

**Matter of DeLuca (Suchard)**

2016 NY Slip Op 32039(U)

June 29, 2016

Surrogate's Court, Nassau County

Docket Number: 2012-369177A

Judge: Margaret C. Reilly

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This opinion is uncorrected and not selected for official publication.

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

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**Accounting of Jeffrey E. DeLuca, as Administrator of the  
Estate of**

**LEON SUCHARD a/k/a LEON SUHAR  
a/k/a LIONEL SUHAR,**

**Deceased.**

**DECISION  
File No. 2012-369177A  
Dec. No. 31705**

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

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

Decision of the court dated March 28, 2016 .....	1
Citation, Petition and Account .....	2
Affidavit of Legal Services .....	3
Affidavit of Tax Services .....	4
Documents submitted by the attorney for paternal claimants .....	5
Report of Guardian ad Litem and Supplement Report of the Guardian ad Litem . .....	6

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By decision of this court dated March 28, 2016, the court declined to determine the status of claimants of the decedent on the paternal side without additional documentation. Specifically, the court required additional information about the decedent’s paternal uncle Moritz/Maurice Suhar/Suhars and a child of his, Vivian N. Suhars. There was also an allegation that a first cousin, Ella Cojocar Bitman, predeceased the decedent but there was no evidence in support of that allegation. Additional documentation has now been provided and the court is in a position to render a final determination on the kinship hearing.

Based on the additional information submitted, the court finds that the decedent's paternal uncle Moritz/Maurice Suhar/Suhars predeceased the decedent. His first marriage was to Jennifer Glantzstein and they had one child, Vivian N. Suhars. Vivian's half brother, Ron Segev, testified that at some point in 1950 or 1951 Vivian was adopted by non-family members and changed his name to Ronald Heller. Additional documentation was provided which confirms that Vivian Suhars/Ronald Heller was adopted by the Heller family and is not a distributee of the decedent. Further, the attorney for the paternal claimants provided the court with a certified copy of a death certificate for Ella Cojocarui Bitman which shows that she predeceased the decedent. Hence, on the paternal side of the family, the decedent was survived by: Ron S. Segev; Vivian Suchards Yatteau; Friederich Cojocarui; and Lupo Goldstein.

Having determined the kinship issue, the court will now address the accounting filed by the Public Administrator in which the Public Administrator seeks the following relief: release and discharge of the Petitioner; allowing the commissions of the Petitioner in the amount of \$28,422.81 and reasonable and necessary expenses of the office in the amount of \$8,140.94; fixing and determining the attorneys' fees of Mahon, Mahon, Kerins & O'Brien, LLC in the amount of \$48,568.75; fixing the accounting fees of Rispoli & Co., CPA in the amount of \$1,937.50; releasing and discharging the surety; and directing the net estate be paid to the New York State Comptroller on account of unknown kin. The court must also fix the fee of the guardian ad litem and address the outcome of the kinship hearing.

The decedent, Leon Suchard, died a resident of Nassau County on December 8, 2011. Letters of administration issued to the Public Administrator on March 22, 2012. This accounting is the first and final accounting. The summary statement shows charges to the accounting party of \$814,093.72 and credits in the total amount of \$152,463.38 leaving a balance of \$661,630.34.

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.

The court bears the ultimate responsibility for approving legal fees that are charged to an estate and has the discretion to determine what constitutes reasonable compensation for legal fees rendered in the course of an estate (*see Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of Vitole*, 215 AD2d 765 [2d Dept 1995]; *Matter of Phelan*, 173 AD2d 621, 622 [2d Dept 1991]). While there is no hard and fast rule to calculate reasonable compensation to an attorney in every case, the Surrogate is required to exercise his or her authority "with reason, proper discretion and not arbitrarily" (*Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; *see Matter of Wilhelm*, 88 AD2d 6, 11-12 [4th Dept 1982]).

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*see Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*see Matter of Coughlin*, 221 AD2d 676 [3d Dept

1995]); the nature of the services provided (*see Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*see Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*see Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*see Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*see Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]). Also, the legal fee must bear a reasonable relationship to the size of the estate (*see Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]).

In this case, the attorney employed by the Public Administrator filed an affirmation of legal services and annexed a copy of his time records to the affirmation. The attorney for the Public Administrator affirmed that his firm rendered 69.67 hours of legal services to date, at various hourly rates. The attorney for the Public Administrator performed the following services: opened and reviewed the file; prepared the petition for letters of administration; prepared the bond application; reviewed real estate and personal property appraisals; participated in the auction of the real property; prepared and reviewed documents in connection with the closing of the real property; prepared correspondence; prepared the accounting and petition; appeared in court on the return date of the accounting citation; prepared for and attended multiple kinship hearings;

reviewed exhibits and transcripts; engaged in conversations with the court appointed guardian ad litem; and reviewed the report of the guardian ad litem.

The attorney further anticipates that in order for him to finalize the proceeding he will have to spend approximately 12 hours of time of both a partner and paralegal. The attorney affirms that he will have to review the decisions of the Court; bring the account current; prepare closing documents for the Public Administrator; and settle the decree. Although the citation asks the court to fix the fee of the attorneys in the amount of \$48,568.75, in his affirmation of legal services, the attorney asks the court to set the fee in the total amount of \$27,779.17 and \$111.30 in disbursements. Considering all of the aforementioned factors, the court sets the fee, including disbursements, of Mahon, Mahon, Kerins & O'Brien, LLC in the total amount of \$28,000.00.

The guardian ad litem submitted a final report in which he reported that he spent a total of 29.75 hours on this matter which include: reviewing all necessary pleadings and documentation; visiting the court to file all necessary documents; participating at the multiple kinship hearings; reviewing and analyzing the documentary evidence and testimony of the witnesses; and preparing his report. The reports of the guardian ad litem were very useful to the court in determining the kinship issue. Upon a review of all of the factors, the fee of the guardian ad litem is fixed in the amount of \$7,500.00.

The account and citation show accounting fees in the amount of \$1,937.50. The accountant, however, filed an affidavit of tax services in which she requests a total fee of \$3,687.50. The accountant avers that she prepared the decedent's personal income tax

return for 2011 and that she further prepared fiduciary returns from 2013, 2014 and 2015. The use of an accountant in this case appears to be reasonable. Therefore, the fee of the accountant in the amount of \$3,687.50 is approved.

The application to fix the commissions of the Petitioner in the amount of \$28,422.81 and reasonable and necessary expenses of the office in the amount of \$8,140.94 is GRANTED, subject to audit; the application to fix and determine the attorneys' fees of Mahon, Mahon, Kerins & O'Brien, LLC is GRANTED in the total amount of \$28,000.00; the application to fix the accounting fees of Rispoli & Co., CPA in the amount of \$3,687.50 is GRANTED. The application to distribute the net estate to the claimants is GRANTED as follows: in accordance with EPTL 4-1.1 [a] [6], one-half of the net estate shall be distributed to the maternal distributees: Sorel Flis, Lyonell Flis, Steve Abramovici (post-deceased) Michael Justin/Miguel Justo Flis and Daniela Maria Flis, and one-half of the net estate shall be distributed to the paternal distributees: Ron S. Segev, Vivian Suchards Yatteau (post-deceased), Friederich Cojocararu and Lupo Goldstein.

Settle decree.

Dated: June 29, 2016  
Mineola, New York

**E N T E R :**

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

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