

Matter of Mitchell (Adams)
2017 NY Slip Op 32436(U)
October 27, 2017
Surrogate's Court, Nassau County
Docket Number: 2016-387977/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 Joseph Adams
as the Executor of the Estate of**

**DECISION
File No. 2016-387977/A
Dec. No. 33463**

**JEAN ANNE MITCHELL,
a/k/a JEAN A. MITCHELL,**

Deceased.

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PRESENT: HON. MARGARET C. REILLY

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

Petition.....	1
Amendment to Petition.	2
Affirmation dated October 23, 2017.	3
Account.	4
Waivers (4)..	5
Citation with Proof of Service	6
Notice of Appearance by New York Attorney General.....	7
Affirmation of Legal Services.....	8

PROCEDURAL HISTORY

Before the court is the petition and account of Joseph Adams as the executor of the estate of Jean Anne Mitchell a/k/a Jean A. Mitchell.

The petitioner prays that the account of proceedings be judicially settled and that Raymond Jude Ellmer, Esq., be paid his legal fee of \$15,000.00 and disbursements in the amount of \$1,298.00, and that the balance remaining on hand in the amount of \$271,795.03 be paid as follows: Maria Bernadette Walker \$135,897.51; Regina Adamo Morris \$135,897.52; and that process be issued to all necessary parties who have not appeared to

show cause why the relief requested should not be granted.¹

BACKGROUND

Jean Anne Mitchell (hereinafter referred to as “the decedent”) died on October 8, 2015, a resident of Jericho in Nassau County. She left a will dated November 17, 2011. Under the terms of the will, the decedent bequeathed \$125,000.00 to St. Jude’s Children’s Hospital. The decedent’s ownership and control of the premises at 3 Onondaga Place, Jericho, New York was bequeathed to Maria Bernadette Walker and Regina Adamo Morris, equally or to the survivor. The residuary estate is to be distributed in equal shares to the following persons or survivor of them: Christopher Adamo, Michael Contorno, Jill Cobb, Joseph Adams and Patricia Garnett.

Preliminary letters issued to Joseph Adams on February 11, 2016. The will was admitted to probate and full letters testamentary issued on September 7, 2016.

Waivers of citation and consents in this accounting proceeding were filed by: Maria Bernadette Walker; Regina Adamo Morris; Christopher Adamo; and Patricia Garnett. Citation was served upon: St. Jude’s Children’s Hospital; Michael Contorno; and Jill Cobb. The Attorney General of the State of New York filed a notice of appearance. There were no objections to the account.

¹At the request of the court, counsel for Joseph Adams filed an affirmation, dated October 23, 2017, in which he clarified the relief sought and the abatement of bequests, discussed below. The affirmation reflected a modest decrease in the disbursements payable to counsel and a resulting increase in the bequests payable under the will.

THE ACCOUNT

The account covers the period from October 8, 2015 to April 21, 2017. Schedule A shows that there was \$288,093.03 in principal received. Schedule C-1 lists an unpaid legal fee of \$15,000.00; an unpaid probate filing fee and accounting filing fee of \$1,280.00; and a process server fee of \$1,200.00. Schedule G reflects that \$288,093.03 is the balance on hand. All of the other schedules are blank.

As clarified in the affirmation submitted by counsel, the estate principal of \$288,093.03 consists exclusively of a balloon mortgage payment made to the estate in connection with the decedent's interest in 3 Onondaga Place, Jericho, New York. According to Article Fourth of the decedent's will, the net proceeds from this payment are payable to Maria Bernadette Walker and Regina Adamo Morris. The estate has no other assets. Therefore, the bequests to St. Jude's Children's Hospital and to the residuary legatees abate in accordance with EPTL § 13-1.3.

FEES

“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” (*Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008] [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]). In determining what constitutes a reasonable attorney's fee,

the court may considers factors such as “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 Szkambara*, 53 AD3d 502, 502-503 [2d Dept 2008] [citations omitted]; *see Matter of Freeman*, 34 NY2d 1 [1974]). 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]).

Counsel to the executor submitted an affirmation of services reflecting 55 hours, at an hourly rate of \$275.00, for total billing of \$15,000.00. Annexed to the affirmation is a copy of the retainer agreement, which provides for a flat fee payment of \$15,000.00 (approximately five percent of the gross estate) plus disbursements. Contemporaneous time records were not annexed. The affirmation of legal services indicates that 20 hours were devoted to the preparation and execution of the petition for probate; 20 hours were devoted to the review of a note, mortgage and mortgagee's contract; and 15 hours were devoted to the judicial accounting proceeding. In his October 23, 2017 affirmation, counsel explained that this breakdown is an estimate of hours spent on each aspect of the estate administration.

Counsel also sought reimbursement of expenditures in the amount of \$2,480.00, which he reduced to \$1,298.00 in his subsequent affirmation. In support, counsel annexed: a receipt from the court for \$673.00; a receipt from the court for \$625.00; and a statement from, and attorney check payable to, Anke Judicial Services in the amount of \$125.00, for

a total of \$1,423.00.

CONCLUSION

Jurisdiction having been obtained over all necessary parties and no objections to the account having been filed, the account is approved. The court approves legal fees of \$15,000.00 and disbursements of \$1,298.00.

The net estate shall be paid to Maria Bernadette Walker and Regina Adamo Morris in equal shares.

Settle decree.

Dated: October 27, 2017
Mineola, New York

E N T E R :

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

cc: Raymond Jude Ellmer, Esq.
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