

**SURROGATE'S COURT
COUNTY OF NEW YORK**

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ACCOUNT OF

**Alvin J. Burnett and the
Estate of Archibald Hill, Deceased,
as Trustees under the Last Will of**

JESSICA M. HILL,

Deceased.

**: AFFIDAVIT OF
: ALVIN J. BURNETT**

: File Number 2197/1951
:

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STATE OF FLORIDA)
 : ss.:
COUNTY OF PALM BEACH)

ALVIN J. BURNETT, being duly sworn, deposes and says:

1. I am the sole surviving Trustee of the Trust established by the Will of Jessica M. Hill, deceased. I make this affidavit in support of my motion to dismiss the Objections filed by Association for Childhood Education International ("Association") in connection with accountings filed pertaining to the Hill Foundation, Inc. ("Foundation") and the Trust as well as to dismiss the Petition filed by the Association to remove me as Trustee and for other relief.

2. Association has propounded two theories in support of its Objections and Petition, both of which are legally deficient.

(a) That the Trustees are liable to the Association, the remainderman of the Trust, because the Trustees did not liquidate the Hill Foundation in 1986. The Association alleges that prior to 1986 the liquidation would have been tax free. It is the

Trustees' position that it would not have been prudent to liquidate the Foundation in 1986, the liquidation would not have been tax-free. See affidavits of Ira Stechel, Esq., and William Stevenson, accompanying this motion.

(b) That the Association is entitled to have monies returned to the Foundation which constituted income of the Foundation and were distributed by the Foundation at the direction of the income beneficiary during the lifetime of the income beneficiary without the declaration of formal dividends. If so, is the Association or the Estate of the income beneficiary entitled to receive the monies?

3. It is the Trustee's position that it was proper to distribute monies constituting income from the Foundation - without the necessity of declaring formal dividends. If not, the monies (constituting income) would necessarily not belong to the remainderman, the Association, but to the Estate of the income beneficiary. The sole residual beneficiary of the Estate of the income beneficiary has renounced her right, if any, to said monies. See affidavit of Muriel Wright attached hereto.

STATEMENT OF FACTS

4. Jessica M. Hill (the "Decedent") died on July 25, 1951. Her Last Will and Testament was submitted to probate by Surrogate's Court, New York County. The Will provides:

THIRTEENTH: I give, devise and bequest all the rest, residue and remainder of my estate of whatsoever kind and nature and wheresoever the same may be situated and over which I at the time of my death may have any power of disposition, to my trustee hereinafter nominated and appointed, IN TRUST NEVERTHELESS, upon the following uses and purposes: to hold, manage, invest and reinvest the same and after deducting all proper and necessary charges and expenses incurred in the administration thereof including trustee's commissions, to pay over

the net income therefrom to my nephew, PROFESSOR ARCHIBALD ANDERSON HILL of Charlottesville, Virginia, during his life in semi-annual installments or oftener in the discretion of my trustee, and upon the death of my said nephew the trust created hereby shall terminate and come to an end, and the corpus or fund remaining on hand together with any accrued income shall be paid over to the children of my nephew him surviving, in equal parts, share and share alike; and in default of such children him surviving, the corpus or fund remaining on hand together with any accrued income shall be paid over to the ASSOCIATION FOR CHILDHOOD EDUCATION, corporation organized and existing under the laws of the district of Columbia, to be used by said corporation for its lawful corporate purposes and to be designated as the "PATTY SMITH HILL FUND." The term "children of my nephew" shall be construed to refer to and include any legally adopted child or children.

5. Letters of Trusteeship under Decedent's Will were issued to Samuel Mann on September 7, 1951. Mr. Mann died on September 6, 1958.

6. On January 7, 1959, successor Letters of Trusteeship were issued to Professor Archibald Anderson Hill ("Professor Hill"), the income beneficiary under the aforementioned trust, and to me, to act in place and stead of Mr. Mann.

7. Since Jessica Hill's death, the Trust has owned and still owns the shares of the Hill Foundation, Inc. ("Foundation"). The Foundation's sole asset was and still is the right to receive income from royalties for the copyrighted song "Happy Birthday."

8. Pursuant to a 1959 written agreement between me and Professor Hill, I was given the right to receive from the Foundation an amount equal to 15% of all income received by the Foundation. This agreement was subsequently modified by Professor Hill; Professor Hill granted me additional percentages of income.

9. On October 16, 1944, the copyright to "Happy Birthday" was assigned to Clayton F. Summy Co. with the Foundation receiving the right to receive 1/3 of the income

from royalties that Summy received. In the late 1980's, the copyright was subsequently assigned to Warner-Chappell Music, Inc, with again the Foundation having the right to receive 1/3 of the income from royalties received by Warner-Chappell. The copyright is to expire in 2005.

10. Accountings of the Trust were prepared and furnished by me for the periods May 1, 1954 to September 6, 1958 (the date of death of Samuel Mann, as Trustee, and from September 7, 1958), June 30, 1961, 1961/1971 and 1971/1981. These Accountings were sent to the Association and Professor Hill. At no time did Professor Hill or the Association question these Accountings. At no time did Professor Hill or Association ever make any claims that I wrongfully or improperly administered the Trust.

11. Professor Hill died on March 21, 1992 without legal issue, leaving me as his executor and sole surviving Trustee. Muriel Wright is the sole residual beneficiary of the Estate of Professor Hill.

12. To satisfy the objections of the Association, full accountings were prepared and filed for the Foundation for the period July 2, 1962 through July 31, 1995 and for the Trust for periods July 1, 1961 through March 31, 1994 and March 31, 1994 through July 31, 1995.

13. Payment of \$400,000 was made by the Trust to the Association in October 1995. Additional payment of \$250,000 was made by the Trust in July 1996 and \$700,000 was made by the Foundation.

THE HILL FOUNDATION

14. The Foundation was incorporated in the State of New York in 1942. The initial shareholders were Patty S. Hill and Jessica M. Hill. Upon the death of Jessica M. Hill, Samuel Mann, as Trustee under the Will of Jessica M. Hill, became the shareholder. Upon Mr.

Mann's death, Archibald Anderson Hill and Alvin J. Burnett, Successor Trustees under the Will of Jessica M. Hill became shareholders.

15. In 1944, the Foundation assigned its copyrights to "Happy Birthday" and other compositions to Clayton F. Summy Co. The Foundation, in return, received the right to receive 1/3 of all net proceeds of royalties received by Summy. In 1988, Summy assigned its rights to Warner-Chappell Co., the Foundation again retained the right to receive 1/3 of all net proceeds received by Warner-Chappell.

16. The vast majority of income received by the Foundation during this period was from the royalties received by Summy and then Warner-Chappell. As the Accounting for the Hill Foundation indicates the royalty income in 1989 became significantly higher when Warner-Chappell became involved.

17. It was the common practice that when monies were received by the Foundation, it was distributed. Monies were held by the Foundation solely for payment at the direction of the income beneficiary. The intent of Jessica Hill's Will is clear - all income is to go to the life beneficiary, Professor Hill. Since Professor Hill and I were the only two shareholders (as Trustees), and we agreed as to the disposition of the monies, there was no need to have the formality and expense of declaring formal dividends.

18. Now, the Association, the remainderman, seeks to have monies that was already distributed from income for the thirty-three year period (1959-1992) returned back to the Foundation. The Association's position would result in an unfair windfall to the Association. It is the clear intent of Jessica's Hill's Will that income was to go to her nephew, Professor Hill. It is therefore clear that monies could be distributed at the direction of, and for the benefit of,

the income beneficiary, Professor Hill. Professor Hill could obviously direct when and to where these monies should be distributed, which he did.

TAX CONSEQUENCES

19. Association takes the position that the Foundation should have been liquidated prior to August 1, 1986. The Association alleges that if a corporation made a distribution of its property, the value of which exceeded its cost basis, in complete liquidation, there would be no tax on this excess at the corporate level. Therefore - six years later when the Association became entitled to the income - it would not be subject to tax, since it alleges it has a charity exemption, although it appears to not be a charity.

20. My attorneys have retained an independent tax expert, Ira Stechel, Esq. According to Mr. Stechel, the liquidation of the Foundation prior to August 1, 1986 would not have been tax free, as the Association claims. Mr. Stechel states, unequivocally, that the decision not to liquidate the Corporation was "a rational and prudent one." Attached hereto is Mr. Stechel's Affidavit. My attorneys also retained Mr. William Stevenson as a tax expert for the purpose of computing the total federal, state, and local income tax liability resulting from a liquidation of the Foundation in 1986, as urged by Association. Mr. Stevenson computed the Trust's tax liability as ranging from a low of \$307,292 to a high of \$919,087, depending upon the value ascribed to the Foundation's assets in 1986. In addition, Mr. Stevenson calculated that the Foundation faced an aggregate tax liability upon such a liquidation ranging from a low of \$543,322 to a high of \$1,123,774. Such tax liability would dwarf the assets then available

to the Foundation (\$71,182 as of December 31, 1986) and the Trust (\$195,100.59 as of July 31, 1986).

Alvin J. Burnett
ALVIN J. BURNETT

Sworn to before me this
23 day of January, 1997

Linda J Means

Notary Public



LINDA L. MEANS
COMMISSION # CC 421559
EXPIRES NOV 17, 1998
BONDED THRU
AT & FID BONDING CO., INC.