

Axed Trustees Of Herbalife Founder's Estate Still Fired

By **Y. Peter Kang**

Law360, Los Angeles (March 30, 2015, 10:08 PM ET) -- A California appeals court on Monday upheld the removal of three trustees from the estate of Herbalife Ltd. founder Mark Hughes for breach of trust and gross negligence epitomized by the botched sale of 157 acres of land in Beverly Hills that exposed the trust to millions in litigation costs.

A lower court judge ordered the removal of attorney Conrad Lee Klein, Herbalife executive Christopher Pair and Jack Reynolds, Herbalife founder Mark R. Hughes' father, from their duties of running the hefty estate because of the land sale to a financially-troubled business partner who later declared bankruptcy.

In his 2013 decision, Los Angeles Superior Court Judge Mitchell L. Beckloff criticized the trustees' decision to sell a parcel of land called Tower Grove — “the trust's most valuable nonliquid asset” — for \$23.7 million in 2004 to an entity controlled by Charles “Chip” Dickens, a man whom they knew had no formal education in real estate and who was suffering from financial difficulties.

The suit was brought by Alexander R. Hughes, the only child of the nutritional supplement company's founder, and also the son of Hughes' third wife, Suzan Hughes, who has frequently battled in court with the trustees. Alexander Hughes alleged in his petition to remove the trustees that they breached the terms of the trust by spending money on themselves instead of investing it for his benefit.

The defendants had argued on appeal that the trial court applied the wrong legal standard in determining their dismissal and said the evidence did not show they committed gross negligence, according to court documents.

A three-justice panel disagreed on Monday, saying that the lower court ruled appropriately.

“We conclude there is indeed substantial evidence to support the findings relied upon by the trial court to suspend and remove appellants based on their conduct in connection with the Tower Grove sale,” the panel wrote in the unpublished opinion. “In short, the trial court appropriately identified evidence of a multitude of acts or failures to act committed by appellants in connection with the Tower Grove sale that, viewed collectively, met the legal standard for removal.”

The panel said the trustees failed to investigate Dickens' creditworthiness and business competence and failed to step in when Dickens could not meet his loan obligations.

“The end result of these failures was, thus, that title to the Trust's most valuable non-liquid asset was

passed to Dickens, an individual who never paid any money whatsoever to the Trust or the Trust-owned LLC for the Tower Grove property and ultimately filed for bankruptcy protection in federal court, costing the Trust an estimated \$2 million to \$3 million in legal fees,” the panel states. “Under these circumstances, we agree with Alexander [Hughes] that the trial court’s suspension/removal order was a reasonable exercise of discretion.”

An attorney for Hughes told Law360 on Monday they were pleased with the decision.

“The beneficiary is very pleased that this chapter in his life now is closed, that the positions taken by him and his guardian before him have been vindicated, and that his trust now will be administered by a faithful fiduciary in the manner contemplated by his father,” said Eric V. Rowen of Greenberg Traurig LLP.

Representatives for the defendants did not immediately respond to a request for comment late Monday.

Justices Martin J. Jenkins, William R. McGuinness and Stuart R. Pollak sat on the appeals panel.

Hughes is represented by Eric Victor Rowen, Scott Donald Bertzyk and Lisa Christine McCurdy of Greenberg Traurig LLP and Burt Alan Levitch, Todd William Bonder and Ryan Matthew Lapine of Rosenfeld Meyer & Susman LLP.

The defendants are represented by Edward Alan Woods and Oleg Stolyar of Akin Gump Strauss Hauer & Feld LLP.

The case is Alexander Hughes v. Conrad Klein et al., case number A138983, in the Court of Appeal of the State of California, First Appellate District, Division Three.

— Additional reporting by Ciaran McEvoy. Editing by Ben Guilfooy.