

Matter of Lourie

2017 NY Slip Op 30936(U)

April 5, 2017

Surrogate's Court, New York County

Docket Number: 2013-3322/B

Judge: Nora S. Anderson

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

New York County Surrogate's Court

APRIL 5, 2017

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Application of Erica Bell, Attorney at Law,
to Fix the Compensation of the Attorneys
for Services Rendered to the Estate of

File No. 2013-3322/B

MONA LOURIE,

Deceased.

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A N D E R S O N , S .

This is the uncontested petition of the attorney/executor of this estate, pursuant to SCPA 2110, to fix the legal fees of her law firm, Weiss, Buell & Bell, for services rendered since decedent's death on August 16, 2013. Petitioner now requests that the court fix the firm's compensation in the sum of \$22,187.42, reflecting \$19,642.50 in legal fees and \$2,554.92 in disbursements. The estate is valued at \$465,820.

The court has the ultimate responsibility to determine the reasonableness of legal fees (*Stortecky v Mazzone*, 85 NY2d 518 [1995]). An attorney is not allowed legal fees for rendering services that are executorial in nature (*Matter of Ellis*, 277 AD2d 102 [1st Dept. 2000]). The attorney/executor has the burden to differentiate between executorial and legal services rendered (*Matter of Epstein*, 158 AD2d 183 [1st Dept. 1990]).

Whereas petitioner offers that 7.733 hours, at the rate of \$450/per hour (\$3,480), were spent on executorial duties, yet mistakenly billed as legal fees, she does not identify the

specific dates or services to which she refers. A review of the billing records shows that approximately \$4,680 in fees were billed as legal services, but were executorial in nature (see *Matter of Goodman*, NYLJ, May 29, 2015 at 18, col 2 [Sur Ct, NY County 2015]). This includes time spent making arrangements for cremation, paying estate obligations, reviewing and organizing decedent's bills and mail, arranging for the cleaning out and surrender of decedent's apartment, emptying decedent's safe deposit box, closing decedent's bank accounts, reviewing decedent's past tax returns and account statements, organizing paperwork, revising, reviewing and reconciling estate bank account statements and estate account activity, sending out mailings, depositing checks, scanning and filing, basic research regarding decedent's distributees, corresponding with an accountant regarding income tax returns, photocopying, collecting assets and making partial distributions. Legal fees are accordingly reduced in the amount of \$4,680. These executorial services are instead compensable by executor's commissions (SCPA 2307).

Legal fees are further reduced in the sum of \$1,700, representing numerous general or vague entries from which the court cannot discern whether the services were legal or executorial (see *Matter of Passuello*, 184 AD2d 108 [3d Dept. 1992] ["vague and generalized descriptions are insufficient to

establish that . . . acts were legal as opposed to executorial in nature"]) and are also reduced in the sum of \$1,900, representing a partial reduction for entries which contain descriptions of both legal and executorial services combined.

In consideration of the time-honored factors set forth in *Matter of Freeman* (34 NY2d 1 [1974]) and *Matter of Potts* (213 AD 59 [4th Dept. 1925], *aff'd* 241 NY 593 [1925]), the remainder of the legal fees are approved in the amounts requested.

Certain expenditures for which petitioner has requested reimbursement (\$209.94 utility bill and \$1,415.00 fee for cremation and death certificates) constitute administration expenses, rather than legal disbursements, and are therefore not proper subjects of this proceeding. Moreover, the court will not approve reimbursement for postage and express mail fees (\$23.98), which are considered office overhead (*Matter of Stiftung*, NYLJ, Nov. 17, 2014 at 23, col 1 [Sur Ct, NY County 2014]). The remaining legal disbursements are approved in the amounts requested.

Prior to making this application, petitioner paid \$21,616.67 (\$19,276.75 in legal fees and \$2,339.92 in disbursements) to Weiss, Buell & Bell without the requisite court order (SCPA 2211). In its discretion, the court directs petitioner to pay the estate interest, as compensation for the lost use of \$21,616.67 (see *Matter of Amsellem*, 2005 NY Misc Lexis 7771 [Sur Ct, NY

County 2005]; *Matter of Gillett*, 139 Misc 2d 188 [Sur Ct, Suffolk County 1988]), at the rate of two percent per annum(CPLR 5001[a]).

Submit decree.



SURROGATE

Dated: April 5, 2017