January 11, 2012

T&E Litigation Update: *Rochalski v. Sklodowski*

In *Rochalski v. Sklodowski*, Case No. 10-P-1750, 2012 Mass. App. Unpub. LEXIS 12 (Jan. 6, 2012), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed the probate court's judgment voiding certain transactions on grounds of lack of capacity and undue influence.

The decedent's native language was Polish, with her knowledge of English being limited. She also suffered from mental illnesses, among them hoarding. Despite these limitations, she was able to accumulate a considerable estate, including a six-family residential building in Boston.

The decedent lived in an apartment on the property until 2002, when the building was condemned and put into receivership. The decedent contested the receivership and became embroiled in legal proceedings in an attempt to rehabilitate the property. She was assisted by an attorney, her guardian, and the defendant, who acted as the decedent's interpreter. The attorney developed a plan for the property that required the decedent to deed one-half of her interest to a developer, who would rehabilitate the property and then allow the decedent to live in one of the apartments rent-free for the remainder of her life. The defendant intervened, however, persuading the decedent to deed the entire property to him for one dollar.

Thereafter, the defendant rehabilitated the property but rented the apartment meant for the decedent to a third party. The defendant also assumed control of the decedent's finances, using a general power of attorney to withdraw money from the decedent's accounts and cashing her Social Security checks, and isolated her from her family and guardian. Moreover, the defendant arranged for the decedent to execute a new will, which the defendant hand-wrote, naming himself as executor and the beneficiary of almost the entire estate.

The defendant admitted that he had emptied the decedent's accounts, but argued that he did so at the decedent's request. He also claimed that he sent $150,000 to a purported guard who had allegedly helped the decedent escape from a concentration camp in Siberia, even though the defendant conceded that he did not believe this had actually happened.

After trial, the probate court found the decedent had been incompetent and the victim of undue influence, voiding the deed, invalidating the will, and ordering the defendant to return funds to the decedent's estate. The probate court also found that the defendant had violated his common law duties associated with a power of attorney, including by sending $150,000 to a person whose identity the defendant himself had questioned. The Appeals Court affirmed on all counts, and further ordered the defendant to pay the plaintiff administratrix's costs and fees on appeal pursuant to Rule 25 of the Massachusetts Rules of Appellate Procedure.