

**Arizona Supreme Court
Administrative Office of the Courts**



INVESTIGATION SUMMARY

Complaint No. 18-0061

License No. [REDACTED]

Certification and Licensing Division

May 2, 2022

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**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

CERTIFICATE HOLDER/LICENSEE INFORMATION	Certificate Holder:	Diane Prescott	
	Certification Number:	[REDACTED]	
	Business Name:	N/A	
	Certification Number:	N/A	
	Type of Certificate/License:	Individual Fiduciary	
COMPLAINANT	Name:	Director	Initiated
		Complaint	
INVESTIGATION INFORMATION	Complaint Number:	18-0061	
	Investigator:	Pasquale Fontana	
Complaint Received:		December 17, 2018	
Complaint Forwarded to the Certificate Holder:		December 27, 2018	
Certificate Holder/Licensee Received Complaint:		January 7, 2019	
Response From Certificate Holder:		February 1, 2019	
Period of Active Certification/Licensure:		September 8, 2011 - Present	
Status of Certification/License:		Active	
Availability of Certificate Holder/Licensee:		Available	
Availability of Complainant:		Available	
Report Date:		May 2, 2022	

ALLEGATIONS:

- 1) Diane Prescott failed to practice competently by use of unacceptable practice by imprudently investing estate funds bequeathed to beneficiaries and/or failing to observe the standards of care applicable to a trustee, including the prudent investor rules.
- 2) Diane Prescott engaged in unprofessional conduct and unacceptable fiduciary practices by:
 - a) Failing to distribute assets of the decedent in accordance with the terms of the Will by creating a trust and naming herself as trustee when such action was not directed by the will.
 - b) Changing the directive of the will.
 - c) Failing to distribute and/or timely distribute the assets of the estate.

- 3) Diane Prescott failed to avoid self-dealing, conflict of interest or impropriety, and/or the appearance of a conflict of interest or impropriety.
- 4) Diane Prescott failed to keep estate beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests.
- 5) Diane Prescott failed to comply with the Court's order to provide an estate status report by the Court's deadline.

ADDITIONAL ALLEGATIONS:

None.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

- Records obtained through the Arizona Supreme Court Compliance Audit conducted on August 1, 2018 (for the period from March 1, 2016 – March 31, 2018).
- Written response and documentation submitted by certificate holder, Diane Prescott ("Prescott"), by and through her attorney, Gary Strickland ("Strickland"), formerly of Warner Angle Hallam Jackson & Formanek, PLC.
- Review of applicable Certification and Licensing Division ("Division") records.
- Review of applicable sections of Arizona Revised Statutes ("ARS"), Arizona Codes of Judicial Administration ("ACJA") §§ 7-201, 7-202, and 3-303, and Arizona Supreme Court Rules.
- Records from the Arizona Superior Court, Yavapai County, in Probate Cause Numbers, V1300PB20148-0112 involving Estelle Harrison Russo ("E.H. Russo") and V1300PB82006-0114 involving Everett Lodge ("Lodge").
- Interview with Billie Laird ("Laird"), President of Dysart Education Foundation.
- Records provided by Dysart Education Foundation.
- Interview with Lee Bialostok ("Bialostok"), of the law firm, Platte Klarsfeld & Levine, LLP, counsel for Sephardic Home for the Aged Foundation.
- Interview with Prescott, with counsel, Strickland.

PERSONS INTERVIEWED:

1. Billie Laird
2. Lee Bialostok
3. Diane Prescott

SUMMARY OF INVESTIGATION:

Prescott holds licensures in Arizona as a fiduciary,¹ attorney,² and realtor.³

The Division randomly selected Prescott for a compliance audit of her fiduciary files in July and August 2018. During the audit, the Division, in part, examined court records, records of the fiduciary, and interviewed Prescott and her office manager. The audit uncovered situations which required further investigation and possible disciplinary action. Pursuant to ACJA §7-201(H)(1)(b), the Division requested that a Director Initiated Complaint be authorized. The Director of the Administrative Office of the Courts (“AOC”) authorized the complaint.

In summary, the Director Initiated Complaint included various concerns that Prescott violated her fiduciary duties:

- Engaging in self-dealing and conflict of interest impropriety and/or not avoiding the appearance of self-dealing and impropriety by hiring and using estate funds to pay her husband to perform various services for estates.
- Purchasing real property from people for whom the fiduciary served as agent under Powers of Attorney.
- Creating trusts and naming herself as trustee when such action was not directed by the decedent’s will.
- Failing to distribute and/or timely distribute the assets of the decedent’s estate in accordance with the terms of the will.
- Failing to timely provide the court with estate status reports and/or failing to appropriately notify the court of the estate status, her concerns regarding the timely administration of the estate, and the necessity for further court direction.

Prescott has denied that she violated any of her fiduciary duties to any estate.

The facts suggest that Prescott engaged in unacceptable fiduciary practices by misusing and/or abusing her fiduciary duties. Prescott’s conduct exhibited negligence because she deviated from the standard of care a reasonable licensed fiduciary would exercise. Prescott controlled estate assets that did not belong to her and she treated certain bequests as if her own. She created trusts when such action was not directed by the Will and she

¹ Division records show that the Fiduciary Board granted initial licensure to Diane Prescott on September 8, 2011.

² The State Bar of Arizona website shows Diane Prescott as an active member. She was admitted to the practice of law in 1976 and admitted to the State Bar of Arizona on October 8, 1991.

³ The Arizona Department of Real Estate Public Database shows Diane Prescott is an active member holding Real Estate Broker License Number [REDACTED] original license date December 18, 1998. Diane Prescott has an active Real Estate Self Employed Broker License Number [REDACTED] business name Silver Star Realty, original license dated December 18, 1998.

benefitted financially from creating and administering the trusts. Prescott did not make distributions from estate assets in accordance with the terms of the Will and/or did not timely make distribution of estate assets. The facts are presented herein.

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION AND ANALYSIS:

Allegation 1:

Diane Prescott failed to practice competently by use of unacceptable practice by imprudently investing estate funds bequeathed to beneficiaries and/or failing to observe the standards of care applicable to a trustee, including the prudent investor rules.

As Personal Presentative and/or Trustee, rather than disbursing funds as directed, Prescott invested probate and trust funds in Dollar Mark, LLC ("Dollar Mark"), an Arizona limited liability company, through promissory notes ("Promissory Note(s)"). Dollar Mark is a short-term money lender that uses investors' money to fund the purchase and sale of residential real estate. The properties Dollar Mark lends on include fix and repair and/or rehabilitated properties.

Prescott involved the following estates in her investment arrangement with Dollar Mark:

- E.H. Russo Estate
- Margaret Fallon Estate
- Anita Lantz Estate
- James and Gloria Henderson Estate
- Everett Lodge Estate

The Division contends that Prescott did not observe the standards applicable to a trustee, including the prudent investor rules, and she failed to use the degree of care, skills and proficiency commonly exercised by the ordinary skillful, careful, and prudent professional fiduciary engaged in similar practice under the same or similar conditions. Prescott's imprudent conduct in her management of estate and trust funds is evidenced in the following areas:

- Investment arrangement with Dollar Mark;
- Insufficient and/or incomplete due diligence prior to investing estate and trust funds; and
- Relinquishing control of estate and trust funds.

Investment arrangement with Dollar Mark

In summary, Prescott's investment arrangement with Dollar Mark is structured in the following manner:

- Dollar Mark executes a Promissory Note which details the transactions.
- The Promissory Note is "personally guaranteed" by Dollar Mark's two managing members and their wives.
- Dollar Mark agrees to pay monthly interest only payments, at an agreed upon percentage, for example, 8 % interest per annum, to the estate on the money borrowed from the estate.
- The Promissory Note is secured by an Assignment of Deed of Trust on residential real estate.
- Dollar Mark executes an Assignment of Deed of Trust securing the estate's interest in the property or properties.
- Once recorded, the Assignment of Deed of Trust securing Dollar Mark obligations is physically returned to Dollar Mark.
- At the same time Prescott "receives" the Assignment of Deed of Trust securing Dollar Mark's obligations, by the terms of the Promissory Note, Prescott is obligated to sign a Release or Re-Assignment of Deed of Trust and deliver that executed Release to Dollar Mark.
- Dollar Mark maintains possession of the executed Re-Assignment of Deed of Trust delivered by Prescott. Dollar Mark eventually delivers the document to a title company with instructions on when it is to be used.
- When one or more of the real estate properties identified in the Promissory Note sells, Prescott instructs the title company to deliver the proceeds or "repaid loan" to Dollar Mark.
- Once Dollar Mark is obligated per the terms of the Promissory Note to "repay the loan" to the estate, the money does not go to the estate. Instead, the "repaid loan" remains with Dollar Mark and is not returned to the estate or Prescott.
- Dollar Mark then executes a Modification of Note removing the property or properties under the original Promissory Note and replacing them with new property or properties of equal value.
- The Modification of Note is executed by the two managing members of Dollar Mark but, unlike the original Promissory Note which includes all four signatures, the Modification of Note is not executed by their two wives to personally guarantee the Modification of Note.
- After the Modification of Note is executed by Dollar Mark, the company executes an Assignment of Deed of Trust which secures Dollar Mark's obligation and secures the estate's financial interest in the new property or properties identified in the Assignment of Deed of Trust.

The investment arrangement repeats in the manner described above through various Modification of Note(s).

The investment arrangement and Prescott's implementation of that investment arrangement is not prudent for the following reasons:

- Prescott invested estate/trust funds by lending probate and trust funds to be used to finance short-term loans for the purchase and sale of residential real estate. These properties include "fix and flip" or rehabilitated properties. The investment of estate funds is speculative, in part, because it involves the purchasing and selling of real estate properties, particularly properties that have been fixed up or "rehabilitated." There is also risk to the collateral because it is entirely dependent upon the state of the real estate market.
- Prescott's files did not contain evidence of professional appraisals or of valuation of the property securing the loans. Prescott told Division staff she does not require Dollar Mark to obtain a professional appraisal of the properties for which she is committing estate/trust funds.
- Prescott relied on "loan to value ratios" which were performed by Dollar Mark. Prescott told Division staff that she does not review the specific software program Dollar Mark uses to obtain the property valuations nor does she review any report that Dollar Mark may generate regarding the "valuation" of each property.

Once Dollar Mark provides a valuation for any given property, Prescott conducts her "research" on the property, utilizing internet websites including Zillow⁴ and Realtor⁵ and she compares the valuation provided by Dollar Mark to those valuations that appear on the referenced websites.

- Dollar Mark executed an Assignment of Deed of Trust on any given property, which secured the estate's financial interest in the property or properties. By the terms of the Promissory Note, Prescott was contractually obligated to provide Dollar Mark, the company she is lending estate funds to, a release of the security interest on or about the same day as the loan rather than the date of repayment.
- At the same time the estate's financial interest is secured by Dollar Mark's Assignment of Deed of Trust to a property, Prescott executes a Release of Assignment of Deed of Trust releasing Dollar Mark of its loan obligation to the estate/trust and delivers the Release of Assignment of Deed of Trust to Dollar

⁴ [Zillow: Real Estate, Apartments, Mortgages & Home Values](#)

⁵ [Homes for Sale, Mortgage Rates, Virtual Tours & Rentals | realtor.com®](#)

Mark. In doing so, Dollar Mark, as the borrower of estate funds, is responsible for protecting the lender's interest by giving appropriate instruction of repayment.

- The Promissory Note(s) states that “[u]pon the payment of the principal portion of the payoff amount...and all unpaid interest...of the original principal amount of this Note [Promissory Note] to Lender [estate or trust], Lender hereby irrevocably and unconditionally authorizes Borrower [Dollar Mark] to instruct Agent to cause the Re-Assignment to be recorded...” However, the Re-Assignment of the Deed of Trust occurred without the principal amount ever going to the estate or trust.
- After a property is sold, Prescott instructs the title company to directly deliver the “repaid loan,” which represents the estate and trust funds, to the borrower, Dollar Mark.
- Prescott relinquishes control/possession of the estate/trust funds. Dollar Mark retains possession of the funds.
- After the title company wires the “repaid loan” to Dollar Mark, there is a gap in time when Dollar Mark executes an Assignment of Deed of Trust securing Dollar Mark's obligation and the estate's financial interest to another property through a Modification of Note.
- Prescott did not require all parties who initially executed the Promissory Note to also execute the Modification of Note.
- Prescott's recycling of estate and trust funds to Dollar Mark fails to adequately protect or account for estate or trust funds.

In her interview with the Division, Prescott confirmed the investment arrangement as described herein. She acknowledged that the estate/trust never received the “repaid loan” from the sale of the properties and that Dollar Mark retained possession of the funds in its accounts. Prescott said Dollar Mark pays the estates monthly interest and if she “calls in” a loan, Dollar Mark, using a “pool” of money, will repay the funds requested, eliminating the need to first sell the property or properties for which the estate/trust has been assigned a financial interest, per the Assignment of Deed of Trust.

Prescott does not have past or current qualifications as an investment advisor or financial planner who advises others on financial matters including investments, and who, for example, makes strategic investment decisions based on the client's risk profile and prospect for financial gain, using skills and methodology to increase returns for estates/trusts. There is no standard that requires Prescott to have exceptional investment expertise when managing estate funds. However, Prescott entrusted Dollar Mark with hundreds of thousands of dollars of probate and trust assets which were used to fund the

purchase and sale of residential properties, as described herein. For example, in the E.H. Russo Estate, Prescott's primary responsibilities to the estate was to disburse estate money to beneficiaries in accordance with the terms of the Russo Will. The Russo Will did not state that estate funds should be invested before the money went to beneficiaries.

The oversight, management, and investment of estate funds under the control and responsibility of a fiduciary is regulated by the ACJA and A.R.S.

ACJA §7-202(J)(6)(d):

A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

A.R.S. §14-10804. Prudent Administration

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

In addition, fiduciaries are compelled to observe certain standards of care including the Prudent Investor Rules, per A.R.S. §14-10901 et seq.

A.R.S. §14-10901. Prudent Investor Rule

A. Except as provided in subsection B, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule requirements of this article.

A.R.S. §14-10902. Standard of care: portfolio strategy; risk and return objectives

A. A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard the trustee shall exercise reasonable care, skill and caution.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

Insufficient and/or incomplete due diligence prior to investing estate/trust funds

The Division reviewed some of the actions Prescott undertook while performing her due diligence on Dollar Mark and its members prior to loaning Dollar Mark trust funds in 2014. The facts suggest that Prescott's due diligence into Dollar Mark was insufficient and/or incomplete.

As trustee and/or Court-appointed Personal Representative, Prescott is bound by duties of care and loyalty to the estate and beneficiaries. She is required to act in the best interest of the estate and beneficiaries and to exercise the upmost care and caution in decision making. Consequently, Prescott's decision-making is open to scrutiny.

ACJA §7-202(J)(3)(e):

...The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

In response to a records request from the Division, on July 31, 2021, Prescott, by and through counsel, Strickland, in part, supported her actions involving her examination and due diligence into Dollar Mark. Prescott said she performed "a thorough inquiry" into Dollar Mark and its principals including financial assets. She said she personally visited the offices and reviewed Dollar Mark's operation including visiting sample properties on which loans had been made or would be made, examined the instruments that secured the loans that were made by Dollar Mark, and ensured that all loans were secured by first trust deeds. Prescott said she had "twenty-hour online access to charts showing the status of the loans and computer images of the county recorded liens." Prescott said she had monthly telephone meetings with Dollar Mark's principals to pose questions that she may have had and to receive updates on the status of the loans.

The Division reviewed the documentation Prescott provided regarding the "thorough inquiry" she made into Dollar Mark.

Email records demonstrate that on April 4, 2014, Dollar Mark's Matthew Uhler ("Uhler") contacted Prescott and others at Dollar Mark including Kristian Gose ("Gose") and assistant, Karen Waskiewicz ("Waskiewicz") regarding giving Prescott access to a Google drive that contained recorded Deeds for properties Dollar Mark has funded. The file is used for all lenders that work with Dollar Mark. Uhler also noted that he and Gose had ideas on "how we might structure some of the loans in a way that may fit your unique situation especially well."

In an email from Gose to Prescott, dated April 25, 2014, he noted, in part, that it was a pleasure meeting with Prescott [on April 23, 2014]. Gose said he would review Dollar Mark's current properties that Dollar Mark "already funded and will also look at what is coming up for your consideration." Gose said Dollar Mark has four consistent borrowers and they are required to send him a biweekly email status report on the properties. Gose asked Prescott to provide him with a list of items she would like to see from Dollar Mark including member credit reports, tax returns, personal financial statements, articles of organization, etc.

Waskiewicz emailed Prescott on April 29, 2014 and attached Gose's and Uhler's personal financial statements. Waskiewicz noted that credit reports were being run by Dollar Mark's banks and would be sent to Prescott when available. Waskiewicz also included examples of a "Note" between Dollar Mark and a borrower and a borrower Guaranty Agreement.

Dollar Mark provided the following documentation to Prescott for her review and consideration:

- Uhler's personal financial statement, dated February 1, 2013
- Gose's personal financial statement dated April 1, 2014
- Gose's wife, Wendy Alexonis' ("Alexonis") personal financial statement dated April 1, 2014.

Prescott also received a copy of Uhler's resume and reviewed information that appears on Alexonis' website.⁶ Prescott told Division staff that Alexonis is a well-known and respected accountant.

Prescott's due diligence did not appear to include obtaining personal financial statements for Audrey Uhler ("Audrey") for 2013 or 2014. In addition, there was no record of a credit report involving Audrey even though she executed the Promissory Note(s) and was one of the four individuals who "personally guaranteed" the loans.

On May 15, 2014, Gose emailed Prescott wherein he attached Uhler's credit report. Gose said his own credit report would follow. On the same date, Gose emailed Prescott and identified his and Alexonis' credit score provided by his bank. The report was done in connection with a home loan application because Gose and Alexonis were undertaking extensive renovations to their home. Gose indicated that his bank would not allow him to send a whole report, but he offered to submit the same credit report that Uhler had provided if Prescott wanted that level of credit report for him and Alexonis.

⁶ Tucson Accountants | Roberts Alexonis Group | Wendy G. Alexonis (rtaxes.com)

The Division reviewed Uhler's credit report. It was a comprehensive credit report which included reporting sources Equifax, Experian, and Transunion. It showed all accounts opened and closed and balances on those accounts.

Conversely, the credit report involving Gose and Alexonis was brief and contained a score from a single credit reporting source, Experian.

Prescott told Division staff that she did not obtain a personal financial statement or credit report for Audrey. She was a guarantor on the Promissory Note(s) and if there was any issue, Prescott could go the "community property" since the Promissory Note(s) had Audrey's authorization therefore Prescott did not need to know Audrey's credit score.

Prescott was asked if she requested that Gose and Alexonis provide a full or whole report like Uhler's credit report, as Gose had offered to do in his May 15, 2014, email to Prescott. Prescott did not request a full credit report for Gose and Alexonis.

Prescott's insufficient and/or incomplete due diligence is further evidenced by email records and timeline.

On July 9, 2014, Gose emailed Prescott and Windham, with a copy to Gose, Uhler, Alexonis, and Waskiewicz, regarding a visit to Tucson. Gose wrote that he was firming up "the schedule for Friday" [July 11, 2014] which included a 9:00 a.m. meeting at Alexonis' office for Prescott to meet Alexonis and Dollar Mark's bookkeeper. At 10:00 a.m. they would meet at Dollar Mark's office to meet with Waskiewicz who Gose said drafts "all the Notes, Deed of Trust Lien process, Assignments, facilitates all payoff and purchases, on and on and on." Gose said they would also have a representative from Fidelity National Title who holds all the documents.

Gose also wrote that Dollar Mark would have:

"2 of our top Borrowers there to introduce themselves of which one of them will show you 4 properties in the area. 1 just purchased, 2 in the middle of rehab stage [sic], and 1 finished, and on the market. This will give you a very good idea of the type of homes we lend on of which of course we assign over to you."

Gose's comments, referenced above, is noteworthy because it undermines the statements Prescott represented to the Division that she conducted "a thorough inquiry" into Dollar Mark. The referenced statements were made in a July 19, 2021 response to the Division's request for additional documentation. Prescott did not specifically state that she made "a thorough inquiry" into Dollar Mark *prior to* investing estate funds with Dollar Mark, but it stands to reason that a proper due diligence and prudent investing of estate funds would inform Prescott's decision-making and dictate that a complete and "thorough inquiry" be

made before loaning and entrusting hundreds of thousands of estate/trust funds to Dollar Mark.

As referenced in Gose's July 9, 2014, email, Prescott's forthcoming meeting with Dollar Mark's people presented the opportunity for her to meet two of Dollar Mark's top borrowers who were going to show Prescott four properties in the area including one property that was just purchased, two properties in the middle of "rehab stage," and one property that was "finished, and on the market." Gose opined that this would give Prescott "a very good idea of the types of homes we lend on which of course we assign to you."

The facts suggest that by July 9, 2014, Prescott had not met Dollar Mark's top borrowers or personally examined the types of properties that Dollar Mark loaned on despite already having invested trust funds in Dollar Mark. On May 23, 2014, Prescott had already entered into Promissory Notes with Dollar Mark to invest \$200,000.00 from the Dyke Family Revocable Living Trust ("Dyke Trust"), and \$100,000.00 from The 2008 Anita M. Lantz Living Trust ("Lantz Trust"). Additionally, on June 27, 2014, Prescott invested another \$480,000.00 from the Lantz Trust to Dollar Mark.

A critical element of a prudent and "thorough" process of due diligence should include a clear understanding of the types of real estate properties, in context of their neighborhoods, that Prescott would be committing estate funds for which she was entrusted and responsible. An examination of the actual properties should and ought to be an essential feature of a fiduciary's analysis prior to investing estate funds, if a fiduciary is acting in the best interest of the estate.

There is further evidence demonstrating that Prescott's due diligence was insufficient and/or incomplete prior to loaning/investing trust funds. Email records show that by July 23, 2014, Prescott was still engaged in the process of learning and examining Dollar Mark's operations and investment structure and she was not familiar and confident with the operations, as noted below.

On July 23, 2014, Prescott emailed Waskiewicz, Uhler and Gose, with a copy to Windham, Subject line: Dollar Mark Trust Beneficiary Payoff Statement Draft. In the email, Prescott wrote:

So Good [sic] to meet you in Tucson! The payoff draft looks great.

I am so glad you're keeping track of all these investments since they get paid off and need to be reinvested so often. That's definitely a paperwork challenge. Thank you for keeping them all straight since my clients need to always have those lines in place immediately upon the investment of the funds. The chart of loans and investments dates and payoff dates will certainly help me feel more comfortable in being able

to see where all the money is at any one time. [emphasis added] That way I can check my paperwork and keep the current loans and deeds of trusts in a "current" file and remove the paid off loans and their paperwork to a "paid off" file. This will also help my accountant track the investments, the interest associated with each loan and assure the payoff amount corresponds with the paperwork. It's really important to me, as I'm just getting familiar with the structure of your company to have systems in place that track the transactions and allow for easy doublechecking. [emphasis added]

In addition, Prescott did not appear to have a clear understanding of Dollar Mark's internal operating agreement and succession planning before she invested estate assets.

On July 30, 2014, Prescott emailed Gose, Uhler, and Windham regarding the Lantz Trust. The email states that Prescott sent an additional \$100,000.00 to Dollar Mark from the Lantz Trust. Pertinently:

The \$100,00.00 for Anita Lantz Trust went out an hour and a half ago.

I like your flow chart for the event of a catastrophe. It would be good to discuss that further, when things calm down, if they do...I'm most interested in knowing who keeps the records of who each loan is made too [sic] and who would collect and track the payments and the payoffs and releases in the event of your disability. Obviously, it's in everyone's interest that the operations side continue to run smoothly. Who would be overseeing these daily tasks and holding the right to deal with the funds so that the funds aren't frozen because you are the only person on the bank account? [emphasis added]

As an attorney I deal alot [sic] in looking forward so I'm used to asking these questions. One of the big issues in most business planning is making sure someone can still deal with the accounts in the event the principal is absent, temporarily or permanently. And what are the safeguards on these accounts. [emphasis added]

That's a brief summary of some of the things that will continue to be developed as we go alone. [sic]

I look forward to brainstorming with you and the other principals.

Prescott raised the issue and her concerns about Dollar Mark's business plan in the event the principals were not able to carry out their duties several months after she had invested approximately \$800,000.00 in combined assets involving the Dyke Trust and Lantz Trust funds in Dollar Mark.

Although Prescott raised the business plan issue with Dollar Mark on July 30, 2014, per her email of that date, on October 15, 2014, Prescott emailed Waskiewicz, Uhler and Gose stating that she had reviewed Dollar Mark's Operating Agreement, had comments on the business plan and wanted this item to be placed on a meeting agenda.

On October 27, 2014, Uhler responded to Prescott's email and, in part, outlined a summary of the plan with Dollar Mark in the event that Uhler and/or Gose passed away. Uhler, in part, said each of the two would obtain \$1,000,000.00 of term life insurance with Dollar Mark as beneficiary. The life insurance would be used to eliminate debt owned by the company where such debt has the surviving spouse's personal guarantee then for operating capital or other purposes as needed. Uhler noted that this should cover most of the questions and requested that Prescott, Gose, Alexonis, and Audrey email any additions, modifications, suggestions or deletions. Uhler requested to be notified of any issue they need "to consider for you to effectively draft the Agreement. Once it is in final form from you, we will meet to discuss again and not any requested changes."

The original Operating Agreement of Dollar Mark, LLC, was dated March 1, 2009.

The Amendment to the Operating Agreement of Dollar Mark, LLC, was executed by Uhler, Gose and Alexonis on February 2, 2015.

A further Amendment to the Operating Agreement of Dollar Mark, LLC, was executed by Uhler, Gose and Alexonis, on April 1, 2018 reflecting that Uhler is being changed to The Uhler Living Trust.

Relinquishing control of estate/trust funds

Prescott's investment arrangement with Dollar Mark and her implementation of that investment arrangement, as described herein, was utilized in all cases. Prescott relinquished control of estate assets when she instructed the title company to direct the "repaid loan" from the sale of the properties to Dollar Mark and not direct the "repaid loan" to the estate/trust account(s). Dollar Mark received the "repaid loan" from the title company and retained control of the assets and account. Dollar Mark later executed an Assignment of Deed of Trust for a future property. Prescott told the Division that the estate's financial interest in a property was secured after Dollar Mark executed the Assignment of Deed of Trust thereby assigning the estate's interest in the property.

The E.H. Russo Estate will serve as an example to illustrate how Prescott's actions exhibited negligence and contrary actions taken in the best interest of the estate.

ACJA §7-201(A) defines negligence:

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

Prescott invested or loaned over one million dollars of E.H. Russo Estate funds to Dollar Mark beginning in early 2015 and beyond. Despite having an obligation to disburse estate funds in accordance with the Russo Will involving certain bequests, Prescott initially invested \$500, 000.00 of estate funds in Dollar Mark, per the terms of the Promissory Note, dated March 30, 2015. See below.

PROMISSORY NOTE

\$500,000.00

Tucson, Arizona
March 30, 2015

FOR VALUE RECEIVED, Dollar Mark LLC, an Arizona Limited Liability Company (the “Borrower”), hereby promises to pay to The E. H. Russo Trust and/or its successors or assigns (the “Lender”), the amount of FIVE HUNDRED THOUSAND and 00/100 dollars (\$500,000.00). Borrower agrees that this note shall include monthly interest only payments at 8% interest per annum in the amount of THREE THOUSAND THREE HUNDRED NINETEEN AND 33/100 DOLLARS (\$3,333.33). The first prorated interest only payment of TWO HUNDRED NINETEEN AND 18/100 DOLLARS (\$219.18) will be combined with the first May 1, 2015 monthly interest only payment of \$3,333.33 (totaling \$3,552.51). Beginning June 1, 2015, monthly interest only payments of \$3,333.33 shall be made on the first of each month directly by Dollar Mark, LLC. Lender has the option to call the Note due in full March 30, 2016 or any time thereafter. There is no pre-payment penalty.

Upon the date of this Note, the following Deed(s) of Trust will be one hundred percent (100%) assigned by Borrower, as the assignor, to Lender, as the assignee, pursuant to an Assignment of Deed of Trust.

Deed of Trust dated February 26, 2015, executed by KSW Properties, LLC, an Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on February 27, 2015, at Instrument No. [REDACTED] official records of Pima County, Arizona. [REDACTED] original Note funded for \$185,000.00; payoff amount to The E. H. Russo Trust \$165,000.00.)

Deed of Trust dated March 25, 2015, executed by ACM Ventures LLC, an Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on March 26, 2015, at Instrument No. [REDACTED] official records of Pima County, Arizona. [REDACTED] original Note funded for \$190,188.57; payoff amount to The E. H. Russo Trust \$170,000.00.)

Deed of Trust dated March 26, 2015, executed by ACM Ventures LLC, an Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on TBD, at Instrument No. TBD official records of Pima County, Arizona. [REDACTED] original Note funded for \$116,000.00; payoff amount to The E. H. Russo Trust \$82,000.00.)

Borrower(s) Initials [REDACTED]

Page 1 of 5

Lender(s) Initials [REDACTED]

Deed of Trust dated March 25, 2015, executed by KSW Properties, LLC, as Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on March 27, 2015, at Instrument No. [REDACTED] official records of Pima County, Arizona. [REDACTED] original Note funded for \$118,207.00; payoff amount to The E. H. Russo Trust \$83,000.00.)

Upon the date of this Note, Lender shall execute and deliver to Borrower an Assignment of Deed of Trust ("Re-Assignment") in favor of Borrower both in connection with the Deed of Trust. Borrower shall deliver the Re-Assignment to the account servicing agent ("Agent") who will hold the document(s) and administer only the payoff collection of the promissory note secured by the Deed of Trust. Upon the payment of the principal portion of the payoff amount stated above and all unpaid interest (namely, \$165,000.00, \$170,000.00, \$82,000.00 and \$83,000.00) of the original principal amount of this Note to Lender, Lender hereby irrevocably and unconditionally authorizes Borrower to instruct the Agent to cause the Re-Assignment to be recorded in the official records of Pima County, Arizona.

Any payment made late by more than ten (10) days, by Borrower, shall result in a ten dollar (\$10.00), per day, late fee, being due and payable to the Lender, in addition to each such late payment. No default for a late payment shall occur until after Borrower has first received a five (5) day written notice of default, from Lender, of such default, and shall have failed to cure such default within five (5) days thereafter. Time is of the essence hereof, and should Borrower fail to pay any amounts hereunder within five (5) days after written demand or if an uncured default shall occur and be continuing, then the entire unpaid principal and/or interest due Lender shall become immediately due and payable without notice to Borrower, at the option of the Lender of this Note. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

All payments shall be paid to Lender at such location as Lender may from time to time designate to Borrower in writing.

Lender shall not, by any act of omission be deemed to waive any of its rights remedies or powers hereunder or otherwise, unless such waiver shall be in writing signed by Lender, and then only to the extent specifically set forth therein. A waiver of one default shall not be construed as continuing or as a bar to or waiver of such right, remedy or power on a subsequent event of default.

Any consent, waiver, notice, demand, request or other instrument required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person or by certified or registered United States mail, return receipt requested, postage paid, addressed as follows, or by facsimile:

Borrower(s) Initials:



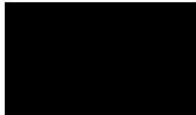
Page 2 of 5

Lender(s) Initials:



To Borrower:

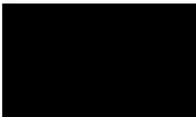
Dollar Mark LLC



Phone:

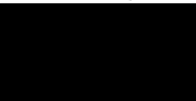
To Guarantors:

Kristian Gose



Phone:

Matthew Uhler



Phone:

To Lender:

E. H. Russo Trust



Phone:

Any notice properly sent shall be deemed effective upon hand delivery or three (3) days after deposit in the United States mail, if mailed, and upon the date of transmission by facsimile, provided sender receives a printed confirmation thereof. Any party may change its address for notices by written notice to the parties set forth above.

This Promissory Note is jointly and individually guaranteed by: Kristian Gose and Matthew Uhler and their wives Wendy Alexonis and Audrey Uhler.

This Note and any other documents evidencing or securing the indebtedness evidenced hereby shall be governed by, and construed in accordance with, the laws of the State of Arizona.

Should this Note be placed in the hands of an attorney for collection, or to enforce its collection or to protect any security for its repayment, the prevailing party shall be entitled to recover all costs of litigation together with attorney's fees incurred in the collection or enforcement of this Note.

Dated this 30th Day of March 2015

Borrower(s) Initials: [Redacted] Page 3 of 5 Lender(s) Initials: [Redacted]

BORROWER(S):

[Redacted] By: Kristian Gose, Managing Member Dollar Mark, LLC [Redacted] By: Matthew Uhler, Managing Member Dollar Mark, LLC

PERSONAL GUARANTORS:

[Redacted] By: Kristian Gose, Individually [Redacted] By: Wendy Alexonis, Individually

State of Arizona } ss:
County of Pima

On this 20th day of April, 2015, before me, the Undersigned, a Notary Public in and for said County and State, personally appeared Kristian Gose, Managing Member of Dollar Mark, LLC, and Wendy Alexonis personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument WITNESS my hand and official seal.

(SEAL)  [Redacted] Notary Public

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

Borrower(s) Initials: [Redacted] Page 4 of 5 Lender(s) Initials: [Redacted]

By: Matthew Uhler, Individually

By: Audrey Uhler, Individually

State of Arizona }
County of Pima } ss:

On this 20th day of April, 2015, before me, the Undersigned, a Notary Public in and for said County and State, personally appeared Matthew Uhler, Managing Member of Dollar Mark, LLC, and Audrey Uhler personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument WITNESS my hand and official seal.

(SEAL)



Notary Public

ACCEPTED AND APPROVED:

LENDER:

E. H. Russo Trust

BY:

Diane B. Prescott, Esq.

ITS: TRUSTEE

Borrower(s) In/With:

Page 5 of 5

Lender(s) To/From:

Although the Promissory Note was dated March 30, 2015, it was not executed and notarized by Dollar Mark's principals, Uhler and Gose; and personal guarantors, Audrey Uhler and Alexonis; and Prescott until April 20, 2015.

Prescott seems to have transferred \$500,000.00 of the E.H. Russo Estate funds to Dollar Mark before the Promissory Note was executed by Dollar Mark, personally guaranteed by parties, and accepted by Prescott. See below:

NBofAZ						
Transfer	03/30/2015		Funds Transfer	X	GC Chase x04...	883,082.83
Check	03/31/2015	EFT	Dollar Mark	X	DollarMark Inv...	-500,000.00

The Promissory Note identified four properties and their respective values which represented the \$500,000.00 of the E.H. Russo Estate funds Prescott invested with Dollar Mark:

▪	[REDACTED]	\$165,000.00
▪	[REDACTED]	\$170,000.00
▪	[REDACTED]	\$82,000.00
▪	[REDACTED]	\$83,000.00

On April 20, 2015, Dollar Mark executed an Assignment of Deed of Trust for each of the above-referenced properties at which time the estate's financial interest was secured to those properties.

[REDACTED]

Records show that after the property sold, Dollar Mark issued a Beneficiary Payoff Statement to the title company. See below.

BENEFICIARY PAYOFF STATEMENT

Beneficiary:	<u>Dollar Mark, LLC</u>
Title Company:	<u>Title Security Agency, LLC</u>
Escrow No.:	<u>[REDACTED]</u>
Existing Payor:	<u>KSW Properties, LLC</u>
Property Address:	<u>[REDACTED]</u>
Calculated Through Date:	<u>July 2, 2015</u>
Unpaid Principal Balance:	<u>\$ 185,000.00</u>
Rate of Interest:	<u>17.00%</u>
Payment Due Date:	<u>NA</u>
Interest Paid Current:	<u>NA</u>
Last Payment Received Date:	<u>NA</u>
Per Diem Interest:	<u>\$ 86.16</u>
Number of Per Diem Days:	<u>125</u>
Total Interest Due:	<u>\$ 10,770.00</u>
Inspection Fees:	<u>\$ 500.00</u>
Payoff Subtotal	<u>\$ 196,270.00</u>
Less Assignment Due (see Assignment Payoff Statement)	<u>\$ 165,000.00</u>
TOTAL DUE TO DOLLAR MARK, LLC	<u>\$ 31,270.00</u>

Prepared by: [REDACTED] 7/02/2015
 Karen Wasikowicz Date

APPROVED: [REDACTED] 7/6/2015
 Kristian Gose Date

Prescott instructed the title company to direct the proceeds of the sale or "repaid loan" to Dollar Mark. See below.

Assignment Beneficiary: E. H. Russo Trust

Title Company: Title Security Agency, LLC
Escrow No.: [REDACTED]
Property Address: [REDACTED]
Calculated Through Date: July 2, 2015
Per Diem Interest: *There is no interest associated with this payoff*
TOTAL DUE TO ASSIGNMENT BENEFICIARY \$165,000.00

Title/Escrow is authorized to wire the total due to the following account:

Dollar Mark, LLC
Bank: Chase
Routing #: [REDACTED]
Account #: [REDACTED]

APPROVED: [REDACTED] 7/6/2015
E. H. Russo Trust
Olga B. Prescott, Esq., Trustee

Records demonstrate that the title company wired Dollar Mark the funds on July 6, 2015. See below.

OUTGOING WIRES				
POSTED				
10813	07/06/15	Dollarmark	Wire	196,270.00
10814	07/06/15	KBW Properties, LLC	Wire	16,748.88
2 OUTGOING WIRES:				<u>\$213,018.88</u>

After the sale of [REDACTED] Dollar Mark executed a Modification of Note, dated July 20, 2015, removing the property, and replacing it with the property located at [REDACTED]. The valuation of the E. Pencil Leaf property was the same as the Twinberry Drive property. See portions of the Modification of Note below.

MODIFICATION OF NOTE

This agreement made and entered into this 20th day of July, 2015 between Dollar Mark, LLC as Borrower and The E. H. Russo Trust as Lender, and are parties to the original Note dated March 30, 2015 in the amount of \$500,000.00

Witness that the parties desire to change and modify the terms stated in the Agreement referenced herein.

Remove:

Deed of Trust dated February 26, 2015, executed by KSW Properties, LLC, an Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on February 27, 2015, at Instrument No. [REDACTED] official records of Pima County, Arizona. [REDACTED] original Note funded for \$185,000.00; payoff amount to The E. H. Russo Trust \$165,000.00.)

And replace with:

Deed of Trust dated June 23, 2015, executed by ACM Ventures, LLC, an Arizona Limited Liability Company, as the Trustor, to First American Title Insurance Company, a Nebraska Corporation, as the Trustee, in favor of Assignor, as the Beneficiary, and recorded on July 14, 2015, at Instrument No. [REDACTED] official records of Pima County, Arizona. [REDACTED] original Note funded for \$167,013.00; payoff amount to The E. H. Russo Trust will be \$165,000.00.)

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

IN WITNESS WHEREOF, the parties hereto have executed this agreement to date and year first above written.

BORROWER(S):

By:

[REDACTED]
Kristian Gose, Manager
Dollar Mark, LLC

By:

[REDACTED]
Matthew Uhler, Manager
Dollar Mark, LLC

LENDER(S):

BY:

[REDACTED]
The E. H. Russo Trust
Diane B. Prescott, Esq. – Trustee

Unlike the Promissory Note, dated March 30, 2015, executed by all parties including Audrey and Alexonis, as personal guarantors, Audrey and Alexonis did not execute the Modification of Note. The Modification of Note(S) all included the language, "ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME." This approach was consistent with all Promissory Note(s) and Modification of Note(s) reviewed by the Division. Prescott told Division staff that the reasons Audrey and Alexonis did not need to sign the Modification of Note(s) because the only item(s) that changed were the properties, and all other terms remained the same.

However, Prescott's explanation that Audrey and Alexonis did not need to execute the Modification of Note(s) because only the properties changed is undermined by other Modification of Note(s). For example, the Modification of Note, dated October 11, 2016, between Dollar Mark and E.H. Russo Trust, involving the original Note of November 13, 2015, in the amount of \$700,000.00. The October 11, 2016, Modification of Note references various other Modification of Note(s) but the October 11, 2016, Modification of Note reflects the parties' desire to change and modify the terms stated in the Agreement which was referenced in the document. Specifically, the parties agreed to reduce the interest rate Dollar Mark paid to the E.H. Russo Trust from 8% to 6.5% effective November 1, 2016. This also reduced the interest only monthly payment to the estate from \$4,666.67 monthly to \$3,791.67 monthly with the first reduction payment due on December 1, 2016. Therefore, this Modification of Note changed the terms of the interest rate and reduced the amount of the monthly interest only payment that Dollar Mark would pay. Audrey and Alexonis did not sign the Modification of Note dated October 11, 2016. See below.

MODIFICATION OF NOTE

This agreement made and entered into this 11th day of October, 2016 between Dollar Mark, LLC as Borrower and E. H. Russo Trust as Lender, and are parties to the original Note dated November 13, 2015 in the amount of \$700,000.00 and Modification of Note dated April 15, 2016 and Modification of Note dated June 20, 2016 and Modification of Note dated July 27, 2016.

Witness that the parties desire to change and modify the terms stated in the Agreement referenced herein.

- Reduce interest rate from 8% to 6.50% effective November 1st, 2016. Interest only monthly payment will reduce from \$4,666.67 to \$3,791.67 with the first reduction payment due on December 1, 2016 and on the first of each month thereafter.

ALL OTHER TERMS AND CONDITIONS SHALL REMAIN THE SAME.

IN WITNESS WHEREOF, the parties hereto have executed this agreement to date and year first above written.

BORROWER(S):

By:


Kristian Gose, Manager
Dollar Mark, LLC

By:


Matthew Uhler, Manager
Dollar Mark, LLC

LENDER(S):

By:


E. H. Russo Trust
Diane B. Prescott, Esq. – Trustee

All parties who executed the Promissory Note(s) and who personally guaranteed the loans should sign all subsequent Modification of Note(s) involving the estate to avoid any potential dispute(s) as to who agreed to changing any term as those appear in any new

Modification of Note. Prescott's failure to secure all parties as personal guarantors and have then sign the Modification of Note(s) further jeopardized the security of estate funds.

Prescott did not secure assets and relinquished control of E.H. Russo Estate funds.

After the property located at [REDACTED] sold, Prescott instructed the title company to wire the proceeds or "repaid loan," to Dollar Mark and the title company wired the "repaid loan" to Dollar Mark on July 6, 2015. The new Modification of Note removing [REDACTED] and replacing it with [REDACTED] was dated July 20, 2015, but it is not clear when it was executed because signatures were not notarized, unlike the Promissory Note where signatures are notarized. The Assignment of Deed of Trust involving [REDACTED] which secured the estate's financial interest to this property, was dated July 20, 2015, but the document was not executed (notarized) by Dollar Mark until July 23, 2015. The recordation date of the document was August 5, 2015.

During the time when Dollar Mark received the "repaid loan" on July 6, 2015, Prescott did not secure the estate's funds and allowed Dollar Mark to retain possession and control of the estate funds. The estate's financial interest was not secured to a real estate property until July 23, 2015, when Dollar Mark executed the Assignment of Deed of Trust assigning the new property to the E.H. Russo Trust.

Records shows that after any investment property sold and Dollar Mark received the payout from the proceeds of the sale or "repaid loan," there was a gap in time between when Dollar Mark received the "repaid loan," retained possession of the estate funds and when Dollar Mark executed an Assignment of Deed of Trust securing the estate's interest in another property.

For example, the payout for the sale of the property located at [REDACTED] Avenue, occurred on September 16, 2015. On October 5, 2016, Dollar Mark executed a Modification of Note to include:

- Remove

- [REDACTED]
- [REDACTED]
- [REDACTED]

- Replace with

- [REDACTED]
- [REDACTED]

• [REDACTED]

The properties located at [REDACTED]
[REDACTED]

The property located at [REDACTED] sold and escrow closed on September 16, 2015. The title company wired the "repaid loan" of \$82, 000.00 to Dollar Mark on September 16, 2015, per Prescott's instructions of July 31, 2015.

The property located [REDACTED] was sold and escrow closed on August 12, 2015. The title company, per Prescott's instructions, wired the "repaid loan" of \$83, 000.00 to Dollar Mark on August 12, 2015.

Although Dollar Mark removed [REDACTED] Beech Avenue properties and replaced them with other properties, Dollar Mark did not execute an Assignment of Deed of Trust for "replaced properties," [REDACTED] until months later. The Assignment of Deed of Trust to the E.H. Russo Trust for [REDACTED] and [REDACTED] Street properties were executed by Gose on December 31, 2015, Uhler on January 6, 2016, and Prescott on January 11, 2016.

There were no records available showing when the property located at [REDACTED] sold and the proceeds were distributed.

Additional Examples

The Promissory Note, dated November 13, 2015, involved the E.H. Russo Trust loaning Dollar Mark \$700, 000.00. This Promissory Note was personally guaranteed by Gose, Alexonis, Uhler, and Audrey. The Promissory note was executed (notarized) by Uhler and Audrey on December 1, 2015, by Gose and Alexonis on December 10, 2015, and by Prescott although her signature was not notarized. The terms and conditions were the same as those in the Promissory Note, dated March 30, 2015.

The Promissory Note, dated November 13, 2015, involved the assignment of the following real estate properties to E.H. Russo Trust:

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Dollar Mark executed (notarized) an Assignment of Deed of Trust to E.H. Russo Trust for [REDACTED] on November 17, 2015, Uhler on December 1, 2015, and Prescott on December 15, 2015.

The property located at [REDACTED] was sold and Prescott authorized the title company to direct the proceeds of the sale to Dollar Mark on April 4, 2016. The title company wired the funds to Dollar Mark on April 12, 2016.

Dollar Mark issued a Modification of Note, dated April 15, 2016, executed by Gose, Uhler and Prescott. The signatures were not notarized. Alexonis and Audrey Uhler did not sign the document. The Modification of Note removed [REDACTED] and replaced it with [REDACTED]

The Assignment of Deed of Trust to E.H. Russo for [REDACTED] [REDACTED] were signed by Gose on April 15, 2016, Uhler on April 20, 2016, and Prescott on April 25, 2016. The Assignment of Deed of Trust for replacing the properties occurred well after the original properties were sold and Dollar Mark had received the money from the sale of those properties.

The facts suggest that Prescott did not exercise the degree of care and caution that would be commonly exercised by the ordinary, skillful, careful, and prudent professional fiduciary in the same or similar circumstances, per ACJA §7-201(H)(6)(k)(7) and A.R.S. §§14-10902 and 14-10804.

Prescott's actions deviated from the standard of care a reasonable certificate/license holder would exercise in the situation. Prescott's investment arrangement, as described herein, and Prescott's implementation of the investment arrangement is problematic for the reasons detailed in the Summary of Factual Findings of Investigation and Analysis of this report.

Another example of Prescott failing to secure estate/trust assets, per the terms of the Promissory Note, involved her executing a release or Re-Assignment of Deed of Trust then immediately delivering the document to Dollar Mark. This occurred at the same time that Dollar Mark executed an Assignment of Deed of Trust securing Dollar Mark's loan obligation and the estate's financial interest in the same property or properties.

The resultant concern with this transaction is evident. Just as Dollar Mark executes an Assignment of Deed of Trust securing its loan obligations to the estate and securing the estate's financial interest in the real estate property, Prescott, at the same time, signs a release of Dollar Mark's loan obligation and the estate's financial interest in the property and then Prescott delivers that Re-Assignment of Deed of Trust to Dollar Mark before the loan is paid off.

Prescott was asked the reason she executed and delivered the release or Re-Assignment of Deed of Trust at the same time Dollar Mark executed the Assignment of Deed of Trust to which she replied, "trust." Prescott trusted Dollar Mark and its managing members. It was also Prescott's "trust" of Dollar Mark that allowed her to proceed with the belief that Dollar Mark would not abscond with estate funds after the title company wired the "repaid loan" to Dollar Mark.

The Division is not asserting nor has evidence demonstrating that Dollar Mark misused or misappropriated any probate and/or trust funds. However, the fundamental issue to resolve is whether Prescott, on behalf of the estate(s), acted in a careful, thoughtful and judicious manner before and when she invested estate funds in Dollar Mark's investment arrangement. The facts suggest that Prescott's investment approach was imprudent, and she put estate funds at risk. Even though Dollar Mark did not appear to do anything improper with the estate funds that Prescott loaned to or invested with Dollar Mark, Prescott's conduct was imprudent and potentially left estate funds at risk, and she allowed this to happen because she trusted Dollar Mark.

Prescott's due diligence prior to investing large sums of estate/trust funds was insufficient and/or incomplete. In summary:

- Prescott failed to obtain a personal financial statement for Audrey for 2013 or 2014
- Uhler's personal financial statement was dated February 1, 2013. There was no personal financial statement for Uhler for 2014.
- Prescott failed to request a comprehensive credit score report for Gose and Alexonis, despite Gose's offer to provide a credit report that was the same as the credit report Uhler provided.
- Prescott invested estate/trust funds before she personally saw the types of properties for which estate money would be used for loans to fund the purchase and sale of the properties.
- Prescott invested estate/trust funds before she had a secure understanding of Dollar Mark's operating agreement/succession planning.

A.R.S. §14-10906. Prudent investor rule: language to invoke standard:

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article:

4. Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

5. Prudent man rule.
6. Prudent trustee rule.
7. Prudent person rule.
8. Prudent investor rule.

The prudent man or prudent person rule applies because Prescott was the trustee and/or personal representative and was granted stewardship of the estate fund. A higher standard is and should be applied to a fiduciary who has control of estate funds that do not belong to the fiduciary to ensure that estate funds are invested appropriately and safely.

A.R.S. §14-10902. Standard of care; portfolio strategy; risk and return objectives

E. A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

Although there is no specific standard that requires Prescott to have exceptional investor expertise, the nature of the investments with Dollar Mark using estate funds is somewhat dubious. Investing in short-term loans for the purchase and sale of real estate properties is a speculative investment. There are concerns as to whether this type of investment is a suitable investment vehicle or safe harbor for probate and trust funds, particularly considering that the estate assets were to be distributed to beneficiaries. Prescott told Division staff that the primary risk to the estates' assets invested with Dollar Mark would involve a downturn in the real estate market. It is commonly understood that the housing market in Arizona and nationally was volatile and experienced a significant collapse around 2008 and onward and its recovery took many years.

Moreover, Prescott's approach and investment arrangement with Dollar Mark provokes controversy. Would a prudent investor invest hundreds of thousands of dollars into short-term loans used to fund the purchase and sale of fix and repair and/or rehabilitated real estate properties for the purpose of a quick sale? Prescott was asked if she invested any of her own assets with Dollar Mark, invested in the same way she invested estate funds. Prescott said she has invested her own assets into Dollar Mark but acknowledged that she has invested "recently."

The Division contends that Prescott's investment arrangement and implementation of the investment arrangement was not prudent, regardless of whether the estate realized financial gain from the monthly interest Dollar Mark paid the estates for the use or probate and trust assets. Dollar Mark made monthly interest only payments to the estate in accordance with the terms of the Promissory Note(s) and/or Modification of Note(s).

As to diversification, The Prudent Investor Rule, A.R.S. §14-10903:

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

In her response to the complaint, Prescott stated that the investments she made with Dollar Mark were diversified. However, the facts suggest otherwise. Diversification allows Prescott to invest with other companies, but she invested solely with Dollar Mark. If Dollar Mark experienced financial problems or declared bankruptcy, estate and trust funds invested with Dollar Mark would be placed at risk. In addition, estate monies invested with Dollar Mark were used entirely to fund short-term loans for the purchase and sale of similar type of real estate properties including fix and repair or rehabilitated properties for a quick sale. Although the investments involved different real estate properties, the investment itself was homogenous because all the estate monies involved real estate properties and were exposed to a possible depression in the real estate market and/or potentially unexpected repairs in the rehabilitated or other properties that may affect the sale price.

Allegation 1 is substantiated.

Allegation 2:

Diane Prescott engaged in unprofessional conduct and unacceptable fiduciary practices by:

- a) Failing to distribute assets of the decedent in accordance with the terms of the Will by creating a trust and naming herself as trustee when such action was not directed by the will.**
- b) Changing the directive of the will.**
- c) Failing to distribute and/or timely distribute the assets of the estate.**

By way of background, the Fifth clause of the Last Will and Testament of Estelle Harrison Russo aka E.H. Russo (Russo Will), dated April 2, 2013, and First Codicil to the Last Will and Testament of Estelle Harrison Russo aka E.H. Russo, dated August 26, 2013, named her then living husband, Isaac Russo, to be Personal Representative. If Isaac Russo was to become unable to serve or ceased to serve as Personal Representative, E.H. Russo named Prescott to serve as successor Personal Representative. The couple did not have children.

The Will identified specific bequests of tangible property to certain beneficiaries. The Will's Sixth clause:

"I empower my Personal Representative with all the authority to negotiate, manage, sell, rent, dispose of, or otherwise act with respect to all or any part of the estate and according to his/her discretion and in order to effect the terms thereof, including to

open and maintain any and all necessary bank and escrow accounts and sign my name in my place and stead or as my Personal Representative.”

Prescott told Division staff that she drafted the Russo Will.

Isaac Russo died on November 11, 2014; E.H. Russo passed away on November 25, 2014, 14 (fourteen) days after her husband.

On December 30, 2014, Prescott filed with the Court an Application for Information Probate of Will and Appointment of Personal Representative in Probate Cause Number V1300PB2-148-0112.⁷

On January 5, 2015, Prescott was Court-appointed as Personal Representative for the E.H. Russo Estate, per Letters of Personal Representative, in Probate Cause No. V13000PB20148-0112.

On January 5, 2015, the Court issued the Order to Personal Presentative and Acknowledgement and Information to Heirs/Deviseses. Commissioner Shannon Shoemaker wrote, pertinently:

The bests interest of this estate is of great concern to this Court. As Personal Representative, you are subject to the power of the Court. Therefore, to help you avoid problems and to assist you in your duties, this Order is entered. You are required to be guided by this Order and to obey it.

The Personal Representative is required to provide sufficient information to the beneficiary to permit the beneficiary to protect his or her interests.

After the valid debts and expenses are paid, you have the duty to distribute any remaining assets according to the decedent's Will. As Personal Representative, you have the authority to manage the estate assets, but you must manage the estate assets for the benefit of those interested in the estate.

As Personal Representative, you are a fiduciary...You must be cautious and prudent in dealing with estate assets.

Arizona law prohibits a Personal Representative from participating in transactions that are a conflict of interest between you, as Personal Representative, and you as an individual. Other than receiving reasonable compensation for your services as Personal Representative, you may not profit from dealing with estate assets.

⁷ Superior Court of Arizona, Yavapai County.

Do not [original emphasis] put the estate assets into your name, anyone else's name, joint accounts, trust accounts ("in trust for"), or payable on death ("POD") accounts.

After payment of all debts or expenses of the estate, you must distribute estate assets as directed in the Will...

Usually, the estate should be completely administered and closed within two (2) years after the initial appointment of the Personal Representative.

a) Failing to distribute assets of the decedent in accordance with the terms of the will by creating a trust and naming herself as trustee when such action was not directed by the will.

ACJA §7-202(J)(6)(a), (d), and (f):

6. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

Prescott told Division staff that Isaac Russo and E.H. Russo did not have assets held in any trust prior to their deaths. After Prescott was appointed as Personal Representative for the Russo estate, Prescott created four trusts and named herself as trustee for the following bequests:

- Russo Trust I (Rosemary Russo bequest) – created August 31, 2015
- Russo Trust II (Dysart High School District #89 bequest) – created September 1, 2015
- Russo Trust III (Sephardic Nursing and Rehabilitation Center bequest) – created September 2, 2015
- Russo Trust IV (Charitable bequest) – created July 2, 2018

The Will contained language involving the Dysart High School District and Charitable bequests that reflected that the bequests “shall be held in trust...” See below.

Dysart High School District #89 Bequest (\$162,973.92)

4. TWENTY PERCENT (20%) shall be held in trust and the income shall be distributed for the purpose of creating scholarships for needy, promising children presently enrolled at DYSART HIGH SCHOOL DISTRICT [sic] 89, El Mirage, Arizona.

Fire and Flood Victims Bequest (Charitable) (\$162, 973.92)

5. TWENTY PERCENT (20%) shall be held in trust and the income shall be distributed to recipients for the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care other help.

Rosemary Russo Bequest (\$689, 713.87)

Unlike the Dysart and Charitable (Fire and Flood Victims) bequests, the Will did not direct that estate assets “shall be held in trust” for the Rosemary Russo bequest (Russo Trust I) or Sephardic Nursing & Rehabilitation Center (“Sephardic”) bequest (Russo Trust III).

The Will provides

3. The account at Bank of America which I receive from my husband shall be distributed in monthly payments of \$2,000 to **ROSEMARY RUSSO** of Far Rockaway, New York, until the entire amount has been paid to her or until her death. If **ROSEMARY RUSSO** predeceases me, or the full distribution of her share, then her undistributed share shall lapse.

The Will did not direct that a trust be created for this bequest, but Prescott treated the bequest as a trust and created the Russo Trust I on August 31, 2015, and she named herself as trustee.

In the Declaration of Trust, Russo Trust I, Prescott declared that she, as Trustor, entered into the Trust Agreement to receive the Bank of America Funds which E.H. Russo and Isaac Russo have left in the Last Wills and Testaments to be distributed in monthly payments to Rosemary Russo until the entire account has been paid to her or until her death. Prescott granted herself reserved powers to amend the trust at any time to further the purposes for which the trust was established, or to deal with the administration of the trust “without notifying any beneficiary.” The newly created trust granted Prescott powers including, but not limited to, the power to sell Russo Trust I property and to take

and hold promissory notes as part of any sale of trust real property, and to borrow money and to encumber that property, specifically including trust real estate, by mortgage, deed of trust or other method. Prescott granted herself the power to “manage trust real estate as if the Trustee were the absolute owner of it...”

The Will bequeathed monthly distributions of \$2,000.00 to Rosemary Russo from E.H. Russo’s Bank of America account until the bequest was fully distributed or until her death. Records show that Rosemary Russo began receiving the monthly distributions on July 24, 2015.

In a letter to Rosemary Russo, dated January 9, 2017, Prescott wrote, in part, that she would be closing the probate this year and the funds for the monthly distribution “will be held in a Trust and you will continue to receive your monthly distribution without interruption.” This appears to be the first time Rosemary Russo was informed that her bequeathed money was held in a trust.

Prescott also told Division staff that she did not have any conversation with Rosemary Russo regarding how Prescott had been investing her bequest with Dollar Mark. Additional analysis regarding whether Prescott provided sufficient information to beneficiaries is detailed in Allegation 4.

In her interview, Prescott said that although she drafted the Russo Will, it was her error not to include that the bequest should be held in trust and then distribute the bequest to Rosemary Russo. Prescott was asked about what options she considered, other than creating a trust. She said the Bank of America wanted her to be a trustee for the purposes of distributing money to Rosemary Russo, although records show that Prescott had been distributing money to Rosemary Russo before she created the trust.

Prescott also stated that the reason she created trusts was because Dollar Mark required that a trust be created for the investment arrangement, so the creation of the trust was for investment purposes. Prescott acknowledged that it would have been a good idea for her to seek instruction from the Court regarding this matter, but she did not seek instructions from the Court.

Sephardic Nursing & Rehabilitation Center⁸ Bequest (\$651,895.68)

The Will provides:

“B. All the remainder of one half of my estate, shall be distributed to my husband’s beneficiaries as follows:

⁸ Due to corporate assets acquisitions, the Sephardic Nursing & Rehabilitation Center bequest was later accepted by the Sephardic Home for the Aged Foundation.

1. An eighty percent (80% share shall be distributed to the **SEPHARDIC NURSING AND REHABILITATION CENTER** [sic], 2266 Cropsey Avenue, Brooklyn, Long Island, New York 11214. These monies shall only be spent as scholarships for residents who need assistance to be able to live at the Center and shall not be paid to the general fund, for salaries or for maintenance of the facilities.”

Like the Rosemary Russo bequest, Prescott treated the Sephardic bequest as a trust and created the Russo Trust III on September 2, 2015, and named herself as trustee, when such action was not directed by the Will.

In the response to the Director Initiated Complaint, Prescott stated that Isaac Russo and E.H. Russo wanted the Sephardic bequest to be used for scholarships thereby creating a need for oversight and the creation of a trust and ongoing management of the trust. However, Prescott’s rationalization does not appear to be consistent with the actual terms of the Will regarding this bequest which does not call for this bequest to be held in trust, unlike the Dysart and Charitable bequests. Prescott told Division staff that she drafted the Will which incorporated the language that appears in the document including the identification of which bequests “shall be held in trust” and which did not contain that specific language.

Moreover, during her interview, Prescott told Division staff that the primary reason she created the trusts was because Dollar Mark required that a trust be set up for investment purposes.

The ACJA bars fiduciaries from acting outside of the authority granted by the Court.

ACJA §7-202(J)(1)(b):

The fiduciary shall not act outside of the authority granted by the court and shall seek the court’s direction as necessary and court authorization for actions that are subject to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or directions.

ACJA §7-202(J)(6):

Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

In her interview, Prescott acknowledged that a Personal Representative could not exceed the authority granted by the Court. Therefore, in the absence of any judicial authority that expanded the scope of the duties and responsibilities, Prescott was duty bound to distribute the estate in accordance with the terms of the Will. Prescott seems to have unilaterally decided to enlarge her authority and capacity as Personal Representative by creating a trust, naming herself as trustee, and then determining the terms of the distribution of estate assets to the devisees.

Allegation 2 a) is substantiated.

b) Changing the directive of the Will

ACJA §7-202(J)(1)(a) and (b):

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or directions. If the fiduciary is aware of a court order that may conflict with this ACJA section, the fiduciary shall bring the possible conflict to the attention of the court and seek the court's direction

ACJA §7-202(J)(6)(a), (d), and (f):

6. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

Prescott exceeded her authority as Personal Representative when she changed the distributive intent and/or directive of the Russo Will. Evidence of Prescott's conduct is found in the following:

Fire and Flood Victims Bequest (\$162, 973.92)

The Will called for the Fire and Flood Victims bequest to "be held in trust" and the income was to be distributed to recipients for purpose of aiding victims of fire, flood, accident, and violent crimes.

The Will provides:

5. TWENTY PERCENT (20%) shall be held in trust and the income shall be distributed to recipients for the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care or other help.

Prescott changed the directive of the Russo Will by directing estate funds to beneficiaries who were not identified in the Russo Will. Prescott created Russo Trust IV (Charitable) on July 2, 2018, and she named herself as trustee. Prior to creating the trust, Prescott's billing records from 2016 and 2017, and client files, indicated that trust funds were being used to develop a culinary program in the Verde Valley school system.

Prescott established the Culinary Career Launch Program on September 10, 2016. According to the Arizona Corporation Commission records, Culinary Career Launch⁹ is a domestic nonprofit corporation, formed on September 30, 2016, as an educational services business, in which Prescott is the President, Chairman of the Board of Directors, and a Director; and her son, Sanders Windham, is a Director, each having taken office on September 30, 2016.

On November 1, 2016, the Russo Trust IV (Charitable) entered into an agreement titled "Employment Agreement" with Katherine Murphy ("Murphy"), as an independent contractor, to perform certain tasks related to the culinary program. The Employment Agreement noted that the culinary program was created for the purpose of developing curriculum for programs for "at-risk" children for grade and high schools in Verde Valley for the school year and summer programs. Murphy would be paid \$1,000.00 monthly

⁹ Records from the Arizona Corporation Commission demonstrate that the entity name was first registered as Chef's Culinary Career Prep School. On October 20, 2016, the entity name changed to Culinary Career Launch.

from the Russo Endowment Fund. The intent was to assess, identify, create, and fund programs for all grade levels in vocational training, decide what grades would benefit most from art, music, or vocational education, and help teachers match up programs with the school.

Prescott's billing demonstrates that the Russo Trust IV (Charitable) began making payments to Murphy as early as September 29, 2016. See below:

Equity		Beneficiary Distribution		Russo Charitable Trust T4					
Check	09/29/2016	1033	Katherine Murphy	T4 Distribution to CCP (Ba...	NBofA		-1,000.00	-1,000.00	
Check	09/29/2016	1034	Katherine Murphy	T4 Distribution to CCP (Ba...	NBofA		-1,000.00	-2,000.00	
Check	09/29/2016	1035	Katherine Murphy	T4 Distribution to CCP (Ba...	NBofA		-380.00	-2,380.00	
Total Russo Charitable Trust T4							-2,280.00	-2,280.00	

Prescott's services rendered invoice also reflect ongoing discussion with Murphy regarding the administration of the Russo Trust IV (Charitable). See below:

Professional Services

Date		Details	Hours	Rate	Amount
09/30/2016	DBP	Conference with Kathryn Murphy who will administer Charitable Trust.	2.00	\$250.00	\$500.00
Date		Details	Hours	Rate	Amount
10/09/2016	DBP	Review Culinary Career Launch materials	0.33	\$250.00	\$83.33
10/09/2016	DBP	Review the availability of teachers and facilities for the summer program. Camp Verde has the best facility.	1.25	\$250.00	\$312.50
10/15/2016	DBP	Discuss with Katherine Murphy whether to open Enrollment to include students from outside the Verde Valley.	0.35	\$250.00	\$87.50
10/20/2016	DBP	Meeting with Katherine re Culinary Career Launch school program.	1.50	\$250.00	\$375.00
10/20/2016	DBP	Conference with Katherine Murphy re the availability of the Camp Verde facility. Will the regular teacher during the school year, Kathy King, be available for the summer? What are Her salary requirements?	0.35	\$250.00	\$87.50
10/20/2016	DBP	Conference with Katherine Murphy, Kathy King should be available as well as a chef who teaches at Yavapai College who has a lot of experience that he would be able to share with a lot of different areas, entrees, salads, desserts.	0.50	\$250.00	\$125.00
10/26/2016	DBP	Phone conference with Katherine Murphy, some of the students who are in the regular class during the school year have expressed interest.	0.30	\$250.00	\$75.00
10/28/2016	RSW	Confirm next meeting with Katherine Murphy To discuss progress.	0.08	\$75.00	\$6.25

Professional Services

Date	Details	Hours	Rate	Amount
11/05/2016	DBP Telephone conference with Katherine Murphy re Culinary Career Launch summer program.	0.50	\$250.00	\$125.00
11/17/2016	DBP Receive, review and process incoming mail.	0.13	\$250.00	\$33.33
11/23/2016	DBP Write and mail check for Invoice from Katherine Murphy for Culinary Career Launch November Director's fee.	0.15	\$250.00	\$37.50

When Prescott created the Russo Trust IV (Charitable) on July 2, 2018, she integrated the language that created the pathway for her to completely deviate from the directive of the Russo Will. The Russo Will was specific as to the identified beneficiaries of the bequest. When Prescott created the trust, she changed the directive of the Russo Will by including language in the trust that expanded the intended beneficiaries. Prescott included the following language:

It is the Trustor's intention to follow the intent of Isaac and Estelle Russo who directed that this trust be established to hold assets and to distribute those assets for charitable purposes for people who have a need for help, **including but not limited to [emphasis added], the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care of other help.**

As to beneficiaries, Prescott wrote:

The Trust assets shall be distributed, in the sole discretion of the Trustee to people or to organizations who aid people who are in need of help. Specifically, the Trust funds can be used to provide housing, food and medical care for victims of fire or flood, accidents or violent crime. **The Trust funds may also benefit a broader class of persons who need help, as an example, who need training to obtain jobs to stay out of jail, in order to support their families and to provide housing for their families and to provide medical care. [emphasis added]** Teaching people to have self-esteem and training people to have a vocation that they can earn a reasonable living is consistent with the intent of ISAAC and ESTELLE RUSSO [sic] who are, under other bequests and trusts, supporting arts scholarships at a Phoenix High School, supporting Habitat for Humanity, Paine Whitney Hospital and granting scholarships to seniors at Sephardic Nursing Home.

Contrary to the final wishes of the decedent who had bequeathed a portion of her estate assets "for the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care other help," Prescott appears to have discounted the decedent's wishes and expand the beneficiaries to a "broader class of people who need help" including those, "who need training to obtain jobs to stay out of jail, in order to support their families and

to provide housing for their families and to provide medical care. Teaching people to have self-esteem and training people to have a vocation that they can earn a reasonable living is consistent with the intent of ISAAC and ESTELLE RUSSO.” [sic]

The facts demonstrate that Prescott had embarked on the Culinary Career Launch program in 2016, two years prior to her creating the Russo Trust IV (Charitable), in 2018, suggesting that Prescott had little to no intention of following the wishes of the decedent and, instead, changed the directive of the Russo Will and supplanted her own objectives and intentions.

In her interview, Prescott told Division staff that Verde Valley did not have agencies that provide the types of services to people identified in the Russo Will. However, each of the numerous bequests named in the Will identified in which state the beneficiaries were located i.e., New York. The Russo Will did not specify a state or location regarding the intended beneficiaries. The Russo Will set forth that the bequest “shall be held in trust and the income shall be distributed to recipients for the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care or other help.” Unlike other bequests that specifically identified an address and/or a state, this bequest did not include language involving geography. It appears that E.H. Russo was concerned enough to help a particular type of individual rather than where the individual resided, so Prescott was not restricted to the Verde Valley.

Further, Prescott offered an additional or alternative explanation for her actions. She told Division staff that the Will permitted her to enlarge the scope regarding the intended beneficiaries because the terms of the Will, related to this bequest, closed by including “or other help,” referring to “...aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care or other help.” [emphasis added]

However, “or other help” seems to relate to *how* to help those beneficiaries identified in the Russo Will and to provide other help that may not have been specifically covered by the Will, but it was not tacit approval to entirely change who should receive the bequest. The intended beneficiaries were victims of fire, flood etc. Prescott completely changed who was eligible to receive estate funds rather than finding other ways in which to help those victims identified by the terms of the Russo Will.

Prescott also seemed to justify her actions telling Division staff that an urgent or pressing need to help others existed in Verde Valley suggesting that setting up and providing culinary preparation training to elementary school children or to high school students met her criteria for an urgent or pressing need for help.

The Culinary Career Launch website¹⁰ features an “About” webpage, wherein it states, in part:

Culinary Career Launch is a non-profit organization designed to introduce elementary, middle, and high school students to the career possibilities they have in the culinary industry. The program is coordinated by funding from the Russo IV Charitable Trust and supplies are provided by the Gloria and James Henderson Trust and the Benfer Trust. During the school year students will have the opportunity to learn all about food safety and prep, diet, cooking, presentation, and how a professional kitchen actually works...

We feel this is the ideal time to ask you to support our efforts to help grow these programs and work with the Russo IV Charitable Trust and the Gloria and James Henderson Trust and the Benfer Trust to provide hands on training for our young people. The culinary profession is a very broad field for young people who want to stay at home and work, work part-time when their children are young, or to go to another city and follow their dreams.

Prescott’s billing showed that on February 15, 2017, she billed for time involving “Research re culinary programs to keep teens in school, success in changing teens’ direction with work experience.” On March 6, 2017, Prescott billed for time involving “Research programs for at risk teens to get ideas on how best to serve our 20% homeless population.”

Dysart High School District #89 Bequest (\$162,973.92)

Like the Fire and Flood Victim bequest, the Will called for the creation of a trust for the Dysart High School District #89 (“Dysart”) bequest. The Will bequeathed 20% (twenty percent) of the estate to Dysart High School District #89.

The Will provides:

TWENTY PERCENT (20%) shall be held in trust and the income shall be distributed for the purpose of creating scholarships for needy, promising children presently enrolled at DYSART HIGH SCHOOL DISTRICT [sic] 89, El Mirage, Arizona.

Prescott created the Russo Trust II on September 1, 2015, and she named herself as trustee. The language Prescott included when she created the Russo Trust II is notable because it appears to establish the basis for allowing Prescott to fundamentally deviate from the directive of the Russo Will and displace it with her own vision of how the bequest should be used.

¹⁰ [REDACTED]

In the Declaration of Trust Russo Trust II, Prescott notes that the Will bequeathed funds for:

“...scholarships for needy, promising children presently enrolled at DYSART HIGH SCHOOL DISTRICT 89...in the discretion of DIANE PRESCOTT, who is the Personal Representative for ESTELLE RUSSO and who shall serve as initial Trustee of this Trust, RUSSO TRUST II.” [original emphasis]

Prescott added that E.H. Russo “was a ballerina herself and recognizes the value of the arts in education.” Prescott wrote that it was her intention to follow the intent of E.H. Russo “who directed that this trust be established to hold assets and to distribute the income from the trust assets as scholarships for needy, promising children presently enrolled” at Dysart.

The language Prescott included in Russo Trust II, in part, granted her the power to amend the trust at any time to further the purposes for which the trust was established, or to deal with administration of the trust without notifying any beneficiary. Prescott gave herself the power to sell trust property, and to take and hold secured promissory notes as part of any sale of trust real property, and to borrow money and to encumber that property specifically including trust real estate, by mortgage, deed of trust, or other method. Prescott added that she had authority to manage the trust real estate as if the trustee “were the absolute owner of it, including the power to lease (even if the lease term may extend beyond the period of any trust) or grant options to lease the property, to make repairs or alterations and to insure against loss.”

Prescott initially sent a letter to Mary Simmons (“Simmons”) of Dysart Unified School District, on July 30, 2015, wherein Prescott informed Simmons that a probate for each estate has been opened to collect and distribute the assets in accordance with the terms of the Will. Prescott said that Isaac Russo predeceased his wife, so his assets had to first be collected and distributed to E.H. Russo’s estate. Prescott said it has come to light that the Russo’s had not filed state or federal income taxes and that an accountant was working with the IRS to get the tax information necessary to complete the estate tax returns. Once the tax issues were resolved, Prescott said she would contact Simmons “to begin the distribution process” and when all the assets from Isaac Russo’s estate were transferred to E.H. Russo’s estate, “we can begin to make distributions to the beneficiaries.”

Prescott further noted, in part, that distributions to the school are from income of the bequest for scholarships for needy promising children presently enrolled at Dysart High School. To receive the distributions, Prescott requested from Simmons scholarship applicants to whom the funds would be awarded showing what each student’s needs were and to give a description of the student’s promising talents and what the money would be used for.

Prescott's version of how the bequeathed estate assets should be administered is reflected in a July 9, 2018, letter to Simmons. In this letter, Prescott informed Simmons that the E.H. Russo estate is still ongoing and that a "partial distribution of your devise has been made to a trust, known as the Russo Trust II, which will hold and distribute the funds designated for you. When the probate closes, the Trust will receive additional funds." Prescott informed that she was ready to make a distribution to Dysart to be used for scholarships **in the arts** [emphasis added] to students who require financial assistance. Prescott added that E.H. Russo "was herself a ballerina and so appreciated the value of dance for young people." Prescott wrote that she would make yearly distributions of the net income from the assets which are held for Dysart's benefit and that the **"only requirement is that the funds be used for scholarship for students who have financial need and who are pursuing education in the arts."** [emphasis added]

Prescott conditioned the bequeathed funds to include children pursuing education in the arts, contrary to the terms of the Will that directed that the money "shall be held in trust and the income shall be distributed for the purpose of creating scholarships for needy, promising children presently enrolled at DYSART..." Prescott's version of how the estate funds were to be used, reflected in her instructions to Dysart, restricted the pool of beneficiaries to needy, promising children pursuing education in the arts rather than the more expansive "...scholarships for needy, promising children presently enrolled at Dysart..." as set out in the Will. Again, Prescott drafted the Russo Will and did not include the "arts" language at the time the Russo Will was created or First Codicil.

On August 2, 2018, Billie Laird ("Laird"), President of Dysart Education Foundation ("DEF") replied to Prescott's July 9, 2018, letter to Prescott. In the reply, Laird stated that DEF "is pleased to accept the oversight of the distribution from the Russo Trust and facilitate the selection, funds dispersal, undertaking, recordkeeping, and reporting each year for a **deserving Dysart graduate who is seeking further education in the arts.**" [emphasis added]

Records show that Prescott issued Check No. [REDACTED] dated July 9, 2018, to Dysart Education Foundation in the amount of \$3,983.29.

The Division interviewed Laird. Laird told Division staff that the Dysart Unified School District is not set up to administer trusts or endowments etc., but the DEF is able to receive endowments or bequests. Laird said the DEF has been administering approximately eight (8) scholarships¹¹ and she referenced the foundation's website that lists the scholarships managed by the education foundation. Laird said the DEF can

¹¹ The Dysart Education Foundation website ([Scholarships | Dysart Education Foundation \(defweb.org\)](https://www.defweb.org)) identified the following scholarships: Dysart High School Alumni Scholarship, DEF Scholarships, Roy Fenton Scholarship, Carlos Carbajal Memorial Scholarship, The Grand Opportunity, Dr. Gail Pletnick Education Award, Tyrus Timbrooks Memorial Scholarship at Dysart High School, Established in 2020.

independently set up accounts for scholarships and oversee the selection of recipients, distributions for scholarships, record keeping etc. The DEF could set up an account/scholarship in a specific name per the endowment and would issue scholarships in accordance with a Will or bequest/endowment.

Laird said the scholarship funds are invested in low risk, conservative investments including mutual funds and bonds and are managed by Baird Financial Advisors. Laird said that Prescott has not discussed how the estate funds were being managed and DEF did not have any input into how the money was managed.

DEF retains professional and experienced financial advisors to prudently manage monies endowed to the foundation and used for scholarship. How DEF manages the endowments and scholarship monies contrasts with Prescott's investment approach. The Division reviewed the Baird Financial Advisors website.¹² One of the services advertised is financial and estate planning including charitable giving.

In her interview with Division staff, Laird was asked about communication with Prescott and Dysart High School District #89 between July 20, 2015, and July 9, 2018, per Prescott's two letters to Mary Simmons. Laird said she did not know if there was any more correspondence but would check her records. Laird said Prescott made annual distributions for the scholarships beginning in 2018 and has continued to do so. The monies are used for individuals involved with the performing arts.

The Division conducted a follow up interview with Laird. Division staff read the portion of the Russo Will specific to the Dysart bequest. Laird expressed surprise saying that it was the first time she heard what the Russo Will stated. She said that DEF was using estate funds for teachers.

At a later date, Laird provided the Division with DEF records including:

- Minutes of meetings for November 2018 through 2021
- Letter from Prescott to DEF dated December 3, 2018, involving the 2017 Distribution from the "Russo II Trust"
- Russo Trust II Balance sheet as of December 31, 2016
- Profit and Loss statement Russo Trust II, January through December 2016
- Letter from Prescott to Simmons dated July 9, 2018.

The letter from Prescott to DEF, dated December 3, 2018, stated, in part:

¹² [Baird's Financial Advisors Group - Wealth Management Group of Scottsdale, Scottsdale, AZ: Welcome to Baird \(bairdfinancialadvisor.com\)](http://www.bairdfinancialadvisor.com)

“Thank you for your recent email attaching the meeting minutes showing the judge’s selections for the Foundation’s mini-grant program that includes a summary of their projects. You and the board are doing a wonderful job with the distribution of funds. Mrs. Estelle Russo would be very delighted to know that her gifts are making a difference in a young artist’s life.”

DEF used the Russo Trust II bequest with Prescott’s approval. DEF proposed and awarded funds to teachers and were used to purchase equipment and other items for the classroom. This arrangement or understanding on how the bequest was used indirectly benefitted students enrolled in the Dysart Unified School District #89 but it is unclear how the money was used for “needy promising children...” because the acquisition of classroom resources and equipment would generally benefit all students and not target the money in a manner that directly benefitted “needy promising children presently enrolled in Dysart...”

The following are excerpts from the DEF Board of Director’s Meeting minutes. The Minutes identify the proposed recipient(s) and use of funds, pertinent to the Russo bequest.

DEF Board of Director’s Meeting

November 7, 2018 Meeting

DYSART EDUCATION FOUNDATION: 2018 Mini-Grant Winners

RUSSO TRUST ARTS AWARDS, PHASE ONE			
Kendra Schroeder, Theater, 9-12, Shadow Ridge High School	Lighting Up the Theater Classroom	\$2000	DEF funds will be used to purchase lighting equipment, including a laptop, necessary for students in theater classes to use in order to explore and learn lighting techniques. Students will learn how to mix color, use the lighting design program to create cues, create a plot, run a show, and focus lights.
Diane Richardson, Music 5 – 8 Surprise Elementary School	Piano Schoolists	\$2000	Students will learn to play a self-selected piano piece on purchased keyboards and record themselves multiple times in order to assess their own progress identify areas to work on. In addition to twelve keyboards, the DEF grant will fund keyboard stands and headsets.
TOTAL: \$4000		(DISTRIBUTION FROM 2016 TRUST WAS \$3983.29)	

RUSSO TRUST ARTS AWARDS, PHASE TWO			
Christina Williams, Art, 7-8, Marley Park Elementary	Wearing Art	\$1250	Students will have the experience of creating and running a clothing business, including the logo design, company name, prototype of their product, and potential price breakdown. They will also design and dye their fabric as well as cut and sew it to achieve the finished product. Funds will be used to purchase the materials for the wax resist process of fabric dyeing.
Sara Mendoza, Art 3-8, Rancho Gabriela Elementary	Chromebooks in the Art Room	\$1863.63	Five new Chromebooks in this art classroom will allow students internet access to images that can be used to teach fundamental art techniques, processes, and use of tools. Downloaded images can be used as a reference as students begin their own creation. When students study an art style, they will be able to access and study the work of other artists who use that same style.
TOTAL:		\$3113.63	(DISTRIBUTION TO BE RECEIVED IS APPROX. \$3000)

November 6, 2019 Meeting

**DYSART EDUCATION FOUNDATION
Proposed 2019 Mini-Grant Winners**

RUSSO TRUST: (\$3119.74)

NAME/SCHOOL	TITLE	AMOUNT REQUESTED	AMOUNT GRANTED	SUMMARY
Dr. John Hammit, Band Director, Dysart El/Lake Elem	Band Equipment & Sheet Music	\$1906.14	1200	Tools for the performance of different styles of music were requested. Luke Elementary currently does not have a drum set, and Dysart Elementary needs a set of mallets for the xylophones and metal bells. In addition, funds to build the band libraries at both schools will allow the students to perform different styles of music and sufficient compositions for one concert of 5 th – 8 th graders.
Sara Mendoza, K-8 Art, Rancho Gabriela Elem	Exploring Culture through Ceramic	\$1410.27	\$1000	Students in grades K-8 will have the opportunity to work with clay, exploring various cultures and traditions, from creating jewelry inspired by Navajo traditions in kindergarten to carving
	Clay in the Art Room			personal tiki's in 8 th grade to learn about Polynesian culture and ancient Maori mythology.
Suzanne Putman, Art, 4 – 8 th Grade, Sunset Hills Elem	Logitech Cameras in the Art Room	\$1999.75	\$1000	Digital cameras in this art classroom will allow students to learn photography techniques as they also learn fundamental art techniques. Students will have a better understanding of how different types of media is created.
	TOTAL		\$3200	

DEF's records demonstrate that the Russo Trust II bequest was being used for classroom resources and equipment.

In her interview with the Division, Prescott was asked if she was aware of how Dysart and DEF used the bequeathed assets to which she answered that she was aware. Prescott said she reviewed correspondence from DEF to determine how the annual distributions would be used before Prescott issued a distribution to DEF.

Sephardic Nursing & Rehabilitation Center Bequest (\$651,895,86)

Unlike the Fire and Flood Victims bequest which called for the bequest to be held in trust “and the income shall be distributed to...,” and the Dysart bequest that called for the funds to be held in trust “and the income shall be distributed for...,” the Will did not include language that the Sephardic bequest would be subject to the bequest being held in a trust and the income shall be distributed to Sephardic.

The Will provides:

1. An eighty percent (80% share shall be distributed to the **SEPHARDIC NURSING AND REHABILITATION CENTER** [sic], [REDACTED]
[REDACTED] These monies shall only be spent as scholarships for residents who need assistance to be able to live at the Center and shall not be paid to the general fund, for salaries or for maintenance of the facilities.

Contrary to the directive of the Russo Will, Prescott appeared intent on disbursing only a portion of the income while maintaining the principal of approximately \$651,000.00 or more in the trust. By doing so, Prescott ensured that the administration of the trust was protracted over many years and she created the opportunity to compensate herself for “managing” the trust. Prescott seemed intent on distributing approximately \$4,200.00 annually to Sephardic, which presented the trust’s annual accrued interest on the income.

Prescott’s intention to maintain the principal of the trust and distribute annual income from the trust is evidenced by correspondence Prescott sent to Sephardic.

In a letter to Sephardic’s James Connie (“Connie”), dated July 30, 2015, Prescott, in part, informed him that Prescott needed to first collect and distribute Isaac Russo’s estate and distribute those assets to E.H. Russo’s estate. Prescott said an accountant was working with the Internal Revenue Service (“IRS”) on tax matters and after the estate tax issues were resolved, Prescott would contact Connie “to begin the distribution process.” Prescott noted that the estate funds allocated were to be used for scholarships for residents who require assistance to be able to live at Sephardic. Prescott requested that Connie provide information on each resident who is to receive a scholarship, the basis for the need, and amount of the scholarship. Prescott added that it was her responsibility to monitor the expenditure of these funds “for the stated purpose.”

The Russo Will did not directly require that Prescott obtain the information she requested from Connie and Sephardic. The Russo Will directed that the bequest be used for scholarships for residents who needed help to be able to live at the Center and the money was not to be paid to the general fund used for salaries or for maintenance of the facilities etc.

Three years later, in a letter to Connie, dated July 11, 2018, Prescott told Connie, pertinently, that Isaac Russo's estate had been closed but that E.H. Russo's probate was ongoing. Prescott said, "We will be making yearly distributions of net income from assets which are held for your benefit" which was held in Russo Trust III. Prescott said when probate closed, Prescott would receive additional funds. Prescott said she was ready to make a distribution to Sephardic to be used for scholarships for residents who need financial assistance to be able to live at Sephardic. Prescott informed Connie that she required an annual report regarding the use of money and the names and some information about each recipient before Prescott made the following year's distribution. Prescott enclosed the 2016 Profit and Loss Statement and noted that the net income for 2016 was \$4,234.95 which would be the amount that Sephardic was to receive.

On January 14, 2019, Prescott sent a letter to Sephardic's Miriam Schenker ("Schenker"), who was Connie's successor. Prescott wrote that she had previously been in contact with Connie in July (2018) about a bequest that had been left to Sephardic, but she did not receive any notice of the change in administrators at Sephardic. In her letter to Schenker, Prescott stated, in part, that the bulk of Sephardic's devise has been made to Russo Trust III and Prescott would be making yearly distributions of the net income from the assets which are held for Sephardic's benefit. Prescott provided Schenker a copy of the 2016 accounting and stated that the net income was \$4,234.96 and informed that this amount would be the distribution to Sephardic for 2016.

Prescott seems to have somewhat made a first attempt at distributing estate funds in July 2018, per her letter to Connie although no distributions were made. The Division notes that Prescott's first attempt followed the Division contacting Prescott to inform her that the Division was going to conduct a compliance audit of her fiduciary files.

By deciding that Sephardic would only receive, annually, the net income of the trust, as represented by the annual accrued interest of approximately \$4, 200.00, Prescott changed the distributive intent of the Will and supplanted it with her own. Prescott drafted the Russo Will yet two of the bequests included language involving distributing net income and the other bequests did not include that language. Prescott's decision-making does not appear to align with the intent of the Russo Will.

There is no record demonstrating that Prescott communicated with anyone at Sephardic to discuss whether the devisee wanted the bequeathed funds in annual distributions of accrued interest, invested in short-term loans with Dollar Mark, or if the yearly distribution dictated by Prescott would be sufficient for scholarships to assist people to be able to live at Sephardic, in New York.

The Division interviewed Bialostok, counsel for the Sephardic Home for the Aged Foundation ("Sephardic Foundation"). Bialostok had difficulty remembering the specifics of the bequest and said he would need to check his records. He said he did not recognize

the names of Connie and Schenker. Bialostok said the Sephardic Foundation was the proper entity to receive the E.H. Russo bequest. He recalled that they needed to get an attorney in Arizona to assist in getting the funds bequeathed to Sephardic and the entity received the bequest from Prescott sometime afterward. Bialostok could not remember whether the matter was litigated but said the attorney they retained was quite concerned with what he believed was an imprudent investment of estate funds because Prescott was investing in mortgages.

Allegation 2 b) is substantiated.

c) Failing to distribute and/or timely distribute the assets of the estate

ACJA §7-202(J)(6)(a), (d), and (f):

6. **Personal Representative.** A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

Prescott was appointed as Personal Representative of the E.H. Russo Estate on January 5, 2015. As Personal Representative, Prescott had a duty to pay the estate's expenses, debts, and taxes etc. then distribute the assets of the estate in accordance with the terms of the decedent's Will and the Court's Order to Personal Representative.

The Order to Personal Representative and Acknowledgement and Information to Heirs/Devises, issued by the Court on January 5, 2015, pertinently:

15. DISTRIBUTE REMAINING ASSETS [original emphasis]

After payment of all debts or expenses of the estate, you must distribute estate assets as directed in the Will...

19. CLOSE THE ESTATE [original emphasis]

After you have administered the estate and the assets of the estate have been distributed, the estate must be closed, either formally or informally...

Usually, the estate should be completely administered and closed within two (2) years after the initial appointment of the Personal Representative.

The Russo Will bequeathed estate funds to numerous individuals and community organizations. There were certain devisees that were designated to receive a one-time specified distribution. For those devisees, Prescott made three separate distributions of \$15,000.00 (Beth Bergman), \$5000.00 (Clarkdale Baptist Church), and \$2,000.00 (Old Town Mission) on or about June 30, 2015, in accordance with the Russo Will.

Records demonstrate that before she made the June 30, 2015, distributions of Russo Estate funds to the devisees identified in the Russo Will, Prescott transferred \$500,000.00 of the estate funds to Dollar Mark on March 31, 2015, launching the real estate investment arrangement referenced earlier in this Investigation Summary.

Prescott failed to timely distribute the assets of the estate involving the Sephardic, Fire and Flood Victims, and Dysart bequests.

Sephardic Nursing & Rehabilitation Center Bequest (\$651,895,86)

On July 30, 2015, Prescott sent a letter to Connie informing that a probate for the Russo estates was opened to collect and distribute the assets for the estates of Isaac Russo and E.H. Russo in accordance with the provisions of the Wills. Prescott said she needed to first collect Isaac Russo's estate and transfer it to E.H. Russo's estate. Prescott informed that state and federal taxes had not been filed by the Russo's and that a chartered public accountant was working with the IRS to get the tax information necessary to complete the tax returns. Prescott said when the tax issues were resolved she would contact Connie to "begin the distribution process" and when Isaac Russo's assets were transferred to E.H. Russo's estate, Prescott would "begin to make distributions to the beneficiaries."

Prescott also told Connie that the Russo's were very specific that the funds allocated be used for scholarship for residents who need assistance to be able to live at Sephardic and that Prescott was responsible for monitoring the expenditure of the funds for the stated purpose. Prescott told Connie that to receive the distributions, Connie was required to provide Prescott with the information on each resident who is to receive a scholarship, the basis for need, and the amount of the scholarship. After Prescott received the different applications, she would send a Partial Receipt and Release to sign acknowledging the proposed use of the funds and to return those to Prescott's office. Once her office

received the fully executed Partial Receipt and Release, she would issue a check and sent it to Connie at Sephardic's address on file.

Although Prescott told Connie that she would contact him to begin the distribution process after resolving the outstanding estate taxes and transferring Isaac Russo's estate to E.H. Russo's estate, records show that Prescott addressed the outstanding estate tax issue before she sent her letter to Connie.

On May 20, 2015, Prescott issued a check to Red Rock Taxes (accountant) in the amount of \$975.00 regarding "call IRS" and preparation of the 2011 tax returns. Prescott issued two checks to Red Rock taxes on June 5, 2015 and June 15, 2015, in the respective amounts of \$858.00 and \$669.00, for preparation of the estate 2012 tax returns.

In addition, Prescott issued checks to the Arizona Department of Revenue, as follows:

- June 22, 2015 (Isaac Russo's and E.H. Russo's 2014 taxes)
- July 13, 2015 (Isaac Russo taxes for 2014)
- April 7, 2016 (Only the amount paid was identified)

Prescott paid the United States Department of Treasury as follows:

- July 15, 2015 (Isaac Russo estate taxes for 2014)
- July 20, 2015 (2013 taxes for both estates)
- July 20, 2015 (2011, 2012, 2014 taxes)

It appears that by July 30, 2015, the date of Prescott's letter to Connie, she had the outstanding estate tax issues resolved. Prescott had also transferred Isaac Russo's assets to the E.H. Russo by then.

Three years later, Prescott sent a follow up letter to Connie, dated July 11, 2018, wherein she stated, in part, that she was ready to make a distribution to Sephardic to be used for scholarships for residents who need financial assistance to be able to live Sephardic. Prescott informed Connie that she required an annual report regarding the use of money and the names and information on each recipient before Prescott made the following year's distribution. There was no record demonstrating that Prescott made a distribution or followed up with Connie regarding distributions.

On January 14, 2019, Prescott sent a letter to Schenker telling her that Prescott had previously been in contact with Connie in July (2018) about a bequest that had been left to Sephardic, but Prescott did not receive notice of a change in administrators at Sephardic. Prescott added that she was ready to make the 2016 distribution now and planned to send out the paperwork for 2017 in near future. Prescott said because the 2016 and 2017 distributions were being made close together, she would send out the 2017

distributions before she received Sephardic's information about the recipients of the 2016 distribution. Prescott said she required both reports from Sephardic before she could send out the 2018 distributions.

The July 11, 2018, letter to Connie and January 9, 2019, letter to Schenker demonstrates Prescott's willingness to forego her previous position that before she could make a distribution, she required information from Sephardic regarding who would receive the scholarship and how the money was going to be used. In 2018 and 2019, Prescott seemed willing to distribute the 2016 and 2017 distributions before she obtained the information that she said she required. This suggests that either the information Prescott required from Sephardic in 2015 before she could make a distribution was unnecessary or she may have felt pressure to take concrete action regarding this bequest because in July 2018, she knew that the Division was preparing to conduct a compliance audit of her fiduciary files and she had not taken any definitive action toward the administration of this bequest.

Prescott did not make a distribution to Sephardic until fourth quarter 2019.

On March 29, 2019, Prescott filed with the Court a Petition for Instructions and/or for Distribution Order Non-Appearance Hearing Requested. Prescott stated that all the distributions of the estate assets had been made to various distributees, either in a lump sum or held in trust for periodic distributions, except the distribution to Sephardic. Prescott stated, "No distributions have been made to the Beneficiary."

Prescott, in part, told the Court that Connie called Prescott's office and a subsequent letter was sent to Connie in July 2015 requesting information on how the Beneficiary intended to use the funds because the Will is very specific that the funds allocated be used for scholarship for residents who need assistance to be able to live at the Center. Prescott said Connie did not respond to Prescott's request for information. Prescott added that a second letter was sent to Connie in July 2018 and Prescott later determined that Schenker had been Connie's successor. Prescott said a telephone call was made to Schenker and a letter was sent to her. Counsel for the Beneficiary informed Prescott that Sephardic has been sold and is now King David Center for Nursing and Rehabilitation, a for-profit organization and the organization cannot receive any distributions from the E.H. Russo Estate.

Prescott informed the Court that she researched other Jewish organizations in New York who also provide housing and services for Sephardic Jewish individuals and who have a program that provides financial assistance to their residents who cannot fully afford the cost of the facilities. Prescott named Gurwin Jewish Healthcare and said she did not believe that a direct one-time distribution of the bequest, now at \$739, 216.13, should be given to the organization. Prescott said the Beneficiary implies a monitoring component. She asked the Court to change the terms of the Will so that the new organization would be named as the Beneficiary in lieu of Sephardic.

On April 23, 2019, the Sephardic Foundation, by and through counsel, filed with the Court a Notice of Appearance on Behalf of Sephardic Home for the Aged and Demand for Notice.

Prescott's willingness to forsake her previous position that the Will demanded oversight of the Sephardic bequest is evidenced by a stipulated agreement filed with the Court.

On September 24, 2019, the Sephardic Foundation, by and through counsel, filed with the Court a Stipulated Petition for Order Regarding Settlement of Sephardic Home for the Aged Foundation's Share of Estate. Pertinently, the Stipulated Petition stated that all the Sephardic Foundation and Prescott reached an agreement regarding identifying Sephardic Foundation as the "intended beneficiary" and the appropriate distribution for the eighty percent (80%) residual share of Isaac Russo's one-half share of Decedent's estate.

The terms of the stipulated agreement included, in part:

- The Parties agree that all distributions made to the Sephardic Foundation will not have any continuing oversight by the Personal Representative over the use, distribution, or management of the Sephardic Foundation's share of the Estate
- The Court will order the Sephardic Foundation to use its distributions specifically for the scholarships for residents who need assistance to be able to live in skilled nursing facilities in the New York area and shall not be paid to the general fund, for salaries, or for maintenance of the facilities of either the Sephardic Foundation or the applicable skilled nursing center
- The Parties agree that the Sephardic Foundation will work with the Gurwin Jewish Healthcare Foundation in addition to any other similar organization who the Sephardic Foundation deems appropriate, for the purpose of providing grants for skilled nursing facility rental assistance to the Jewish population.

Prescott created the Russo Trust III which held the Sephardic bequest. By her own account, Prescott created the trust for the purpose of investing estate funds with Dollar Mark. Prescott has maintained her position that the Russo Will required her oversight because the Russo Will directed that the bequest be used for scholarships to help individuals and funds were not to be used to pay to the general fund or salaries etc. However, the final disposition of the case in Court came about after Sephardic Foundation filed Petitions with the Court. Ultimately, Prescott entered into a Stipulated Agreement with the Sephardic Foundation, the terms of which included, in part, that Prescott distribute the Sephardic Foundation's share of the bequest and that Prescott cease any oversight, by her, over the use, distribution or management of the bequest. The resultant Stipulated Agreement and disposition of the case is evidence that Prescott was incorrect about how she should manage the bequest because she was not required to

provide perpetual oversight of the bequest and distribute only yearly income to the beneficiary.

Between 2015 and 2019, not a single beneficiary of the Russo Will benefitted from the bequest because of how Prescott administered the estate. Prescott did not make any distribution of estate funds to the intended beneficiary until 2019. She told Division staff that she did not make any distributions because she had not heard back from Connie after she sent him a letter dated July 30, 2015, and he did not reply to her follow up letter of July 11, 2018. Prescott failed to provide any documentation that she followed up with Connie or anyone at Sephardic between July 30, 2015 and July 11, 2018 and then followed up with Schenker on January 9, 2019.

Prescott appears to have abandoned her responsibilities as Personal Representative and took no demonstrable action to follow up with Sephardic for four years approximately, suggesting, inappropriately, that unless or until Connie or someone else from Sephardic followed up with her, she would take no action to administer the estate regarding distribution of the bequest.

Prescott was appointed as Personal Representative of the E.H. Russo Estate on January 6, 2015. She initially invested \$500, 000.00 of estate funds to Dollar Mark on March 31, 2015, and on September 1, 2015, transferred \$340, 000.00 of estate funds to Dollar Mark. Prescott transferred \$700,000.00 to Dollar Mark on November 13, 2015. In total, records indicate that Prescott invested approximately \$1,540,000.00 of the estate funds with Dollar Mark.

Fire and Flood Victims Bequest (\$162,973.92)

There is no record demonstrating that Prescott made any distribution of estate assets consistent with the wishes of the decedent as set out in the terms of the Russo Will.

The Russo Will bequeathed 20% (twenty percent) of the estate to be held in trust and directed that the income “be distributed to recipients for the purpose of aiding victims of fire, flood, accident, violent crime or such circumstances as may leave said recipients homeless and/or with immediate need for health care other help.”

Instead of making timely distributions of the estate funds as directed by the Russo Will, Prescott ignored the wishes of the decedent and used the estate funds to develop a culinary program in the Verde Valley School System.

Prescott instead decided to hire an independent contractor, Murphy, to develop curriculum for a culinary program and Prescott paid Murphy \$21,000.00 monthly for her services beginning on September 29, 2016 and onward.

There was no record demonstrating that Prescott made any effort to reach out to and/or communicate with any community organization involved with victims of fire, flood, violent crimes, or such circumstances as may leave said recipients homeless and/or with immediate need for health care other help, as provided for in the Russo Will.

There is no record showing that Prescott used any of the estate funds for the victims and the circumstances described in the Russo Will. Records show that all of Prescott's efforts, upon inception of the bequest, appeared to be focused on setting up a culinary program.

Prescott told Division staff that, in her view, the culinary program is aligned with the spirit and values of Isaac Russo and E.H. Russo, and that the program is benefiting many young people.

Dysart High School District 89 Bequest (\$162,973.92):

Prescott did not timely make distributions of estate funds to the devisee.

The Will bequeathed 20% (twenty percent) of the estate to Dysart High School District 89 ("Dysart"). Like the Fire and Flood victims' bequest, the Will called for the creation of a trust for the Dysart bequest. On September 1, 2015, Prescott created Russo Trust II and named herself as trustee.

In a letter to Simmons of Dysart Unified School District, Prescott informed that a probate for each estate has been opened to collect and distribute the assets in accordance with the terms of the Will. Isaac Russo predeceased his wife, so his assets had to first be collected and distributed to E.H. Russo's estate. Prescott said it has come to light that the Russo's had not filed state or federal income taxes and that an accountant was working with the IRS to get the tax information necessary to complete the estate tax returns. Once the tax issues were resolved, Prescott said she would contact Simmons "to begin the distribution process" and when all the assets from Isaac Russo's estate were transferred to E.H. Russo's estate, "we can begin to make distributions to the beneficiaries."

Prescott further noted, in part, that distributions to the school are from income of the bequest for scholarships for needy promising children presently enrolled at Dysart High School. To receive the distributions, Prescott requested from Simmons scholarship applicants to whom the funds would be awarded showing what each student's needs were and to give a description of the student's promising talents and what the money would be used for. The Russo Will did not direct that any such documentation be provided to Prescott.

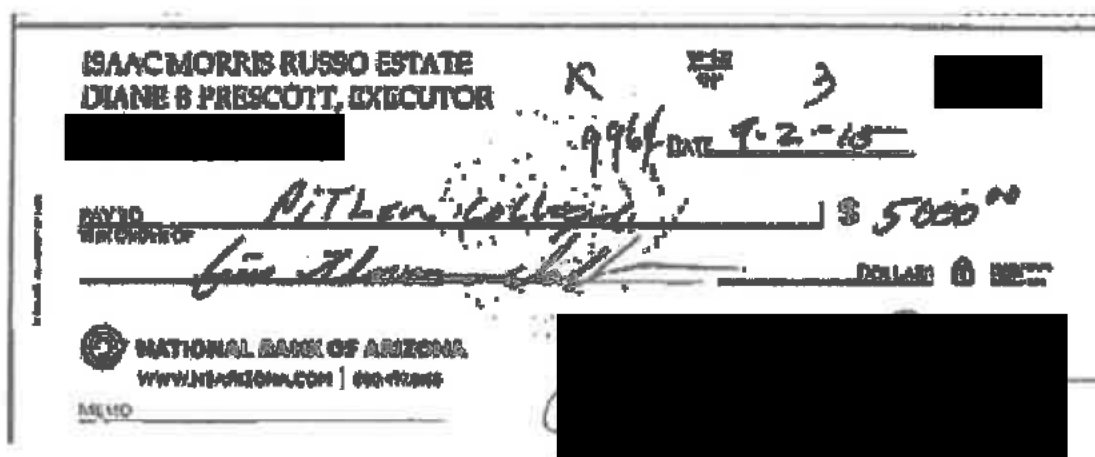
As previously detailed in this Investigation Summary, the outstanding estate tax returns, and transfer of Isaac Russo's assets to E.H. Russo's estate appear to be resolved before Prescott sent the July 30, 2015, letter to Simmons, on behalf of Dysart.

In a second letter to Simmons, dated July 9, 2018, Prescott notified Simmons that the E.H. Russo Estate is still ongoing and that a "partial distribution of your devise has been made to a trust, known as the Russo Trust II which will hold and distribute the funds designated for you. When the probate closes, the Trust will receive additional funds." Prescott informed that she was ready to make a distribution to Dysart to be used for scholarship in the arts to students who require financial assistance.

Prescott wrote that she would make yearly distributions of the net income from the assets which are held for Dysart's benefit and that the "only requirement is that the funds be used for scholarship for students who have financial need and who are pursuing education in the arts." Prescott stated that she was going to make the 2016 distributions now and plan to send out the paperwork for 2017 in near future adding that because the 2016 and 2017 distributions are being made close together, Prescott would send out the 2017 before she received their information about the 2016 recipient. She said the distribution for 2016 was \$3,983.29.

Records show that Prescott a distribution to Dysart on July 9, 2018. Prescott issued Check No. [REDACTED] dated July 9, 2018, to Dysart Education Foundation in the amount of \$3,983.29.

It is possible that the first distribution was made on or about September 3, 2015, involving check number [REDACTED] in the amount of \$5,000.00 made to Pitlen or Piltin College.



If the \$5,000.00 distribution payment was made from the Dysart bequest, the payment did not go to a student presently enrolled at Dysart, in accordance with the terms of the Russo Will.

Prescott told Division staff that this money was given to the college for a Dysart student who was pursuing higher education in the arts. Even if the \$5,000.00 issued in September 2015 represented the first distribution of the Dysart bequest, it was not until almost three years late, in July 2018, when Prescott issued another distribution. Prescott's attempt at distributing estate funds in July 2018 appears to follow the Division contacting Prescott to inform her that the Division was going to conduct a compliance audit of her fiduciary files.

Laird told Division staff that Prescott began making annual distributions around July 2018 and Prescott may have made two distributions within one year. The annual distributions have continued since 2018.

Like the Sephardic matter regarding distributions, Prescott seemed to have abandoned her previous condition that Dysart provide certain information on the recipient of the scholarship before she could make a distribution. In the July 9, 2018, letter to Dysart, Prescott noted that because the 2016 and 2017 distributions would be made close together, she would send out the 2017 distribution before she received information about the recipient of the 2016 recipient. Prescott's willingness to forsake the condition suggests that it was not necessary or in July 2018. Prescott's distribution in 2018 was shortly after receiving notice that the Division would be conducting a compliance audit of her fiduciary files.

Prescott was appointed as Personal Representative of the E.H. Russo Estate on January 6, 2015. She made the first distribution to Dysart in July or August 2018 although the distributions were not made to "needy promising children presently enrolled" at Dysart as directed but the Will, but, instead, Prescott approved the use of estate assets for classroom resources and equipment. As discussed above, DEF was available to hold the bequest in trust for Dysart, which would have allowed Prescott to disburse the funds as directed in the Russo Will, eliminating the need for her to establish and maintain a trust.

Allegation 2 c) is substantiated.

Allegation 3:

Diane Prescott failed to avoid self-dealing, conflict of interest or impropriety, and/or the appearance of a conflict of interest or impropriety.

ACJA §7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA §7-202(J)(2)(b)(1), (2), and (3)(a):

(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.

(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.

(3) Unless otherwise authorized by the court, the fiduciary shall not:

(a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, “closely related” includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.

The Order to Personal Representative and Acknowledgement and Information to Heirs/Devises, issued by the Court on January 5, 2015, pertinently:

DUTIES OF THE PERSONAL REPRESENTATIVE [original emphasis]

The duties of the Personal Representatives are found in Chapter 3, Title 14 of the Arizona Revised Statutes (from now on called “A.R.S.” You are responsible for knowing and doing your duties according to these statutes.

2. FIDUCIARY DUTIES [original emphasis]

As Personal Representative you are a fiduciary. This means you have a legal duty of fairness and impartiality to the beneficiaries and the creditors of the estate. You must be cautious and prudent in dealing with estate assets. As Personal Representative, the estate assets do not belong to you and must never be used for your benefit or mixed with your assts or anyone else’s assets. Arizona law prohibits a Personal Representative from participating in transactions that are a conflict of interest between you, as Personal Presentative, and you as an individual.

Prescott failed to avoid self-dealing, conflict of interest or impropriety, and/or the appearance of a conflict of interest or impropriety evidenced by the following actions:

- Hiring and paying her spouse to perform contractor/handyman, repair, remodeling, landscaping, and property management services for estates;
- Retaining her law firm, The Law Office of Diane B. Prescott, Inc., while serving in a fiduciary capacity; and
- Creating a trust and naming herself as trustee.

Hiring and paying her spouse to perform contractor/handyman, repair, remodeling, landscaping, and property management services for estates

Prescott's former husband, Rob Windham ("Windham"), is a Licensed General Contractor¹³ and Licensed Real Estate Agent.¹⁴ He owned Rob Windham Construction/Windham Construction. Prescott and Windham divorced in 2018. While the couple were married, Windham worked in Prescott's office as non-licensed support staff. In addition, Prescott hired her spouse, his company, or both to perform various services to estates including, but not limited to, cleaning, landscaping, appliance installation, handyman, repair, remodeling, and property management services.

The Division reviewed various records for 2016. Those records demonstrated that Windham was paid for services rendered in the following estates for which Prescott served as a trustee:

1) Bowden Estate ¹⁵	\$3,695.93	(2016)
2) Dostert-Jones Estate ¹⁶	\$19,895.86	(2016)
3) Henderson Estate ¹⁷	\$10,087.51	(2016)

Below are examples of work Windham was paid for in 2016. These examples are not exhaustive of the services Windham completed for the estates. The Division has not reviewed all annual records for the afore-mentioned estates nor has the Division reviewed all cases for which Prescott served in a fiduciary capacity.

¹³ The Licensed General Contractor's License, [REDACTED] that Robert Windham includes in the invoices that appear in this Director Initiated Complaint, seems to be incorrect and may have been erroneously identified. The Arizona Registrar of Contractors website identifies Windham Construction having General Residential Contractor License [REDACTED]

¹⁴ Real Estate License No. [REDACTED]

¹⁵ William Bowden Estate

¹⁶ Betty Dostert and Wilma Jones Estate

¹⁷ James and Gloria Henderson Estate

Bowden Estate

03/07/2016	1028	Rob Windham Const..	Home:Repairs and Mai...		1,843.72	X
03/11/2016	1030	Rob Windham Const..	Home:Repairs and Mai...	Stove and dish...	170.00	X
05/11/2016	1047	Rob Windham Const..	Home:Repairs and Mai...	03/24/16	537.02	X
03/11/2016	1048	Rob Windham Const..	Home:Repairs and Mai...	Final cleaning	150.00	X

Windham Invoices

Rob Windham

[REDACTED]
Licensed General Contractor [REDACTED]
Licensed Real Estate Agent
License # [REDACTED]

Bowden Job 3-16-16

New stove and dishwasher from Home Depot, they will be delivered on 3-22-16 then a plumber will install and bill separately for installation along with new garbage disposal, cost of the 2 appliances is \$950.19 and 1 Hr labor \$45.00 total bill \$995.19, Thank You..

Rec'd 3-16-16
✓ # 1032

Rob Windham

[REDACTED]
Licensed General Contractor [REDACTED]
Licensed Real Estate Agent
License [REDACTED]

Bowden job 3-24-16

1. Install stove, dishwasher and new garbage disposal, 4 hrs \$260.00, redo inside of kitchen cabinet 2hrs \$90.00, repair toilet inst bath \$65.00 materials \$15.30 the front door has side windows and the wood was damaged we sanded and stained, 2 hrs \$90.00 materials \$16.72 Total bill is \$537.02 paid 5-11-16 pics included

✓ ** 1047

Rob Windham

[REDACTED]
Licensed General Contractor [REDACTED]
Licensed Real Estate Agent
License [REDACTED]

Bowden house

1. Final cleaning prior to walk through with clients that are buying house, we mopped the tile floors and cleaned the toilets and all the counter tops we dusted and vacuumed we also cleaned windows and tracks, we broomed out the leaves etc in garage, and pulled the weeds in back yard, Total cost \$150.00

The new owners loved how clean everything was and the house was sold.
Thank You...paid 5-11-16 check # [REDACTED]

[Handwritten signature]

Dostert-Jones Estate

03/18/2016	1034	Rob Windham Const..	Rentals:Fir Street Prop...	2,612.09	X
03/24/2016	1036	Rob Windham Const..	Home Expenses - 2622...	347.55	X
04/20/2016	1053	Rob Windham Const..	Rental Management	655.00	X
05/11/2016	1062	Rob Windham Const..	Rentals:Fir Street Prop...	4,503.00	X
06/07/2016	1073	Rob Windham Const..	Home Expenses - 2622...	3,714.96	X

Windham Invoices

Rob Windham

Licensed General Contractor
Licensed Real Estate Agent
License #

Wilma Jones-Rio Verde House 8-1-16

1. Reaktor called me and said the ceiling in laundry room had fallen in, there was a big rain storm so I thought some shingles had blown off and caused a leak, after driving out and doing an inspection I found the drain pipe for the ac unit that's in the attic had been installed incorrectly and had failed causing the ceiling to cave in , that's was on Sunday night 7-24-16 I called my plumber Jerry and he came out to install new piping from ac unit into wash sink in laundry, Monday morning I was able to send out my worker to tear out the wet sheetrock and wet insulation and pick up new sheetrock, the and rehang and tape the laundry room ceiling, he also hauled all the trash to the dump, I then hired Randy to put second coat of drywall mud on the ceiling and texture to match, Randy has been paid from Wilmas check book. After the texture dried I went to home depot and was able to match ceiling paint from a piece of trim I had removed, I then covered everything up and painted the ceiling and cleaned up , when I reinstalled ceiling lite the unit sparked so I took it down and found the wires inside the light were frayed and the light needed to be replaced, back to home depot where I purchased a new light fixture and installed it, at this point the new owners arrived with their moving van and I was able to leave just moments before they moved in,
2. Cost of paint \$25.00 and sheetrock materials \$11.98 and ceiling light \$9.95
3. Plumber \$250.00 includes materials and emergency call
4. Labor for cleanup of wet sheetrock and cutting out of wet damaged sheetrock, pickup new material and install and do 1 coat of tape and mud, haul trash to dump 18 hrs at \$45.00 an hr \$10.00
5. Paint ceiling 1 coat primer 1 coat of finish paint 4 hrs \$180.00
6. Total cost of job \$1286.93 Paid 8-7-16 check #

Rob Windham

[REDACTED]
Licensed General Contractor
Licensed Real Estate Agent
License # [REDACTED]

Monthly Management Fee for Wilma Jones 4 Rentals

1. Monthly management fee for July 2016 total rentals collected and deposited in national bank, \$2500.00 fee for the month of July is \$250.00 Thank You. Paid on 7-12-16

[REDACTED]

Rob Windham

[REDACTED]
Licensed General Contractor
Licensed Real Estate Agent
License # [REDACTED]

Wilma Jones paint job

1. The rental at [REDACTED] had extensive dry rot and paint peeling, we spent many hours just repairing damage and scraping old paint off the walls, and replacing wood that was dry rotted, we also took out the wood deck in the rear of the house it was a danger to walk on, dry rot, loose boards, the total cost of the work was \$4503.00, thank You 5-9-16, pics included and paid 5-11-16 check # [REDACTED]

[REDACTED]

Henderson Estate

04/07/2016	1353	Rob Windham Const...	-split-	270.00	X
04/14/2016	1354	Rob Windham Const...	Home & Property Expe...	6,717.51	X
05/01/2016	1355	Rob Windham Const...	-split-	270.00	X
05/07/2016	1356	Rob Windham Const...	Home & Property Expe... Garage beam	670.00	X

Windham Invoices

Rob Windham

Licensed General Contractor
Licensed Real Estate Agent
License #

Henderson ext paint and wood repair 3-30-2016

1. We are replacing wood trim and fascia where needed and renafling siding , there was lots of wood rot
2. We are also prepping the house to be painted theres lots of areas that the paint is peeling and needs scraping sanding
3. Materials so far \$39.90 \$22.80 \$45.17 \$553.25 2 gallons of trim paint also from ms \$60.00 more wood and caulking \$210.00 more paint \$309.44 for garage
4. Labor 3-24 10 hrs 3-25 10 hrs 3-28 10 hrs 3-29 10hrs 3-30 10 hrs 3-31 11 hrs 4-1 11 hrs 4-4 10 hrs 4-5 10-hrs 4-6 10 hrs 4-7 10 hrs 4-8 10 hrs total hrs 122 at \$45.00 per hour = \$5490 material \$1227.51
Total job cost \$6717.51 paid 4-14-16 check #

Rob Windham

[REDACTED]
Licensed General Contractor [REDACTED]
Licensed Real Estate Agent
License # [REDACTED]

Henderson House Dry rot

Large beam holding up garage had termites dry rot damage and needed to be replaced, cost of beam \$150.00 total hrs to get material jack up garage and install new beam and paint was 8 hrs at \$65.00 = \$520.00 total job cost \$670.00 Thank You. Paid 5-7-16

Zoom

PAID
5-7-16
✓ 1354

Rob Windham

[REDACTED]
Licensed General Contractor [REDACTED]
Licensed Real Estate Agent
License # [REDACTED]

Henderson property management Bill for the month may 2016

1. Rent is \$1100.00
2. Management fee \$110.00
3. Monthly weed spray \$65.00
4. Monthly landscaping fee \$ 95.00
5. Total due for the month of may 2016 is \$270.00

Thank You Rob Windham

Zoom

✓ 1355

ACJA §7-202(J)(2)(b) (1-3) exists to protect against fiduciaries from engaging in self-enriching practices. The provisions bar self-dealing, conflict of interest or impropriety, or the appearance of a conflict of interest or impropriety. They also serve to alert and

provide guidance to the fiduciary. Despite the prohibition of such actions, Prescott appears to have disregarded or rejected the safeguards and hired her husband, his construction company, or both to perform work on various estates and, in doing so, appeared to benefit financially from her actions. By hiring her husband, his construction company, or both, Prescott could not ensure that she maintain the requisite independence from service providers “to challenge inappropriate or poorly delivered services” and act in the best interests of the estate, as set forth in ACJA §7-202(J)(2)(b)(2). Prescott was excluded from providing non-fiduciary services if the fiduciary “or the person or entity closely related to the fiduciary has a personal or financial interest.” The code defines that a spouse is someone “closely related” to the fiduciary.

In her interview, Prescott told Division staff that she requested waivers of a conflict of interest from clients regarding hiring Prescott’s husband to perform work on the estates. The Division requested that she provide supporting documents. Prescott later informed the Division that she was unable to produce any client waiver of conflict of interest.

The Division did not find evidence that Prescott hired her husband, his company, or both, after 2018. The couple divorced in 2018. The timing gives credibility to the argument that Prescott acted in a conflict of interest and self-serving and improper manner.

Retaining The Law Office of Diane B, Prescott, Inc., while serving in a fiduciary capacity

Prescott engaged in self-dealing and conflict of interest or impropriety by retaining her law firm in cases for which she was serving in a fiduciary capacity.

E.H. Russo Estate

Prescott was appointed as Personal Representative for the E.H. Russo Estate on January 5, 2015, per Letters of Personal Presentative, in Probate Cause No. V13000PB20148-0112, involving the E.H. Russo Estate.

On December 30, 2014, Prescott, as pro per, affixed her State Bar license number and identification for the Law Offices of Diane B. Prescott, Inc., on the Application for Informal Probate of Will and Appointment of Personal Representative filed with the Court. In addition, on the same date, Prescott, as pro per, filed with the Court a Cover Page for Fiduciary License of Diane B. Prescott along with a copy of her Arizona fiduciary license. Further, on December 30, 2014, Prescott filed with the Court a Court Information Sheet, again using her State Bar license number. In Section 2, of the information sheet, “Information about the people who are asking to be Personal Presentative of the Estate of Estelle Harrison Russo AKA E.H. Russo,” Prescott, as Petitioner, identified her Relationship to Decedent as “Attorney.” See pertinent section below:

2. Information about the people who are asking to be Personal Representative of the Estate of Estelle Harrison Russo AKA E.H. Russo:

DESCRIPTION OF	PETITIONER	
Name	DIANE B. PRESCOTT, ESQ.	
Address		
City, State, Zip Code		
Relationship to Decedent	Attorney	

Section 3 of the Court Information Sheet requires information about the Petitioner's attorney. Although Prescott was the "petitioner," she identified Diane. B. Prescott, Esquire, as the "Petitioner's Attorney." See below:

3. Information about Petitioner's Attorney

Diane B. Prescott, Esquire
 State Bar # [REDACTED]
 Law Offices of Diane B. Prescott, Inc.
 [REDACTED]

The following excerpts were taken from Prescott's various billing records. Records reflected fiduciary, trust administration, and legal fees. The records show that Prescott delineated between legal and trust administration fees. See below:

Expense		
Bank Fees		158.00
Isaac's Expenses		24,619.26
Medical Expenses		342.49
Professional Fees		
Accounting	5,828.00	
Fiduciary	802.40	
Legal	42,007.93	
Trust Administration	30,166.80	
Total Professional Fees		78,905.13

Check	07/06/2016	2016	Diane Prescott	X	Legal	-3,542.00	484,308.84
Check	08/04/2016	2027	Diane Prescott	X	Legal	-3,348.22	136,825.77
03/07/2016	2036	Diane B Prescott Inc	Professional Fees:Legal			1,106.25	X
03/07/2016	2037	Diane B Prescott Inc	Professional Fees:Legal			131.25	X
03/08/2016	2038	Diane B Prescott Inc	Professional Fees:Legal			393.75	X

In her interview, Prescott seemed to have difficulty answering straightforward questions related to how she distinguishes between the provision of services as an attorney and at the same time, as a fiduciary for an estate. She also indicated that the legal billing is how her accounting program categorizes the fees. But, if Prescott could enter trust administration and fiduciary fees, there would be no need to include payment of legal fees. Prescott's legal fees and trust administration fees were reflected throughout the administration of the E.H. Russo estate.

Prescott told Division staff that she executed waivers of conflict of interest involving Prescott serving both as attorney and fiduciary for estates. Division staff requested supporting documentation of the waivers. Prescott later informed the Division that she was unable to produce any such waiver of conflict of interest.

Creating a trust and naming herself as trustee

On January 5, 2015, Prescott was Court-appointed as Personal Representative for the E.H. Russo Estate, per Letters of Personal Representative, in Probate Cause No. V13000PB20148-0112.

On January 5, 2015, the Court issued the Order to Personal Presentative and Acknowledgement and Information to Heirs/Devises. Commissioner Shannon Shoemaker wrote, pertinently:

The bests interest of this estate is of great concern to this Court. As Personal Representative, you are a fiduciary...You must be cautious and prudent in dealing with estate assets.

Arizona law prohibits a Personal Representative from participating in transactions that are a conflict of interest between you, as Personal Representative, and you as an individual. Other than receiving reasonable compensation for your services as Personal Representative, you may not profit from dealing with estate assets.

Prescott exceeded the authority of a Personal Representative by creating various trusts and naming herself as the trustee when such action was not directed by the Will.

In summary, the facts suggest that Prescott engaged in self-dealing, conflict of interest or impropriety and/or failed to avoid the appearance of self-dealing and conflict of interest or impropriety. Prescott hired her husband to perform substantial work on the estates, retained her law firm when Prescott served as fiduciary, and she created trusts and named herself as trustee.

Allegation 3 is substantiated.

Allegation 4:

Diane Prescott failed to keep estate beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests.

ACJA §7-202(J)(1)(a):

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

ACJA §7-202(J)(6)(a), (d):

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

A.R.S. § 14-10813. Duty to inform and report

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

The facts suggest that Prescott did not keep estate beneficiaries reasonably informed of about the administration of the trust/estate and of material facts necessary for beneficiaries to protect their interests. Evidence of Prescott failing to disclose material facts to beneficiaries is found in her administration of the E.H. Russo Estate and the Dostert-Jones Estate.

E.H. Russo Estate

Prescott was appointed as Personal Representative of the E.H Russo Estate on January 5, 2015, per Letters of Personal Representative.

On January 5, 2015, the Court issued the Order to Personal Representative and Acknowledgement and Information to Heirs/Devises. Commissioner Shannon Shoemaker wrote, including, pertinently:

The Personal Representative is required to provide sufficient information to the beneficiary to permit the beneficiary to protect his or her interests.

Prescott had control and stewardship of the E.H. Russo Estate which had an approximate value of over 1.2 million dollars, per the Inventory and Appraisement Prescott filed with the Court on March 2, 2015.

Russo Trust I - Rosemary Russo bequest

The Will did not direct that a trust be created for the Rosemary Russo bequest, but Prescott created Russo Trust I on or about August 31, 2015. Prescott told Division staff that she created the Russo trusts because Dollar Mark required that trusts be created to proceed with the investment arrangement Prescott had with Dollar Mark, as extensively described herein. Prescott did not inform a trust had been created for her bequest until January 9, 2017, at which time Prescott wrote a letter to Rosemary Russo informing, in part, that Prescott would be closing the probate this year and the funds for the monthly distribution “will be held in a Trust and you will continue to receive your monthly distribution without interruption.” This appears to be the first time Rosemary Russo was informed that her bequeathed money was held in a trust.

Prescott told Division staff that she did not have any conversation with Rosemary Russo regarding how Prescott was going to or used the bequest by investing/loaning the estate money to Dollar Mark.

Although the bequest did not belong to her, Prescott treated the bequest as if her own by creating a trust, investing the bequeathed monies in short-term loans to fund the purchase of sale of real estate properties, and not informing beneficiary of those facts. In doing so, Prescott deprived Rosemary Russo of sufficient information or material facts necessary to protect her financial interests.

Russo Trust II – Dysart bequest

The Will called for the money to be held in trust and the income distributed in accordance with the terms of the Will to needy promising children enrolled in Dysart School District

#89. Prescott created Russo Trust II on September 1, 2015. However, it was not until July 9, 2018, when Prescott informed Dysart that the bequest was held in a trust.

Prescott did not inform the beneficiary that she was going to or invested the bequest in Dollar Mark. Laird told Division staff that Prescott never discussed how the bequest was invested therefore Dysart did not have any input into how the bequest was managed. Laird stated that they have been administering approximately eight scholarships and those monies are held in low risk, conservative investments including mutual funds and bonds and are managed by professional financial advisors, Baird Financial Advisors.

In addition, Division staff read the specific language of the Will after which Laird expressed surprise because she said the bequest was going to teachers and classrooms.

DEF had the means to accept and administer the bequest. Dysart ensures that endowments and scholarships are managed by professional financial advisors and monies are invested in low risk, conservative financial instruments including mutual funds and bonds, as represented by Laird. Prescott did not have discussion with any representative of Dysart regarding receiving the entire sum of the bequest so that Dysart could manage the bequeathed funds. Prescott did not have any discussion with Dysart regarding how Prescott chose to invest the bequest. By failing to do so, Prescott deprived the beneficiary and/or potential beneficiaries of sufficient information or material facts necessary to protect their interest.

Russo Trust III – Sephardic bequest

The Will did not call for the creation of a trust for this bequest. Prescott created Russo Trust III on September 2, 2015. Records show that it was not until July 11, 2018, when Prescott sent a letter to Connie informing him the Isaac Russo Estate had been closed but the E.H. Russo Estate probate was ongoing. Prescott further informed Connie that she was going to make yearly contributions of net income from the assets which were held in Russo Trust III. This appears to be the first time Prescott informed anyone at Sephardic that the bequeathed funds were held in a trust but there was no mention of Dollar Mark or how the funds were invested.

The New York attorney for Sephardic Foundation, Bialostok, told Division staff that they hired a legal firm in Arizona to resolve the issue of the bequest and the Sephardic Foundation and Prescott stipulated to an agreement. Bialostok said they had concerns about how Prescott had managed the bequest because she was investing money into “mortgages” adding that the Arizona attorneys were concerned that Prescott’s investments were not prudent pursuant to statute. Sephardic Foundation’s attorneys, retained for the matter in Arizona, were unwilling to speak with Division staff because the matter was resolved by agreement. Prescott told Division staff that Sephardic Foundation had not raised any concern about how she invested the bequest. Considering

the Sephardic bequest was resolved through litigation, Prescott's statement raises concerns about her candor to the Division.

Prescott treated the bequest as if her own. Prescott told Division staff that she created a trust because Dollar Mark required her to do so, so that she could invest the estate assets despite the Russo Will not directing the creation of a trust for this bequest. Prescott failed to act to administer the bequest to Sephardic between the time when she sent a letter to Connie, dated July 30, 2015, to the follow up letter to Connie, dated July 11, 2018. Prescott did not inform the beneficiary as to how she was investing the bequest.

Prescott deprived the beneficiary of sufficient information or material facts necessary to protect their financial interest.

Dostert-Jones Estate

Prescott served as Successor Trustee of the Jones Revocable Trust, dated June 20, 1994, Amended and Restated April 19, 2005, First Amendment to the Jones Revocable Trust dated June 20, 1994, on April 16, 2008, Second Amendment to the Jones Revocable Trust Dated June 2, 1994, on April 21, 2010.

The estate owned numerous real estate properties. Regarding the property located at [REDACTED] Prescott obtained a professional appraisal that was conducted on December 16, 2015, by Brock Appraisal Services. At that time, the appraised value was \$70, 221.00. On January 17, 2017, Donna Chesler ("Chesler") of Russ Lyons Sotheby's International Realty conducted an evaluation of the property. Chesler opined that the property could be listed for sale at \$69,000.00 and entertain offers slightly lower. Chesler indicated that the property could sell between \$65, 000.00 to \$69,000.00 noting, "The property is in disrepair. At this price, it should sell AS IS. The other option is to make improvements in order to ask a higher price." Prescott's records, dated January 12, 2017, valued the property at \$68, 000.00. On January 23, 2017, Prescott sent a letter to estate beneficiaries wherein Prescott noted a topic requiring resolution of the Mesa Dr. property. Prescott said one of the beneficiaries expressed an interest in taking the property in lieu of a cash distribution. Prescott enclosed the realtor's letter expressing her opinion on the marketability of the Mesa Dr. property. The excerpt below was taken from the January 23, 2017, letter.

On a topic that needs to be resolved before the final distributions are made, enclosed is a letter from the Realtor expressing her opinion as to the marketability of the Mesa Drive property. Her opinion coincides with the appraised amount of \$68,000.00 that we received in early 2016.

Prescott stated that if the beneficiary received the Mesa Dr. property instead of cash, the Trust would save the expense and time involved in selling the property.

On June 12, 2017, Prescott sent a letter to the beneficiaries regarding “the last piece of real property held in the Trust,” which was the Mesa Dr. property. In part, Prescott reviewed the condition of the property and items that would require replacing. Regarding Hoke, Prescott wrote, “I’ve hired a contractor named Dwayne Hoke and his crew to take a look at the property and give me estimates of how much the repairs to get the property ready for sale would be.” In the same letter, Prescott stated, pertinently,

“Mr. Hoke has given me an estimate for the clean-up of the property of \$3,450 and the estimates for the known repairs is \$7,605. I think these numbers are low and when we actually get into the house and see what a Buyer would require or ask in the amount of a reduction of price the repairs could be much higher. And, of course this is all money that comes out of the Trust assets now before the listing of the property, especially the clean up money. So, we’d have to go forward and spend approximately \$11,145 to get it ready to sell and that will take approximately a month. Then the property would be listed and could sell overnight or take 4-6 months, depending on the market.

With that said, Contractor, Mr. Hoke has made an offer on the property, “As is”. [sic] The Contractor is willing to forego a septic pump and inspection as he is aware that the septic was replaced last July. He is also waiving all other inspections (including termite) and an appraisal. He’ll be paying cash so the closing would be much quicker than if there were a loan involved.

Mr. Hoke is offering cash of \$48,500 and will close in less than a month.

The offer is open until June 26.”

Prescott added that she was inclined “to take this offer, close the deal, and make a final accounting and distribution to you all. The expenditure of money to clean up the property and do the long overdue repairs is something I wouldn’t go without you knowing about it and getting your input. Please let me know whether you wish me to take this offer or go forward with cleanup and repairs. “

Prescott included the following analysis:

Here are the numbers for your consideration.

If we were to look at this offer using the asking price of \$68,000.00 that the realtor gave as her suggestion last December, the numbers would look like this:

+ \$68,000.00 Asking price.
- 3,400.00 the usual selling price is at 5% under asking price
- 4,080.00 6% sales commission.
- 400.00 Septic pump-out and inspection will usually be required by Buyer.
- 500.00 Estimated termite inspection and repairs
- 3,540.00 Clean-up of property.
- 7,605.00 Repairs necessary for listing.
\$48,475.00 Net
- 5,000.00 Possible additional repairs and/or offer reductions.
\$43,475.00 Possible Net

During her interview with the Division, Prescott was unable to tell Division staff if she had disclosed to the beneficiaries that Hoke was an unlicensed contractor when he provided the estimate for the clean-up and repairs which totaled \$11,135.00 according to Hoke. Prescott's June 12, 2017, letter referenced to Hoke as the "Contractor" that she hired. Prescott told Division staff that she has used Hoke and his company, Hoke Enterprises, LLC, on another estate for services such as spraying for weeds (\$25.00 and \$20.00), evidenced by invoices from Hoke Enterprises, LLC. The Division was unable to independently verify the type of business Hoke Enterprises, LLC operated although the business may be a landscaping type of business.

In her interview, Prescott told Division staff that she did not think she obtained alternative estimates from licensed contractors.

Arizona statute prohibits an unlicensed contractor to perform any work less than \$1,000.00.

A.R.S §32-1121(A)(14) Persons not required to be licensed; penalties; applicability:

A. This chapter does not apply to:

14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials, and all other items...is less than one thousand dollars.

It would have been prudent for Prescott to obtain estimates from qualified contractors to ensure that the repair costs Hoke provided were appropriate before she presented those costs to the beneficiaries. Prescott herself noted in her letter that she believed Hoke's estimate was low.

The issue is that Hoke was an interested buyer of the Mesa Dr. property and Prescott restricted the estimated costs of clean-up and repair to the individual who wanted to purchase the property. Hoke's offer to purchase the property was \$20,000.00 less than the appraised listing value that Chesler presented in her January 17, 2017, letter. Chesler believed the property was in despair and the "AS IS" listing price could be approximately \$68,000.00.

Further, Prescott was unable to tell Division staff whether she disclosed that Hoke was in a relationship with her office manager, Daymude, at the time he provided his estimate and offer to purchase the property.

Prescott's lack of disclosure to beneficiaries regarding Hoke's professional qualifications, his relationship with Daymude, an employee of Prescott's, and Prescott's lack of obtaining other estimates for clean-up and repair of the property, raises concern whether Prescott was acting in the best interest of the beneficiaries or showing preference to Daymude and Hoke.

Daymude and Hoke purchased the Mesa Dr. property on or about June 27, 2017, "AS IS" for \$48,500.00, per the Purchase Contract. Recordation with Yavapai County was on July 7, 2017.

Additional Example:

Failing to notify of change in rate of compensation

Prescott routinely utilized a template for a Fee Agreement wherein she noted her hourly rate of \$225.00 and informed that when her services are used, Prescott "will charge the current hourly fee that I charge to my legal clients at that time. I charge only for the time I spend on the administration of the estate." Prescott is required to notify beneficiaries at least thirty days in advance of any change in the method or rate of her compensation.

A.R.S. § 14-10813. Duty to inform and report

A. A Trustee:

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

Prescott billed at \$225.00 per hour but over the time she served as trustee or Personal Representative, Prescott raised her rate of compensation to \$250.00 per hour. In her interview, Prescott was asked if she provided a written notice to beneficiaries in advance of her increase in rate of compensation. Prescott believed that she did notify beneficiaries. The Division requested supporting documentation. Later, Prescott informed

the Division that her records did not show a written notice of increase of rates to the beneficiaries but said her records included a Fee Agreement for each client for whom she served as Personal Representative and/or Trustee during the Division's compliance audit period. Prescott said in the Fee Agreement, the clients agree to the increase in hourly rate when the fees to her legal clients are increased. Each Fee Agreement reviewed by the Division contained the same or similar language. Each stated that Prescott charges the current hourly fee that she charges to her legal clients at that time.

Prescott was bound by statute to provide at least 30 days advanced notice of any change in method or rate of compensation, and she did not do so. By notifying beneficiaries, Prescott would have acted in a transparent manner and at least give beneficiaries the opportunity to question or challenge the rate increase.

Allegation 4 is substantiated.

Allegation 5:

Diane Prescott failed to comply with the Court's order to provide an estate status report by the Court's deadline.

ACJA §7-202(J)(1)(a) and (c)(2):

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

c. The fiduciary shall:

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration

Prescott was appointed as Personal Representative of the Everett Lodge Estate ("Lodge Estate") on November 29, 2006, per Letters of Personal Representative. At the time of her appointment, Prescott was not licensed as a fiduciary in Arizona. The Fiduciary Board issued a fiduciary license to Prescott on September 8, 2011.

The administration of the Lodge Estate took approximately 14 (fourteen years) from opening the probate in late 2006 to closing the estate around June 2020. The Division reviewed Prescott's administration of the estate but any conduct during the time when

Prescott was not a fiduciary was outside of the Division's regulatory oversight and authority.

By way of background, The Last Will and Testament of Everett K. Lodge ("Lodge Will") called for specific direct distributions of estate money to three devisees, and the rest and residue of the estate was to be liquidated and bequeathed to the Montezuma Rim Rock Fire District, to be used only for providing fire hydrants to the Rim Rock Fire District. It appears that the beneficiary, represented by the Fire Chief at the time, requested that Prescott hold on to the estate funds and not distribute the funds. Prescott made the first distributions from the estate in 2010.

On August 17, 2012, the Court issued a Notice of Impending Dismal¹⁸. Pursuant to Arizona Rules of Probate Procedure, Rule 15.2(A), in effect at the time, the case was placed on the inactive Calendar for 90 days. This was because the case had been opened since 2006 and Prescott did not notify the Court of the status of the administration of the estate. The Court's Notice to Prescott stated that unless Prescott took certain actions before the expiration of 90 days, the case would be dismissed for lack of prosecution without further notice and the Appointment of the Personal Representative would be terminated. The Court requested a number of items, including, but not limited to, a Closing Statement and Status Report describing matters that remain to be resolved.

Prescott was licensed as a fiduciary in September 2011, and, by that time, the probate had been opened approximately five years. Given the circumstances which prevented her from moving forward with the administration of the estate, it would have been proactive and practical for her to file with the Court an estate status report giving the Court a clear understanding of the presenting issues and an estimation of when she may close the estate under the circumstances. Prescott did not file an estate status report with the Court.

After receiving the Court's Notice of Impending Dismissal, Prescott filed with the Court an Estate Status Report, on September 11, 2012. Prescott filed with the Court Estate Status Reports in 2013 through 2016, typically after an internal review by the Court.

On December 8, 2016, the Court issued a Notice Re: Status Report stating that the Court received and reviewed the Estate Status Report filed on November 15, 2016, and that the Estate Status Report indicates on November 8, 2016, an email from Fire Chief Terry Keller informed the AZ Water Company had completed, through a contractor, their portion of waterline improvements. This would allow Chief Keller to install two hydrants and provide for a fire line tap for the fire sprinklers and a tap to the domestic water supply. When all the proposed hydrants had been installed, the probate could be closed.

¹⁸ Superior Court of Arizona, Yavapai County, involving Probate Cause Number V1300PB820060114.

The Court ordered vacating an internal review hearing set for November 7, 2016, and ordered an internal review on May 8, 2017, no appearance necessary. The Court requested a Status Report which addresses the progress of the installation of fire hydrants, as well as the anticipated date of the closing of the estate. The Court further ordered that Prescott shall comply with the Court's request and file a Status Report on or before April 28, 2017 and provide copies of the Status Report to all interested persons.

There was no record demonstrating that Prescott filed the Estate Status Report with the Court on or before April 28, 2017, as previously ordered by the Court.

On September 7, 2018, the Court issued a Notice of Impending Dismissal noting that the case has been placed on the Dismissal Calendar for 90 days. The Court requested certain actions from Prescott before the expiration of 90 days or the case would be dismissed for lack of prosecution without further notice and the Appointment of the Personal Representative would be terminated.

On September 12, 2018, Prescott filed with the Court an Estate Status Report.

Allegation 5 is substantiated.

CONCLUSION:

Allegation 1: Diane Prescott failed to practice competently by use of unacceptable practice by imprudently investing estate funds bequeathed to beneficiaries and/or failing to observe the standards of care applicable to a trustee, including the prudent investor rules.

ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA §7-201(A) defines negligence:

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

ACJA §7-201(H)(6)(a), and (k)(6), and (8):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

- a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

k. Engaged in unprofessional conduct, including:

(6) Failed to practice competently by use of unsafe or unacceptable practices;

(8) Failed to practice competently by reason of any cause on a single occasion or on multiple occasions by performing unsafe or unacceptable client or customer care or failed to conform to the essential standards of acceptable and prevailing practice;

ACJA §7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA §7-202(J)(2) and (3):

2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.

3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

ACJA §7-202(J)(6)(d):

A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

ACJA §7-202(J)(3)(e):

The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

A.R.S. §14-10804. Prudent Administration

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

A.R.S. §14-10901. Prudent Investor Rule

A. Except as provided in subsection B, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule requirements of this article.

A.R.S. §14-10902. Standard of care: portfolio strategy; risk and return objectives

A. A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard the trustee shall exercise reasonable care, skill and caution.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

A.R.S. §14-10906. Prudent investor rule: language to invoke standard:

The following terms or comparable language in the provision of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article:

4. Using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.
5. Prudent man rule.
6. Prudent trustee rule.
7. Prudent person rule.
8. Prudent investor rule.

The facts presented in this Investigation Summary indicate Prescott failed to practice competently and did not prudently invest estate funds and/or failed to observe the standards applicable to trustees, including the prudent investor rule.

For the reasons described in the Summary of Factual Findings of Investigation and Analysis of this report, Allegation 1 is substantiated.

Allegation 2: Diane Prescott engaged in unprofessional conduct and unacceptable fiduciary practices by:

- a) Failing to distribute assets of the decedent in accordance with the terms of the Will by creating a trust and naming herself as trustee when such action was not directed by the will.**
- b) Changing the directive of the Will.**
- c) Failing to distribute and/or timely distribute the assets of the estate.**

ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA §7-201(A) defines negligence:

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

ACJA §7-201(H)(6)(a), and (k)(6):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

- a) Failed to perform any duty to discharge any obligation in the course of the certificate holder’s responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

k. Engaged in unprofessional conduct, including:

- (6) Failed to practice competently by use of unsafe or unacceptable practices;

ACJA §7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA §7-202(J)(2) and (3):

2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.

3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

ACJA §7-202(J)(6)(d):

A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

ACJA §7-202(J)(3)(e):

The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

ACJA §7-202(J)(6)(a), (d), and (f):

6. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

ACJA §7-202(J)(1)(b):

The fiduciary shall not act outside of the authority granted by the court and shall seek the court's direction as necessary and court authorization for actions that are subject

to court approval. The fiduciary shall clarify with the court any questions about the meaning of a court order or directions from the court before taking action based on the order or directions...

For the reasons detailed in the Summary of Factual Findings of Investigation and Analysis of this report:

Allegation 2 a) is substantiated.
Allegation 2 b) is substantiated.
Allegation 2 c) is substantiated.

Allegation 3: Diane Prescott failed to avoid self-dealing, conflict of interest or impropriety, and/or the appearance of a conflict of interest or impropriety.

ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA §7-201(H)(6)(a), and (k)(6):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

k. Engaged in unprofessional conduct, including:

(6) Failed to practice competently by use of unsafe or unacceptable practices;

ACJA §7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA §7-202(J)(2) and (3):

2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.

3. Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall

make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

ACJA §7-202(J)(6)(d):

A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

ACJA §7-202(J)(3)(e):

The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

ACJA §7-202(J)(6)(f):

6. Personal Representative. A fiduciary acting as personal representative shall settle and distribute the estate of the decedent efficiently, timely, and in the best interests of the estate and, if appropriate, in accordance with the terms of any probated and effective will.

f. A fiduciary shall have no self-interest in the management of the decedent's estate and shall exercise caution to avoid even the appearance of self-interest.

ACJA §7-202(J)(2)(b)(1), (2), and (3)(a):

(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent. A conflict of interest may also arise if the fiduciary has dual or multiple relationships with a ward that conflict with each other or has a conflict between or among the best interests of two or more wards.

(2) Maintain independence from all service providers to enable the fiduciary to coordinate services, challenge inappropriate or poorly delivered services, and act in the best interests of the ward or protected person.

(3) Unless otherwise authorized by the court, the fiduciary shall not:

- (a) Provide non-fiduciary services to the ward or protected person if the fiduciary or a person or entity closely related to the fiduciary has a personal or financial interest. For the purposes of this subsection, "closely related" includes a spouse, child, parent, sibling, grandparent, aunt, uncle, or cousin of the fiduciary, and any business, partnership, corporation, limited liability company, trust, or other entity that the fiduciary or a closely related person has a financial interest in, is employed by, or receives compensation or financial benefit from.

ACJA §7-202(J)(1)(a):

1. Duty to the Court.

- a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

ACJA §7-202(J)(6)(a) and (d):

- a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

- d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

A.R.S. § 14-10813. Duty to inform and report

- A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

- 4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

A.R.S §32-1121(A)(14): Persons not required to be licensed; penalties; applicability:

- A. This chapter does not apply to:

14. Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials, and all other items...is less than one thousand dollars.

Any person other than a licensed contractor engaging in any work or operation on one undertaking or project by one or more contracts, for which the aggregate contract price, including labor, materials, and all other items...is less than one thousand dollars....

For the reasons detailed in the Summary of Factual Findings of Investigation and Analysis of this report, Allegation 3 is substantiated.

Allegation 4: Diane Prescott failed to keep estate beneficiaries reasonably informed about the administration of the trust and of the material facts necessary for the beneficiaries to protect their interests.

ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA §7-201(A) defines negligence:

“Negligence” means deviation from the standard of care a reasonable certificate holder would exercise in the situation.

ACJA §7-201(H)(6)(a), and (k)(6):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

a) Failed to perform any duty to discharge any obligation in the course of the certificate holder’s responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

k). Engaged in unprofessional conduct, including:

(6) Failed to practice competently by use of unsafe or unacceptable practices;

ACJA §7-202(J)(7):

7. Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether that person is acting pursuant to court appointment.

ACJA §7-202(J)(2):

2. Relationship with the Ward or Protected Person. The fiduciary shall exhibit the highest degree of trust, loyalty, and fidelity in relation to the ward, protected person, or estate.

ACJA §7-202(J)(6)(d):

A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees

ACJA §7-202(J)(3)(e):

The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

ACJA §7-202(J)(6)(a) and (d):

a. On appointment, the fiduciary shall review and be informed of the statutory requirements for managing a decedent's estate.

d. A fiduciary shall exercise intelligence, prudence, and diligence in providing competent management of the property and income of the estate. A fiduciary acting as a personal representative shall observe the standards of care and duties applicable to trustees.

A.R.S. § 14-10813. Duty to inform and report

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

B. A Trustee:

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

For the reasons detailed in the Summary of Factual Findings of Investigation and Analysis of this report, Allegation 4 is substantiated.

Allegation 5: Diane Prescott failed to comply with the Court's order to provide an estate status report by the Court's deadline.

ACJA § 7-201(F)(1) and § 7-202(F)(1) require all fiduciaries to comply with the Code of Conduct contained in § 7-202(J).

ACJA §7-201(H)(6)(a):

6. Grounds for Discipline. A certificate holder is subject to disciplinary action if the board finds the certificate holder has engaged in one or more of the following:

a) Failed to perform any duty to discharge any obligation in the course of the certificate holder's responsibilities as required by law, court rules, this section or the applicable section of the ACJA;

ACJA §7-202(J)(3)(e):

The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration.

A.R.S. § 14-10813. Duty to inform and report

A. Unless the trust instrument provides otherwise, a trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless the trustee determines that it is unreasonable under the circumstances to do so, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

4. Shall notify the qualified beneficiaries at least thirty days in advance of any change in the method or rate of the trustee's compensation.

For the reasons detailed in Summary of Factual Findings of Investigation and Analysis of this report, Allegation 5 is substantiated.

SUB



5/2/2022

Pasquale Fontana, Investigator
Certification and Licensing Division

Date

REVIEWED BY:



5-2-2022

Aaron Nash, Division Director
Certification and Licensing Division

Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number 18-0061, the Probable Cause Evaluator:

- requests division staff to investigate further.
- determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

- determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

#1 #2ca #2(b) #2cc #3 #4 #5



5/2/2022

Marcus Reinkensmeyer,
Probable Cause Evaluator

Date

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

CERTIFICATE HOLDER INFORMATION	Certificate Holder:	Diane Prescott
	Certification Number:	██████████
	Business Name:	N/A
	Certificate Number:	N/A
	Type of Certificate/License:	Individual Fiduciary

RECOMMENDATION TO THE FIDUCIARY BOARD ("BOARD"):

Arizona Code of Judicial Administration ("ACJA") § 7-201(F)(1) requires all fiduciaries to comply with the Code of Conduct contained in §7-202(J).

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding **DIANE PRESCOTT** has committed the alleged acts of misconduct as detailed in the Investigation Summary and Probable Cause Analysis and Determination Report in complaint number 18-0061.

It is further recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6) for acts of misconduct involving:

1. ACJA §§7-201(H)(6)(a), and (k)(6), and (8), 7-202(J)(2), (3)(e), (6)(d), and (7), A.R.S. §§14-10804, 14-10901(A), 14-10902(A) and (D), and 14-10906(4)-(8) for failing to practice competently and not prudently invest estate funds and failed to observe the standards applicable to trustees, including the prudent investor rule.
2. ACJA §§7-201(H)(6)(a), and (k)(6), 7-202(J)(1)(b), (2), (3)(e), and (7), 7-202(J)(6)(a), (d) and (f) for failing to distribute assets of the decedent in accordance with the terms of the will by creating a trust and naming herself as trustee when such action was not directed by the will, for changing the directive of the will and for failing to distribute or timely distribute the assets of the estate.
3. ACJA §§7-201(H)(6)(a), and (k)(6), 7-202(J)(2), (3)(e) and (7), 7-202(J)(6)(a), (d) and (f), 7-202(J)(2)(b)(1), (2), and (3)(a), 7-202(J)(1)(a), A.R.S. §§ 14-10813(A)(4) and 32-1121(A)(14) for failing to avoid self-dealing, conflict of interest or impropriety, and the appearance of a conflict of interest or impropriety.
4. ACJA §§7-201(H)(6)(a), and (k)(6), 7-202(J)(1)(b), (2), (3)(e), (6)(a) and (d), and (7), A.R.S. §14-10813(A) and (B)(4) for failing to keep estate beneficiaries reasonably informed about the administration of trust and of the material facts necessary for the beneficiaries to protect their interests.
5. ACJA §§7-201(H)(6)(a), 7-202(J)(3)(e) and A.R.S. §14-10813(A)(4) for failing to comply with the court's order to provide an estate status report by the court's deadline.

Mitigating Factors:

1. Absence of a prior disciplinary record.

Aggravating Factors:

1. Selfish motive;
2. Multiple offenses;
3. Substantial experience in the profession.

Proportionality Analysis:

It is further recommended the Board enter an order revoking the fiduciary license of Diane Prescott.

It is further recommended that any new or open complaints involving Diane Prescott be held in abeyance pending final resolution of this matter.

SUBMITTED BY:



5/6/2022

Aaron Nash, Division Director Date
Certification and Licensing Division

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 18-0061 and DIANE PRESCOTT, license/number [REDACTED] makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- requests division staff to investigate further.
- refers the complaint to another entity with jurisdiction.

Referral to: _____

- dismisses the complaint, and:
 - requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
 - requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
 - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
 - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).
- requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: _____

adopts the recommendations of the Division Director.

does not adopt the recommendations of the Division Director and orders:



Deborah Primock _____, Chair
Board of Fiduciary _____

5/14/22
Date

