

Matter of Sevioli

2017 NY Slip Op 30572(U)

March 7, 2017

Surrogate's Court, Nassau County

Docket Number: 324482

Judge: Margaret C. Reilly

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

**Proceeding to Approve Attorneys fees in Guardianship
of the Property of**

**DECISION AND
ORDER**

JOHN JOSEPH SEVIROLI,

File No. 324482

Dec. No. 32554

An Infant,

Over the age of 14 years.

PRESENT: HON. MARGARET C. REILLY

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

Guardian’s Petition, dated August 1, 2016.....	1
Affirmation of Legal Services, dated July 26, 2016.....	2
Affirmation in Support, dated July 26, 2016.	3
Accountant Invoices and Letter.	4
Retainer Agreement.	5
Grassi Invoices.	6
Decision No. 31508, dated January 29, 2016.....	7

Before the court is the petition of Maria Seviroli, guardian of the property of her son, John Joseph Seviroli, submitted in support of application for compensation of Reisman Peirez Reisman & Capobianco LLP for compensation as attorney for the guardian of the property of John Joseph Seviroli for the period November 1, 2015 through July 14, 2016. David H. Peirez, a member of that firm, was appointed by this court pursuant to an order dated January 9, 2009, to act as co-guardian of the business property of John Joseph Seviroli. On or about July 7, 2015, Maria discharged her then attorney, Thomas O. Rice, and replaced him with David H. Peirez and his firm.

The petition seeks compensation of \$49,121.19. The services encompass 106.05 billable hours. The petition also seeks authorization to pay the accounting bills of Grassi & Co CPA, which total \$15,427.86.

With respect to the issue of attorneys' fees, 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 services 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" (*see 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]). In discharging this duty to review fees, the court cannot apply a selected few factors which might be more favorable to one position or another, but must strike a balance by considering all of the elements set forth in *Matter of Potts*, (123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]), and as re-enunciated in *Matter of Freeman* (34 NY2d 1 [1974]) (*see Matter of Berkman*, 93 Misc 2d 423 [Sur Ct, Bronx County 1978]). 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]; *see Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]; *Matter of Reede*, NYLJ, Oct. 28, 1991, at 37, col 2 [Sur Ct, Nassau County]; *Matter of Yancey*, NYLJ, Feb. 18, 1993, at 28, col 1 [Sur Ct, Westchester County]). Moreover, the size of the estate can operate as a limitation on the fees payable (*Matter of McCranor*, 176 AD2d 1026 [3d Dept 1991]; *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]), without constituting an adverse reflection on the services provided.

The burden with respect to establishing the reasonable value of legal services performed rests on the attorney performing those 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]; *see e.g. Matter of Spatt*, 32 NY2d 778 [1973]). Contemporaneous records of legal time spent on estate matters are important to the court in determining whether the amount of time spent was reasonable for the various tasks performed (*see Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]; *Matter of Phelan*, 173 AD2d 621 [2d Dept 1991]).

The court notes that a major portion of the services for which compensation is sought and described in counsel's time records, are 54.1 hours respecting the petition of Maria Seviroli for authorization to use guardianship funds to purchase a residential property, which application was denied. The billable value of such services is stated as \$32,456.25 and \$110.00 in disbursements are also detailed.¹

Considering the foregoing and the affirmation of counsel for services rendered, the court fixes counsel's fees in the sum of \$45,000.00 and allows disbursements of \$72.14. Disbursements for duplication are disallowed. The court directs the guardian of the child's

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The court also notes that such services did not benefit the guardianship or the infant (*see Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]).

property to remit those sums to Reisman Peirez Reisman & Capobianco LLP.

With respect to the accountant's fees, normally, an accountant's services are not compensable out of estate assets unless there exist unusual circumstances that require the expertise of an accountant (*see Matter of Meranus*, NYLJ, Mar. 31, 1994, at 37, col 2 [Sur Ct, Suffolk County]). The fee for such services is generally held to be included in the fee of the attorney for the fiduciary (*see Matter of Musil*, 254 AD 765 [2nd Dept 1938]). "[T]he purpose of this rule is to avoid duplication (*see Matter of Schoonheim*, 158 AD2d 183 [1st Dept 1990]). Where the legal fees do not include compensation for services rendered by the accountant, there is no duplication and the legal fee is not automatically reduced by the accounting fee.

Here, petitioner has submitted invoices requesting fees totaling \$15,427.86, on behalf of the accounting firm of Grassi & Co. CPAs, PC, none of which has been paid. The attached invoices show that Grassi & Co. prepared the 2015 federal and state fiduciary tax returns and projections for the 2016 federal and state fiduciary tax returns and the guardianship accounts for 2016, and related services. The work performed was not duplicative of the legal services rendered by the guardian's legal counsel and the requested amount is reasonable. The court approves the fees of Grassi & Co., CPAs, PC, in the amount of \$15,427.86. The court directs the guardian of the child's property to remit those sums to Grassi & Co., CPAs, PC.

This constitutes the Decision and Order of this court.

Dated: March 7, 2017
Mineola, New York

E N T E R:

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

cc: David H. Peirez, Esq.
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