

**Matter of Elnadav (Robinson)**

2019 NY Slip Op 35253(U)

August 15, 2019

Surrogate's Court, Queens County

Docket Number: File No. 2016-1235/B

Judge: Peter J. Kelly

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This opinion is uncorrected and not selected for official publication.

Present: HON. PETER J. KELLY  
SURROGATE

SCANNED

SURROGATE'S COURT: QUEENS COUNTY

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In the Matter of the Accounting by Saul  
Elnadav, Esq., as Co-Administrator of the  
Estate of

MAGDALENE ROBINSON, a/k/a  
MADELINE ROBINSON,

File No. 2016-1235/B

Deceased.  
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In this proceeding for the judicial settlement of the final account of Saul Elnadav, Esq. (hereinafter "petitioner"), as a co-administrator of the decedent's estate, objections were filed by a distributee, Toni Luck. She also filed objections to the accounting proceeding of the co-administrator Tanya Hobson-Williams Esq. (hereinafter "Hobson-Williams"), (File No. 2016-1235/D).

Magdalene Robinson died intestate on March 11, 2002. She was survived by her three children, Leroy Hefley (hereinafter "Leroy"), William Luck (hereinafter "William") and Toni Luck (hereinafter "Toni"). Toni commenced an administration proceeding to which Leroy objected. The proceeding was settled by stipulation dated December 4, 2016, and letters of administration issued to their respective attorneys, Hobson-Williams and petitioner.

Petitioner filed his account on April 27, 2018 and Toni filed objections thereto on August 2, 2018. Hobson-Williams filed her account on June 12, 2018 and Toni filed objections thereto on September 24, 2018.

Pursuant to an ex-parte order of the Court dated October 31, 2018, petitioner and Hobson-Williams were permitted to take advance payments of legal fees and expenses in amounts not to exceed \$22,820.00 and \$19,075.00 respectively. Said order also provided that "...judicial approval of the legal fees to be paid to counsel shall be determined in the judicial accountings filed herein."

Pursuant to Schedules A, A-1, A-2, and B of petitioner's amended account, the gross estate amounts to \$156,678.07. Schedule C indicates that the advance payments of legal fees and expenses were paid in the maximum sums allowed on October 31, 2018. Additionally it indicates that Glatt, Maney, Kling & Rufer P.C. was paid \$1,500.00 for preparation of Federal and New York State taxes. Schedule C of Hobson-Williams' account did not contain an entry for attorney fees, disbursements, or accounting fees. Thus, the estate has, to date, paid out \$43,395.00 in attorney and accounting fees, which constitutes over 27% of the gross estate. Additionally, both co-administrators are seeking payment of commissions.

The co-administrators both seek additional legal fees and disbursements. Petitioner's Schedule C-1 lists petitioner's unpaid legal fees and disbursements as \$19,521.96 and sets forth a "holdback" for additional attorney fees and disbursements of \$20,000.00. In Schedule C-1 of her accounting, Hobson-Williams lists unpaid attorney fees and disbursements in the sum of \$15,563.75 and provides for "holdback" of \$32,000.00 for "tax, accounting and attorney fees."

On May 20, 2019, upon the trial of both accountings, Toni Luck withdrew all objections except for those concerning the attorney's fees of both co-administrators. Upon the close of the trial the Court, on consent, indicated that the matters would be determined on the evidence submitted on May 20, 2019 as well as supplemental affidavit of legal services filed by counsel.

The Surrogate bears the ultimate responsibility to determine what constitutes reasonable compensation regardless of the existence of a fee agreement or the consent of all parties to the requested fee (see: Estate of Verplanck, 151 A.D.2d 767; Matter of Phelan, 173 AD2d 621).

While there is no hard and fast rule to calculate reasonable compensation to an attorney in every case, the Surrogate is required to exercise his authority "with reason, proper discretion and not arbitrarily" (Matter of Brehm, 37 AD2d 95; See: Matter of Wilhelm, 88 AD2d 6). The reasonableness of the attorney's claim for services should be determined by reference to the following factors: time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved (Matter of Freeman, 34 NY2d 1; Estate of Von Hofe, 145 AD2d 424).

The burden with respect to establishing the reasonable value of legal services performed rests on the attorney performing those services (Matter of Potts, 213 AD 59, *aff'd* 241 NY 593).

Upon a review of the affirmations submitted herein by petitioner and the time records attached thereto, it is clear that time spent was the sole factor petitioner used in calculating his fee. It is well-settled, however, that time spent is the least important factor considered by a court in fixing reasonable compensation (see Matter of Snell, 17 AD2d 490).

Additionally, much of the services provided are executorial in nature and may not properly be considered in the setting of the legal fee (see, Matter of Bernheimer, 61 AD2d 761, *lv denied* 45 NY2d 710), but rather are compensated by the statutory commission. Petitioner acknowledges in his first affirmation of legal services that some of the time billed therein concerned the "...administration of the estate." Additionally, petitioner's billing records contained entries indicating he had spent time doing administrative work, such as opening accounts, communicating with the Office of the State Comptroller for Unclaimed Funds, and to conducting searches for other assets of the estate.

The questions involved in this estate were not particularly difficult, consisting of a contested administration proceeding and the instant accounting. However, the Court also recognizes that much of the legal work performed and

time spent appears to have been necessitated by the claims of Toni relating to the existence of assets allegedly owned by the decedent.

Legal fees must bear a reasonable relationship to the size of the estate (Matter of Kaufmann, 26 AD2d 818, *aff'd* 23 NY2d 700; Martin v Phipps, 21 AD2d 646, *aff'd* 16 NY2d 594). The instant estate is modest in size and neither petitioner nor his co-administrator appeared to consider this factor in calculating their fee requests. Petitioner's fee request of \$52,140.00 is roughly one-third of the gross estate. Together with Hobson-Williams' fee request of \$28,962.50, the \$81,102.50 in attorneys' fees constitutes over 51% of the gross estate.

Accordingly, upon the evidence presented and applying the factors set forth in Matter of Freeman, *supra*, and Matter of Potts, *supra*, the Court finds that the just and reasonable compensation for legal services rendered by Saul Elnadav, Esq. in the representation of petitioner as a co-administrator shall be fixed in the amount of \$25,000.00. As Saul Elnadav, Esq. has already received \$22,820.00, petitioner shall pay Saul Elnadav, Esq. the balance of \$2,180.00. This amount shall include preparation, execution and entry of the decree herein.

Disbursements are allowed in the amount of \$1,014.00. Disbursements for calendar watching services, photocopying, per diem services, travel, parking, research and mail are considered normal law office overhead and are disallowed (see, CPLR § 8301).

Settle decree.

Dated: August 15, 2019

  
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SURROGATE