

**Matter of Hutchinson**

2018 NY Slip Op 34547(U)

June 4, 2018

Surrogate's Court, Bronx County

Docket Number: File No. 2017-2554/A

Judge: Nelida Malave-Gonzalez

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This opinion is uncorrected and not selected for official publication.

**FILED**

SURROGATE'S COURT, BRONX COUNTY

JUN 04 2018

June 4, 2018

SURROGATE'S COURT,  
COUNTY OF BRONX

ESTATE OF ROSEMARY HUTCHINSON, Deceased  
File No.: 2017- 2554/A

In this uncontested proceeding, the decedent's niece seeks to probate an instrument dated April 25, 2014 and requests that no effect be given to certain handwritten alterations contained therein. In addition to the petitioner, the decedent's distributees are a brother and two nephews who filed waivers and consents.

The decedent died on October 10, 2017, at the age of 90. The propounded instrument was attorney-drafted and supervised, consists of five typewritten pages, bears the signatures of two witnesses and contains an attestation clause, to which an affidavit of attesting witnesses is appended. Under the instrument, the petitioner and numerous family members and friends receive small up-front bequests of cash and personal property and the only residuary beneficiaries are three charities. Paragraph SECOND of the instrument contains alterations at (L) and (M) with written parentheses surrounding portions of certain specific bequests and handwritten notations

“omit” in the right margins, and (P) contains handwritten notations adding additional tangible property to another bequest. Paragraph THIRD contains handwritten notations adding “co” to the executor appointment and striking out the designation of a friend as successor executor and nominating her as co-executor. Paragraphs FOURTH and FIFTH contain handwritten notations adding “co” and “s” to the executor designations. A renunciation was filed for the nominated successor executor who is designated “co-executor” pursuant to the handwritten notations

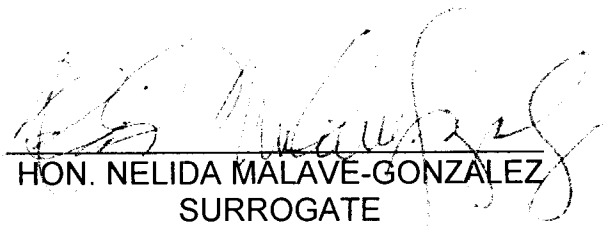
An affidavit from the attorney draftsman states that: (1) on April 25, 2014 the decedent signed the instrument prepared by the attorney in her presence; (2) that instrument contained no handwritten instructions or declarations; (3) counsel gave the original instrument to the decedent after it was executed; and, (4) a copy of the instrument in counsel’s possession contains no handwritten changes. An affidavit from estate counsel states that although the proponent gave her the propounded instrument consisting of five pages which contained handwritten notations, counsel has no opinion as to when or by whom those notations were written.

The proof establishes that the handwritten alterations to Paragraphs SECOND, THIRD, FOURTH and FIFTH of the instrument occurred after its execution, do not comply with the statutory formalities and cannot be given testamentary effect (see EPTL 3-2.1; Matter of Martinez, NYLJ, Dec. 31, 2007 at 37, col 4 [Sur Ct, Bronx County 2007]).

The court is satisfied that the testator executed the will dated

April 25, 2014 in its original form in compliance with the statutory requirements, and that, at the time of execution, the testator was competent to make a will and was free from restraint. Accordingly, a decree has been entered admitting the will to probate in its original, unaltered form (see EPTL 3-2.1, SCPA 1408).

Proceed accordingly.

  
HON. NELIDA MALAVE-GONZALEZ  
SURROGATE