

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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In the Matter of the Application of
CHARLES FERRANDO,

Petitioner,

For the Appointment of a Guardian of
the Person and Property of

ADELE FERRANDO
An Alleged Incapacitated Person.
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**VERIFIED
PETITION**

Index No.

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

Charles Ferrando, being duly sworn, deposes and states:

1. I am the son of Adele Ferrando, the Alleged Incapacitated Person, and as such, I am fully familiar with the facts and circumstances of this proceeding.
2. I make this Petition to request that the Court appoint me as guardian of the person of my mother, and to appoint an independent guardian from the Office of Court Administration list as guardian of her property.

ALLEGED INCAPACITATED PERSON

3. My mother was born on March 18, 1928. Her social security number is 141-22-4413. She presently resides at 52 Clinton Place, Staten Island, New York 10302, a one-family home which she owns.
4. My mother was married for over 50 years to Robert Ferrando, who died in 2008. They have three children: Your petitioner, Charles Ferrando, residing at 44 Dover

Green, Staten Island, NY 10312, with a birthdate of 1/18/55; Cecilia Nicholas, residing at 52 Lathrop Avenue, Binghamton, NY, with a birthdate of 2/28/56; and Mary Beth Walker, residing at 26 Saranac Road, Sea Ranch Lakes, FL, with a birthdate of 5/19/58.

5. My mother suffers from dementia. She requires a wheelchair to ambulate. She requires assistance with all aspects of her daily living including but not limited to food preparation, organizing and overseeing her medications, assistance with dressing and personal hygiene, shopping and management of her finances.

6. My mother continued to care for herself and manage her finances after my father's death in 2008. Her grandson, Bobby Nicholas, lived in her home during various times during the years 2008 through the present, using one of the bedrooms upstairs. He never provided care to my mother but would check on her in the morning before he left for work or school and again at night. He used the kitchen and the bathroom on the first floor, but there was only limited interaction between him and my mother. My mother's meals are provided by Meals on Wheels.

7. My mother was mentally competent until approximately January 2014, when she began showing signs of dementia. Since that time, her condition has worsened, and she is no longer able to care for herself or to live alone.

8. In December 2014, my mother fell and fractured her pelvis. She was treated at Staten Island University Hospital and discharged for rehabilitation to Sea View Hospital and Rehabilitation Center in January 2015, and was sent home at the end of January. Her dementia worsened severely after the accident.

9. As a result of my mother's dementia, she doesn't always know where she is, confuses family members, and had mistaken her granddaughter, Bess, for a homecare

aide. She cannot organize her medications or take them in a timely manner. She is unable to cook for herself and she cannot manage her finances. She does know that she owns her own home, and that her husband is deceased. Most of the time, she can name her children and grandchildren, but sometimes she gets confused. I am afraid that my mother is subject to influence by my sister, Cecilia, and that her finances could be in danger when they are needed to provide for her care. Without 24-hour care, my mother's health and wellbeing are in danger as well.

10. It was my intention when my mother returned home to arrange for 24 hour care from a reputable homecare agency and to use my mother's funds to pay for such care. However, there was disagreement from my two sisters, Cecilia and Mary Beth, who did not believe it necessary to spend my mother's money for her care and that between us three siblings, we could manage my mother's care. My wife and I are unable to provide the homecare ourselves. Our home is a multi-level townhouse in which it would be highly inappropriate for my mother to visit or stay for any length of time. Although my wife and I visit my mother regularly, neither of us are free to provide her with the 24 hour care she requires.

11. When my mother returned home, my sister, Cecilia, came from Binghamton, NY, where she resides, to stay with my mother. She stated that she was "in charge", and at that time, my mother was mentally competent enough to agree to have Cecilia stay with her. However, she was unable to realize that Cecilia was incapable of providing the care she required. Cecilia suffers from multiple sclerosis which is at times debilitating and at times promotes poor decision making. Because of Cecilia's

limitations, she was unable to manage my mother's care alone, so she also arranged to have her daughter, Bess, come to live with them and assist with my mother's care.

12. Bess was employed in Binghamton as a visiting nurse; however, Cecilia asked her to leave her job in order to come and assist with her grandmother's care.

13. In approximately August 2015, my sisters hired Lola Benson, a homecare aide who began coming once or twice per week to help my mother bathe.

14. My wife and I attempted to visit my mother numerous times while Cecilia was there, but were always told that 'mom is sleeping', or 'mom is tired', and there never seemed to be a convenient time for us to come. My sons have always had a close relationship with their grandmother, and Cecilia would not allow them to visit either. We continued to reach out to Cecilia to allow us to visit, but she would never give her consent. We didn't force the issue, as we knew a visit would probably result in a family argument, and we did not want to cause my mother any distress. Additionally, while Bess was living with my mother, her condition appeared to remain stable and I believed her to be in a safe environment.

15. Bess stayed with my mother and Cecilia from January 2015 to October 2015. At the end of October, Bess moved out and Cecilia was left alone with my mother for a period of two days. During those two days, Cecilia was unable to manage being alone with my mother, so on October 31, 2015, my sister, Mary Beth, came from Florida to help out. During the period of Mary Beth's visit, I was confident that my mother's situation was stable because Mary Beth had the capability to take care of her. We were even able to visit with my mother during Mary Beth's stay.

16. Mary Beth, however, could not remain caring for my mother and had to return to her home in Florida. She left my mother's home on November 15, 2015, and once again my mother's situation began to deteriorate.

17. Three days after Mary Beth left, on November 18, 2015, Cecilia phoned me to say that the heat in the house was not working, the house was going to "blow up", and that she and my mother needed to evacuate immediately. I questioned my sister at length about the problem, as my profession as a plant engineer for almost 30 years has given me specific expertise in heating matters. I was able to ascertain from our discussion that there in fact was no emergency, and I told my sister I would come the next morning to fix the problem. The temperature that night was mild and in the mid 50's. There was no danger of freezing pipes or of the occupants becoming uncomfortably cold during the night.

18. The next morning, November 19, 2015, my mother called me at approximately 6:00 a.m. to tell me she was all alone in the house. I went over that morning to find Cecilia and her car gone. My mother told me that she now recalled that Cecilia had left about 8:00 p.m. the night before. Her grandson, Bobby, was also gone, which I presumed meant he had already left for work.

19. I was outraged that my 87 year old mother had been left alone with no explanation. Additionally, when I arrived, I found a homemade, potentially dangerous system rigged to help Cecilia toilet my mother and unusual writing scrawled on the bathroom wall. Clearly Cecilia demonstrated poor judgment in constructing such an unsafe system and appeared to be suffering from some sort of mental impairment other than multiple sclerosis (see photos annexed hereto as Exhibit A).

20. My mother needs improvements done inside her home to accommodate her changing needs and provide a safe environment for her, which would include eliminating the toileting system installed by Cecilia and renovating the bathroom to provide for her disabilities.

21. I learned that Cecilia, instead of arranging to have those renovations done, had once again exercised poor judgment with plans to renovate the outside of the home with custom vinyl siding and had in fact hired a contractor to begin the job at a cost of \$28,500.00, charging a \$5,000.00 deposit to my mother's charge card. My mother's home does not need custom vinyl siding. There are only minor repairs which need to be made to the existing aluminum siding.

22. Further, my mother was extremely agitated about the siding job. She felt she had been pressured by my sister (who then abandoned her) to have the job done, as well as pressured as to which color scheme to choose. My mother did not want the siding, and she became more and more distressed the more she thought about it. When I learned about the job, I contacted the contractor by letter dated November 28, 2015 advising that he delay or cancel the siding job, and he agreed.

23. At that point I was so concerned for my mother's welfare that I made arrangements to move in with my mother until I was able to retain appropriate 24-hour homecare for my mother.

24. Later on that same day, November 19, while I was at my mother's home, we received a visit from Volunteers of America, who were called by my sister, Mary Beth, from Florida, to complain that there was no heat in the house. I do not know how

Mary Beth came to know this but would surmise that Cecilia called to tell her. After speaking with representatives of Volunteers of America, they subsequently referred my mother's case to Adult Protective Services ("APS").

25. On November 20, 2015, I met with Marina Potashnik from APS and explained my mother's limitations to her. She also interviewed my mother. Ms. Potashnik agreed that my mother required 24-hour care and advised that APS would institute a guardianship proceeding on my mother's behalf; however, she also advised that it could take several months and that if I was really concerned with my mother's wellbeing at the present time, it might be more practical if I instituted the proceeding. I then contacted Kuhn and O'Toole, LLP and retained them to represent me in this proceeding.

26. After my meeting with APS, I discussed my mother's living situation with her, and she understood enough to realize that she required professional care. My mother does not handle lifestyle changes well, so because she trusts and likes her aide, Lola, who comes to bathe her weekly, we approached Lola first to ascertain whether she would be available for a full-time position. Lola agreed, and she began a full-time schedule on Tuesday, November 24, 2015. My mother agreed to pay Lola from her personal finances, and she signed a check for \$2,000.00 payable to me, which I had been using to pay Lola's compensation for the period of November 24, 2015 to December 8, 2015. Thereafter, I paid Lola from my personal funds. My mother was happy with Lola and happy living in her own home.

27. Unfortunately, on November 29, 2015, Cecilia returned to my mother's home. Almost immediately, the situation once again worsened, and my mother was

admitted to Staten Island University Hospital where she was diagnosed with a pulmonary embolism. She remained in the hospital for eight days and was discharged to Clove Lakes Rehabilitation Center for rehabilitation, where she currently remains. It is my understanding that she could be discharged home with 24-hour care provided there is a safe discharge plan.

FINANCIAL RESOURCES

28. Because I have not been allowed access on a regular basis to my mother or to her financial records, I have set forth below selected assets for which I was able to obtain information, although some of the information is out of date. It is my belief that my mother has sufficient assets to pay for her homecare for an extended period of time. However, I fear that some of those assets have been mismanaged and may continue to be mismanaged.

29. Upon information and belief, my mother's assets are as follows:

(a) Northfield Savings Bank CD - IRA Acct. No. xxxxxxxx2027 which will renew on 12/24/15, in the amount of \$71,124.86;

(b) Chase Money Market Savings Acct. No. xxxxxxxxxxxx3965 with a balance of approximately \$9,406.96 as of May 15, 2015;

(c) New York Community Bank Checking Acct. No. xxxxxxxx1049 with a balance of approximately \$2,765.06;

(d) Richmond County Savings Bank accounts (3): Acct. No. CD xxxx793 in trust for me with a balance of approximately \$16,000; Acct. No. CD xxxx785 in trust for my sister, Cecilia, in an amount undetermined at this time but which had a balance of

\$12,016.54 as of 2/3/01; Acct. No. CD xxxx777 in trust for my sister, Mary Beth, in an amount undetermined at this time but which had a balance of \$16,158.80 as of 2/3/01;

(e) Exxon stock in an undetermined amount;

(f) Real property located at 52 Clinton Place, Staten Island, NY 10302;

(g) A 50% interest as tenant in common with me in real property located at 39 White Plains Avenue, Staten Island, NY;

(h) Co-ownership with my sister, Cecilia, of a 24-acre mini farm in Laurens, NY;

(i) Two Northfield Savings Bank Certificates, Numbers 01-xxx134 and 01-xxx664 totaling \$23,010.38 and \$10,640.45, respectively, in the name of Adele Ferrando in trust for Mary Beth Walker;

(j) In addition, it is my understanding that there is a checking account ending in No. 11031 at Richmond County Savings Bank in an undetermined amount into which my mother's monthly income is automatically deposited and from which many of her monthly household bills are automatically paid. Additional household bills had always been automatically charged to her Citicard and paid monthly. I could not find any statements or other information regarding this account.

(k) Also, there appears to be a missing passbook for an account which was held jointly with me and my mother with a balance of approximately \$9,000.00 which was understood between us to be used for household repairs, renovations, etc. When I asked my mother if she knew anything about that account, she told me that Cecilia told her she had no more money and that it had all been used up.

30. Upon information and belief, my mother's income is as follows:

- (a) Social Security - \$1,700 per month;
- (b) NYC Board of Education Pension - \$1,300 per month;
- (c) Dividends (quarterly) - between \$600 - \$1000

31. Since Cecilia had been living with my mother, it is my fear that a large amount of my mother's assets have been used for purposes other than my mother's care (as in the case of the vinyl siding) and are in danger of being dissipated further. Attached as Exhibit B are my mother's charge card statements for February, June and July, 2014, totaling an average of approximately \$700 per month, as opposed to the statements for the same months of February, June and July, 2015, totaling an average of over \$4,000 per month, and September 2015 in the amount of \$7,975.75.

32. In addition, attached as Exhibit C is a bank statement from the account at New York Community Bank (described in paragraph 29(c)) which is held jointly with my sister, Mary Beth, showing a withdrawal of \$9,000.00 on June 19, 2015, which has no explanation.

33. My mother's homecare aide costs \$4,700 per month, which was paid from her personal funds up to December 8, 2015, after which I have been paying from my personal funds. It is my wish that any property guardian continue to pay for 24-hour care from my mother's assets until such guardian could apply for Medicaid on my mother's behalf.

34. My mother has never executed a will or power of attorney. It is my understanding that she may have signed a health care directive upon her admission to Sea View Nursing Home and Rehabilitation Center in January 2015.

PETITIONER

35. Your petitioner, Charles Ferrando is the son of the AIP.

36. I reside at 44 Dover Green, Staten Island, NY 10312.

37. I am presently retired as a plant manager with the New York State Institute for Basic Research where I was employed for 30 years.

38. I am the only one of my mother's children who resides close to her in Staten Island.

39. I am fully familiar with her medical condition and the daily care she requires.

40. Both my sister, Cecilia, and my sister, Mary Beth, refuse to admit to the amount of care my mother requires and the need for professional assistance. Cecilia is incapable of assisting my mother with her care and has even left her alone without any explanation to my mother and without advising any other family member that she was leaving. Mary Beth, who resides in Florida, appears to accept information she receives from Cecilia, who is an unreliable source.

41. In light of the foregoing, I am the most appropriate person to act as guardian of the person of my mother. I believe that my mother's health and wellbeing would be severely endangered if either of my sisters were appointed guardian. I love my mother and would like her to live comfortably in her own home with appropriate care for as long as possible. I am requesting that the Court appoint me as Guardian of the Person of my mother.

42. If appointed Guardian of the Person of my mother, it is my intention to have her remain living in her own home, where she is most comfortable, with appropriate care.

PERSONAL NEEDS MANAGEMENT

43. My mother needs a guardian of her person because she cannot care for herself, and she no longer retains the judgment necessary for making sensible decisions regarding healthcare, residence and other personal decisions.

44. Upon information and belief, mother's condition is unlikely to improve and will likely worsen.

45. I am requesting that the Court appoint me as guardian of the person of my mother, as I am fully familiar with her health and other circumstances.

46. Petitioner requests that the guardian of the person have the following powers:

- a) Make decisions regarding general environment and other social aspects of the life of the AIP;
- b) Determine whether the AIP should travel;
- c) Authorization to have access to or release of confidential personal and medical records;
- d) Consent to or refuse generally accepted routine and major medical treatment (as defined in MHL Section 81.03, including the administration of psychotropic medication) or dental treatment;
- e) Choose the place of abode of the AIP, including the power to move the AIP to a nursing home or other residential facility as those terms are defined in Public Health Law Section 2801;
- f) Determine who shall provide personal care and assistance;
- g) Apply for government and private benefits;
- h) Determine whether the AIP should possess a license to drive; and
- i) Any other power which the Court in its discretion shall deem appropriate to meet the AIP's needs.

PROPERTY MANAGEMENT

47. In addition, my mother requires a guardian of her property to determine her assets and manage her finances in such a way as to insure her quality of life for as long as possible.

48. I do not believe it would be in my mother's best interest for me to serve as a property guardian for my mother. There is too much friction between my two sisters and me, which would surely cause multiple disagreements as to the management of my mother's assets. Neither of my sisters is qualified to be property guardian, as it is my belief that they have been exercising poor judgment in spending my mother's money. The dissipation of her funds has jeopardized her ability to remain living at home and could be endangering her welfare. For these reasons, I am requesting that the Court appoint an independent guardian from the Office of Court Administration List to serve as property guardian. It is my request that such a property guardian would collaborate with me, as personal needs guardian, so that I can remain fully familiar with my mother's needs.

49. Petitioner requests that the guardian of the property have the following powers:

- a) Collect all income, including but not limited to Social Security, dividends, interest and pension;
- b) Endorse, collect, negotiate, deposit and withdraw Social Security, Veterans Administration, and/or other pension, annuity or benefit checks and/or negotiable instruments;
- c) Apply for government and private benefits on behalf of the Alleged Incapacitated Person;
- d) Deal with Medicare and Medicaid claims, litigation and settlement;
- e) Claim, negotiate, obtain and settle claims and actions for government entitlements and benefits of all kinds with all government administrations and agencies;

- f) Deal with all pension, retirement incentive, I.R.A./Keogh/SEP and similar type plans, programs and annuities;
- g) Sign tax returns and deal with all Federal, State and local tax authorities on all claims, litigation, settlement and other matters;
- h) Marshal the Alleged Incapacitated Person's assets, and to invest and reinvest such assets as a prudent person of discretion and intelligence in such matters seeking reasonable income, and to apply so much of the income and principal as necessary for the Alleged Incapacitated Person's comfort, support, maintenance and well-being;
- i) Pay the funeral expenses of the Alleged Incapacitated Person;
- j) Pay bills after the death of the Incapacitated Person if incurred prior to said death, if authority to pay any such bill would otherwise have existed;
- k) Buy and sell stocks, bonds and Treasury bills;
- l) Make statutory claims and elections;
- m) Implement and make tax savings decisions;
- n) Enter into contracts to sell real estate subject to prior court approval;
- o) Create supplemental needs trusts for the benefit of the AIP;
- p) Retain attorneys concerning the Alleged Incapacitated Person's property and affairs and to pay the same, subject to prior approval of the Court;
- q) Retain accountants, investment counsel and similar professionals concerning the Alleged Incapacitated Person's property and affairs and to pay the same subject to prior Court approval;
- r) Handle all banking decisions;
- s) Apply for and handle all claims and settlements including insurance transactions;
- t) Handle estate transactions;
- u) Defend or maintain any Civil judicial proceeding;
- v) Access confidential financial records, reports and statements;
- w) Access safe deposit boxes/ vaults/ safes, if any;
- x) Provide for the Alleged Incapacitated Person's maintenance and support;
- y) Engage in Medicaid planning on behalf of the AIP subject to court approval; and
- z) Any other power which the Court in its discretion shall deem appropriate to meet the Alleged Incapacitated Person's property management needs;

DURATION OF POWERS BEING SOUGHT

50. Your petitioner requests that the person and property management powers granted by the Court be for an indefinite period.

INTERESTED PARTIES

51. The interested parties to this proceeding are as follows:

<u>Name and Address</u>	<u>Relationship</u>
Adele Ferrando 52 Clinton Place Staten Island, NY 10302	AIP
Cecilia Nicholas 52 Lathrop Avenue Binghamton, NY	Daughter
Mary Beth Walker 26 Saranac Road Sea Ranch Lakes, FL	Daughter
Robert Nicholas 52 Clinton Place Staten Island, NY 10302	Grandson
Clove Lakes Health Care & Rehabilitation Center 25 Fanning Street Staten Island, NY 10314	

52. I have not previously requested the relief sought herein.


WHEREFORE, petitioner respectfully requests that the Court:

(a) Appoint petitioner, Charles Ferrando, as Guardian of the Personal Needs and of the AIP within the State of New York, based upon his qualifying in accordance with the statutes of the State of New York;

(b) Appoint an independent Guardian of the Property of the AIP from the Office of Court Administration List within the State of New York, based upon his or her qualifying in accordance with the statutes of the State of New York; and

(c) Grant such other and further relief as the Court may deem just and proper.

Dated: Staten Island, NY
December 14, 2015



Charles Ferrando

