

Matter of McCray

2012 NY Slip Op 32399(U)

September 5, 2012

Surrogate's Court, Nassau County

Docket Number: 2011-364040

Judge: III., Edward W. McCarty

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

-----X
In the Matter of the Administration of the Estate of

MIRIAM McCRAY,

File No. 2011-364040

Dec. No. 27966

Deceased.
-----X

Before the court are a petition and a cross petition for letters of administration.

Objections were filed to both petitions. For the reasons stated below, the cross petition is granted and the petition for letters is denied.

BACKGROUND

Miriam McCray died a resident of Hempstead on April 26, 2009, leaving no spouse, children, parents, or siblings. Decedent's distributees are 22 nieces and nephews, and one grandniece and one grandnephew: (1) Walter Graves, (2) Phyllis Mayrant, who is a grandniece, (3) Jayne Walker, (4) Rhea Walker, (5) Diana Walker, (6) Sharon Walker, (7) Natalie Walker, (8) Valerie Walker, (9) Michael Walker, (10) Nathaniel Walker, (11) Joanna Walker, (12) Frances Walker, (13) Deborah Walker, (14) Cecilia Walker, (15) Angela Walker, (16) Janice Patrick, (17) Theresa Walker, (18) Albert Walker, (19) James Rhodes, (20) Carolyn Price, (21) Linda Williams, (22) Mitchel Rhodes, (23) Bruce Rhodes, and (24) Charles Stewart, who is a grandnephew.

Decedent's niece, Carolyn Price (hereinafter, "Carolyn"), petitioned for letters of administration. Another niece of the decedent, Diana Walker (hereinafter, "Diana"), subsequently cross petitioned for letters of administration. Each niece has submitted documentation supporting her petition.

PETITION FOR LETTERS OF ADMINISTRATION

The petition for letters filed by Carolyn is supported by an affirmation of counsel, as well as the affidavit of petitioner. Both documents assert that decedent's relationship with Carolyn was like that of a mother and a daughter, rather than that of an aunt and a niece, in part because Carolyn lived with the decedent. The depiction of the petitioner and decedent as loving and devoted toward one another is supported by sworn statements from friends and acquaintances of the decedent who witnessed the unusually close relationship between the two women. Also affixed to counsel's affirmation is a copy of the power of attorney granted to Carolyn by the decedent on March 5, 2008.

Objections to Carolyn's petition were filed on behalf of 14 nieces and nephews of decedent; three other nieces and nephews filed consent to the cross petition filed by Diana.

CROSS PETITION FOR LETTERS OF ADMINISTRATION

Diana filed a cross petition for letters of administration in her aunt's estate. In support of the cross petition, counsel for Diana notes that Carolyn has already taken possession of decedent's real property without authorization, for her own use and for the use of her immediate family members, to the exclusion of decedent's other distributees. Diana's counsel further notes that decedent never selected a fiduciary to administer her estate, even though she could have done so by executing a will when she executed a power of attorney and her health care proxy.

Carolyn filed objections to Diana's cross petition and her counsel filed an affirmation in support of Carolyn's objections and in further support of the issuance of letters of administration to Carolyn. The affirmation reemphasizes Carolyn's close relationship with decedent and asserts that the decedent had minimal contact with Diana and with the other nieces and nephews objecting to Carolyn's petition. Counsel for Carolyn argues that his client is better suited,

positioned and qualified to serve as the sole administrator of decedent's estate.

ANALYSIS

The court notes preliminarily that there have been no assertions that either petitioner is unqualified to serve. Each petitioner appears to be eligible to receive letters (*see* SCPA 707), and each has presented a compelling case for her own appointment. Carolyn's petition is supported by her own affidavit and the letters of decedent's friends and neighbors, which reflect the close relationship between decedent and Carolyn. Diana's cross petition is supported by 17 out of 24 of the interested parties, who hold a majority interest in the estate.

Under these circumstances, the court might have considered appointing both the petitioner and the cross petitioner to serve jointly. However, in the course of multiple conferences at the court, Diana's counsel repeatedly expressed Diana's willingness to serve as a co-administrator with Carolyn, but the offer to serve jointly was rejected by Carolyn, whose counsel indicated that his client was unwilling to serve as a co-administrator with Diana. Carolyn's position on serving as a co-administrator was reiterated in paragraph (27) of her affidavit in support of objections to the issuance of letters of administration to Diana, which states, in its entirety: "I do not believe that it would be in the best interest of the Estate to appoint both Ms. Walker and myself as co-administrators, as I believe there will be much disagreement between us."

Neither petitioner has priority over the other under SCPA 1001 (*Matter of Kimmel*, NYLJ, Apr. 25, 2001, at 23, col 5 [Sur Ct, Richmond County]). "In the absence of circumstances establishing that a contrary result is in the best interests of the estate, the court will exercise its discretion in favor of the distributee selected by the distributees entitled to the larger share of the estate" (*Matter of Djeljaj*, 30 Misc 3d 1229 [A] [Sur Ct, Bronx County 2011]).

Each of 14 parties objecting to Carolyn's petition, and the additional three parties consenting to Diana's cross petition, has an interest in the estate which is identical to that of the petitioner and the cross petitioner. In total, the nieces and nephews who oppose Carolyn's petition and support Diana's cross petition constitute more than 70% of the parties interested in decedent's estate.

“Where, as here, two apparently eligible distributees have the same share in the estate and, accordingly, are equally entitled to administer the estate, the court has the discretion to appoint one or both of them (SCPA 1001 [1] [f] [i]). In this situation the court will give weight to the distributee selected by the distributees entitled to the largest share of the estate. The obvious rationale for this approach is that the voices of the distributees having the largest financial stake in the estate should be heard. This rule is also consistent with the statutory mandate that, where the contest is between two eligible distributees and one of them has a larger share in the estate, preference is given to that distributee”

(*Matter of Doyle*, 10 Misc 3d 1077 [A] [Sur Ct, New York County 2006] [internal citations omitted]). As Diana's cross petition is supported by the parties who hold the majority interest in decedent's estate, it is presumed that Diana's appointment as administrator would be in the best interests of the estate (*see Matter of Rizaj*, 16 Misc 3d 1102 [A] [Sur Ct, New York County 2007]).

Accordingly, the cross petition of Diana is granted. Letters of administration will issue to her upon her qualification according to law and the filing of a bond.

The petition of Carolyn is dismissed.

Settle decree.

Dated: September 5, 2012

EDWARD W. McCARTY
Judge of the
Surrogate's Court

