

**Matter of Dicks**

2014 NY Slip Op 33064(U)

August 20, 2014

Sur Ct, Nassau County

Docket Number: 29961

Judge: Edward W. McCarty III

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

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Proceeding to Settle the Accounts  
of Jeffrey E. DeLuca, Public Administrator of Nassau  
County, as Administrator of the Estate of

File No. 346579/B

HOWARD DICKS,

Dec. No. 29961

Deceased.

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Before the court is the first and final account of the Public Administrator for the estate of Howard Dicks who died intestate, a resident of Nassau County, on December 11, 2006. Letters of administration issued to the Public Administrator on May 17, 2007. A guardian ad litem was appointed by the court to represent the interests of the decedent’s unknown heirs. He filed his report and has no objections.

The Public Administrator filed his account which shows the receipt of \$143,700.32 of principal and income. This amount was reduced by administrative expenses and creditor’s claims in the amount of \$71,752.34 leaving a balance of \$71,947.98 on hand. Howard Dicks’ brother, Robert Dicks, predeceased the decedent. Robert Dicks’ estate was settled by this court (Dec. No. 28350 dated February 22, 2013) and the balance of approximately \$225,000.00 was to be distributed to the estate of Howard Dicks. The account as filed does not reflect the receipt of these funds. The account must therefore be amended before the court can settle this estate. The issue of kinship, however, may be decided as the parties have rested.

All parties at the hearing stipulated to waive the report of the referee and to allow kinship issues to be decided by the court based upon the transcript of the hearing, the documentary evidence and the arguments made by the claimants and the guardian ad litem representing the interests of unknown distributees.

At the outset, it should be noted that the decedent died almost eight years ago. The proceedings were complicated. The testimony elicited that the decedent's paternal grandfather was a sharecropper in the South and that birth certificates were not routinely issued in the South until after many of the decedent's aunts and uncles were born. Further complicating the matter is that the surname Dicks is common and the spelling is frequently changed to Dix. On the maternal side of the family, the testimony established that the decedent's mother was from Hungary. Several of her siblings died in the Holocaust and no records could be found and the family did not remember the names or details of the siblings. Further, after the decedent's mother married the decedent's father, her family disowned her. The decedent's aunt allegedly secretly maintained contact with the decedent's mother but her descendants lacked information regarding the Dicks' family history and nobody could be located on the Dicks' side to verify the genealogist's testimony. Finally, the decedent's maternal grandfather married twice and had a daughter from that other relationship. The daughter emigrated to Israel and it was only through a forty-year-old address maintained by one of the decedent's cousins, that her family was tracked down.

In order to establish their rights as distributees, claimants in a kinship proceeding must prove: (1) their relationship to the decedent; (2) the absence of any person with a closer degree of consanguinity to the decedent; and (3) the number of persons having the same degree of consanguinity to the decedent or to the common ancestor through which they take (*Matter of Morrow*, NYLJ, April 12, 2001 at 23, col 1 [Sur Ct, Bronx County]; 2 Harris, *New York Estates*, 27:3 [6th ed 2014]). Claimants who allege to be distributees of the decedent have the burden of proof on each of these elements (*Matter of Cruz*, NYLJ, Jan. 7, 2002, at 29, col 4 [Sur Ct, Kings

County]). The quantum of proof required to prove kinship is a fair preponderance of the credible evidence (*Matter of Jennings*, 6 AD3d 867 [3d Dept 2004]; *Matter of Whelan*, 93 AD2d 891 [2d Dept 1983], *affd* 62 NY2d 657 [1984]).

Based upon the evidence presented before the court attorney/referee, the court makes the following findings of facts and conclusions of law:

1. The decedent Howard Dicks died intestate on December 11, 2006, and letters of administration were issued to the Public Administrator on May 17, 2007.

2. The decedent, Howard Dicks, was married to Lillian Strayhorn Dicks. Lillian Strayhorn Dicks predeceased the decedent. The decedent did not have any issue, adopted or otherwise.

3. The decedent's parents were Lena Pearl Dicks and Robert Dicks. They had two children, Ronald Jerome Dicks and the decedent. Ronald Jerome Dicks died in the Korean War. He had no issue. The decedent's father had a child by a previous relationship and may have had another child who died in infancy. The child who survived to adulthood was Robert Dicks. Robert Dicks predeceased the decedent and had no issue. As stated previously, the decedent is the sole beneficiary of his brother Robert's estate.

4. The decedent's maternal grandparents were Josef /Joseph Pearl and Sara/Sarah Gluck a/k/a Sarah Glick. Sara Gluck Pearl and Josef Pearl had five children. The oldest child was Frieda Pearl Bolchower (subsequently changed Boller). She predeceased the decedent and had two children, Hyman Lois Boller a/k/a Lois Herman Boller and Sylvia Boller Pashman. Both predeceased the decedent. The second child of the decedent's maternal grandparents was Israel Pearl. He predeceased the decedent. He had two children, Samuel Pearl, who is a claimant, and

Irving Pearl, who predeceased the decedent. The third child of the maternal grandparents, Martin Pearl, and the fourth child whose first name no one can recall, predeceased the decedent, having died in the Holocaust. The genealogist testified credibly that she diligently searched for records on both of these children, but could not find anything in any of the Holocaust records. The family members in the United States believe that both children perished and had no issue.

The genealogist testified that both Samuel Pearl (a claimant herein and cousin of the decedent) and Sylvia Pashman's daughter informed her that Josef Pearl had remarried after the death of Sara Pearl and that he and his new wife, also named Sarah, had a child named Pnina Pearl who allegedly resided in Israel. Samuel Pearl provided the genealogist with a forty year old address he had for Pnina and with that address, they were able to locate Pnina's family. Pnina Pearl Weingarten predeceased the decedent. She had three children, Zev Weingarten, Yoshaved Hava Weingarten and Sarah Weingarten Vilnai, all of whom are claimants.

5. Thus, on the maternal side, the decedent was survived by four first cousins, Samuel Pearl, Zev Weingarten, Yoshaved Hava Weingarten and Sarah Weingarten Vilnai.

6. The decedent's paternal grandparents were Edward James Dicks and Elizabeth Williams Dicks. They both predeceased the decedent. Edward James Dicks and Elizabeth Williams Dicks had six children. The oldest child, Minnie Dicks, was married twice. The genealogist testified that she reviewed the relevant census records and other available records and could not find anything that indicated that Minnie Dicks had children. She also could not locate a death certificate for Minnie Dicks. As Minnie Dicks was born in 1902 and would have been over one hundred years old at the time of the decedent's death, it is presumed that she predeceased the decedent (*Young v Shulenberg*, 165 NY 305 [1901]). With regard to the second

child, Edith Dicks, the genealogist testified that she never married and that she could not locate any issue. An index for a death certificate was located for Edith Dicks who died in 1958 and the genealogist testified that it was probable that this was the correct Edith Dicks. In any event, Edith Dicks would have been over one hundred years old at the time of the decedent's death, it is presumed that she predeceased the decedent (*id.*). The third child was Robert Dicks, the decedent's father. The fourth child was Dorothy Dicks Rhett. She predeceased the decedent and had no issue. The fifth child was Edward James Dicks. According to the genealogist, he was married, died at the age of thirty-nine and predeceased the decedent, and is buried alone. She checked the internment data base and there was no one listed as a spouse or child. The last child was William Dicks. The genealogist reported that there is no information regarding William Dicks after 1940. She diligently searched all records and any available materials to find anything with regard to his existence and could not find anything regarding him.

The petitioner requests that the court determine pursuant to SCPA 2225(b) that diligent and exhaustive efforts have been made from all available sources to ascertain paternal and maternal distributees and that as more than three years have elapsed and no claim to the share of the estate has been made that the court determine that there are no distributees in existence other than those whose status has been established. As indicated above, the guardian ad litem appointed to represent the interests of missing or unknown distributees has interposed no objection to the relief sought. Bearing in mind that the level of diligence to be exercised should be in proportion to the amount at issue (*Matter of Schrake*, 129 Misc 2d 671 [Sur Ct, Bronx County 1985]), the application is granted. The court finds that the decedent was survived by four first cousins on the maternal side, Samuel Pearl, Zev Weingarten, YOSHAVED HAVA

Weingarten and Sarah Weingarten Vilnai. In accordance with EPTL4-1.1(a)(6), the whole estate is to be distributed to them, by representation.

The petitioner is directed to bring the account down to date.

This constitutes the decision and order of the court.

Dated: August 20, 2014

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