

Matter of London

2015 NY Slip Op 30237(U)

February 18, 2015

Surrogate's Court, New York County

Docket Number: 1985-4111/LM

Judge: Nora S. Anderson

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court
DATA ENTRY DEPT.

FEB 18 2015

-----X
In the Matter of the Appointment of Jerome
L. Levine and Resignation of Arlene Alter
as Trustee of the Trust f/b/o London
Family created under Article Third C and
Sixth of the Last Will and Testament of

File No. 1985 4111/LM

LEON LONDON,

Deceased.

-----X
A N D E R S O N , S .

In this contested proceeding, Allen London ("Allen") and Arlene Alter ("Arlene"), co-trustees of a trust created under the will of Leon London for the benefit of his son Allen and Allen's family, jointly petition for the resignation of Arlene as co-trustee and the appointment of Jerome L. Levine, a trusts and estates lawyer, as successor co-trustee.

Leon London died on December 26, 1984. His will was admitted to probate by decree of this court dated February 21, 1989, and letters testamentary issued to his wife, Anna London ("Anna").

Decedent's will created a trust for Anna's lifetime benefit ("the Anna trust"). On her death, the will directed the creation of two sub-trusts: one, consisting of one-third of the Anna trust principal, for the benefit of Arlene and her descendants ("the Alter sub-trust"), and the other, consisting of two-thirds of the Anna trust principal, for the benefit of Allen and his descendants ("the London sub-trust"). Arlene and Allen and their

respective descendants are contingent beneficiaries of the other's sub-trust.

Anna, Allen and Arlene were nominated and appointed as trustees of the Anna trust. If Anna died or ceased to act as trustee, the will named her attorney, Jacob Usadi, as her successor. It also provided that Usadi could nominate his own successor, but in the event he failed to qualify or ceased to serve without nominating a successor, the remaining trustee(s) could nominate his successor. Mr. Usadi died three years after Anna's death without having been issued letters of trusteeship and without having applied for any other successor to Anna. Thus, Allen and Arlene continued to serve as the sole co-trustees of the Anna trust and subsequently of the two sub-trusts.

Subsequently, litigation arose on several occasions between Allen and Arlene regarding the management of assets owned jointly by the sub-trusts, but the parties settled pursuant to an agreement whereby they would divide the trust assets, thus eliminating the requirement of joint administration. They also agreed to petition jointly for leave to resign from each other's sub-trust and to seek the appointment of Tao Alter as successor co-trustee to serve with Arlene and Jerome L. Levine as successor co-trustee to serve with Allen.

This application and a companion application in the matter of the Alter sub-trust followed. The application with respect to

the Alter sub-trust is unopposed. All parties interested in the London sub-trust have waived and consented to the requested relief except for Zachary London ("Zachary"), who has filed objections. Zachary, Allen's son, is a presumptive income beneficiary in a continued trust after Allen's death.

Zachary's objections do not state cognizable grounds for denying the petition. First, he complains that the manner in which Allen and Arlene have interacted as co-trustees, including their failure to petition for the appointment of a third trustee who could have served as a tie-breaker in their various disputes, has been costly to the trusts. He complains that the negotiation of their settlement has added to the expense in the form of additional legal fees, further diminishing the sub-trust's value. In this petition, however, Allen and Arlene do not seek the court's approval of any prior conduct of the co-trustees, nor of the settlement agreement. They merely seek approval of Arlene's resignation and the appointment of Levine as her successor, relief as to which Zachary raises no articulated challenge. Any allegations regarding the trustees' past conduct are not appropriate here but rather in an accounting proceeding.¹

Zachary's second objection is that Jerome L. Levine would not be "neutral," and that, if the court allows Arlene to resign,

¹The court notes that Allen has filed an intermediate account and named Zachary as an interested party. Citation on this matter has not yet issued.

a corporate fiduciary should be appointed in her place.

Zachary's allegations, even if true, do not constitute a cognizable objection to this petition. The will does not use the word "neutral" with respect to fiduciary appointments, and decedent's three initial nominations, Anna, Arlene and Allen, were all family members with interests in the trusts. In any event, Zachary makes no allegation which raises a genuine question of fact as to a disqualifying bias or other impediment to Levine's eligibility to receive letters (SCPA § 707). His conjecture that Levine might have been Allen's lawyer at some time in the past, an allegation which Levine denies, would not, even if true, disqualify Levine. The court will not deny letters to a properly nominated and otherwise qualified successor on the basis of mere speculation that he may act in derogation of his fiduciary obligations. If Levine's conduct in office should raise concerns as to his fitness to serve, the proper remedy is an application for removal under SCPA § 711.

Finally, Zachary argues that the appointment of Levine might disadvantage him because the trustee is allowed under the will to make discretionary distributions of up to one-third of the principal to Allen outright. Zachary alleges that he is the less favored of Allen's children and that any such distribution would reduce what he might ultimately receive from the sub-trust. It is not a cognizable objection that a fiduciary might someday make

a decision which a beneficiary dislikes. Again, any allegation that a trustee has violated the decedent's directives or his own fiduciary obligations is the subject of a removal proceeding.

The court finds that Zachary's objections fail to raise any questions of fact which might require a hearing. The objections are dismissed.

Decree signed.

Dated: February 18, 2015



SURROGATE