

**Matter of Maichin**

2016 NY Slip Op 32159(U)

September 29, 2016

Surrogate's Court, Nassau County

Docket Number: 2012-370904/D

Judge: Margaret C. Reilly

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

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**In the Matter of the Account of Proceedings of the  
Public Administrator of Nassau County,  
as Administrator of the Estate of**

**DECISION  
File No. 2012-370904/D  
Dec. No. 31849**

**ARDEN LYNNE MAICHIN,**

**Deceased.**

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

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

Petition for Judicial Settlement of Account.....	1
Accounting by Administrator.....	2
Affirmation to Amend Account.....	3
Affirmation of Legal Services.....	4
Affirmation of Tax Services.....	5

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**I. PROCEDURAL HISTORY**

Before the court is the first and final account of the Public Administrator for the estate of Arden Lynne Maichin. Letters of administration issued to the Public Administrator on June 5, 2013. The account of the Public Administrator was filed on August 21, 2015.

**II. BACKGROUND**

The decedent, Arden Lynne Maichin, died on April 29, 2012. Her will, dated September 26, 1990, directs that her residuary estate will be divided in equal shares among her surviving children, with a share payable to the issue of a predeceased child. She was survived by six children and by two grandchildren born to a predeceased child.

Accordingly, the decedent's children, Catherine L. Maichin, Debra L. DeBaere, John L. Maichin, Gregory S. Maichin, Pamela J. Maichin, and Lisa A. Maichin will each receive one full share, and the decedent's grandchildren, Jesse Kruszynski and Tiowa Reynolds, will each receive one-half share of the decedent's residuary estate.

### **III. THE ACCOUNT**

The account filed by the Public Administrator covers the period from April 29, 2012 through July 14, 2015, and shows the receipt of \$1,158,348.72 of estate principal, which was supplemented by realized increases of \$23,604.97 and income collected totaling \$40,049.97. This resulted in total charges of \$1,222,003.66. This amount was reduced by realized decreases on principal of \$47,929.51, administrative expenses in the amount of \$215,296.21, creditors' claims paid in the amount of \$73.92, and distributions in the amount of \$395,000.00, leaving a balance of \$563,704.02 on hand.

The Public Administrator seeks: approval of the accounting; approval of commissions; the fixing of fees for the services of the attorney and the accountant; allocation of check number 1 from Citibank Account xx1876 signed by Catherine L. Maichin as attorney-in-fact for Arden Lynne Maichin on April 30, 2012, after the death of Arden Lynne Maichin, as a distribution to Catherine L. Maichin in the amount of \$10,000.00; rejection of the claims of Pamela Maichin totaling \$6,792.64; ,and the release and discharge of the surety.

On December 4, 2015, a motion was filed by counsel for Catherine L. Maichin asking the court to compel disclosure by the petitioner. An examination pursuant to SCPA § 2211 was scheduled for December 18, 2015, but was not held. On February 23, 2016, counsel for the administrator and counsel for Catherine L. Maichin agreed to the following, which was so ordered by the Surrogate: (1) The claim of the petitioner in his accounting of an early distribution of \$10,000.00 to Catherine L. Maichin is withdrawn; (2) Catherine L. Maichin withdraws her claim against the petitioner in the amount of \$10,000.00; (3) Catherine L. Maichin withdraws her motion to compel discovery; (4) Catherine L. Maichin withdraws her request to examine the petitioner; (5) the petitioner agrees to make an advance distribution to each full residuary beneficiary in the amount of \$20,000.00 and to each one-half residuary beneficiary in the amount of \$10,000.00; and (6) the balance of the relief requested by the petitioner would be submitted to the court for decision.

#### **IV. FEES**

##### **A. Legal Fees for the Administrator's Attorney**

Regarding the fee of the attorney for the estate, the court bears the ultimate responsibility for approving legal fees that are charged to an estate and has the discretion to determine what constitutes reasonable compensation for legal services rendered in the course of an estate (*see Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of Vitole*, 215 AD2d 765 [2d Dept 1995]; *Matter of Phelan*, 173 AD2d 621, 622 [2d Dept

1991)). While there is no hard and fast rule to calculate reasonable compensation to an attorney in every case, the Surrogate is required to exercise his or her authority "with reason, proper discretion and not arbitrarily" (*see Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; *Matter of Wilhelm*, 88 AD2d 6, 11-12 [4th Dept 1982]).

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*see Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*see Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*see Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*see Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*see Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*see Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*see Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]). In discharging this duty to review fees, the court cannot apply a selected few factors which might be more favorable to one position or another but must strike a balance by considering all of the elements set forth in *Matter of Potts* (123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]), and as re-enunciated in *Matter of Freeman* (34 NY2d 1 [1974]) (*see Matter of Berkman*, 93 Misc 2d 423 [Sur Ct, Bronx County 1978]). Also, the

legal fee must bear a reasonable relationship to the size of the estate (*see Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 16 NY2d 594 [1965]; *Matter of Reede*, NYLJ, Oct. 28, 1991, at 37, col 2 [Sur Ct, Nassau County]; *Matter of Yancey*, NYLJ, Feb. 18, 1993, at 28, col 1 [Sur Ct, Westchester County]). The burden with respect to establishing the reasonable value of legal services performed rests on the attorney performing those services (*see Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *see e.g. Matter of Spatt*, 32 NY2d 778 [1973]).

The court received an affirmation of services from counsel to the Public Administrator.<sup>1</sup> The affirmation reflects billable charges totaling \$28,695.86 for 89.17 hours of services rendered to date. The billing records reflect expense charges of \$147.15. Counsel requests a fee, inclusive of disbursements, of \$33,168.36, which includes anticipated time in the amount of \$4,325.00, of which \$16,395.86 has been paid.

The time records annexed to the amended affirmation cover the period between March 13, 2013 and March 9, 2016. During this three-year period, counsel prepared and filed the documents necessary for the Public Administrator to serve as the personal

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<sup>1</sup> Fees for prior counsel were fixed by this court in Dec. No 29448, issued on December 14, 2013, and Dec. No. 29721, issued on June 20, 2014.

representative of the decedent's estate, reviewed financial records, attended conferences, represented the estate in applications filed by prior counsel to fix their fees, conferred with the estate's accountant on tax matters, prepared the contract of sale of real property and supporting documents, prepared and filed the judicial account and supporting documents, sent and received correspondence, and appeared in court. The time records reflect that an unusual amount of legal services were required and provided in connection with the sale of the decedent's real property.

Considering all of the foregoing criteria, the court fixes the fee of current counsel to the Public Administrator for services provided through March 9, 2016 in the amount of \$28,695.86, plus \$3,000.00 for future services, plus disbursements of \$147.15, for total payment of \$31,843.00, of which \$16,395.86 has been paid and \$15,448.00 remains unpaid.

#### **B. Fee of the Administrator's Accountant**

The court has also been asked to review the accountant's fees. Typically, an accountant's services are not compensable from estate assets unless there exist unusual circumstances that require the expertise of an accountant (*see Matter of Meranus*, NYLJ, Mar. 31, 1994, at 28, col 2 [Sur Ct, Suffolk County]). The fee for such services is generally held to be included in the fee of the attorney for the fiduciary (*see Matter of Musil*, 254 App Div 765 [2d Dept 1938]). The purpose of this rule is to avoid duplication (*Matter of Schoonheim*, 158 AD2d 183 [1st Dept 1990]). "Where the legal fees do not

include compensation for services rendered by the accountant, there is no duplication and the legal fee is not automatically reduced by the accounting fee” (*Matter of Tortora*, NYLJ, July 19, 1995, at 26, col 2 [Sur Ct, New York County] [internal citation omitted]). The citation reflects the Public Administrator’s request that fees in the amount of \$5,687.50 be approved. The accountant has submitted an affidavit of services requesting a total fee in the same amount, of which \$4,437.50 has been paid and \$1,250.00 remains unpaid. The affidavit indicates that the accountant prepared the 2011 individual income tax returns, the federal and New York State estate tax returns, and fiduciary returns for the years ending March 31, 2013, March 31, 2014 and March 31, 2015. The requested fee includes a charge of \$168.75 to review correspondence. The accountant states that two additional returns will be required, for which she has billed \$1,250.00.

The work performed by the accountant was not duplicative of the services rendered by the estate attorney, and the requested amount for these services is reasonable. The court approves the fee in the amount \$5,518.75, which will cover all past and future services on behalf of the decedent’s estate. Of this amount, \$4,437.50 has been paid and \$1,081.25 remains unpaid.

## V. CONCLUSION

Within sixty (60) days of the date of this decision, the Public Administrator shall bring his account down to date.

The commission of the administrator is approved subject to audit. In addition, the Public Administrator is allowed, pursuant to SCPA §1207(4), the reasonable and necessary expenses of the office.

As no objections to the account were filed, the court approves rejection of the claim for expenses totaling \$6,792.64 filed by Pamela Maichin, as shown on Schedule D.

The decree shall discharge the surety and shall authorize the Public Administrator to distribute the balance of the net estate, after payment of the outstanding fees noted above, in accordance with the terms of the decedent's will.

Settle decree.

Dated: September 29 2016  
Mineola, New York

**E N T E R :**

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

cc: Mahon, Mahon, Kerins & O'Brien, LLC  
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