

Matter of Tran

2016 NY Slip Op 31544(U)

August 12, 2016

Surrogate's Court, New York County

Docket Number: 2012-1785/E

Judge: Nora Anderson

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

New York County Surrogate's Court

Date: August 12, 2016

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Application of Harriet Parness, as
Administrator of the Estate of Stanley
Parness, former Temporary Administrator
of the Estate of

TRUONG TRAN,

File No. 2012-1785/E

Deceased,

for an Order Authorizing Advance Payment
on Account of Commissions.

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A N D E R S O N , S .

Before the court is an application by the fiduciary of a deceased temporary administrator for advance payment of commissions for services rendered in connection with the estate of Truong Tran. The court initially appointed the temporary administrator due to hostility among the allege distributees, three of whom have filed competing petitions for letters of administration. The count determined that a neutral person was required to oversee the administration of this complex estate pending determination of kinship. A retired Justice of New York Supreme Court was appointed temporary administrator on October 25, 2012. He died on July 7, 2014, while still in office.

The temporary administrator's ex parte application for advance commissions was pending at the time of his death. His fiduciary has moved to be substituted as petitioner in this proceeding and seeks the relief requested in the original application.

Pursuant to SCPA §§ 2310 and 2311, any fiduciary may petition for a sum on account of commissions which would be due upon the judicial settlement of his or her account. Under SCPA § 103[21], a temporary administrator is defined as a fiduciary, and thus this application for advance payment of commissions is cognizable. Proceedings brought under SCPA § 2310 are made on notice to all affected parties, but identical proceedings are allowed to be brought ex parte under SCPA § 2311 under certain circumstances.

The temporary administrator met the pleading requirements for an ex parte application by alleging that he would suffer inconvenience if not compensated for the time and effort he expended from the date of his appointment to the date he filed his request for advance payment. He also claimed he would be disadvantaged if he could not spread income taxes on his commissions over more than one year. After his death, his fiduciary moved to be substituted in the matter, at which time the court in its discretion directed that all parties in the administration proceeding be served with the motion. Accordingly, the motion papers were served by mail together with a copy of the original ex parte application. No opposition has been filed.

The order of the court which appointed the temporary administrator provided that "he shall receive as compensation for

his services one-half the statutory commissions to which he would otherwise be entitled" (*Matter of Tran*, NYLJ, Nov. 13, 2012, at p 23, col 2, Glen, S.). The death of the temporary administrator before the completion of his services necessitated the appointment of a successor, who would serve under a decree containing a similar provision regarding compensation (*Matter of Tran*, #2012-1785/H, Decree, July 15, 2014).

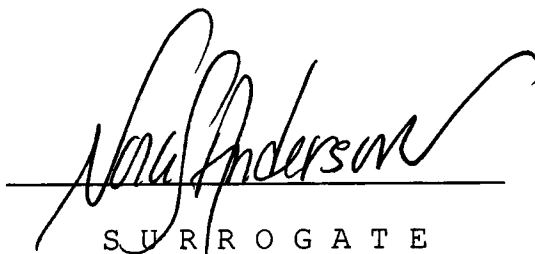
The basis for and the amount of compensation for services rendered prior to the temporary administrator's death will be determined in a final accounting proceeding. Uncertainty of the amount or the manner of calculation ultimately to be employed does not preclude the court from granting advance compensation (*Matter of Kochovos*, 132 Misc 2d 577 [Sur Ct, Bronx County 1997]).

The deceased temporary administrator calculated one-half of a full statutory commission based on the value of the assets he had collected at the time he filed his application, minus one-half to arrive at the receiving commissions, and made a further reduction of one-half based on the restriction on commissions contained in the order of appointment, arriving at proposed commissions of \$301,192.76. There is evidence in the record that an award in this amount would not be excessive even if compensation is ultimately calculated on a quantum meruit basis. Accordingly, the application is granted.

[* 4]

This direction is not a determination of the commissions due petitioner, but merely an advancement. If either commissions or compensation in *quantum meruit* in lieu of commissions is eventually fixed and determined at an amount lower than the amount advanced, petitioner shall pay that difference to the estate with interest at a rate to be determined by the court.

Settle decree.


S U R R O G A T E

Dated: August 12, 2016