

Matter of Caponera

2009 NY Slip Op 33485(U)

January 6, 2009

Surrogate's Court, Bronx County

Docket Number: Index No. XXXXX

Judge: Lee L. Holzman

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January 6, 2009

ESTATE OF BERNARD CAPONERA, Deceased

In this proceeding to judicially settle the account of the Public Administrator, objections were filed by one alleged paternal uncle, three alleged paternal first cousins, and eight alleged maternal first cousins who initially asserted that they are the decedent's only distributees.

The proof at the kinship hearing held before the court included testimony taken and documents admitted during a hearing conducted on September 3, 2008 before a court attorney-referee pursuant to a commission directed by order of this court. A genealogist and another witness testified at the hearing before the court. Following the hearing, and as a result of proof adduced at the hearing, a notice of appearance and additional documents were filed by a ninth alleged maternal first cousin, upon the consent of all parties. To the extent that the objectants were unable to locate certain documentary or other information they requested that, where necessary, the ameliorative provisions of SCPA 2225 be utilized in determining the distributees entitled to share in the net distributable estate.

The documentary and other proof adduced at the hearing

establish that the decedent died on June 25, 2005 at the age of 86 without any spouse or issue. He was one of two children born to Admeto and Julia Caponera (nee Campagnolo). Both of his parents predeceased him, as did his sister, who predeceased him without issue.

With respect to the paternal line, the decedent's father was one of eight children born to Amilcare and Anna Caponera (nee Simonetti), both of whom were born in Italy, emigrated to the United States, and predeceased the decedent. Six of the decedent's seven paternal aunts and uncles predeceased him, but one paternal uncle, Albert Caponera, survives and is an objectant herein. Of the six predeceased paternal aunts and uncles, three died without issue (Bernardino Caponera, Angelo Caponera and Ida Dagnino [nee Caponera]), while the remaining three were survived by one child each, the decedent's paternal first cousins who are objectants herein, namely: (1) the sole issue of the decedent's paternal uncle Alfred Cesare Caponera, the decedent's paternal first cousin Alfred C. Caponera; (2) the sole issue of the decedent's paternal aunt Gina Peroni (nee Caponera)), the decedent's paternal first cousin, Luciana Picone (nee Peroni); and, (3) the sole issue of the decedent's paternal uncle August Caponera, the decedent's paternal first cousin, Geraldine Dixon (nee Caponera).

With respect to the maternal side, the proof establishes that the decedent's mother, Julia Campagnolo, was one of three children born to Gennaro and Adelina Campagnolo (nee Orecchio), both of whom were born in Italy, emigrated to the United States, and predeceased the decedent.

Both maternal uncles from the marriage of the decedent's grandparents predeceased the decedent, one without issue (Pasquale Campagnolo). The remaining predeceased maternal uncle of this marriage, Anthony Campagnolo, had seven children, the decedent's maternal first cousins, three of whom predeceased the decedent in infancy or in their youth without issue (Gennaro Campagnolo, Anthony John Campagnolo and an unnamed infant), and four of whom survived the decedent and are objectants herein; namely, the decedent's maternal first cousins Candida Marullo (nee Campagnolo), Josephine E. Spataro (nee Campagnolo), John Anthony Campagnolo and Adelaide N. Boissy (nee Campagnolo), the latter of whom post-deceased the decedent on May 21, 2006.

After the accidental death of the decedent's maternal grandfather Gennaro Campagnolo in 1903, the decedent's maternal grandmother married Giovanni (John) Scalzo. During her second marriage, she had two more children, the decedent's maternal aunt and uncle Antoinette Rio (nee Scalzo) and Carmine Scalzo, both of whom predeceased the decedent with issue. During a first marriage, the decedent's maternal uncle Carmine Scalzo had one daughter, Joan, but, following a divorce, his first wife remarried. Carmine Scalzo's daughter was adopted by her stepfather. That daughter, the decedent's maternal first cousin Joan V. Riegel, filed a notice of appearance following the hearing held in this proceeding. Pursuant to Domestic Relations Law § 117 (1)(e), Joan V. Riegel is a distributee of the decedent's estate as the decedent is a

descendant of Joan's grandparent and Joan's adoptive parent was married to her birth parent (see Matter of Seaman, 78 NY2d 451, 460, 461 n 2 [1991]; Matter of Hayes, NYLJ, Jan. 18, 2007, at 31, col 5; Matter of Morrow, 187 Misc 2d 742 [2001]).

The decedent's predeceased maternal uncle Carmine Scalzo subsequently remarried and, during his second marriage, he had three children who survive and are objectants herein; namely, the decedent's maternal first cousins Johanna May Palumbo (nee Scalzo), John C. Scalzo and Bernadette E. Palang (nee Scalzo). The decedent's maternal aunt, Antoinette Rio (nee Scalzo), had two issue, one of whom predeceased the decedent without issue, and one of whom survives and is an objectant herein, the decedent's maternal first cousin Joseph J. Rio.

Utilizing the criteria used to determine whether a diligent search under SCPA 2225 has been made, including the amount of time which has elapsed since any other possible distributees have been heard from, and the lack of any leads whatsoever as to their whereabouts, it is determined that an adequately diligent and exhaustive search has been completed (see Matter of Schrake, 129 Misc 2d 671 [1985]).

Accordingly, it is concluded that with respect to the paternal side, the decedent was survived by: (1) one paternal uncle, Albert Caponera; and, (2) three paternal first cousins, Alfred C. Caponera, Luciana Picone and Geraldine Dixon, each of whom is the sole issue of each of three predeceased siblings of the decedent's mother. The decedent's surviving

paternal uncle and three paternal first cousins are each entitled to one-quarter of the paternal one-half of the net distributable estate (see EPTL 4-1.1[a][6]).

On the maternal side, the decedent was survived by nine maternal first cousins, namely; Candida Marullo, Josephine E. Spataro, John Anthony Campagnolo, Joan V. Riegel, Johanna May Palumbo, John C. Scalzo, Bernadette E. Palang, Joseph J. Rio and Adelaide N. Boissy, the latter of whom post-deceased the decedent. The decedent's surviving nine maternal first cousins are each entitled to one-ninth of the maternal one-half of the estate (see EPTL 4-1.1[a][6]). The share payable to the post-deceased maternal distributee shall be paid to the duly appointed fiduciary of her estate.

The Public Administrator shall file an affidavit bringing her account up to date and shall settle a decree in conformity with this decision.

Settle decree.

Lee L. Holzman

SURROGATE