

# *LK Alert*

August 2007

**Littman Krooks LLP**

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## **COURT DISMISSES GUARDIANSHIP PETITION FILED BY NURSING HOME**

Consistent with a recent line of decisions, including the Matter of S.K. decision discussed in our November 2006 LK Alert, the Bronx County Supreme Court recently issued a decision in the Matter of G.S., in which the Court dismissed the nursing home's petition for the appointment of a guardian. The nursing home filed the petition following the sale of a home belonging to the alleged incapacitated person ("AIP") by the AIP's attorney-in-fact. Because the nursing home received only partial payment from the AIP's share of the house sale proceeds, it alleged that the AIP's attorney-in-fact failed to properly use the Power of Attorney. The attorney-in-fact, who is the AIP's son, reported that he had used the AIP's funds solely for his mother's benefit and that he planned on providing for her "creature comforts" before turning over the balance to the nursing home. The AIP testified in support of her son's activities as attorney-in-fact and that she wished for him to continue serving in that capacity. The Court found the petitioner failed to show that the AIP's son mishandled his mother's funds or engaged in conduct sufficient to justify revocation of the Power of Attorney. Moreover, the Court concluded that to the extent the nursing home is seeking to be paid for care provided to the AIP, it must "seek a different form of redress...as guardianship application is inappropriate." Lastly, as in the Matter of G.S. case mentioned above, the Court held the nursing home responsible for all approved guardianship fees.

The Matter of S.K. and Matter of G.S. cases, while fact sensitive, illustrate the importance of nursing homes being extremely careful in deciding what cases are appropriate for guardianship, as well as the efforts which should be made and documented by the facility before doing so. For example, in the Matter of S.K. case, the result might have been different if the son had engaged in conduct sufficient to justify revoking the Power of Attorney (e.g., if he had taken his mother's money and used it for his own benefit and to the detriment of his mother). Even in such a case, it's difficult to predict the outcome, particularly given the Court's indication that other avenues of redress are more appropriate in cases related to an outstanding nursing home bill. However, it's critical that the nursing home document the facility's efforts in seeking to secure cooperation from the resident's representative.

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