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| Matter of Tisi (Hosek) |
| 2018 NY Slip Op 32627(U) |
| September 27, 2018 |
| Surrogate's Court, Nassau County |
| Docket Number: 2013-377600/B,C,D |
| 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 Heather Hosek,
as Administrator of the Goods, Chattels and Credits
which were of**

DECISION

RONALD TISI,

**File No. 2013-377600/B,C,D
Dec. No. 35123**

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:

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| Amended Petition with Exhibits..... | 1 |
| Citation with Proofs of Service..... | 2 |
| Waivers and Consents..... | 3 |
| Attorney’s Affidavit..... | 4 |
| Amended Account..... | 5 |
| Proposed Decree..... | 6 |

In this uncontested proceeding for leave to distribute the proceeds of a cause of action for wrongful death, the petitioner seeks a decree: (1) allocating the entire recovery of \$240,000.00 to the cause of action for the decedent’s wrongful death; (2) directing the defendant, Robert Smith, or the defendant’s insurance company, to pay McAndrew, Conboy & Prisco, LLP, Esqs. out of the proceeds of the settlement for the claim for wrongful death, the sum of \$76,768.99 as and for attorneys’ fees, together with disbursements in the sum of \$9,693.02; (3) authorizing and empowering the administrator to compromise and settle a

certain claim for the wrongful death of the decedent, pursuant to the directives of Hon. Jerome C. Murphy, Supreme Court, Nassau County, and to remit the payment for the balance of the settlement of \$153,537.99 to be distributed to Heather Hosek, as administrator of the estate of Edward Tisi, the post-deceased brother and sole distributee of the decedent; (4) reimbursing the petitioner for the decedent's funeral bill and miscellaneous funeral expenses totaling \$5,409.70 paid by the petitioner; (5) disallowing the claim for social services benefits which has been filed by HMS, Inc. on behalf of the Commissioner of the Nassau County Department of Social Services in the amount of \$23,203.31; (6) modifying the provisions in the letters of administration heretofore issued to the petitioner on December 24, 2013 to permit said compromise; (7) dispensing with the filing of a bond; (8) directing payment of statutory commissions to Heather Hosek, as administrator in this proceeding, in the amount of \$7,141.51, based on the net recovery proceeds herein of \$153,537.99; (9) judicially settling the account of Heather Hosek, as administrator in this proceeding; (10) directing the defendant, Robert Smith, or the defendant's insurance carrier, Nationwide Insurance, to remit payment in the amount of \$153,537.99 to Heather Hosek, as administrator of the estate of Edward Tisi, the post-deceased brother and sole distributee of the decedent; and (11) upon payments as hereinbefore mentioned by the said defendant, Robert Smith, or the defendant's insurance company, Nationwide Insurance, the petitioner, as the administrator of the goods, chattels and credits that were of Ronald Tisi, deceased, shall execute and deliver to the said defendant, Robert Smith, or the defendant's insurance company, a full, final and complete

release in the claim against them arising out of the aforesaid cause of action, together with any other papers necessary to effectuate said compromise.

The decedent, Ronald Tisi, died intestate, a resident of Nassau County, on January 17, 2013. He was survived by his brother, Edward J. Tisi, who post-deceased him on November 22, 2016, survived by his adult children, Heather Hosek and Anthony Tisi. On December 24, 2013, letters of limited administration for the decedent's estate were issued by this court to Heather Hosek, the niece of the decedent and the petitioner in this proceeding. On October 2, 2017, letters of administration for the estate of Edward J. Tisi were issued by the Surrogate's Court, Suffolk County to Heather Hosek.

Waivers and consents have been filed by Heather Hosek, as administrator of the estate of her father, Edward J. Tisi, and by Anthony Tisi, as heir at law of his father, Edward Tisi. Citation has been served upon HMS, Inc., as the authorized agent for the Nassau County Department of Social Services, and upon the New York State Department of Taxation and Finance. Neither the Nassau County Department of Social Services, nor the New York State Department of Taxation and Finance has any objection to the relief requested in this proceeding.

Petitioner, as administrator of the estate of the decedent, commenced an action in Supreme Court, Nassau County against Robert Smith, the owner and operator of the vehicle which struck the decedent on January 17, 2013 causing his death. Before trial, \$240,000.00 was offered in settlement of the matter. By order, dated April 25, 2017, Hon. Jerome C.

Murphy of Supreme Court, Nassau County approved the settlement amount, allocated the settlement to the cause of action for wrongful death, approved disbursements of \$9,693.02 and attorneys' fees of \$76,768.99, leaving the net sum of \$153,537.99 to be distributed pursuant to the order of this court (EPTL 5-4.6 [d]).

The decedent's funeral expenses of \$5,409.70 were paid in full by the petitioner, who seeks reimbursement of same. The petitioner shall be reimbursed for said funeral expenses, from the net settlement proceeds. Petitioner also seeks a statutory commission in the amount of \$7,141.51. Personal injury recovery is an asset of the estate and as such, commissions are based on the full amount of the recovery, while a wrongful death recovery is not an estate asset and commissions are paid on the net recovery after deduction for attorneys' fees and disbursements and funeral expenses (SCPA 2307; EPTL 5-4.4 [b]; *Matter of Almonte*, NYLJ, Oct. 24, 2005, 2005 NY Misc LEXIS 4557 [Sur Ct, Bronx County]). Accordingly, after deducting attorneys' fees, disbursements and funeral expenses from the net settlement proceeds, the petitioner is entitled to statutory commission of \$6,925.13, pursuant to SCPA 2307.

Since the entire settlement proceeds have been allocated to the cause of action for wrongful death, any claim made on behalf of the Nassau County Department of Social Services shall be disallowed.

After deducting the decedent's funeral expenses and the petitioner's commission from the net settlement proceeds, \$141,203.16 remains to be distributed to Heather Hosek, as

administrator of the estate of Edward Tisi, the post-deceased brother and sole distributee of the decedent.

The petitioner is not required to file a bond herein. The account of the petitioner is judicially settled. The restrictions on the letters of administration previously issued to petitioner shall be removed to allow her to effectuate the settlement.

The decree submitted has been reviewed, found to be in proper order, and will be signed, as corrected.

Dated: September 27, 2018
Mineola, New York

E N T E R:

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

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