

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1357 Disciplinary Docket No. 3  
Petitioner :  
v. :  
No. 98 DB 2007  
ROBERT G. WELCH, : Attorney Registration No. 17002  
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 23<sup>rd</sup> day of May, 2008, there having been filed with this Court by Robert G. Welch his verified Statement of Resignation dated February 19, 2008, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Robert G. Welch is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: May 23, 2008

Attest:

Chief Clerk

Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 98 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 17002
	:	
ROBERT G. WELCH	:	
Respondent	:	(Philadelphia)

**RESIGNATION BY RESPONDENT**

Pursuant to Rule 215  
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF  
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 98 DB 2007  
v. :  
: Atty. Registration No. 17002  
ROBERT G. WELCH, :  
Respondent : (Philadelphia)

RESIGNATION  
UNDER Pa.R.D.E. 215

Robert G. Welch, Esquire, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about May 14, 1973. His attorney registration number is 17002.

2. He desires to submit his resignation as a member of said bar.

3. His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress and he is fully aware of the implications of submitting this resignation.

4. He is aware that there are presently pending investigations into allegations that he has been guilty of misconduct, the nature of which allegations have been made known to him by service of a Petition for Discipline. He

admits to the Rule violations charged in the Petition for Discipline, which are as follows: RPC 1.7(b) (effective 4/1/88, superseded effective 1/1/05); RPC 1.8(a) (effective 4/1/88, superseded effective 1/1/05); RPC 1.15(a) (effective 4/1/88, superseded effective 4/23/05); RPC 1.15(a); RPC 1.15(b); RPC 8.4(c); and RPC 8.4(d).

5. He admits to the factual allegations stipulated to in the Joint Stipulations of Facts submitted in the Orphans' Court of Philadelphia County, in a case captioned **Rose Kogen, Intervivos Trust**, No. 1787IV of 2004, a true and correct copy of which is attached hereto, made a part hereof and marked Exhibit "A."

6. He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct set forth in the attached exhibit.

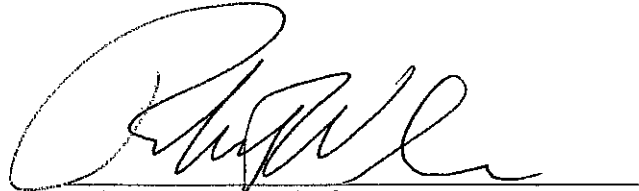
7. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b).

8. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained Samuel C. Stretton, Esquire. He has consulted with Mr. Stretton and acted upon the advice of

Mr. Stretton in connection with his decision to execute the within resignation.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., Section 4904 (relating to unsworn falsification to authorities).

Signed this 17<sup>th</sup> day of February, 2008.

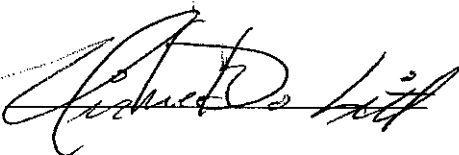


Robert G. Welch  
Respondent

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Samuel C. Stretton, Esquire  
Counsel for Respondent

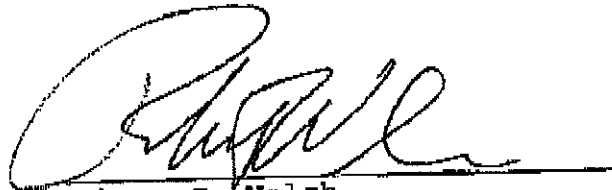
WITNESS:




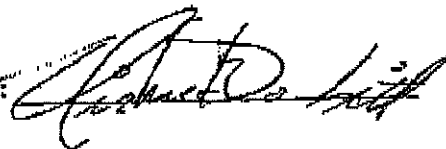
Mr. Stretton in connection with his decision to execute the within resignation.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., section 4904 (relating to unsworn falsification to authorities).

Signed this 19<sup>th</sup> day of February, 2008.

  
Robert G. Welch  
Respondent

  
Samuel C. Stretton, Esquire  
Counsel for Respondent

WITNESS: 

THE ROSE KOGEN IRREVOCABLE : PHILADELPHIA COUNTY  
TRUST, ROBERT WELCH, ESQ., Trustee : COURT OF COMMON PLEAS  
: ORPHANS' COURT DIVISION  
:  
: NO. 1787IV of 2004

**JOINT STIPULATION OF FACTS**

**EXECUTION OF TRUST**

1. Settlor Rose Kogen ("Settlor"), of Mount Laurel, New Jersey, executed "The Rose Kogen Irrevocable Trust" ("Trust") agreement, effective date January 1, 1999, and provided funds to the Trust while she was still alive. Ex. O-3; N.T. 9-18-2006, pp. 50-54. The Trust named Robert Welch, Esq., ("Welch" or "the former Trustee") as Trustee. Ex. O-3. On the effective date of the Trust, Welch had been a practicing attorney in Philadelphia with over 25 years of experience. N.T. 9-18-2006, p. 49. After different interactions and discussions between Welch and the Settlor, Welch drafted the Trust on behalf of his client, Settlor. N.T. 9-18-2006, pp. 53-58.

**CIRCUMSTANCES PRE-FORMATION OF TRUST**

2. The Settlor had been abandoned in a hotel in the spring of 1998. N.T. 9-19-2006, p.6. The State of New Jersey attempted to assist Settlor and Settlor was brought to a Nursing Home. N.T. 9-19-2006, pp. 6-7. The State of New Jersey was trying to find a guardian or someone who would be her power of attorney. N.T. 9-19-2006, pp. 6-7. The State of New Jersey contacted Jonathan Kogen, Settlor's son, and offered him the job and he turned them down. N.T. 9-18-2006, p. 44. A Cherry Hill, New Jersey, nursing

home administrator contacted Welch to ask him whether he would be interested in helping Settlor. N.T., 9-19-2006, p. 6. After meeting with Settlor several times over a number of weeks, Settlor decided on Welch to be her power of attorney and Welch drafted a power of attorney. N.T., 9-19-2006, pp. 7-8; Ex. T-2. Mrs. Kogen visited Sunrise Assisted Living and made her own decision to move there. Ex. T-2. After a few months, Welch ordered a Comprehensive Geriatric Evaluation of Settlor and Follow-up Report to the Evaluation, created in late summer or early fall of 1998, Dr. Claire L. Jurkowski states the following in her first report: "Mrs. Kogen is a college graduate and a retired teacher. She is widowed and has 2 adult children with whom she has no contact stating 'they turned on me; all they want is my money.' . . . She expresses dissatisfaction with all placement efforts, and in fact has been moved from room to room at Sunrise due to dissatisfaction with her surrounding. . . . It is unclear to me on this initial visit whether this represents dementia or benign senescent forgetfulness complicated by the stress of her move and perhaps some degree of overlying depression. She may be making multiple demands and changing her mind frequently as a final attempt to maintain some control over her life, as she currently feels totally under the control of others. I would like to re-evaluate her in 1-2 weeks to determine what her level of adjustment has been, and what her view of her situation is at that time before making a final decision about her capacity to make decisions on her own behalf." Dr. Jurkowski states the following in her second report: "She is quite distraught over her estrangement from her family members, becoming tearful and stating that she wished she could reconcile to them but that she can't, and that she is afraid of her son. . . . She also exhibited visual special perceptual deficits, but on the other hand wrote a much more elaborate and well constructed



sentence. . . . Although Mrs. Kogen retains much insight into her circumstances, her problem solving ability and reasoning power are quite limited.” Ex. T-2. Dr. Jurkowski further believed that Settlor was incapable “of managing her own affairs in her own best interests. She is unable to recognize the risk posed to her by members of her family. . . .” Ex. T-2. Settlor did, however, have a “reasonably good understanding of her current circumstances.” Ex. T-2.

### **DECISIONS LEADING TO TRUST FORMATION**

3. During his meetings with Settlor, Welch explained the various options available to Settlor as far as her property was concerned; initially she wanted to give everything away to charity. N.T., 9-19-2006, p. 10. These options included, but were not limited to: 1) giving all of her property directly to charity; 2) using a trust to give property to charity; or 3) benefiting her grandchildren via benefiting her children and also providing for charities at the same time through a trust. N.T., 9-19-2006. pp. 10-12. Initially, the Trust held assets through a Merrill Lynch account holding equities and different bonds. N.T., 9-19-2006, p. 12-13.

### **TRUST PROVISIONS: PURPOSE**

4. The purpose of the Trust “is to manage [Settlor’s] assets and to use them to allow [Settlor] to live in the community as long as possible and to manage [Settlor’s] assets after [Settlor’s] death.” Ex. O-3, ¶1.2. The terms of the Trust allow, at the sole discretion of the Trustee, payments of income to Settlor Rose Kogen or on her behalf during her lifetime. Ex. O-3, ¶2.1. Section 2.1 also says, “My trustee may make

charitable contributions to a Public Charity as defined by the Internal Revenue Code under Section 501 C 3 but in no event to exceed fifty percent of the trust assets.” Ex. O-3, ¶2.1 The terms of the Trust allow, at the discretion of the Trustee, distributions to each of Settlor’s children of portions of trust principal. Ex. O-3, ¶2.2. Pursuant to the terms of the trust, Settlor Rose Kogen requested, but did not require, that should the Trustee make distributions to Settlor’s children, that the distributions be made in equal shares to her children. Ex. O-3, ¶2.2. Also, the terms of the Trust require that upon termination of the Trust, 50% of trust property and income must go to a §501(c)(3) charity and the remaining 50% must go in equal shares to Settlor’s children. Ex. O-3, ¶3.1.

#### **TRUST PROVISIONS: TRUSTEE POWERS**

5. In Section 2.2, the Trust discusses the use of an independent trustee. Ex. O-3, ¶2.2; N.T. 9-18-2006, p. 54. In Section 2.2, it defines an independent Trustee as “an individual or institution that has no beneficial interest in the trust.” Ex. O-3, ¶2.2; N.T. 9-18-2006, p. 54. The former Trustee testified that he believes that he was authorized to invest Trust assets in Ansar, Inc., under the provision granting him power “in addition to all common law and statutory authority. . .” “to invest income and principal without being subject to legal limitations on investments by fiduciaries.” Ex. O-3, ¶4.4 (d); N.T. 9-18-2006, p. 55. The Former trustee alleges that he had “not unlimited” discretion to invest in trustee affiliated corporations or other entities so long as it would help to accomplish the goals and objectives of the Trust, which were competing and conflicting due to Mrs. Kogen’s wishes contrasted with the needs of the beneficiaries. N.T. 9-18-2006, pp. 56-57.

## TRUST PROVISIONS: CHARITABLE POWERS

6. In section 2.1 of the trust, "My Trustee may make charitable contributions to a Public Charity as defined by the Internal Revenue Code under Section 501 c 3 but in no event to exceed fifty percent of the trust assets." Ex. 0-3, ¶ 2.1. In addition, in Section 3.1 (a) upon termination of the trust, my trustee shall pay fifty percent of the trust property and undistributed income to or for the benefit of a public charity pursuant to section 501 c 3 of the Internal Revenue code. Ex 0-3. The former Trustee explains that Section 2.1 is the following:

"you could give away 50 percent of the assets every year, so if it's a million dollars in the first year, you could give away \$500,000, and if that left \$500,000, in year two you could give away 250 thousand, which would leave 250, and in year three you can give away 50 percent for \$125,000."

N.T. 9-18-2006, pp. 57-58. Jonathan Kogen had copies of the trust tax returns clearly showing the annual contributions to charity prior to 2002. N.T. 9-18-2006, pp.110-112 Ex. 0-11.

## THE BENEFICIARIES

7. Jonathan Kogen ("Jonathan" or "Objectant") and Alice Leibowitz ("Alice") are Settlor's children and are Beneficiaries under the Trust. N.T. 9-18-2006, pp. 33-34; Ex. O-3. Settlor Rose Kogen passed away in May 2000. N.T. 9-18-2006, p. 71. Jonathan, a man in his 60s, is employed as a clinical psychologist earning \$200,000.00 per year, has children now ages 27 and 15, and owns assets valued at

\$100,000.00. N.T. 9-18-2006, pp. 31-33. Jonathan testified as Alice was not in court that Alice, a woman in her 60s and younger than her brother Jonathan, was formerly employed as a paralegal, earns "close to nothing," owns few assets, and was supported by the Trust and by her brother Jonathan for several years. N.T. 9-18-2006, pp. 34-36. Welch stated that Mrs. Kogen led him to believe that Alice had had alcohol/drug problems and had trouble keeping money or making appropriate use of monies in any way. N.T. 9-18-2006, p. 60. Welch had made a trust payment to one of Alice's divorce lawyers but she didn't even show for her divorce hearing. N.T. 9-18-2006, pp. 60 -61. Welch testified that he attempted due diligence on Alice and Jonathan to find out their true needs but neither complied. N.T. 9-18-2006, pp 60-62.

#### PAYMENTS TO BENEFICIARIES UNDER TRUST

8. While he was Trustee, Welch made payments to or on behalf of beneficiaries Jonathan and Alice to help meet some of their needs. N.T. 9-18-2006, p. 59. The Amended Account reflects payments from principal of \$26,612.33 and from income of \$112,883.73 to or on behalf of Alice. Amended Account, pp. 5-5 to 5-6, 7-1 to 7-7. The Amended Account reflects payments from principal of \$1,127.67 and from income of \$52,550.73 to or on behalf of Jonathan. Amended Account, pp. 5-6, 7-7 to 7-8. Ansar acted as a disbursing agent and made the payments directly to beneficiaries as an obligation of the Trust. N.T. 9-18-2006, pp. 107-108. Many of the payments to the beneficiaries were written on checks issued by Ansar as the disbursing agent. N.T. 9-18-2006, p. 108.

#### TRUSTEE'S ACCOUNT: ASSETS

9. The Amended Account dated January 17, 2006, is stated for the time period from January 1, 1999 through December 31, 2005 and states that at the Trust's inception, it held assets in the form of publicly traded stocks and U.S. Treasury notes and valued at nearly \$1,200,000.00. Amended Account, pp. 2-1 to 2-5. The brokerage account which held those assets was liquidated in December 1999 and the funds were then managed by Brinker Capital and invested in different managed funds. Amended Account, pp. 10-1 to 10-7 and 11-1 to 11-58, N.T. 9-18-2006, pp. 64-66. The Trust also invested in a closely-held corporation known as Ansar Group, Inc. ("Ansar") through lending money to the corporation and receiving convertible debentures in return. Amended Account, pp. 10-1, 11-58 to 11-59; N.T. 9-18-2006, pp. 72, 76.

#### ANSAR GROUP, INC.

10. Ansar is a company that develops medical technology, specifically systems monitoring the autonomic nervous system through noninvasive, "real-time," and digital means. N.T. 9-18-2006, p. 103. The former Trustee and others including teaching faculty at medical schools and practicing clinicians believe that reading the autonomic nervous system is the "missing ingredient" to better evaluate the existence of most diseases and to better evaluate the efficacy of prescription drugs. N.T., 9-19-2006, pp. 14-17. The former Trustee believes that the technology could be used for battlefield and operating room triage, for pain management, and to treat sleep disorders. N.T., 9-19-2006, pp. 18-20. The former Trustee testified that Ansar's technology has become a medical standard of care. N.T. 9-19-2006, pp. 18-20. Ansar has been in existence for about 20 years. N.T. 9-18-2006, p. 104.

## CONNECTIONS BETWEEN ANSAR AND WELCH

11. The managing director and corporate president of Ansar, a business corporation, since its incorporation in 1993 is Welch himself, the former Trustee. N.T. 9-18-2006, p. 81. The Donna J. Welch Family Irrevocable Trust ("Welch Family Trust") has a significant financial interest in Ansar; N.T. 9-18-2006, pp. 81-83. All parties now stipulate that Donna J. Welch is the wife of the former Trustee. Welch, the former trustee, testified that he has no interest in the trust. N.T. 9-18-2006, p. 83. Half of the value of the assets held by the Welch Family Trust is invested in Ansar; 40% of Ansar's stock is owned by the Welch Family Trust and the other 60% is owned by 85 other shareholders. N.T. 9-18-2006, pp. 83, 85. The only entity which owned convertible debentures, described below, was the Trust. N.T. 9-18-2006, p. 103.

## TRUST'S INVESTMENT IN ANSAR

12. From late 1998 through early 2001, the former Trustee on behalf of the trust loaned a total of \$928,318.00 to Ansar. N.T. 9-18-2006, pp. 72-74; Amended Account, pp. 10-1, 11-58 to 11-59. Up until Settlor passed away in May 2000, in a seventeen-month time period, the Trust loaned a total of just over \$230,000.00 to Ansar. N.T. 9-18-2006, pp. 74-75; Amended Account, pp. 10-1, 11-58. After Settlor passed away in May 2000 and for eight months thereafter, the Trust loaned the remainder of \$698,000.00 to Ansar. N.T. 9-18-2006, pp. 75-76; Amended Account, pp. 10-1, 11-58 to 11-59. In exchange for the money loaned to Ansar, the Trust received a series of thirty separate convertible debentures (six percent interest) ranging in cost from as low as

\$300.00 to as high as \$100,000.00. N.T. 9-18-2006, pp. 76-77; Amended Account, pp. 10-1, 11-58 to 11-59.

### **DEBENTURE TERMS**

13. As President and Managing Director of Ansar, the former Trustee drafted the convertible debenture instrument. N.T. 9-18-2006, pp. 116-120; Ex. O-12. All of the debentures had 10-year terms and earned 6% per year; the instruments were identical except for the inception dates, maturity dates, and the loan amounts. N.T. 9-18-2006, p. 76; Amended Account, pp. 10-1, 11-58 to 11-59. The Trust was the convertible debenture holder earning interest from Ansar in exchange for the Trust's loan of money. N.T., 9-19-2006, p. 13. The debentures had no security interest in specific assets but they were the only indebtedness and therefore all the assets were subject to the indebtedness as debt has priority over equity. N.T., 9-19-2006, pp. 36-38. The former Trustee defined a convertible debenture as one in which there is "the opportunity to convert the debt into equity should [one] decide or believe the equity could be worth more than the debt." N.T., 9-19-2006, pp. 13-14. In this case, equity took the form of shares of common stock of Ansar. Exs. T-1 and O-12.

### **HOW TRUST INVESTED IN ANSAR**

14. Usually, in order to make the loans, checks with investment written in the check description were drawn on the Trust and paid to Ansar. N.T. 9-18-2006, pp. 72-74; Ex. O-4. However, the former Trustee wired funds in two instances, in April 1999 for \$38,418.00 and September 2000 for \$20,000.00, to lend money from the Trust to Ansar.

N.T. 9-18-2006, pp. 78-79; Account filed November 21, 2005, p. 4. Welch explained that the wire transfers were made to "expedite the investment(s)" because the stock market was crashing or "going down and down." N.T. 9-18-2006, pp. 78-81. Welch stated, "When we, if you go back and you look historically, that we thought we doing the right thing by putting it into Brinker. If you started reviewing their monthly statements, you can just see deterioration in all the accounts, deterioration in all the values, and it accelerated and accelerated and accelerated to the point where if you historically view what we did, and you left the money, you would have lost 35 to 40 percent of the account value. By doing what I did, you have not lost a dime and you've got six percent interest[ ]" N.T. 9-18-2006, p. 80.

#### CONSIDERATIONS BEHIND TRUST INVESTING IN ANSAR

15. The initial decision to liquidate holdings in Brinker and invest in Ansar in late 1998 and 1999 was because the former Trustee testified that he perceived "a gradual deterioration in the marketplace." N.T., 9-19-2006, pp. 20-21. During the years that Ansar sold its convertible debentures to the Trust, Ansar did not approach banks or other financial institutions to borrow money for its operations, however, the former Trustee testified that Ansar had been approached by different entities at different times from different sources who wanted to provide funding. N.T. 9-18-2006, pp. 105-106. The former Trustee considered, but then rejected, investing Trust assets in U.S. Treasury bills or municipal bonds because he believed that the prospective obligations of the Trust required an investment that could yield higher returns. N.T., 9-19-2006, pp. 40-41. Each time he loaned money from the Trust to Ansar, the former Trustee did not consider



placing the money in safer investments like U.S. Treasury notes or saving accounts, he believed it's more of an accumulative strategy we were trying to follow through with; she, the Settlor, needed a lot of money for the needs of the trust. N.T., 9-19-2006, pp. 46-47. The former Trustee admitted that an initial public offering for Ansar had not occurred during the last ten years and would not occur in the coming year. N.T., 9-19-2006, pp. 50-51. While it had occurred to the former Trustee that the investment in Ansar could be viewed as a wrong decision from a fiduciary standpoint, he testified that he believed he was acting in the best interests of the beneficiaries because of the prospects of making a lot of money for the Trust. N.T., 9-19-2006, pp. 53-54.

#### ANSAR'S CORPORATE RETURNS

16. Ansar experienced losses over the several years during which the Trust was invested in it. Exs. O-5 to O-10. As reported to the Internal Revenue Service, on sales of \$2,151,876.00 in 1999, it had net income of \$83,033.00 in 1999 and with net operating losses in 1998 of \$180,982.00 and net operating losses in 1997 of \$3,164.00. N.T. 9-18-2006, pp. 91-92; Ex. O-5. In 2000, Ansar reported net loss per books of \$1,228,000.00, on sales of \$432,481.00. N.T. 9-18-2006, pp. 92-93; Ex. O-6. On sales of \$0.00 in 2001, Ansar reported net loss per books of \$90,612.00. N.T. 9-18-2006, pp. 92-94; Ex. O-7. In 2002, sales were reported as \$837,256.00 with net loss per books of \$57,132.00. N.T. 9-18-2006, pp. 94-95; Ex. O-8. In 2003, sales were \$1,153,489.00 and net loss per books was \$104,369.00. N.T. 9-18-2006, pp. 95-96; Ex. O-9. Finally, in 2004, sales were reported as \$1,817,595.00 and net loss per books was \$254,040.00. N.T. 9-18-2006, pp. 96-97; Ex. O-10. Over the years ending in 2003, Ansar had total net

operating losses of \$1,581,406; even allowing for the income of \$254,040.00 from 2004, Ansar's net operating losses ending in 2004 totaled over \$1,300,000.00. N.T. 9-18-2006, pp. 97-98; Ex. O-10. As managing director, Welch received no wages from Ansar during the years he served as Trustee. N.T. 9-18-2006, p. 102. Ansar or its predecessor has been in existence for about 20 years. N.T. 9-18-2006, p. 104; N.T. 9-18-2006, p. 81.

### **DONATIONS TO ADA AND RATE OF DONATIONS**

17. Of the \$928,318.00 invested in Ansar convertible debentures, the Trustee showed in his Amended Account that a total of \$528,828.00 was donated to the American Diabetes Association ("ADA"). N.T. 9-18-2006, pp. 108-109; Amended Account, pp. 11-58 to 11-59. Of that \$528,828.00 figure, the Amended Account shows a series of donations to the ADA totaling \$310,000.00 from 1999 through 2004. N.T. 9-18-2006, pp. 112-113; Amended Account, p. 11-59. While the Petition to Remove him as Trustee was pending and before his removal in December 2005, the Amended Account shows a single donation to the ADA, made in November 2005, of \$272,828.00. N.T. 9-18-2006, pp. 113-114; Amended Account, p. 11-59. Welch explains that he terminated the trust to make sure he followed through with Mrs. Kogen's wishes. N.T. 9-18-2006, pp. 113-115. He did not disburse the other 50% directly to the beneficiaries, as required under the terms of the Trust, because, "[i]n my opinion, I did it the way I was subsequently told to do it." N.T. 9-18-2006, pp. 114 -115. Welch testified that he had no concept of revenge and wanted to follow through with Mrs. Kogen's wishes by contributing one half to charity. N.T. 9-18-2006, p. 114.

### **REASONS FOR CONVERTING THE DEBENTURES**

18. Before the donations were allegedly made to the ADA, the former Trustee testified that he converted the debentures to shares and reflected that conversion and issuance of share certificates for the benefit of the ADA on Election to Convert documents and share certificates pursuant to the terms of the convertible debenture. N.T. 9-18-2006, p. 121; Ex. O-12. The Exercising Election to Convert document and the share certificates were drafted by the former Trustee himself. N.T. 9-18-2006, pp. 116-120; Ex. O-12. As per the language of the Convertible Debenture, the former Trustee testified that he converted the debentures to shares; the former Trustee testified that he believed that it was best to simplify the nature of the charitable deduction for the Trust. N.T. 9-18-2006, p. 121.

#### EVIDENCE OF DONATION

19. The former Trustee testified that the transfer of the Ansar shares to the ADA was reflected on the corporate books of Ansar. N.T., 9-18-2006, pp. 124-125. Copies of the share certificates were first sent to an ADA representative in August or September 2006. N.T., 9-18-2006, pp. 125, 163. In handwritten ledgers prepared by the former Trustee as Managing Director of Ansar, the former Trustee recorded the date of acquisition of the convertible debentures, their purchase price, the date the shares were converted and then transferred, the name of the entity to which the shares were transferred, the number of shares, and the share certificate number. N.T., 9-18-2006, pp. 126-127; Ex O-13. The decision to convert the debentures to shares of stock and reflect the conversion on Ansar's books was the former Trustee's decision and was not communicated to the ADA before 2006. N.T., 9-19-2006, p. 55; N.T., 9-18-2006, p.

159. Once the debentures had been converted to shares, Ansar was no longer obligated to pay 6% interest. N.T., 9-18-2006, pp. 160-161. The former Trustee did not involve the ADA in helping him decide whether to donate the convertible debentures themselves or whether to donate shares after being converted from debentures. N.T., 9-18-2006, pp. 173-179. But in his opinion, the value of the shares far exceeded the value of the debentures. N.T., 9-18-2006, p. 181. Welch also stated that the purpose of the trust was Mrs. Kogens and what she wanted to accomplish, and that for purpose of making charitable deductions it's easier to do it in stock. N.T. 9-18-2006, p. 174.

#### TRUSTEE'S CONTACTS WITH ADA

20. It was stipulated that the ADA was unaware of the alleged donations as late as December 29, 2005. N.T., 9-18-2006, pp. 129-130; In her memo to file dated May 30, 2006, Natalia Soriano, the Associate Manager of Individual Giving, of the ADA stated that, "[i]t is important to note that 5/26/06 was the first point of contact Mr. Welch made with me." Ex. O-16. In a series of Emails in late May and early June 2006 to ADA officials, the former Trustee explained that the Chicago Community Trust was holding Rose Kogen Trust shares of Ansar for the benefit of the ADA. Ex. O-14. Welch did not follow through with the Chicago Community Trust. N.T. 9-18-2006, p. 167. The shares along with any other shares for the benefit of the ADA would be redeemed prior to Ansar "going public" and the purchase price value of the shares would be totaled and paid in the form of a check issued by Ansar to the ADA. N.T., 9-18-2006, pp. 133-136; Ex. O-14. Language in the Emails said that, "prior to going public or at the time of going public, the shares would be redeemed," ; the former Trustee testified at the Audit Hearing that the

shares could either be redeemed and a check cut “[o]r they could have the public shares. Then it would be their choice.” N.T., 9-18-2006, p. 136; Ex. O-14.

### **PROPOSED REDEMPTION OF DEBENTURES**

21. After his removal, the former Trustee, as managing director of Ansar, had been communicating with the ADA to determine a method of redeeming those shares over a period of time. N.T., 9-18-2006, p121-122; Ex. O-14. The former Trustee, as managing director of Ansar, had explained to ADA representatives that the stock donated would be worth more than just its redemption value. N.T., 9-18-2006, p. 122. Its face redemption value was equal to its purchase price. N.T., 9-18-2006, p. 122.

### **WELCH'S RECENT CONTACTS WITH ADA AND PROPOSALS**

22. With correspondence from Welch, as managing director of Ansar, to a different ADA official, who Welch had been directed to by a member of the Board of Directors of the ADA, dated August 31, 2006, Welch, as managing director of Ansar, enclosed a check made payable to the ADA for \$10,000.00 as partial redemption of the shares valued at \$528,828.00. Ex. O-15. Welch proposed to this official a systematic redemption of the rest of the shares at the rate of \$12,000.00 per quarter, or \$48,000.00 per year. Ex. O-15. Welch claimed that Ansar was in a “pre i.p.o. status” and that should Ansar go public before all of the shares had been redeemed and the market value of the shares had risen, then the ADA would receive the greater value of the shares: either market value or purchase price value. Ex. O-15. Welch believed Ansar was able to fund such a systematic redemption. N.T., 9-18-2006, pp. 141-142.

### ATTORNEY'S FEES

23. This Court removed Welch in December 2005 from his position as Trustee because of his admitted self-dealing. Decree dated December 19, 2005. Welch says he admitted to self-dealing on advice of counsel but Welch testified that he didn't believe he was self dealing and was acting in the best interest of the beneficiaries. N.T. 9-18-2006, p. 50; N.T. 9-19-2006, pp. 54-55. Welch billed the Trust a total of \$109,350.00 for his services as Trustee and while he was acting as Settlor's agent under her power of attorney. N.T., 9-18-2006, pp. 145-146; Amended Account, pp. 4-1, 8-1 to 8-2. In a series of eight payments between January 1999 and March 1999, the Trust paid Welch a total of \$19,350.00 of the \$109,350.00. Amended Account, pp. 8-1 to 8-2. As Welch was accruing his fees, the next time the Trust paid Welch was six and a half years later through the redemption of \$90,000.00 worth of debentures in November 2005. N.T., 9-18-2006, p. 146; Amended Account, p. 4-1. Worksheets provided by Mr. Welch indicated total hours worked between 1999 and 2005, not including hours in 2006, as 458.5, so the average hourly rate worked out to around \$238.00 per hour. N.T., 9-18-2006, p. 147. Mr. Welch believed that the number of hours worked was higher, but did not provide his own estimate. N.T., 9-18-2006, p. 147. The Trust provides that the Trustee be paid fair and reasonable compensation for his services to the Trust. Ex. O-3, ¶4.7. Mr. Welch believed that his fees were fair and reasonable. "if not low, substantially low," based on the work he performed for the Trust. N.T., 9-19-2006, p. 29.

### ACCOUNTANT'S FEES AND SERVICES

24. The Trust made three separate payments totaling \$17,000.00 in 2000 to St. Clair, C.P.A.s for accounting services rendered to the Trust. Amended Account, p. 8-1. The predecessor in interest to St. Clair, C.P.A.s, i.e., "S. E. E. & J., P.C.," prepared, at Welch's request, a 1999 IRS Form 1040 for Settlor Rose Kogen, individually. N.T., 9-18-2006, pp. 149-150; Ex. O-17. Tax liability for Ms. Kogen was calculated at \$57,551.00, and minus payments and credits of \$2,400.00, a subtotal can be calculated at \$55,151.00. Ex. O-17. By tacking on interest and penalties, the balance due calculated was shown as \$57,787.00. Ex. O-17. On April 14, 2000, the former Trustee's bookkeeper wrote a check (referencing Settlor's social security number) to the Internal Revenue Service drawn on an account titled "Rose Kogen, Robert Welch, P.O.A." and in the amount of \$55,151.00. N.T., 9-18-2006, pp. 151-152; Ex. O-18. This amount happens to correspond to the figure referenced above: i.e., tax liability minus payments and credits and before interest and penalties are added on. ----- The check was returned because of "insufficient funds" and the former Trustee did not make another payment to replace the bounced check. N.T., 9-18-2006, pp. 152-153; Ex. O-18. The Trustee did not make another payment because "we were trying to figure out a total tax liability and also including the states that she had been a resident of." N.T., 9-18-2006, p. 153.

#### **ACCOUNTANT'S SERVICES: NJ AND NY LIABILITIES**

25. S. E. E. & J., P.C. (St. Clair, C.P.A.s) also prepared, at Welch's request, a 1999 New Jersey Form NJ-40 tax return for Settlor Rose Kogen, individually. N.T., 9-18-2006, pp. 153-154; Ex. O-19. Total New Jersey state tax liability for Ms. Kogen was

calculated at \$13,818.00. Ex. O-19. The former Trustee was not sure that the tax had been paid, but it is not listed as an expense in the Amended Account. N.T., 9-18-2006, pp. 154-155. In February 2000, the New York State Department of Taxation and Finance issued a Consolidated Statement of Tax Liabilities for Ms. Kogen, individually, and assessed state taxes owed New York for the years 1990 through 1997 (except 1995) as totaling \$107,678.75. Ex. O-20. Despite these claims and assessments, the Trust did not address these liabilities because the former Trustee was unable to determine whether Ms. Kogen had been a resident of New Jersey or New York. N.T., 9-18-2006, pp. 155-158; N.T., 9-19-2006, p. 44. The former Trustee testified that he believes that the amount of the accountant's fee was fair and reasonable based on the work the accountant performed, and that the work was necessary for the Trust. N.T., 9-19-2006, p. 30.

#### **\$2,500.00 SHORTFALL**

26. Shortly after the removal of the former Trustee, the First National Bank of Chester County was appointed substituted trustee and Welch was ordered to transfer all monies and properties remaining in the Trust. Decrees dated December 19, 2005, and December 28, 2005. Linda Schaeffer ("Schaeffer" or "Substituted Trustee"), the account administrator for the substituted trustee, testified that of the \$272,828.00 listed as the "Combined Balance on Hand" and due to be remitted by the former Trustee, the substituted trustee had received \$270,389.00. N.T., 9-18-2006, pp. 6, 9-11; Amended Account, Summary of Account. This deficiency amounted to about \$2,500.00, and the shortage was never made up. N.T., 9-18-2006, p. 11. Schaeffer had tried to contact Brinker Capital to close out one of the smaller accounts and make up the difference, but



she did not have the account number and was unsuccessful in getting the money and believed that Welch would take care of it. N.T., 9-18-2006, p. 22. Welch stated that when he delivered the check to the new trustee he told them there was still \$2,500.00 in two accounts and he was told by the new trustees they would get the money. N.T. 9-19-2006, p. 31. Schaeffer said she did try to get the \$2,500.00 but the letters were returned to her because she did not have the account numbers. N.T. 9-18-2006, p. 22. The former Trustee acknowledged the \$2,500.00 deficiency and its continued existence was owing to a miscommunication as he thought and had been told that the new trustee would get the money; he would do whatever the Court would permit him to do in order to move the money from a Brinker account. N.T., 9-19-2006, p. 31.

#### ALLEGED INTEREST DEFICIENCY

27. The alleged expert witness called by Jonathan Kogen. Schaeffer, stated her credentials were as follows: graduated from Central Atlanta School of Trust, studied for CTFA, took the exam the week before 9-18-2006, did not graduate from college, and has 30 years in the business. N.T. 9-18-2006, pp. 7-8 Schaeffer created an alleged analysis ("Interest Analysis") calculating interest that she believes should have been earned by Ansar Convertible Debenture Bonds and paid to the Trust; comparing that figure with the amount of interest that had been paid to the Trust or paid to others on behalf of the Trust. N.T., 9-18-2006, pp. 12-13; Ex. O-2. The Alleged Interest Analysis presents five columns of information dealing with information from the convertible debentures purchased by the Trust. N.T., 9-18-2006, p. 13; Ex. O-2. The first column lists the acquisition dates for each of the debentures, the second column lists the amount used to

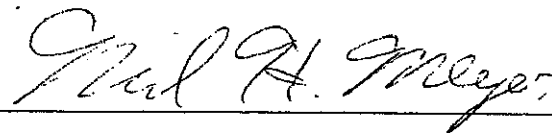
purchase each of the debentures, the third column indicates the date each debenture was converted or split or indicates that the debenture was still outstanding as of December 31, 2005. N.T., 9-18-2006, pp. 13-16; Ex. O-2. The fourth column indicates the number of days of interest between the acquisition date and the conversion/split date or December 31, 2005, as applicable, and the fifth column indicates 6% per year simple interest calculated as the value of the bond times 6% times the number of days of interest and divided by 365 days per year. N.T., 9-18-2006, pp. 16-18; Ex. O-2. The alleged interest that should have accrued for each debenture is listed in the fifth column and the amount for all of the debentures is totaled as \$246,998.32, a figure on the bottom right of the Interest Analysis. N.T., 9-18-2006, pp. 18-19; Ex. O-2. The difference between the Alleged Total Interest that should have accrued and the Interest Income that was earned of \$167,398.83 per the Amended Account equals a deficiency of \$79,590.49. N.T., 9-18-2006, p. 19; Ex. O-2; Schaeffer admitted she did not read the convertible debentures and was not aware of the terms of the convertible debentures N.T. 9-18-2006, p. 13. Schaeffer also prepared another accounting which came up with a different amount of \$250,488.39. N.T. 9-18-2006, p. 20. She stated "I did prepare another document because I'm accustomed in my 30 years of doing accounting the same way over and over, and as, shall we say, as fixated as that may sound, it is an understandable way of preparing it. And I do have an extra copy here for the Court. And I came up with \$250,488.39." N.T. 9-18-2006, p. 20. When asked about the discrepancies between her calculations and Jonathan Kogen's attorney, she explained. "I couldn't find any real discrepancies in the documents that you did. I think it was just a different way of accounting for things, a

different way of doing things and I haven't checked mine. But so what I am saying is, it's at least \$246,989.32." N.T. 9-18-2006, p. 20.

**INTERPRETATION OF DEBENTURES RE EARNED INTEREST**

28. The former Trustee alleges that the convertible debentures are worded so that interest is earned and only payable if the debenture is still outstanding on December 31 as it is a convertible debenture which can be converted or redeemed for stock N.T., 9-18-2006, p. 25; N.T., 9-19-2006, pp. 21-22; Exs. T-1 and O-12. Counsel for Beneficiary Jonathan Kogen and the Attorney General allege that the convertible debentures are worded so that 6% interest continues to accrue on a daily basis, regardless of when the convertible debenture is redeemed, and that "[i]nterest payments will be made on or before the last day of each calendar year end" means that interest will accrue and will come due and be paid no later than December 31. N.T., 9-18-2006, pp. 26-27. Exs. T-1 and O-12. Schaeffer testified that with publicly traded bonds earning interest, the bondholder receives accrued interest payments "for the number of days [he holds] it" even if the bond is sold before its maturity date and before the day it pays interest. N.T., 9-18-2006, pp. 29-30. Schaeffer admitted that she never saw or examined the convertible debentures N.T. 9-18-2006, p. 23 Schaeffer said she was unsure of these convertible debentures because she was not familiar with any that is not publicly traded at the bank. N.T. 9-18-2006, p. 23.

Dated: 3-02-2007



NEIL H. MEYER, ESQUIRE

Counsel for Objectant, Beneficiary Jonathan Kogen

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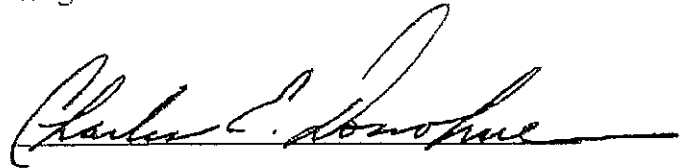
Dated: \_\_\_\_\_

NEIL H. MEYER, ESQUIRE

Counsel for Objectant, Beneficiary Jonathan

Kogen

Dated: MARCH 1, 2007



CHARLES E. DONOHUE, ESQUIRE

Senior Deputy Attorney General

Counsel for the Commonwealth of  
Pennsylvania, Office of Attorney General, as  
*parens patriae*

Dated: \_\_\_\_\_


IONATHAN FREEDMAN, ESQUIRE

Counsel for Accountant, former Trustee

Robert Welch, Esq.

Dated: \_\_\_\_\_  
NEIL H. MEYER, ESQUIRE  
Counsel for Objectant, Beneficiary Jonathan Kogen

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CHARLES DONOHUE, ESQUIRE  
Counsel for the Commonwealth of Pennsylvania, as *parens patriae* for Charities

Dated: \_\_\_\_\_  
  
JONATHAN FREEDMAN, ESQUIRE  
Counsel for Accountant, former Trustee Robert Welch, Esq.