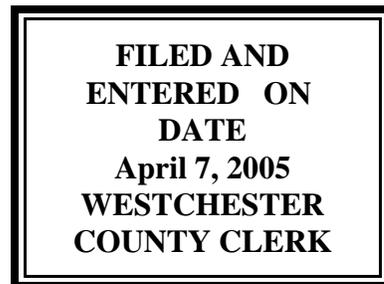


SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER



-----X  
MIRIAM OSBORN MEMORIAL HOME ASSOCIATION,

Petitioner,

DECISION & ORDER

Index No: 17175/97  
18077/98  
16567/99  
16113/00  
16626/01  
18115/02  
16987/03

**-against-**

THE ASSESSOR OF THE CITY OF RYE, THE  
BOARD OF ASSESSMENT REVIEW OF THE CITY  
OF RYE, AND THE CITY OF RYE,

Respondents,

-and-

THE RYE CITY SCHOOL DISTRICT,

Intervenor-Respondent.

-----X  
DICKERSON, J.

TRIAL ORDER NUMBER 4: THE ADMISSIBILITY OF ANCIENT DOCUMENTS

The Petitioner, Miriam Osborn Memorial Home Association [ " The Osborn " ], seeks to have admitted into evidence Petitioner's Exhibits

V [ Letter dated February 20, 1908 from John Sterling to Miss H. Olive Trowbridge<sup>1</sup> ] , W [ Letter dated September 19, 1911 from John Sterling to Mrs. W.V.S. Thorne<sup>2</sup> ] and X [ Letter dated September 12, 1913 from John Sterling to Mrs. Frank C. Littleton [ former Miss H. Olive Trowbridge<sup>3</sup> ] ] [ collectively " The Sterling Letters " ] marked for identification during the cross-examination of John Bowen, Chairman of The Osborn's Board of Trustees. Since the Intervenor-Respondent, The Rye City School District [ " The Respondents " ] objected to the admissibility of the Sterling Letters at trial the Court instructed the parties to submit letter briefs setting forth their positions which they have done<sup>4</sup>.

### **The Ancient Document Rule**

The Osborn relies on Tillman v. Lincoln Warehouse, Corp., 72 A.D. 2d 40, 44-45, 43 N.Y.S. 2d 151 ( 1<sup>st</sup> Dept. 1979 )( " Under the ' ancient document ' rule, a record or document which is found to be more than 30 years of age and which is proven to have come from proper custody and is itself free from any indication of fraud or invalidity ' proves itself '....." ), Fisch, New York Evidence [ 2d ed. ] § 1016 at p. 585 ( " a writing over thirty years old is termed ancient document, and if its genuineness is established may be received to prove the truth of the facts it recites. " ) and on Prince, Richardson On Evidence [ 11<sup>th</sup> ed ], § 8-1012 at pp. 686-87 ( " It seems undesirable to recognize a general

hearsay exception for all ancient documents, for a writing does not become trustworthy simply because the thirty years have passed. Nevertheless, language may be found in some New York cases in support of a general hearsay exception for ancient documents. Matter of Barney, 185 App. Div. 782, 174 N.Y.S. 242; Coleman v. Bruch, 132 App. Div. 716, 117 N.Y.S. 582; Layton v. Kraft, 11 App. Div. 842, 98 N.Y.S. 72. " ).

### **Objection To Authenticity Waived**

The Respondents contend that The Sterling Letters are inadmissible based upon the offer of proof by Petitioner's counsel. The Respondents acknowledge, however, that during the trial they waived any objection to the authenticity of The Sterling Letters ( " Intervenor-Respondent's counsel conceded that the proffered documents are more than 30 years old, have been kept in the vault at the subject property as represented by Petitioner's counsel, and waived objection to the authenticity of the signature on the documents. " )<sup>5</sup>.

### **Challenge To Relevance, Completeness & Opinion Evidence**

The Respondents argue that The Sterling Letters are not relevant to any of the issues before this court since they contain no reference to either Miriam Osborn or her Will and they are patently unreliable. The Respondents contend that The Sterling Letters are incomplete in that

each exhibit refers to or is written in response to correspondence which has not been provided to the Court. Finally, The Respondents state that The Sterling Letters are impermissibly being offered as opinion evidence.

### **The Decision**

This Court has already ruled, during oral argument on this matter, that the Sterling Letters are relevant ( See Trial Transcript at 1693:21-23, " THE COURT: I'm going to override the objections regarding relevance. I think they are relevant. " ). The question as to whether The Sterling Letters are incomplete goes to the weight that the Court will accord these letters, not their admissibility. In addition, this Court is not convinced, as The Respondents contend, that The Sterling Letters are being offered, by attempting to " interpret " Miriam Osborn's will, as inadmissible opinion evidence.

Accordingly, since The Respondents have waived their objection to authenticity, and this Court has found The Sterling Letters to be relevant to the issues before it, Petitioner's Exhibits V, W and X will be admitted into evidence.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, N.Y.  
April 7, 2005

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HON. THOMAS A. DICKERSON  
JUSTICE SUPREME COURT

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## ENDNOTES

1. Letter dated February 20, 1908 from John Sterling to Miss H. Olive Trowbridge ( "...after an Applicant has been approved by the Executive Committee of the Managers and by a physician, she must, provided her testimonials as to character and disposition are satisfactory, be placed on the Waiting List...If any Applicant is a cripple or blind or very noticeably deaf, or has any other disability, the Lady Managers must not allow their sympathy to get the better of their judgment, as persons having such disabilities are not the kind of Beneficiaries for which the Home was founded. There are thousands of deserving gentlewomen in good health. The Home is not a graveyard, but rather an Elysian field. Disease overtakes one at 65 years quite fast enough, even although one has all the outward appearances of health." ).

2. Letter dated September 19, 1911 from John Sterling to Mrs. W.V.S. Thorne ( " In reference to Mrs. Jackson's request to know whether, in case death should occur during the six months of probation, any portion of the \$500 admission fee ( less board for the time she was in the Home ) would be returned to her heirs, I beg to state that it would not...Kindly thank Mrs. Black, on behalf of the Home, for her willingness to contribute to it a Wagonette and a Victoria and to lend a Brougham. I do not think, however, that the Home can accept them, because there are two Wagonettes, a Renwick wagon, a covered Renwick and other carriages already on the place, which are useless on account of the fact that the Home owns no carriage horses..." ).

3. Letter dated September 12, 1913 from John Sterling to Mrs. Frank C. Littleton [ former Miss H. Olive Trowbridge ] ( " In reference to the Waiting List and the large rooms, I do not think well of opening the latter, nor do I think well of taking in any of the persons on the list until their number amounts to what will require an extra servant...I am not particularly anxious to fill up the Home any faster than we are doing, as I am looking after the accumulation of means for the purposes of enabling the Home to carry out what lies in store for it hereafter " ).

4. Letter of Peter G. Bergmann dated March 7, 2005 [ " Bergmann Ltr I " ] and Letter of Daniel G. Vincelette dated March 7, 2005 [ " Vincelette Ltr I " ].

5. Vincelette Ltr I at pp. 1-2.