

Matter of Griffin

2014 NY Slip Op 30824(U)

April 3, 2014

Surrogate's Court, New York County

Docket Number: 2006-3894/A,B,C

Judge: Rita M. Mella

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This opinion is uncorrected and not selected for official publication.

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

New York County Surrogate's Court
DATA ENTRY DEPT.
APR 3 2014

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In the Matter of the Application of Ethel J. Griffin,
as Public Administrator of New York County, as
Administrator of the Goods, Chattels and Credits
which were of

MADIOUF DIOUF,

Deceased,

DECISION

File No. 2006-3894/A,B,C

For Leave to Compromise Causes of Action For
Conscious Pain and Suffering and Wrongful Death of
the Decedent and to Account for Said Compromise
Proceeds.

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M E L L A, S.,

The administrator of decedent Madiouf Diouf's estate, the New York County Public Administrator,¹ seeks authority to compromise and enter into a \$150,000 settlement of her action in Supreme Court for decedent's wrongful death. Petitioner also seeks to judicially settle her account for and distribute the proceeds. This uncontested petition is granted, except as set forth below.

The decedent died at age 46 on November 2, 2004, from blunt impact trauma, which he suffered on October 31, 2004, when he was hit by a taxi as a pedestrian at 57th Street and Lexington Avenue. He never regained consciousness after the impact. The settlement amount is alleged to be the limit of defendants' insurance coverage.

The petition requests that the following amounts be paid to the attorney handling the tort action in Supreme Court: disbursements of \$1,480.77, and 33 and 1/3% of the remaining proceeds as attorneys' fees. The petition also seeks to pay different counsel, one that handled the

¹A temporary administrator was originally appointed, but was succeeded by the Public Administrator.

applications in this court that concerned the wrongful death action, an additional \$5,938.07 in attorney's fees and \$1.17 in additional disbursements. The petition further proposes an allocation of all the proceeds to the cause of action for wrongful death and that the net amounts be distributed to decedent's surviving spouse and infant child, 70% and 30%, respectively, based on the relative number of years of dependence on or support to be received by the decedent. Neither appeared in this proceeding, but the guardian ad litem appointed for the infant reports in favor of the proposed allocation and distribution and raises no objection to the relief sought.

As noted, counsel to the Public Administrator on this petition was not the same as her counsel in the wrongful death action. Given that an Appellate Division, First Department rule mandates that legal fees shall not exceed one-third (net of certain expenses) of the settlement, the court must require in this case that the legal fees of administrator's counsel for applications in this court in respect of that action be within the one-third contingency fee permitted (Rules of the App Div, 1st Dept [22 NYCRR] § 603.7[e]). To allow different counsel fees in an amount that exceeds the 33 and 1/3% for work done only to obtain limited letters of administration to bring that action and to seek compromise of it would circumvent that rule (*see Matter of Hernandez*, NYLJ, March 30, 2011, at 31 [Sur Ct, New York County]; *Matter of Rose Anastasio*, NYLJ, July 9, 2010, at 38, col 1 [Sur Ct, New York County]; *Matter of Brown*, NYLJ, Feb. 8, 1995, at 34, col 2 [Sur Ct, Bronx County]). Further, the \$1.17 disbursement is not explained, and it too is disallowed. The disbursements of counsel in the tort action, however, are substantiated and proper (*see Matter of Herlinger*, NYLJ, Apr. 28, 1994, at 28, col 6 [Sur Ct, New York County] [as to disbursements]).

With these provisos, the attorneys' fees and disbursements are fixed and determined. Additionally, the commissions and statutory costs sought by the public administrator are allowed,

and the funeral creditor should be paid as requested. The proceeds are allocated to the cause of action for wrongful death, and the account for these proceeds is settled in conformity with this decision.

The restrictions on the letters issued by this court are removed, and the administrator is authorized to collect the compromise proceeds and to execute such receipts and releases as may be required.

The net settlement proceeds shall be distributed in the following percentages to the following distributees: seventy per cent (70%) to decedent's surviving spouse and thirty per cent (30%) to the property guardian of decedent's infant daughter; the final account is settled.

Settle decree for signature, providing for compensation for the guardian ad litem.

Dated: April 3, 2014


SURROGATE