

Matter of Thanks to Scandinavia, Inc.

2019 NY Slip Op 31108(U)

April 12, 2019

Supreme Court, New York County

Docket Number: 161547/2018

Judge: Eileen A. Rakower

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

-----X
In the Matter of the Application of

THANKS TO SCANDINAVIA, INC.

Index No.
161547/2018

Petitioner,

**DECISION
and ORDER**

for a modification of the purpose restrictions on the
Robert and Florence Blauner Fund under Section 555(c)
of the Not-for-Profit Corporation Law

Mot. Seq. 001

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Thanks to Scandinavia, Inc. ("Petitioner") brings this action pursuant to Not-for-Profit Corporation Law ("NPCL") § 555(c) for an Order approving a modification of the restrictions of the Robert and Florence Blauner Fund (the "Blauner Fund"), a restricted endowment fund. There is no opposition.

Factual Allegations/Relevant Background

Petitioner is a New York not-for-profit charitable corporation, which was incorporated in 1965. As set forth in Petitioner's certificate of incorporation, the purpose of the corporation is:

- "(a) providing scholarships and other financial assistance to Scandinavian youth, including in order to "express ... thanks to the people of Denmark, of Finland, or Norway, and of Sweden" for "defying the Nazis and in saving the lives of thousands of their compatriots and others of Jewish faith";
- (b) "[b]y means of such scholarships and other financial assistance, to remind man for all time of the singular deeds of the people of Denmark, of Finland, of Norway, and of Sweden during the years of Nazi tyranny,"
- (c) to "thus pay perpetual tribute to the people of Scandinavia...";
- (d) "[b]y means of scholarships and other financial assistance to pay tribute to the people of the United States and of other countries...";
- (e) to "provide

scholarships and other financial assistance to Scandinavian students selected or approved by the corporation in order to enable to assist such students to attend educational institutions of the United States of America and other countries...”; (f) to “provide such scholarships and such financial assistance to other foreign students selected or approved by the corporation, and also to provide such scholarships and such financial assistance to American students selected or approved by the corporation”; (g) to “foster or support, directly or indirectly, the exchange of students between the United States and other countries”; and (h) to “apply the funds and property of the corporation for religious, charitable, scientific, literary or educational purposes, including the giving of the same to any other corporation, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purpose...”

(Petitioner’s Petition at 5-6).

The Blauner Fund was created in 1982 by Robert and Florence Blauner (“Mr. and Mrs. Blauner”). Mr. and Mrs. Blauner donated \$50,000 to the Blauner Fund and \$50,000 was matched by the Federal Foundation, Inc. (the President Richard Netter, was also the co-founder and President of Petitioner). On August 19, 1982, Petitioner and Mr. and Mrs. Blauner entered into a letter agreement, stating that the Blauner Fund’s purpose is “to provide grants to doctors, nurses and others involved with health care and/or hospital administration, to deserving persons from Denmark, Finland, Norway and/or Sweden pursuing health care and/or hospital administration studies at [Beth Israel Medical Center] (“BI”); and/or to provide grants to persons affiliated with BI to defray costs of lectures and/or studies in such Scandinavian countries, deemed by [Thanks To Scandinavia] (“TTS”) to be in the interest of the Scandinavian people.” (Petitioner’s Petition at 4). As of June 30, 2018, the fair market value of the Blauner Fund was \$140,309.96.

Petitioner contends that it cannot utilize the money in the Blauner Fund in the manner originally intended. Petitioner asserts that it does not usually fund programs at hospitals and if it created a program to use the money in the Blauner Fund would “dilute” Petitioner’s mission. Furthermore, Petitioner asserts that it does not have the administrative funds to create a program. Petitioner contends that “the use of those funds to support The Louis Armstrong Thanks To Scandinavia Training

Program in Music and Medicine at The Louis Armstrong Department of Music Therapy at Mount Sinai Beth Israel, a program which provides training to music therapy scholars from the Scandinavian countries with the aim of enhancing clinical training, theoretical knowledge, and research toward the development of multi-cultural understanding of music therapy practices in a medical context” would be a good solution. (Petitioner’s Petition at 8).

Cy Pres

“[U]nlike other trusts, a charitable trust will not necessarily fail when the settlor’s specific charitable purpose or direction can no longer be accomplished.” *Matter of Estate of Wilson*, 59 N.Y.2d 461, 471–72 [1983]. “Cy pres, now codified as part of Article 8 of the Estates, Powers and Trusts Law (s 8-1.1(c)), is: . . . the principle that equity will make specific a general charitable intent of a settlor; and will when an original specific intent becomes impossible or impracticable of fulfillment, substitute another plan of administration which is believed to approach the original scheme as closely as possible.” *Lefkowitz v. Lebensfeld*, 68 A.D.2d 488, 494 n. 2 [1st Dept 1979], *aff’d*, 51 N.Y.2d 442 [1980].

Cy pres can be applied when (1) the gift or trust was created for a charitable purpose; (2) the donor established a general charitable intent; and (3) circumstances have changed that render the donor’s specific charitable intent “impossible or impracticable”. *Matter of Estate of Wilson*, 59 N.Y.2d at 471–72.

Petitioner argues that the three conditions for the application of cy pres are applicable to the Blauner Fund. Petitioner contends that the first condition is met, the Blauner Fund is charitable in nature. Petitioner asserts that the second condition is met, that the intent of the original donors was general charitable intent which is indicated in the documents relating to the development of the Blauner Fund. Petitioner argues that it is “reasonable to infer” that the donors of the Blauner Fund would have wanted the money to be used in a way to support Petitioner’s charitable mission. Petitioner contends that the third condition is met, circumstances have changed which render compliance impossible or impracticable. Petitioner argues that the Blauner Fund appeared to be practicable when it was first established because there were three scholarships awarded from 1984 through 1997, but since 1997 there have been no scholarships awarded. Furthermore, Petitioner argues that the original mission of the Blauner Fund does not fit with Petitioner’s central mission. Petitioner contends that donors of the Blauner Fund could not have foreseen the change in circumstances and there is no evidence that the donors would have wanted the money in the Blauner Fund to lapse.

Moreover, Petitioner contends that Alice Netter, the President of Federated Foundation, Inc. executed a Waiver of Notice and Consent sworn on August 9, 2018, consenting to the relief Petitioner seeks in the current application. Petitioner further contends that Joanne Loewy, director of The Louis Armstrong Department of Music Therapy at Beth Israel, executed an affidavit in support of Petitioner's Petition on August 22, 2018.

Discussion

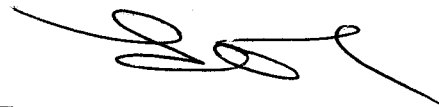
Petitioner has failed to demonstrate that cy pres can be applied in this circumstance. Petitioner has not shown that the third condition exists, that circumstances have changed that rendered the donor's specific charitable intent "impossible or impracticable." *Matter of Estate of Wilson*, 59 N.Y.2d at 471-72. While Petitioner asserts that no scholarships have been awarded since 1997 and that the original mission of the Blauner Fund does not fit within Petitioner's central mission, it is unclear to the Court what the change of circumstance is. Therefore, Petitioner's request for an Order approving a modification of the restrictions of the Blauner Fund is denied.

Wherefore it is hereby

ORDERED that the Petition is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

DATED: April 22, 2019



EILEEN A. RAKOWER, J.S.C.