

# LOSE TRUSTEES NOW, ASK ME HOW!

by *Matthew Heller*

*photo by Vern Evans*

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*After years of bitter litigation on his behalf, the young heir to the Herbalife fortune wins removal of three trustees for mismanagement.*

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**I**n July 2012, a key witness took the stand in Los Angeles in an extraordinary probate trial that pitted the sole heir to a \$330 million fortune against the three men Herbalife founder Mark Hughes had chosen to manage his estate.

Attorney Conrad Lee Klein—along with Hughes's father, Jack Reynolds, and Herbalife chief of operations Christopher Pair—were named co-trustees of the Hughes Family Trust shortly before Mark's accidental death in May 2000 at age 44. At issue before Superior Court Judge Mitchell L. Beck-

loff was the petition filed by Mark's son, Alex, to remove the trustees for alleged gross negligence in the performance of their duties.

Such petitions are rarely successful because, under California law, a showing of extreme circumstances is required to justify removal of trustees named by the settlor (creator) of a trust, rather than by a court or third person. (See Cal. Prob. Code §§ 15642(b) and 17200(b).) During Alex's childhood his mother and legal guardian, Suzan Hughes, failed twice to oust the trustees. Once he turned 18, Alex hired his own team of lawyers from Greenberg Traurig to conduct an exhaustive investigation of the case,

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Eric V. Rowen, the lead attorney for Herbalife heir Alex Hughes at Greenberg Traurig in Los Angeles.

*“Tower Grove was Mark Hughes’s ultimate real estate acquisition, the top of the mountain that would have his name on it forever.”* —SUZAN HUGHES

and later filed his own petition for removal. (*In re the Matter of the Mark Hughes Trust*, No. BP063500 (Los Angeles Super. Ct. petition filed Dec. 15, 2010).)

Now nine days into the trial, Alex’s lawyers were trying to show that Klein, in particular, had substantially breached his duty in the management of Tower Grove—157 acres of prime real estate on a hilltop above Benedict Canyon, with panoramic views of Santa Monica Bay and downtown Los Angeles. Mark had planned to build a 45,000-square-foot Mediterranean villa there, along with a tennis pavilion, a million-gallon pond, and a wildlife refuge.

In 2004 Klein arranged for the trust to sell the property for \$23.75 million to Charles “Chip” Dickens, an Atlanta

businessman. The trust itself would fund the entire purchase, along with a \$12 million loan for construction.

By his own account, Dickens seemed singularly underqualified to purchase or develop Tower Grove, having no formal education in real estate, property management, or finance, and he lacked a broker’s license. The Tower Grove deal quickly went sour, as Dickens defaulted on several of its terms and eventually filed for bankruptcy protection. Testifying earlier in the removal proceedings, Dickens had joked that his middle name was “Default.”

Eric V. Rowen, the lead attorney for the petitioner at Greenberg, asked Klein, “Did your due diligence with Mr. Dickens indicate that Mr. Dickens could pay these loans back?”

“Mr. Dickens?” Klein responded. “No. As far as I know, he’s a poor man.”

Eight months later Judge Beckloff would quote that testimony in granting Alex Hughes’s petition for removal. Among other findings, the judge faulted the trustees for selling “the single most valuable non-liquid asset essentially owned by the trust” to Dickens, and then sitting “idly by” as the buyer repeatedly defaulted. “The transaction is a vivid illustration of imprudence,” Beckloff stated. (*In re the Matter of the Mark Hughes Trust*, No. BP063500 (Los Angeles Super. Ct. ruling on petition March 18, 2013).)

The trustees have appealed to the First District Court of Appeal in San Francisco, which took the case because Klein’s wife, California Court of Appeal



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Justice Joan Dempsey Klein, sits on the Second District bench in Los Angeles. If Judge Beckloff's decision is affirmed, Alex Hughes's fortune will be released from a trio of trustees—including his grandfather—whom he has accused of being “far more interested in advancing their own personal interests than in serving as faithful stewards” of his inheritance.

For Conrad Klein, who says he regarded Mark Hughes as a “surrogate son,” the ruling has been extremely painful, personally and professionally. He sees it as a blight on a 62-year legal career that he must remove to salvage his reputation, and his posterity.

“I can sleep if I can clear my name,” Klein says.

**M**ark Reynolds Hughes was, in many ways, the incarnation of the Southern California dream. Although from humble beginnings, he used his charisma and sales savvy to build Herbalife into a \$956 million business empire, marketing weight-



**Mark Hughes, founder and CEO of Herbalife International, built a diet empire with the slogan, “Lose Weight Now, Ask Me How!”**

management and personal-care products through a network of about a million independent distributors in 49 countries. By the time he celebrated the company's 20th anniversary in February 2000, his Herbalife stock was worth about \$250 million.

Hughes had a passion for beauty queens—marrying four of them in all—and for real estate. One estimate put the value of his real property holdings near \$100 million, including a \$25 million cottage in Malibu once owned by Verna Harrah, widow of the Reno casino magnate, and Grayhall in Beverly Hills, a historic, 22,000-square-foot residence resembling a Tyrolean castle (the hand-painted ceiling in its ballroom was imported from a real castle in Spain).

But the prize parcel in Hughes's portfolio was Tower Grove. He purchased the land for \$8.5 million from media mogul Merv Griffin in 1997. At the time, he'd been married for a decade to his third wife—the former Suzan Schroder, a court reporter and former Miss Petite U.S.A.—and their son was nearly six years old.

**Mark Hughes's 45,000-square-foot Tower Grove mansion was designed to include 25 rooms, a 65-foot lookout cupola, and four corner pavilions.**

Tower Grove was her husband's “ultimate real estate acquisition, the top of the mountain that would have his name on it forever,” Suzan Hughes says. “It represented Mark's vision for his family's future, and Mark shared that vision with his son. It was their special place.”

Among those who helped Hughes with his real estate activities was Klein, who started working for him as outside counsel in 1982. A veteran business litigator, Klein became such a valued aide that Hughes hired him full time at Herbalife, appointing him an executive vice president and chief business affairs officer. “I was his friend,” Klein recalls. “I loved him, and I think he loved me.”

Sometimes, Klein says, he and Hughes would drive up Benedict Canyon to check in on Tower Grove. “It was an incredible piece of property,” he says. “Mark fell in love with it. Everybody who saw it fell in love with it.” But Mark's ardor for the acreage dimmed after his divorce from Suzan in 1998 and then, in 1999, his marriage to Darcy LaPier, a former Miss Hawaiian

DAVID M. GENTHER & ASSOCIATES (BELOW); LOS ANGELES TIMES (RIGHT)



## “Did Alex adopt Suzan’s goal of removing the trustees? Of course.” —CONRAD KLEIN, TRUSTEE



Suzan Hughes, who failed twice to remove the estate’s trustees, with son Alex in 2004.

Tropic and ex-wife of action movie star Jean-Claude Van Damme.

According to Klein, the fourth Mrs. Hughes preferred to live in Malibu, and she associated Tower Grove with Suzan. So in December of that year Mark Hughes dropped \$25 million on another Malibu property—a peach-colored mansion on seven-and-a-half acres with 300 feet of Pacific Ocean shoreline. It was there in the master bedroom suite, on May 21, 2000, that Darcy found him lying dead on the four-poster bed. Hughes’s death was attributed to a mix of alcohol and Doxepin, an antidepressant he was taking to help him sleep.

For eight-year-old Alex, it set in motion a chain of events that would bring him, more than a dozen years later, to the courtroom of Judge Beckloff.

These days, Conrad Klein and Justice Dempsey Klein live down the coast from the Malibu estate where Mark Hughes died. Their condo has a spectacular ocean view and a hallway lined with photos of their five children—including Los Angeles Superior Court Judge Marc Dempsey Gross—and eight grandchildren. Spry and with a booming voice at age 85, Klein still chokes up when he remembers getting the phone call notifying him of Hughes’s death. “I was really shocked,” he says.

The trust Hughes left behind included his Herbalife stock and real estate assets. As part of his divorce settlement with Suzan, who had primary custody of Alex, he had been paying \$10,000 a month in child support. He also covered the purchase price of her home in Beverly Hills. The trustees were to continue the child support payments until Alex graduated from high school, and also provide discretionary funds to maintain him in the lifestyle to which he had become accustomed while his father was alive—including private education and expensive vacations. Alex, says attorney Rowen, “is a prince.”

Klein says it wasn’t until the day Hughes died that he learned he’d been named to manage Hughes’s estate. “It totally surprised me,” he says. “I had no idea I was a trustee and executor [of the will].”

While Alex was a minor, his mother was his legal guardian. But from the

outset, there appears to have been a mutual antipathy between Suzan Hughes and the trustees. Klein suggests he unintentionally antagonized Suzan after the couple’s divorce when he tried to help resolve disputes over child visitation: “Suzan perceived me as favoring Mark.” The trustees have accused her of waging a “personal vendetta” against them, fueled by a “desire to gain access to the money Mark left for Alex (and not for her).”

According to Rowen, however, the “big issue” was that the trustees simply didn’t like Suzan.

The three men had barely settled into their work on the trust in February 2001 when Suzan and two business partners proposed taking Herbalife private through a management buyout, at \$12 to \$14 per share. Suzan approached the trust first, because it held a controlling interest in Herbalife. But after an investment bank pointed out flaws in the proposal—including use of \$70 million of the company’s own cash to fund the deal, and the takeover group’s request for more than \$30 million in fees—the trustees declined the offer. (The following year, Herbalife’s board of directors agreed to sell the company to two private equity firms for \$19.50 a share, and the trust voted its shares in favor of the transaction.)

Of course, the trustees’ rebuff didn’t ingratiate them with Suzan. Within months, she filed her first removal petition, alleging, among other things, that the trustees made “arbitrary and capricious” decisions and were excessively hostile toward Alex. (*In re the Matter of the Mark Hughes Trust*, No. BP063500 (Los Angeles Super. Ct. petition filed May 24, 2001).)

Two years later Los Angeles Superior Court Judge Thomas W. Stoeber Jr. granted the trustees’ motion for summary judgment and denied Suzan’s

petition. (*In re the Matter of the Mark Hughes Trust*, No. BP063500 (Los Angeles Super. Ct. ruling on summary judgment May 15, 2003).) The First District Court of Appeal affirmed in October 2004, finding Suzan had presented no evidence that the trustees' alleged hostility toward Alex "in any way impaired, or threatened to impair, the administration of the trust." (*Hughes v. Klein*, 2004 WL 2382298 at \*8 (Cal. Ct. App).)

The vitriol between the trustees and Alex's mother spilled into the media. The *Los Angeles Times* reported in October 2005 that the Hughes Family Trust was valued at \$400 million—but Suzan's then-attorney, Hillel Chodos, complained that the trustees had paid themselves at least \$5 million in fees while ignoring Alex's needs beyond the monthly child support payment.

By Suzan's calculations, Alex should have been receiving an additional \$250,000 a year by the time he was 13. "Basically, [the trustees] got the gold mine and [Alex] got the shaft," Chodos told reporters. Attorneys for the trustees countered that Suzan had blocked their efforts to talk to Alex about what his needs actually were. Christopher Pair's lawyer described Suzan's litigation against him and the other trustees as the legal equivalent of "World War III."

In 2005 Suzan opened another battlefield by suing Pair for sexual harassment and intentional infliction of emotional

distress. She alleged that after she asked the trust to provide \$160,000 for a two-month rental of a Malibu beach house, the former Herbalife executive insinuated he would support the request in return for sexual favors. "You are one of the most beautiful, unattainable women in the world," he allegedly told her. "Here's my home telephone number, and call me when you're ready to give me what I want."

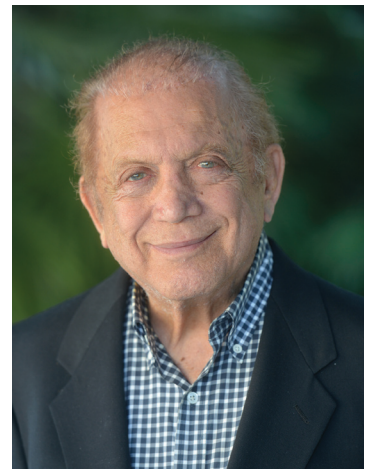
In a chance encounter with Suzan and Alex later that evening at the King Tut exhibit in Los Angeles, according to court documents, Pair said to her, "I'll get you on your knees eventually. I'm going to fuck you one way or another." The lawsuit went all the way to the California Supreme Court, which in July 2009 affirmed the trial court's dismissal, ruling that Suzan had failed to show sufficiently "severe" or "pervasive" conduct to support her claim. (*Hughes v. Pair*, 46 Cal. 4th 1035, 1048–49 (2009).)

Five months later Alex turned 18, ending his mother's guardianship. He was then a senior at the elite New Roads School in Santa Monica and looking forward to college. "He was an A student," Rowen reports. Attorneys for both sides have described the young man as normal and well adjusted. He also zealously guards his privacy—Rowen would reveal only that he attended "one of the best colleges" in the country.

If the trustees had expected relief from litigation once Suzan Hughes's legal role was over, they were soon disappointed. Within a year, Alex's own lawyers filed his petition for removal.

According to Klein, the trustees had reached out to Alex but couldn't keep him from absorbing his mother's animus toward them. "Did Alex adopt Suzan's goal of removing the trustees?" he asks. "Of course." He adds that the last time Jack Reynolds was permitted to speak with his grandson was in 2001. "When [Reynolds] and I first talked about it, he almost wept."

Rowen says it was the trustees who



*"We did what we thought was right. If we were wrong, there was no harm [to the trust]."*

—CONRAD KLEIN, TRUSTEE

provoked Alex's petition by stopping the child support payments for several months after his 18th birthday but before he completed high school, and by refusing to pay him any additional maintenance. (The child support obligation lasted until he graduated, and he is entitled to additional maintenance until he turns 35 and inherits the bulk of the trust.)

"The problem is that nothing changed" when Alex turned 18, Rowen says. "In fact, things got worse." That, he adds, left his client with "no choice" but to sue the trustees.

The petition alleged several grounds for removing the trustees, including failure to support Alex when he was a minor, improperly settling a lawsuit against the trust, and hostility toward the beneficiary. But Alex's lawyers focused much of their case on Tower Grove, arguing that Klein strung the inexperienced Dickens along in order to maintain control of a property he hoped to profit from himself.

"My opinion is, it was a question of



**Christopher Pair, a trustee and former Herbalife executive, won dismissal of Suzan Hughes's sexual harassment suit.**

## *“Basically, [the trustees] got the gold mine and [Alex] got the shaft.”*

—HILLEL CHODOS, FORMER ATTORNEY FOR SUZAN HUGHES

control,” Rowen says. “Conrad [Klein] believed it was *his* money in the trust. In a way, Conrad believed he was Mark Hughes.”

**J**udge Beckloff usually moves things along pretty briskly in his probate courtroom. But the trial on Alex Hughes’s petition was a lumbering affair, spanning 51 court days over five months starting in July 2012. The Greenberg Traurig team of Rowen, Scott D. Bertzyk, Lisa C. McCurdy, Matthew Gershman, and Nicholas A. Insogna faced off against equally high-powered counsel for the trustees: Edward A. Woods, Susan K. Leader, and Oleg Stolyar of Akin Gump Strauss Hauer & Feld representing Klein and Reynolds, and Clark R. Byam and Rita M. Diaz of Hahn & Hahn representing Pair.

At the trial, Alex’s attorneys alleged that Klein had acted out of self-interest in the Tower Grove real-estate deal, using Dickens as a “front man” so he could develop the land himself. “Dickens offered Klein the ability to retain total control and develop the property with some cover—and a potential partner for future self-dealing,” Rowen said in his closing argument.

Rowen contended that Tower Grove was a temptation the trustees could not resist. Back in 2003, the three men had asked for court approval of their own plan to develop the property. When that request was denied, they agreed in January 2004 to lease Tower Grove to Dickens—who had previously been aligned with a group of prospective buyers from Chicago—and granted him an option to buy it.

Klein says he was impressed with Dickens’s “go-getter attitude” and “native intelligence.” He adds, “We did

some due diligence—nothing bad about him, nothing great. ... I had a good feeling about him.”

The following September, however, Los Angeles developer Henry Shahery offered \$25.75 million in cash for Tower Grove—\$2 million above Dickens’s offer. But a lawyer for the trust rejected the bid, explaining that Dickens was in escrow.



Suzan Hughes, in her capacity as Alex’s guardian, approved the Dickens deal, which provided her a payment of \$250,000. But she says Klein deceived her into believing it was an all-cash transaction. “The trustees never explained to me ... that they were going to sell the property for no money down to a man with no money, no financial backing, and no real estate experience,” she insists.

Dickens’s defaults to terms of the agreement didn’t require prompt foreclosure, according to Klein, “because in business life, unless you’re a shark, you extend financial courtesies to the other

side, as long as you do it without risk. The purchase price [Dickens agreed to] was well above what I knew I could get on the market for the property. Why would I want to foreclose and end up with a piece of property—and no money—when I can just keep extending [the arrangement]?”

But at trial Dickens testified, “From the beginning, I knew that I had to

**Greenberg Traurig shareholders (from left) Scott D. Bertzyk, Eric V. Rowen, and Lisa C. McCurdy helped litigate Alex Hughes’s petition to remove the trustees.**

make sure that [Klein] was happy with what I was doing. And if I went against or disagreed with him, I was putting myself in jeopardy because ... my middle name is ‘Default,’ and at any time he could have pulled the plug.”

When Klein was asked in court why he spent so much time with Dickens after selling him the property, the attorney responded, perhaps in a slip: “I

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VERIN EVANS

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had a lot to talk about with Dickens at that time. We were both developing the property.”

As for Shahery’s higher offer for Tower Grove, Alex Hughes’s lawyers dispute that there were legal impediments to accepting it. Among other things, they argued at trial, Dickens was already in default on terms of the agreement when he exercised his option. It was Klein’s ulterior motives, they argued, that were better served by staying with Dickens.

Klein compares the trust to a corporation in which “I was the chief operating officer and the three of us were the board of directors. We made the policy decisions together. It was my job to effectuate [them].”

But in an email that Rowen introduced into evidence, Pair’s attorney Byam told Klein, “I think Chris, and I assume Jack, will rely on your input since you have essentially been in charge of overseeing [the Tower Grove] project.” Reynolds wrote back to Byam on his copy of the email: “You are correct. CLK has been in charge of Tower Grove since inception.”

**W**hen Judge Beckloff ruled in the case on March 18, 2013, he found only one ground for granting the petition: “[Klein] with the consent of the [co-]trustees elected to sell real property then worth \$23,750,000 to an unqualified poor man buyer with limited financial resources for no money down. The resulting damage to the trust was foreseeable,” he wrote, citing, at a minimum, millions of dollars in attorneys fees as well as “lost opportunity costs.”

Beckloff cited correspondence about the Dickens deal in which Byam wrote to Klein’s counsel that “it appears [Klein] is now placing himself in a position as manager [of Tower Grove] to go ahead with developing the property, although there does not appear to be any additional benefit to the trust from what would have been the sale to [Dickens].”

Given what was known to the trust-

ees at the time of the sale “and all that followed,” Beckloff continued, “it seems self-evident that a ‘prudent person’ exercising ‘reasonable care, skill and caution’ would not have approved the transaction proposed by [Klein,] or sat idly by as default after default occurred.”

In the trustees’ opening appellate brief, they argue that the prudent-person standard of care does not apply to functions such as the management of Tower Grove; that Suzan had expressly consented to the sale; and that Judge Beckloff’s finding of gross negligence failed to take into account Klein’s overall performance as a trustee. Tower Grove constituted less than 7 percent of the trust’s assets at the time, their brief noted. “The trial court’s approach to removal ... would create a dangerous precedent and pose a grave risk to trustees who delegate management and

it is to get through a 50- or 60-year career without a single client complaint, without a single sanction? I never had a judge sanction me.”

Klein is adamant that as a trustee he did “everything within the bounds of discretion,” adding that even in hindsight, he wouldn’t have handled Tower Grove differently. “We did what we thought was right,” he says. “If we were wrong, there was no harm [to the trust]. And if there ever turns out to be any harm, in the scheme of all the great we did, we [shouldn’t] get punished.”

Some 14 years after the untimely death of the Herbalife tycoon, a company called Noval Development is planning to build “the world’s most exclusive and private residential enclave” at Mark Hughes’s beloved Tower Grove. It will consist of six “uber-elite” mountaintop mansions and a vineyard. Klein says he’s heard

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*“If I disagreed with him, I was putting myself in jeopardy because ... my middle name is ‘Default.’ ”*

—CHARLES “CHIP” DICKENS, ONE-TIME PURCHASER OF TOWER GROVE

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investment duties” under California’s Uniform Prudent Investors Act, it states. (*Hughes v. Klein*, No. A138983 (Cal. App., 1st Dist., Div. 3, opening brief filed Jan. 23, 2014).)

Though it’s been months since Beckloff’s ruling, when you ask Conrad Klein about it he frowns and sighs as if in acute pain. “I got divorced once,” he says. “That was the worst experience of my life. And this is the second worst experience of my life.”

It’s not the loss of fee income since being removed that bothers him (court documents indicate that from 2000 through 2009 the trustees received more than \$7.7 million). Rather, it’s the damage to his reputation that he says keeps him up at night. “It’s humiliating,” he laments. “You know how hard

that the lots alone are currently worth more than \$120 million. The trust, which still holds a first deed of trust on the property, could ultimately net a profit of at least \$25 million, he predicts.

As for Suzan Hughes and Alex—now 22 but still more than a dozen years from claiming the rest of his fortune—Klein says he doesn’t blame them for fighting him in court for so long. “They are doing what they believe to be right,” he says.

“Suzan you have to admire,” Klein adds. “She hung in unremittingly, and she won.” Another anguished look passes across his face. “Even if it gets reversed on appeal, she won—because I will never recover the last year and a half. That’s not recoverable.” 📌