

Matter of Salas (Preza)
2017 NY Slip Op 31648(U)
July 25, 2017
Surrogate's Court, Nassau County
Docket Number: 2010-362084/A,B,C
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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In the Matter of the Application of Stephany Lorena Salas, as Administrator of the Goods, Chattels and Credits which were of

**DECISION
File No. 2010-362084 /A,B,C
Dec. No. 32961**

SAUL ANTONIO PREZA,

Deceased,

for leave to compromise a certain cause of action for wrongful death of the decedent and to render and have judicially settled an account of the proceedings as such Administrator.

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PRESENT: HON. MARGARET C. REILLY

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

Petition with Exhibits.	1
Attorney’s Affirmations (5).	2
Stipulation.	3
Waiver of Citation and Consent.	4
Report of the Guardian ad Litem.	5
Account.	6

In this wrongful death proceeding, the petitioner, Stephany Lorena Salas, seeks: (1) authorization to compromise and settle a claim against the defendants for the wrongful death of Saul Antonio Preza for \$250,000.00; (2) modification of letters of administration to permit the compromise and collection of the claim; (3) an order dispensing with a bond; (4) judicial settlement of her account; (5) authorization to distribute the settlement amount in accordance with the stipulation executed by the parties.

The proceeding was resolved by stipulation of settlement that detemined the allocation

and distribution of the settlement funds among the interested parties, and the payment of legal fees. The stipulation of settlement was set forth in open court and so-ordered on July 8, 2014 by Hon. R. Bruce Cozzens, Jr., of the Supreme Court, Nassau County,

BACKGROUND

Saul Antonio Preza (hereinafter referred to as “the decedent”) died at the age of 19 years in an arson-started fire on February 19, 2009, while residing at 232 Lawrence Avenue, Lawrence, New York with his mother, Morena Vanegas, his stepfather, Edit Vanegas, and four of his siblings: Andrea Vanega, Susana Vanegas, Eddie Manaces Vanegas and Leonel Vanegas. The decedent’s mother, Morena Vanegas, and two of his sisters, Andrea Vanegas and Susana Vanegas, were also killed in the fire. The decedent was pronounced dead at the scene.

On August 5, 2010, this court issued letters of guardianship for property only to Stephany Lorena Selas (hereinafter referred to as “the petitioner”) for Jayden Anthony Preza Salas, the infant son of the decedent and the petitioner (hereinafter referred to as “the decedent’s son”). On October 29, 2010, this court issued limited letters of administration to the petitioner.

The petitioner retained counsel, who conducted an investigation and commenced an action in the Supreme Court of Nassau County against the following defendants: (1) 232 Lawrence Avenue, LLC; (2) Lee Bialostok; (3) Sud-Sational, LLC; (4) Ariel Czemerinski; (5) AMC Engineering, LLC; (6) Caleb Lacey; (7) J.A.S. Electric; and (8) Matthew Seigal

(hereinafter collectively referred to as “the defendants”). The lawsuit involved allegations of negligent design, construction and maintenance of the building located at 232 Lawrence Avenue that resulted in the deaths of the decedent and three other family members when the arsonist set the fire. The decedent’s stepfather commenced a personal injury action on behalf of himself and two sons. In a separate proceeding, Caleb Lacey was convicted of manslaughter and arson and sentenced to jail for 25 years to life.

Following discovery, the defendants moved for summary judgment, which was denied. Numerous settlement conferences were conducted, and after a full day mediation, all of the parties in the related proceedings agreed to a settlement fund of \$1,733,413.00 for the seven plaintiffs.

Under the terms of the stipulation, the estate of the decedent receives \$250,000.00, all of which will be distributed to the decedent’s son, whose was born on April 2, 2008. The petitioner believes the settlement amount to be fair and reasonable. Pursuant to the attorney’s affirmation filed on March 27, 2017, it is proposed that the funds will be used to purchase a structured settlement for the benefit of the decedent’s son, which will pay \$1,407.30 per month, guaranteed 12 years, beginning at age 18, which will occur on April 2, 2026, with the last payment being made on March 2, 2038, for a guaranteed amount of \$202,651.20. In addition, there will be a guaranteed lump sum payment of \$250,000.00 payable to the decedent’s son at age 30, which will occur on April 2, 2038. The combined total guaranteed payout amount is \$452,651.20.

Pursuant to the stipulation so-ordered by Hon. R. Bruce Cozzens, Jr., legal fees and disbursements of \$156,995.18 and disbursements of \$2,983.54 will be paid to counsel for the petitioner.

The decedent's funeral bill of \$6,580.00 was paid by the Crime Victim's Board. The Office of Victim Services was served with citation and did not appear. The New York State Tax Commission filed a waiver of citation and consent.

The petitioner seeks no reimbursement for expenses she incurred in the administration of the decedent's estate. There are no medical or hospital bills, and no assignments, compensation claims or liens filed with the administrator.

REPORT OF THE GUARDIAN AD LITEM

The court appointed a guardian ad litem to represent the interests of the decedent's infant son. The guardian ad litem filed his report on March 22, 2017. He advises the court that he believes the settlement offer to be fair and reasonable and has no objection to the proposed structured annuity for his ward.¹ The guardian ad litem waived his fee in view of the fact that his ward is a small child who lost his father in an arson fire and is receiving only a modest settlement.

¹Although the Supreme Court approved the legal fee, the guardian ad litem notes that the legal fee is equivalent to roughly 39% of the gross recovery, in that the legal fee of \$156,995.17 plus the settlement amount of \$250,000.00 equals \$406,995.17, and 1/3 of that sum would only be \$133,665.06. The court notes that the share of the infant would not be altered by a change in the legal fee.

CONCLUSION

The petition is approved and the account is settled. The petitioner is authorized to compromise and settle her claim against the defendants for the wrongful death of Saul Antonio Preza for \$250,000.00, and the letters of administration issued to her are modified to permit the compromise and collection of the claim. A bond is dispensed with, and the petitioner is authorized to utilize the settlement amount to purchase a structured settlement for the benefit of the decedent's son, as set forth above.

Settle decree.

Dated: July 25, 2017
Mineola, New York

E N T E R:

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

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