

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

D27097
G/prt

_____AD3d_____

Submitted - March 3, 2010

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2009-06457

DECISION & ORDER

In the Matter of Calvin E. Benjamin, deceased.
Janet Benjamin, et al., respondents; George B.
Headley, nonparty-appellant.

(File No. 905/03)

George B. Headley, Brooklyn, N.Y., nonparty-appellant pro se.

Lee M. Nigen, Brooklyn, N.Y., for respondents William Gilkes, Albert Gilkes, and
Clarisa Gilkes.

In a probate proceeding in which the successor trustees of a living trust petitioned for the judicial settlement of their account, George B. Headley, the attorney for the successor trustees, appeals, as limited by his brief, from so much of a decree of the Surrogate's Court, Kings County (Johnson, S.), dated May 1, 2009, as, upon a decision of the same court dated November 7, 2008, fixing his attorney's fee in the principal sum of only \$28,698, directed him to refund the sum of \$25,437 to the trust.

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

The Surrogate "bears the ultimate responsibility to decide what constitutes reasonable legal compensation" in estate matters regardless of whether the parties agreed to the amount of legal fees (*Matter of Verplanck*, 151 AD2d 767, 767; *see Matter of Phelan*, 173 AD2d 621). Here, the Surrogate's Court providently exercised its discretion in fixing the appellant's attorney's fee in the principal sum of only \$28,698, and directing him to return to the trust the sum of \$25,437, representing an overpayment. The Surrogate properly considered the relevant factors, and its

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emphasis on the size of the trust estate was warranted under the circumstances (*see Matter of Szkambara*, 53 AD3d 502; *Matter of Murphy*, 248 AD2d 475; *Matter of Kaufman*, 26 AD2d 818, *affd* 23 NY2d 700; *Matter of Potts*, 213 App Div 59, *affd* 241 NY 593).

The appellant's remaining contentions are without merit.

FISHER, J.P., COVELLO, LOTT and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court