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LITIGATION

Heir's mother 'human again' after epic battle

By Brian Cardile
Daily Journal Staff Writer

LOS ANGELES — In the world of California probate law, it was a rare decision — the removal of three fiduciaries from roles designated by a trust settlor — as such action requires extreme circumstances. Lending further to the matter's singularity: The trust in question was the \$330 million Hughes Family Trust, created by late Herbalife founder Mark Hughes.

Hughes, shortly before he died in May 2000, designed the trust to provide for his only son Alex — 8 years old at the time of his father's death — and entrusted its care to Conrad Lee Klein, Christopher Pair and Jack Reynolds, men who had played various roles alongside the marketing tycoon's rise to international notoriety.

In ordering the removal this past March, Los Angeles County Superior Court Judge Mitchell Beckloff cited a knot of improvidence, including the botched sale of a prized Malibu property, for which Beckloff deemed the men to have committed "a gross breach of trust" that "resulted in significant damages to the trust."

For Suzan Hughes, Mark Hughes's wife of 11 years and Alex Hughes's mother, the decision marks the end of 13 years of courtrooms, calumny and cupidity.

"I'm becoming human again," Suzan Hughes recently sighed of her relief with the removal order, which culminates a multi-layered legal action she first brought in 2001, and which Alex shouldered once he turned 18 in 2010. "I can have a sense of humor again; I can be carefree. And I don't have to be afraid anymore."

Suzan Hughes' constant fear in the years between Mark Hughes's death and Beckloff's ruling was that the co-trustees — through

insouciance and self-interest — would jeopardize her husband's intention to convey his empire to his only son.

"Alex was the light of the world to [Mark]," Suzan Hughes said. "I know what [Mark] envisioned for his son. They took that will and trust and basically didn't follow any of his wishes."

When he formed the trust months before his untimely passing, Mark Hughes named his son its sole beneficiary and charged Klein, Pair and Reynolds with maintaining the trust until its bulk went to Alex Hughes on his 35th birthday.

Before then, Mark Hughes instructed, the trust should maintain the privileged life — full of yacht cruises, palatial estates and board room glimpses — he'd long provided his son. Mark Hughes also assigned his son two million Herbalife shares to safeguard his prominent role in the weight management company's future.

But, shortly after Mark Hughes's death, Suzan Hughes began to feel that the fiduciaries did not regard their son's interests as paramount, or at all.

"They tried to ignore he even existed," said Suzan Hughes, who divorced Mark Hughes in 1998 and has never remarried. "I have an 8-year-old who's lost his father and I think I have these three trusted advisers who have an interest in him, but no."

During that time, she requested some of Mark Hughes's items that held sentimental value for their son, like the former's clothing or portraits. But Suzan Hughes said the co-trustees rebuffed even trifling appeals.



Herbalife founder Mark Hughes



Brian Cardile / Daily Journal

Suzan Hughes, the former wife of Herbalife founder Mark Hughes and mother of his sole heir, Alex Hughes

"I'd ask for things from Alex's room [at Mark's home in Beverly Hills], or a carpet [Alex] liked when he was a kid and they'd say, 'No, sue us,'" Suzan recounted grimly. "They wouldn't even give him his dad's tie, or his favorite shirt, so I started to realize they weren't out for [Alex's] best interest."

Beckloff cited this antagonism in his decision, saying the co-trustees were "discourteous and show[ed] an inappropriate lack of respect" for Suzan Hughes. He also noted that the co-trustees would refuse many of her requests that, "in the context of [Alex Hughes's] accustomed standard of living [were] minuscule."

Such cavils alarmed Suzan Hughes, but a more frightful tocsin rang when the co-trustees claimed plum Herbalife postings for which their qualifications were dubious. Reynolds, Mark Hughes's long-absentee father, had become chairman of the board, though he later admitted in court that he "didn't have that much knowledge about the company."

Pair, who pled no contest to shoplifting charges in 1998, became CEO before soon resigning in 2001, a few months before settling a sexual harassment suit filed by a former Herbalife employee. *Faulkner v. Herbalife International of America*, BC278272. In 2005, Pair faced similar claims brought by Suzan Hughes in a protracted dispute that reached the state Supreme Court. *Hughes v. Pair*, 46 Cal. 4th 1035 (2009).

Suzan Hughes said rapacity motivated the reshuffling.

"They put themselves in these top positions controlling the board; they controlled every single part of [Herbalife]," she said. "It was like a prequel to Enron. They were using it as their own candy store. They were going to take this company down to nothing."

Such self-appointments also piqued the concern of major investors Steel Partners II and Jana Partners, who wrote an open letter in July 2001 expressing worry that the co-trustees' new positions conflicted with their role as stewards of Mark Hughes's trust, which then controlled roughly half of Herbalife.

Suzan Hughes pursued legal recourse, seeking, among other things, that Klein, Pair, and Reynolds be relieved of their duties as co-trustees. *In re the matter of the Mark Hughes Trust*, BP063500. Thus began 13 years of bitter litigation that finally resulted in Beckloff's ruling this spring.

The judge granted removal principally due to a failed 2004 real estate sale that at best was ill-conceived and at worst represented self-dealing. The venture, funded entirely by the trust, sought to transfer 157 acres of coveted real estate atop Benedict Canyon for \$23.75 million to an Atlanta business whom Klein later admitted knowing was "a poor man."

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Beckloff also cited other serious derogations of the co-trustees' fiduciary duties, any of which could have justified removal, said Suzan Hughes along with Alex Hughes's attorney Eric Rowen of Greenberg Traurig LLP, who recently responded to the co-trustees' appeal of the ruling.

"Sure, Tower Grove was the count that Judge Beckloff removed them on, but that's like the FBI getting Al Capone on tax [evasion]," Suzan Hughes said.

The additional breaches — noted by Beckloff and emphasized in Rowen's response to the co-trustees' appeal — include a years-long neglect to fund the two million shares designated for Alex Hughes, and obdurate refusal to provide the financial support Mark had envisioned. *Hughes v. Klein*, A138983 (Cal. App. 1st Dist., Div. 3).

"What Mark had intended for him they completely wiped off his plate," Suzan Hughes said. "They turned the trust into a large, dead-beat dad, contrary to anything that Mark would have wanted. They took it for themselves, running around with Mark's money, acting like big shots, and ignoring the beneficiary."

From the start, Suzan Hughes was outnumbered by the co-trustees' legal cadre. She also felt continually handicapped by skepticism her former beauty queen appearance — and understandably

unpolished knowledge of probate law — engendered in court.

"At first it looks like a stereotype: you look at me, a woman suing her rich husband, and you look at them, men in respectable suits with a high-powered team of attorneys," said Suzan Hughes, who worked as a court reporter for several years before meeting Mark Hughes, and who divorced him without seeking a large settlement, ending up with roughly 2 percent of the marital assets, by her count. "But after hearing the evidence, the judges could tell something was wrong [with the trust's management]."

Indeed, said Rowen, Suzan's appearance tended to belie the fact that her concerns and arguments were usually well-founded.

"The truth was that Suzan was exactly right pretty much most of the time," Rowen said. "Even though she might not have come across the way people wanted her to, her objections and complaints were actually very accurate."

Meanwhile, the interminable proceedings — prolonged by a cataract of continuances and procedural challenges — continued to sap trust funds for the defense's legal fees. Rowen's appellate brief cites trust payments of \$22.6 million for litigation purposes. That number, along with roughly \$10 million the co-trustees paid to themselves as of 2010, helps explain a decline in the trust's value

since Mark Hughes's death.

For her part, Suzan Hughes footed mountainous legal bills by mortgaging her and Alex Hughes's home, and by foregoing routine household repairs that became unaffordable.

"Legal bills were pouring in; and then there'd be phone call after phone call about a late mortgage payment," Suzan Hughes said. "[During court proceedings], [the co-trustees] would be talking about matters in the millions of dollars and I'd go home and my reality was I had pots and pans under leaks in my ceiling."

Suzan Hughes admits that the wearying battles pushed her to near-irretrievable despair. But thoughts of her son, and of her former husband's wishes, reinvigorated her resolve.

"I thought I was dying almost every day," Suzan Hughes said. "But I had helped Mark to build this dynasty and I was glad to leave it [when divorcing Mark] because I knew it was going to my son. If I hadn't continued to fight to my last breath I wouldn't have been able to live with myself."

Rowen also credits Suzan Hughes's unflagging determination for helping the matter reach its successful conclusion.

"She was an excellent mother and she was watching out for her child," Rowen said. "She maybe was more strident at times than some people might have liked but, ultimately,

when the matter did get heard, and when the court finally looked at all the things [the former co-trustees] did and how they acted, the court recognized the problem."

That recognition was Beckloff's order last spring, now under review at the 1st District Court of Appeal. *Hughes v. Klein*, A138983. In their opening brief, Klein and the other the co-trustees maintain that their stewardship of the trust was prudent save for the real estate sale, which, they say, suffered from an unfortunate combination of circumstances.

In such an appellate review, Rowen noted in his response brief, wide discretion is afforded to the lower court.

In the meantime, Suzan Hughes said, she, Alex Hughes, and the trust — now maintained by new fiduciaries — have achieved a stability quite unlike the last dozen years of antagonism and upset.

"Now we have fiduciaries and things are fine," Suzan Hughes said. "They're carrying out the terms of the trust, so now Mark can have his will carried out like a proper fiduciary would."

Still, the resolution hasn't immediately salved the decade of psychological wounds, thoughts of which still reduce Suzan Hughes to patent emotion.

"It was just so sad," Suzan Hughes uttered, with quavering voice and vacant eyes. "It was all such a tragedy."