

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

D36744
G/kmb

_____AD3d_____

Argued - November 8, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2011-02004

DECISION & ORDER

In the Matter of Claire S. Albertson Fitzgerald, deceased.
Gil Santamarina, petitioner-respondent; Jeffrey A. Asher,
appellant; Anthony Rahmanan, respondent-respondent.

(File No. 2950/81)

L'Abbate, Balkan, Colavita & Contini, LLP, Garden City, N.Y. (William T. McCaffery and Jessica E. Zimmerman of counsel), for appellant.

In a proceeding, inter alia, to revoke letters of trusteeship previously issued to Anthony Rahmanan, and to hold Jeffrey A. Asher jointly and severally liable with Anthony Rahmanan for the alleged wrongful conduct of Anthony Rahmanan, Jeffrey A. Asher appeals from so much of an amended order of the Surrogate's Court, Westchester County (Scarpino, Jr., S.), dated January 7, 2011, as granted the petition insofar as asserted against him.

ORDERED that the amended order is reversed insofar as appealed from, on the law, with costs, and the petition insofar as asserted against Jeffrey A. Asher is denied.

Under Limited Liability Company Law § 1205(a), a member of a professional service limited liability company "shall be personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or her or by any person under his or her direct supervision and control while rendering professional services on behalf of such limited liability company." Here, the petition does not allege that Jeffrey A. Asher engaged in or directly supervised any of the allegedly wrongful conduct attributed to Anthony Rahmanan. Rather, the sole allegation against Asher was that he was a member of Rahmanan Asher, PLLC; that allegation, however, does

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not provide a sufficient basis upon which to hold him jointly and severally liable with Rahmanan (see *Rothstein v Equity Ventures*, 299 AD2d 472, 474; cf. *Kew Gardens Hills Apt. Owners, Inc. v Horing Welikson & Rosen, P.C.*, 35 AD3d 383, 386). Accordingly, the Surrogate's Court should have denied the petition insofar as asserted against Asher.

DILLON, J.P., LEVENTHAL, CHAMBERS and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court