

Matter of Ryan

2017 NY Slip Op 30679(U)

March 15, 2017

Surrogate's Court, Nassau County

Docket Number: 2015-384023/A

Judge: Margaret C. Reilly

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

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**Accounting by Anna M. Ryan, as the Executor
of the Estate of**

**DECISION
File No. 2015-384023/A
Dec. No. 32882**

ELEANOR A. RYAN,

Deceased.

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PRESENT: HON. MARGARET C. REILLY

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

Petition for Judicial Settlement of Account of Executor.	1
Account	2
Citation	3
Proof of Service of Citation	4
Stipulation with Office of the Attorney General	5
Affirmation of Legal Services	6
Supplemental Affirmation of Legal Services	7
Affidavit of Accountant Services	8

In this uncontested executor’s accounting proceeding, the accounting party is the decedent’s sister, Anna M. Ryan. The matter has been submitted for decision for approval of the account and the special prayers for relief including approval of attorneys’ and accountants’ fees and fiduciary commissions. The decedent’s will contains a charitable bequest and the court’s file contains a stipulation executed by the executor and the Office of the Attorney General of the State of New York regarding the allocation of fiduciary income taxes. The stipulation provides that the Attorney General has no objection to the account.

With respect to the issue of attorney 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 fees rendered in the course of an estate (*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 (*Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 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], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 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 (*Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *aff'd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 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], *aff'd* 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 (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *aff'd* 213 App Div 59 [4th Dept 1925], *aff'd* 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 (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]; *Matter of Phelan*, 173 AD2d 621 [2d Dept 1991]).

In this case, the executor's attorney has supplied the court with a very detailed affidavit of legal services. Although counsel has not submitted contemporaneous time records because his retainer provided for a fixed fee of 2.5% of the gross estate, he avers that

he has expended over 350 hours on this estate. Although the court need not accept at face value an attorney's estimation of time spent (*Matter of Bobeck*, 196 AD2d 496, 497 [2d Dept 1993]), the court notes that the fee sought is not disproportionate to those customarily sought and awarded and similar proceedings and that no objection to the fee request has been interposed by any party. Accordingly, the fee of the executor's attorney is approved in the amount sought.

Traditionally, accountants' services are not compensable out of estate assets unless there exist unusual circumstances that require the expertise of an accountant (*Matter of Meranus*, NYLJ, March 31, 1994, at 37). The fee for such services is generally held to be included in the fee of the attorney for the fiduciary (*Matter of Musil*, 254 AD 765 [1938]). The purpose of this rule is to avoid duplication (*Matter of Schoonheim*, 158 AD2d 183 [1990]). Where, as here, the request for legal fees does not include compensation for services that were rendered by the accountant, there is no duplication and the legal fee is not automatically reduced by the accounting fee (*Matter of Falbee*, 2010 NY Slip Op 33604 [Sur Ct, Nassau County 2010]). The accountant's services were not duplicative of the attorneys' services and appear reasonable for the services provided. The fees of the accountant are therefore approved.

Finally, the prayer in the petition for reimbursement to the executor for administration and funeral expenses she advanced in the sum of \$22,862.25 is approved.

The executor is directed to bring the account down to date by affidavit and settle a decree on all parties who have appeared in the proceeding.

This is the decision and order of the court.

Dated: March 15, 2017
Mineola, New York

E N T E R :

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

cc: Dominic L. Carini, Esq.
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