

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Accounting of
WALLACE BOCK and IRVING KAMSLER,
As Attorneys-in-Fact for

**REPLY AFFIDAVIT AND
AFFIDAVIT IN OPPOSITION
TO CROSS-MOTION**

HUGUETTE CLARK,

Deceased.

File No. 1995-1375A

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STATE OF NEW YORK)
)ss:
COUNTY OF NASSAU)

John R. Morken, being duly sworn, deposes and says:

1. I am a member of the law firm Farrell Fritz, P.C., attorneys for the movants (herein "Family Members"). This Affidavit is submitted in Reply to the Memorandum of Law of Wallace Bock and Irving Kamsler (herein "Bock" and "Kamsler" or "Petitioners") opposing the Family Members' motion to intervene. I also submit this Affidavit in opposition to the cross-motion of Hadassah Peri ("Peri").

The Opposition of Bock and Kamsler

2. In September 2010, nine months before Huguette Clark ("Huguette" or "Decedent") died, three Family Members presented a Petition to the Supreme Court asking for appointment of guardians to take care of both the person and the property of Huguette (see Petition, Exhibit G to Motion). In that Petition, these Family Members set forth their concerns as to Huguette's care by Bock and Kamsler, specifically alleging that the latter had "taken advantage of her inability to understand and appreciate the consequences of their financial decisions, and committed acts of mismanagement and dishonesty" (Petition ¶8(f); see, Morken

Affidavit 11/28/11, ¶¶ 41-42). The guardianship Petition was opposed by Bock. What can now only be assessed as a gross travesty of justice, the Petition was dismissed, without any investigation or inquiry being undertaken.

3. Yesterday, on December 20, 2011, this Court signed an Order to Show Cause in a proceeding to revoke the letters of Bock and Kamsler brought by the Public Administrator of New York County. The Public Administrator's Petition, with Order to Show Cause, is annexed hereto as Exhibit A. The facts set forth in that Petition, all documented, demonstrate clearly that what the Family Members suspected in 2010 was only the tip of the iceberg. It is apparent the Bock and Kamsler are guilty of, at best, misfeasance and malpractice, and at worst fraud. Their deceit and mishandling of Huguette's affairs has resulted in Huguette's Estate possibly owing the Internal Revenue Service as much as \$100,000,000 because of unpaid gift taxes, interest and penalties, and for the failure to either file or properly file gift tax returns.

4. As a result of these facts, which are not "mere allegations", just yesterday Petitioners' counsel informed the Court that Kamsler is resigning as preliminary executor of the Estate. But that is not enough. It is respectfully submitted that both Kamsler's and Bock's letters as preliminary executors should be immediately revoked. They should not be allowed to have anything further to do with the affairs of Huguette Clark.

5. In their opposition to the Family Member's Motion to Intervene in their accounting as attorneys-in-fact, Bock and Kamsler would wish to relegate the Family Members to only litigation over the Decedent's purported Wills, executed in March and April of 2005. What is abundantly clear, however, both from the attorney-in-fact accountings and now by the Revocation Petition, the litigation in this Estate is not just about the probate of a will. Rather, it is about what transpired during the last twenty years of Huguette Clark's life. This inquiry

requires an open airing of all the facts. The Family Members should not be denied the opportunity to participate in same. They were denied that opportunity when their Guardianship Petition was dismissed in 2010, while Huguette was alive. They should not be denied that opportunity again.

6. For these reasons, as well as those asserted previously and in the accompanying Reply Memorandum of Law, the motion by the Family Members to intervene should be, in all respects, granted.

Peri's Cross Motion in Opposition

7. At first blush, it is surprising that Peri is not also seeking leave to intervene and to become a party to the accounting proceeding. After all, given the approximately \$26 million in purported gifts that, upon information and belief, she and her family received from Huguette's funds during the course of Bock and Kamsler's stewardship, as attorneys-in-fact, attorney and accountant, it would seem that Peri would want to insure that these payments to her or her family were staunchly defended by herself and her own counsel.

8. The fortune bestowed upon Peri during the period in which Bock and Kamsler served as attorneys-in-fact and also as Huguette's attorney and accountant was used by her for, amongst other things, the purchase of five homes, on the upper East Side, in Manhattan Beach, on the Jersey Shore, and in Brooklyn, and for cars- - and not just any cars- - a \$204,000 Bentley Arnage sedan, and a \$42,000 Lincoln Navigator SUV; and millions for two condominiums for her children.¹ Should not Peri be expected to defend these purported gifts?

¹ The Brooklyn property is a purchase that is of particular note. While the underpinnings of this transaction were not known to your affairs at the time of the filing of his initial affidavit with the Court, on November 28, 2011, information since learned indicates that, upon information and belief, the \$50,000 reflected in the accounting as a payment by Bock and Kamsler to Solomon Antar on September 21, 2000 represented the down payment on the property that was held by him in escrow on behalf of the sellers of the house to Peri.

9. However, on further consideration, the motive for Peri's desire to remain on the sidelines and avoid the fray is clear. Indeed, if Peri were to become a party to this proceeding, she would be bound by any judgment that this Court would ultimately render. As it is, by not being a party to the accounting proceeding, she would not be bound by any judgment against Bock and Kamsler which may well determine that any purported gifts she or her family received through use of a power-of-attorney were improper and must be returned to the Estate. This result, i.e. the setting aside of purported gifts, is very likely if for no other reason that there was no gift-giving authority under the power-of-attorneys in favor of Bock and Kamsler. (*See Matter of Ferrara*, 7 NY3d 244). Clearly, Peri is seeking to avoid such a judgment against her, "clawing-back" to the estate the many millions she received.²

The Family Members' Standing

10. Given Peri's clear intent to avoid any scrutiny of her conduct and of the purported gifts to her or her family, that she would oppose the Family Members' motion to intervene in the pending accounting proceeding is not surprising.

11. The basis for Peri's as well as Bock and Kamsler's opposition to the Family Members' motion to intervene is two-fold: 1) that the Family Members have no financial interest in the outcome of the proceeding, and thus lack standing to intervene; and 2) that the interests of the Family Members are adequately represented by the Public Administrator.

12. The opposition to the motion is seriously flawed. It ignores both the facts and the law underlying the Family Member's motion.

13. Although Peri hinges her cross-motion on the Family Members' purported lack of interest in the instant proceeding, she makes no mention of the very statute which makes clear

² Peri will not long be able to avoid that day of reckoning. The Family Members are gratified to see that the Public Administrator fully intends to bring discovery proceedings "to claw-back into the estate any gifts deemed to be invalid". (Exhibit A hereto, Revocation Petition, fn 1, p. 4).

that the Family Members do have standing to be parties to the accounting proceeding. The provisions of SCPA 103(39) expressly recognize the Family Members as “persons interested” within the scope of this proceeding, notwithstanding the contingency, and disputed nature, of their financial stake. Yet, Peri’s counsel does not mention the statute, much less discuss it.

14. Undaunted by the transparent weakness of her argument, Peri alleges that because the execution of the propounded Will was supervised by an attorney, it is presumptively valid (Corn Aff., ¶3). Again, Peri is wrong.

15. When the execution of a will is supervised by an attorney, it is entitled to a presumption of due execution, but nothing more. *Matter of Hedges*, 100 AD2d 586, *app. Dismissed* 63 NY2d 944 (1984); *In re Estate of Hulme*, NYLJ, 12/11/00 (Sur. Ct. Westchester County). It does not signify that the decedent had capacity, or that the instrument was not the product of fraud and/or undue influence.

16. Again, Peri omits, or perhaps more accurately ignores, critical facts such as that the propounded Will was procured by Bock,³ who, as Huguette’s attorney-in-fact and attorney, stood in a confidential relationship with her; that Messrs. Bock and Kamsler were the recipients of bequests and were named executors in the instrument; that at or about the time the propounded Will was executed, Messrs. Bock and Kamsler, as well as Peri, had isolated Huguette from her family, with whom she had long communicated; and that they had infused themselves into her life to such an extent that her long-standing estate plan benefitting her Family Members suddenly and dramatically changed in order to principally benefit them and a foundation which they were to control.

³ In fact, upon information and belief, Bock had repeatedly asked Huguette to execute a will.

17. Not to be ignored in the history of Bock's and Kamsler's malfeasance is Peri's role. Without question, thanks to Bock and Kamsler, Peri's current station in life is a far cry from her modest background and her status as a salaried nurse.⁴ Indeed, commencing in February, 2001 and continuing through May, 2011, Peri was receiving \$2520 per week in wages for providing Huguette nursing care- - handsome compensation for her services, but, of course, not nearly as attractive as the millions she garnered. Clearly, these millions were exponentially more than her weekly wage could have afforded her. Clearly, these millions were for something more- - something, which has yet to be explained, that went even beyond the many, many millions she would like to receive under the propounded Will.

18. It can hardly be said with a straight face that Peri had no relationship with Bock and Kamsler (Corn Aff. ¶2). In fact, it would not at all be surprising if she played an integral role in the procurement of the propounded Will. After all, she saw or communicated with Huguette "almost every day" "for almost twenty years" (Corn Aff. ¶2); after all, the propounded Will increased her share of Huguette's estate from a conditional bequest of \$5 million in the penultimate Will, to a multimillion bequest of Huguette's doll collection together with 60% of her residuary estate; after all, other than Bock and Kamsler, she too stood in a confidential relationship with Huguette. *See* Williston, on Contracts, Sec.71.55 (4th ed.).

19. Surely, under these circumstances, Peri's counsel cannot legitimately contend that this instrument is presumptively valid (Corn Aff. ¶3). To the contrary, under the law there is an inference that it was procured by the undue influence of Bock, Kamsler and Peri- - an inference that serves to only bolster the financial interest and standing of the Family Members to be parties in this accounting proceeding. Indeed, as this Court well knows, in order to rebut this inference

⁴ *See* Boniello, Kathianne, Vincent, Isabel, Klein, Melissa, *How a New York heiress made her nurse a millionaire*, New York Post, November 20, 2011.

of undue influence, Bock, Kamsler and Peri must come forward with an explanation of the role he/she played in the execution of the Will and the making of any gifts, as the case may be, and to furnish proof that the transactions were the product of the free and voluntary acts of Huguette. *See Gordon v. Bialystoker Center and Bikur Cholim, Inc.*, 45 NY2d 692. 698-699 (1978); *In re Besdansky*, 31 Misc.2d 1210 (A)(2011); *Matter of Elmore*, 42 AD2d 240 (3d Dept. 1973).

The Role of the Public Administrator

20. Although Peri's counsel makes much of the role of the Public Administrator in this proceeding, this role was recognized and pointedly addressed by the Family Members in the Memorandum of Law in support of their motion. Nevertheless, once again, Peri ignores the position of the Family Members. She obviously is fixed on making an argument regardless of its merits.

21. Peri's contention that the Public Administrator alone should be the protagonist in the accounting proceeding against Bock and Kamsler ignores one very important fact, which is that the Public Administrator does not oppose the application of the Family Members to intervene. Further, Peri ignores another very important practical fact, which is that this accounting is immense, involving literally thousands of transactions over many years, and scores of thousands of documents. That counsel for the Family Members would assist in uncovering the facts need hardly be said. A full airing of those facts is what is called for.

22. The Family Members have always acknowledged that the Public Administrator serves an important role in this proceeding as an independent fiduciary. However, the Family Members, as the closest living relatives of Huguette, have both a significant personal as well as a financial stake. Further, Peri fails to respond to the contention that the provisions of SCPA 2210(10) do not apply to attorney-in-fact accountings, and that, in all events, intervention is

discretionary with the Court, and such discretion should be exercised in favor of allowing the Family Members to be parties to the accounting proceeding.

Peri's Discussion of Legal Precedent

23. While Peri contends that two cases cited by the Family Members (*Plantech Housing v. Conlan*, 74 AD2d 920 (2d Dept. 1980); *Raymond v. Honeywell*, 58 Misc.2d 906 (1968)) are inapposite, a contention with which your deponent completely disagrees (see below), he makes no attempt to discredit the series of cases cited by the Family Members supportive of their argument that the jurisdictional provisions of SCPA article 22 are inapplicable to this proceeding, and that the issue of intervention rests within the discretion of the Court. See e.g., *In re Trustco*, 929 NYS2d 707 (2011); *Matter of Gall*, 182 NY 270 (1905); *Matter of Gershenoff*. 2 Misc.3d 847 (2008).

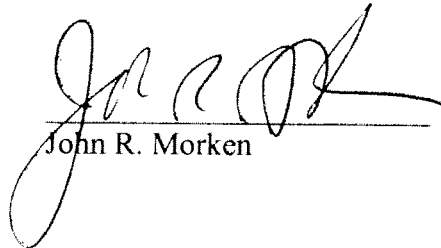
24. Further, counsel's discussion of the holding in *Plantech Housing v. Conlan*, *supra.*, is entirely incorrect. In fact, despite counsel's claim that the school district in that case was entitled to statutory notice, the Appellate Division held to the contrary, finding that no notice by statute was required. Nevertheless, the Appellate Division granted the motion to intervene, on the grounds that the school district, like the Family Members here, had a financial interest in the outcome of the action. Similarly, while the school district in *Raymond*, *supra.*, was entitled to notice by statute, that did not translate to joinder. Rather, in granting intervention, the court relied on the fact that the district, like the Family Members here, had a financial stake in the outcome of the proceeding.

25. Moreover, Peri's counsel essentially concedes the Family Members' claims that the requested intervention will serve the interests of judicial economy, and will promote efficiency in the pending probate proceeding by providing the Family Members with some of the

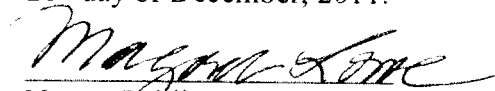
discovery involving the very same issues impacting upon the validity of the propounded Will. The Family Members are not hoping for “two bites of the same apple”, as Peri’s counsel contends (*see* Corn’s Aff. ¶8). Rather, the purpose is to bring both the accounting proceeding and the probate proceeding to an expeditious and correct conclusion.

Conclusion

26. For all the reasons asserted above and in the Reply Memorandum submitted herewith, and for the reasons asserted in their initial papers, it is respectfully requested that Peri’s cross-motion be denied, and the motion by the Family Members to intervene be, in all respects, granted.


John R. Morken

Sworn to before me this
21st day of December, 2011.


Notary Public
Interwoven\2131060.2

MARGARET LOWE
NOTARY PUBLIC, State of New York
No. 01LO4613171
Qualified in Suffolk County
Commission Expires September 30, 2013

<http://clark.msnbc.com>

EXHIBIT A

At the Surrogate's Court of the State of New York, in and for the County of New York, at 31 Chambers Street, New York, New York on the 20th day of December, 2011.

Present: Honorable Kristin Booth Glen,
Surrogate.

New York County Surrogate's Court
DATE FILED
Date: 12/20/11

In the Matter of the Petition of the Public Administrator, New York County, as Temporary Administrator of the Estate of

HUGUETTE M. CLARK,

Deceased,

For a Decree Pursuant to SCPA § 711 Revoking the Preliminary Letters Testamentary Issued to Wallace Bock and Irving H. Kamsler and for Related Relief.

File No. 1995-1375/A

ORDER TO SHOW
CAUSE

UPON the annexed petition and supporting papers of the Public Administrator, New York County, as Temporary Administrator of the Estate of Huguette M. Clark, verified on the 20th day of December, 2011, and upon all prior proceedings had herein, it is hereby

ORDERED, that respondents Wallace Bock and Irving H. Kamsler show cause at a term of this Court, to be held at the Surrogate's Court of the County of New York, 31 Chambers Street, New York, New York, in Courtroom 503, on the 23rd day of December, 2011 at 10:00 in the forenoon of that day, or as soon thereafter as counsel can be heard, why the Court should not grant the Petition and issue a Decree awarding the following relief:

- (i) Revoking the Preliminary Letters Testamentary heretofore issued to Wallace Bock and Irving H. Kamsler, or in the alternative, if the Court finds that there are material issues of disputed fact, immediately suspending the Preliminary Letters Testamentary heretofore issued to Wallace Bock and Irving H. Kamsler, pending a

hearing on the Petition for Revocation;

- (ii) Directing Wallace Bock and Irving H. Kamsler, and their attorneys, to immediately surrender to the Public Administrator all documents, information and property in their possession that is necessary for the effective administration of the Estate;
- (iii) Requiring Wallace Bock and Irving H. Kamsler to account for all legal fees paid to their attorneys from the Estate, so that a determination may be made whether such legal fees were proper administration expenses;
- (iv) Requiring Bock and Kamsler to pay the legal fees and costs incurred by the Public Administrator in connection with this Petition; and
- (v) Awarding Petitioner such other and further relief as may be just and proper.

SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order, together with the Petition and the papers submitted in support thereof, be good and sufficient if made as follows:

- (i) by personal service on or before December 20, 2011 upon Holland & Knight, LLP, the attorneys for Wallace Bock and Irving H. Kamsler, at their offices at 31 West 52nd Street, New York, NY 10019; and
- (ii) by service by electronic mail and overnight courier delivery, on or before December 20, 2011, upon the following: Greenfield Stein & Senior, LLP, the attorneys for Hadassah Peri, at their offices at 600 Third Avenue, New York, NY 10016; Farrell Fritz, P.C. and Thomas R. LeViness, Esq., the attorneys for certain distributees, at their respective offices at 1320 RXR Plaza, Uniondale, NY 11556

and 260 Madison Avenue, 18th Floor, New York, NY 10016; the Office of the Attorney General of the State of New York, Charities Bureau, as representative of charitable beneficiaries, at its offices at 120 Broadway, New York, NY 10007; Putney Twombly Hall & Hirson LLP, the attorneys for Edith MacGuire, at their offices at 521 Fifth Avenue, New York, NY 10175; and Paul Hastings, LLP, the attorneys for The Corcoran Gallery, at their offices at 75 East 55th Street, New York, NY 10022.

A handwritten signature in black ink, appearing to be 'KJL' or similar, written above a horizontal line.

Surrogate

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Petition of the Public Administrator,
New York County, as Temporary Administrator of the
Estate of

HUGUETTE M. CLARK,

Deceased,

For a Decree Pursuant to SCPA § 711 Revoking the
Preliminary Letters Testamentary Issued to Wallace Bock
and Irving H. Kamsler and for Related Relief.

File No. 1995-1375/A

PETITION

TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK:

The Petition of the Public Administrator, New York County (the "Public Administrator"), with offices at 31 Chambers Street, Room 311, New York, New York 10007, respectfully shows:

1. Decedent Huguette M. Clark (hereafter "decedent" or "Mrs. Clark") died on May 24, 2011, domiciled at 907 Fifth Avenue, New York, New York.

2. An instrument dated April 19, 2005 has been offered for probate as decedent's Last Will and Testament by Wallace Bock ("Bock") and Irving H. Kamsler ("Kamsler"), the nominated executors under that instrument. The April 19, 2005 instrument has not been admitted to probate. A supplemental citation in the probate proceeding is returnable on January 6, 2012. Nineteen of decedent's distributees have requested pre-objection discovery, and a contest in the probate proceeding is expected.

3. By Order of this Court dated July 5, 2011, Preliminary Letters Testamentary issued to Bock and Kamsler (the "Preliminary Executors"), and Letters of Temporary Administration issued to the Public Administrator, to act by unanimous decision in the administration of the

Estate.

4. As Temporary Administrator, the Public Administrator is a person interested in the Estate, and is authorized to commence this proceeding pursuant to SCPA § 711.

PRELIMINARY STATEMENT

5. The Public Administrator brings this Petition seeking, among other relief, the revocation of the Preliminary Letters Testamentary issued to Bock and Kamsler.

6. Information and documents recently provided to the Public Administrator establish – by uncontroverted evidence – that Bock and Kamsler (a) failed to prepare or file gift tax returns on behalf of Mrs. Clark for the years 1997 through 2003, and, notwithstanding their failure to file these returns, fraudulently charged Mrs. Clark for their preparation and filing; (b) prepared and filed gift tax returns for the years 2004 through 2009 that contained false and material misstatements; (c) underreported and underpaid by millions of dollars the gift tax and generation-skipping transfer (“GST”) tax owed by Mrs. Clark during the years Bock and Kamsler were purporting to act on her behalf in fiduciary roles; and (d) fraudulently misrepresented to the Internal Revenue Service that gift tax returns were filed when, in fact, they had not been filed.

7. Bock and Kamsler’s fraud and gross negligence have caused tens of millions of dollars in damages to Mrs. Clark and the Estate, in the form of interest and potential penalties owed to the Internal Revenue Service. This harm is ongoing and can be mitigated only with the immediate removal of Bock and Kamsler as preliminary executors.

8. The facts set forth below are based principally upon information and documents provided by Bock and Kamsler to the Public Administrator. These facts are undisputed and

establish that Bock and Kamsler are unfit for the execution of their office, by reason of their dishonesty, improvidence, waste and want of understanding. The Public Administrator seeks the issuance of a Decree pursuant to SCPA §§ 711(1), 711(2) and 711(8), revoking Bock's and Kamsler's Preliminary Letters Testamentary.

FAILURE TO FILE GIFT TAX RETURNS

9. Bock is an attorney admitted to practice in the State of New York. He acted as Mrs. Clark's attorney at all times during the period from 1997 through her death on May 24, 2011. During that period, Bock, or the firm of which he was a member, was paid a minimum monthly retainer ranging from \$12,000 in 1997 to \$15,000 in 2011 (although actual monthly fees charged were as high as \$34,500), for legal services purportedly rendered to Mrs. Clark.

10. Kamsler is a Certified Public Accountant licensed to practice by the State of New York. Kamsler acted as Mrs. Clark's accountant at all times during the period from 1997 through her death on May 24, 2011. During that period, Kamsler, or the firm with which he was associated, was paid a monthly retainer ranging from \$3,300 in 1997 to \$7,500 in 2011, for accountant services rendered to Mrs. Clark.

11. According to Bock's billing statements and accompanying time entries, the professional services that Bock rendered to Mrs. Clark during the period from 1997 through 2011 included ongoing responsibility for "maintenance of [decedent's] accounts and payment of expenses; "preparation and filing" of all tax returns including income and gift tax returns; and "general attention to banking arrangements."

12. The professional services Kamsler rendered to Mrs. Clark during the period from 1997 through 2011 included preparation and filing of all required tax returns including income

and gift tax returns; and auditing decedent's accounts, including preparation of profit and loss statements.

13. According to information and documents provided by Bock and Kamsler, during the period 1997 through 2003, Mrs. Clark made non-charitable gifts of cash, real estate, artwork, cooperative apartments, and other miscellaneous personal property, to various individuals, in the aggregate amount of approximately \$56,000,000.¹

14. In their respective roles as Mrs. Clark's attorney and accountant, Bock and Kamsler had personal knowledge of every gift made by Mrs. Clark.

15. Mrs. Clark was required to file a federal gift tax return, Form 709, for each of the years during the period from 1997 through 2003.² The aggregate gift tax and GST tax due on Mrs. Clark's gifts during those seven years was approximately \$41,500,000.

16. During the years 1997 through 2003, Bock and Kamsler made, on decedent's behalf, estimated payments of gift taxes to the Internal Revenue Service in the aggregate amount of \$7,475,000, an underpayment of approximately \$34,000,000 on the gift and GST taxes that were due. To date, this amount has not been paid, although Bock and Kamsler have known since at least 2003 that \$34,000,000 was past due and owing, exclusive of interest and penalties.

17. Bock and Kamsler were jointly responsible for the preparation and filing of gift tax

¹ The Public Administrator does not concede that these gifts, or any of the other purported gifts by Mrs. Clark referred to in this Petition, were valid as a matter of law. The Public Administrator will seek, in a separate proceeding, to clawback into the Estate any gifts deemed to be invalid.

² New York State gift tax returns were also required for the years 1997, 1998 and 1999. New York State's gift tax was repealed effective January 1, 2000. The Public Administrator has not yet ascertained whether New York State gift tax returns were filed for Mrs. Clark, and the allegations relating to gift taxes and gift tax returns in this Petition refer only to federal gift taxes and federal gift tax returns.

returns for Mrs. Clark.

18. Although Bock and Kamsler made some estimated gift tax payments on behalf of Mrs. Clark, they inexplicably failed to prepare or file a gift tax return for Mrs. Clark for any year during the period from 1997 through 2003. Upon information and belief, no such return has been filed for those years.

19. Bock and Kamsler knew, or should have known, that the failure to pay the \$34,000,000 of gift and GST taxes due would result in the assessment by the Internal Revenue Service of millions of dollars in interest.

20. Bock and Kamsler knew, or should have known, that the failure to file gift tax returns for the period from 1997 through 2003 would expose Mrs. Clark to potential liability for millions of dollars in additional “failure to file” penalties.³

21. Bock and Kamsler knew, or should have known, that the failure to pay gift and GST taxes due for the period from 1997 through 2003 would expose Mrs. Clark to potential liability for millions of dollars in additional “failure to pay” penalties.

22. Upon information and belief, Bock or Kamsler did not inform Mrs. Clark that she owed \$34,000,000 in unpaid gift and GST taxes for the period from 1997 through 2003, or that millions of dollars in additional interest and potential penalties were accruing every year that the taxes were not paid.

23. At all relevant times, Mrs. Clark had sufficient liquid assets (in addition to substantial illiquid assets) that could have been used to pay the gift and GST taxes that were due.

³ The Public Administrator expects that the Internal Revenue Service will argue that there are “failure to file” and “failure to pay” penalties due and payable by the Estate. By presenting these potential liabilities, the Public Administrator is not conceding that such penalties are due and payable, as certain exceptions to the assessment of such penalties may apply.

Upon information and belief, neither Bock nor Kamsler advised Mrs. Clark to liquidate assets and pay the gift and GST taxes to avoid the assessment of interest and penalties.

24. Upon information and belief, neither Bock nor Kamsler informed Mrs. Clark of the full tax ramifications of her gift giving. The little advice they did give to Mrs. Clark regarding gift tax was incomplete and incorrect. In two letters that Bock and Kamsler sent to Mrs. Clark in October 2000, they underestimated by millions of dollars the amount of taxes due as a result of her gifts that year. In another letter sent to Mrs. Clark by Kamsler in July 2004, he underestimated by several hundred thousand dollars the amount of taxes that would be due as a result of proposed gifts.⁴

25. Mrs. Clark made additional gifts in the aggregate amount of more than \$20,000,000 in the years subsequent to 2003. Bock and Kamsler never advised Mrs. Clark of the full extent of the taxes due on those gifts, or that she still owed \$34,000,000 in gift and GST taxes, plus millions of dollars in interest and potential penalties, for the gifts prior to 2004.

26. In 2005, Kamsler requested from the Internal Revenue Service a transcript of Mrs. Clark's income and gift tax returns. Kamsler received the transcript from the IRS and provided a copy to Bock. The transcript confirmed that no gift tax returns had been filed by Mrs. Clark for any of the years from 1999 through 2003. A handwritten note on the transcript indicates "need Form 709" for each of the years for which estimated gift taxes had been paid.

⁴ According to a letter from Bock to Mrs. Clark in August 2004, Kamsler's discussions the previous month with Mrs. Clark about "tax implications" of gifts were at Bock's suggestion. After confirming Kamsler's incorrect advice about the amount of gift taxes that would be due on gifts Mrs. Clark was considering, Bock, in his letter, "strongly urge[s]" Mrs. Clark to make a will, enclosing for her convenience a draft will naming himself and Kamsler as executors. Bock's August, 2004 letter was one of many over the course of several years "strongly urging" Mrs. Clark to make a will that named Bock and Kamsler as executors.

27. By 2005, in addition to the \$34,000,000 in gift and GST taxes owed by Mrs. Clark, by reason of Bock's and Kamsler's failure to file any gift tax returns, Mrs. Clark was incurring additional interest and potential penalties of several million dollars each year.

28. By 2011, Mrs. Clark owed \$34,000,000 in gift and GST taxes for the years 1997 through 2003; plus potential late filing and late payment penalties in excess of \$16,000,000; plus interest on the unpaid taxes and potential penalties in the amount of approximately \$32,000,000; for a total potential liability to the IRS in excess of \$82,000,000.⁵ Upon information and belief, neither Bock nor Kamsler made Mrs. Clark aware of this tax liability.

THE PRELIMINARY EXECUTORS LIED TO THE PUBLIC ADMINISTRATOR ABOUT THE 1997-2003 GIFT TAX RETURNS

29. Upon the Public Administrator's appointment as temporary administrator, she promptly requested from Bock and Kamsler copies of all gift tax returns prepared and filed on behalf of Mrs. Clark. These requests were made by counsel for the Public Administrator to counsel for Bock and Kamsler. The first such request was made by letter dated July 28, 2011, repeated at a meeting on July 29, 2011, and repeated again by letter dated August 1, 2011. Counsel for the Public Administrator also sent to the IRS a request for copies of all income and gift tax returns filed on behalf of Mrs. Clark.

30. On August 15, 2011, Bock and Kamsler (through counsel) produced to the Public Administrator copies of unsigned gift tax returns for each of the years from 2004 through 2009 prepared for Mrs. Clark. They did not produce any gift tax returns for any year prior to 2004.

⁵ This potential tax liability is only for the years 1997 through 2003. As set forth below, as a result of the Preliminary Executors' further negligence and fraud, Mrs. Clark incurred additional gift and GST tax liabilities, including interest and potential penalties, aggregating more than \$10,000,000

Bock and Kamsler also produced to the Public Administrator certain documents entitled "Attachment to Form 709", which were lists of purported gifts for certain years before 2004. Counsel for Bock and Kamsler repeatedly advised counsel for the Public Administrator that a search for the gift tax returns for the years 1997 through 2003 "was continuing."

31. During September and October 2011, at weekly or bi-weekly meetings with counsel for Bock and Kamsler, the Public Administrator's attorneys repeatedly requested copies of the gift tax returns for 1997 through 2003. Counsel for Bock and Kamsler advised that the search for the gift tax returns was ongoing; that the files were "voluminous"; that the files were not all in one location; and that the search was extensive and time-consuming. Bock and Kamsler continued to withhold from the Public Administrator the truth that they never filed gift tax returns for the years 1997 through 2003 for Mrs. Clark.

32. On November 10, 2011, the Public Administrator's attorneys received a telephone call from two Internal Revenue Service agents. During that telephone call the IRS agents advised that the IRS had no record of any gift tax return having been filed for Mrs. Clark for the years between 1997 and 2001 (there was no discussion concerning gift tax returns for 2002 and 2003).

33. The Public Administrator's attorneys immediately called counsel for Bock and Kamsler to relay this information, and to again ask whether gift tax returns had been filed for any of the years from 1997 through 2003. Counsel for Bock and Kamsler responded that he would speak to his clients.

34. On December 8, 2011, for the first time, Bock and Kamsler (through counsel) admitted to the Public Administrator's attorneys that no gift tax returns had ever been filed for

for the years 2004 through 2009, all of which remains unpaid.

Mrs. Clark for any of the years from 1997 through 2003.

35. If Bock and Kamsler lied to their attorneys about their failure to file gift tax returns, their counsel needlessly incurred tens of thousands of dollars in legal fees charged to the Estate, in a futile months-long search for gift tax returns that Bock and Kamsler knew did not exist, and in the preparation of *pro forma* estate tax projections and estate tax returns based upon incorrect information.

36. Since July 5, 2011, when Bock and Kamsler were appointed Preliminary Executors, the Estate has been further damaged by hundreds of thousands of dollars by Bock's and Kamsler's ongoing concealment of their failure to file gift tax returns and pay the gift and GST taxes owed by Mrs. Clark for the years 1997 through 2003.

**BOCK AND KAMSLER'S FRAUD AND GROSS NEGLIGENCE
CONCERNING GIFT TAX RETURNS FOR 2004 THROUGH 2009**

37. Kamsler prepared and filed gift tax returns for Mrs. Clark for the years 2004 through 2009.

38. During the period from 2004 through 2009, Bock continued to bill Mrs. Clark a minimum amount of \$15,000 every month for legal services that, according to Bock's billing statements and time entries, included preparation and filing of gift tax returns. Accordingly, Bock knew, or should have known, of the content of the gift tax returns prepared and filed by Kamsler.

39. Each of Mrs. Clark's gift tax returns for the years from 2004 through 2009, prepared and filed by Kamsler, contain significant errors and misrepresentations.

40. Schedule A of the federal gift tax return, Form 709, requires that the taxpayer identify every donee whose gift is subject to GST tax in addition to gift tax. Because of Mrs.

Clark's advanced age (she was anywhere from 97 to 102 years of age when the subject gifts were made), most of the gifts during the period 2004-2009 were made to donees who were "skip persons" (*i.e.*, more than 37.5 years younger than Mrs. Clark). Such gifts were subject to gift tax *and* GST tax, and should have been reported in Part 2 of Schedule A. However, each of the Forms 709 prepared by Kamsler incorrectly lists all donees (including Kamsler himself), and their respective gifts, in Part 1 of Schedule A, as gifts subject only to gift tax.

41. Kamsler's account on the LinkedIn.com web site lists one of his "specialties" as "Gift Tax Planning and Preparation".

42. Bock's biography on the web site maintained by his law firm states that he has "substantial expertise in estate planning". The web site states that the law firm has a "Trusts & Estates Practice Area," with expertise in drafting "instruments designed to achieve dramatic reductions in gift and estate taxes."

43. Bock and Kamsler knew, or should have known, that the gift tax returns filed for Mrs. Clark for the years 2004 through 2009 failed properly to disclose that most of the donees were "skip persons" and that the gifts received by them were subject to GST tax.

44. As a result of the failure properly to identify gifts subject to GST tax, Mrs. Clark underpaid the taxes due as a result of her gifts during the period from 2004 through 2009 by more than \$7,000,000. That principal amount of tax liability remains due and owing by the Estate.

45. As a result of Mrs. Clark's underpayment of taxes due as a result of her gifts during the period from 2004 through 2009, the Estate owes interest and potential late payment penalties aggregating approximately \$3,200,000.

46. Schedule B of Form 709 requires that the taxpayer set forth information concerning

all gift tax returns filed by the taxpayer for prior years. The taxpayer is required to set forth the calendar year for which each gift tax return was filed, and to identify the Internal Revenue Service office where each prior return was filed.

47. Each of the gift tax returns prepared by Kamsler for Mrs. Clark for the years from 2004 through 2009 falsely stated in Schedule B that gift tax returns were filed by Mrs. Clark for each of the years from 1997 through 2003, and included false information as to the Internal Revenue Service office where such return was purportedly filed.

48. Section 7206(2) of the Internal Revenue Code of 1986, as amended, provides that it is a felony for any person to willfully submit, or aid or assist in the preparation or submission of, any return that is fraudulent or false as to a material issue. A false statement is considered material when it has the potential to hinder efforts by the Internal Revenue Service to monitor and verify the tax liability of the taxpayer.

49. Upon information and belief, Kamsler and Bock knew that the gift tax returns filed for each of the years 2004 through 2009 misrepresented the status of the donees in Schedule A, and that such information was material.

50. Bock and Kamsler knew that the information set forth in Schedule B of the gift tax returns filed for 2004 through 2009, representing that gift tax returns were filed for the years from 1997 through 2003, was false and material.

BOCK AND KAMSLER'S FRAUD AND NEGLIGENCE CONTINUED IN 2009

51. By 2009, Mrs. Clark owed more than \$80,000,000 in unpaid gift and GST taxes, interest and potential penalties. Because the taxes remained unpaid, and interest and possible penalties continued to accrue, that amount was increasing by millions of dollars each year.

There is no evidence that Bock or Kamsler ever advised Mrs. Clark of this enormous tax liability.

52. Prior to 2009, most of Mrs. Clark's cash gifts had been made by checks signed by her and drawn on her personal account at JPMorgan Chase Bank ("JPMorgan"). The last check signed by Mrs. Clark, which is barely legible, is dated February 6, 2009 (in the amount of \$60,000, payable to Geula Peri, the daughter of Hadassah Peri, Mrs. Clark's nurse).

53. Neither Mrs. Clark's inability to write checks after February 2009, nor her enormous tax liabilities, stopped the purported gift-giving.

54. On February 11, 2009, using a JPMorgan account from which he paid Mrs. Clark's expenses (and over which he had only a limited bank power of attorney, with no gift-giving authority), Bock wrote a gift check to Hadassah Peri, in the amount of \$5,000,000.

55. In July 2009, when Mrs. Clark was 103 years old, Bock obtained from her a purported general power of attorney. Bock thereafter went on a check writing spree. On November 16, 2009, he wrote checks – purported gifts – from Mrs. Clark's personal JPMorgan account, in the aggregate amount of \$350,000, payable to several individuals including a \$60,000 check payable to Hadassah Peri and a \$60,000 check payable to his co-fiduciary, Kamsler.

56. Bock did not stop there. On December 3, 2009, Bock wrote a gift check to himself from Mrs. Clark's bank account in the amount of \$60,000.

57. On December 29, 2009, Kamsler received another cash gift in the amount of \$50,000 (the Public Administrator has not yet determined which account was used for this gift).

58. Mrs. Clark's "gifts" in 2009 totaled \$5,550,419. Bock and Kamsler knew of each of these "gifts." They also knew, or should have known, that Mrs. Clark's tax liability for the 2009 gifts was over \$4,000,000, including \$1,733,212 in GST tax.

59. Despite knowing that Mrs. Clark owed more than \$4,000,000 in gift and GST taxes for tax year 2009, Bock and Kamsler paid estimated gift tax on her behalf of only \$167,850.

60. In October 2010, as the filing deadline for the 2009 gift tax return approached, Bock applied to JPMorgan for an emergency \$3,000,000 loan to help pay the tax liabilities in connection with the 2009 gifts. JPMorgan denied the loan request.

61. Bock and Kamsler filed the 2009 gift tax return, Form 709, which showed a “balance due” in the amount of \$2,338,090. As with all of the gift tax returns filed by them for the years 2004-2009, the return failed to disclose the skip status of the donees and failed to calculate the GST tax due. Bock and Kamsler did not pay the balance shown on the return as due, notwithstanding that Mrs. Clark had substantial assets that could have been liquidated to pay this tax obligation.

62. The Internal Revenue Service sent Bock a Notice of Intent to Levy on January 3, 2011, for the balance due of \$2,461,953.66, which included over \$20,000 in interest and penalties.⁶

63. On January 26, 2011, Kamsler wrote to the Internal Revenue Service, asking for abatement of late payment penalties. Bock received a copy of that letter. Kamsler lied in that letter. He represented to the IRS that he was not aware of the \$5,000,000 gift to Hadassah Peri in February, 2009, until “it was time to file the Gift Tax Return” in October 2010, because it was purportedly written on an account (that is, Bock’s attorney-in-fact account) which he did not review.

64. Kamsler’s representation to the Internal Revenue Service in his January 26, 2011

⁶ The IRS had no way of knowing that Mrs. Clark’s 2009 return misrepresented the skip status of virtually all of the donees, and that an additional \$1,733,212 of GST tax was due.

letter was false and material. A “Profit & Loss” statement prepared by Kamsler in June 2010 – four months before the gift tax return was to be filed – lists the \$5,000,000 gift to Hadassah Peri. Upon information and belief, Kamsler provided a copy of the June, 2010 Profit & Loss statement to Bock. Bock, of course, knew of the \$5,000,000 payment to Hadassah Peri because he wrote the check.

65. Kamsler enclosed payment of \$2,461,953.66 with his January 26, 2011 letter. According to the letter, Bock and Kamsler “sold securities in order to raise the amount needed to pay this tax.”

66. By January, 2011, when Bock and Kamsler were selling securities to pay only the 2009 gift tax, Mrs. Clark’s actual gift tax and GST tax liabilities (including interest and potential penalties), exceeded \$90,000,000 and was increasing at the rate of approximately \$9,000 per day.

BOCK AND KAMSLER VIOLATED THEIR FIDUCIARY DUTIES TO MRS. CLARK AND TO THE ESTATE

67. As set forth above, the undisputed facts establish that Bock and Kamsler have failed to act in the best interests of Mrs. Clark and in the best interests of the Estate.⁷

68. The damage to the Estate, as a direct result of Bock and Kamsler’s fraud, negligence and misconduct – that is, the interest and potential penalties owed on the past due gift and GST taxes – may exceed \$50,000,000.

69. Bock and Kamsler have demonstrated that they are unfit for the execution of their office as Preliminary Executors, by reason of their dishonesty, improvidence, waste and want of

⁷ The Public Administrator believes that there are other acts of misconduct by Bock and Kamsler that constitute grounds for revocation of their letters, including improper solicitation of gifts, abuse of their powers as attorneys-in-fact for Mrs. Clark, and the making of gifts as attorneys-in-fact without proper authority. The Public Administrator is investigating these actions and will, as

understanding, both while Mrs. Clark was alive and subsequent to their appointment as Preliminary Executors.

70. The Preliminary Letters Testamentary issued to Bock and Kamsler should be revoked immediately, pursuant to SCPA §§ 711(1), 711(2) and 711(8). In the alternative, if the Court finds that there are material issues of disputed fact that require a hearing, their Preliminary Letters Testamentary should be suspended immediately, pending the outcome of the hearing.

WHEREFORE, the Public Administrator seeks the issuance of a Decree awarding the following relief:

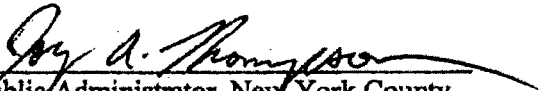
- (i) Revoking the Preliminary Letters Testamentary heretofore issued to Wallace Bock and Irving H. Kamsler, or in the alternative, if the Court finds that there are material issues of disputed fact, immediately suspending the Preliminary Letters Testamentary heretofore issued to Wallace Bock and Irving H. Kamsler, pending a hearing on the Petition for Revocation;
- (ii) Directing Wallace Bock and Irving H. Kamsler, and their attorneys, to immediately surrender to the Public Administrator all documents, information and property in their possession that is necessary for the effective administration of the Estate;
- (iii) Requiring Wallace Bock and Irving H. Kamsler to account for all legal fees paid to their attorneys from the Estate, so that a determination may be made whether such legal fees were proper administration expenses;
- (iv) Requiring Bock and Kamsler to pay the legal fees and costs incurred by the Public

may be appropriate, present the details to the Court in a future application.

Administrator in connection with this Petition; and

- (v) Awarding Petitioner such other and further relief as may be just and proper.

DATED: New York, New York
December 20, 2011


Public Administrator, New York County,
as Temporary Administrator
Petitioner
By: Joy A. Thompson, Deputy Public Administrator

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

The undersigned, Joy A. Thompson, the Deputy Public Administrator, New York County, petitioner in the foregoing Petition, being duly sworn, says:

I have read the foregoing Petition subscribed by me and know the contents thereof. The same is true of my own knowledge, except as to the matters stated therein to be alleged upon information and belief, and that as to those matters, I believe them to be true.


Joy A. Thompson

Sworn to before me this 20th
day of December, 2011.


Notary Public

JENNIFER FARRELL
Notary Public, State of New York
No. 01FA6205788
Qualified in Queens County
Comm. Expires May 2013

FILE NO. 1995-1375/A

SURROGATE'S COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

In the Matter of the Petition of the Public Administrator, New York County, as Temporary
Administrator of the Estate of

HUGUETTE M. CLARK,

Deceased,

For a Decree Pursuant to SCPA § 711 Revoking the Preliminary Letters Testamentary Issued to
Wallace Bock and Irving H. Kamsler and for Related Relief.

ORDER TO SHOW CAUSE AND PETITION

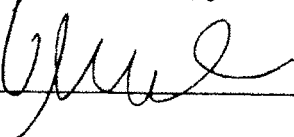
SCHRAM & GRABER, P.C.
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MILBANK, TWEED, HADLEY & McCLOY LLP
*Attorneys for Public Administrator,
New York County*

One Chase Manhattan Plaza
New York, NY 10005
(212) 530-5000

Certification pursuant to Rules of the
Chief Administrator, §130-1.1-a.



SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

File No.:1995-1375/A

Accounting of
WALLACE BOCK and IRVING KAMSLER
As Attorneys-in-Fact for

HUGUETTE M. CLARK

Deceased.

**REPLY AFFIDAVIT AND AFFIDAVIT
IN OPPOSITION TO CROSS-MOTION**

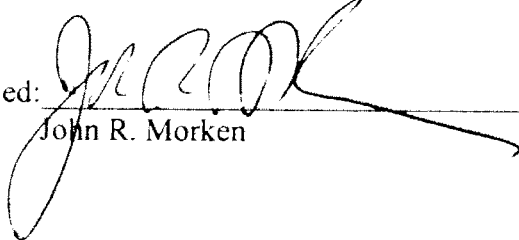
FARRELL FRITZ, P.C.
Attorneys for Movants
1320 RXR Plaza
Uniondale, New York 11556-1320
(516) 227-0700

This certification, pursuant to 22 NYCRR Part 130-1.1-a,
applies to the following papers contained within this back:

- 1) **Reply Affidavit and Affidavit in
Opposition to Cross-Motion**

Dated: December 21, 2011

Interwoven.2135192.1

Signed: 

John R. Morken