

Matter of Haldeos

2009 NY Slip Op 32198(U)

September 2, 2009

Surrogate's Court, Nassau County

Docket Number: 326544/2009

Judge: John B. Riordan

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

-----X
In the Matter of the Account of Eric P. Milgrim, Public
Administrator of Nassau County, as Limited Administrator
of the Estate of

File No. 326544

Dec. No. 401

IOANNIS HALDEOS,

Deceased.

-----X
In its Decision No. 762, issued on March 31, 2009, this court addressed most of the issues raised in this accounting proceeding commenced by the Public Administrator in his capacity as the limited administrator of the estate of Ioannis Haldeos, who died intestate on April 22, 2003 at the age of 29 years, survived by his mother, Maria Haldeos-Gonzalez, and his father, James Haldeos. Limited letters of administration were issued to the Public Administrator on April 22, 2003. By order dated January 7, 2004, the limitation contained in the limited letters of administration limiting the Public Administrator from collecting or disposing of any assets of the estate was modified to allow the Public Administrator to collect up to \$20,000.00 without applying to the court for a bond.

The account presented is for the period from December 28, 2002 to December 31, 2007 and the summary statement showed total charges of \$7,456.41. The estate is insolvent and insufficient to pay all administrative claims. Decision No.762 addressed certain objections received in the form of a letter dated October 22, 2008 from James Haldeos. The court dismissed Mr. Haldeos's objections to the account, the court finding that under the circumstances, the Public Administrator's decision not to pursue a case against Ms. Haldeos-Gonzalez was a reasonable exercise of discretion. Mr. Haldeos was not precluded from pursuing such a proceeding against Ms. Haldeos-Gonzalez if he was so inclined by first seeking letters of

administration d.b.n. He has not done so.

In Decision No. 762 this court directed the Public Administrator to bring the account down to date and to file affidavits of legal services with respect to any legal fees sought to be paid from this estate and a proposed decree

As directed, the Public Administrator has brought his account current and his counsel has filed an affirmation of legal services. This leaves the court with the duty to determine fees and approve the account and commissions as to which no further objections are pending.

With respect to the issue of the 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], *affd* 213 App Div 59 [4th Dept 1925], *affd* 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], *affd* 213 App Div 59 [4th Dept 1925], *affd* 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], *affd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 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], *affd* 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], *affd* 213 App Div 59 [4th Dept 1925], *affd* 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]).

As set forth in the affirmation of legal services dated May 12, 2009, the attorneys for the Public Administrator spent in excess of 76 hours on this estate at hourly rates ranging from \$125.00 to \$350.00 per hour and billed \$12,822.57. The affirmation and the billing reports annexed thereto detail the legal services provided to the Public Administrator through February 28, 2009. The services included (a) preparation of the Public Administrator's Oath and Designation for Limited Letters of Administration; (b) investigation, identification and collection of Decedent's assets, which consisted of a single bank account, an automobile and the proceeds from the settlement of a personal injury lawsuit having a total value of approximately \$7,000.00; (c) conferences with and correspondence to and from Lite & Russell, the attorneys retained by the Public Administrator to continue Decedent's personal injury action; (d) review of proposed petition to compromise cause of action; (e) preparation and filing of the verified Petition modifying Limited Letters of Administration and proposed order regarding same; (f) conferences with and correspondence to and from Decedent's parents concerning status of personal injury action and administration of the estate; (g) correspondence to and from Astoria Federal Savings concerning Maria Haldeos's withdrawal of estate funds pursuant to the provisions of SCPA § 1310 and requesting that she account for disposition of such funds; (h) reviewing the claims of Providian National Bank, Citibank N.A., AT&T Wireless, Capital One, ACS, Inc., Mastercard, Transworld Systems and Maria Haldeos; (I) reviewing and responding to correspondence from State Bank concerning a New York State Tax compliance levy; (j)

reviewing objections to Final Account filed by James Haldeos; (k) preparation and filing of the administrator's final account, the Petition for Judicial Settlement of Account of Administrator, the Affidavit in Support of the Petition for Judicial Settlement of Account of Administrator and the Affirmation Amending Petition; (l) arranging for service of same to secure court's jurisdiction; (m) attendance at citation return date; (n) multiple telephone conferences with the Public Administrator and the employees of his office; (o) preparation and filing of the Affidavit bringing Account Current and the proposed Decree Judicially Settling Account of Administrator with Notice of Settlement.

Based upon the limited size of the estate, the firm has agreed to limit its fees to \$1,988.01, i.e., the balance of funds available after payment of other administrative expenses, none of which has been paid, thereby taking a significant discount from its hourly charges. The court notes that this sum is significantly below the value of the services rendered. Accordingly, counsel's fee is fixed in the sum of \$1,988.01.

The account as filed and amended is approved. The Public Administrator will be released and discharged as provided in the decree to be entered herein.

Finally, commissions are approved subject to audit.

The decree previously settled will be signed if found to be in proper form.

Dated: September 2, 2009

JOHN B. RIORDAN
Judge of the
Surrogate's Court