

**Matter of Ikenson**

2018 NY Slip Op 31821(U)

June 21, 2018

Surrogate's Court, Nassau County

Docket Number: 2014-380584/G, H

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 Robert A. Brady,  
for Permission to Resign as Trustee and for the  
Appointment of a Substitute Successor Trustee  
in the Estate of**

**DECISION**

**File No. 2014-380584/G, H  
Dec. No. 34545**

**MARTIN IKENSON,**

**Deceased.**

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

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

Petition.....	1
Affirmation to Amend the Resignation Petition.....	2
Stipulation dated August 10, 2016 (Exhibit [1]).....	3
Renunciation of Letters, Waiver of Process, and Consent to Dispense with Bond. ....	4
Waivers and Consents of Charitable Remainder Beneficiaries (5).....	5
Waiver and Consent of New York State Attorney General.....	6
Combined Verification, Oath and Designation.....	7
Proposed Decree.....	8

Before the court is an unopposed petition<sup>1</sup> filed by a testamentary trustee requesting an order, pursuant to SCPA § 715: permitting the petitioner to resign as trustee, and that the letters issued be revoked; that said trustee not be required to file for the judicial settlement of account as such fiduciary for the period from the issuance of letters to date based upon the waivers and consents and/or citation issued; that Harriet Ikenson O’Kelly be appointed substitute successor trustee, to serve without bond, whose oath and designation is concurrently filed herein; that successor letters of trusteeship be issued to Harriet Ikenson

<sup>1</sup> The petition was dated October 2, 2017 and was amended by affirmation dated January 8, 2018.

O’Kelly; that the court direct to whom, and the manner in which, notice of this application shall be given; and for any further and different relief this Court deems just and proper.

### **BACKGROUND**

Martin Ikenson (the decedent) died on May 20, 2014. The decedent’s last will and testament, dated April 25, 2013 (the will), was admitted to probate by this court on August 26, 2015. Pursuant to Article Tenth of the will, letters testamentary issued to Robert A. Brady (the petitioner) along with letters of trusteeship in connection with the residuary trust created under Article Seventh of the will, which provides for the lifetime benefit of Maxine Vogel and names five charities as the remainder beneficiaries. Article Tenth further provides “that no Executor or Trustee shall be required to file or furnish any bond, surety or other security in any jurisdiction.”

The petitioner filed a judicial accounting as executor, which was contested. In that context, the parties interested in the estate entered into a stipulation of settlement on August 10, 2016 (the stipulation). The parties agreed that the petitioner would resign as executor and trustee, and Harriet Ikenson O’Kelly<sup>2</sup> would serve as administrator, c.t.a. and successor trustee. Letters of administration, c.t.a. were granted to Harriet Ikenson O’Kelly on September 11, 2017.

### **WAIVERS AND CONSENTS**

Maxine Vogel, the lifetime beneficiary of the trust created under Article Seventh of the will, filed a renunciation of letters, waiver of process and consent to dispense with the

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<sup>2</sup> Harriet Ikenson O’Kelly is also known as Harriette Ikenson or Harriet Ikenson.

bond. All of the charitable remainder beneficiaries, as well as the New York State Attorney General on behalf of the charitable remainder beneficiaries, have filed waivers and consents in which they: acknowledge receiving a copy of the petition and amended petition for resignation of the trustee; renounce all rights to serve as successor trustee; waive the issuance and service of citation; consent to the issuance of successor letters of trusteeship to Harriet Ikenson O’Kelly; consent to dispensing with a bond of the successor trustee; and consent to the relief requested in the petition, to wit, permitting the petitioner to resign and letters to be revoked, and granting judicial settlement to the account filed by the petitioner as executor for the period of August 1, 2014 to February 28, 2017.

#### ANALYSIS

The decedent’s will is silent with regard to the appointment of successor trustees. “Once a trustee has qualified and assumed the administration of his trust he cannot resign as a matter of right. The granting or withholding of such relief rests in the sound discretion of the surrogate” (*Matter of Busto*, 173 Misc 25, 29 [Sur Ct, Queens County 1939]). “The grant of a fiduciary’s application to resign rests in the discretion of the court. The Court’s principal consideration must be the best interests of the estate, its administration and its beneficiaries” (*Matter of Kohlmeyer*, NYLJ, Oct. 30, 2001, at 23, col 1 [Sur Ct, Westchester County] [internal citation omitted]). Where no successor trustee is named in a will, the court has the discretion to appoint a successor (*Matter of Cuccia*, NYLJ, June 16, 2000, at 30, col 6 [Sur Ct, Kings County]).

SCPA §715 provides, in relevant part, that “[a] fiduciary may present to the court at any time a petition praying that he or she be permitted to resign” and that “[t]he petition shall show the facts upon which the application is founded.” SCPA §716 provides that the court may enter an order permitting the trustee to resign, revoking the letters of trusteeship, appointing a successor trustee and directing the resigning trustee to turn over all trust assets in the trustee’s hands and to settle an account, formally or informally. Once these steps have been taken, the court may issue a decree discharging the trustee.

### CONCLUSION

Permission for the petitioner to resign as trustee of the trust created under Article Seventh of the decedent’s will is **GRANTED**. Letters of trusteeship that were previously issued to the petitioner are revoked.

The request that Harriet Ikenson O’Kelly shall be appointed as successor trustee of the Article Seventh trust, to serve without bond, is **GRANTED**. Harriet Ikenson O’Kelly has filed a combined verification, oath and designation, and successor letters of trusteeship shall issue.

The request that the petitioner not be required to file for the judicial settlement of his account as trustee, as reflected in the citation, is **DENIED**. While the relief listed in the citation dated March 16, 2018 and issued by this court specifically seeks a decree directing that an accounting be dispensed with, the consents and waivers filed with the court on behalf of the lifetime beneficiary, the five charitable remainder beneficiaries, and the New York State Office of the Attorney General, do not include acknowledgment of the petitioner’s

request that an accounting be dispensed with. Accordingly, the petitioner is required to account, either formally or informally (SCPA §§ 715 and 716).

Settle decree.

Dated: June 21, 2018  
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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