

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK-----X  
EVAN DAVID KREEGER,

Petitioner,

**PETITION FOR  
COMPULSORY  
ACCOUNTINGS**

-against-

DOUGLAS KREEGER, DOUGLAS DURST and  
JONATHAN D. DURST,Respondents.  
-----X

Index No.:

The Petition of EVAN DAVID KREEGER, residing at 318 Warren Street, Hudson, New York 12534, upon information and belief, respectfully states and alleges as follows:

1. This Petition is related to the guardianship case that was brought by my parents, DOUGLAS KREEGER and WENDY KREEGER (the "Guardianship Petitioners"), and which is currently being heard in New York Supreme Court by Judge Sokoloff under index number 500232/2019.

2. I, EVAN DAVID KREEGER, the petitioner herein, am fifty (50) years old and am the beneficiary of at least three trusts, which together comprise my sole source of income. The Trustees of those trusts (described below) have ceased making regular direct distributions to me and thereby caused me extreme hardship.

3. I am advised that there are at least three trusts created by my family of which I am a beneficiary. The trusts that I am aware of are the WENDY KREEGER FAMILY TRUST dated February 10, 2005 (attached hereto as "Exhibit A"), the EVAN KREEGER 2008 FAMILY TRUST, dated December 3, 2008 (attached hereto as "Exhibit B"), and the WENDY KREEGER 1999 GRAT REMAINDER TRUST dated November 15, 2012 (attached hereto as "Exhibit C") (collectively, the "Trusts").

4. DOUGLAS KREEGER is the Trustee of the WENDY KREEGER FAMILY TRUST.

5. DOUGLAS DURST, JONATHAN D. DURST, and EVAN KREEGER are the trustees of the EVAN KREEGER 2008 FAMILY TRUST.

6. DOUGLAS DURST and JONATHAN D. DURST are Trustees of the WENDY KREEGER 1999 GRAT REMAINDER TRUST.

7. It is not clear if or when any accountings were prepared for the WENDY KREEGER FAMILY TRUST, the EVAN KREEGER 2008 FAMILY TRUST, and/or the WENDY KREEGER 1999 GRAT REMAINDER TRUST.

8. This Petition requests that DOUGLAS KREEGER, DOUGLAS DURST and JONATHAN D. DURST (collectively, the “Trustees”) file full and complete accountings of the WENDY KREEGER FAMILY TRUST, the EVAN KREEGER 2008 FAMILY TRUST, and the WENDY KREEGER 1999 GRAT REMAINDER TRUST for all activity that has not yet been filed and approved. *See CPLR 7701.*

9. Neither I nor my counsel have received any trust accounts whatsoever. As a beneficiary of the Trusts, I have a right to demand an accounting of each. Moreover, the Trustees have duties to account and report—as well as a duty to provide certain required information. *See In re Est. of Hunter*, 753 N.Y.S.2d 675, 679 (Sur. 2002), *aff’d as modified sub nom. In re Hunter*, 775 N.Y.S.2d 42 (2004), *aff’d*, 4 N.Y.3d 260, 827 N.E.2d 269 (2005).

10. The timing of my request for accountings is especially important because information regarding the contents of the Trusts, and thus any distributions potentially available to me, is essential to Judge Sokoloff’s determination as to whether the appointment of a guardian is necessary.

11. By way of background, my parents filed a petition on September 12, 2019, at the New York County Clerk's Office to commence a guardianship proceeding against me (the "Guardianship Proceeding"). I do not need a guardian and make all of my own health care decisions. Further, when the trusts are properly functioning, I have ample resources to secure the management of my property.

12. Before a court can exercise its power to appoint a guardian over a person, it must first make a determination that "the appointment is necessary to provide for the personal needs of that person . . . ." *See* MHL § 81.02(a). A petitioner's ability to meet the necessity element is crucial to appointing a guardian, as "[c]ourts have emphasized that even the most limited guardianship entails the deprivation of a person's liberty and in this way is 'a legal proceeding of constitutional dimensions . . . ." *See Matter of Zachary L.*, No. 500089-2017, at \*17 (Sup Ct, New York County May 11, 2020) (attached hereto as "Exhibit D"). A court is therefore required to conduct an inquiry into whether there are alternative resources available that will adequately protect the alleged incapacitated person. *See Matter of Maher*, 207 A.D.2d 133, 140 (2d Dept 1994). These alternative available resources can include, *inter alia*, any trusts of which the AIP is a beneficiary. *See* Mental Hygiene Law §81.03(e); *see also Matter of Zachary L.*, at \*18.

13. I am aware that the Trusts are discretionary; however, the Trustees can still be compelled by a court to make distributions from the Trusts. *See Anderson v. Hinrichs*, 42 N.Y.S.2d 610, 611 (2d Dept. 1943) ("The trust agreement gives to the trustee uncontrolled discretion . . . . This does not mean that the courts are without authority in a given case to control the exercise of the discretionary power vested in the trustee.") (internal citations omitted).

14. Once reviewed, it may be appropriate to make an application to compel distributions because these are potentially available resources that must be considered to determine whether or not a guardianship constitutes the least restrictive form of intervention.

15. The Trustees have virtually cut off distributions directly to me, in breach of their fiduciary duties. A pattern of distributions had been established and continued over years, which has been disrupted. The *only* explanation the Trustees have provided to me is that they deem distributions to be “inadvisable” at this time, which is insufficient under their fiduciary obligations. *See* Restatement (Third) of Trusts § 82 (2007) (“[A] trustee should advise discretionary distributees of information the trustee may need (or desire) regarding the beneficiaries' circumstances, needs, resources, concerns, or wishes, as may be relevant to fiduciary judgments with respect to discretionary distributions, along with disclosure by the trustee of the bases upon which discretion will be exercised.”).

16. It is important to note that my circumstances are not markedly different than they were at most times since the creation of the Trusts and the distribution patterns established. I believe that the timing of the Trustees' termination of regular distributions, coupled with their reticence as to the reason for the termination, is troubling. By cutting off direct distributions, the Trustees have made my life more difficult in order to cause me to act out and demonstrate the need for the appointment of a guardian over me. This is in clear violation of their duty of loyalty as fiduciaries.

17. I have spoken my mind about family matters throughout my adulthood, which infuriates the Trustees.

18. I have made a previous application for this relief. In October 2019, I filed a Petition for Compulsory Accountings, dated October 29, 2019, with the New York Supreme Court. It was dismissed without prejudice to renew because it was not in compliance with certain provisions of the CPLR. I now refile to be in compliance but ask the Court to look at the substance of the application.

**WHEREFORE**, your Petitioner prays why the Trustees should not file their accounts of the WENDY KREEGER FAMILY TRUST, the EVAN KREEGER 2008 FAMILY TRUST, and the WENDY KREEGER 1999 GRAT REMAINDER TRUST and cause same to be judicially settled and upon failure to file their account in the time and manner directed by the Court, why their authority should not be suspended, and why the court should not appoint an eligible person(s) as temporary fiduciary and to fix a trial date for a hearing on the removal of whose authority has been suspended and for the appointment of Successor Fiduciary(ies); and further, grant such other and further relief as seems just and proper.

Dated: New York, New York  
September 20, 2021



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