

From: Valeria Chomsky <[REDACTED]>
To: "jeffrey E." <jeevacation@gmail.com>
Subject: Fwd: your advice
Date: Wed, 30 May 2018 07:50:42 +0000

FYI.

No word from them yet.

Thanks.

----- Forwarded message -----

From: Noam Chomsky <[REDACTED]>
Date: Mon, May 28, 2018 at 6:07 PM
Subject: Fwd: your advice
To: Harry Chomsky <[REDACTED]>
Cc: Avi Chomsky <[REDACTED]>, Diana Chomsky <[REDACTED]>

I am re-sending the letter below, since it wasn't answered, and I would like to clear up this very painful affair -- which I do not understand -- as quickly as possible.

To repeat the essentials, concerning the marital trust, there are several options discussed in earlier letters. I won't again review the fact that the marital trust was set up so that funds would be available to the survivor, with what remains going to the children. Though that is a fact, it seems that your interpretation is different, though you have not responded to my repeated inquiries about that. But let's put that aside. On the basis of our letters, the options seem to be these:

1. You can resign and then you will have no further obligations and no fears about further liabilities from which you have to be protected. We can then return to the situation before I appointed you as trustee in my place. I will be the trustee. As before, there will be no problems about fiduciary responsibility, no concern about liability, no problem about funds that are needed, no lawyers or intrusive inquiries into finances.

Furthermore, you can be assured that after I die most of the trust will be added to your inheritance. Now that the radical depletion of my IRA has been overcome, and I have responsible financial advisers, there will be limited occasion to access the Trust, and my advisers will ensure that there are no distributions from it without my knowledge and that other requirements will be honored with regard to interest and other matters.

2. We can adopt your suggestion, leaving you in charge, in which case you will ensure that the entire Trust will go to you. To repeat the very simple logic, a few years ago, before I found out about it, my IRA was being very seriously depleted. Half of the mandatory withdrawal was being distributed to family, the other half was being used to pay management fees and taxes for the entire estate. Therefore, in order to pay Alex's medical bills and expenses for Wellfleet, I had to make extra withdrawals with an onerous tax payment. And since I also needed something to live on, I had to make still more withdrawals, with even further onerous tax payments. At that point I asked Max to release some funds from the marital trust for tax relief. You refused, demanding an intrusive and insulting financial accounting that no one with a shred of dignity would accept -- particularly under these remarkable circumstances. It follows that any request without such very clear justification will also be refused. So you can be assured of receiving the entire Trust. I also suggested an improvement: you can take all of it right now and we can dissolve the Trust.

3. We can pursue my suggestion: divide the Trust right now and dissolve it. To repeat, there are some arcane tax issues, but can easily be resolved, as your lawyer can explain to you, with common consent among the beneficiaries -- which means your consent.

These appear to be the options. I hope we can settle this quickly. As I have repeatedly explained with no response, I cannot expect what my father was able to enjoy, but at least I would like to end this particular horror as quickly as possible. Could you please, then, send me your specific suggestions.

Earlier letter below.

D

As usual, you ignored everything I wrote and are pursuing your own agenda. But this letter is nevertheless very helpful. I've been asking you repeatedly to clear the air and say exactly what you want instead of evading it in one way or another, and this does come close to that. It also finally explains clearly what I did not want to believe about your refusing my request for some funds for taxes a few years ago

You no doubt recall the circumstances. Unknown to me, my financial advisers had arranged to rapidly deplete my main source of support, my IRA, by distributing half of the mandatory withdrawal to family members and to use the rest for paying management fees and taxes for the entire estate. That meant that when I paid Alex's expenses, I had to withdraw over the limit, with exorbitant taxes. Same with any other funds for any family matters, and with Wellfleet payments well after I stopped using the house, again with exorbitant taxes. Of course I also needed to live, so that meant more withdrawals with exorbitant taxes. Under those conditions I requested some tax relief from the marital trust -- which, of course, was established on the understanding that it would be available to the survivor.

Your reaction, to my amazement, was to refuse, even under these remarkable circumstances, by imposing absurd conditions that no one with a shred of dignity could accept, no concern of yours. Of course, no such questions ever were on even the remote horizon when I was trustee, before choosing you to replace me, or on any other occasion when I arranged for funds to go to you, either as an ample inheritance or for regular expenses.

Your letter now makes your reasoning very clear. Your proposal is that you should remain in total control, evidently a matter of great importance for you. And following your principles, as exhibited with crystal clarity under even the extreme circumstances just described, you can ensure that the funds in their entirety will go to you, though I suppose in your kindness you might relax your strict regimen slightly when the day comes, as it must, when I am no longer in a position to retain a shred of dignity and to refuse an intrusive and humiliating interrogation.

However, there is a simpler way to realize your objectives, even more fully. You can resign as trustee -- of course possible, just as I did when I appointed you. We can then agree that you receive the entire funds right now, instead of waiting until I die, so that you can use them right now for whatever purposes you like. Plainly that's more efficient, and even more lucrative for you than your suggestion.

It's true that this is one possible proposal, as you suggest.

Another proposal is the one I suggested. True, there are some arcane tax issues, but these can easily be resolved, as your lawyer can explain to you, with common consent among the beneficiaries -- which means your consent.

There are, of course, other possibilities. I could pursue legal measures to have the trust used in the manner in which it was intended. I could also look into the disbursements that have been made to family members (so I have learned) without informing me, and could look into why I haven't been receiving any income from the trust for years (until I finally raised the question), and why investments were made the way they were done, yielding long-term returns that would be of no use for me, highly irregular for an elderly person -- which, as I wrote you, greatly surprised financial advisers I consulted when I finally began to pay attention. And, furthermore, why I never received any statements about what was going on for years, until I finally asked what is going on with the trust. And perhaps other matters that evidently concern you, as shown by your request for protection for past actions. But I haven't yet shifted to your domain and still retain some illusions about family relations.

There are other matters that I've written to you about several times, with no response, which means I presume that you do not want to hear them. They don't specifically have to do with this matter, so if you have gotten this far in the letter, you can stop here. But they are on my mind, and I want to clear the air -- if anyone wishes to look.

My father could die in peace, knowing his children would ensure that his wife would be taken care of. I don't have that luxury.

No lawyers or words were necessary. It was simply obvious that we would hand over to her what there was of an inheritance, the house and everything in it. And of course we were very pleased that he had joy and companionship in his last years.

Valeria and I are very happy together, apart from what you are doing, which is naturally extremely painful. She left her friends and family, and a professional life. I have almost no pension, as I described, and it terminates when I die. Accordingly, I have to deal with concerns that my father, luckily for him, never had to consider.

The situation is not only extremely painful, but in fact surreal. I could never have imagined that anything like this would happen in my last years.

----- Forwarded message -----

From: **Harry Chomsky** <[REDACTED]>
Date: Tue, May 22, 2018 at 2:32 PM
Subject: Re: Marital Trust
To: Noam Chomsky <[REDACTED]>

I'd like to put together a proposal that I think would address some of your needs and ease our communications. The proposal would give you some additional access to the trust assets. It would also include appointing a new independent trustee to replace Max. However, it would not terminate the trust, and I would remain as one trustee.

Are you interested in seeing such a proposal?

If you feel that it would be a good use of everyone's time, I will work with my lawyer Jillian to write up an outline of what I have in mind. We will send the outline to you and Rich, unless you would prefer we send it only to you.

You may want to consult a lawyer to learn more about why we can't just terminate the trust and split the assets as you suggested. If your lawyer disagrees with Jillian and feels that such a split would be viable, Jillian would be happy to discuss it with your lawyer.

On Mon, May 21, 2018 at 12:30 PM, Noam Chomsky <[REDACTED]> wrote:

Sorry, I made the same error as before. I'm finding it hard to shake the illusion that we are discussing things within a family, and are not characters in *Bleak House*. I'll try to remember. Below.

On Sun, May 20, 2018 at 9:19 PM, Harry Chomsky <[REDACTED]> wrote:

It sounds like you would like me to say yes or no to your proposal exactly as you have stated it, without further discussion. I can't do that. Here are some reasons:

1. It's not permitted under Massachusetts trust law.

Can you -- or perhaps your lawyer -- refer me to the part of Mass Trust Law that makes it illegal for beneficiaries to agree on distributing funds from a marital trust and then liquidate it? I can't find it.

1. I agreed to certain obligations when I became trustee, and I have to make sure to discharge them faithfully. Even if you tell me you don't care about my fiduciary responsibility, the law says I'm responsible anyway.

Your solemn obligations are no doubt impressive, but there is an easy way to put them to rest. Simply resign (permitted under Mass law) and then you will have no further obligations. We can then return to the situation before I appointed you to be a trustee, when I was a trustee and there were no problems about fiduciary responsibility – that was before the transition from family to *Bleak House*.

1. It's not specific. For instance, you mention dividing the trust into two parts, but you don't say what each part would consist of.

Correct. I left that for discussion, still laboring under my illusions. So I therefore suggest that you propose what you think would be an appropriate split and we can proceed from there.

1. It's not complete. For instance, you haven't proposed any way to shield us and Max from liability for past actions.

I hadn't realized that you are concerned that your past actions might make you legally liable. But this too can be handled easily. I'm sure that your lawyer can construct some document to protect you from whatever those past infractions were, and since I still labor under my old illusions, that will suffice.

However, given your assumptions, we should definitely have ironclad agreements, with batteries of lawyers and notaries and witnesses, including an agreement that you will not contest my will, something that had never crossed my mind before I learned about your assumptions – which, I admit, I'm still having trouble comprehending.

It might be possible to work out all of these problems and develop a legal, specific and complete agreement based on the framework you've proposed. Would you like to engage with me in some kind of process to attempt that? Other than having your lawyer talk to mine, do you have any suggestion about how to do so?

Very simple. Proceed as above

On Sat, May 19, 2018 at 2:26 PM, Noam Chomsky <[REDACTED]> wrote:

I'm glad that you find the idea interesting and think that you might consider it, though you have to consult lawyers first.

My own view is different. To me the proposal I suggested seems to be a very simple way of settling this matter, which to me is extremely troubling. I realize that this is just another case of a longstanding difference in the way we approach these problems, a difference that has been clear ever since we were discussing the interest on the loan from the Trust and found that we could not communicate because I mistakenly assumed that it was a discussion among family members while your letters made it very clear and explicit that you saw it as a legal issue to be settled among lawyers and Bainco, perhaps with a mediator in the adversary proceeding. All matters I find it very hard to comprehend, and to live with, but so be it.

So by all means consult with your lawyer, or perhaps a battery of lawyers, to make sure that your interests are properly protected. I don't need any lawyer's advice. The matter is perfectly clear and straightforward. So there is no reason for me to hire a lawyer to deal with the question and to have a lawyer contact yours and initiate a discussion in which we all participate.

The matter is very simple. We can proceed without delay if you agree to settle the issue in the simple manner that I suggested.

As for your proposals in your letter of March 29, as I wrote you, the letter was so shocking that it was hard for me to bring myself to respond, but I did, in detail, but decided not to send it. Perhaps I should. Will think about it.

As for your proposals, my response was the obvious one. I'm sorry for the stress you had to endure, but your efforts were a waste of time for reasons I had already fully explained before you undertook them. As I'm sure you recall, a few years ago, I requested tax payments from the marital trust when my IRA was being rapidly depleted by my advisers who were distributing half to family and using the other half to pay management fees and taxes for the entire estate, so that to pay Alex's medical expenses and the expenses for Wellfleet I had to withdraw excess funds with exorbitant taxes, all that before withdrawing even a cent to live on again with exorbitant taxes. Your response was to refuse the request unless I agreed to intrusive and insulting financial investigations -- of a kind I never considered when providing funds to you for something you needed. I made it clear and explicit at the time that I would not submit to this procedure. Since your efforts and proposals simply repeat the same procedure, they were a waste of time.

There were some things in your letter that were correct. You're right that despite what has happened, I'm still a "wealthy man," with income well above the median, though lacking a pension and accumulated property, not at the level of my peers. Furthermore, I can supplement my income by teaching large undergraduate courses, something I'd never done and that is not that common for people approaching 90, but something that I enjoy. And you too are a wealthy man, for the same reasons: the reasons are that I've worked hard all my life, lived fairly simply (and live even more simply today), and was therefore able to put aside enough money to ensure that my children and grandchildren are very well cared for, indefinitely.

But I again suggest that we put all of this aside, and deal quickly and simply with what appears to be the one outstanding issue: dividing the Marital trust and then dissolving it, all very simple, needing no lawyers, at least on my part.

D

On Fri, May 18, 2018 at 1:44 PM, Harry Chomsky <[REDACTED]> wrote:

This is an interesting idea. We could consider it further, but I would need the advice of my lawyer — and I assume you would want your own lawyer's advice as well — to ensure that any agreement we reach is consistent with Massachusetts law and satisfies the interests, needs, and obligations of everybody involved. Perhaps, as a next step, you could ask your lawyer to contact mine and begin a discussion in which we all participate.

I'm also curious to hear your thoughts about the proposals I suggested in my message on March 29th.

On Thu, May 17, 2018 at 10:05 AM, Noam Chomsky <[REDACTED]> wrote:

As I wrote a little while ago, I did write a long response to your last -- deeply depressing -- letter, but decided not to send it. I may return to that letter later but will keep to some factual matters that ought to be cleared up.

But now I'm writing just about one point, which seems to be the core of the problem -- a problem, which, again, I don't understand. But let's put that aside, though I hope we can clear it up soon. All of this is a painful cloud that I never would have imagined would darken my late years.

The core issue seems to be the marital trust. I've explained how M and I actually set it up with Eric, which seemed to us just plain common sense. I've also explained Max's different interpretation. I've asked you for yours, but haven't heard it. But let's put that aside too, and just resolve the matter, as can be done very simply -- with no need for lawyers to explain the fiduciary responsibility of the trustee I appointed years ago to replace me, something I never paid any attention to before.

The simple solution is to divide the trust into two parts. One part will go to you, to use as you wish. One part will go to me, for me to use without any investigations of my financial situation and other such intrusions that I won't accept. Then the trust can simply be dissolved, and it is all over.

So I suggest that we proceed this way, and end the whole matter -- at least, whatever it is that I understand about what is of concern to you.

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