small sum in the Chase checking. I was told by Joan Huber, the financial advisor for the AIP, that the liquid assets of the AIP at the present time is approximately ~~2.0~~ million dollars.

28. I was told by Joan Huber that the yearly expenses for Anita's upkeep is approximately \$160,000.00 per year.

TELEPHONE INTERVIEW WITH JOAN HUBER, FINANCIAL PLANNER

29. On the 27<sup>th</sup> day of July, 2009, I had a prolonged telephone conversation with Joan Huber, who has been the financial planner and registered investment advisor for the AIP. Also on the phone line was her attorney, Mark Powers, Esq. She informed me that she had worked on the AIP's estate plan along with her late husband since 2003. She recommended irrevocable life insurance trusts and other instruments which were not used. She worked with Mr. James Klein, Esq., to work out estate gifting to limit estate taxes. She told me that she wanted to give equally to her children, but also wanted to gift to her grandchildren. The AIP supposedly stated to Ms. Huber "Am I doing enough for the boys." She stated that the AIP was in fully competent until 2007 when small changes were noticeable. These included forgetfulness and trouble following planning put forth. She believed she had understanding during her 2009 meeting and wrote a letter to the AIP with her findings. (Attached as Exhibit "B") She also told me that the petitioner, Robin Liebowitz was given a gift of approximately \$70,000.00 as a down payment for a cooperative in 2003 or 2004.

## SECOND VISIT WITH AIP

30. On the 27<sup>th</sup> day of July, 2009, I made my second visit to the home of the AIP. We had a conversation for over 40 minutes. She told me the names of her three grandchildren and that she loved them very much. I asked if she would like to give them gifts even if meant less to her children. She told me she would have to think about that. She told me that she did not know if she had a will and did not know if she had a health care proxy or power of attorney. She told me she knew Joan Huber but said she was only a friend. When I asked if she was a financial advisor, she stated she didn't think so. I wrote down two questions for the AIP to think about. First, the question about gifts to the grandchildren and the second on asking for counsel. When I was about to leave, I again asked those questions. The AIP did not answer about the appointment of counsel, but as to gifting, she told me she would like to give gifts to her grandchildren even if meant less for her children. She stated that she loved her grandchildren and that her children were getting plenty. On the visit I was able to speak with Janice Liebowitz, who stated that she always would help mom and that she would see to her care with the Power of Attorney and Health Care Proxy. She explained her objections to the cruise that was to be taken by the AIP and her daughter Robin, and why she objected to her mother's travel to New York City by train.

## CONCLUSION

31. Based upon a review of the pleadings herein, affirmation, interviews of the aforementioned, we have reached the following conclusions:

- a. This is a proceeding under Mental Hygiene Law, Article 81, to have a Guardian appointed for ANITA LIEBOWITZ, an AIP.
- b. The Court has requisite subject matter jurisdiction.

c. The Court does have jurisdiction over all interested persons in this proceeding since all parties consented to the method of service even though certain time lines were not met.

d. The venue has been properly laid in Nassau County.

e. The AIP suffers from on set dementia and needs assistance with her daily affairs.

f. The AIP currently living at home and her care is good.

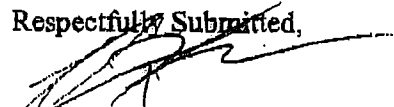
g. Mrs. Liebowitz has not informed me if she wishes counsel. It is my opinion that she does not need counsel at the present time.

### RECOMMENDATIONS

32. It is very difficult to give a recommendation at this time. Presently there are advanced directives in place, however, a hearing must be held to determine if these directives should be revoked based upon a possible breach of fiduciary responsibility. I therefore give this preliminary report, and will give a final report after further investigation.

Dated: Kings County  
July 28, 2009

Respectfully Submitted,

  
Ira Keith Miller, Esq.