

Instructions on Distribution to Trustees of a Passive Trust

From beneficiary Candace Louise Curtis

To: Anita Brunsting and Amy Brunsting as co-trustees for a naked, dry or passive trust.

Amy and Anita Brunsting you are in breach of fiduciary for your failure to administer the express trust in good faith according to its terms and the Texas Trust Code and have refused or otherwise failed to perform any fiduciary duties under any proclaimed trust instrument for more than eight consecutive years.

On April 19, 2013 United States District Court Judge Kenneth Hoyt issued a preliminary injunction in which he found the existence of a fiduciary relationship, stating the following:

“The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.¹ At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21,

2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.”

The federal preliminary injunction, by its own command, remains in full force and effect throughout the controversy between the parties thereto. You have been served according to the Uniform Enforcement of Foreign Judgments Act notifying you that the federal injunction has been domesticated in the state of Texas and serves as a final judgment of the District Court for all findings of fact and conclusions of law purposes.

Not only have you been found to have failed to perform the duties required by the trust but you were specifically ordered to perform the affirmative fiduciary function of depositing income into an appropriate account for the beneficiary. You have not only refused and otherwise failed to honor the affirmative commands in that injunction but in the more than seven years since it was issued you have failed to perform any affirmative fiduciary obligations at all, thus establishing a naked, dry or passive trust.

You are herein notified that, as co-trustees of a passive or dry trust, you have no authority other than to distribute the assets of the trust as commanded by the beneficiary. You are hereby instructed to distribute the assets forthwith, according to the instructions contained in this letter.

DISTRIBUTION SCHEDULE

You will divide the remaining liquid assets by five and distribute the cash to each beneficiary in equal amounts. This will be completed within ten days of the date of these instructions. You will divide the securities by five and distribute them equally to each of the five beneficiaries within the next thirty days. Once that has been accomplished the farm will be sold or divided under the laws of Iowa and if sold, it will be sold at auction in the usual fashion.

You are to follow the guidelines set out in my demand letter dated February 21, 2020 attached hereto, with the exception that the shares designated for Anita and Amy Brunsting shall be held in a constructive trust pending resolution of all damage and in Terrorem claims and shall not be enjoyed by the co-trustee beneficiaries until all matters in controversy have been resolved. You are not to pay any fees or costs from any beneficiaries share without the express written consent of the beneficiary.

Dated June 25, 2020

Beneficiary Candace Curtis