

Matter of Coppola

2017 NY Slip Op 31262(U)

June 8, 2017

Surrogate's Court, Nassau County

Docket Number: 2013-374523/B

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**

-----X
**Accounting by Walter D. Coppola, as the Executor of
the Estate of**

DECISION

**File No. 2013-374523/B
Dec. No. 32652**

ANTOINETTE COPPOLA,

Deceased.

-----X
PRESENT: HON. MARGARET C. REILLY

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

Petition.....	1
Accounting.....	2
Objections.....	3
Stipulation of Settlement.....	4
Affirmations of Legal Fees (3).....	5
Receipts and Releases (2).....	6

PROCEDURAL HISTORY

In response to a petition to compel an accounting, a petition and account were filed on September 26, 2014 by Walter D. Coppola (the executor), in connection with the estate of Antoinette Coppola (the decedent). Objections to the account were filed by Peter W. Coppola (the objectant). The executor and the objectant entered into a stipulation of settlement that was filed with the court on October 21, 2016 (the stipulation), in which both parties waived all rights to any additional formal accounting and reached an agreement concerning the division of estate property. The objectant withdrew all of his objections to the account except with respect to legal fees payable to three attorneys who represented the executor.

Subsequently, receipts and releases were executed by two of the attorneys who had formerly represented the executor, in exchange for combined payments of additional legal fees totaling \$2,000.00. No further fees are sought by these attorneys. Thus, the only issues currently before the court are approval of the fees paid to prior counsel and the payment of legal fees to the executor's present counsel, the law firm of Bondi Iovino & Fusco.

FEEES

"The Surrogate's Court bears the ultimate responsibility for deciding what constitutes a reasonable attorney's fee, and the evaluation of what constitutes a reasonable attorney's fee is a matter within the sound discretion of the court. In evaluating what constitutes a reasonable attorney's fee, factors to be considered include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained" (*Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008])[internal quotation marks and citations omitted]; *accord*, *Matter of Freeman*, 34 NY2d 1, 9, [1974]; *Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]).

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]).

The court notes that in the course of this estate administration, the executor received legal services from three law firms. When multiple attorneys are employed by the fiduciary of a decedent's estate, the aggregate fee should approximate what one attorney would charge (*Matter of Leopold*, 244 AD2d 411 [2d Dept 1997]; *Matter of Mattis*, 55 Misc 2d 511 [Sur Ct, New York County 1967]). Some overlap in services may necessarily occur (*Matter of Patchin*, 106 AD2d 730 [3d Dept 1984]), and should be

a factor when considering the aggregate fee (*see Matter of Mergentime*, 155 Misc 2d 502 [Sur Ct, Westchester County 1992], *aff'd*, 207 AD2d 453 [2d Dept 1994]). There can be some exceptions or relaxation of this rule, for example, where the separate counsel does separate work, where counsel are under time pressures, or where there are complex or exceptional circumstances (*Matter of Duke*, NYLJ, May 3, 2000, at 28, col 6 [Sur Ct, New York County]).

The Fee of Piccirillo & Piccirillo, Esqs.

From the inception of the estate administration, through the filing of the accounting, the petitioner was represented by Piccirillo & Piccirillo, Esqs. Mark J. Piccirillo, of the firm of Piccirillo & Piccirillo, Esqs., filed an affirmation of legal services reflecting net payments of \$3,500.00, and an unpaid balance of \$4,362.50, for 11.05 hours of services in connection with the probate proceeding and 17 hours of legal services in connection with the accounting proceeding. Subsequently, counsel was paid an additional \$1,500.00 in full payment of the unpaid balance of \$4,362.50, as evidenced by the receipt and release contained in the file. The fee of Piccirillo & Piccirillo, Esqs., in the total amount of \$5,000.00, all of which has been paid, is approved by the court.

The Fee of Jim D. Sarlis

Jim D. Sarlis filed an affirmation indicating that he provided 8.75 hours of legal services in connection with the preparation of the petitioner's judicial accounting, for total billable time of \$3,281.25, based upon an hourly rate of \$375.00. He advises the court that he was paid \$2,000.00, leaving an unpaid balance of \$1,281.25. Subsequently, Jim D. Sarlis was paid an additional \$500.00, which he accepted as payment in full, as

evidenced by the receipt and release contained in the file. The fee of Jim D. Sarlis, in the total amount of \$2,500.00, all of which has been paid, is approved by the court.

The Fee of Bondi Iovino & Fusco

The law firm of Bondi Iovino & Fusco has represented the executor since November 12, 2015. Their services were billed at \$475.00 per hour for a partner's time and \$85.00 per hour for a clerk's time, for billing through October 21, 2016 in the total amount of \$11,205.70, of which \$1,000.00 has been paid, and disbursements of \$182.80, all of which remains unpaid.

The court has reviewed counsel's affirmation of services and contemporaneous time records. The affirmation reflects services that included, but were not limited to: securing and reviewing files of prior counsel; reviewing court records; appearing in court; receiving and holding estate funds; responding to discovery demands; reviewing objections; appearing at depositions; and drafting and revising the settlement agreement. Although the right of the objectant to file papers in opposition to counsel's fee application was preserved under paragraph (4) of the stipulation, no further objections to the fee request were filed following the submission of the stipulation.

As noted above, the petitioner's prior attorneys voluntarily accepted reduced fees for their legal services. As a result of these reductions, the fee sought by Bondi Iovino & Fusco, even when combined with the payments to prior counsel, represents less than 6% of the decedent's gross estate.

The fee is approved in the amount requested.

CONCLUSION

The stipulation of settlement is approved.

The court approves the fees paid to the petitioner's prior attorneys.

Legal fees for Bondi Iovino & Fusco are approved in the amount of \$11,205.70, plus disbursements of \$182.80, of which \$1,000.00 has been paid and \$10,205.70, plus disbursements of \$182.80 remain unpaid.

Pursuant to the agreement of the parties, the decree shall authorize the executor to distribute the balance of the net estate in accordance with the terms of the stipulation.

Settle decree.

Dated: June 8, 2017
Mineola, New York

E N T E R:

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

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