

Matter of Sanford (Brownstein)
2017 NY Slip Op 32062(U)
May 22, 2017
Surrogate's Court, Nassau County
Docket Number: 2012-369342/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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**In the Matter of the Judicial Settlement of the Account
of Proceedings of Daniel J. Brownstein as the Executor
of the Estate of**

DECISION

File No. 2012-369342/A

**SUSAN H. SANFORD
a/k/a SUSAN SANFORD,**

Dec. No. 32931

Deceased.

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PRESENT: HON. MARGARET C. REILLY

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

Petition	1
Accounting by Executor.. . . .	2
Affidavit of Professional Accounting Services.	3
Affirmation of Legal Services.	4
Report of Guardian ad Litem.	5
Affirmation of Legal Services	6

I. PROCEDURAL HISTORY

The petitioner seeks judicial settlement of his final account as executor of the estate of Susan H. Sanford.

II. BACKGROUND

Susan Sanford died on January 28, 2012. She was survived by her sister and various nieces and nephews. The decedent’s last will and testament dated April 30, 1999 was admitted to probate by this court on November 4, 2015 and letters testamentary issued to the petitioner, Daniel J. Brownstein. The decedent’s will provided for the following: \$20,000

to the decedent's brother, Paul Gomory; \$10,000.00 to the decedent's sister-in-law, Margaret Gomory; \$10,000.00 to the decedent's sister in law, Betty Gomory; and \$10,000.00 to the decedent's nephew, Burt T. Gomory. In the event that any of the aforementioned persons predeceased the decedent, his or her share was devised to the person's children, per stirpes. The residue was to be divided equally between the decedent's sisters, Mary Ann Okie, Lillian Westberg and Eva Kearney. The decedent provided that in the event that any of the sisters predeceased, the bequest for said deceased sister shall be paid to her children, per stirpes, "and in default of such issue paid over to the surviving beneficiaries named in this paragraph or their children, per stirpes, as the case may be."

The following information is based on information provided by the petitioner and set forth in the accounting. The decedent's sister, Eva Kearney, survived the decedent. Paul Gomory predeceased the decedent and was survived by two children, Nanette Gomory Lunde and Paul Gomory. Burt Gomory predeceased the decedent and was survived by one child, Pamela Moore. Margaret Gomory post-deceased the decedent and Nanette Gomory Lunde and Paul Gomory are the sole beneficiaries of her estate. Betty Gomory survived the petitioner

With regard to the residuary, Eva Kearney survived the decedent. Lillian Westberg predeceased the decedent and was survived by two children, Ingrid Westberg and Ellen Ott. Mary Ann Okie predeceased the decedent and was survived by Sandi Siegel and possibly another daughter, both of whom have been unable to be located by the petitioner. A guardian

ad litem was appointed to represent the missing and unknown heirs and he has filed his report. He has no objections to the relief requested.

III. THE ACCOUNT

The account covers the period from January 28, 2012 to December 31, 2015. The principal account reflects: total principal charges of \$224,728.26, total principal credits of \$38,168.23, and principal balance on hand of \$186,560.03. The income account reflects: total income charges of \$6,468.87, total income credits of \$0.00, a balance of undistributed income on hand of \$6,468.87, and a combined total on hand as of December 31, 2015 of \$193,028.90.

IV. RELIEF REQUESTED

The executor asks the court to:

- (a) judicially settle and allow the executor's account;
- (b) approve the payment of \$29,323.43 to Daniel J. Brownstein, Esq., as guardian of Susan Sanford;
- (c) approve the payment of \$600.00 to Richard Garfinkle, CPA, for tax preparation;
- (d) approve the payment of administration expenses in the sum of \$38,168.23;
- (e) approve executor's commissions in the sum of \$9,989.13;
- (f) approve legal fees to Susan I. Stein, Esq., in the amount of \$38,270.86;
- (g) approve the payment of specific bequests as set forth in Schedule H; and

(h) direct that the residuary bequests for the missing/unknown heirs be paid to the Treasurer of the County of Nassau, State of New York.

The court must also set the fee of the guardian ad litem.

V. FEES

A. Fee of the Guardian

The petitioner, Daniel J. Brownstein, Esq., was appointed guardian of the personal needs and property management of the decedent. By order dated September 24, 2014, the guardian was awarded fees of \$28,315.50 and disbursements in the amount of \$1,007.93, for a total amount of \$29,323.43. The executor seeks approval of the sum, all of which is paid. The payment is approved.

B. Fee of the Attorney for the Executor

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 attorney submitted a very detailed affirmation of legal services as well as exhibits and time records. She spent 105.50 hours on this matter, and she notes that at least an additional 60 hours of her time were not billed. She also notes that she regularly charges and regularly receives the sum of \$350.00 per hour for her services. The attorney also asks to be reimbursed for disbursements in the total amount of \$1,345.86.

After considering all of the factors discussed above, and after reviewing the affirmation of legal services which includes contemporaneous time records, the fee of counsel is fixed in the total amount, including disbursements, of \$38,270.86.

C. Fee of the Guardian ad litem

The guardian ad litem filed an affirmation of legal services in which he affirmed that he spent 8.8 hours on this matter. He regularly charges and regularly receives a fee of \$400.00 per hour for his services. After considering all of the factors discussed above, the fee of the guardian ad litem is fixed in the total amount of \$3,400.00.

D. Fee of the Accountant

The court has also been asked to review the accountant's fee of \$600.00 for the preparation of individual federal and New York State income tax returns for the year 2011 and federal and New York State fiduciary income tax returns for 2012, 2013 and 2014.

Where the legal fees do not include compensation for services rendered by an accountant, and if there is no duplication of services, the fee of the accountant may be a proper charge against the estate (*see generally Matter of Schoonheim*, 159 AD2d 183 [1st Dept 1990] and *Matter of Tortora*, NYLJ, July 19, 1995, at 26, col 2 [Sur Ct, New York County]).

The work performed by the accountant was not duplicative of the services rendered by the attorney for the estate. The court approves the fee in the amount of \$600.00.

VI. CONCLUSION

The commissions of the executor are approved subject to audit.

The payment to the guardian in the amount of \$29,323.43 is approved.

Fees of the guardian ad litem, counsel and the accountant are fixed as set forth above.

Within sixty (60) days of the date of this decision, the executor shall file an affidavit bringing his account down to date.

The executor is authorized to pay the distributions as set forth in Schedule H with any amounts due to a missing or unknown to be paid to the New York State Office of the Comptroller for his or her benefit.

Settle decree.

Dated: May 22, 2017
Mineola, New York

E N T E R:

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

cc: Lawton W. Squires, Esq.
193 Montecito Crescent
Melville, NY 11747

Susan I. Stein, Esq.
9 Cutter Mill Road, Suite 322N
Great Neck, NY 11021