

**Submission
No 20**

**INQUIRY INTO ELDER ABUSE IN NEW
SOUTH WALES**

Name: Name suppressed
Date received: 14/11/2015

Partially Confidential

The Director,
General Purpose Standing Committee No.2,
Legislative Council,
Parliament of NSW,
Parliament House,
Macquarie Street,
Sydney. NSW. 2000

13 November, 2015

Dear Director,

Submission to the Inquiry into Elder Abuse

I make this submission as the advocate for my mother who is 93 years old and now living in an aged care facility. My mother has been suffering from alzheimer's disease for a number of years. She was evicted from her home in October 2014 as a result of financial elder abuse. By making this submission I am hopeful that it will no longer be so easy for people who hold Power of Attorney to abuse this privilege. I am hopeful that perpetrators of elder abuse will be held accountable by law.

A timeline of events is outlined as follows:

In 2003 my brother was appointed joint Power of Attorney following the death of my father.

In 2003 my sister and I were appointed Enduring Guardians.

In 2007 the last tax return was lodged for my mother. There was \$1.36m in a company, \$75,000 in earnings, \$50,000 in dividends, and she owned her home.

In August 2009 my brother became sole Power of Attorney. Medical reports from my mother's GP indicate that her capacity was already diminished at that time. Her GP stated to me (in 2014) that he had never been contacted by the solicitor witnessing mum's signature regarding mum's capacity to sign such a document, as was usual practice and known as a 'letter of comfort'. The solicitor's name also appeared as a director of a company of my mothers. This same solicitor became a solicitor the day before he witnessed mums signature on the new Power of Attorney. Did this solicitor have the skill and experience to deem my mother to be fully aware of what she was doing? Perhaps this solicitor was personally known by my brother?

My brother is also a solicitor.

By 2009 there were no records, no tax returns, no company accounts.

In December 2009 my mother took out a mortgage. Did the bank uphold their responsible lending obligation when my mother already had diminished capacity at that time? Why would my mother take out a mortgage when she had been financially secure?

By 2010 there was no income – over \$3m had disappeared.

In October 2012 my brother signed the 'Acceptance by Attorney' thereby enacting the Enduring Power of Attorney.

In January 2013 an 'Authority Form' to the Commonwealth Bank was completed in my brother's handwriting and signed by him and my mother which gave him access to her account. Mum had severe alzheimers at this stage. Did the bank ever question this authority?

In late 2013 my brother put my mother's house on the market. Discovering this by chance via a care agency contacting my sister to report my brother, a real estate agent and viewers being at mum's home and mum being clearly agitated, I called a meeting with my brother and sister in December 2013. My brother told me that this was to get a transparent market value of her house. My brother assured me that it was not up for sale and that he had no intention of selling it. He encouraged my sister and I to join him in putting mums house in our names. I wanted nothing to do with this. Did any real estate agent question my brother as to whether he was in breach of his fiduciary duties?

In January 2014 mums house was sold, unbeknownst to my sister and I. My brother entered into a lease agreement with the new owner placing mum on a 2 year lease. He was to pay \$2,000 per week.

On 15 January 2014 my mother, then aged 91 with alzheimers, was made a director of a company. On 31 January 2014 my brother ended being a director of the same company, thereby mum became the sole director. Is it legal to make a person who has no capacity a sole director of a company? Who would monitor this?

In August 2014 I became aware that \$12,000 was owed to one of mum's care agencies. This resulted in mum's care being terminated.

On 6 September 2014 I learnt by chance that my brother had sold mums home (in January 2014).

On 8 September 2014 I spoke with the indebted care agency who voiced their increasing concern that there was significant financial elder abuse happening and that my brother "was not a fit and proper person to be managing the affairs of my mother".

On 9 September 2014 I spoke with the Elder Abuse Helpline.

On 10 September 2014 I spoke with the new owner of my mother's home who informed me that rent was in arrears and he would be seeking to evict my mother.

On 10 September 2014 I made an urgent application to NCAT for a financial management order on the grounds of my mother being at risk of homelessness and financial elder abuse.

On 12 September 2014 I spoke with Aged Care Rights Service who advised me to apply to the supreme court to sue my brother for breaches of his obligations of attorney as he had not been acting for the benefit of the donor (mum).

On 19 September 2014 I attended the NCAT hearing guardianship division and was appointed financial manager along with my sister.

On 29 September 2014 mums Residential Tenancy Agreement was terminated.

From 28 September to 10 October 2014 I attended mum's home to pack up all of her and dads belongings as mum was being evicted. During this time I discovered a locked cash box which contained numerous cheque book stubbs. There were many, many amounts lent to my brother between 2005 to 2008 which totalled \$353,534.09. There is also a cheque butt dated 22.2.06 indicating a loan of \$9056.85 in the name of the solicitor who represented my brother at the NCAT hearing. There are many butts made out to different companies of my mothers/brothers. There are butts also made out for his personal use. These butts are both in mum's handwriting and my brothers. Have any of these loans ever been repaid? Who will act on my mother's behalf to determine this? Was my mother intimidated, bullied and deceived? How must she have felt?

On 13 October 2014 I made a complaint to ASIC – see attachment. (No further action taken).

On 17 October 2014 I made a complaint to the OLSC – see attachment. (No further action taken).

On 24 October 2014 I attended NCAT and the financial management of my mother's affairs was appointed to NSW Trustee and Guardian (TaG) due to the enormity of the matter and my limited ability to access information. (Awaiting action).

On 3 November 2014 I made a statement to the police – see attachment. (Awaiting action).

To date I have not learnt what has become of my mother's assets. For over a year at intervals I have contacted TaG and the detective allocated to mums case. The detective suggests that it is a civil matter but will keep the case open until he hears from TaG. The solicitor at TaG suggests that the detective should be pursuing the criminality of the case independent to her findings. TaG inform me that they are only interested in seeing if there is any money for mum (besides her pension).

Meanwhile my mother resides in an aged care facility when my father's wish was for her to stay in the family home with 24 hour care if needed and this is what he had scrupulously provided for.

It is a blessing that she is unaware of the reprehensible betrayal by her son.

Who will act on my mother's behalf to seek answers and to hold my brother accountable?

Thought 1: If my sister and I had agreed with my brothers proposal to put mums house in our names we very likely may have incurred outstanding debts racked up by our brother.

Thought 2: If I had not discovered by chance that mum's house had been sold which led to her being evicted, she would have been escorted from her property by the sheriff (and taken where?).

If each individual, company and organisation were more versed in elder abuse perhaps more due care would be taken to protect the vulnerable elderly.

If the elderly's capacity to make decisions was questioned, particularly by money lenders, real estate agents, solicitors, and police, such abuse may be diverted.

If there was mandatory reporting of elder abuse victims would be reduced.

If solicitors witnessing Power of Attorney documents were held accountable to guarantee their client was of sound mind when signing such documents....

Perhaps there needs to be a law that the aged person needs to be assessed by a gerontologist before signing documents.

Perhaps there should be no sole Power of Attorneys.

Perhaps any transaction by the Attorney above a certain amount or percentage, or not in keeping with the 'usual running of business', needs to be approved by an independant third party.

If it was not so difficult to hold attorneys accountable for their abuse of power and misconduct.....

I fully support this inquiry and urge there be consideration to applying a suitable law to protect the elderly.

I am also happy to appear before the committee if they should see fit and to provide further documents if necessary.

Thankyou for your attention to this matter.

Yours sincerely,