

Matter of DeLuca (Marra)
2016 NY Slip Op 32028(U)
August 1, 2016
Surrogate's Court, Nassau County
Docket Number: 357165B
Judge: Margaret C. Reilly
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**Accounting of Jeffrey E. DeLuca, As Administrator of the
Estate of**

**DECISION
File No. 357165B
Dec. No. 31698**

EDWIN MARRA, JR.,

Deceased.

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

The Account, Petition and Citation on Accounting	1
Affirmation to Amend Account	2
Affirmation of Legal Services	3
Affidavit of Tax Services	4
Report and Final Report of Guardian Ad Litem	5
Decision of the Court dated February 29, 2016	6

Submitted for review is an accounting filed by the Public Administrator in the estate of Edwin Marra, Jr. The court must also address the outcome of the hearings on kinship. The Public Administrator seeks approval of commissions, attorneys’ fees and accountant’s fees, authorization to distribute the net estate to the New York State Comptroller on account of unknown kin of the decedent, and a release and discharge of the surety. The citation was originally issued in 2011 and the amounts requested in the current affirmation of legal services and affidavit of tax services are substantially larger than originally requested. The attorney for the Public Administrator filed an affirmation to amend the account, but it is unclear whether the document was served on any of the parties. As such, the attorney for the Public Administrator is directed to secure the

issuance and service of a supplemental citation. The matter will then be submitted for a final determination of the accounting. This decision will determine only the issue of kinship.

The decedent, Edwin Marra, Jr., died a resident of Nassau County on February 22, 2009. Letters of administration were issued to the Public Administrator on August 12, 2009. This accounting is the first and final accounting. The summary statement shows charges to the accounting party of \$371,989.30 and credits in the total amount of \$228,026.97, leaving a balance of \$143,962.33.

Objections to the accounting were filed by Louise Cornetta, Matthew Cornetta, Donald LaRosa, Patricia Marra and Rosemary Roggenkamp.

All parties at the hearing stipulated to waive the report of the referee and to allow kinship issues to be decided by the court based upon the transcript of the hearing, the documentary evidence and the arguments made by the claimants and the guardian ad litem, representing the interests of unknown distributees.

John Cornetta and Susan Caruso testified at the hearing.

In order to establish their rights as distributees, claimants in a kinship proceeding must prove: (1) their relationship to the decedent; (2) the absence of any person with a closer degree of consanguinity to the decedent; and (3) the number of persons having the same degree of consanguinity to the decedent or to the common ancestor through whom they take (*Matter of Morrow*, NYLJ, April 12, 2001 at 23, col 1 [Sur Ct, Bronx County]; 2 Harris, *New York Estates*, 27:3 [6th ed 2014]). Claimants who allege to be distributees of the decedent have the burden of proof on each of these elements (*Matter of Cruz*,

NYLJ, Jan. 7, 2002, at 29, col 4 [Sur Ct, Kings County]). The quantum of proof required to prove kinship is a fair preponderance of the credible evidence (*Matter of Jennings*, 6 AD3d 867 [3d Dept 2004]; *Matter of Whelan*, 93 AD2d 891 [2d Dept 1983], *affd* 62 NY2d 657 [1984]).

Based upon the evidence presented before the court attorney/referee, the court makes the following findings of facts and conclusions of law:

1. The decedent, Edwin Marra, Jr., died intestate on February 22, 2009, and letters of administration were issued to the Public Administrator on August 12, 2009.

2. The decedent, Edwin Marra, Jr., was never married and did not have any issue, adopted or otherwise.

3. The decedent's parents were Edwin Marra and Augusta Greishaber. The decedent's parents predeceased him and had only one child, the decedent.

4. The decedent's maternal grandparents were Frank Greishaber and Augusta Knopfel. They predeceased the decedent and had one child, the decedent's mother.

5. The decedent's paternal grandparents were Angelo Marra and Donetea/Daisy Grippe. They predeceased the decedent and had eight children: Elizabeth Marra Cornetta; Mary Marra Suydam; Carmella/Nellie Marra; Jennie Marra DeBella; Rose Marie Marra Lachmann; Anthony Marra; Michael Marra and Edwin Marra (the decedent's father).

6. The first child, Elizabeth Marra Cornetta, predeceased the decedent. She had five children: Edward Cornetta, who predeceased the decedent; Frank Cornetta, Jr., who post-deceased the decedent; Emmanuella Cornetta Pupo, who predeceased the decedent; Matthew Cornetta, who survived the decedent and Rosemarie Cornetta Johnson, who predeceased the decedent.

7. The second child, Mary Marra Suydam, predeceased the decedent. She had three children: Edwin Suydam, Jr.; Marie Suydam Skoros; and Dorothea Suydam Cannady; all of whom predeceased the decedent.

8. The third child, Carmella/Nellie Marra LaRosa, predeceased the decedent. She had five children: Anthony LaRosa, who predeceased the decedent; Frances LaRosa Ring, who predeceased the decedent; Dorothy LaRosa Holker, who predeceased the decedent; Mary LaRosa Petrocelli, who predeceased the decedent; and Donald LaRosa, who survived the decedent and is a claimant herein.

9. The fourth child, Jennie Marra DeBella, predeceased the decedent. She had three children: Rita DeBella McAuley, who survived the decedent; Michael DeBella, who post-deceased the decedent; and Eugene Marra, who predeceased the decedent.

10. The fifth child, Rose Mary Marra Lachmann, predeceased the decedent. She had one child, Kelvin John Lachmann, who predeceased the decedent.

11. The sixth child was Anthony Marra. He predeceased the decedent and had no issue.

12. The seventh child was Michael Marra. He predeceased the decedent and had two children: Michael Marra, who post-deceased the decedent and Rosemary Marra Roggenkamp, who survived the decedent.

13. The eighth child was the decedent's father, Edwin Marra.

Thus, on the paternal side of the family, the decedent was survived by the following: Frank Cornetta, Jr. (post-deceased); Matthew Cornetta; Michael Marra (post-deceased); Rosemary Marra Roggenkamp; Donald LaRosa; Rita DeBella McAuley; and Michael DeBella.

The decedent was not survived by relatives in a closer degree on the maternal side of the family. Thus, in accordance with EPTL 4-1.1 (a) (6), the entire estate shall be distributed to the surviving issue on the paternal side by representation.

The matter will be submitted for decision on the remaining prayers for relief, including the fixing of fees for counsel to the Public Administrator, upon the return date of the supplemental citation to issue or the filed waivers and consents of the decedent's distributees as determined above.

This is the decision and order of the court.

Dated: August 1, 2016
Mineola, New York

ENTER:

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

cc: William K. Champness, Esq.
Brosnan & Hegler, LLP
1325 Franklin Avenue, Suite 165
Garden City, New York 11530

Joseph E. Soffey, Esq.
Soffey & Soffey, LLC
821 Franklin Avenue, Suite 304
Garden City, New York 11530

Lisa M. Sconzo, Esq.
120 Pine Street
Garden City, New York 11530

Mahon Mahon Kerins & O'Brien, LLC
254 Nassau Blvd.
Garden City So., New York 11530

Eric T. Schneiderman
Attorney General of the State of New York
By: Michael A. Sullivan
Senior Attorney, Charities Bureau
120 Broadway
New York, New York 10271