

**Matter of Rosetti**

2019 NY Slip Op 35238(U)

August 29, 2019

Surrogate's Court, Albany County

Docket Number: File No. 2019-360

Judge: Stacy L. Pettit

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This opinion is uncorrected and not selected for official publication.

*State of New York*

*Surrogate's Court, Albany County*

**FILED**

AUG 29 2019

ALBANY COUNTY  
SURROGATE'S COURT

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Rosetti Family Irrevocable Trust dated  
September 2, 1992, commonly known as the Rosetti  
Family Irrevocable Trust I.

DECISION AND ORDER

File Nos. 2019-360  
2019-360/A  
2019-360/B  
2019-360/C  
2019-360/D  
2019-360/E

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Rosetti Family Irrevocable Trust dated  
January 4, 1993, commonly known as the Rosetti  
Family Irrevocable Trust II.

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Rosetti Family Irrevocable Trust dated July 1,  
1997, commonly known as the Rosetti Family  
Irrevocable Trust III.

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Rosetti Family Irrevocable Trust dated May  
13, 1996, commonly known as the Rosetti  
Residence Trust.

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Richard Rosetti Irrevocable Trust dated  
December 7, 2010, commonly known as the  
Richard Rosetti Irrevocable Trust V.

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In the Matter of the Application by Beneficiary,  
Richard G. Rosetti, for a Compulsory Accounting  
of the Joan Rosetti Irrevocable Trust dated  
December 7, 2010, commonly known as the Joan  
Rosetti Irrevocable Trust VI.

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**Appearances:** Thomas J. Collura, Esq., Attorney for Petitioner Richard G. Rosetti,  
Hodgson Russ, LLP, 677 Broadway, Suite 301, Albany, New York 12207

Thomas F. Gleason, Esq., Attorney for Respondents Richard C. Rosetti  
and Joan Rosetti, Gleason, Dunn, Walsh & O'Shea, 40 Beaver Street,  
Albany, New York 12207

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**Pettit, S.,**

Petitioner Richard G. Rosetti is the son of respondents Richard Rosetti and Joan Rosetti. In April 2019, petitioner commenced these proceedings to compel accountings of six trusts created by respondents, which are described more fully below. Megan Falvey, Alexandra Falvey Watson and Matthew Falvey, the children of petitioner's sister, Jacqueline Rosetti Falvey, have filed a petition to intervene in these proceedings pursuant to 22 NYCRR 207.9.

Trust I: Richard Rosetti, as grantor, entered into an irrevocable trust agreement on September 2, 1992, with Joan Rosetti as trustee, known as the Rosetti Family Irrevocable Trust I. Petitioner is a beneficiary of Trust I.

Trust II: Respondents, as grantors, entered into an irrevocable trust agreement on January 4, 1993, with Richard Rosetti as trustee, which was amended on September 1, 2011, and is known as the Rosetti Family Irrevocable Trust II. Petitioner is a beneficiary of Trust II.

Trust III: Respondents, as grantors, entered into an irrevocable trust agreement on July 1, 1997, with Richard Rosetti as trustee, which is known as the Rosetti Family Irrevocable Trust III. Petitioner is a beneficiary of Trust III.

Residence Trust: Respondents, as grantors, entered into an irrevocable trust agreement on May 13, 1996, with respondents as trustee, which is known as the Rosetti Residence Trust. Petitioner is a beneficiary of the Residence Trust.

Trust V: Richard Rosetti, as grantor, entered into an irrevocable trust agreement on December 7, 2010, with Joan Rosetti as trustee, known as the Richard Rosetti Irrevocable Trust V. Petitioner is a beneficiary of Trust V.

Trust VI: Joan Rosetti, as grantor, entered into an irrevocable trust agreement on December 7, 2010, with Richard Rosetti as trustee, known as the Joan Rosetti Irrevocable Trust VI (hereinafter Trust VI). Petitioner is a beneficiary of Trust VI.

In May 2019, respondents appeared and answered the petitions to compel accountings, raising several affirmative defenses and requesting that the petitions be dismissed. Respondents alleged, among other things, that petitioner had renounced his interests in Trusts V and VI, although a copy of the renunciation was not included with their papers. Respondents noted that petitioner contested the validity of the renunciation. The Court held a conference with the parties and then allowed 30 days for the parties to try to come to some agreement about the accountings. In June 2017, Megan Falvey, Alexandra Falvey Watson and Matthew Falvey, who are beneficiaries of the trusts at issue but are not parties to these proceedings to compel accountings, sent a letter to the Court stating that they “believe that the interests of all parties are best served by a voluntary accounting at this time.” They further stated that respondents were “willing[] to submit a voluntary accounting for the subject trusts.” A letter from respondents followed which confirmed their agreement to voluntarily account for the trusts at issue. They requested 60 days to present a plan for the accountings. In response, petitioner sent the Court proposed orders to account for the Court to issue. Respondents objected to petitioner’s proposed orders, again reiterating their request for time to develop a plan for the accountings. Petitioner then revised the proposed orders to provide 90 days to file the accountings.

Based on respondents' representation to the Court that they agreed to voluntarily account, and because they had filed answers objecting to petitioner's requests for accountings, the Court declined to sign petitioner's proposed orders. The parties were notified that the Court would not issue any orders and would allow 60 days, until August 26, 2019, for respondents to file their accountings. On August 26, 2019, respondents failed to file any trust accountings. Instead, respondents filed an affidavit, an attorney affirmation and a memorandum of law. Respondents, by these documents, request that the Court limit the scope of the accountings.

It is axiomatic that "trustees have an obligation to account for their actions" (Matter of Hunter, 4 NY3d 260, 267 [2005]). "Although the SCPA does not require a fiduciary to give periodic or intermediate accountings, where trusts are managed over a lengthy period trustees often account periodically" (*id.*; see Matter of Mastroianni, 105 AD3d 1136, 1138 [3d Dept 2013]). If the trustees do not voluntarily account for their actions, an accounting may be compelled by beneficiaries or by Surrogate's Court (see SCPA 2205; Matter of Hunter, 4 NY2d at 267-268). Surrogate's Court "may at any time, upon it appearing that it is for the best interests of the estate, make an order...requiring a fiduciary to file an intermediate or final account within such time and in such manner as directed by it" (SCPA 2205 [1]). The Court of Appeals has observed that "[j]udicial settlement serves the interests of both the fiduciary and the beneficiary in that it provides full disclosure of the fiduciary's transactions and, upon issuance of a decree, the fiduciary is released from liability for those transactions" (Matter of Hunter, 4 NY2d at 268).

The Court finds that it would be in the best interests of the fiduciaries and the beneficiaries to fully account for the trusts at issue. The Court also finds that respondents have had ample time to prepare their accountings, giving that they have had notice of these

proceedings for more than four months and indicated their willingness to account over two months ago.

With respect to the petition to intervene in these proceedings filed by Megan Falvey, Alexandra Falvey Watson and Matthew Falvey, the Court finds they are not necessary parties to these proceedings to compel accountings. In any event, by the issuance of this order to account, these proceedings are concluded. Megan Falvey, Alexandra Falvey Watson and Matthew Falvey, as beneficiaries of the trusts at issue, will be interested parties to each of the accounting proceedings commenced by respondents. This constitutes the decision and order of the Court. It is hereby

ORDERED that Joan Rosetti, as trustee of the Rosetti Family Irrevocable Trust I, dated September 2, 1992, render and file a formal account of her proceedings as trustee from September 2, 1992, to the present, by September 30, 2019; and it is further

ORDERED that Richard Rosetti as trustee of the Rosetti Family Irrevocable Trust II, dated January 4, 1993, and amended September 1, 2011, render and file a formal account of his proceedings as trustee from January 4, 1993, to the present, by September 30, 2019; and it is further

ORDERED that Richard Rosetti as trustee of the Rosetti Family Irrevocable Trust III, dated July 1, 1997, render and file a formal account of his proceedings as trustee from July 1, 1997, to the present, by September 30, 2019; and it is further

ORDERED that Richard Rosetti and Joan Rosetti, as trustees of the Rosetti Residence Trust, dated May 13, 1996, render and file a formal account of their proceedings as trustees from May 13, 1996, to the present, by September 30, 2019; and it is further


ORDERED that Joan Rosetti, as trustee of the Richard Rosetti Irrevocable Trust V, dated December 7, 2010, render and file a formal account of her proceedings as trustee from December 7, 2010, to the present, by September 30, 2019; and it is further

ORDERED that Richard Rosetti, as trustee of the Joan Rosetti Irrevocable Trust VI, dated December 7, 2010, render and file a formal account of his proceedings as trustee from December 7, 2010, to the present, by September 30, 2019; and it is further

ORDERED that these judicial settlement proceedings be comprised of, but not limited to a petition, filing fee, account of proceeding with schedules, releases, waivers and/or citation, and a proposed decree; and it is further

ORDERED that service of this order be effected by first class mail upon counsel for Richard Rosetti and Joan Rosetti.

Dated and Entered: *August 29, 2019*

  
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Hon. Stacy L. Pettit, Surrogate

**Papers Considered:**

- 1) Verified Petitions (6) of Richard G. Rosetti, dated April 5, 2019, with exhibits;
- 2) Verified Answers (6) of Richard C. Rosetti and Joan Rosetti, dated May 6, 2019; Attorney Affirmations of Thomas F. Gleason, Esq., dated May 6, 2019, with exhibits;
- 3) Correspondence from Michael Koenig dated June 14, 2019;
- 4) Correspondence from Thomas F. Gleason dated June 17, 2019;
- 5) Correspondence from Thomas J. Collura dated June 18, 2019;
- 6) Correspondence from Thomas F. Gleason dated June 18, 2019;
- 7) Correspondence from Thomas J. Collura dated June 19, 2019;
- 8) Correspondence from Thomas J. Collura dated August 27, 2019;
- 9) Correspondence from Thomas F. Gleason dated August 28, 2019.