

Matter of Jeziorski

2007 NY Slip Op 30164(U)

March 7, 2007

Surrogate's Court, Nassau County

Docket Number: 0331987

Judge: John B. Riordan

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SURROGATE'S COURT: STATE OF NEW YORK
COUNTY OF NASSAU

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

File No. 331987

Decision No. 14

ROBERT J. JEZIORSKI,

Deceased.
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Submitted for decision in this accounting proceeding is the reasonableness of the fees sought by counsel for the Public Administrator. The Public Administrator also seeks approval of commissions.

Robert J. Jeziorski died intestate on February 22, 2004, a resident and domiciliary of Nassau County. Letters of administration issued to the Public Administrator by decree dated March 22, 2004. This is the Public Administrator's first and final accounting. The summary statement shows charges to the accounting party of \$322,653.79.

As with any request for a fee, 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 fees rendered in the course of an estate (*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" (*Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; see *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 (*Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 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], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 241 NY 593 [1925]), and as re-enunciated in *Matter of Freeman* (34 NY2d 1 [1974]) (*see, Matter of Berkman*, 93 Misc2d 423 [Sur Ct, Bronx County 1978]). Also, the legal fee must bear a reasonable relationship to the size of the estate (*Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *aff'd* 23 NY2d 700 [1968]); *Martin v. Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 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] [Sur Ct, Nassau County]; *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]). Moreover, the size of the estate can operate as a limitation on the fees payable (*Matter of McCranor*, 176 AD2d 1026 [3rd Dept 1991]; *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *aff'd* 23 NY2d 700 [1968]), without constituting an adverse reflection on the services provided.

The burden with respect to establishing the reasonable value of legal services performed rests on the attorney performing those services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 241 NY 593 [1925]; *see e.g.*, *Matter of Spatt*, 32 NY2d 778 [1973]). Contemporaneous records of legal time spent on estate matters are important to the court in determining whether the amount of time spent was reasonable for the various tasks performed (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]; *Matter of Phelan*, 173 AD2d 621 [2d Dept 1991]).

The attorney has supplied the court with an affirmation of legal services and it shows that the attorney rendered more than one hundred and ten (110) hours of legal services of a partner, associate and paralegal at various hourly rates. The fees of the attorney's firm total \$17,470.00 (exclusive of a flat fee of \$1,500.00 in connection with the sale of the decedent's home) of which \$17,385.00 has been paid and \$85.00 remains unpaid. The services performed by the attorney for the Public Administrator include investigation regarding the possible existence of a will, participation in the lost will proceeding, communications with attorneys for the distributees, and preparation of the accounting petition and related papers.

The attorney for the Public Administrator seeks a total fee of \$17,470.00 which is approximately five and one-half percent (5-1/2%) of the estate. The court notes some duplication of services by employees and attorneys at the attorney's firm. Also, there are entries for time spent on the preparation of the affirmation of legal services which is not compensable (*Matter of Gallagher*, NYLJ, Feb. 2, 1993, at 22, col 4). The affirmation also includes travel time which is similarly not compensable (*Matter of Trotman*, NYLJ, May 13, 1998, at 32). Considering all these factors, the court fixes the total fee of counsel for the Public Administrator (excluding the real estate fee) in the amount of \$16,500.00. Any sums in excess of this amount

shall be returned to the estate.

Finally, the commission of the Public Administrator is approved subject to audit.

Settle decree.

Dated: March 7, 2007

JOHN B. RIORDAN
Judge of the
Surrogate's Court