

Matter of Rubin

2009 NY Slip Op 33487(U)

April 28, 2009

Surrogate's Court, Bronx County

Docket Number: File No. XXXXX

Judge: Lee L. Holzman

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April 28, 2009

ESTATE OF STUART RUBIN, Deceased

In this proceeding to judicially settle the account of the Public Administrator, objections were filed by individuals who allege they are the decedent's paternal uncle, aunt and first cousins and his only distributees. During the hearing at which the guardian ad litem for unknown heirs participated, the proof consisted of, inter alia, testimony by an expert genealogist and by a disinterested witness who is the surviving spouse of a predeceased paternal uncle, as well as documents.

To the extent that the objectants were unable to locate certain documentary or other information they request that, where necessary, the ameliorative provisions of SCPA 2225 be utilized in determining the distributees entitled to share in 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 the decedent (see *Young v Shulenberg*, 165 NY 385, 389-391 [1901]).

The decedent died on September 16, 2005, without any spouse or issue. He was the only child of Julius and Beatrice Rubin, both of whom predeceased him. With respect to the paternal side, the decedent's father was one of six children born to Sam and Ida Rubin, both of whom predeceased the decedent. Of the decedent's five paternal aunts and uncles, one aunt predeceased him without issue (Sylvia Rubin), and two survive and are objectants herein; namely, the decedent's paternal aunt Laura Rubin and paternal uncle Aaron Zelig Rubin. The decedent's remaining two paternal uncles both predeceased him with issue, namely: (1) the decedent's paternal uncle Herman Rubin had two issue, the decedent's paternal first cousins Gary Allen Rubin and Michelle Ackerman (nee Rubin), both of whom survive and are objectants herein; and, (2) the decedent's paternal uncle Ralph Rubin had two issue, the decedent's paternal first cousins Marc Rubin and Karin Weidmann (nee Rubin), both of whom survive and are objectants herein.

With respect to the maternal line, the proof demonstrates that the decedent's mother was the only child of David and Esther Weisbaum, both of whom are presumed to have predeceased the decedent (see *Young v Shulenberg*, 165 NY at 389-391). A maternal second cousin of the decedent was scheduled to testify at the hearing with respect to maternal distributees, but she became unavailable and the parties consented to the admission of her affidavit into evidence at trial. That affidavit from the disinterested witness and the genealogist's testimony support the

determination that the decedent's mother was an only child and therefore the decedent did not have any maternal aunts, uncles or first cousins.

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 adequate and exhaustive search has been completed (Matter of Schrake 129 Misc 2d 671 [1985]).

Accordingly, it is concluded that the decedent was not survived by any maternal relatives with a degree of kinship equal to or closer than that of first cousins (see EPTL 4-1.1 [a] [6]; cf. EPTL 4-1.1 [a] [7]). On the paternal side, the proof demonstrates that the decedent was survived by his aunt Laura Rubin and by his uncle Aaron Zelig Rubin, each of whom is entitled to one-quarter of the entire net estate, and was survived by four paternal first cousins who are the issue of two predeceased uncles; namely, Gary Allen Rubin, Michelle Ackerman, Marc Rubin and Karin Weidmann, each of whom is entitled to one-eighth of the entire net estate (EPTL 4-1.1 [a] [6]).

Finally, separate objections unrelated to the issue of kinship were filed by two of three alleged contingent residuary remaindermen of a testamentary trust allegedly created by the will of the decedent's predeceased mother, who assert that they are entitled to their respective shares of the alleged trust funds which, they contend, improperly passed to

the decedent's estate. In addition, separate objections were filed by the co-executor of the estate of the decedent's predeceased mother, who asserts that he is entitled to a commission from the same alleged trust funds that flowed to the decedent's estate. The Public Administrator is directed to take the necessary steps either to resolve those outstanding objections expeditiously or to ensure that this proceeding appears on the ready for trial calendar of the court with respect to those outstanding objections.

Upon the resolution or determination of the outstanding objections, the Public Administrator shall file an affidavit bringing her account up to date and shall settle a decree judicially settling her account in conformity with this decision.

Proceed accordingly and settle decree.

Lee L. Holzman

SURROGATE