

**Matter of Pagliuca**

2009 NY Slip Op 33486(U)

April 24, 2009

Surrogate's Court, Bronx County

Docket Number: File No. XXXXX

Judge: Lee L. Holzman

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April 24, 2009

ESTATE OF MINNIE PAGLIUCA, also  
known as PHILOMENA PAGLIUCA, Deceased

In this proceeding to judicially settle the account of the Public Administrator, the court previously determined that the decedent was not survived by any distributees closer than first cousins and that her maternal distributees consisted of nine first cousins (Matter of Pagliuca, NYLJ, Sept. 9, 2008, at 34, col 6). At the request of counsel for alleged paternal distributees a hearing was held with respect to paternal kinship. The guardian ad litem for unknown heirs and the Attorney General participated at the hearing, and counsel for the maternal distributees was also present.

The paternal objectants requested that the ameliorative provisions of SCPA 2225 be utilized in determining that they are the only paternal distributees entitled to share in the paternal half of the net distributable estate. Where appropriate, the court also utilized the presumption that a person who would have been in excess of 100 years upon the date of the decedent's death predeceased her (see *Young v Shulenberg*, 165 NY 385, 389-91 [1901]).

The documentary and other proof previously adduced established, inter alia, that the decedent, who died on April 28, 2003, at the age of 91, was one of four children born to Filomena (Lena) DelVecchio and Giovanni Volponi, who predeceased the decedent, and her three siblings predeceased her without issue.

At the instant hearing, the proof, including the genealogist's testimony, established that the decedent's father was the non-marital child of Ilario Volponi and Lucia Constantini, a widow. The decedent's grandmother died three weeks after the decedent's father was born. Ilario Volponi subsequently married and had nine other children, the decedent's paternal aunts and uncles, all of whom predeceased the decedent, four without issue. The five aunts and uncles who predeceased the decedent with issue are as follows: the decedent's paternal uncle, Fausto Andrea Giovanni Volpini, had four children, three of whom predeceased the decedent, and one of whom, the decedent's paternal first cousin Literia Basaglia (nee Volponi), post-deceased the decedent. Another paternal uncle, Antonio (Anthony) Volponi, had the following three children: Rose Vodola, (nee Volponi); Lawrence Volponi, who post-deceased the decedent; and Pietro Armand (Peter) Volponi, who also post-deceased the decedent. A paternal aunt, Maria Silvia Angela Sasso (nee Volponi) had four children, two of whom survived the decedent and are objectants: Ilario Antonio (Lawrence) Chiavaro, and Carmela Emmerich (nee Chiavaro). The decedent's paternal uncle, Umberto Volponi, had seven children, the

following five of whom survived the decedent: Vincenzo Enzo Volponi, Fulvia Volponi, Fausto Volponi, Teresa Maria Balacco (nee Volponi), and Giovanni Ilario Volponi who post-deceased the decedent. A paternal uncle, Domenico Volponi, had four children, two of whom survived and are objectants, the decedent's paternal first cousins: Phyllis Jean Breheney (nee Volponi) and Michael Volpone.

The genealogist testified that, based upon her searches of the Family History Library maintained by the Church of Jesus Christ of Latter Day Saints and the extant records maintained by the relevant localities in Italy, she did not find any record of other children born to the decedent's paternal grandmother, Lucia Constantini, and she concluded that the decedent's father, Giovanni Volponi, who was acknowledged by Ilario Volponi and given his name, was the only child born to Lucia Constantini, there are no other distributees on the paternal side, and that the relationship between the decedent's father and his half-siblings was further documented in certain passenger arrival records. In addition, other testimony corroborated the genealogist's findings.

Utilizing the criteria used to determine whether a diligent search under SCPA 2225 has been made, including the size of the estate, 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 13 first cousins, four of whom post-deceased: Literia Basaglia (nee Volponi)(post-deceased), Rose Vodola (nee Volponi), Lawrence Volponi (post-deceased), Pietro Armand (Peter) Volponi (post-deceased), Ilario Antonio (Lawrence) Chiavaro, Carmela Emmerich (nee Chiavaro), Vincenzo Enzo Volponi, Fulvia Volponi, Fausto Volponi, Theresa Maria Balacco (nee Volponi), Giovanni Ilario Volponi (post-deceased), Phyllis Jean Breheny (nee Volponi), and Michael Volpone, each of whom is entitled to one-thirteenth of the paternal half of the estate, or one-twenty-sixth of the net distributable estate (EPTL 4-1.1 [a] [6]). The shares of Lawrence Volponi and Pietro Armand (Peter) Volponi, who died domiciled in the United States, are to be paid to the duly appointed fiduciaries of their estates. The shares of Literia Basaglia (nee Volponi) and Giovanni Ilario Volponi, both of whom died in Italy, are to be paid to their heirs in accordance with Italian law, upon production of satisfactory proof that they are entitled to share in those estates.

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

*Lee L. Holzman*

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SURROGATE