

Matter of De Jesus
2018 NY Slip Op 31386(U)
June 21, 2018
Surrogate's Court, Nassau County
Docket Number: 2013-377335/A
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 Application of Griselda De Jesus,
as Administrator of the Goods, Chattels and Credits
Which Were of**

DECISION

**File No. 2013-377335/A
Dec. No. 34487**

RAFAELITO DE JESUS,

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.**

PRESENT: HON. MARGARET C. REILLY

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

Petition	1
Affirmation to Amend Petition	2
Supplemental Affirmation to Amend Petition	3
Affirmation in Support	4
Proposed Decree	5
General Release.	6
Verified Objections..	7
Letter from Nassau County Dept. of Social Services.	8
Notice of Consent and Withdrawal of Objections.	9
Accounting.	10
Attorney’s Affirmation of Legal Services	11

In this proceeding for leave to compromise a cause of action for wrongful death and conscious pain and suffering, the administrator, Griselda DeJesus (“petitioner”), seeks a decree: (1) authorizing and empowering the petitioner to compromise and settle the claim for

wrongful death of the decedent against Luis Munoz and Carlos Munoz for the sum of \$100,000.00 and to discontinue the action for conscious pain and suffering; (2) allocating the entire recovery of \$100,000.00 for the decedent's wrongful death; (3) modifying the letters of administration to permit the compromise; (4) dispensing with the filing of a bond; (5) judicially settling the account of the petitioner as administrator; (6) directing the insurance company to pay to the firm of Sanford L. Pirotin, P.C. the sum of \$33,043.33 for attorney's fees together with disbursements of \$870.00; (7) directing the balance of the settlement, to wit the sum of \$66,086.67, be distributed to the petitioner; (8) rejecting the claim of the Department of Social Services; (9) rejecting the claim of Rafael Almonte; (10) rejecting the claim of DCM Services in the amount of \$1,493.25; and (11) permitting the petitioner to execute and deliver general releases and all other necessary papers to the defendant or defendant's insurance company and releasing them from all claims against them arising out of the aforesaid action for personal injuries, together with any other papers necessary to effectuate the said compromise.

The decedent, Rafaelito DeJesus, died intestate on June 2, 2013. The decedent was operating a motorcycle when he was struck by a motor vehicle driven by Luis Munoz and owned by Carlos Munoz. Luis Munoz was later arrested for driving while intoxicated and for leaving the scene of an accident. The decedent did not regain consciousness and all proceeds of the settlement are to be allocated for wrongful death and none for conscious pain and suffering. The decedent was twenty-three (23) years old. The decedent was not married

at the time of his death and was survived by his mother (the petitioner) and his father, Rafael Almonte. The petitioner alleged that the decedent's father abandoned him and was not entitled to share in the recovery. The matter was eventually settled and Rafael Almonte executed a general release in exchange for the sum of \$20,000.00. The New York State Department of Taxation and Finance filed objections which were subsequently withdrawn by Notice of Consent and Withdrawal of Objection, dated June 22, 2017. By letter, dated June 27, 2017, the Nassau County Department of Social Services determined that it did not have a basis for a lien against the lawsuit.

An action was commenced in Supreme Court, Bronx County against the defendants, Luis Munoz and Carlos Munoz for wrongful death and conscious pain and suffering and there is an offer of settlement in the sum of \$100,000.00. The petitioner seeks to withdraw the conscious pain and suffering claim and to allocate the entire recovery to wrongful death. The petitioner has waived statutory commissions. The funeral bill has been paid and reimbursement is not sought. There are no outstanding medical or hospital bills. DCM Services, on behalf of Discover Bank, submitted a claim for \$1,493.25 which the petitioner seeks to reject on the grounds that the entire recovery is allocated to wrongful death. DCM Services received service of citation by mail (SCPA § 307 [6]) and has defaulted. Their claim is therefore dismissed.

After review of the petition and affirmations, the compromise of the action in the amount of \$100,000.00 is approved. Allocation of the proceeds one hundred percent (100%)

to wrongful death is also approved. The restrictions on the petitioner's letters of administration are lifted to allow the petitioner to compromise, settle, and collect the net proceeds. The claims are rejected.

Contingency fees in personal injury and wrongful death actions are limited by court rule (22 NYCRR § 691.20 [e]) and generally are not to exceed one-third of the recovery. Attorneys' fees have been properly calculated pursuant to 22 NYCRR § 691.20 [e] and they were agreed upon pursuant to Judiciary Law § 474. Therefore, attorney's fees in the sum of \$33,043.33 and disbursements in the sum of \$870.00 are also approved. The balance of the recovery, \$66,086.67, shall be paid as follows: \$46,086.67 to the petitioner and \$20,000.00 to the decedent's father, Rafael Almonte. The requirement of a bond is dispensed with and the defendants are released against all claims against them arising out of the underlying cause of action. The account is judicially settled.

Settle decree.

Dated: June 21, 2018
Mineola, New York

E N T E R:

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

cc: William S. Kanas, Esq.
Sanford L. Piroton, P.C.
323 Madison Street
Westbury, New York 11590

Mark Silverman, Esq.
Silverman & Taylor, PLLC
33 Guy Lombardo Avenue
Freeport, New York 11520

New York State Department of
Taxation and Finance
TDAB Estate Tax Audit
Waiver of Citation Unit
W.A. Harriman Campus
Albany, New York 12227