

Matter of Pisana

2017 NY Slip Op 33564(U)

December 1, 2017

Surrogate's Court, Queens County

Docket Number: File No. 2015-131/A

Judge: Peter J. Kelly

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This opinion is uncorrected and not selected for official publication.

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT: QUEENS COUNTY

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In the Matter of the Application of Joseph
Picana, a distributee of the Estate of

FRANK PISANA,

File No. 2015-131/A

Deceased,

Seeking an Order vacating the Decree Granting
Probate dated March 27, 2015.

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This is a proceeding to vacate the decree of this Court dated March 27,
2015 granting probate to a will dated July 13, 2013 and issuing letters of
administration c.t.a. to Alan Gerson, Esq.

Although the Petitioner Joseph Pisana was the nominated executor in the
will, letters were granted to Alan Gerson, Esq., as the Petitioner's nominee, based
upon Gerson's representation in the probate petition that the Decedent was
survived by only one son, the Petitioner, accompanied by a wavier of citation and
renunciation of nominated executor allegedly signed by the Petitioner.

In the verified pleading, the Petitioner averred he has never met or
authorized Gerson to act on his behalf, he did not sign the waiver of citation nor
did he sign the renunciation as nominated executor. The Petitioner also averred

that another distributee, the Decedent's daughter, Barbara Agnello, was omitted from the original probate petition.

Respondent Gerson filed an answer herein and, on June 15, 2017, stipulated to a discovery schedule wherein he agreed to be deposed on August 7, 2017 and agreed to a date for the pre-trial conference.

Gerson did not appear for the pre-trial conference and petitioner's attorney informed the Court at that time that Gerson had not appeared for his deposition either. By order dated November 13, 2017 the court suspended the letters issued to Alan Gerson, Esq. and directed him to show cause why the letters of administration, c.t.a. should not be revoked.

On the return date, an attorney did appear on behalf of a co-respondent but Gerson failed to personally appear at the hearing. Although counsel stated he was appearing for Gerson, a notice of appearance was not filed. Petitioner's counsel repeated the allegations set forth above and also produced an affidavit from Lakovos T. Papapavlos where he states that the affidavit of heirship notarized and submitted by Respondent Gerson in the probate proceeding supposedly executed by Mr. Papapavlos, was, in fact, not signed by him and contained false information.

The attorney representing both Respondent Gerson and Respondent 3802 223rd Street Bayside, Inc. expressly told the court he presently had no evidence to contradict the merits of this petition.

Accordingly, pursuant to CPLR §409[b], the answers of Respondent Gerson and Respondent 3802 223rd Street Bayside, Inc. are dismissed and the petition is granted. The decree of this Court dated March 27, 2015 is vacated and the letters of administration, c.t.a. issued to Alan Gerson, Esq. are revoked.

Alan Gerson, Esq. shall file his account as administrator, c.t.a. within thirty (30) days of the decree to be settled herein.

Settle decree.

The Clerk of the Court is directed to mail a copy of this decision to the administrator, c.t.a. and to the attorneys who have appeared in this proceeding.

Dated: December 1, 2017



SURROGATE