

Matter of Levine (Cahan)
2015 NY Slip Op 30452(U)
March 30, 2015
Surrogate's Court, New York County
Docket Number: 1987/0966
Judge: Nora S. Anderson
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SURROGATE'S COURT : NEW YORK COUNTY
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In the Matter of the Final Account
of Barbara Levine, as Trustee of the

New York County Surrogate's Court
MISCELLANEOUS DEPT.
MAR 30 2015
FILED
Clerk

File No. 1987/0966

Trust U/W/O AMOS CAHAN,

Deceased.

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A N D E R S O N, S.

This uncontested motion by the fiduciary of a deceased trustee to dismiss pro se objections was granted upon respondent's default.

Decedent Cahan died on December 13, 1986. His will, admitted to probate on September 30, 1987, established a trust for the benefit of his three children. The nominated trustee, Barbara Levine, was given discretionary power regarding the distribution of income and principal to the beneficiaries. The remainder beneficiaries are decedent's grandchildren, one of whom is a minor and is represented by a court appointed guardian ad litem.

The original trustee, Barbara Levine, died on November 28, 2013. Movant is the executor of her estate, and the court has appointed Capital One, N.A, as her successor. Levine's account covers the period from December 22, 1987 through December 31, 2003.

On March 25, 2011, one of decedent's sons, Adam Cahan, filed pro se objections, informing the court that he and his two siblings intended to dispute "any and all legal fees that are

being presented." Cahan is not an attorney and, therefore, can only file objections on his own behalf. Regardless of his expressed intentions, Cahan's siblings have all consented to the account.

After reviewing the affirmation of legal services by the trustee's former counsel, the guardian ad litem recommended that the court schedule a conference regarding the fees sought by the attorney and the accountant who prepared the accounting. The court concurred, and all parties, including respondent, were notified of the date. Several conferences ensued before a court attorney-referee, all of which were attended by movant, the guardian ad litem, former and present counsel to the trustee, and the accounting firm. Respondent did not appear at any of the conferences, nor did he contact the court or his adversaries to seek an adjournment.

In due time, the guardian ad litem reported that counsel and the accountant agreed to reduce their fees, and movant agreed to a reduction in the trustee's commissions. The guardian ad litem further reported that she had repeatedly advised respondent of the progress of the settlement discussions, sought his input, and ultimately informed him that she thought the settlement was fair and in the best interests of her ward, who, incidently, is respondent's daughter. Respondent, however, was also unresponsive to the guardian's communications, and ultimately defaulted on

this motion to dismiss his pro se objections. The guardian ad litem advises the court that the proposed settlement is in her ward's best interests and seeks authorization to enter into a written stipulation to that effect.

Movant now seeks to dismiss respondent's objections on the ground that they are overly broad, in that the objections stated an "intention to dispute any and all legal fees that are being presented..." without apprising the court of his concerns about specific amounts billed for services allegedly rendered. Rather, respondent merely concludes that any fee is excessive relative to the size of the estate. Movant also points to respondent's refusal to respond to any efforts to negotiate a settlement, and to his failure to seek discovery over a period of three years, or to take any action to particularize or prosecute his claims.

Discussion

Respondent's default on this motion is sufficient ground to dismiss his objections (see, *Toos v Leggiadro Intl., Inc.*, 114 AD3d 559; *Matter of Multani*, 2007 N.Y. Misc. LEXIS 2658, 237 N.Y.L.J. 14; *Matter of Simpson*, 2007 N.Y. Misc. LEXIS 3835, 237 N.Y.L.J. 88; *Matter of Greenberg*, 2007 N.Y. Misc. LEXIS 4716, 237 N.Y.L.J. 13; *Matter of Behncke*, 172 Misc 532).

Moreover, by failing to appear at court conferences or to communicate with fellow counsel, respondent has effectively abandoned his previously stated intent to dispute " any and all

legal fees...presented."

Notwithstanding the foregoing, it is well settled that, even in the absence of objections, the Surrogate bears the ultimate responsibility to determine the reasonableness of legal compensation (*Matter of Storecky v Mazzone*, 85 NY2d 518). Accordingly, in granting that part of the motion seeking approval of fees and judicial settlement of the account, the court has considered the recommendation of the guardian ad litem and the factors enumerated in *Matter of Freeman*, 34 NY2d 1; and *Matter of Potts*, 213 AD 59, which are by now standard in determining the reasonableness of legal fees.

Movant is directed to supplement the account by affidavit, and as so supplemented, the account is settled.

Settle decree.

Dated: *MARCH 30,* ,2015


S U R R O G A T E