

Matter of Carrano

2007 NY Slip Op 31767(U)

May 30, 2007

Surrogate's Court, Nassau County

Docket Number: 0338804/2007

Judge: John B. Riordan

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

-----X
Accounting by Laurie Russo as the Executor of the
Estate of

File No. 338804

Dec. No. 241

JOANNE CARRANO,
a/k/a JOAN CARRANO, JOANNE L. CARRONO,

Deceased.

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Submitted for decision in this accounting proceeding are the issues of attorney's fees,
accountant fees and the dismissal of the claim of the Nassau County Department of Social
Services.

Joanne Carrano died on June 4, 2005, a resident of Nassau County. Letters testamentary
issued to Laurie Russo on September 8, 2005. The accounting before the court is a first and final
accounting of the petitioner. The summary statement shows charges to the accounting party of
\$19,141.98.

With respect to the issue of attorney fees, 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 Misc 2d 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]; *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]).

In this case, the attorneys have supplied the court with affidavits of services. The affidavit of Frank G. D'Angelo, prior counsel, shows that he spent seven (7) hours on the estate including the filing of the probate petition and seeks a fee of \$2,100 plus \$227 in disbursements; the affidavit of Frank B. Castiglione, successor counsel, shows that he spent nine (9) hours on the estate, including the filing of the accounting and seeks approval of his fee of \$2,250 which has been paid in full. There is no objection to the fees requested. The account also shows funeral expenses of \$22,180, as well as an allowed but unpaid claim in the sum of \$1,443 to the New Hyde Park Funeral Home and a claim by the Nassau County Department of Social Services. The executor paid the funeral bill and is seeking reimbursement, which will render the estate insolvent. The Department of Social Services has appeared and has not opposed the dismissal of its claim. The account shows paid accounting fees in the sum of \$2,500.00.

Considering all the factors set forth above, and the duplication of some services given the rather routine nature of the estate and the relatively small amount involved, the court approves

legal fees of \$1,800 to Frank D'Angelo, plus disbursements of \$227; the sum of \$1,750 to Frank Castiglione and the sum of \$500 for accounting fees. Any funds paid in excess of the approval fees shall be reimbursed to the estate.

Settle decree.

Dated: May 30, 2007

JOHN B. RIORDAN
Judge of the
Surrogate's Court