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Re: Kathryn J. Niesen and the C. Duane Niesen and Kathryn J. Niesen Revocable Trust

Gentlepeople:

It is my understanding that relations among the Niesen siblings have been strained regarding the handling and management of the property held in Kathryn Niesen's name and in the name of the Niesen Family Trust. I believe some of this is due to misunderstandings that have developed over the course of the last year since Duane's death. I would like to provide some information and perspective to hopefully delineate my role, Perry's role, what I believe to be Jesse's role and Jesse's attorney's role. For clarity's sake, I will be referring to C. Duane Niesen as "Duane", and Perry Duane Niesen as "Perry" in this discussion. Because I represent Perry, I would ask that any communication regarding the matters addressed in this correspondence to you be directed to me as his attorney rather than to Perry directly.

First, some background. Kathryn ("Kathy") and Duane Niesen contacted our office in late January/early February of 2022 for their estate planning needs as their attorney, Jennifer Wilkerson, was transitioning into retirement. Ms. Wilkerson provided Kathryn and Duane with the names of several local attorneys, and Kathryn and Duane chose to move their file to our office. Ms. Wilkerson provided us with a copy of their current estate planning document at that time. They made an appointment with Rich Keene, who met with them in March of 2022. At that time, he discovered that on January 8, 2022, Kathryn and Duane signed a deed transferring the property out of the trust and into their names as joint tenants. This had most likely been done as a requirement of obtaining a loan on the property. The document was recorded by USA National Title Company. At Kathryn's and Duane's request, Rich Keene prepared a deed transferring the property back into the Trust, which was recorded on May 18, 2022. There was no further contact from them.

In November of 2023, Perry Niesen ("Perry") called and made an appointment for himself, Amy Niesen and Jason Niesen regarding what Perry's and Jason's duties would be as Trustees following the eventual deaths of both Duane and Kathy. Duane and Kathy, at that time, had moved to the Auburn Oaks care facility. At the time of my meeting with Perry, Amy and Jason, I was told that there were questions regarding both Duane's and Kathryn's declining capacity. I discussed with Perry and Jason their roles as the eventual Trustees of the "Ranch Property Trust" (which I will refer to as the "Ranch Property Trust") which is essentially a sub-trust of the C. Duane Niesen and Kathryn J. Niesen Revocable Trust (which I will refer to as the "Niesen Trust"). I told Perry and Jason that the Ranch Property Trust would not be established until after the death of the second of Duane and Kathryn to die. Perry and Jason will be the co-Trustees of the Ranch Property Trust once established. Until that time, the property would remain titled in the name of the Niesen Trust, and all property so titled was to be used for the benefit of Duane and Kathryn while they were living. Following the death of the first Grantor to die (Duane), all of the property was to be used for the benefit of the "Surviving Grantor" (Kathy.) Following the deaths of both Duane and Kathy, the property will be distributed per the terms of the trust for the benefit of the remainder beneficiaries. Perry is named as the sole successor Trustee of the Niesen Trust. Currently, the remainder beneficiaries are the five siblings. Should any of the siblings die before the death of the survivor (who we now know to be Kathy) the deceased sibling's share will instead be distributed to his or her children.

Sometime in November of 2023, while Duane was still alive, Duane verbally directed Perry to sell the firearms and use the proceeds for expenses. There was at least one witness to that conversation. Following Duane's verbal instructions, Perry began to make arrangements to sell the firearms and place the money into the Niesen Trust. In November of 2023, Perry informed all of his siblings of this plan, compiled a list of the firearms, and asked all siblings, either via a verbal conversation, text and/or email if there were any guns that any of them particularly wanted. For those who responded, Perry set aside those guns for later distribution to the siblings.

Duane died on May 28, 2024. Kathryn was deemed incapacitated on May 21, 2024 per a letter from Dr. Zarlisht Fakiri, who was her doctor at the Auburn Oaks Care Center. Per the

terms of the trust, a Grantor's incapacity "shall be established by the written opinion of his or her physician ..."

Accordingly, as of May 28, 2024, based upon Duane's death and Kathy's incapacity, Perry became the successor Trustee of the Niesen Trust. He contacted me to advise him regarding his duties as acting Trustee of the Niesen Trust. I have been advising him and represent him in that capacity only. I have provided him with information and guidance regarding his duties as Trustee. Specifically, I have explained the terms of the Trust, that Kathy is the only current beneficiary of the Trust and that his duty as Trustee is to Kathy first, which is to manage the trust property for Kathy's benefit. As Trustee of the Niesen Trust, however, Perry only has authority and management responsibility over property titled in the trust, and cannot reach or manage any property not titled in that manner. Because Jesse is named as Kathy's Agent under her Durable Power of Attorney, Perry is unable to reach funds titled in Kathy's name to pay for her care or for any expenses to maintain her property (i.e. the Ranch Property.)

Following both Kathy's incapacity, and then Duane's death, the Trust became irrevocable. I advised Perry that upon the Trust becoming irrevocable, he was required by California Probate Code §16061.7 to serve a notification to each remainder beneficiary that Duane and Kathy had a Trust, that the Trust became irrevocable, and that upon reasonable request to the Trustee, the notified party can request a true and complete copy of the terms of the trust. This notification, along with a true and complete copy of the Trust, was mailed to each of you on September 6, 2024.

On that same day, I sent a letter to Jesse, separately, regarding his duties under Kathy's Durable Power of Attorney, and my belief, based upon the information I had, that he had breached those duties in several ways, including failing to pay Kathy's bills. I sent this to Jesse only, rather than to all of the siblings, so that it could remain a private matter, but as he has chosen to discuss this with all of you via email, I am now forwarding a copy to all parties. He has referred to this letter in emails to you as a "nastygram" and has alleged that "threats" were made against both him and his business, which is untrue. No threats were made against either Jesse or his business. I did inform Jesse, however, that he would be accountable for any breach of duty regarding the management of Kathy's property. I will assert that, had Jesse been properly fulfilling his duties as Kathy's Agent under her Power of Attorney, then of course he should have had nothing to be concerned about.

To be clear, I do not represent, nor have I ever represented Perry in any action "against Jesse" or his business. The action mentioned in my letter was to a possible conservatorship over Kathy, because that would be the only legal method available for someone other than Jesse to have access to the accounts in Kathy's name, and the only way to ensure that Kathy's bills and expenses would be covered if Jesse were unable or unwilling to manage the assets as required. The reason for seeking a possible conservatorship over Kathy would be that the court would have oversight to ensure that all of Kathy's funds were being used for Kathy's benefit and were being properly managed. Of course, if the assets are being managed as they should be, a conservatorship should not be necessary, as the funds would be managed via the Durable Power of Attorney and the Niesen Trust.

My understanding is that, at the time Duane passed, there were no financial accounts titled in the name of the Trust. The only property so titled was the "Ranch Property." Perry, believing that Jesse, as Kathy's Agent, would be paying her bills from the cash accounts, concentrated on paying bills due for the Ranch property. Perry moved forward with the plan to sell the firearms to have funds available to pay the bills for the Ranch. He asked all siblings whether there were firearms they wanted set aside for them. Jesse ultimately did inform Perry, on June 18, 2024, of his request for two Mini-14 rifles for himself and his son. Other than the previously "claimed" firearms requested by the other siblings, Perry sold the remaining guns to Cabela's in July of 2024. The funds from the sale were used to pay the overdue bills at the Ranch and some of Kathy's bills. If any of you believe there are guns missing, please inform Perry, and he will report them as stolen.

Following the determination of Kathy's incapacity, Jesse had management responsibility and authority over property titled in Kathy's name alone. All property formerly held in joint tenancy between Duane and Kathy became Kathy's sole property on Duane's passing, and Perry had no ability to reach those funds. Under Kathy's Durable Power of Attorney, Jesse, her Agent has a fiduciary duty to, among other specified duties, manage all property for the benefit of, and in the best interest of, the Principal (the owner of the property) who is Kathy. Such an Agent may not use the Principal's property for his/her own benefit, and must pay the legal debts and obligations of the Principal.

What this comes down to is that both Perry and Jesse have the same duty, which is to ensure that Kathy's bills get paid. Jesse must also, under Kathy's Advance Health Care Directive, ensure that Kathy receive proper medical care. Jesse's duty to pay Kathy's expenses arises from her Durable Power of Attorney, because he is in charge of all assets in her name alone, and Perry's duty to pay Kathy's expenses arises from the Trust, because Kathy is the sole current beneficiary of the Trust. All of the siblings (Laurel, Heather, Perry, Jason and Jesse) are remainder beneficiaries, and are not entitled to any payments or assets while Kathy is still living.

Again, Perry only has access to assets titled in the name of the Trust to pay the bills. To my knowledge, at the time Perry took over as Successor Trustee, there were no liquid assets in the Trust, meaning that he would have to sell Trust assets to obtain the necessary funds. He asked Jesse to pay Kathy's bills from Kathy's accounts, as those funds are liquid, so that he did not need to liquidate property. My understanding as of this past autumn was that there had been difficulty in accessing funds from Kathy's Long Term Care insurance policy and Duane's pension through CalPers.

Jesse's inability to access Kathy's accounts for Duane's retirement death benefits and Long Term Care insurance benefits created an unfortunate situation for Kathy, specifically, but also for the family as a whole. Jesse is now represented by Tiffany Aanestad, and I presume that she is advising Jesse regarding what he must do to comply with his duties as Kathy's Agent. I have not yet received any confirmation that Jesse is able to access Kathy's accounts, but am informed and believe that Jason has been able to pay at least some of the bills from her accounts. It is my understanding that currently the funds from the Long Term Care policy are being deposited directly into Kathy's checking account. Please note that Jesse is the only person

authorized by Kathy's Durable Power of Attorney who may access those funds. Perry has no access to them to pay for Kathy's expenses.

I should also note that, if Perry runs out of funds to keep the Ranch Property afloat, those bills also will need to be paid from Kathy's accounts (Kathy being the current beneficiary of the Trust, which holds the Ranch Property.) If Kathy's funds are not used, then the only asset he can access is the Ranch property. There are a few other options Perry can use to obtain cash to pay the ongoing bills. One option is to sell the firearms currently being held for the siblings. If that were necessary, any sibling requesting a particular firearm would be asked to purchase it from the Trust. If the requesting sibling passed on that option, the remaining siblings would have the option to purchase, and if no sibling then purchased the firearm, it would be sold on the open market. If the funds obtained in that manner were not sufficient, then the only other option to raise cash would be to turn to the Ranch property.


Currently, the Ranch is being leased for cattle grazing, although this does not bring in enough to cover both Kathy's current expenses and the expenses of the Ranch. One option might be to lease the shop and the house to a third party for the short term. Another option would be to enter into a conservation easement with the Bear Yuba Land Trust (the "BYLT") which Perry believes would allow the existing mortgage on the property to be paid off, and provide sufficient additional funds to support Kathy in the near term if not longer, depending on her care needs. That easement would be permanent. Should the family agree that a conservation easement is the best option to preserve the trust property then a decision may need to be reached quickly, as the funds advanced by BYLT are through a grant, which may expire. The last option would be to sell the Ranch property outright.

The foregoing is why it is imperative that your family work together. I previously suggested to Ms. Aanestad that a mediation might be productive, or at least a meeting with all family members, who could attend either in person or via Zoom or Teams, so that any lingering issues are addressed, and so that a mutual agreement can be reached regarding ongoing management of the family's assets, first, to ensure Kathy's care and comfort going forward, but also to reduce any friction and misunderstandings among you.

One last thing to address is the hiring of the attorneys. Perry has a right under the Trust to hire an attorney to represent him in his capacity as Trustee. Jesse likewise has a right under the Power of Attorney to hire an attorney to represent him in his capacity as Kathy's attorney-in-fact. Kathy's funds, both from the Trust and her own funds accessed through her Durable Power of Attorney may be used to provide legal advice as to duties and responsibilities of the Trustee and/or the Agent. As Perry's attorney, my representative capacity is ONLY of him as Trustee of the Trust – to advise him and prepare the documents necessary for him to carry out his fiduciary duty as Trustee. I do not represent him as a beneficiary, or as to any personal matter. Therefore, my bill is legally payable from Trust assets. Ms. Aanestad, as Jesse's attorney, and assuming she represents him only in his capacity as Kathy's Agent, may also be paid from Kathy's funds. If she represents him in any other capacity, her fee may not be paid from Kathy's funds but would be a personal obligation of Jesse's.

In summary, I believe it is in the best interest of all of the siblings that both Jesse and Perry work together, and receive competent advice as to what must legally be done to ensure that their respective fiduciary duties are being complied with, both for Kathy's benefit through the end of her lifetime, and for the benefit of the remainder beneficiaries thereafter. Obviously, if all parties can agree on a working arrangement, the costs will be substantially reduced going forward.

Best Regards,


Laura Pare