

**Matter of JPMorgan Chase Bank (Pratt)**

2007 NY Slip Op 33581(U)

October 31, 2007

Surrogate's Court, Nassau County

Docket Number: 0025584/2007

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 judicial settlement of the supplemental  
account of proceedings of JPMorgan Chase Bank,  
as trustee of the trust created for the benefit of Dorothy  
Pratt Barrett and others under Article SEVENTH of  
the will of

File No. 25584

Decision No. 694

GEORGE D. PRATT,

Deceased.

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Submitted for review in this uncontested accounting proceeding is the supplemental account of proceedings of JPMorgan Chase Bank, as trustee of the trust created for the benefit of Dorothy Pratt Barrett and others under Article SEVENTEENTH of the Last Will and Testament of George D. Pratt, deceased, for the period from February 10, 1998 though September 6, 2005. The trustee also requests that the property remaining on hand in the trust be distributed in accordance with the proposed distribution shown on Schedule I of the supplemental account. Also before the court is the issue of the fee of the guardian ad litem.

The decedent, George D. Pratt, died a resident of Nassau County on January 20, 1935, leaving a last will and testament, dated September 17, 1926, and three codicils thereto, which were admitted to probate on February 11, 1935. Under Article SEVENTH of his will, George created a trust for the benefit of his wife, Vera A. H. Pratt, during her life. The will provides that, upon Vera's death, the principal of the trust was to be divided into so many shares that there would be one share paid over to the issue of each child who predeceased Vera and one share to be held in further trust for each child of the decedent who survived Vera. Vera died on February 3, 1978. The only child to survive her was Dorothy Pratt Barrett.

Article SEVENTH of George's will directed the trustee to invest and reinvest the property held in a separate trust for Dorothy's benefit. Dorothy was to be paid the net income from the trust during her lifetime. The will further directed that, when Dorothy died, the principal of the trust was to be paid as she designated pursuant to a power of appointment, or, if Dorothy defaulted in the exercise of the power, the principal was to be to Dorothy's living issue, *per stirpes*. Dorothy executed a complete release of her testamentary power of appointment by a written document dated June 8, 1943.

Dorothy died on February 10, 1998. Her will was admitted to probate in California on June 17, 1998. Dorothy was survived by a daughter, Barbara R. Jackson a/k/a Barbara P. Register, and a son, Eliot. Two sons of Dorothy predeceased her leaving issue. Barbara died on October 26, 2000.

Since George's death, the various trustees of the Article SEVENTH trust have filed accountings, which were judicially settled and allowed.

JPMorgan Chase Bank is the current trustee. By decree, made and entered on February 27, 2003 of this court, JPMorgan Chase Bank's account for the period from November 14, 1979 through February 10, 1998 was judicially settled and allowed, except as to any funds in JPMorgan Chase Bank's hands after the close of the account.

JPMorgan Chase Bank now accounts for the period from February 10, 1998 though September 6, 2005. The summary statement in the final account shows charges to the accounting party of \$20,686,924.57.

The court appointed a guardian ad litem to represent the interests of Eliot Steven Barrett, an incapacitated person, who is Dorothy's son. Jurisdiction has been obtained in this proceeding over Cessna Barrett and Alexander Dupont Barrett, who were appointed as co-conservators for Eliot by order of Superior Court, Napa County, California, on December 26, 1996. Eliot is entitled to one-quarter of the property remaining in the trust. The guardian ad litem appointed to protect Eliot's interests in this proceeding has submitted a detailed report dated September 19, 2007, wherein she indicates her consent to the relief requested in the petition, including the proposed distribution shown on Schedule I.

The relief requested in the supplemental petition is approved, with the supplemental account being approved and settled as filed, except that commissions are approved subject to audit.

With respect to the guardian ad litem's attorney's 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, including: 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 that 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]).

The guardian ad litem has submitted an affidavit of services in which she advises the court that she has rendered 15.8 hours of legal services on this matter. The guardian ad litem's contemporaneously-maintained time records show that she communicated with the court, reviewed the court's accounting file, reviewed the schedules of the supplemental account for mathematical accuracy, reviewed documents, including the decedent's will and three codicils thereto and communicated with the trustee's attorneys. The guardian ad litem is not seeking reimbursement for the preparation of her report or for disbursements.

The services performed by the guardian ad litem were of the utmost quality. Her report was thorough and useful to the court. Considering all of the factors used to determine the reasonableness of fees set forth herein, the court fixes the fee of the guardian ad litem for services

rendered in the amount of \$5,214. The guardian ad litem fee shall be paid within thirty days of the date of the decree to be entered herein.

Settle decree on notice.

Dated: October 31, 2007

JOHN B. RIORDAN  
Judge of the  
Surrogate's Court