

PRESENT: HON. Robert A. Onofry, A.J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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In the Matter of the Application of  
Yehuda Friedman

Petitioner,

DECISION/ORDER/JUDGMENT  
Index No.: 2018-09060

for the Appointment of a Guardian of  
the person and property of  
Yoel Friedman, the alleged incapacitated person

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**WHEREAS**, a Petition has been filed by Yehuda Friedman, requesting the appointment of a guardian for the person and property of Yoel Friedman; and

**WHEREAS**, Yoel Friedman, the alleged and incapacitated person (AIP), was personally served with copy of an Order To Show Cause and supporting papers advising him of the nature and effect of the instant proceeding and his right to be represented by counsel and the right to a jury trial; and

**WHEREAS**, a hearing was held on December 11, 2018 at the Orange County Surrogate's Court, 30 Park Place, Goshen, New York at which were present the following persons:

Michael D. Meth, attorney for Petitioner;  
Martin Hirsch, counsel for the AIP  
David Gubitz, Esq., Court Evaluator;  
Yehuda Friedman; Petitioner and Brother of AIP; and  
Faigy Tyrnauer; Sister of AIP

#### FINDINGS

Upon application the Court's review of the Report of the Court Evaluator this Court dispensed with the presence of Yoel Friedman since it appeared to the Court that no meaningful participation would have been had he been present.

Based upon the evidence presented, including the Court Evaluator's report, I find that Yoel Friedman suffers from "severe dependency" on his brother Ben Zion Friedman and that the AIP is not able to appreciate that Ben's "brainwashing" is detrimental to his welfare. Yoel Friedman is not able to make decisions pertaining to his personal or financial affairs. He is unable to provide for any of his personal needs and requires someone to assist with all of his activities of daily living.

Yoel Friedman would suffer harm if a Guardian of both his person and property is not appointed. Yoel Friedman is incapacitated as defined in Mental Hygiene Law §81.02(b) and a guardian of the person and property is necessary for Yoel Friedman. The welfare of Yoel Friedman requires the appointment of a guardian as a means of providing for his personal needs and property management since he is likely to suffer risk and harm without the appointment of a guardian of his person and property.

### ORDER AND JUDGMENT

Upon the foregoing, on Motion of Michael Meth, Esq., attorney for Petitioner, it is hereby

**ORDERED AND ADJUDGED**, that Yehuda Friedman, 55 Throop Avenue, Apt. 2d, Brooklyn, NY, Telephone (646) 321-2981 or (718) 954-1980 and Faigy Tyrnauer, 3 Lipa Friedman Lane, Unit 303, Monroe, NY 10950, Telephone (845) 783-4934 are hereby appointed co-Guardians of the Person and Property of Yoel Friedman; and it is further

**ORDERED AND ADJUDGED**, that subject to the remaining terms of this judgment, the co-Guardians shall have all of the following powers with respect to personal needs management:

1. Determine who shall provide personal care or assistance for Yoel Friedman;
2. Authorize access to or release of confidential records of Yoel Friedman;
3. Consent to or refuse generally accepted routine or major medical or dental treatment for Yoel Friedman; the co-Guardians shall make treatment decisions consistent with the findings under §81.15 of Article 81 of the Mental Hygiene Law and in accordance with Yoel Friedman's wishes, including Yoel Friedman's religious and moral beliefs, or if Yoel Friedman's wishes are not known and cannot be ascertained with reasonable diligence, in accordance with Yoel Friedman's best interests, including a consideration of the dignity and uniqueness of every person, the possibility and extent of preserving the person's life, the preservation, improvement or restoration of Yoel Friedman's health or functioning, the relief of Yoel Friedman's suffering, the adverse side effects associated with the treatment, any less intrusive alternative treatments, and such other concerns and values as a reasonable person in Yoel Friedman's circumstances would wish to consider. The authority to consent or refuse major medical treatment does not include the authority to refuse life-sustaining treatment, defined at Mental Hygiene Law Section 81.29 (c) to mean medical treatment which is sustaining life functions and without which, according to reasonable medical judgment, the patient will die within a relatively short time period.;
4. Authorize access to or release of confidential records, including the authority to

access, review and obtain all medical records; and to execute releases of confidential information from medical providers and insurers or other third party payors, to the same extent as Yoel Friedman could, and shall be considered Yoel Friedman's personal representative for health care disclosure under 2004 Federal HIPAA regulations, as may be amended, and other personal information. The co-Guardians have explicit authority, notwithstanding anything to the contrary that may be contained under Federal HIPAA regulations as they currently exist or as they may be amended in the future, to, not only secure all medical information about Yoel Friedman, but to authorize disclosure thereof to any person or entity as the co-Guardians, in their sole discretion, deem appropriate. In conjunction with the foregoing the co-Guardians are hereby designated as Yoel Friedman's "Personal Representative" as defined by 45 CFR 164.502(g), commonly known as the HEALTH INSURANCE PORTABILITY and ACCOUNTABILITY ACT of 1996 (HIPAA). The co-Guardians are to have the same access to Yoel Friedman's health care and treatment information as Yoel Friedman would have if Yoel Friedman were able to act for herself;

5. Choose the place of abode; the choice of abode must be consistent with the findings under §81.15 of the Mental Hygiene Law, the existence of and availability of family, friends and Social Services in the community, the care, comfort and maintenance, and where appropriate, rehabilitation of Yoel Friedman, the needs of those with whom Yoel Friedman resides; placement of Yoel Friedman in a nursing home or residential care facility as those terms are defined in section two thousand eight hundred one of the public health law, or other similar facility is authorized;

6. That Ben Zion Friedman shall not have any written, phone or in person contact with Yoel Friedman; and it is further

**ORDERED AND ADJUDGED**, that subject to the remaining terms of this judgment, the co-Guardians shall have all property management powers outlined §81.21 of the Mental Hygiene Law, including, but not limited to:

1. Marshal the income and assets and establish bank, brokerage and other similar accounts in the name of the co-Guardians for Yoel Friedman in a bank that shall provide either

banking statements, canceled checks, or copies of canceled checks to the co-Guardians and endorse, collect, negotiate and deposit all negotiable instruments drawn to the order of Yoel Friedman, including, but not limited to government entitlement checks; invest funds with the same authority as a trustee, pursuant to EPTL § 11-2.2; inventory personal belongings, and store or dispose, as appropriate. All guardianship accounts shall be solely for the benefit of the incapacitated person and no 'joint' accounts shall be allowed;

2. Pay such bills as may be reasonably necessary for his and his wife and children's maintenance and care. This includes providing support for persons dependent upon him;

3. Establish from resources only (if and when sufficient resources are found) and not from income:

- a. an irrevocable prepaid funeral trust and submit proof of such trust to the Court Examiner with the Initial Report;
- b. a luxury account in the amount not to exceed the amount permitted by statute;

4. Apply for government and private benefits;

5. Prosecute and defend civil proceedings, including administrative proceedings, and settle and compromise all matters related to such proceedings (all settlements are subject to the approval of this Court). The Guardians are put on notice that NO attorney's fees are to be paid from the assets of the incapacitated person without a prior written court order. The co-Guardians are NOT required to be personally responsible for legal fees for the benefit of the incapacitated person nor are the co-Guardians required to sign any retainer agreements that would require them to be personally responsible for legal fees for services to the Guardianship;

6. Sign and file income tax returns and all other tax documents for any and all tax obligations and appear before federal, state and local taxing authorities on all claims, litigation, settlements and other matters related thereto;

7. Authorize access to or release of confidential records;

8. Pay the funeral expenses of Yoel Friedman out of any funds remaining in the guardianship estate at death, to the extent that a prepaid funeral trust, if any, is insufficient to pay for same;

9. Pay such bills after Yoel Friedman's death if incurred prior thereto and if authority to pay same would have otherwise existed;

10. Upon the death of the incapacitated person, the co-Guardians shall comply with all of the terms of Mental Hygiene Law §81.44, including the specific directions as to turn over of guardianship property;

11. Collect and open all of the incapacitated person's mail; to have full authority to direct, forward or stop the delivery of mail and to take all lawful actions with regard to the incapacitated person's mail, including the establishment of a post office box in the co-Guardians' name for the incapacitated person for the delivery of all mail, if necessary; and it is further

**ORDERED**, that the posting of a bond is hereby waived at the current time; and it is further

**ORDERED**, that the duration of the Guardianship shall be for an indefinite period of time; and it is further

**ORDERED**, that it being acknowledged that the arrangements herein are being made solely for the protection and best interests of Yoel Friedman, commissions and fees shall not necessarily be awarded on quantum meruit basis and shall be in accordance with procedures established in this Judicial District. Initially, the Guardian's compensation shall be calculated generally in accordance with the trustee compensation provisions of SCPA § 2309; and it is further

**ORDERED AND ADJUDGED**, that Yoel Friedman, shall retain all powers and rights except those specifically granted the Guardian, and in all respects the least restrictive form of intervention shall, as far as practicable, be applied; and it is further

**ORDERED**, that the reading of a copy of this Decision to Yoel Friedman is hereby waived; and it is further

**ORDERED**, that the caption of all future proceedings in this matter be titled:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
In the Matter of

Yoel Friedman,

Index No.: 2018-09060

a person adjudicated as an incapacitated Person.

-----X, and it is further

**ORDERED**, that the co-Guardians shall file their initial report in accordance with Mental Hygiene Law § 81.30 (no later than 90 days after the Commission to the Guardian is issued) and an annual report in the month of May, commencing May 2019, and every May thereafter in accordance with §81.31 of Mental Hygiene Law; and it is further

**ORDERED**, that the co-Guardians shall file their designations under § 81.26 of the Mental Hygiene Law forthwith, and their commission shall be issued in accordance with § 81.27; and it is further

**ORDERED**, that the legal fees and court evaluator fees may be granted upon separate application; and it is further

**ORDERED AND ADJUDGED**, that the court shall maintain jurisdiction over this matter and that the Rules of the 9th Judicial District's Guardianship Accounting Part (111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601) shall govern all procedures for the examination and settlement of said reports and accountings; and it is further

**ORDERED AND ADJUDGED**, that the guardians shall be required to complete a training program, as required by Mental Hygiene Law section 81.39, within a reasonable period after issuance of the commission; and it is further

**ORDERED AND ADJUDGED**, that on or before 90 days from the date that the Commission to Guardians is issued, the Co-Guardians must file with the Court Examiner (copies acceptable) that they have complied with all of the preliminary requirements

(commission, bond, educational training, if required) and that failure to timely comply shall result in a mandatory Compliance Conference to be held at the Court; and it is further

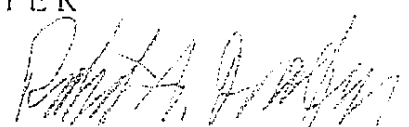
**ORDERED**, that SHARON LOUISE KELSON, 542 Union Avenue, New Windsor, New York 12553 (845) 567-3010 (Fiduciary Number 753174) be and is hereby appointed Court Examiner; and it is further

**ORDERED**, that Petitioner's attorney shall, within ten (10) days after his receipt of a copy of this Decision, Order and Judgment, serve a copy of the Decision, Order and Judgment on the above appointed Court Examiner; and it is further

**ORDERED**, that the records of this proceeding be sealed.

Dated: January 3, 2019

ENTER

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HON. ROBERT A. ONOFRY, A.J.S.C.