

Matter of Sackler

2007 NY Slip Op 33226(U)

September 28, 2007

Surrogate's Court, Nassau County

Docket Number: 0249220/2007

Judge: John B. Riordan

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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 Settlement of the Final Account and Supplemental Account of Carol Master, Arthur F. Sackler, Gillian T. Sackler and Michael R. Sonnenreich, and Carol Master and Elizabeth A. Sackler, as Executors of the Estate of Else Sackler, as Executors of the Estate of

File No. 249220

Dec. No. 466

ARTHUR M. SACKLER,

Deceased.

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This is a final accounting by the executors of the decedent’s estate.

The decedent died on May 26, 1987, and his Last Will and Testament, dated June 21, 1985, and his First Codicil to the Last Will and Testament, dated July 25, 1985, (collectively “the will”) were admitted to probate on June 30, 1987 by decree of this court. Letters testamentary issued to Carol Master, Arthur Sackler, Elizabeth Sackler, Michael Sonnenreich, Gillian Sackler and Else Sackler. The decedent was survived by his wife, Gillian Sackler, and four children from two prior marriages, Carol Master, Arthur Sackler, Elizabeth Sackler and Denise Marika. Else Sackler was the decedent’s first wife, and Michael Sonnenreich is one of the decedent’s attorneys. Else Sackler died on March 16, 2000 and Carol Master and Elizabeth Sackler were appointed as executors of Else Sackler’s estate.

The will gave the decedent’s residuary estate to the trustees of the “Trust Indenture.” In the Trust Indenture, the decedent directed that upon his death, a portion up to a maximum of \$600,000.00 was to be paid outright to his children and descendants, and the remainder was to be

distributed to a QTIP marital trust for the benefit of Gillian T. Sackler. Upon Gillian's death, the marital trust was to terminate and the art and antiquities remaining in the marital trust were to be divided equally between the Arthur M. Sackler Foundation and the Arthur M. Sackler Foundation for the Arts, Sciences and Humanities. The balance of the marital trust was to be divided into eight (8) equal shares and paid to eight (8) charitable lead trusts established by the decedent. At the end of the annuity term of each such trust, the corpus of the trust was to be paid to the decedent's issue.

Carol Master, Arrthur Sackler, Gillian Sackler and Michael Sonnenreich have served as executors without interruption since June 30, 1987. Else Sackler acted as executor from June 30, 1987 through March 16, 2000, her date of death. Elizabeth Sackler acted as executor from June 30, 1987 until she resigned by letter to the executors dated September 17, 1990, and letters testamentary issued to her were revoked by order dated December 11, 1990.

This is the executors' final accounting. On February 11, 1992, Gillian Sackler, Carol Master, Arthur Sackler, Else Sackler, Elizabeth Sackler and Michael Sonnenreich filed a verified account covering the period from May 26, 1987 through September 17, 1990, as to Elizabeth Sackler, and through August 30, 1991, as to the others. On June 27, 1994, the executors filed a verified account covering the period from August 30, 1991 to and including June 27, 1994. A settlement agreement resolving numerous disputes and claims was entered into on June 27, 1994. The terms of the settlement agreement dictated the manner in which the estate would be administered from June 27, 1994 forward, including a modification of the Trust Indenture. The modification to the Trust Indenture dramatically redirected the distribution of the decedent's residuary estate by modifying the charitable interests and ultimate distribution to the decedent's

issue. The Settlement Agreement was approved by decree of this court dated September 29, 1994 which decree also settled the executors' account for the period May 26, 1987 through June 27, 1994. The final account covers the period June 27, 1994 through April 30, 2002. The executors have also rendered a supplemental account of their proceedings for the period May 1, 2002 through April 30, 2006. A guardian ad litem was appointed on behalf of the six minor beneficiaries of the estate. During the pendency of the proceeding, four of her wards attained the age of majority. The final account shows principal charges to the accounting parties of \$112,421,661.25.

The guardian ad litem filed an interim report dated September 1, 2005 wherein she pointed out that Schedule B of the final account shows a decrease of \$21,349,774.59 in the value of the decedent's art collections. The executors explain in Schedule B that they tentatively valued such collections at \$60,000,000.00 in the first account because the identity of the items comprising the collections and the value of such items were undetermined at that time. The executors further explain that the final account reflects corrections of information regarding the art collections for reasons such as "double counting, ownership issues, and the like." The executors explain that they elected to use the values from a 1988 Sotheby's appraisal of the decedent's art collections in finalizing the distributions of art assets in the estate to the trusts established pursuant to the terms of the Settlement Agreement, and that an adjustment of \$21,349,774.59 was made in the final account to reflect the difference between the tentative value reflected on the first account and the Sotheby's valuation. The guardian ad litem initially recommended that the decree settling the account make no decision as to the value of the decedent's artwork.

Due to the size of the accounting adjustment to the value of the decedent's art collections, the guardian ad litem requested an affidavit from the executors explaining the adjustment. The executors stated that they unanimously agreed upon a tentative value of \$60,000,000.00 for the art collections because they believed the appraisal they had received by the time of the first account was too low, and they were advised that the tentative figure could be refined and adjusted once the final value of the collections was established. The value of the art collections was reported in the decedent's federal estate tax return as "undetermined." In addition, the executors state that the \$60,000,000.00 figure was approved by all parties for purposes of calculating receiving commissions. Finally, the executors state that the difference between the \$60,000,000.00 tentative value on the first account and the value of the art owned by the estate based on certain appraisals, sales, and agreed-upon values relating to distributions is \$21,349,774.59. Accordingly, due to agreed-upon events resulting from the Settlement Agreement such as distributions, adjustments and sales of items, certain valuations and reappraisals were no longer necessary, and the \$21,349,774.59 adjustment was made on the final account.

According to the executors' attorneys, the reason for the adjustment was that actual values for each piece were necessary in order to effectuate distribution and, therefore, the Sotheby's values were used. The executors' attorneys state that because the Settlement Agreement addressed distributions of specific items, use of the Sotheby's appraisal values was the most appropriate and simple way to measure the value of items for distribution. In addition, the Sotheby's appraisals were used because the values are substantiated values which can be used for tax purposes.

The guardian ad litem concludes that, despite the somewhat nominal impact on her wards, the accounting adjustment and the use of the Sotheby's appraisal values appeared to be an acceptable method to settle the final account. The guardian ad litem expressed concern, however, as to the accuracy of the Sotheby's appraisal and asked that some form of verification be provided. Nevertheless, the guardian ad litem concludes in her initial report that executors' commissions should be recalculated in accordance with the adjusted value of the decedent's art collections, notwithstanding that such commissions were approved by the court's decree settling the first account. According to the guardian ad litem's calculations, the difference between the executors' commissions using the \$60,000,000.00 value and the adjusted value is \$1,402,516.52 which would be part of the marital trust corpus and which would be distributed to the guardian ad litem's wards pursuant to the settlement.

The guardian ad litem opines that opening the decree to recalculate the commissions and to compel the executors to refund the amounts previously paid could potentially jeopardize the global settlement entered into by the parties after many years of litigation. According to the guardian ad litem, another round of litigation would almost certainly eliminate the additional principal to be realized from a recalculation of the executors' commissions. The guardian ad litem's initial report, therefore, recommends that instead of refunding the overpayment, the executors waive the balance of \$415,530.63 in commissions on income and additional principal received for the period covered by the final account. After receiving the guardian ad litem's report, the executors' attorneys and the guardian ad litem engaged in extensive negotiations and conferences.

The guardian ad litem has now submitted a supplemental report to advise the court

regarding additional information which she received from the executors regarding the valuation and a proposed settlement with respect to executors' commissions. The guardian ad litem reported that the executors supplied an appraisal of the decedent's art collections performed by Christie's in 2001 to confirm the reasonableness of their use of the Sotheby's appraisal. The guardian ad litem was concerned that there was a thirteen-year gap between the appraisals and a variance of almost twenty percent (20%) between the total values of the appraisals. To address these concerns, the executors submitted an affidavit from C. Hugh Hildesley, an expert with 45 years of experience in the art market. Mr. Hildesley states that a twenty percent (20%) difference between the totals is not exceptional. Based upon the information provided, the guardian ad litem has withdrawn her recommendation that the decree settling the account specifically state that no decision is being made as to the value of the decedent's art collections.

In addition, the guardian ad litem recommends in her supplemental report that the court, instead of denying the commissions of \$415,530.63 sought in the final account, approve the creation of an irrevocable life insurance trust to address the financial impact to her wards as a result of the overpayment based upon the \$60,000,000.00 value. The executors have proposed that Gillian Sackler, as donor, and the decedent's daughters, Carol Master and Elizabeth Sackler, and the decedent's daughter-in-law, Laurie Sackler, as trustees, execute a trust agreement establishing an irrevocable life insurance trust. The trust will be funded by Gillian Sackler with \$200,000.00 to be used by the trustees to purchase a single premium insurance policy on the life of Arthur Sackler, the decedent's son.¹ Commissions are not provided for individual trustees

¹.It was originally suggested at the outset of the settlement discussions that the policy would be taken out on the life of Carol Master.

pursuant to the term of the trust agreement. The guardian ad litem anticipates a death benefit of approximately \$1,000,064.00 with Arthur Sackler as the insured. The insurance premium will be borne by the executors in proportion to the total commissions sought by each executor in the final account. The funds to pay the premium will be generated as follows: (a) the executors will take \$222,615.75 in commissions with respect to the period covered by the final account and leave the sum of \$200,000.00 in the estate; (b) the estate will distribute the sum of \$200,000.00 to the trustees of Trust A of the marital trust; (c) the trustees of Trust A will distribute the sum of \$200,000.00 to Gillian Sackler; (d) Gillian Sackler will then transfer the \$200,000.00 to the trustees of the insurance trust; and (e) the trustees of the insurance trust will send out the notices to the beneficiaries required under the trust agreement and thereafter purchase the policy.

The insurance trust instrument mirrors the provisions of Article V of the Modified Trust Indenture which, pursuant to the Settlement Agreement, apply upon the death of Gillian Sackler and the termination of the marital trust. The purpose is to ensure that the persons who will benefit from the insurance trust are the same persons who would benefit from the marital trust upon Gillian's death. The guardian ad litem opines that it is likely that her wards will realize a greater economic benefit from the proposed settlement than from a return of \$1,402,516.32 to the estate for overpayment of commissions or a denial of \$415,530.63 in commissions requested by the executors in the final account. The guardian ad litem has calculated that the proposed settlement will yield \$90,915.00 for each of her wards as opposed to \$64,737.00 (return of overpayment) and \$19,180.00 (denial of commissions) under the other scenarios.

Citation issued to the adult parties who did not sign waivers and consents as to why the proposed settlement should not be approved, and no one appeared on the return date.

Accordingly, jurisdiction has been obtained over the necessary parties. Being satisfied that the terms of the stipulation as modified are fair and further the wards' best interest, the court authorizes the guardian ad litem to execute the stipulation of settlement on behalf of her wards.

With respect to the issue of attorneys' 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 [3d 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]).

These factors apply equally to an attorney retained by a fiduciary or to a court-appointed

guardian ad litem (*Matter of Burk*, 6 AD2d 429 [1st Dept 1958]; *Matter of Berkman*, 93 Misc2d 423 [Sur Ct, Bronx County 1978]; *Matter of Reisman*, NYLJ, May 18, 2000, at 34[Sur Ct, Nassau County]). Moreover, the nature of the role played by the guardian ad litem is an additional consideration in determining his or her fee (*Matter of Ziegler*, 184 AD2d 201 [1st Dept 1992]).

With respect to disbursements, the tradition in Surrogate's Court practice is that the attorney may not be reimbursed for expenses that the court normally considers to be part of overhead, such as photocopying, postage, telephone calls, and other items of the same matter (*Matter of Graham*, 238 AD2d 682 [3d Dept 1997]; *Matter of Diamond*, 219 AD2d 717 [2d Dept 1995]; Warren's Heaton on Surrogate's Court Practice §106.02 [2][a][7th ed.]). In *Matter of Corwith* (NYLJ, May 3, 1995, at 35 [Sur Ct, Nassau County]), this court discussed the allowance of charges for photocopies, telephone calls, postage, messengers and couriers, express deliveries and computer-assisted legal research. The court concluded that it would permit reimbursement for such disbursements only if they involved payment to an outside supplier of goods and services, adopting the standards set forth in *Matter of Herlinger* (NYLJ, Apr. 28, 1994, at 28 [Sur Ct, New York County]). The court prohibited reimbursement for ordinary postage and telephone charges other than long distance.

Schedule C of the final account reports that Simpson Thacher & Bartlett ("Simpson Thacher") was paid as escrow agent the fee of \$26,715.31 on May 2, 1995 pursuant to the Settlement Agreement and a total of \$2,579,039.12² from November 21, 1994 to April 30, 2002

²The sum of \$1,162,607.00 reflected in the first intermediate account of the executors is included in the figure of \$2,579,039.12. The \$1,162,607.00 was approved but presumably not paid.

for services rendered to the estate. Counsel has submitted an affidavit of legal services which states that for the period June 27, 1994 through July 31, 2005, the firm's fee totaled only \$1,514,036.00. Thereafter, counsel submitted a supplemental affidavit of legal services and disbursements which shows that the firm's billing records actually total \$1,475,949.00 rather than the total of \$1,514,036.00 set forth in the prior affidavit. Counsel explains that the difference between the fee noted in her initial affidavit (\$1,514,036.00) and the fee noted in her supplemental affidavit (\$1,475,949.00) of \$38,037.00 was caused by the firm's conversion to a new time entry system. Accordingly, counsel has withdrawn her request for approval of legal fees of \$1,514,036.00 and requests approval of \$1,475,949.00 for the accounting period. In addition, counsel seeks fees of \$157,021.25 for services rendered from August 1, 2005 through April 30, 2006; fees in the amount of \$42,051.25 for services rendered from May 1, 2006 through June 30, 2006 and allowance of disbursements in the amount of \$33,146.00 for the period June 27, 1994 through July 30, 2005 and disbursements in the amount of \$4,037.00 for the period July 30, 2005 through June 30, 2006. The guardian ad litem notes that due to the prolonged period covered by the account, there are some discrepancies in the fee requested which cannot be reconciled. Counsel avers that a portion of the discrepancy can be explained by the fact that the firm has written off \$70,000.00 of disbursements which are not compensable. Nevertheless the guardian ad litem believes the legal fees requested by Simpson Thacher in the amount of \$1,475,949.00 (for the period June 27, 1994 through July 31, 2005) and \$199,072.25 (for the period August 1, 2005 through June 30, 2006) and the disbursements requested are reasonable given the size and complexity of the estate, the varied nature of the legal services provided, the length of time spent on the matter and the results achieved.

According to counsel, her firm performed the following services over the eleven-year span of the period covered by the final account: (i) administrative and legal work in connection with the execution of the Settlement Agreement, including, but not limited to, attending court hearings, formalizing the approval of the first intermediate account, drafting and negotiating releases and agreements, researching issues regarding claims, work in connection with insurance claims and preparing final versions of the closing documents, (ii) work as escrow agent, (iii) preparation of the decree, (iv) preparation of a time line setting forth each party's responsibilities under the Settlement Agreement, along with a time frame for those responsibilities to be completed; (v) facilitated the division of the estate art pursuant to the terms of the Settlement Agreement; (vi) gave tax planning advice regarding the division and preparation of the necessary documents to effectuate the division; (vii) worked with Sotheby's and Christie's to obtain appraisals and analyzed the income tax effects; (viii) facilitated the sale of \$5,000,000.00 of artwork to meet the estate's cash requirements; (ix) mediated conflicts between the executors and other interested parties, including disputes regarding commissions and the division of art; (x) represented the executors in disputes that arose with institutions to which Dr. Sackler had lent parts of his art collection; (xi) performed fiduciary accounting work; (xii) involved in the negotiation of the settlement of a claim filed by MSCDC, a holding company which Arthur Sackler had helped to operate and build during his lifetime; (xiii) provided legal advice with respect to the decedent's other investments and business ventures; (xiv) preparation of the account and related documents; and (xv) had numerous discussions with the guardian. During the eleven-year period, the firm spent 7,600 hours on the estate consisting of over 700 hours of partners' time, over 2,100 hours of associates' time, over 2,400 hours of fiduciary

accountants' time, over 2,100 hours of legal assistants' time and over 80 hours of managing clerks' time. The hourly billing rates during this time period were as follows: (i) partners' time ranged from \$295 to \$760, (ii) associates' time ranged from \$95 to \$525, (iii) fiduciary accountants' time ranged from \$100 to \$155, (iv) legal assistants' time ranged from \$80 to \$150, and (v) managing clerks' time ranged from \$80 to \$120.

According to the supplemental affidavit of legal services and disbursements, counsel spent an additional 519 hours for the period August 1, 2005 through June 30, 2006. During this period, counsel had extensive negotiations with the guardian ad litem regarding her recommendations, specifically with respect to the adjustment concerning the valuation of the artwork and the commissions issue. Counsel drafted several versions of the settlement agreement and the insurance trust. Counsel had numerous discussions with insurance brokers regarding the insurance policy to be purchased. Counsel also researched the income tax consequences of the proposed settlement. Issues raised by the executors regarding deductions of expenses and whether assets, the ownership of which is disputed, are commissionable under New York law were also researched. During this time period, counsel had discussions with the federal and New York State taxing authorities regarding refund claims for prior years. In addition, counsel also oversaw and reviewed the production of the Supplemental Account and Affidavit Amending the Account. During this period of time, the hourly billing rates were as follows: (i) \$830 to \$840 for partners; (ii) \$245 to \$570 for associates, (iii) \$155 for fiduciary accountants, (iv) \$150 for legal assistants, and (v) \$95 for managing clerks.

The guardian ad litem has computed the blended hourly rate of the attorneys and related individuals who worked on the estate to be between \$343 and \$359. The guardian ad litem

points out that the value of the estate as of the decedent's date of death was \$142,287,685.50 (prior to the adjustment in the decedent's art collection). The guardian ad litem also notes that the administration of this estate took nineteen years. From the outset, the issues were "exceedingly complex, and anything but routine and ordinary." Accordingly, the guardian ad litem recommends approval of the legal fee and disbursements requested.

The court recognizes that this estate was extremely complicated and that counsel's work was of the utmost quality. Nevertheless, a review of the time records indicates that there are entries for secretarial work (i.e., photocopying, faxing and collating), which is not compensable. Moreover, there are charges for filing and service of the affidavit of legal services, which similarly is not compensable (*Matter of Gallagher*, NYLJ, Feb. 2, 1993, at 22, col 4 [Sur Ct, Bronx County]). Most importantly, there appears to be some duplication of services by attorneys and staff at counsel's firm. For example, on June 27, 1994, twenty individuals spent a total of 180.50 hours on this matter, specifically with respect to the closing of the settlement agreement. The court recognizes that the estate is sizeable; however, a sizeable estate permits only adequate compensation. Accordingly, for the foregoing reasons, the court approves a total fee of \$1,625,021.50. With respect to the disbursements of \$33,146.47 and \$4,037.36, all disbursements are approved other than the \$6,562.00 and \$550.94 shown as travel expenses, which are normally not compensable (*Matter of Trotman*, NYLJ, May 13, 1998, at 32 [Sur Ct, Nassau County]). It is unclear whether the expenses were ordinary travel expenses or expenses for out-of-state travel. Accordingly, these expenses are denied at this time. Counsel may, however, within thirty (30) days of the date of this decision, submit an itemization of the travel expenses for the court's further review and consideration.

Concerning the fee of the guardian ad litem, the guardian ad litem has submitted an affirmation of legal services wherein she affirms that she spent a total of 283.50 hours on this matter at hourly rates ranging from \$275.00 to \$350.00, an associate of her firm spent a total of 814.35 hours on this matter at hourly rates ranging from \$185.00 to \$235.00, an attorney who is of counsel to her firm spent a total of 46.70 hours at an hourly rate of \$300.00, and a certified public accountant spent a total of 20.50 hours on this matter at the hourly rate of \$240.00. The guardian ad litem performed the following services: (i) reviewed all of the relevant documents in the prior accounting, including the settlement agreement and related documents, evidencing that the transfers pursuant to the settlement agreement had been made; (ii) examined the Final Account; (iii) examined the executors' adjustment of the value of the decedent's art collections set forth in Schedule B of the account; (iv) investigated the reasons for the adjustment; (v) met with the previous guardian ad litem concerning the adjustment; (vi) had numerous discussions and correspondence with counsel for the executors regarding the adjustment; (vii) researched the issue of the accounting adjustment and its impact on the tax basis of the art pieces; (viii) prepared calculation of executors' commissions taking into account the adjustment; (ix) considered whether to attempt to open decree to compel a refund of commissions; (x) prepared initial report; (xi) meeting with executors and their attorneys to discuss recommendations in guardian ad litem's report; (xii) attended court conferences; (xiii) requested verification regarding the Sotheby's appraisal and reviewed affidavit from art expert; (xiv) took a random sample of art objects from Sotheby's appraisal to confirm that such objects were also included in Christie's appraisal and to compare differences in values; (xv) assessed and analyzed impact of proposed settlement; (xvi) negotiated and revised terms of proposed insurance trust drafted by Simpson

Thacher; (xvii) analyzed federal income and transfer tax issues in connection with the insurance trust; (xviii) reviewed supplemental account; and (xix) prepared supplemental report.

The guardian ad litem asks that a fee of \$265,762.72 be approved representing her fee for services rendered, disbursements of \$1,543.00 and anticipated fees of \$3,500.00 to conclude this matter. The services provided by the guardian ad litem were of the utmost quality. As a result of her efforts, a favorable economic benefit for her wards was achieved and the original terms of the Settlement Agreement remained undisturbed. Considering all of the factors used to determine the reasonableness of fees, the court fixes the total fee, including disbursements, of the guardian ad litem in the amount of \$260,000.00. The guardian ad litem's fee shall be paid within thirty (30) days of the date of the decree to be settled herein.

The guardian ad litem also notes that Schedule C-1 of the final account shows the balance of a fee to the previous guardian ad litem, John J. Barnosky, in the amount of \$54,411.90. The guardian ad litem states that the balance of Mr. Barnosky's fee is in excess of the amount allowed under the court's decree of September 29, 1994 which approved the settlement agreement and the first account. By letter dated May 3, 2002, Mr. Barnosky advised Simpson Thacher of the balance of his unpaid fee but did not provide any explanation of the services rendered. The current guardian ad litem contacted Mr. Barnosky and he provided a copy of his firm's billing worksheet. The guardian ad litem, however, has asked Mr. Barnosky to confirm that such legal services were not covered under a prior fee award but has yet to receive a response. Mr. Barnosky is directed to submit an affidavit, within twenty (20) days of the date of this decision, providing the court with an explanation of the services provided. Failure to do so will result in disallowance

of the requested fee.

This constitutes the decision and order of the court.

Proceed accordingly.

Dated: September 28, 2007

JOHN B. RIORDAN
Judge of the
Surrogate's Court