

**Matter of Muller**

2009 NY Slip Op 33491(U)

July 2, 2009

Surrogate's Court, Bronx County

Docket Number: File No. XXXXX

Judge: Lee L. Holzman

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July 2, 2009

ESTATE OF LORETTA MULLER, also  
known as LORETTA FRANCES MULLER, Deceased

In this proceeding to judicially settle the account of the Public Administrator, objections were filed by one alleged paternal first cousin, notices of appearance were filed by five other alleged paternal first cousins, and counsel for the alleged paternal first cousins indicated on the record in open court that he also represented one alleged maternal first cousin, all of whom contend that they are the decedent's only distributees. A kinship hearing was held before the court at which the guardian ad litem for unknown distributees participated.

At the hearing, numerous documents were admitted into evidence and there were two testifying witnesses, a genealogist and the superintendent of the building where the decedent lived for 20 years. To the extent that the objectants were unable to locate certain documentary or other information, they requested that 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 October 31, 2004 at the age of 79. She never married, had no issue, and was the only child of John M. and Veronica Florence Muller (nee Buckingham), both of whom predeceased her. With respect to the maternal side, the proof establishes that the decedent's mother was one of eight children born to Joseph Francis and Mary Buckingham (nee Dugan), both of whom predeceased the decedent. Of the decedent's seven maternal aunts and uncles, six predeceased her without issue (Francis Buckingham, Loretta Morrissey (nee Buckingham), Arthur Frank Buckingham, Addazilla Buckingham, Irene Bourne Deangelis (nee Buckingham) and William Buckingham). The remaining paternal uncle, Vincent Harold Buckingham, predeceased the decedent with two issue, one of whom also predeceased the decedent (Vincent R. Buckingham), and one of whom survives and is a claimant herein, the decedent's maternal first cousin Arthur L. Buckingham.

With respect to the paternal side, the decedent's father was one of five children born to George and Katharina Muller (nee Hermann), both of whom predeceased her. The decedent's paternal aunt and three uncles predeceased the decedent with issue: (1) the decedent's paternal uncle Joseph H. Muller had one child, the decedent's paternal first cousin Albert G. Muller who survives and is a claimant herein; (2) the decedent's

paternal uncle George Joseph Muller had two children, one of whom predeceased the decedent (Adrian G. Muller), and the other of whom, the decedent's paternal first cousin Katherine Margaret Vincent (nee Muller), survives and is a claimant herein; (3) the decedent's paternal uncle Francis J. Muller had three children, the decedent's paternal first cousins Richard G. Muller, Judith Anne Rourke (nee Muller) and Cathryn Mary Piccoli (nee Muller), all of whom survive and are claimants herein; and, (4) the decedent's paternal aunt, Margaret Anna Rueckert (nee Muller) had one daughter, the decedent's paternal first cousin Theresa Rueckert, who survives and is a claimant herein.

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 survived by one distributee on the maternal side, her maternal first cousin Arthur L. Buckingham who is entitled to one-half of the net distributable estate (EPTL 4-1.1 [a] [6]). On the paternal side, the decedent was survived by six paternal first cousins; namely, Albert G. Muller, Katherine Vincent, Richard G. Muller, Judith Anne Rourke, Cathryn Mary Piccoli and Theresa Rueckert. Each of the paternal distributees is entitled to one-sixth of the remaining half

of the net distributable estate or one-twelfth of the entire 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.

  
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SURROGATE