

**Matter of Braham**

2018 NY Slip Op 34589(U)

October 1, 2018

Surrogate's Court, Queens County

Docket Number: File No. 2014-3146/A

Judge: Peter J. Kelly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

Present: HON. PETER J. KELLY  
SURROGATE

SURROGATE'S COURT: QUEENS COUNTY

-----X  
Proceeding by Richard Braham as  
Administrator of the Estate of,

File No: 2014-3146/A

MARQUISE A. BRAHAM,

Deceased.

-----X  
Petitioner, Richard Braham, father of the decedent and administrator of his estate, moves pursuant to 22 NYCRR § 216.1 for an order to seal portions of this court's file containing the specific terms of the partial settlement agreement reached with Pennsylvania State University (PSU), Maria Mosely, and Karly Bish (settling defendants) in connection with a wrongful death action he commenced on behalf of the estate.

The wrongful death action arose on March 14, 2014 when decedent, then in the second semester of his first year at PSU, tragically jumped to his death from the roof of the Marriott Hotel in Uniondale, New York. Petitioner commenced an action against the settling defendants and others alleging that his son's suicide was the result of the brutal hazing his son endured at the hands of the members of the Phi Sigma Kappa fraternity at PSU.

Petitioner's moving papers, comprised of his attorneys' affirmations and the affirmation of counsel for the settling defendants, indicates that the settlement

agreements entered into between the petitioner and settling defendants included provisions to keep the terms and the monetary amounts paid confidential. The petition for partial settlement was approved and directed to be filed under seal by order of the Court of Common Pleas in Dauphin County, Pennsylvania.

Under New York law, all court records and judicial proceedings, with certain exceptions, are considered open to public scrutiny so as to foster the efficiency and integrity of the judicial process (NY CLS Jud § 4) (“the sittings of every court within this state shall be public, and every citizen may freely attend the same . . .”). As evidenced by 22 NYCRR § 216.1, favoring of transparency over secrecy extends to and includes court records:

Except where otherwise provided by statute or rule, a court **shall not** enter an order in any action or proceeding sealing the court records, whether in whole or in part, **except upon a written finding of good cause**, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

“To establish good cause, the likelihood of ‘significant and concrete harm’ to the parties is the threshold consideration” (see *Matter of E. 51<sup>st</sup> St. Crane Collapse Litig*, 31 Misc. 3d 405 [Sup Ct. New York County 2011]). Good cause requires that “compelling circumstances” exist that justify the restriction of public access to the records (see *id.*) (citing *Mosallem v Berenson*, 76 AD3d 345 [1st Dept 2010])).

Inasmuch as can be gleaned by the sparse papers before this court, the “good cause” proffered by the movant is that the settling parties have agreed to keep the terms and monetary amounts paid confidential and such an order would be “consistent” with the directive from the Dauphin County Court of Common Pleas. Also generally relied upon by the movant is New York’s strong public policy favoring settlement of claims.

Counsel further speculates that due to the local and national media attention given to the hazing and death of the decedent, publication of the terms of the settlement may be disruptive to the lives of decedent’s family members. Counsel for the settling defendants also submits a bare-boned affirmation in support of sealing the records of this court. Affidavits have not been submitted by the petitioner or the settling defendants providing any specific reasons as to why the documents are so sensitive that public access to them should be restricted (*see Mosallem v Berenson*, 76 AD3d 345 [1st Dept 2010] (citing *L.K. Sta. Group, LLC v Quantek Media, LLC.*, 20 Misc. 3d 1142[A] [Sup. Ct. New York County 2008])).

In light of the substantial burden of establishing good cause to seal this court’s records, the movant’s papers could have been more detailed and compelling. However, the court is cognizant that no opposition has been submitted to the within motion and, more importantly, the Pennsylvania trial court that has been overseeing discovery in this action has seen fit to seal its records, including, specifically, the

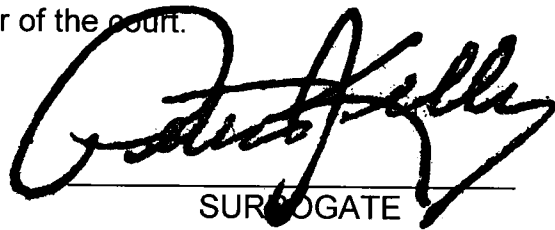
terms of this settlement. A contrary ruling from this court would, effectively, result in an end-run around that court's order.

Accordingly, in the absence of opposition, the petitioner's motion is granted.

The portions of the court's file containing the specific terms of the within settlements shall be sealed, and the Clerk of the Court shall deny access to such records to anyone except the settling parties or their counsel of record.

This is the decision and order of the court.

Dated: October 1, 2018

  
SURROGATE