

**Matter of Pritchett**

2013 NY Slip Op 30715(U)

March 29, 2013

Surrogate's Court, Nassau County

Docket Number: 304328/D

Judge: III., Edward W. McCarty

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

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Petition for Compulsory Accounting in the Estate of

File No. 304328/D

EUNICE PRITCHETT,  
a/k/a EUNICE M. PRITCHETT,

Dec. No. 28426

Deceased.  
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This is a petition to compel the fiduciary of the deceased fiduciary of the estate of Eunice Prichett to account. For the following reasons, the petition is denied.

#### BACKGROUND

Eunice Pritchett, the decedent, died on March 18, 1998. Letters testamentary issued to the decedent's husband, Ray G. Pritchett. Ray G. Prichett died on July 17, 2000, survived by a son, Donald R. Pritchett, and a daughter, JoAnn Jergensen. Letters testamentary in Ray's estate issued to Donald and JoAnn on August 16, 2000. JoAnn died on October 4, 2008, and her husband, Robert Jergensen, was appointed administrator of her estate.

Robert Jergensen filed the instant petition seeking to compel Donald to account as the fiduciary of the deceased fiduciary of Eunice's estate. In support of his application, Robert asserts that the estate of JoAnn Jergensen has a claim against Eunice's estate for Ray's failure as executor to make distribution to JoAnn in the amount of \$316,164.00 as shown on the Federal Estate Tax Return filed in connection with Eunice's estate. Robert claims that those funds came into Donald's hands as sole surviving executor of Ray's estate. The claim was first asserted by JoAnn in an Amended Verified Complaint dated May 18, 2006 (paragraph 19 thereof) in an action brought by JoAnn against Donald, which action is currently pending in this court after being transferred by the Supreme Court of Nassau County.

Donald has filed an answer contesting the application on the following grounds: (i) statute of limitations; (ii) lack of standing; (iii) failure to set forth a claim; (iv) collateral estoppel, laches, res judicata and unclean hands; (v) JoAnn Jergensen received all “entitlements” and “distributions” from Eunice’s estate; (vi) the proceeding constitutes frivolous conduct in civil litigation as defined in 22 NYCRR §130.1; and (vii) the proceeding constitutes frivolous conduct in civil litigation as defined in CPLR §8303-a.

In addition, Donald’s counsel has submitted an affirmation in which he states that the petition is another “reach by the very desperate widower of Joann [sic] Jergensen.” He points out that JoAnn was represented by counsel from July 17, 2000. For eight years, until her death on October 4, 2008, Joann and Donald were co-fiduciaries of Ray’s estate. Moreover, counsel states that the petitioner’s testimony, in fact, demonstrates the frivolous nature of this proceeding. According to counsel, Robert testified that his wife said she “didn’t get what . . . [she] was entitled to.” Counsel states that the claim is based solely upon a “vague allegation” that JoAnn’s mother “promised her more.”

Donald has also submitted his own affidavit opposing the application. Donald states that the petition should be denied because he does not know where any papers his father might have kept in connection with his mother’s estate may be. The estate was closed over thirteen years ago. He states that he cannot account because: (i) he was not the fiduciary; (ii) he does not have the documents pertaining to his mother’s estate necessary to prepare an accounting; (iii) he never came into possession of assets of his mother’s estate in his role as co-executor of his father’s estate; (iv) over fifteen years have passed since his mother’s death and (v) it would be unduly burdensome. Donald states that his sister was paid in full from his mother’s estate and points

out that she served with him as co-executor of their father's estate and she was represented by counsel.

The petitioner has submitted what is denominated as "a reply memorandum of law in support of petition." Petitioner states that the proceeding is brought pursuant to SCPA 2205 and, thus, there is no statute of limitations. In addition, petitioner claims that he has standing as the fiduciary of a deceased person interested since JoAnn as a beneficiary was "a person interested." In addition, petitioner claims that the proceeding is not frivolous as it is based upon on SCPA 2207 (1). Petitioner also claims that the claim is not barred by laches because SCPA 2205 (1) states that the proceeding may be brought at any time. Petitioner claims that it is in "the best interests of the estate to grant the petition in order to afford full relief to the parties."

In a proceeding to compel a fiduciary to account, the Surrogate acts in his discretion, governed by what is deemed to be in the best interests of the estate (*Matter of Taber*, 96 AD2d 890 [2d Dept 1983]; *see also Matter of Gallagher*, 2006 N.Y. Misc Lexis 3966 [Sur Ct, Kings County 2006]; *Matter of Vorhand*, 2008 N.Y. Misc Lexis 4136 [Sur Ct, Kings County 2008]). The qualifying phrase "best interests" is not defined and no rigid rule exists as to what constitutes the best interests of the estate (7 Warren's Heaton on Surrogate's Court Practice §97.01 [7th ed]).

The assets in Eunice's estate were distributed almost thirteen years ago. JoAnn was a co-fiduciary of Ray, who died in 2000, only two years after Eunice's death. As a co-executor JoAnn had the authority to have made available to her all of Ray's records either with her brother's cooperation or with court intervention, if necessary. JoAnn signed the Federal Estate Tax Return (Form 706) for Ray's estate on April 10, 2001. Nowhere in that Form 706 is mentioned a claim by JoAnn against Ray's estate for the funds she claimed represented her share of her mother's

estate.<sup>1</sup> In addition, Schedule D of JoAnn's own accounting as co-executor of Ray's estate fails to identify her as a claimant. This current application appears to be just another chapter in this litigious quest. In fact, JoAnn first raised the issue of non-payment or partial payment of her share<sup>2</sup> in an amended complaint in May of 2006 wherein she asserted that she had not received her entire share of Eunice's estate. From that time until her death in excess of two years later, she did not commence a proceeding to compel her brother to account. In fact, had she attempted to do so, she might not have had standing absent first filing her own accounting as the co-fiduciary of a deceased fiduciary (SCPA 2205 [h]).

An accounting of Eunice's entire estate is not in the best interests of the estate as there is already a proceeding pending relating to JoAnn's claim that she did not receive her full share. An accounting would be duplicative, expensive, and unduly burdensome given the length of time since distribution of Eunice's estate and Ray's death. Moreover, there is some authority for the proposition that with respect to the death of a fiduciary, the limitations period for compelling an account may begin to run upon letters being granted to the representative of the deceased fiduciary (*see Matter of Lesser*, 119 App Div 507 [2d Dept 1907]). Here, letters on the deceased fiduciary's estate, i.e. Ray's estate, issued to JoAnn and Donald on August 16, 2000. Thus, the statute of limitations for JoAnn (or her representative) to compel her account may have expired.

In any event, for all of the foregoing reasons, the court declines to exercise its discretion

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<sup>1</sup> Although JoAnn claims in her Amended Complaint that she only received the signature page of the Form 706, she signed the Form 706 under penalties of perjury and is bound by the recitations therein. As a co-executor of Ray's estate, JoAnn could have filed her own Form 706 on behalf of the estate which set forth her claim against Ray's estate. She failed to do so.

<sup>2</sup> JoAnn alternates at times regarding whether she received partial payment of her share or non-payment.

to order an accounting on the basis that an accounting would not be in the best interests of the estate.

Settle decree.

Dated: March 29, 2024

EDWARD W. McCARTY III  
Judge of the  
Surrogate's Court