

<b>Matter of Dorfsman</b>
2016 NY Slip Op 32026(U)
July 11, 2016
Surrogate's Court, Nassau County
Docket Number: 355703D
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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**Accounting by Elissa Dorfsman as the Executor  
of the Estate of**

**LOUIS DORFSMAN,**

**Deceased.**

**DECISION AND ORDER**

**File No. 355703D**

**Dec. No. 31566**

**31567**

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**PRESENT: HON. MARGARET C. REILLY**

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In connection with a judicial accounting, the following papers were considered in the preparation of this decision:

Motion to Renew and Motion to Reargue.....	1
Affirmation in Support of Motion to Renew and Reargue. ....	2
Cross-Motion for Sanctions. ....	3
Reply Affirmation in Further Support of Motion to Renew and Motion to Reargue and in Opposition to Cross-Motion for Sanctions. ....	4
Letter from J. Hillman, Esq., to the Court, dated April 26, 2016. ....	5

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**I. PROCEDURAL HISTORY**

Before the court is: (A) a motion filed on behalf of the petitioner, Elissa Dorfsman, for an order granting leave to reargue and leave to renew the motion for summary judgment filed by the objectants, Neil Dorfsman and Mitchell Dorfsman; and (B) cross-motion for sanctions on Elissa Dorfsman, filed on behalf of the objectants, Neil Dorfsman and Mitchell Dorfsman. In addition, the court has agreed to consider: (C) a written request by the parties to have all unresolved issues submitted for review and determination on paper submissions without the need for a hearing.

## II. BACKGROUND

Louis Dorfsman (the decedent) died on October 22, 2008, leaving a last will and testament dated September 22, 2004. He was survived by his wife, Ann Hysa Dorfsman (Ann), and by his daughter, Elissa Dorfsman (Elissa, or the petitioner) and his two sons, Neil Dorfsman (Neil) and Mitchell Dorfsman (Mitchell) (collectively, the objectants). The will was admitted to probate on April 28, 2009. It names Elissa, Neil and Mitchell as co-executors of the estate and as co-trustees of the trust created under the decedent's will. Letters testamentary issued to all three co-executors on April 28, 2009. Under Article Second of the decedent's will, all tangible personal property was to pass to the decedent's wife. Ann post-deceased her husband and her disputed estate in Pennsylvania is currently being administered by a court-appointed administrator.

The objectants filed an accounting in connection with decedent's estate and also filed a petition to compel the petitioner to account as co-fiduciary of the estate. The petitioner defaulted on the objectants' accounting petition and, on June 5, 2013, filed the present petition and judicial accounting, which were subsequently amended.

While the accounting filed by the petitioner was in large measure identical to the accounting filed by the objectants, there were several points on which the accounts differ, including the ownership of certain pieces of artwork. Elissa took the position and testified at her SCPA §2211 examination that certain artwork had been gifted to her by the decedent in November 2007: a pen and ink illustration by Andy Warhol (the Warhol); two Japanese art renderings (the Japanese art); six Sumi-e paintings (the Sumi-e

paintings); and three laminated scenes of Old World Jewish rituals (the laminated art) (collectively, the artwork). Elissa supported her position with a letter, dated November 25, 2007 and her personal recollection of conversations between herself and the decedent. Neil and Mitchell filed objections to Elissa's account, including an objection to her claim that the artwork had been gifted to her by the decedent.

The objectants brought a motion seeking summary judgment under CPLR §3212 on certain of their objections to Elissa's account as co-executor of the decedent's estate, including the position taken by the objectants that the artwork was an estate asset that had never been gifted to Elissa. In Dec. No. 31010, issued on November 20, 2015 (the prior decision), the court granted summary judgment to the objectants in connection with the artwork, specifically noting that CPLR § 4519 barred the petitioner from testifying about any personal transactions or communications with the decedent, which prohibition extended to documents if the documents signed by the decedent could not be authenticated by a source other than an interested witness's testimony concerning a transaction or communication with the decedent. The court found that the petitioner failed to submit any admissible evidence to support the gift claim by clear and convincing evidence.

### **III. RELIEF REQUESTED**

#### **A. Relief Sought by Petitioner**

Elissa now seeks leave to reargue and leave to renew the motion for summary judgment, to the extent that the court granted that portion of the motion which sought a determination that the artwork is estate property.

#### **B. Relief Sought by Objectants**

Neil and Mitchell ask the court for an order granting: their cross-motion for sanctions against Elissa; denying Elissa's motion to renew and reargue the decision of this court dated November 20, 2015; or, alternatively, upon reargument and renewal, granting summary judgment to the objectants and awarding costs and damages to them, including the cost of opposing the motion filed by Elissa.

#### **C. Additional Relief**

The court was advised, by a letter from counsel to the objectants, that all parties had agreed to waive a hearing and submit for review and determination on paper submissions all of the remaining issues and unresolved requests for relief in Elissa's accounting. The three issues which required a hearing, pursuant to the prior decision, were: (1) the objectants' claim that the petitioner should be surcharged for the costs totaling \$9,350.00 associated with archiving and storage of Decedent's Life Works at Diane Publishing; (2) the objectant's request that the petitioner be denied commissions; and (3) the parties' request that their legal fees to Ruskin Moscou Faltischek, P.C. and Moritt Hock & Hamroff LLP be fixed.

The parties also asked the court to make a determination concerning the following items of relief requested in the petitioner's accounting that remain unresolved: (4) commissions to be paid to the objectants; (5) payment to Rispoli & Co. CPA's, P.C., for reasonable accounting fees; (6) approval of payment to POD Storage in the amount of \$1,631.32; (7) the petitioner's request for reimbursement for payment of estate administration expenses in the amount of \$59,692.18; (8) the petitioner's request that the objectants relinquish and deliver to the petitioner any and all property and other assets of the decedent in their possession and under their control belonging to the decedent's estate, including items listed in Schedule J of the objectants' accounting; and (9) the fixing of attorneys' fees for Davidow, Davidow, Seigel & Stern, LLP and Cullen & Dykman.

Pursuant to the court's responsive letter to all counsel, dated May 4, 2016, the court will delineate below which matters may be decided without a hearing, decide those matters, and set a date for those issues which require a hearing.

#### **IV. ANALYSIS**

##### **A. Motion for Leave to Reargue and Leave to Renew**

A motion for leave to renew must be based upon new facts not presented on the prior motion that would alter the court's earlier determination (CPLR §2221[e]). A movant on a motion to renew must demonstrate a reasonable justification for not placing such alleged additional facts before the court on the original motion (CPLR §2221[e] [3]). The Second Department has repeatedly held that the additional evidence offered on a motion to renew must be either newly discovered or have been unavailable to the movant

at the time of the prior application (*see Winograd v Neiman Marcus Group*, 11 AD3d 455 [2d Dept 2004]; *Seltzer v City of New York*, 288 AD2d 207 [2d Dept 2001]; *Delvecchio v Bayside Chrysler Plymouth Jeep Eagle*, 271 AD2d 636 [2d Dept 2000]).

A motion to reargue is not based upon any new facts, but seeks to convince the court that it overlooked or misapprehended the facts or the law on the prior motion, or for some reason mistakenly arrived at its earlier decision (CPLR § 2221 [d]; *see Bolos v Staten Island Hosp.*, 217 AD2d 643 [2d Dept 1995]; *Schneider v Solowey*, 141 AD2d 813 [2d Dept 1988]). A motion to reargue is not to be used as a means by which an unsuccessful party is permitted to argue again the same issues previously decided (*see William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 [1st Dept 1992]; *Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]), nor does it provide an unsuccessful party with a second opportunity to present new or different arguments from those originally asserted (*see Giovanniello v Carolina Wholesale Off. Mach. Co., Inc.*, 29 AD3d 737 [2d Dept 2006]; *Gellert & Rodner v Gem Community Mgt., Inc.*, 20 AD3d 388 [2d Dept 2005]).

Elissa's motion for leave to reargue and leave to renew the motion for summary judgment concern this court's determination on a motion for summary judgment that the artwork is the property of the decedent's estate. She makes the following arguments:

(1) New Facts Exist that Would Change the Outcome of the Prior Motion

Elissa argues that new facts exist that would change the court's prior determination, because after the motion's submission date Elissa discovered new

evidence in the records maintained by Ann that should have been considered by the court. According to Elissa, on April 25, 2015, the court-appointed administrator for Ann's estate in Pennsylvania, Dianne C. Magee (Magee) sent a letter to the parties' respective Pennsylvania counsel which referenced assets contained in two storage units. On May 21, 2015, Magee, together with Elissa and her Pennsylvania counsel, Jeffrey Ogren, Esq. (Ogren), visited the storage units and located file cabinets maintained by Ann. On June 10, 2015, Magee's intern, together with Elissa and Ogren, visited the storage units and this time they retrieved three banker's boxes of records, taken into Magee's possession. Two days later, Elissa and Ogren visited Magee's office and found two copies of handwritten letters drafted by the decedent and copies of the typewritten transcriptions of the letters, dated July 24, 2000 and February 16, 2003 (Ex.s A and B). Elissa argues that the copies of these letters, found among Ann's assets, support Elissa's position that the decedent routinely wrote handwritten letters that were then typed by Ann on her computer. She maintains that these unrelated letters support the authenticity of the November 25, 2007 letter which Elissa asserts was written by the decedent, gifting the Warhol and other artwork to Elissa, and then typed by Ann and signed by the decedent. Elissa does not claim that the addressees and subject matters of the submitted letters are pertinent in any way to the present proceeding.

Further evidence (Ex. C) now submitted by Elissa is an envelope from J.N. Bartfield addressed to the decedent, upon which is a handwritten note. The note states:

“Sis<sup>1</sup> - I sold them some art - if you wanted to check the value of the Japanese pornography and the Warhol for an idea of their value?” Elissa states that the envelope was located with the Warhol, but that she had overlooked it until after the motion for summary judgment was submitted for decision.

In the prior decision, the court refused to consider these items because they were submitted beyond the time-frame permitted by CPLR §2214(b). Elissa now maintains that the evidence produced as Ex.s A and B (two handwritten and transcribed letters unrelated to this proceeding) and Ex. C (an envelope with a note that Elissa states was with the Warhol), are new facts concerning the decedent’s gift to her which would change the court’s prior determination. Elissa’s position is that had the court considered this evidence, the outcome of the motion would have been different.

In response, counsel for Neil and Mitchell first note that the petitioner herself offered no sworn testimony in support of her motion, relying instead on counsel’s affidavit. Elissa admits that the envelope with the note (Ex. C) was in her sole possession since 2007. In connection with the letters (Ex.s A and B) the objectants argue that Elissa made no effort to serve discovery requests or subpoenas to obtain the documents in the storage units for Ann’s estate prior to the submission of the motion for summary judgment.

The proponent of a gift must prove the elements of intent, delivery and acceptance by clear and convincing evidence (*Gruen v Gruen*, 68 NY2d 48 [1986]). This court, in

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<sup>1</sup>Elissa maintains that “Sis” was the decedent’s term of endearment for her.

the prior decision, found that “petitioner has not submitted any admissible evidence to support the gift claim by clear and convincing evidence [citations omitted].” The submission of photocopies of letters unrelated to the alleged gift and an envelope with a handwritten note asking about checking on the values of some of the artwork does not change that determination. The branch of the motion seeking leave to renew is therefore denied.

(2) The Court Overlooked or Misapprehended Matters of Fact or Law

The court found that CPLR §4519 (the Dead Man’s Statute) barred Elissa from testifying about her personal communication or transactions with the decedent. Counsel for Elissa argues that Neil and Mitchell waived the protection of the Dead Man’s Statute when they elicited testimony from Elissa at her examination before trial concerning the transaction that Elissa claimed was a gift of artwork from the decedent to her, and her communication with the decedent regarding that transaction, including testimony from Elissa about the November 25, 2007 letter. The argument is that Neil and Mitchell “opened the door” to Elissa’s testimony concerning that transaction, and that Elissa’s testimony regarding the transaction and her communications with the decedent should have been admissible to prove the decedent’s intent to gift the artwork to Elissa.

In granting summary judgment to Neil and Mitchell in connection with the artwork, the court said the following:

“CPLR 4519 is implicated as CPLR 4519 bars petitioner from testifying about any personal transactions or communications with the decedent. This prohibition extends to documents if the documents signed by the decedent

cannot be authenticated by a source other than an interested witness's testimony concerning a transaction or communication with the decedent. In the instant case, petitioner has not submitted any admissible evidence to support the gift claim by clear and convincing evidence (citations omitted)."

The objectants argue that their questioning of Elissa during an examination before trial about her claim that the decedent gifted the artwork to her did not result in a waiver of the Dead Man's Statute; a waiver would only have been triggered by the introduction of barred testimony at the trial.

"New York's Dead Man's Statute by its terms makes testimony by an interested witness "concerning a personal transaction or communication between the witness and the deceased" excludable only "[upon] the trial of an action or the hearing upon the merits of a special proceeding" (CPLR 4519). The executor does not waive rights under the statute by taking the opponent's deposition. This subsidiary rule, that the statute may not be asserted or waived until the trial, is dictated by the very language of the New York statute" (*Phillips v. Joseph Kantor & Co.*, 31 NY2d 307, 313 (1972)).

The court agrees with the objectants on this issue. The Dead Man's Statute was not waived as a result of questioning Elissa about her claim in the context of an examination pursuant to SCPA §2211.

### (3) The Court Lacked Jurisdiction

The assertion made by Elissa, that this court does not have jurisdiction over the artwork, is based solely on Elissa's position that the artwork was gifted to her by the decedent and moved to Pennsylvania prior to the death of the decedent. Counsel for Neil and Mitchell argue that the physical location of an item of personal property belonging to an estate has no bearing on the court's jurisdiction.

The claim that this court lacks jurisdiction can only be based upon a determination that a completed gift of the artwork was made by the decedent to Elissa in 2007, effectively removing the artwork from the decedent's probate estate and thus from this court's jurisdiction. No such determination has ever been made.

(4) The Court Overlooked or Misapprehended the Law of Estoppel

Elissa maintains that Neil and Mitchell are barred from taking a position in connection with her accounting proceeding that is contrary to the position they took in their own accounting proceeding, which preceded hers, and which did not list the artwork in question, particularly the Warhol, as an estate asset, despite the fact that they knew about its existence. Elissa argues that the court was incorrect in stating that Neil and Mitchell listed the Warhol and the other artwork as estate assets.

In response, counsel for Neil and Mitchell note the court's finding, in the prior decision, that "[c]ontrary to petitioner's contention, objectants did dispute any alleged gift of the artwork to petitioner in Schedule J of Objectants' Accounting . . . ."

In view of the language contained in the objectants' Schedule J, there is no basis for the court to revisit this issue.

In a second argument, Elissa argues that the court made a mistake in applying the doctrine of estoppel to her, incorrectly holding that Elissa was estopped from taking a position concerning the gift of artwork that differs from the position she took on the decedent's 2007 gift tax return.

In its prior decision, the court correctly found that since the petitioner failed to include the artwork on the 2007 gift tax return that she signed and that was prepared by her counsel, she was subsequently estopped from taking a position in litigation which is contrary to that previously taken on a tax return. The branch of the motion seeking leave to reargue is therefore denied.

### **B. Cross-Motion for Sanctions**

The objectants argue that the present motion filed by the petitioner is no more than a tactical roadblock, raising the same arguments that were previously rejected by this court. The issues of jurisdiction, estoppel and the application of the Dead Man's Statute were fully addressed and resolved in the prior decision. The court determined that the petitioner had not met her burden of proving, by clear and convincing evidence, that the decedent had made a completed gift of the artwork to her. The objectants argue the new evidence offered has no bearing on the question of the gift and, in any event, all of the evidence was in existence when the prior motion for summary judgment was submitted.

Sanctions are governed by Rule 130-1.1 of the Rules of the Chief Administrator, which permits the court, in its discretion, to award costs and fees that result from frivolous conduct. Conduct is defined as frivolous in this section if it:

- “(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the party” (22 NYCRR § 130-1.1 [c]).

The objectants point to the conduct of the petitioner as the basis for sanctions, arguing that she has disregarded her fiduciary duties and waged a personal battle against the objectants, citing these acts:

1. The petitioner removed estate assets from New York.
2. The petitioner’s counsel consented to the temporary relief of a restraining order and subsequently disavowed the consent.
3. Even after receiving this court’s prior decision, the petitioner continues to refuse to return the artwork to New York.
4. The petitioner filed a forged letter, made bogus reimbursement requests, deposited an estate tax return check into her personal account, acted contrary to signed releases, and effectively froze estate assets.

In connection with the present motion for leave to reargue and leave to renew, the court finds that the motion, although denied, was based in part on what Elissa believed to be new evidence, and therefore was not frivolous. The other issues underlying the request for sanctions will be addressed at a hearing, discussed below.

### C. Additional Relief

Counsel for the objectants wrote to the court on April 26, 2016, advising the court that all parties had agreed to submit the following issues to the court for review and determination on paper submissions:<sup>2</sup>

(1) Issues that were to have been determined at a hearing, pursuant to the prior decision:

(a) Objectants' claim that the petitioner should be surcharged for the costs totaling \$9,350.00 associated with archiving and storage of Decedent's Life Works at Diane Publishing.

In the prior decision, at page 6, the court found that this issue could not be decided on the conflicting papers. A hearing is required.

(b) Objectant's request that the petitioner be denied commissions.

In the prior decision, at page 6, the court found that this issue required a hearing. Generally, a court can only deny statutory commissions to a fiduciary upon a finding of misconduct, breach of fiduciary duty, or similar misfeasance (*Matter of Gregory Stewart Trust*, 109 AD3d 755, 757 [1st Dept 2013]; see *Matter of Saxton*, 274 AD2d 110, 121 [3d Dept 2000]). In the context of the hearing, the court will consider the objectants' requests that the court deny executor's commissions to Elissa and charge her with sanctions (for conduct other than the filing of this motion).

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<sup>2</sup>By letter to the court dated June 2, 2016, counsel for the objectants agreed to the relief requested.

(c) The parties' request that their legal fees to Ruskin Moscou Faltischek, P.C., and Moritt Hock & Hamroff LLP, be fixed.

In the prior decision, at page 6, the court indicated that this request would await the hearing, when the totality of fees to be charged to the estate could be fully assessed. However, if all parties agree and all counsel waive a hearing, the question of fees can be determined on written submissions (*see* 22 NYCRR § 207.45).

Affirmations of services were submitted to the court by Ruskin Moscou Faltischek, P.C. for services rendered through September 29, 2012 in connection with the objectants' accounting proceeding and in connection with the objectants' petition to compel Elissa to account; the court does not have an affirmation from counsel for services rendered in connection with the petitioner's account. No other affidavits of services rendered have been filed by attorneys or accountants.

The court directs the law firms of: (i) Ruskin Moscou Faltischek, P.C.; (ii) Moritt Hock & Hamroff LLP; (iii) Davidow, Davidow, Seigel & Stern, LLP; and (iv) Cullen & Dykman, along with the accounting firms of (i) Rispoli & Co., CPA's, P.C.; and (ii) Jerald M. Lane, CPA, to submit affidavits of services as soon as possible, but no later than 30 days following the conclusion of the hearing to be conducted on the unresolved issues, after which the court will consider and fix the fees of the attorneys and accountants who provided services in connection with the administration of the decedent's estate.

(2) Relief requested in the petitioner's accounting that remains unresolved:

(a) The petitioner's request for a determination and approval of commissions to be paid to the objectants.

Petitioner did not file objections to the objectants' account. Accordingly, objectants' commissions are approved, subject to audit.

(b) The petitioner's request for approval of payment to Rispoli & Co. CPA's, P.C., for reasonable accounting fees.

The fee will be determined upon the submission of affidavits of services from all attorneys and accountants, as set forth in paragraph (C) (1) (c) above.

(c) The petitioner's request for approval of payment to POD Storage in the amount of \$1,631.32.

In their objections to Elissa's account, the objectants, in paragraph (9), objected to this payment. Originally, this item was shown on Schedule C-I in the amount of \$1,710.97. Elissa filed a copy of a document titled "Transaction Summary" from PODS, showing total charges of \$1,170.97 (two of the digits were reversed in the number shown on Schedule C-1). Elissa then amended her account, and this item was changed to \$1,631.32.

The court lacks sufficient information to reach a determination on the objection to \$1,631.32 based upon the documents submitted. This objection will be addressed at the hearing.

(d) The petitioner's request for reimbursement for payment of estate administration expenses in the amount of \$59,692.18.

According to the affirmation to amend the petitioner's accounting, filed with the court on September 6, 2013, this requested reimbursement amount is based upon the following items, some of which have already been determined, or will be determined at the hearing, or will be determined upon the submission of affidavits of legal and accounting services provided, as set forth in paragraph (C) (1) (c) above:

(i) North Shore Monuments - Fee for Headstone \$ 850.00

There was no objection to this specific item shown on amended Schedule C-1. Reimbursement of the unpaid amount is approved.

(ii) Bill Wurtzel - Fee for Design of Headstone \$ 500.00

There was no objection to this specific item shown on amended Schedule C-1. Reimbursement of the unpaid amount is approved.

(iii) Diane Publishing - Fee Advance For Archiving Life Works \$ 4,710.00

This fee will be determined at the hearing, to be considered as a part of the total costs associated with archiving and storage of Decedent's Life Works at Diane Publishing.

(iv) POD Storage \$ 1,631.32

As discussed above in paragraph (C) (2) (c) above, this amount will be addressed at the hearing.

(v) Extra Space Storage Units \$ 9,750.86

In their objections to Elissa's account, the objectants, in paragraph (15), objected to this payment. The court lacks sufficient information to reach a determination on this objection. The objection will be addressed at the hearing.

(vi) Jerald M. Lane, CPA \$ 2,250.00

This fee will be determined upon the submission of affidavits of services from all attorneys and accountants, as set forth in paragraph (C) (1) (c) above.

(vii) Moritt Hock & Hamroff LLP - Legal Services \$25,000.00

This fee will be determined upon the submission of affidavits of services from all attorneys and accountants, as set forth in paragraph (C) (1) (c) above.

(viii) Cullen & Dykman, LLP - Legal Services \$15,000.00

This fee will be determined upon the submission of affidavits of services from all attorneys and accountants, as set forth in paragraph (C) (1) (c) above.

(e) The petitioner's request that the objectants relinquish and deliver to the petitioner any and all property and other assets of the decedent in their possession and under their control belonging to the decedent's estate, including items listed in Schedule J of the objectants' accounting.

The court denies this request and notes that the objectants cannot remove estate property from New York State without this court's prior approval (*see* SCPA 711 [7]).

(f) The awarding of reasonable attorneys' fees for Davidow, Davidow, Seigel & Stern, LLP and Cullen & Dykman.

These fees will be determined upon the submission of affidavits of services from all attorneys and accountants, as set forth in paragraph (C) (1) (c) above.

## V. CONCLUSION

A. The motion filed on behalf of the petitioner, Elissa Dorfsman, for an order granting leave to reargue and leave to renew the motion for summary judgment filed by the objectants, Neil Dorfsman and Mitchell Dorfsman, is denied in its entirety.

B. The cross-motion for sanctions on Elissa Dorfsman, filed on behalf of the objectants, Neil Dorfsman and Mitchell Dorfsman, is denied as to sanctions for bringing the present motion.

C. Legal and accounting fees will be fixed by the court after the submission of affidavits of service from all counsel and the accountant, which affidavits are to be submitted as soon as possible, but no later than 30 days following the conclusion of the hearing to be conducted by this court on the remaining unresolved issues.

D. The objectants' commissions are approved, subject to audit.

E. The court approves the petitioner's request for reimbursement in connection with the following expenditures: North Shore Monuments, fee for headstone \$850.00; and Bill Wurtzel, fee for design of headstone \$500.00.

F. The court denies the petitioner's request that the objectants relinquish and deliver to the petitioner any and all property and other assets of the decedent in their possession.

G. The court has determined that with respect to the remainder of the relief sought in the cross-motion, and in the letter dated April 26, 2016, in which counsel advised the court that all parties had agreed to submit certain issues to the court for review and determination on paper submissions, the following issues will be addressed at the hearing:

(1) The objectants' request that Elissa be: (a) denied commissions (*see* [C] [1] [b] above); and (b) charged with sanctions, on grounds other than the present motion (*see* [B] above).

(2) The objectants' request that the petitioner be surcharged for the costs totaling \$9,350.00 associated with archiving and storage of Decedent's Life Works at Diane Publishing (*see* [C] [1] [a] above).

(3) The objection to petitioner's request for approval of reimbursement for payment to POD Storage in the amount of \$1,631.32 (*see* [C] [2] [c] above)

(4) The objection to the Diane Publishing fee advance of \$4,710.00 for archiving Life Works (*see* [C] [2] [d] [iii] above).

(5) The objection to the petitioner's request for reimbursement for the amount of \$9,750.86 paid to Extra Space Storage Units (*see* [C] [2] [d] [v] above).

A trial shall be scheduled after a note of issue is filed (22 NYCRR §207.29). A control date conference is scheduled for September 8, 2016 at 10:00 a.m.

This is the decision and order of the court.

Dated: July 11, 2016  
Mineola, New York

**E N T E R:**

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**HON. MARGARET C. REILLY**  
**Judge of the Surrogate's Court**

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