

Matter of McCray (Patrick)

2018 NY Slip Op 31656(U)

May 9, 2018

Surrogate's Court, Nassau County

Docket Number: 2011-364040/G

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
**Accounting by JANICE PATRICK, as the Administrator
d.b.n. of the Estate of,**

MIRIAM McCRAY,

Deceased.

DECISION

**File No. 2011-364040/G
Dec. No. 34544**

-----X
**Accounting by DIANA WALKER, as the Administrator
d.b.n. of the Estate of,**

MIRIAM McCRAY,

Deceased.

**File No. 2011-364040/H
Dec. No. 34375**

-----X
**Application to charge expenses against distributive shares
LINDA WILLAMS and CAROLYN J. PRICE in the
Estate of,**

MIRIAM McCRAY,

Deceased.

**File No. 2011-364040/E
Dec. No. 34543**

-----X
PRESENT: HON. MARGARET C. REILLY

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

Petitions for Judicial Settlement of Accounts of Diana Walker and Janice Patrick.....	1
Rider to Petition.	2
Petition of Diana Walker to charge expenses.	3
Accounting filed March 10, 2017.	4
Amended Schedule Cs(x2)filed March 30, 2017.....	5
Waivers of Citation and Notices of Appearance.	6
Affirmation of Legal Services	7
Stipulation of Settlement.....	8
Supplemental Stipulation of Settlement.....	9

-----X

Before the court are three (3) petitions and a Stipulation of Settlement. The petitions are as follows: [A] a petition in connection with the final account of Diana Walker (“administrator”) (decision number 34375), as administrator of the estate of Miriam McCray, the petition requests that the account of proceedings be judicially settled, and seeks an order

with the following relief: (1) approval of commissions in the sum of \$8,775.83 to Diana Walker¹ as administrator and \$1,022.58 to Janice Patrick as administrator d.b.n.; (2) approval of the payment of legal fees and disbursements to William D. Cooper, Esq., in the amount of \$8,250.00 together with attorney's fee in the proceeding to recover real property and evict in the sum of \$5,500.00 and the attorney's fees for the proceeding to compel an account by the attorney-in-fact in the sum of \$2,925.00, which later two fees are part of the amount sought to be charged against distributees Linda Williams and Carolyn Price²; (3) that distributees Linda Williams and Carolyn Price be charged with the expense, \$20,131.33 and \$3,435.00 respectively, incurred by the estate of the Miriam McCray; (4) rejecting the claim of Carolyn Price in the amount of \$7,680.00 for the Miriam McCray's funeral expenses; and (5) that process be issued to all necessary parties who have not appeared to show cause why the relief requested should not be granted; and that an order be granted directing the service of process pursuant to the provisions of SCPA Article 3 upon such persons named in paragraph [6] whose names or whereabouts are unknown and cannot be ascertained or who may be persons on whom service by personal delivery cannot be made; [B] a petition to judicially settle the account of Janice Patrick as administrator d.b.n, and;[C] a petition to charge expenses against the distributive shares of Linda Williams and Carolyn J. Price.

BACKGROUND

Miriam McCray ("decedent") died a resident of Nassau County on April 26, 2009, leaving no spouse, children, parents, or siblings. Decedent's distributees are 22 nieces and nephews, and one grandniece and one grandnephew: (1) Walter Graves, (2) Phyllis Mayrant, who is a grandniece, (3) Jayne Walker, (4) Rhea Walker, (5) Diana Walker, (6) Sharon

¹ Diana Walker died during the pendency of her administration.

² There is also a request to approve \$500.00 in attorney's fees in the Petition for Judicial Settlement of the account of Janice Patrick.

Walker, (7) Natalie Walker, (8) Valerie Walker, (9) Michael Walker, (10) Nathaniel Walker, (11) Joanna Walker, (12) Frances Walker, (13) Deborah Walker, (14) Cecilia Walker, (15) Angela Walker, (16) Janice Patrick, (17) Theresa Walker, (18) Albert Walker, (19) James Rhodes, (20) Carolyn Price, (21) Linda Williams, (22) Mitchel Rhodes, (23) Bruce Rhodes, and (24) Charles Stewart, who is a grandnephew. All distributees either filed waivers and consents or were served and failed to appear except for distributees Carolyn Price, Linda Williams and James Rhodes who have appeared by their attorney Pameal Aurelien, Esq.

Letters of Administration were issued to the administrator by decree of this court on October 26, 2012. While she was the administrator of the estate of the decedent, the administrator filed several petitions. The first petition was to recover possession of real property owned by the decedent located at 457 Champlain Avenue, West Hempstead, New York. Among those then living in the house of the decedent was Linda Williams (“respondent Williams”). On September 17, 2013, the administrator filed a petition to compel Carolyn Price (“respondent Price”), who was acting under a power of attorney for the decedent, to account³. On February 2, 2015 the administrator filed a petition (decision number 34543) seeking:

“that the shares of Linda Williams and Carolyn Price, distributees in the estate, be charged with the expense their respective adverse conduct has occasioned to the damage of the estate and its distributees, to wit Linda Williams be charged with the sum of \$20,131.33 and Carolyn J. Price be charged with the sum of \$3,435.00.”

The administrator died on June 21, 2015, and letters of administration d.b.n., were issued by decree of this court to Janice Patrick (“petitioner”) on September 14, 2016. On May 15, 2017, the petitioner filed a motion to seeking to discontinue and dismiss the petition

³ This proceeding is mentioned because it is addressed in the attorney’s request for attorney’s fees.

filed on February 2, 2015 as the same relief is being sought in the accounting(s). The petitioner has filed a petition to judicially settle her account (decision number 34544) and also has co-signed the petition to settle the administrator's account with Michelle Ridley who co-signed the account as administrator of the estate of Diana Walker.

The parties in the respective aforementioned petitions have submitted a stipulation of settlement ("the Stipulation") and a supplemental stipulation of settlement ("the Supplemental Stipulation")⁴ in an attempt to settle the matters before the court. The court is also being asked to approve attorney's fees.

The Stipulation at paragraph [10] states the "parties consent to the withdrawal of the petitions to account (except in the case of 2011-364040/H, subject to the Supplemental Stipulation)... ."

It appears there is a typographical error in paragraph [10] and the word "petitions" should read "petition." The parties are attempting to withdraw the petition to account by the petitioner Janice Patrick by the Stipulation and have the court judicially settle only the account of the administrator Diana Walker. The court has reviewed both accounts and has determined that the account of Janice Patrick, the petitioner, covers the period from the death of the administrator from June 21, 2015 through February 10, 2017 and in fact the account of Janice Patrick brings the account for the estate of Miriam McCray started by Diana Walker down to date. Accordingly, the court will not withdraw the petition to account by Janice Patrick and will address both accounts below.

THE ACCOUNTS

I. Account of Diana Walker- File No.2011-354040/H

The administrator, Diana Walker's account covers the period from April 26, 2009

⁴ The surety for the account of the administrator, Diane Walker (there is no surety for the administrator d.b.n.) is seeking a decree of judicial settlement prior to discharging the bond. The parties executed the supplemental stipulation of settlement agreeing to the request of the surety.

through June 21, 2015. It shows the receipt of \$108,886.30 of estate principal, which was supplemented by income collected totaling \$73,811.18 and realized increases in principal of \$10,713.18. This resulted in total charges of \$193,410.57. This amount was reduced by funeral and administrative expenses in the amount of \$74,957.57, payment of creditors' claims in the amount of \$36,730.17, and distributions of principal in the amount of \$39,600.00, leaving a balance of \$42,122.83 on hand.

II. Account of Janice Patrick- File No.2011-354040/G

The petitioner, Janice Patrick's account covers the period from June 21, 2015 through February 10, 2017. It shows the receipt of \$42,122.83 of estate principal, which was supplemented by income collected totaling \$126.37, resulting in total charges of \$42,249.20. This amount was reduced by funeral and administrative expenses in the amount of \$1,146.00 leaving a balance of \$42,103.20 on hand.

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 consider 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 for the administrator has provided affidavits of legal services seeking approval of legal fees totaling \$10,175.00, incurred in connection with the administration of the estate, the proceeding to recover real property of the estate, and the proceeding to compel an accounting of the attorney-in-fact Carolyn Price all of which have been paid. Counsel has waived the following fees: \$7,000.00 of the \$8,250.00 for work billed in relation to the administration leaving \$1,250.00 to be approved; all fees in the miscellaneous proceeding to charge expenses against the distributive shares of Linda Williams and Carolyn L. Price (2011-364040/E); all fees have been waived in connection with the preparation and filing of the accounting and subsequent proceedings to decree. The petition seeking judicial settlement of Janice Parker's account requested legal fees in the sum of \$500.00. The account reflects same and there are no objections to any of the above attorney's fees.

The affidavits of legal services address legal services rendered from January 2011 through and including February 15, 2017. The affidavit submitted in the administrator's accounting proceeding cross references services related to multiple pending proceedings that are being settled as the result of the Stipulation which are annexed to the account. Services in the accounting proceeding amounts to over \$7,000.00 for over 20 hours of services. Counsel's usual rate is \$350.00 an hour, he is waiving all but \$1,250.00 in this proceeding. Counsel spent 18.33 hours in the proceeding to recover real property of the estate at a reduced rate of \$300.00 an hour totaling \$5,500.00. Counsel spent 9.75 hours in the proceeding to compel an accounting of the attorney-in-fact Carolyn Price, at a reduced rate of \$300.00 an hour totaling \$2,925.00. Finally in the accounting of Janice Patrick counsel was paid \$500.00 for legal services. The court has carefully reviewed the affidavits of services and the summary of time records submitted to the court. After considering all of the above factors, the fee of William D. Cooper, Esq., is approved in the amount of \$10,175.00,

all of which has been paid.

The Stipulation

The Stipulation at paragraph [6] seeks to “consolidate into the accounting proceedings the miscellaneous relief sought therein.” The Stipulation at paragraph [10] states the “parties consent to the withdrawal of the petitions to account (except in the case of 2011-364040/H, subject to the Supplemental Stipulation) and to the withdrawal of the motion filed in file number 2011-364040/E.”

The court file indicates that jurisdiction was never completed in the miscellaneous proceeding bearing file number 2011-364040/E. Accordingly, that proceeding, including the aforementioned motion, is **DISMISSED**.

The parties have stipulated that the account of Janice Patrick left a balance on hand of \$41,103.20. The court has determined that this account brings the account for the estate of Miriam McCray, originally administered by Diana Walker, down to date and no further account will be required. The parties have also agreed to settle all outstanding issues via the Stipulation including commissions due to the Administrator and the Administrator d.b.n., and the parties have agreed to reimburse Carolyn Price for funeral expenses in the amount of \$7,680.00. All claims against Carolyn Price and Linda Williams are settled by the stipulation. The parties have agreed that the remaining twenty-two (22) distributees shall each receive \$1,000.00 from the balance of the estate funds.⁵

CONCLUSION

The accounts, as filed, are approved. As mentioned above there is no requirement to bring the account down to date from the closing date of the account as the court is satisfied that the account of Janice Patrick has done the same.

The commission of the administrator is approved subject to audit.

⁵ There were previous distributions made to 22 of the distributees.

The commission of the administrator, d.b.n./petitioner is approved subject to audit.

The fee of counsel to the petitioner and former counsel to the administrator, William D. Cooper, Esq., is fixed in the amount of \$10,175.00, all of which has been paid.

The decree shall discharge the surety and shall authorize the petitioner to distribute the balance of the net estate to the decedent's distributees pursuant to the Stipulation, reflecting the amount payable to each.

The administrator and the administrator, d.b.n./petitioner are discharged as to all matters pertaining to the estate of Miriam McCray.

Settle decree.

Dated: May 9, 2018
Mineola, New York

E N T E R:

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

cc: William D. Cooper, Esq.
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