

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of

IAN C. DEVINE, CARLA HALL FRIEDMAN and KARINE
ALBERT MCCALL

for the Appointment of Guardians of the Property and Person
of

HUGUETTE M. CLARK,

a Person Alleged to Be Incapacitated.

VERIFIED PETITION

Index No.

TO THE SUPREME COURT, COUNTY OF NEW YORK:

The petition of Ian C. Devine, Carla Hall Friedman, and Karine Albert McCall
(collectively, "Petitioners"), residing respectively at _____, New York, New York
_____, New York, New York and
Washington, D.C. respectfully states:

1. Petitioners are among the persons who are the next of kin to Huguette M. Clark
("Ms. Clark"), the alleged incapacitated person.

2. Petitioners are nieces and a nephew of Ms. Clark descended from Senator
William Andrews Clark by his first marriage, and are among her closest living relatives. Senator
Clark has surviving descendants from three of his children by his first marriage, and the
Petitioners represent family members from each of these three branches. They bring this petition
in order to protect Ms. Clark's person and property, and to prevent the risk of further improper
influence by Ms. Clark's advisors, Wallace Bock ("Bock") and Irving H. Kamsler ("Kamsler"),

for their personal benefit rather than the benefit of Ms. Clark. Petitioners seek the appointment of a guardian to oversee Ms. Clark's personal and financial affairs.

3. Ms. Clark is 104 years old. She is unmarried and has no children. She resides at Beth Israel Hospital in New York, New York, where she has lived for a number of years.

4. Ms. Clark is the daughter of Senator Clark by his second marriage and is the sole surviving descendant of Senator Clark by his second wife. Senator Clark died in 1925. Ms. Clark's mother died in 1963. Ms. Clark owns sizable assets, estimated to be in the hundreds of millions of dollars. She is the owner of a 23-acre oceanfront property in Santa Barbara, California that has been reported to have a value of \$100,000,000; and a property in New Canaan, Connecticut that is currently listed for sale with an asking price of \$24,000,000. On information and belief, her other assets include substantial cash and/or liquid securities, a cooperative apartment in Manhattan, and a valuable art collection.

5. For at least the last ten years, Ms. Clark's personal and financial affairs have been managed and controlled exclusively by Bock, an attorney in the law firm of Collier, Halpern, Newberg, Nolletti & Bock LLP in New York, and Kamsler, an accountant who resides in Riverdale, New York. Kamsler has continued to manage and control Ms. Clark's affairs notwithstanding that, on September 29, 2008, he pleaded guilty to a felony charge of attempted dissemination of indecent material to minors. He was sentenced to five years probation and a fine of \$5,000.

6. Not surprisingly for a person of her age, Ms. Clark is physically frail and, on information and belief, has poor eyesight and hearing. Her mental abilities are uncertain, but on information and belief as a result of her age and physical condition, she has limited ability to

understand and manage her financial affairs, particularly given her great wealth and the complex issues presented in managing her estate.

7. On information and belief, Ms. Clark is unable to provide for her personal needs and management of her property, and cannot adequately understand and appreciate the nature and consequences of such inability.

8. Unless a guardian is appointed, Ms. Clark is likely to suffer personal and financial harm because she remains at risk of abuse from her purported fiduciaries, Bock and Kamsler.

This ongoing risk is evidenced among other things by the following:

(a) Bock and Kamsler have controlled Ms. Clark's affairs and limited the ability of other persons including relatives to have contact with Ms. Clark or to monitor her well-being. They have controlled and limited such access by representing that Ms. Clark refuses and wishes not to see such persons. On information and belief, such representations are false.

(b) Kamsler was arrested on September 6, 2007 in an undercover law enforcement operation conducted by the Nassau County District Attorney's office, and was charged with six counts of attempting to disseminate indecent material to minors in the first degree, and nine counts of attempting to endanger the welfare of a child. The indictment alleged that in 2005 and 2007, Kamsler had tried to entice 13- and 15-year-old girls in an internet chatroom to meet with him, sending them pornography and describing touching their private areas. Neither Bock nor Kamsler disclosed these charges to Ms. Clark. While these charges were pending, they continued to manage Ms. Clark's affairs,

and Kamsler continued to meet with Ms. Clark, alone and unaccompanied, in Ms. Clark's hospital room.

(c) On September 28, 2008, Kamsler pleaded guilty to one felony count of attempting to disseminate indecent material to minors in the first degree, thereby admitting the allegations of that count in the indictment. Kamsler was sentenced on January 8, 2009. (A copy of the Certificate of Disposition Indictment evidencing this conviction is attached hereto as Exhibit A.) Neither Bock nor Kamsler disclosed the conviction nor the underlying facts supporting the conviction to Ms. Clark.

(d) In December 2008, soon after learning of Kamsler's conviction, Petitioners Friedman and Devine met with Bock, stating that it was inappropriate for Kamsler to continue as a fiduciary to Ms. Clark. That meeting led to a letter dated March 6, 2009 in which Bock claimed that it was appropriate for Kamsler to continue as Ms. Clark's fiduciary because, as a result of the conviction, Kamsler "was not deprived of his license as Certified Public Accountant or his right to act as a fiduciary." Bock downplayed the charges, claiming that Kamsler was "the victim of a 'sting' operation" and agreed to plead guilty to avoid "the time and expense and further publicity that a trial would engender." Bock claimed to have in his file a written confirmation from Ms. Clark of her wishes for Kamsler to continue in his service, although he did not provide that confirmation.

(e) In November 2009, Bock produced to Petitioner Friedman a copy of the purported written confirmation of Ms. Clark's wishes for Kamsler to continue as her fiduciary. The document purports to be a letter from Kamsler to Ms. Clark dated

February 20, 2009 and purports to be countersigned by Ms. Clark and dated March 5, 2009. (A copy of that letter is attached hereto as Exhibit B.) The letter purports to document Kamsler's disclosure of information related to his conviction to Ms. Clark and to evidence Ms. Clark's consent to having Kamsler continue as her fiduciary. Any such consent is ineffective, because Ms. Clark lacked the capacity to understand and appreciate the nature of the charges against Kamsler, to understand and appreciate the nature of the charge to which Kamsler pleaded guilty, and to determine whether Kamsler should continue in his capacity as a fiduciary. Assuming that Kamsler in fact presented this letter to Ms. Clark, the circumstances demonstrate an abuse of trust, in that Kamsler was simultaneously acting as Ms. Clark's fiduciary and in his own self-interest in seeking to retain his position as fiduciary. Further, the contents of the letter are false and misleading in that: (i) Kamsler failed to disclose that Kamsler possessed and attempted to disseminate indecent materials to a minor; (ii) contrary to his guilty plea which was an admission of guilt, Kamsler denied that he had committed a crime, and claimed that he had pleaded guilty for reasons unrelated to the conduct in which he had admittedly engaged; and (iii) Kamsler falsely conveyed that the sentencing judge, because he had granted a Certificate of Relief from Civil Disabilities, had endorsed Kamsler's ability to continue as Ms. Clark's fiduciary.

(f) On information and belief, based on review of recent press reports, Bock and Kamsler have further abused the trust of Ms. Clark, taken advantage of her inability to understand and appreciate the consequences of their financial decisions, and committed acts of mismanagement and dishonesty. Such acts have included:

(i) Bock and/or Kamsler provided Beth Israel Hospital with fictitious contact information for relatives of Ms. Clark, while failing to disclose to the Hospital information regarding her actual next of kin (see article from the *New York Post* dated 8/31/10, a copy of which is attached hereto as Exhibit C);

(ii) Bock solicited and received from Ms. Clark a check for \$1.5 million to build a bomb shelter for a settlement in Israel where Bock's daughter and her family live (see article in the *New York Post* dated 8/28/10, a copy of which is attached hereto as Exhibit D);

(iii) After becoming aware of reports that the New York County District Attorney's Office had initiated an investigation of Bock and Kamsler, Bock called a former paralegal in his office and asked her not to discuss with anyone his dealings with Ms. Clark and encouraged her to leave town (see Exhibit D; article on msnbc.com posted on 9/1/10, a copy of which is attached hereto as Exhibit E; the former paralegal made similar statements in an interview on *The Today Show* on 9/2/10);

(iv) According to the same former paralegal, Bock and Kamsler drafted a will that would have left money to Bock, tried repeatedly to persuade her to sign it, and "joked about and cursed their client behind her back when she would not sign a will" (see Exhibit E); and

(v) Bock and Kamsler mismanaged Ms. Clark's affairs, as evidenced by four tax liens that they permitted to be recorded against her real properties, including two liens of over \$1 million each (all of the liens were subsequently

removed when the delinquent taxes were paid) (see article on msnbc.com posted on 8/20/10, a copy of which is attached hereto as Exhibit F).

9. Petitioners have learned from a person who observed the incident that on Thursday, September 2, 2010, Kamsler visited Ms. Clark in her hospital room, accompanied by his criminal defense attorney. Such a visit could hardly have the purpose to better Ms. Clark's health, safety and well-being. In addition, according to an article in the *New York Post*, sources report that in the past few days Kamsler visited Ms. Clark in her hospital room trying to get her to sign legal documents, which may include a will. (See *New York Post* article posted on 9/2/10, attached hereto as Exhibit G.) In order to protect against the risk of further action that endangers the health, safety or welfare of Ms. Clark, pursuant to New York Mental Hygiene Law Section 81.23(b), Petitioners request that the Court issue a temporary restraining order enjoining Bock and Kamsler from (a) communicating with Ms. Clark, (b) presenting (directly or through their agents) to Ms. Clark any legal documents, (c) selling, assigning or disposing of any property of Ms. Clark, (d) signing any legal documents or entering into any contracts relating to any of her personal or financial affairs, or (e) otherwise taking any action that would dissipate or encumber Ms. Clark's assets, pending the hearing and determination of this proceeding.

10. Petitioners request the appointment of Fiduciary Trust Company International ("Fiduciary Trust"), 600 Fifth Avenue, New York, New York 10020, as the guardian of Ms. Clark's property. Petitioners submit that it is important to appoint an established corporate fiduciary which has the requisite knowledge, experience, availability and financial responsibility required to manage an estate of the size and complexity of Ms. Clark's. Fiduciary Trust, a New York State chartered bank, is regulated by the New York State Banking Department and the

FDIC, and is one of the most established trust and investment management firms in the United States. A substantial portion of its business is comprised of fiduciary accounts where Fiduciary Trust serves as agent, trustee or executor. On information and belief, Fiduciary Trust does not have any conflicts of interest that would preclude its appointment as guardian.¹

11. Because of Ms. Clark's inability to manage financial affairs on her own behalf, Petitioners request that the guardian of Ms. Clark's property have the following powers, all as enumerated by statute:

- a. provide for Ms. Clark's maintenance and support and pay such bills as may be reasonably necessary to maintain Ms. Clark;
- b. marshal Ms. Clark's assets, and invest and reinvest such assets as a prudent person of reasonable discretion and intelligence in such matters seeking reasonable income, and apply so much of the income and principal as necessary for Ms. Clark's comfort, support, maintenance and well-being;
- c. authorize access to or release of confidential records;
- d. apply for, pay and handle all claims and settlements, including insurance transactions;
- e. collect all income, including but not limited to Social Security, dividends, interest and pension;
- f. enter into contracts;

¹ If Fiduciary Trust is unable to serve as guardian or if the Court determines that a different guardian should be appointed, Petitioners request that the Court appoint Bessemer Trust Company, N.A. ("Bessemer Trust"), 630 Fifth Avenue, New York, New York 10111, as guardian of Ms. Clark's property. Like Fiduciary Trust, Bessemer Trust is a highly-respected independent institution with broad resources and specific expertise in serving as agent, trustee or executor to high net worth individuals. On information and belief, Bessemer Trust does not have any conflicts of interest that would preclude its appointment as guardian.

- g. endorse, collect, negotiate, deposit and withdraw Social Security, Veterans Administration and/or other pension, annuity or benefit checks and/or negotiable instruments;
- h. deal with Medicare and Medicaid claims, litigation and settlement;
- i. claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with all government administrations and agencies;
- j. deal with all pension, retirement incentive, IRA/Keogh/SEP and similar type plans, programs and annuities;
- k. sign tax returns and deal with all federal, state and local authorities on all claims, litigation, settlements and other matters;
- l. buy and sell stocks, bonds and Treasury securities;
- m. implement and make tax savings decisions;
- n. retain attorneys concerning Ms. Clark's property and affairs and pay the same;
- o. retain accountant, investment counsel and similar professionals concerning Ms. Clark's properties and affairs and pay the same;
- p. create revocable or irrevocable trusts of property of the estate which may extend beyond the incapacity or life of Ms. Clark;
- q. exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;
- r. administer bank, credit card and brokerage accounts;
- s. apply for government and private benefits on behalf of Ms. Clark;
- t. defend or maintain any civil judicial proceeding;

- u. access safe-deposit boxes/vaults/safes, if any; and
- v. any other power which the Court in its discretion shall deem appropriate to meet Ms. Clark's property management needs.

12. Petitioners propose that one or more of the Petitioners be appointed as guardian or co-guardians of Ms. Clark's person. The personal powers will not include any powers with respect to the property of Ms. Clark, all of which powers will be vested in the guardian of Ms. Clark's property. Petitioners request that the guardian (or co-guardians) of Ms. Clark's person have the following personal needs powers, all as enumerated by statute:

- a. determine who shall provide personal care or assistance to Ms. Clark;
- b. make decisions regarding social environment and other social aspects of the life of Ms. Clark;
- c. determine whether Ms. Clark should travel;
- d. authorize access to or release of confidential records;
- e. apply for government and private benefits;
- f. consent to or refuse generally accepted routine or major medical or dental treatment;
- g. choose the place of abode; and
- h. any other power which the Court in its discretion shall deem appropriate to meet Ms. Clark's personal needs.

13. The personal and property management powers are being sought for an indefinite duration as Ms. Clark's condition is permanent in nature. Ms. Clark has ample assets and funds to cover her living costs.

14. To the best of Petitioners' knowledge, there are no claims against Ms. Clark. She is not a recipient of public assistance.

15. To the best of Petitioners' knowledge, there are no operative Powers of Attorney or valid trusts, Health Care Proxies, or other resources that would sufficiently and reliably provide for Ms. Clark's personal and property management needs.

16. It is not known whether Ms. Clark has in place a last will and testament or, if so, who are the beneficiaries of such last will and testament.

17. No previous application has been made for the relief herein requested to this Court or any other court.

18. If Ms. Clark is intestate, Petitioners are three of the approximately 21 potential intestate distributees of Ms. Clark, and notice of the proceeding is being given to the Petitioners pursuant to New York Mental Hygiene Law Section 81.07(g)(1)(ii). (Names and contact information is not being provided with respect to the other intestate distributees in order to protect their privacy, but will be made available upon request of the Court.) The names, addresses, telephone numbers and relationships of the interested parties are:

Name, Address and Telephone Number

Relationship

Huguette M. Clark
Beth Israel Medical Center
First Avenue at 16th Street
New York, New York 10003
(212) 420-2000

Alleged Incapacitated Person

Ian C. Devine

Petitioner, distributee and nephew of
Huguette M. Clark

Carla Hall Friedman

Petitioner, distributee and niece of
Huguette M. Clark

Karine Albert McCall

Petitioner, distributee and niece of
Huguette M. Clark

Wallace Bock, Esq.
c/o Collier, Halpern, Newberg, Nolletti & Bock LLP
355 Lexington Avenue, Suite 1400
New York, New York 10017
(212) 481-1300

Attorney of Huguette M. Clark

Irving H. Kamsler, CPA
3671 Hudson Manor Terrace, Apt. 4K
Riverdale, New York 10463
(718) 884-8333

Accountant of Huguette M. Clark

Harris Nagler, President
Beth Israel Medical Center
First Avenue at 16th Street
New York, New York 10003
(212) 420-2000

President of facility where Huguette M.
Clark resides

WHEREFORE, Petitioners pray that the Court:

1. Sign the annexed Order to Show Cause;

2. Appoint a proper person as Court Evaluator, pursuant to New York Mental Hygiene Law Section 81.10(c)(5);

3. Set down a hearing to determine the questions of fact arising from the inability of Huguette M. Clark, the person with respect to whom Petitioners pray for the appointment of guardians of the property and person, to be held in the Supreme Court, County of New York, on such day as the Court may direct, and that the case be placed at the head of the calendar and be disposed of at said term of the Court, and that the Justice presiding act as the presiding officer at said hearing;

4. Declare that Huguette M. Clark is incapacitated as that term is defined by New York Mental Hygiene Law Section 81.02(b);

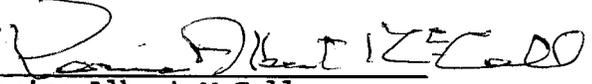
5. Appoint Fiduciary Trust Company as guardian of the property of Huguette M. Clark and Ian C. Devine, Carla Hall Friedman, and/or Karine Albert McCall as guardian or co-guardians of the person of Huguette M. Clark and grant them the powers requested herein; and

6. Issue a temporary restraining order enjoining and restraining Wallace Bock and Irving H. Kamsler, and all persons acting in concert with them, from (a) communicating with Ms. Clark, (b) presenting (directly or through their agents) to Ms. Clark any legal documents, (c) selling, assigning or disposing of any property of Ms. Clark, (d) signing any legal documents or entering into any contracts relating to any of her personal or financial affairs, or (e) otherwise taking any action that would dissipate or encumber Ms. Clark's assets, pending the hearing and determination of this proceeding.

7. Award Petitioners their attorneys' fees and costs in prosecuting this petition; and

8. grant to Petitioners such other and further relief as the Court may deem just and proper.

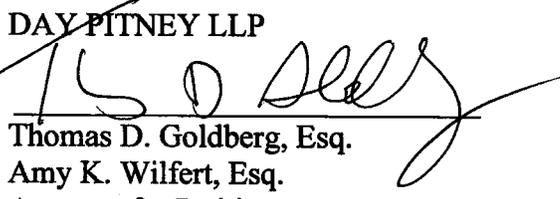
Dated: New York, New York
September 3, 2010

Yours, etc. 
Karine Albert McCall

Ian C. Devine

Carla Hall Friedman

DAY PITNEY LLP

By: 

Thomas D. Goldberg, Esq.

Amy K. Wilfert, Esq.
Attorney for Petitioners
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New York, New York 10036
(212) 297-5800

Attorneys for Petitioners

8. grant to Petitioners such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 3, 2010

Yours, etc.

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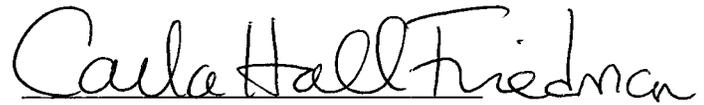
8. grant to Petitioners such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 2, 2010

Yours, etc.

Karine Albert McCall

Ian C. Devine


Carla Hall Friedman

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