

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 9, 2006

A. GAIL PRUDENTI, P.J.
GABRIEL M. KRAUSMAN
WILLIAM F. MASTRO
REINALDO E. RIVERA, JJ.

2005-05250

DECISION & ORDER

In the Matter of Nicholas S. Nicklis, deceased.
Elizabeth Anne Nicklis, appellant; Carol G.
Nicklis, et al., respondents.

(File No. 335006)

Robert S. Perskin, Bayside, N.Y. (Mitchell L. Perry of counsel), for appellant.

Greenfield Stein & Senior, LLP, New York, N.Y. (Norman A. Senior and Elana L. Danzer of counsel), for respondent.

In a probate proceeding, the petitioner appeals, as limited by her brief, from so much of an order of the Surrogate's Court, Nassau County (Riordan, S.), dated April 27, 2005, as denied those branches of her motion which were to disqualify the respondents from serving as co-executors and co-trustees, for an immediate accounting, and for an award of attorney's fees.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the facts of this case, the Surrogate's Court properly denied that branch of the petitioner's motion which was to disqualify the respondents from serving as co-executors and co-trustees (*see* SCPA 711). A testator or testatrix has the right to determine who is most suitable among those legally qualified to settle his or her affairs, and that selection is not to be lightly discarded (*see Matter of Venezia*, 25 AD3d 717, 718). We find no basis to disturb the Surrogate's Court's determination.

December 26, 2006

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MATTER OF NICKLIS, DECEASED

The petitioner's remaining contentions are without merit.

PRUDENTI, P.J., KRAUSMAN, MASTRO and RIVERA, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James Edward Pelzer
Clerk of the Court