

<b>Matter of Stenbeck (Guy)</b>
2018 NY Slip Op 32628(U)
September 27, 2018
Surrogate's Court, Nassau County
Docket Number: 2015-383690/B
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 Henry L. Guy,  
as Executor of the Estate of**

**DECISION**

**File No. 2015-383690/B  
Dec. No. 34887**

**ANDREAS M. STENBECK,  
a/k/a MAX STENBECK,  
a/k/a ANDREAS MAXIMILLIAN STENBECK,**

**Deceased,**

**and as Trustee of the AMS Revocable Trust,  
for Advice and Direction Pursuant to SCPA §2107(2).**

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

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

Petition with Exhibits.....	1
Attorney Affirmation. ....	2
Copy of AMS Revocable Trust.....	3

Henry L. Guy (“petitioner”), in his dual capacities as the executor of the will of Andreas M. Stenbeck (“decedent”) and as the trustee of the revocable trust executed by the decedent during his lifetime, petitions the court pursuant to SCPA 2107 for a decree approving the purchase by BIG Acquiror, LLC of the membership interest held by the estate in Basset Investment Group LLC, pursuant to the terms of the Membership Interest Purchase Agreement dated November 13, 2017, entered into between the petitioner and BIG Acquiror, LLC.

Andreas M. Stenbeck died on March 16, 2015. He was survived by his brother, Hugo Stenbeck; his sisters, Cristina Stenbeck and Sophie Stenbeck; and a half-brother, Felix Granander. The decedent’s last will and testament, dated January 19, 2012 was admitted to probate by this court on September 10, 2015, and letters testamentary issued to the petitioner, who qualified and continues to serve as executor of the decedent’s estate.

By an agreement executed on the same day as his will, the decedent created the AMS Revocable Trust (the trust), under which the petitioner was named as trustee, in which capacity the petitioner continues to serve.

Under Article Fourth of the will, the decedent's residuary estate passes to the trust. After some significant specific dispositions, Article 2 of the trust provides for 75% of the residuary estate to be paid over to a Foundation to be established by the trustee in the decedent's name. Under the terms of the trust, the Foundation is to be of perpetual duration under the applicable provisions of the Internal Revenue Code (IRC), so that transfers to the Foundation will qualify as charitable deductions for tax purposes. Further, the Foundation is to be treated as a private foundation under 26 USC § 509 (a) and will be subject to the restrictions of private foundations. The decedent named the petitioner as well as Cristina Stenbeck and Sophie Stenbeck, as initial potential trustees or directors of the Foundation, and authorized them to appoint Hugo Stenbeck as an additional initial director by unanimous agreement.

At the time of his death, the decedent owned a membership interest in Basset Investment Group LLC (Basset) consisting of 900 Class A Units in Basset which constitute 100% of Basset's Class A Units. The petitioner is the sole manager of Basset and holds in his individual name 90 Class B Units in Basset. Ten Class B Units in Basset are held by another individual but none of the Class B Units are subject to the proposed sale. The petitioner will resign as manager of Basset upon the closing of the sale as proposed in the petition.

The decedent's sister, Sophie Stenbeck, created a Delaware limited liability company, BIG Acquiror, LLC ("BIG Acquiror"). On or about November 13, 2017, the petitioner and BIG Acquiror entered into a membership interest purchase agreement pursuant to which BIG

Acquiror would purchase the Basset Membership Interest for the sum of \$2,703,000.00, subject to the approval of this court. As Sophie Stenbeck is the sole manager of BIG Acquiror and the decedent's brother, Hugo Stenbeck, also holds an interest in BIG Acquiror, the petitioner alleges that pursuant to 26 USC § 4946, BIG Acquiror is a potentially disqualified person with respect to the Foundation.

SCPA 2107 (2) provides that “[t]he court may entertain applications by a fiduciary to advise and direct in other extraordinary circumstances such as complex valuation issues . . . but need not entertain jurisdiction if to do so would be merely to substitute the court’s judgment for that of the fiduciary.” Where there is a possibility that a fiduciary may be accused of self-dealing, the Surrogate has jurisdiction to give advice and direction (*Matter of Weinstein*, 25 AD2d 776 [2d Dept 1966]; *Matter of Katz*, 39 Misc 3d 1225 [A] [Sur Ct, Nassau County 2013];. The court granted a similar application in this estate in March of 2017 (*Matter of Stenbeck*, 2017 NY Slip Op 30571 [U] [Sur Ct, Nassau County 2017]) .

26 USC § 4941 imposes taxes upon a disqualified person and a private foundation manager who engage in self-dealing. The Foundation manager is a disqualified person (26 USC § 4946 [a] [1] [B]). Hugo Stenbeck, Cristina Stenbeck and Sophie Stenbeck are potential initial directors of the private Foundation. Pursuant to 26 USC § 4941 (d) (1) (A), an act of self-dealing includes any direct or indirect sale or exchange of property between a private foundation and a disqualified person. According to petitioner, a sale or an exchange of estate property between a disqualified person and an estate in which a private foundation has an interest or expectancy may be indirect self-dealing.

As a trust beneficiary, the foundation has an interest or expectancy in estate assets, which may include an interest in Basset or its corporate assets. On that basis, the redemption may be deemed an act of indirect self-dealing under 26 USC § 4941.

An exception to the definition of indirect self-dealing is provided by Treasury Regulation 53.4941 (d)-1 (b) (3), which provides, in part:

“(3) Transactions during the administration of an estate or revocable trust. The term ‘indirect self-dealing’ shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if:

(i) The administrator or executor of an estate or trustee of a revocable trust either:

- (a) Possesses a power of sale with respect to the property,
- (b) Has the power to reallocate the property to another beneficiary, or
- (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);

(ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);

(iii) Such transaction occurs before the estate is considered terminated for Federal income tax purposes pursuant to paragraph (a) of § 1.641(b)-3 of this chapter (or in the case of a revocable trust, before it is considered subject to sec. 4947 [26 USCS § 4947]);

(iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and

(v) With respect to transactions occurring after April 16, 1973, the transaction either:

- (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
- (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
- (c) Is required under the terms of any option which is binding on the estate (or trust)”.

In order for the redemption of shares to qualify for this exception to indirect self-dealing, all five of the above requirements must be met. According to the petitioner, the requirements have been, or can be, met as follows:

(i) The first requirement is met. Pursuant to Article SIXTH (b) (2) of the decedent's will, the executor is specifically authorized to sell any interest in any investment. Hence, the executor possesses a power of sale or disposition with respect to the estate's interest in Basset.

(ii) The second requirement will be met if the redemption agreement is approved by this court, as requested in the present petition.

(iii) The third requirement will be met because the redemption will be completed before the estate administration has been concluded for federal income tax purposes, which will not occur until taxes and debts are fully paid (26 CFR 1.641 [b]-3). The petitioner alleges that the federal estate tax return is now being examined and the final estate tax payments due from the estate have not yet been determined. The petitioner further alleges that not all outstanding debts and administration expenses have been made due to the illiquidity of the estate assets.

(iv) The fourth requirement is satisfied as BIG Acquiror has agreed to pay the fair market value as determined by PlurisValuation Advisors LLC, an independent appraiser who valued the company at \$2,703,000.00.

(v) The fifth requirement will be met because the estate and the trust will receive cash in exchange for the Basset Membership Interest which is inherently a more liquid asset than the membership interest.

The court has reviewed the petition, the exhibits, and the pertinent sections of the Internal Revenue Code and the applicable Treasury Regulations, and notes that no

opposition to the relief was filed by the Attorney General of New York or by counsel appearing on behalf of each of the parties interested in this proceeding.

The petition is **GRANTED** in its entirety.

Settle decree.

Dated: September 27, 2018  
Mineola, New York

**E N T E R:**

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

cc: Skadden, Arps, Slate,  
Meagher & Flom LLP  
Att: Ivan Taback, Esq.  
*Attorneys for Henry L. Guy, Petitioner*  
4 Times Square  
New York, New York 10036

Davis Polk & Wardwell LLP  
Att: Paula A. Ryan, Esq.  
*Attorneys for Cristina Stenbeck*  
450 Lexington Avenue  
New York, New York 10017

Attorney General of the State of New York  
Att: Lisa Barbieri  
Charities Bureau  
120 Broadway  
New York, New York 10271