

<p>PROBATE COURT CITY AND COUNTY OF DENVER, COLORADO City & County Building 1437 Bannock Street, Room 230 Denver, CO 80202</p> <p>In the Matter of the Estate of: William C. Scott, Deceased</p> <p>In The Matter of The Trust Created by: Sophia H. Scott and William C. Scott</p> <p>Petitioner: Mark A. Scott Respondent: Samuel C. Scott</p>	<p style="text-align: center;">Δ For Court Use Only Δ</p> <p>Case Number: 00 PR 0620</p> <p>Case Number: 00PR225</p>
<p>FINAL ORDER AND JUDGMENT ON PETITION FOR ACCOUNTING, DAMAGES, DISGORGEMENT AND REMOVAL OF TRUSTEE AND RULING ON TESTAMENTARY CAPACITY</p>	

THIS MATTER comes before the Court in regard to the cases captioned above and the trial of those cases in January 2007.

The Court has considered Respondent’s Request for Hearing on Surcharges and Attorney’s Fees Awards, the responses and reply briefs, and has considered not only the extensive involvement this Court has had with these cases but also the voluminous and comprehensive pleadings already on file in these related cases. The Court has concluded that additional pleadings, evidence or argument would not contribute to the Court’s understanding or appreciation of the issues involved. Accordingly, the Request is DENIED.

The Court has previously issued orders in cases 2000PR225 and 2000PR620. The Court hereby incorporates by reference and affirms the findings and the following prior orders entered in those cases as if set out in full herein:

- Order, dated September 20, 2000 (hereinafter the “September 2000 Order”);
- Findings of Fact, Conclusions of Law, and ORDERS, dated March 11, 2002

- (hereinafter the “March 2002 Order”);
- Comprehensive Order, dated February 11, 2003 (hereinafter the “February 2003 Order”); and
 - 2007 Order on Petition for Accounting, Damages, Disgorgement and Removal of Trustee and Ruling on Testamentary Capacity dated June 8, 2007 (hereinafter the “June 2007 Order”).

The Court adopts and incorporates herein as if set out in full the Successor Trustee’s Amended Report No. 2, August 8, 2007 and the Errata Sheet thereto, August 21, 2007.

The Court now enters the following Findings, Conclusions, Orders and Judgment:

Scott Partners Surcharge

In the June 2007 Order the Court ordered Respondent to “transfer to the Scott Family Trust a ten percent interest in all of the assets that comprised Scott Partners on the date the Respondent was ordered by this Court, in 91PR564, to transfer all of Sophia Scott’s (“Sophia”) assets to the Court-approved trust, including but not limited to the real property investment referred to as 2519 Walnut and the other [assets] that comprised the assets of Scott Partners.”

Scott Partners, on the date of Sophia’s death, owned a 50 percent interest in 2519 Walnut Corporation which owns the real property located at 2519 Walnut.

THEREFORE, IT IS ORDERED that, in addition to transferring the ten percent interest in all of the assets that comprised Scott Partners, Respondent shall assign and transfer to the Scott Family Trust a certificate evidencing five percent of the issued and outstanding stock of 2519 Walnut Corporation.

IT IS FURTHER ORDERED that Respondent shall pay to the Scott Family Trust five percent of all of the distributions made from 2519 Walnut Corporation to its shareholders from the date of Sophia’s death through the date of this Order, plus interest at the statutory rate from the date of each distribution.

The GST Trust Surcharge

In the June 2007 Order the Court ordered that Respondent would be surcharged “the amount of \$400,000, the initial corpus of the GST Trust that he failed to create, plus interest at the statutory rate from the date of death”

The Court finds that the corpus of the GST Trust, plus interest at the statutory rate from the date of Sophia’s death to the date the June 2007 Order was entered, is \$1,235,970.80.

The Court further finds that Respondent failed to transfer \$400,000 from the Scott Trust

to the GST Trust and instead placed that \$400,000 in the Spousal Trust and substantially spent it down. Pursuant to the Scott Trust Agreement and the Court's June 2007 Order, the balance remaining in the Spousal Trust pours into the Scott Family Trust. The Court now recognizes that to award that corpus plus interest without regard to the portion of the GST Trust assets that remain in the Scott Family Trust by virtue of the addition of the Spousal Trust to the Scott Family Trust, would result in a windfall to the beneficiaries of the Scott Family Trust.

THEREFORE IT IS ORDERED that Judgment shall enter against Respondent and for the Scott Family Trust on the GST Trust Surcharge in the amount of \$835,970.80.

Surcharge for Failure to Maintain and Render Accounting

In the June 2007 Order the Court held that Respondent had failed properly to maintain and render accountings. The Court further ordered that Respondent would be surcharged for the unexplained expenses in the accounting he prepared for the Spousal Trust that was admitted into evidence as Exhibit 167.

In the Successor Trustee's Amended Report No. 2, the Successor Trustee concluded that there were \$75,998.80 in unexplained expenses detailed in Respondent's accounting of the Spousal Trust that was admitted into evidence as Exhibit 167. The Successor Trustee further states that in part by reviewing "the Quicken files maintained by Monida Scott" he has been able to find plausible explanations for \$20,737.72 of the expenses the Respondent himself could not explain both when he filed the accounting and during the trial in January 2007.

THEREFORE, IT IS ORDERED that JUDGMENT shall enter against Respondent and for the Scott Family Trust for the surcharge for failure to maintain and render accountings in the amount of \$55,261.08.

Surcharge For Costs of Reconstructing Trust Funding and Accounting

In the March 2002 Order the Court ordered that Respondent pay the costs of the Successor Trustee to prepare an independent accounting of the Scott Family Trust.

In the June 2007 Order the Court further ordered that Respondent pay the costs of the Successor Trustee's reconstruction of the funding and the accounting of the Scott Trust and its sub-trusts (the Spousal Trust, the GST Trust and the Scott Family Trust).

The Successor Trustee submitted with the Successor Trustee's Amended Report No. 2, Exhibit STR2-8, which is the Affidavit of John S. Holt. The Affidavit of John S. Holt details the work he performed to reconstruct the funding and the accounting of the Scott Trust and its sub-trusts, as well as the hours, fees and costs incurred to do that work. In the Errata Sheet to

Successor Trustee's Amended report No. 2, Mr. Holt states the total fees and costs for reconstructing the funding and accountings for the Scott Trust and its sub-trusts are \$182,586.15.

THE COURT HEREBY FINDS that the costs and fees of \$182,586.15 incurred by the Scott Family Trust for the Successor Trustee to reconstruct the funding and accounting of the Scott Trust and its sub-trusts were reasonable and necessary and of significant benefit to the Scott Family Trust, its beneficiaries and the Court.

THEREFORE, IT IS ORDERED that JUDGMENT shall enter against Respondent and for the Scott Family Trust for this surcharge in the amount of \$182,586.15.

Petitioner's Attorney's Fees and Reimbursement Costs

In the June 2007 Order the Court surcharged Respondent for Petitioner's attorney's fees and costs incurred in this litigation to achieve the reconstruction of the Scott Trust, the funding of the sub-trusts, and the accountings.

In the March 2002 Order the Court surcharged Respondent for Petitioner's attorney's fees and costs incurred to obtain the accounting of the Scott Family Trust.

Petitioner has submitted an Affidavit of Attorney's Fees and Costs. The Court has thoroughly and carefully considered all of the applicable factors necessary in such a case to determine the necessity and reasonableness of attorney fees and the benefit to the trust. The Court's lengthy involvement and first-hand experience with these cases has prepared the court to evaluate these factors thoroughly.

THE COURT HEREBY FINDS that Petitioner has incurred \$391,237.64 in attorney's fees from January 1, 2000 through July 31, 2007. The Court further finds that Petitioner was billed by his attorneys for costs of \$18,097.61 and that Petitioner directly paid costs of \$7,268.82. The Court further finds that Petitioner's attorney's fees and costs incurred were reasonable and necessary and were a benefit to the Scott Family Trust and its beneficiaries. But for Petitioner's efforts, the Scott Family Trust would not have been made whole and the award of attorney fees in such a case should make the beneficiaries of the trust whole as well.

THEREFORE, IT IS ORDERED that JUDGMENT shall enter against Respondent and for Petitioner in the amount of \$391,237.64, plus \$25,366.43 in costs, plus pre-judgment interest of \$150,699.05 through August 6, 2007, for a total judgment amount of \$567,303.12.

Surcharge for Self-Dealing

In the June 2007 Order, the Court ordered that Respondent would be surcharged for self-dealing, including distributions from the Scott Family Trust and the Spousal Trust that he made to himself and to his attorneys while he was acting as *de facto* sole trustee.

IT IS ORDERED that JUDGMENT shall enter against Respondent and for the Scott Family Trust for the amount of \$327,956.12 for improper distributions Respondent made to himself or to his attorneys from the Scott Family Trust and the Spousal Trust.

Surcharge for Malfeasance in Administration and Investments

In the June 2007 Order, the court surcharged Respondent \$10,067.00 for the losses resulting from the sale of two tax-exempt municipal bonds he sold prematurely to fund a loan to his company, S.D.G. Properties, LLC.

The Court in the June 2007 Order, also surcharged Respondent \$15,000.00 for his improper investment of \$15,000.00 in Sports World Network, Inc.

The Court also ordered in the June 2007 Order that Respondent be surcharged for any tax penalty or interest caused by his delinquency or failure to file tax returns.

THE COURT HEREBY FINDS that Respondent's failure to file tax returns caused the Scott Family Trust to incur interest and penalties totaling \$692.51, and the Spousal Trust to incur interest and penalties of \$67.19.

THEREFORE IT IS ORDERED that Judgment shall enter against Respondent and for the Scott Family Trust for the Surcharge for Malfeasance in Administration and Investment in the amount of \$25,826.70.

Surcharge for Unauthorized Gifts

In the June 2007 Order, the Court Ordered that Respondent would be surcharged for all gifts made on or after April 1, 1996. The Court has relied on the Successor Trustee's report in determining the proper amount of the judgment in regard to unauthorized gifts and has determined not to impose a surcharge in favor of the Scott Family Trust for the \$50,606.00 transfer made to the Sophia H. Scott and W.C. Scott Charitable Foundation.

THE COURT HEREBY FINDS that Respondent improperly made gifts of \$16,400.00 out of the Scott Family Trust after April 1, 1996.

IT IS FURTHER FOUND that Respondent improperly made gifts of \$83,813.17 out of the Spousal Trust after April 1, 1996.

THEREFORE IT IS ORDERED that JUDGMENT shall enter against Respondent and for the Scott Family Trust for the surcharge for unauthorized gifts in the amount of \$49,607.17.

Exemplary Damages

In the June 2007 Order the Court deferred ruling on exemplary damages.

THE COURT NOW FINDS that Petitioner has proven, beyond a reasonable doubt, that Respondent acted willfully and wantonly and with reckless disregard to the rights of the beneficiaries of the Scott Family Trust, the GST Trust, and the Spousal Trust; and that Respondent acted with the specific intent to injure at least Petitioner and one of the other beneficiaries of the Scott Family Trust with whom his company was engaged in other litigation; and thus the Court can otherwise award exemplary damages not to exceed the amount of actual damages in accordance with C.R.S. § 13-21-102(1)(a), and

THE COURT FURTHER FINDS that Petitioner has proven beyond a reasonable doubt that Respondent has continued the behavior which is the subject of the claims against him during the pendency of the case; and that Respondent acted in a willful and wanton manner which has further aggravated the damages of Petitioner and the Scott Family Trust; and that Respondent knew his actions would produce aggravation so that the Court can otherwise increase the exemplary damages to a sum not to exceed three times the amount of actual damages in accordance with C.R.S. §13-21-102(3)(a) and (b);

Nevertheless, the Court cannot award exemplary damages on the portion of the damages arising from equitable claims. *See Kaitz v. District Court for the Second Judicial District*, 650 P.2d 553 (Colo. 1982).

The Court FINDS that the claim for the failure to transfer Sophia's interest in Scott Partners to the trust and the claim for failure to fund the GST Trust were legal claims inasmuch as the conservator's duty to transfer Sophia's assets to the Scott Trust and the trustees' duty to fund the GST Trust were immediate and unconditional; the remaining claims for breach of fiduciary duty were equitable in nature and were determined by this Court pursuant to its equitable powers. Thus, the Court can increase the exemplary damages to a sum not to exceed three times the amount of actual damages in accordance with C.R.S. §13-21-102(3)(a) and (b) only as to the claim for damages to the Scott Family Trust arising from the failure to transfer Sophia's assets to the Scott Trust and from the failure to fund the GST Trust. *Id.* at 555.

THEREFORE, IT IS ORDERED that JUDGMENT shall enter against Respondent and

for the Scott Family Trust for exemplary damages equal to \$835, 970.78, the amount of the GST Trust Surcharge entered against Respondent.

Finally IT IS ORDERED that the JUDGMENT herein against Respondent Samuel Scott should be reduced by \$958.50 for certain out-of-pocket expenses paid by Respondent that directly benefited the Scott Trust.

JUDGMENT

ACCORDINGLY, IT IS HEREBY ORDERED that JUDGMENT (“Total Judgment Amount”) shall enter against Respondent Samuel Scott in favor of the Scott Family Trust for:

- a 10% interest in the assets of and distributions from Scott Partners, plus
- \$1,513,789.50 in damages; and
- \$835,970.80 in exemplary damages; with
- Interest thereon at 8% per annum compounded annually, pursuant to C.R.S. §5-12-102.

IT IS FURTHER ORDERED that the TOTAL JUDGMENT AMOUNT shall constitute an asset of the Scott Family Trust and shall be enforceable by the trustee of the Scott Family Trust;

IT IS FURTHER ORDERED that JUDGMENT shall enter against Respondent Samuel Scott and for Petitioner Mark Scott in the amount of \$567,303.12, with interest at 8% per annum compounded annually, pursuant to C.R.S. §5-12-102; and

IT IS FURTHER ORDERED that because Respondent’s singular efforts resulted in the benefit to the Scott Family Trust, the Judgment in favor of Petitioner shall have priority over the Judgment in favor of the Scott Family Trust. Until Petitioner’s Judgment is satisfied in full, the Successor Trustee shall immediately upon receipt turn over to Petitioner any recovery made by the Scott Family Trust on its Judgment against Respondent.

December 28, 2007

Successor Trustee’s counsel shall serve copies of this order on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

BY THE COURT:



PROBATE COURT JUDGE