

Matter of Jacobs

2009 NY Slip Op 33484(U)

February 9, 2009

Surrogate's Court, New York County

Docket Number: File No. 696/2007

Judge: Troy K. Webber

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This opinion is uncorrected and not selected for official publication.

SURROGATE'S COURT : NEW YORK COUNTY

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In the Matter of the Estate of

STANLEY NORMAN JACOBS a/k/a
STANLEY N. JACOBS
a/k/a STANLEY JACOBS,

File No. 696/2007

Deceased.

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W E B B E R , S .

The co-executor of the will of Stanley Jacobs asks this court to exercise its cy pres power with regard to a residuary bequest.

Testator died on December 15, 2006. Under his will, dated August 14 of that year, he made preresiduary bequests to various individuals and charities and left his residuary estate equally to seven charities. Testator further provided, however, that if any residuary beneficiary was not a Qualified Charitable Organization as defined under sections 170(c) and 2055(a) of the Internal Revenue Code at the time the bequest was to be distributed, such bequest was to be distributed equally among the remaining residuary beneficiaries that were Qualified Charitable Organizations.

One of the residuary beneficiaries is identified in the will as the "Holocaust Fund, Inc., currently located at Washington D.C. or its successor organization." After a diligent search, petitioner was unable to locate any such organization or successor organization. Nor was petitioner able to identify such organization as a Qualified Charitable Organization in Internal

Revenue Service Publications. Thereafter, this proceeding was commenced asking this court to exercise its cy pres power and determine that 1) the bequest to the Holocaust Fund, Inc. had lapsed or was otherwise ineffective and 2) such bequest should be divided equally among the other residuary beneficiaries as set forth in the will. The Attorney General for the State of New York has consented to the distribution of the funds at issue equally among the remaining residuary beneficiaries, all of whom are represented to be Qualified Charitable Organizations.


Under EPTL 8-1.1(c)(1), the court has the authority to direct the manner in which a charitable disposition is to be administered in order to most effectively accomplish the testator's intent when literal compliance with the terms of a charitable bequest is impracticable or impossible. More to the point, the statute provides that the cy pres power of the court "to prevent the failure of, and to give effect to dispositions for ... charitable ... purposes is not defeated by the circumstance that the beneficiary of any such disposition does not exist...." (EPTL 8-1.1[d]).

Here, however, resort to such statutory authority is not required. As noted above, after a diligent search, petitioner has been unable to locate the Holocaust Fund, Inc. or any successor organization. Moreover, such search has established no basis upon which to find that the intended beneficiary was

misidentified in the instrument which, it is noted, could be a basis for the court exercising its cy pres power (see e.g. Matter of Yungel, 153 NYS2d 418).

Testator's intent that only Qualified Charitable Organizations share his residuary estate is set forth in the clear unambiguous language of the will. Because the will contemplates the circumstance here, namely that a residuary beneficiary is not a Qualified Charitable Organization (in this instance because the entity does not exist), there is no reason to reach beyond the plain language of the instrument to effectuate testator's intent that the bequest in this circumstance be divided among the other residuary beneficiaries.

This decision constitutes the order of the court.



S U R R O G A T E

Dated: February 9, 2009