

<b>Matter of Hoffman</b>
2017 NY Slip Op 32806(U)
September 29, 2017
Surrogate's Court, Nassau County
Docket Number: 358967/B
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**In the Matter of the Account of Proceedings of  
RICHARD HOFFMAN, as Administrator of the  
Estate of**

**DECISION & ORDER**

**File No. 358967/B  
Dec. No. 32522**

**HELENE FIELD HOFFMAN,**

**Deceased.**

**PRESENT: HON. MARGARET C. REILLY**

The following papers have been considered in the preparation of this decision:

Petition. . . . .	1
Account and Amended Account . . . . .	2
Six Guardian ad Litem Reports . . . . .	3
Stipulation of Settlement. . . . .	4

**INTRODUCTION**

This is a contested proceeding to judicially settle an account pursuant to SCPA §2208.

The petitioner is Richard Hoffman, the decedent’s husband and court appointed administrator pursuant to SCPA §1001(1)(a). Pursuant to SCPA §§ 402(2) and 403(2), a guardian ad litem was appointed to represent the decedent’s three minor children, who are necessary parties.

The guardian ad litem seeks the court’s permission pursuant to SCPA §2106(2) to enter into a proposed stipulation of settlement. Surrogate’s Court Procedure Act §2106(2) provides that a person under a disability is a necessary party who shall be represented by a guardian ad litem and that the guardian ad litem may execute on behalf of the person for whom he appears all proper instruments necessary to effect any compromise approved by the court.

## BACKGROUND

The decedent, Bernice Field Hoffman, died intestate on December 3, 2009. She was survived by her husband, Richard Hoffman, and three children, all of whom are minors<sup>1</sup> and for whom a guardian ad litem was appointed (SCPA §§ 402[2] and 403[2]). Letters of administration pursuant to SCPA §1001(1)(a) issued to Richard Hoffman by this court on April 2, 2010. The petitioner commenced a proceeding to judicially settle his accounts as fiduciary and the guardian ad litem filed objections.

On or about March 5, 2012, Shirley Field, the decedent's mother, filed a verified petition to compel the administrator to account (SCPA §2205). The administrator objected to the petition and alleged that Shirley Field did not have standing to compel an accounting (SCPA §2205[2]). The parties apparently resolved their differences as the petitioner filed an account of his proceedings as administrator for the period of December 3, 2009 through May 18, 2012. The summary schedule of the account showed total credits in the amount of \$5,041,725.64 and total charges of \$54,566.20. The guardian ad litem filed a preliminary report on January 31, 2013. He reported that the decedent had a 50% interest in three corporations: H&M Leasing; Field Enterprises East and Jemcal, Inc. The decedent's brother, Marc Field, is the owner of the other 50% interest. The guardian ad litem in his preliminary report raised questions regarding the petitioner's administration of other estate assets. The guardian ad litem filed six reports in total. His objections to the account can be summarized as follows:

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<sup>1</sup> One of the minors reached the age of majority while the matter was sub judice.

the acquisition dates of estate assets were not set forth;  
no estate tax returns were filed;  
the valuation of the decedent's interest in the corporations was arbitrary;  
some expenses paid from the estate for the minors' expenses may have been personal obligations of the petitioner;  
the jewelry was not appraised;  
non-testamentary assets were improperly included;  
some of the expenses were personal to the petitioner;  
the legal fees were excessive;  
some claims were improperly paid; and  
estate assets were improperly withdrawn.

On November 26, 2013, the petitioner filed an amended account. He subsequently filed an amended Schedule C, C-1 and H on March 6, 2014. Thereafter, on March 27, 2014, Mr. Hoffman filed another amended Schedule C, C-1 and A-2. An amended Schedule E was filed on April 16, 2014. Objections to the amended account were filed by the guardian ad litem on May 12, 2014. A second amended account was filed by the petitioner on December 5, 2014. An amended Schedule C, C-1, D and D-1 was filed on January 6, 2015. The second amended account shows total charges of \$597,136.95 and total credits of \$581,943.21 with a balance on hand of \$15,194.74. As explained more fully in the six reports filed by the guardian ad litem, the decedent's 50% interest in the three corporations was grossly overvalued in the original account. The guardian ad litem reported that the correct value of the decedent's interest in the corporations is \$425,000.00.

#### **STIPULATION**

After multiple conferences on the matter, a stipulation was entered into by: Richard Hoffman, individually and as administrator of the estate of Helene Field Hoffman; Peter K. Kelly, Esq., guardian ad litem; Wilbur Palacios, co-executor of the estate of Shirley Field and

trustee, for the benefit of the decedent's three children to be administered pursuant to the terms of Article Sixth of the will of Shirley Field; and Eric Field, co-executor of the estate of Shirley Field<sup>2</sup>. The stipulation, in pertinent part, provides for the following: the petitioner is to execute a second mortgage on property owned by him in Plainview, New York, in the sum of \$350,000.00 with a corresponding promissory note with interest at 2.5 % per annum in favor of Wilbur Palacios, as trustee, for the benefit of the minors to be administered pursuant to the terms of Article VI of the will of Shirley Field. Wilbur Palacios is a co-executor of the estate of Shirley Field and the trustee of the trust established under Shirley Field's will for the benefit of the guardian ad litem's three wards. The parties further agree that the court will determine the reasonable fees of: (1) Anton Borovina, Esq. for representation of the estate in litigation concerning the three corporations in which the decedent held an interest; (2) the legal fees of John Turano, Esq., Richard Hoffman's attorney; and (3) the guardian ad litem. The estate of Shirley Field withdraws its objection to the account and the claim for the payment on the mortgage on Shirley Field's Hicksville property against the estate of Helen Field Hoffman. The guardian ad litem recommends that the court approve the stipulation.

The guardian ad litem reports that the valuation of the decedent's interest in the corporations is correctly valued in the second amended account at \$425,000.00. For this reason, he feels that the stipulation is in the best interests of his wards as the \$350,000.00

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<sup>2</sup> The estate of Shirley Field appeared in this proceeding by counsel as a claimant against the estate of Helene Field Hoffman for satisfaction of a mortgage on property in Hicksville, New York.

represents a reasonable estimate of the full value of their legacy.

Surrogate's Court Procedure Act §2106(4) provides that an agreement of compromise made as herein provided, if found by the court to be just and reasonable, shall be valid and binding upon the interests of persons under a disability. The court has the power to review the discretion and judgment of the estate representative in entering into the agreement by "either approving or disapproving it in its entirety. The Surrogate is without authority to substitute its own judgment for that of the parties" (*Matter of Camarda*, 133 AD2d 114, 115 [2d Dept 1987]). The court approves the stipulation of settlement.

This constitutes the decision and order of the court.

Dated: September 29, 2017  
Mineola, New York

**E N T E R:**

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

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