

Matter of Minkoff

2010 NY Slip Op 32576(U)

August 6, 2010

Sur Ct, Nassau County

Docket Number: 337879

Judge: John B. Riordan

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SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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Petition of George R. Minkoff, Jane B. Hodes and
Lawrence J. Rothenberg, as the Co-Executors of the
Estate of

File No. 337879

Dec. No. 26478

HARRY MINKOFF,

Deceased,

for an Order Approving Settlement Agreement.

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This is a miscellaneous proceeding in which the petitioners, George R. Minkoff, Jane B. Hodes and Lawrence J. Rothenberg, as three of the co-executors of the estate of Harry Minkoff, have petitioned the court for approval of a settlement agreement. Lawrence A. Minkoff is the fourth co-executor of the estate.

On December 8, 2009, the court issued a decision and order (Dec. No. 789) in which it directed the petitioners, among other things, to submit an amended petition with a new settlement agreement that incorporated the modifications contained in certain orders of the Supreme Court, Nassau County, that impacted on the relief sought by the petitioners in the proceeding in this court. The petitioners have complied and the matter is again before the court. The amended petition is unopposed.

Harry Minkoff died on May 7, 2005. George R. Minkoff, Jane B. Hodes and Lawrence A. Minkoff are the decedent’s children; Ruth Minkoff is the decedent’s surviving spouse; and Annie Minkoff, David Minkoff and Eric Minkoff are Lawrence A. Minkoff’s children. The decedent’s last will and testament dated May 28, 1998 was admitted to probate by this court, and letters testamentary were issued on July 13, 2005. Articles FOURTH, FIFTH and SIXTH, respectively, created three trusts for Ruth’s benefit; respectively, they are a credit shelter trust, a

GST exempt marital trust and a residuary marital trust. Letters of trusteeship were issued by this court to Ruth and to Lawrence J. Rothenberg.

The settlement agreement that was originally submitted to the court was signed in October 2008 and November 2008 by George R. Minkoff, Jane B. Hodes and Lawrence A. Minkoff, in their individual and fiduciary capacities; by Lawrence J. Rothenberg, as executor; by Tammy R. Lawlor, as guardian of the property management of Ruth Minkoff; and by Annie Minkoff, David Minkoff and Eric Minkoff, each of whom agreed to paragraph 12 of the agreement as described below. The amended settlement agreement was signed in April 2010 and May 2010 by the same people in their same capacities. The terms of the 2008 settlement agreement are incorporated by reference into the 2010 settlement agreement. Paragraph 16 of the agreement states that its effectiveness is conditioned upon the approval by Supreme Court, Nassau County, and this court. By decision and order dated June 29, 2009, the Supreme Court, Nassau County (Asarch, J.) approved the 2008 settlement agreement upon certain conditions, which are now incorporated into the 2010 settlement agreement as “paragraph 23.”

The settlement agreement arose from certain litigation and threatened litigation against Lawrence A. Minkoff. The facts underlying the claims are set forth in the decisions and orders of the Supreme Court, Nassau County, dated June 29, 2009 and September 4, 2009 in connection with the Mental Hygiene Law Article 81 proceedings which resulted in the appointment of Ms. Lawlor as Ruth Minkoff’s guardian. The estate and Ruth’s guardian commenced an action against Lawrence A. Minkoff to foreclose upon a certain mortgage securing a note in the amount of \$900,000 given to the decedent and Ruth and have asserted other claims for other monies owed by Lawrence A. Minkoff in excess of \$1,200,000 to Minkoff Research Labs, Inc., Ruth,

and the decedent. According to the amended petition, the settlement is designed to resolve all claims that any of the parties had or may have had against any other party and to end long-term disputes and expensive legal proceedings that “had wracked the Minkoff family” and to avoid additional litigation that was expected to arise after Ruth dies. According to the petitioners, the settlement is in the best interests of the decedent’s estate and will spare the estate the expense and uncertainty associated with additional litigation.

Specifically, the settlement agreement includes the release of any claims Lawrence A. Minkoff or his children might have had to any assets or property in Harry’s estate, including with respect to the three trusts established for Ruth’s benefit. Paragraph 12 of the settlement agreements calls for Lawrence A. Minkoff’s three children, Annie, David and Eric, all of whom are adults, to execute a renunciation as to any property from Ruth’s estate each of them may become entitled to through their father as a result of his death.

Under the terms of the settlement agreement, all of the assets held in the GST exempt marital trust and the residuary marital trust will be distributed to Ruth. Lawlor, as Ruth’s property guardian, is to create an irrevocable trust to be funded with the assets distributed to Ruth from the GST exempt marital trust and the residuary marital trust, as well as with other assets; Lawlor and Lawrence J. Rothenberg will be the trustees of the irrevocable trust, and Ruth will receive all the income from the trust during her lifetime in quarterly or more frequent installments. Further, the trustees may distribute so much of the trust principal to Ruth as they, in their absolute discretion deem appropriate, in accordance with the provisions of paragraph 8 of the settlement agreement. Upon Ruth’s death, an amount equal to the value of assets distributed to Lawrence pursuant to the stipulations or the balance of the irrevocable trust, if less, is to be

distributed outright to each of Jane and George, if they are then living, or, if either is dead, to his or her descendants, per stirpes, or if none, to Ruth's descendants, other than Lawrence and his descendants, per stirpes. However, at least as to the GST trust, decedent's will provides that the remainder shares of Jane and George are to be held in trust for their respective lives, with decedent's grandchildren being the ultimate remainder beneficiaries. Additionally, Lawrence A. Minkoff agreed to resign as co-executor of the decedent's estate and as co-trustee of any trust created thereunder and to waive any future compensation to which he may have been entitled as such, to assign/renounce his right to any property to which he may have become entitled from Ruth or as a result of her passing and to renounce his right to act as an executor of Ruth's estate.

It is well settled that the intention of the decedent as expressed in the will is to be given effect by the courts, unless contrary to law or public policy (*Matter of Fabbri*, 2 NY2d 236, 239-240 [1957]). However, if this court were to approve the settlement agreement, the GST exempt marital trust and the residuary marital trust would be dissolved in disregard of the decedent's express estate plan and for no reason that this court can discern. There is no apparent reason why the litigation against Lawrence A. Minkoff cannot be resolved without dismantling these two trusts. Further, the remainder interests of any descendants of George R. Minkoff and Jane B. Hodes are destroyed if the GST exempt marital trust and the residuary marital trust are dissolved since, upon Ruth's death, an amount equal to the value of assets distributed to Lawrence, or the balance of the irrevocable trust, if less, is to be distributed outright to each of Jane and George, if they are then living, but if not, then to their issue. This court does not have jurisdiction over any children of Jane or George; indeed, the court does not know if either or both of them has children.

The court finds that the settlement agreement, as amended, is not in the best interests of the decedent's estate insofar as it calls for the dissolution of the GST exempt marital trust and the residuary marital trust for no apparent reason that would justify such a deviation from the testator's wishes. Accordingly, the petition is denied (SCPA 2106).

Settle decree.

Dated: August 6, 2010

JOHN B. RIORDAN
Judge of the
Surrogate's Court