

Matter of Cassiano

2009 NY Slip Op 33488(U)

May 29, 2009

Surrogate's Court, Bronx County

Docket Number: File No. XXXXX

Judge: Lee L. Holzman

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May 29, 2009

ESTATE OF MARIE A. CASSIANO, Deceased

In this proceeding to judicially settle the account of the Public Administrator, objections were filed by nine alleged paternal first cousins and three alleged maternal first cousins who claim they are the decedent's only distributees. During a hearing before the court at which the Office of the Attorney General and the guardian ad litem for possible unknown distributees participated, numerous documents were admitted into evidence and the witnesses included a genealogist. To the extent that the genealogist was unable to locate certain documentary or other information the objectants requested 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 her (see *Young v Shulenberg*, 165 NY 385, 389-391 [1901]).

The decedent died on April 20, 2004. She never married or had issue. The decedent was one of two children born to Francesco (Frank) Antonio and Maria Cassiano (nee Seminara), both of whom predeceased her without additional issue, and the decedent's brother also predeceased her

without issue.

The decedent's father was one of eight children born to Salvatore and Marie Antoinette Cassiano (nee Laino), the latter of whom predeceased the decedent without other issue. Upon the death of his first wife Marie Antoinette, the decedent's paternal grandfather married Concetta Sylvestre (nee Seminara), a widow who emigrated to the United States with three daughters, one of whom was the decedent's mother, after her first husband predeceased her in Italy without other issue. Thus, Concetta Seminara was both the decedent's maternal grandmother and step paternal grandmother. Upon her entry into the United States, the immigration officials listed her former married name of "Sylvestre" or "Sylvestri" as "Sylvester" and, thereafter, she and her three daughters from her prior marriage used the maiden name "Seminara" as their surname. Both Concetta Seminara and the decedent's paternal grandfather predeceased the decedent without additional issue.

Six of the decedent's seven paternal aunts and uncles from the first marriage of the decedent's paternal grandfather predeceased the decedent with surviving issue, and Rose Pinto (nee Cassiano), predeceased the decedent with issue who also predeceased the decedent. The six paternal aunts and uncles with surviving issue, the decedent's paternal first cousins, are as follows: (1) the decedent's paternal aunt Theresa (Tessie) Gargaglione (nee Cassiano) had four children, three of whom predeceased the decedent and one of whom, Angelina DiMassimo (nee Gargaglione),

post-deceased the decedent; (2) the decedent's paternal uncle Gennaro (Charles) Cassiano had three children, one of whom predeceased the decedent, one of whom, Fortunato (Ford) Cassiano, post-deceased the decedent, and one of whom survives, Biagio (Eugene) Giuseppe Cassiano; (3) the decedent's paternal aunt Adelina (Lena) Marino (nee Cassiano) had eight children, six of whom predeceased the decedent, one of whom, Maria Antonia Lener (nee Marino), post-deceased the decedent, and one of whom survives, Alfred Marino; (4) the decedent's paternal aunt Giovanna (Jennie) Russo (nee Cassiano) had one child, Vincent Ansalone, who post-deceased the decedent; (5) the decedent's paternal uncle Alfred Cassiano had two children, one of whom predeceased the decedent and one of whom survives, Marie Tedone (nee Cassiano); and, (6) the decedent's paternal aunt Amelia (Nellie) Mancuso (nee Cassiano) had two children, Anthony Mancuso and Theresa Port (nee Mancuso), both of whom survive.

With respect to the maternal side, the proof demonstrates that both of the decedent's maternal aunts, Loretta Rizzo (nee Seminara) and Rose Ferraiolo (nee Seminara), predeceased her with issue. Loretta Rizzo had eight children, the decedent's maternal first cousins, seven of whom predeceased her and one of whom, Maria Sahagian (nee Rizzo), post-deceased her. Rose Ferraiolo had two children, the decedent's maternal first cousins John Ferraiolo, Jr. and Lorraine Ortolano (nee Ferraiolo), both of whom survive.

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 with respect to the paternal side, the decedent was survived by nine paternal first cousins, namely: Angelina DiMassimo, Ford Cassiano, Maria Antonia Lener and Vincent Ansalone, all of whom post-deceased the decedent, and by Eugene Cassiano, Alfred Marino, Marie Tedone, Anthony Mancuso and Theresa Port, all of whom survive. The nine paternal first cousins or their estates are entitled to one-ninth each of the paternal half of the estate or one-eighteenth of the net distributable estate (EPTL 4-1.1 [a] [6]). On the maternal side, the decedent was survived by three maternal first cousins, namely: John Ferraiolo, Jr., Lorraine Ortolano, and Maria Sahagian, the latter of whom post-deceased the decedent. The surviving maternal first cousins and the Estate of Maria Sahagian are entitled to one-third each of the maternal half of the estate or one-sixth of the net distributable estate (EPTL 4-1.1 [a] [6]).

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

Lee L. Holzman

SURROGATE