

1 Appeal Panel [redacted]
2 [redacted] & [redacted]
3 vs NSW TG
4

5 Submissions of [redacted] (Friday 17/06/2022)

6
7 I refer below to paragraphs from the Reasons for Decision regarding
8 the Guardianship Division case [redacted]
9 as signed off on 4 April 2022 by Senior Member [redacted].
10 This is in addition to the analysis of the RfD in the application for the appeal
11 where six reasons were given for requesting the appeal.
12

13 Paragraph 29

14 “TAG is reportedly seeking recovery of misappropriated funds used by Mr [redacted]
15 [redacted] whilst acting as Power of Attorney (POA), with particular mention of the
16 purchase of a property at Wangi Wangi with a complex historical transfer of title
17 between [redacted]’s two children and extended family members, including the
18 family solicitor Mr [redacted]”
19
20

21 This was not raised at the hearing nor in TAG's Submissions letter. If it had been I would have
22 pointed out that this is completely irrelevant and has nothing to do with TAG or NCAT. This is
23 clutching at straws on the part of TAG (to put it mildly) and I am surprised SM [redacted] went
24 digging through the s58 document to even find this mention. She made no such efforts for my case.
25

26 Paragraph 30

27 “ [redacted] would sustain a shortfall between her rental income and her annual expenses of
28 around \$10,000 per year”
29

click 30 This is no doubt a citation from the table found in *TAG s58 Documents* on p178, which I have
31 reproduced and corrected below.
32 The shortfall is in fact only around \$2,000 per year.

Wrong Correct



Expected Income and Expenses		
Rental income of \$680.00 per week (REA fee of 7.0%) (A)	32,600	37,400
Total Income	\$32,600	\$37,400
Less		
Basic Daily Fee of \$52.25 per day	19,100	19,100
Personal expenses (e.g. medical and personal costs) (B)	2,500	500
Property expense (e.g. rates, repairs & maintenance) (C)	7,000	4,000
NSWTG fees (based on portfolio of \$1,423,426)	15,200	15,200
Total recurring expenses	\$43,400	\$38,400
Cash flow shortfall	(\$10,800)	(\$2,000)

33 (A) TAG incorrectly assumes \$680 rent per week (should be \$720).
34 and incorrectly assumes 7% REA fees (should be zero – [redacted] has been managing for free for years)

click 35 (B) In TAG s58 document on p200 where it explicitly says \$500.
click 36 The Air/water bed is irrelevant as you can see in AEOD Hearing Book & Exhibits Tab 20, p145
37 where the ACF states it has no water beds and air beds incur no extra fee.
38

39 (C) Rates are \$2877, but let us round that up to \$3,000. [redacted] repairs for less than \$1k annually in materials (free labor), but let us round
40 that up to \$1,000
41

42 **Paragraph 31**

43
44 “ [redacted] has refused access to the property”

45 This is not true and was submitted in my evidence which I would have pointed to if SM [redacted] had
click 46 raised this in the hearing, viz. page 147 of *AEOD Hearing Book & Exhibits*.

47 It is irrelevant anyhow because independent inspections have been done

click 48 See *AEOD Appeal Panel Hearing Book* page 9.

49
50
51

52 **Paragraph 39**

53
54 “Centrelink decided that the Ashfield property would become an assessable asset for
55 [redacted] because it was not leased after she commenced aged care in October 2015 and up
56 to 28 September 2019, which was a requirement”

57
58 No, there is no cutoff date. Again, had SM [redacted] raised this in the hearing I would have pointed
59 out that at *any time* the house is rented the house becomes exempted and Mum's pension eligibility
click 60 is restored - confirmed by the summonsed record from Centrelink and official rules on page 91-96
61 of the *Guardianship Division Hearing Book* (explicitly prepared for the hearing with SM [redacted]).

click 62
63 I have since provided corroboration via a transcript of audio
64 (which you now have the CD of) appearing on page 2 of the *AEOD Appeal Panel Hearing Book*.

65
66
67

68 **Paragraph 40**

69
70 “not satisfied that the Ashfield property was leased prior
71 to 28 September 2019, and was not satisfied that [redacted] had paid rent”

72
73 I produced a lease agreement between myself as leasee and myself as landlord. It was given to
click 74 Centrelink and TAG and NCAT (see page ~~141~~¹³⁹ of TAG's s58 document).

75
76 The lease said I would have the rent deducted from the moneys owed to me by TAG for the rates
click 77 and water connection which I have been paying (page ~~142~~¹⁴⁰ of same).

78
79 Besides, I would think that it is up to Centrelink to decide, not NCAT.

80
81
82

83 **Paragraph 41**

84
85 “Centrelink did not receive further documents provided by [redacted]
86 to TAG until after 23 December 2021. On 23 December 2021 Centrelink
87 affirmed the decision to cancel [redacted]'s pension. That decision was accepted by
88 the AEOD decision which found that [redacted] was not entitled to receive an aged pension.”

89
90
91 So although SM [redacted] acknowledges that TAG failed to provide relevant documents to Centrelink
92 in time she make a fragile assertion that the resulting uninformed assessment by Centrelink is
93 conclusive merely because AEOD accepted it.

94
95

Paragraph 44

“he has the financial resources available to him to find accommodation close to his mother’s care facility in order to continue his regular visits or to travel down from his own property at Wangi Wangi to see her as regularly as he is able.”

click 101 Which financial resources? This was raised by TAG in point 6 of their *Submissions* and is a
102 reference to the letter from my lawyer three years ago where an offer was made to pay a year's rent
click 103 in advance (see page 3 of the *GD Hearing Book*). Yet again, if SM [redacted] had raised this in the
104 hearing or given me time to raise it myself I could have corrected the mistaken presumption. The
105 money would have come from an interest free loan via [redacted]. In fact in this very hearing he
click 106 again pledged to her further financial assistance if needed.

107
108 When SM [redacted] says "as regularly as he is able" this in effect would amount to no more daily
109 visits (as pointed out to her) because it would be 4 hours commuting each time by car. Since I do
110 not have a car it would actually be 9 hours by public transport
click 111 (see maps on page 45 of GD Appeal Panel Hearing Book).

112
113 She acknowledges several times in the hearing that my visits are in [redacted]'s best interests while
114 underplaying it by not accepting the evidence that it is essential to keeping her alive (as is detailed
click 115 by me in the transcript titled “TRANSCRIPT – [redacted]” in the same hearing book).

116
117
118 “ [redacted]’s daily visits to [redacted] “does not outweigh the need for ([redacted]) to have access
119 to sufficient funds to ensure her well-being”
120

121 This give undue weight to a nebulous speculative need vs the real benefit of daily visits as affirmed
click 122 by [redacted]'s doctor in a letter supplied as *Exhibit #9* on page 181 of the *AOED Hearing Book &*
123 *Exhibits*. That benefit being saving her life after she was hospitalised and again when 37.5% of her
124 fellow residents died in the Omicron outbreak. This was all said by me to SM [redacted]
click 125 (lines 11-35 in transcript on page 2 of the *GD Appeal Panel Hearing book*).

126
127 The “sufficient funds” argument is specious because she is ignoring the offer by [redacted] to give
128 an interest free loan should any need arise

click 129 (lines ~~11-35~~
13-16 in transcript on page 26 of the *GD Appeal Panel Hearing book*).

Paragraph 47

“The Tribunal may also review the appointment of the manager if it considers it appropriate to do so.”

I provided several examples of mismanagement by TAG in the hearing (see paragraph 59). Let me add a few more here:

- Did not follow due procedure in current attempt to sell the property. TAG claim to have consulted me but confirmed (obliquely) in an email that they have not, citing only consultation regarding their first sales attempt the year before (pages 38-40 of *GD Appeal Panel Hearing Book*).
- Being two months in arrears paying the ACF (page 85 of *GD Hearing Book*).
- Incorrectly claiming her financial shortfall is \$10k per year - it is only \$2k (as already stated on the first page).
- Wrongly claiming [redacted] has \$2,500 air/water bed charges accruing (claimed on page 200 of *TAG s58 document*) (Proved wrong on, it's zero dollars, page 145 of the *AEOD Hearing Book & Exhibits*).
- “Losing” \$20k for 12 weeks (Tab 9, page ~~92-96~~ **93-97** of *AEOD Hearing Book & Exhibits*).
- Refusing to reclaim \$6,500 owed by my sister (pages 97-99 of *AEOD Hearing Book & Exhibits*).
- Attempting to charge 12% Real estate agent fees (rather than 7% market rate) (pages 148 & 153 of the *AEOD Hearing Book & Exhibits*).
- Attempting to charge \$600 for Financial Planning (pages ~~100-104~~ **99-104** of the *AEOD Hearing Book & Exhibits*).
- Under-reporting value of shares which make [redacted]'s situation look bad (claimed \$2.31 per share in point 14 on page 11 of *AEOD Submissions*) (proved wrong, is \$5.39 per share, on page 180 of the *AEOD Hearing Book & Exhibits*).
- Pretended [redacted] had a \$315,000 Refundable Accommodation Deposit “payable” (point 15 on page 11 of *AEOD Submissions*) (also transcript on pages 3-4 of *AEOD Appeal Panel Hearing Book*).
- Didn't inform me when [redacted]'s pension was suspended. I only found out four months later by summoning unrelated information. (points 8-10, and 12 of my *AEOD Submissions*).
- Took 17 months to report any rental income to Centrelink despite being reminded by me and SM McAteer verbally and in writing to do so and told this affects her pension (points 12-24 of my *AEOD Submissions*)
They are legally required to report regardless of our reminders.
- Reneged on their undertaking to SM Leal to forward to Centrelink “all their rental evidence” regarding the property (page 52 and point 8 on page 1 of the *AEOD Application*).

185

186

click 187 click

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195 Paragraph 59

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199

click 200 Left out a couple of major points from my original application to the Guardianship Division:

201

202

203

204

205 Paragraph 60

206

207

208

209

210 This is not true. It misunderstands the now obsolete claim of repair costs. I have already completed
211 all necessary repairs and can obviously afford to continue to do similar.

click 212 The costs were originally \$35k over \$20k of which (the necessary ones) I have completed.

213

click 214 In response TAG have ridiculously claimed that due repairs have *increased*, now claiming they are
amounting to \$95k (page 208 of the *TAG s58 Document*).

215

216

click 217 Continual lodger placements and photos of the house further discredit TAG's argument
(see photos on pages 15-16 of the *AEOD Appeal Panel Hearing Book*).

218

219 Paragraph 61

220

221

222

click 223 It was in error because it appears they misled this hearing saying they told MyAgedCare about rent
224 (page 5 of the *GD Appeal Panel Hearing Book*).

225

226

227

228

229

click 230 If they really had done so [redacted] would be paying the ACF Daily Accommodation fees which is the
231 only thing stopping her from claiming a pension. I have since tried to Summons evidence that TAG
232 have contacted MyAgedCare but NCAT refuse the summons, absurdly calling it irrelevant, not
specific enough, and too onerous
(pages 6-23 of the *GD Appeal Panel Hearing Book*).

231

click 232 Summons refused

233 Paragraph 63 & 64

234
235 “There was no evidence before the Tribunal that [redacted]’s visits to [redacted] are not in
236 her best interests. The Tribunal accepted that [redacted]’s best interests need to be
237 weighed and some of her best interests may outweigh others”

238
239 “may mean he has to reduce his visits to [redacted] and may not be able to visit her
240 every day.”

241

242 It is disingenuous to say speculative future costs (which [redacted] offered to cover) outweighed keeping
click 243 her alive. I addressed this in detail regarding paragraph 44 where I refute SM [redacted]’s conclusion
244 that “[redacted]’s daily visits to [redacted] “does not outweigh the need for ([redacted]) to have access to sufficient
245 funds to ensure her well-being”.

246

247

248 Paragraph 70

249
250 “On the side of the [NSWTG] was seen to be the manifest
251 independence of the statutory office, the advantages of a dispassionate and
252 neutral approach in situations of family conflict and divided views as to the best
253 interests of the person, expertise and experience in managing estates, an
254 impeccable reputation and the security provided to an estate against loss or
255 damage.”

256 Cambridge dictionary defines *impeccable* as "without mistakes or faults; perfect".

257 Yet in my analysis of paragraph 47 I present a long list of mistakes, faults and imperfection.

258

259 Also my proposed financial manager, [redacted], told SM [redacted] several times about how he took
260 TAG to court and won \$120,000 in damages because of TAG ineptitude.

click 261 (lines 7-14, page 24 of *GD Appeal Hearing Book*)

click 262 (lines 25-32, page 26 of *GD Appeal Hearing Book*)

263

264 I have included the details of his experience with screenshots from his web site

click 265 (pages 27-34 of *GD Appeal Hearing Book*).

266

267

268 Paragraph 72

269
270 “To advance the interests and quality of life of a protected person rather than to
271 eventually increase the assets of the family.”

272 And yet Fairfax Press reported the tragic death of Steven Colley who was under TAG
273 financial management but they allowed his home to fall into squalor by denying him funds
274 and then outrageously tried to charge him fees after his death.

click 275 (pages ~~27-34~~ of *GD Appeal Hearing Book*).

276 35-37

click 277 Ex TAG ex-CEO Imelda Dodds in the *Final Submission to IPART*

278 *Review of Fees for NSW Trustee and Guardian* states that:

click 279

280 “NSWTG has never and would never force the sale of a client’s
281 home simply to pay our fees. Situations do arise where, following a
282 client moving into an Aged Care Facility (ACF), the sale of the home
283 becomes the best option financially for the client, due to the
284 accommodation bond and fee liability from the ACF.”

284

285 And yet it is only the \$15k annual fee of TAG which is necessitating the sale of the house, a fee
286 which would not be payable should [redacted] be assigned as Financial Manager.

287 **Paragraph 75**

288
289 [redacted] opined that [redacted] was not a selfish woman and that
290 she would want to protect her assets for her children. [redacted] having never met
291 [redacted], the Tribunal did not accept that submission.

292 [redacted] has met [redacted] in the ACF. TAG have never met [redacted]. Also this conclusion disrespects my
293 unselfish daily committal to my mother's care for a several years now. There is no plausible reason I
294 would be doing this unless we had a loving filial relationship. Even before my mother developed
295 dementia we had a close relationship living together which is meant to be protected under s39 of the
296 TAG Act.

297
298
299 **Principal-Agent Problem**

300
click 301 What we have here is a Principal-Agent problem (a standard factor in political
302 science and economics. The theory was developed in the 1970s by Michael Jensen
303 of Harvard Business School and William Meckling of the University of Rochester).

304
305 SM [redacted] seemed to put little or no weight on the risks of maintaining TAG as agent for the
306 Principal ([redacted]). Her attention was overwhelmingly focused on the applicants nominated to replace
307 them as Financial Manager. This lack of impartiality is of grave concern as is revealed in
308 transcripts...

309
click 310
311 "Transcript – [redacted]'s Altruism" page 26 of *GD Appeal Panel Hearing Book*

312
313 SM [redacted] totally ignored in her RfD Mr [redacted]'s generous offer to cover any shortfall in [redacted]'s
314 finances with an interest-free loan. Instead her RfD propagated TAG's fear-mongering of potential
315 unforeseeable expenses.

316
click 317
318 "Transcript – [redacted]'s Suitability" page 24 of *GD Appeal Panel Hearing Book*

319
320 SM [redacted] denied procedural fairness by questioning Mr [redacted] in ways she did not question
321 TAG's [redacted]. It appears that because his credentials were impeccable that she repeatedly
322 asked him about responsibilities which were not relevant to Financial Management but to
323 Guardianship and continued to do so even when Mr [redacted] reminded her of this distinction.

324
325 She showed no interest whatsoever in his experience of TAG associated fraud (in a case he
326 managed very similar to the situation of [redacted]). It was not mentioned in her RfD. Instead she cited a
327 ridiculous 29 year old historical assessment of TAG as having an "impeccable reputation". It should
click 328 be noted that her RfD was written three weeks after the Four Corners exposé of Public Trustee
329 abuse of clients around Australia (See video on supplied disc).

330
331 The timing was remarkable, considering the Four Corners investigation was discussed in the press
332 for weeks. Given the common knowledge that Trustees and Guardians were shown to no longer
333 have an "impeccable reputation", it was unreasonable and unfair for SM [redacted] to disregard Mr
334 [redacted]'s experience in uncovering Trustee and Guardian associated fraud. It was clear bias.