

A Recipe for How To Get Noticed by the California Attorney General

05.01.15 | Linda J. Rosenthal, JD



Recently, two fellows in Napa, California, have been cooking up a hearty feast of trouble.

But the saga began in 2004 when an elderly gentleman – let’s call him Mr. A – set out to get his affairs in order.

Mr. A had done well for himself. His Napa residence and a substantial investment account were together valued at over \$2 million. He had no heirs but wanted his estate to assist needy students with scholarships. With the help of his attorney pal – we’ll call him Mr. B – he created an estate plan towards this goal.

Fast forward to late 2009; the old man died. A contemplated nonprofit organization had not yet been formed, but his testamentary documents had been drafted so that the residue of his estate funded a charitable trust.

Now armed with keys to the kitchen, and a plum appointment as executor and trustee, Mr. B was off and running planning a menu of misdeeds – along with a compliant co-trustee.

The Preliminary Courses

First brought to the table was a half-baked appetizer: a Petition for Probate of Will and for Letters Testamentary with only certain ingredients listed, along with a similarly prepared Petition for First and Final Accounting. This delicacy was spread liberally with misinformation about the estate.

The soup course was a steaming bowl of self-dealing, sprinkled with nepotism and topped with large chunks of private benefit. The late Mr. A’s residence was put on the market early in 2010, but stayed on the local MLS for a grand total of 20 days, during which time just two real estate agents viewed the property. The listing agent was the parent of the trust’s extremely well-remunerated accountant.

Who was the lucky buyer? Why, none other than Mr. B (Esquire)! The residence was appraised at \$1.25 million. He “bought” the property at that price, but with no down payment at all and interest-only payments for the first several years.

On to the Main Course

Abundant side dishes were served. First, there was a plate overflowing with defaults on the (interest-only) mortgage payments. Not a single payment was made in full, and in many months, the payment was not made at all.

It was accompanied with a large basket of “expenses” including overpayment of trustee fees and other questionable amounts adding up to some \$170,000. There were also legal and professional fees totaling over \$61,000 just for the period from December 2009 to sometime in 2011.

Another \$14,000 was paid to Mr. B’s law firm for secretarial and administrative fees. Add to this the “board meeting expenses” for 3 years totaling \$10,231; Mr. B and his co-trustee held their frequent meetings at expensive restaurants.

Next, there was a platter of unsecured loans to Mr. B totaling another \$40,000 (entirely deferred interest and principal payments until the end of 2015) – to help him pay the mortgage, of course.

We should mention that these loans were nowhere on the menu – ahem – the Trust’s Annual Registration Renewal Fee Report submitted to the California Attorney General.

Also not on the menu was horsemeat.

But there *were* horses on scene. The late Mr. A had stabled two of these loyal creatures on his Napa property. They were includible in A’s estate, but they were not *included* as assets on the Petition for First and Final Accounting. They have never been listed as trust assets on any of the financial records.

The horses were given a place at the table, though – to the tune of a monthly credit against the mortgage for Mr. B, the new property owner *cum* attorney/executor/co-trustee. This credit was for the housing and care of the two horses, although there has never been any due diligence investigation to determine the appropriateness or accuracy of this credit or its amount.

But – what do you say?: “One of the horses has died!” (Food poisoning, surely, from this questionable feed.) “Is a plate removed from the table,” you ask? Of course not. The full \$2,200 monthly credit keeps coming, against the full \$4,687.50 monthly mortgage amount due, which was routinely unpaid.

“What about the entree?” Have we forgotten about it? No, we have not.

It is – *quelle surprise!* – served nouvelle-cuisine style. Tiny morsels of food artfully arranged around a huge plate, to deceive the eater into thinking that it is a satisfying portion. What’s here? In 2010, there was just \$5,000 spent for the trust’s charitable purposes, compared with \$97,134 that year in expenses. Similarly, in 2011, scholarship disbursements were \$14,470, while expenses were \$117,064; and in 2012, \$19,500 went to scholarships but there were expenses of \$151,077.

The Party is Over

A distasteful scent has been wafting out of the premises – all the way, in fact, to Sacramento. The California Attorney General has crashed the party, just in time for dessert!

What's now being served is a flaming dish of high-priced legal and accounting fees to try to erase the evidence of this unappetizing experience.

Definitely Not a Fairy Tale

Is this a morality tale that we concocted to teach a lesson about how *not* to run a charitable organization? We wish we could claim credit, but it's not a fable.

Sometime back in October 2014, Mr. B and his co-trustee received knocks on their doors. It was a process server with a 16-page legal document: a petition to remove them as trustees, and to get back lots of money and property.

It seems that we, "The People of the State of California," by our "duly elected Attorney General" are invoking a bunch of laws against them, including the Supervision of Trustees and Fundraisers for Charitable Purposes Act.

We explained in *Say What? How Many Government Agencies Are Monitoring Our Activities?* that it's not just the federal Internal Revenue Service that can come looking for you if you're in charge of a nonprofit or charitable trust, and something appears to be amiss.

That's because the State of California also has a legitimate interest in monitoring charities and has the legal authority to back up that interest.

Specifically, the California Attorney General "is charged with the general supervision of all organizations and individuals who obtain, hold or control property in trust for charitable or eleemosynary purposes" and "has primary responsibility for ... ensuring compliance with trusts, and for protecting charitable assets..." The "Attorney General represents the *public beneficiaries* of [any] charitable trust." That's us, the aforementioned People.

Conclusion

Now, all of this is still just a matter of allegations; nothing has yet been proved or disproved. We'll all have to wait and see, but – seriously, folks – we couldn't have made it up better ourselves to teach a lesson about how *not* to run a charitable organization or trust.

You can read all about it here. We'll keep you posted on developments.

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[*Note, July 2, 2023: After a slog of several years through the legal system, the Attorney General's Office won a resounding victory!*]