

**Matter of Tangorra**

2016 NY Slip Op 30742(U)

March 18, 2016

Surrogate's Court, Nassau County

Docket Number: 2014-379489

Judge: Margaret C. Reilly

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

**Administration Proceeding, Estate of**

**DECISION**

**VINCENT TANGORRA,**

**File No. 2014-379489**

**Dec. No. 31418**

**Presumed Decedent.**

**PRESENT: HON. MARGARET C. REILLY**

The following papers were considered in the preparation of this decision:

DOCUMENTS FILED APRIL 29, 2014:

Petition for Letters of Administration..... 1

Affidavit of Edward F. Gentner, Esq. in Support of Petition and  
Heirship..... 2

Affidavit of Raphael Tangorra in Support of Petition..... 3

Waivers of Citation, Renunciation and Consent to Appointment of  
Administrator filed by Raphael D. Tangorra and Susan (Assunta)  
Tangorra ..... 4

United States Coast Guard Report of Investigation Into the  
Circumstances Surrounding the Incident Involving Operator  
of the Polaris/Missing Person, dated December 8, 2013 ..... 5

Letter of Presumed Death from United States Coast Guard, dated  
April 8, 2014 , ..... 6

DOCUMENTS FILED NOVEMBER 14, 2014:

Petition to Extend Letters of Temporary Administration. .... 7

Affirmation of Edward F. Gentner, Jr., Esq., in Support of Petition  
to Extend Letters of Temporary Administration..... 8

Affidavit of Raphael Tangorra in Support of Petition to Extend  
Letters of Temporary Administration. .... 9

DOCUMENTS FILED MAY 7, 2015:

Petition to Extend Letters of Temporary Administration. .... 10

Affirmation of Edward F. Gentner, Esq. in Support of Petition to  
Extend Letters of Temporary Administration..... 11

DOCUMENTS FILED OCTOBER 29, 2015:

Petition to Extend Letters of Temporary Administration and  
Secure Declaration of Death..... 12

DOCUMENT FILED OCTOBER 30, 2015:

Report of the Guardian Ad Litem..... 13

In connection with a proceeding to extend letters of temporary administration, the petitioner, Raphael Tangorra, seeks a declaration pursuant to EPTL §2-1.7 (b), that his brother, Vincent Tangorra, is deceased, based on his exposure to a specific peril.

## **I. BACKGROUND**

On December 5, 2013, Vincent Tangorra (Vincent, or the absentee) a 56-year-old man, allegedly disappeared in the waters off the coast of New Jersey. Previously, Vincent primarily resided with his brother, Raphael Tangorra (Raphael, or petitioner) at 109 Thomas Avenue, Bethpage, in Nassau County. Vincent was divorced and had no children, biological or adopted. His sole distributees are his parents, Raphael D. Tangorra and Susan (Assunta) Tangorra.

Vincent was a boating enthusiast who owned the Polaris, a 37-foot 1973 sailboat with motor assist. On November 7, 2013, Vincent departed in the Polaris from the Williamsburgh Yacht Club in College Point, New York, intending to sail alone to North Carolina. Vincent pulled a jet ski behind the Polaris, for use as a lifeboat in case of an emergency. While on his journey to North Carolina, Vincent was in daily contact with Raphael and other family members through text messaging, Facebook and telephone calls. While sailing near the New Jersey coastline on November 20, 2013, Vincent reported developing fuel problems. The Polaris was towed to a marina in Atlantic City. Vincent then returned to New York by bus to visit with his family and pick up supplies to make needed repairs to his boat.

On November 26, 2013, Vincent returned to Atlantic City, repaired his boat and continued his journey. Vincent reached Ocean City, Maryland, on December 1, 2013. On December 4, 2013, Vincent telephoned Raphael, stating that he was still having engine trouble and was concerned that sailing on to Norfolk, Virginia, would be too long a trip, in view of the condition of his sailboat. Vincent said that he planned to return to the Williamsburgh Yacht Club, stopping at New Jersey ports along the way, if necessary. On December 5, 2013, Vincent sent a text message to Raphael stating that he was headed to nearby Cape May, New Jersey.

On December 6, 2013, the Cape May Police Department contacted Vincent's father and advised him that the police had recovered Vincent's jet ski floating in the ocean off Cape May, New Jersey. A search for Vincent was undertaken. By using Vincent's cell phone signal, the United States Coast Guard (the Coast Guard) located the Polaris, adrift and unattended, 11 miles off the coast of Avalon, New Jersey, and 20 miles from Cape May. No one was on board. Vincent's cell phone, wallet and personal property were found unattended on the sailboat. An immediate search for Vincent was undertaken, using several ships and two aircraft, but no trace of Vincent was recovered. The search was called off at noon on December 7, 2013.

On December 8, 2013, the petitioner and other family members traveled to Cape May, New Jersey, where they met with officers of the Coast Guard to discuss Vincent's disappearance. The officers indicated that the search for Vincent had been unproductive,

with no sign of him discovered, leading to their conclusion that it was highly unlikely that Vincent had survived whatever occurred on his boat which resulted in his disappearance.

The Coast Guard issued a report, dated December 8, 2013, concerning its search for Vincent. This was followed, on April 8, 2014, by a letter of presumed death issued by the Coast Guard. These documents are discussed more fully below.

Three weeks after the Coast Guard issued its letter concerning Vincent's presumed death, Raphael filed a petition for letters of temporary administration. In his supporting affidavit, Raphael advised the court that since December 5, 2013, when Vincent sent his final text message to Raphael, Vincent has had no contact with any family member, friend or acquaintance. Raphael stated that Vincent's assets appear to have consisted of: (1) the jet ski, valued at \$5,000.00; (2) the Polaris, valued at \$12,000.00; (3) a bank account, with a balance of approximately \$17,000.00; and (4) personal property of far less value. It was further noted that Vincent's debts are roughly equal to the amount of his assets.

Each of Vincent's parents signed a waiver of citation, renunciation and consent to appointment of Raphael as administrator of Vincent's estate. The petition was also supported by an affirmation from Edward F. Gentner, Jr., Esq. (Gentner), the attorney retained to assist Raphael in these proceedings. Gentner advised the court that he has known Vincent's parents for more than 40 years and is personally familiar with the circumstances surrounding Vincent's disappearance. In addition, he spoke with

representatives of the Coast Guard, the petitioner, Vincent's parents and Vincent's cousin, Vincent Monteleone.

On May 22, 2014, the court issued temporary letters of administration to Raphael. Orders extending the letters were issued on November 14, 2014, May 7, 2015 and October 29, 2015.

The court appointed a guardian ad litem to represent the interests of Vincent. The guardian ad litem, having been appointed to investigate the circumstances of the disappearance of the absentee, has now reported his findings.

The documents filed with the court also reflect that DNA samples from Vincent's mother and Raphael were provided to the New York City Medical examiner's Office for comparison purposes in the event unidentified bodies should surface or be otherwise located, particularly in the vicinity of Cape May, New Jersey. These DNA samples were entered into a Texas database nearly one year ago, but have not yet been matched with any bodies located anywhere in the United States.

In an affidavit dated October 27, 2015, Gentner advised the court that all of Vincent's assets have been collected, with the exception of a remaining pension benefit of unknown amount from the New York City Employees Retirement System and a \$1,000.00 death benefit payable in connection with a debt of the absentee. The boat was liquidated by settlement of a claim with the insurance carrier, and the funds in the absentee's Citibank account were transferred into an estate account.

## **II. REPORT OF THE UNITED STATES COAST GUARD**

The Coast Guard issued a report dated December 8, 2013 (the Coast Guard Report) regarding its investigation into the disappearance of Vincent while he was operating the sailboat Polaris near Cape May, New Jersey, on December 5, 2013. The Coast Guard Report states that Vincent's jet ski was located near Cape May on December 6, 2013 and that the Polaris itself was found off the coast of Avalon, New Jersey, with no one aboard. The Polaris was towed to the shore and found to be taking in water. After an unsuccessful attempt to find the operator of the Polaris, the search was terminated.

## **III. UNITED STATES COAST GUARD LETTER OF PRESUMED DEATH**

On April 8, 2014, the Coast Guard issued a letter of presumed death, based upon its investigation into the disappearance of Vincent during his voyage from Ocean City, Maryland to Cape May, New Jersey, on or about December 5, 2013. The letters states that Vincent was not found in the search conducted by the Coast Guard and is presumed dead, and concludes that “[s]ince no remains have been found, this letter documents the loss and presumptive death of Vincent Tangorra, in lieu of a death certificate.”

## **IV. REPORT OF THE GUARDIAN AD LITEM**

The report of the guardian ad litem, filed on October 30, 2015, cites and corroborates the Coast Guard Report, and is also based upon a review of the court file and conversations with petitioner and with Gentner.

The guardian ad litem further reports that the New York Employees Retirement System has advised that if there is a judicial determination of the death of Vincent, there will be an unspecified amount payable to Vincent's estate, in addition to a death benefit of \$16,000.00 payable to his parents. The principal estate asset, Vincent's sailboat, remains stored in New Jersey. The cost of repair is likely to exceed the value of the sailboat, which is \$12,000.00-\$15,000.00. The guardian ad litem recommends that the boat be given away for no consideration. Vincent's jet ski has little or no value at this time as it has not been maintained since being recovered and there are no known dealers or buyers interested in purchasing it.

In addition, the guardian ad litem states that Gentner has indicated that he will attempt to negotiate a global settlement with all of Vincent's creditors once all of the assets have been collected. The largest creditor is the Internal Revenue Service, which is owed approximately \$25,000.00.

The guardian ad litem recommends that this court make a determination that Vincent died a resident of Nassau County on December 5, 2013.

## **V. LEGAL ANALYSIS**

EPTL §2-1.7 (a) provides in relevant part as follows:

“A person who is absent for a continuous period of three years, during which, after diligent search, he or she has not been seen or heard of or from, and whose absence is not satisfactorily explained shall be presumed . . . to have died three years after the date such unexplained absence commenced, or on such

earlier date as clear and convincing evidence establishes is the most probable date of death.”

EPTL §2-1.7 (b) provides in pertinent part, as follows:

“[t]he fact that such person was exposed to a specific peril of death may be a sufficient basis for determining at any time after such exposure that he or she died less than three years after the date his or her absence commenced.”

“To invoke the statutory presumption of death . . . the petitioner must establish absence, a diligent search, that there is no satisfactory explanation for the absence and during the absence there was no communication with the absentee” (*Matter of Hettich*, NYLJ, July 28, 2000, at 33, col. 2 [Sur Ct, Westchester County] [citations omitted]). In addition, in order to establish a specific date of death, the evidence must show exposure to a specific peril (*id.*).

Petitioner has established that since December 5, 2013, when Vincent was exposed to a specific peril, suffering engine trouble with his sailboat while out alone on the ocean, Vincent has been absent and that there has been no communication with the absentee since that date. Decedent’s wallet, cell phone and personal property were found on the sailboat. There has been no other explanation for the absentee’s disappearance. In Raphael’s affirmation, dated October 24, 2015, Raphael states that Vincent had not been depressed or “out of sorts” when he left on November 7, 2013. The affirmation filed by Raphael on April 29, 2014, states that family members, friends and acquaintances have reported no contact from Vincent since the date of his disappearance. The Coast Guard Report amply reflects that a diligent search was undertaken.

Under EPTL §2-1.7 (b), this court is authorized to declare dead an absentee who was subjected to a specific peril of death, without waiting a specific period of time. The Coast Guard Report and the surrounding evidence leave no doubt as to the death of Vincent on December 5, 2013.

## VI. LEGAL DETERMINATION

The court is satisfied that there has been a showing of positive proof of facts, based upon which an inference of death may be made, and that the facts shown exclude any other conclusion. The guardian ad litem did not request that a hearing be conducted. On the basis of the evidence before the court, a hearing can be dispensed with (*see, Matter of Shell*, NYLJ, June 15, 2004, at 17, col 2 [Sur Ct, New York County]).

Accordingly, the court finds that Vincent Tangorra was exposed to a specific peril of death and that he died at sea on December 5, 2013. Full letters of administration shall issue to petitioner upon his duly qualifying according to law. The court further directs that on or before August 31, 2016, petitioner shall file his account as administrator of the estate of Vincent Tangorra.<sup>1</sup>

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<sup>1</sup>

The petition filed by Raphael for letters of temporary administration list four debts owed by the decedent: (a) Internal Revenue Service for federal income taxes and interest, in the amount of \$21,641.28; (b) Sheffield Financial, for a loan on the Wave Runner in the amount of \$7,410.75; (c) ATU Mastercard in the amount of \$4,501.49; and (d) Capital One Visa Card, in the amount of \$432.18. A petition to extend letters lists five additional debts owed by the decedent: (e) Citibank, in the amount of \$1,207.92; (f) Verizon, in the amount of \$348.84; (g) Capital One Bank, in the amount of \$4,846.28; (h) Guardian Marine, Inc. d/b/a Sea Tow, in the amount of approximately \$2,150.00; and (i) Citibank, N.A., for a checking account overdraft, in the amount of \$1,207.92. The court notes that in his affirmation dated May 6, 2015, Gentner also references a debt owed by the decedent to the New York State Department of Taxation and Finance.

**VII. FEE OF THE GUARDIAN AD LITEM**

The guardian ad litem requests a fee of \$1,200.00 at the rate of \$200.00 per hour, based upon six hours of services, as reflected in a print-out of his time records annexed to his report. Following the criteria established in *Matter of Freeman* (34 NY2d 1 [1974]) and *Matter of Potts* (213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]), the court awards a fee in the amount requested. The guardian ad litem fee shall be paid within thirty (30) days of the entry of the decree to be entered herein.

Settle decree.

Dated: March 18, 2016  
Mineola, New York

**E N T E R:**

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**HON. MARGARET C. REILLY**  
**Judge of the Surrogate's Court**

cc: Mark Levinson, Esq.  
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