

<b>Estate of Weingarten</b>
2020 NY Slip Op 34480(U)
June 22, 2020
Surrogate's Court, Bronx County
Docket Number: 2017-2005
Judge: Nelida Malave-Gonzalez
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## SURROGATE'S COURT, BRONX COUNTY

June 22, 2020

ESTATE OF FANI WEINGARTEN, Deceased  
File No.: 2017-2005; 2017-2005/B, C, D

In this contested estate, there are five pending proceedings:

(1) a probate petition filed by the nominated alternate executor and attorney drafter (Ruhling) of an instrument dated August 19, 2014 (the 2014 instrument) whose only beneficiaries are five alleged cousins and distributrees of the decedent (the cousins); (2) a cross petition filed by two friends of the decedent (the Madmonis) seeking to probate an instrument dated May 30, 2017 where they are the only residuary beneficiaries (the 2017 instrument, to which Ruhling and the cousins filed objections and jury demands; (3) Ruhling's and the cousins' summary judgment motions seeking denial of probate of the 2017 instrument on the basis of lack of due execution; (4) the Madmonis' cross motion for partial summary judgment seeking dismissal of Ruhling's and the cousins' objections to the 2017 instrument only concerning lack of testamentary capacity; and (5) the Madmonis' petition seeking to compel distribution as the only remaindermen

of all the assets and income in a revocable trust established by the decedent in 2011 as amended on May 30, 2017 (the trust). Although Ruhling drafted the 2014 and 2017 instruments, only the execution of the 2014 instrument was attorney supervised. An affidavit was filed for only one of two attesting witnesses to the 2017 instrument and there is no application seeking to dispense with the other witness' affidavit. Ruhling and the cousins filed objections with jury demand to the 2017 testamentary instrument on the grounds of, inter alia, lack of due execution and testamentary capacity, undue influence and fraud. The Madmonis filed objections to Ruhling's petition seeking preliminary letters testamentary.

The proceeding to probate the 2014 instrument was held in abeyance pending determination of the validity of the 2017 instrument. A guardian ad litem was appointed after jurisdiction was obtained over unknown and whereabouts unknown distributees in the probate proceedings by publication. Notices of appearance were filed by the Public Administrator and the Attorney General. Ruhling and the Madmonis' attorney were appointed temporary co-administrators of the estate pursuant to the terms of a "so-ordered" written stipulation.

All outstanding issues in these proceedings were resolved pursuant to a written stipulation dated May, 2020 (the May, 2020 stipulation) entered into by the cousins, Ruhling, the other temporary co-administrator, guardian ad litem, Public Administrator and the Attorney General. The terms of the stipulation are, inter alia, as follows: (1) the motions and cross motion

for partial summary judgment concerning the 2017 instrument are withdrawn; (2) the parties request that probate of the 2017 instrument be denied for lack of due execution; (3) the 2014 will is to be admitted to probate as an uncontested matter; (4) the proceeding compelling distribution of the revocable trust assets is withdrawn; (5) the revocable trust proceeding is withdrawn; (6) the Madmonis are to receive one-third of the combined estate and trust assets offset by a certain stipulated sum representing refund of alleged pre-death transfers; (7) the temporary co-administrators waive commissions; (8) Ruhling is to be entitled to full statutory commissions as executor and may immediately be paid receiving commissions; (9) Ruhling's reasonable legal fees are to be paid by the estate; (10) distributions to the cousins and the Madmonis are to be expeditiously paid in a certain manner; (11) the parties are mutually released from all claims; and (12) the temporary co-administrators' bond may be cancelled. Consents are now filed for all parties to Ruhling's petition seeking probate of the 2014 instrument.

The decedent died on June 9, 2017. A Holocaust survivor, she was predeceased by her spouse and had no children. The names and whereabouts of her distributees are unknown. Ruhling supervised the execution of the 2014 instrument at a restaurant in the Bronx that the decedent frequented, and acted as a notary. Ruhling's law partner and a waitress were the attesting witnesses. A self-proving affidavit is annexed to the instrument, and a SCPA 2307-a acknowledgment was filed. The guardian ad litem reports that she interviewed Ruhling and the law partner,


Ruhling's father, and they stated that it is their standard practice that all witnesses are present in a room during witnessing of a will and that a testator declare an instrument to be his/her last will and testament, initial each page of an instrument prior to execution and request the witnesses to sign the will, and that the subscribing witnesses also sign a self-proving affidavit, all of which were done for the 2014 will. Ruhling also indicated that the decedent was competent at all times that they met including the day that the 2014 will was signed. The other attesting witness, a waitress at the restaurant who served the decedent several times weekly for over 10 years, also confirmed that the foregoing steps were adhered to.

The guardian ad litem continues that the 2017 will was drafted by Ruhling based upon a phone conversation with the decedent, who was hospitalized in Florida. It was signed by the decedent at the hospital less than two weeks before her death. At the decedent's request, Ruhling mailed a draft of the 2017 will to the Madmonis, the beneficiaries, who arranged for its signing, which was not attorney supervised, and there were irregularities in its execution. Accordingly, the guardian ad litem recommends that the court deny probate of the 2017 instrument and that the 2014 instrument should be admitted to probate.

The court is satisfied that the testator executed the will dated August 19, 2014 in its present form in compliance with the statutory requirements and that, at the time of its execution, the testator was competent to make a will and was free from restraint. Accordingly, this

decision constitutes the order of the court: (1) granting the guardian ad litem authority to execute the May, 2020 stipulation; (2) dismissing the Madmonis' petition seeking to probate the 2017 instrument, as stipulated by all parties; (3) marking the following "withdrawn" pursuant to said stipulation: (A) the summary judgment motion filed by Ruhling and cousins (File No. 2017-2005/B), (B) the Madmonis' cross motion for summary judgment (File No. 2017-2005/B) and (C) the Madmonis' proceeding seeking distribution from the revocable trust (File No. 2017-2005/D) ; and (4) directing that the will dated August 19, 2014 is entitled to be admitted to probate (File No. 2017-2005), subject to the terms of the May, 2020 stipulation (see EPTL 3-2.1; SCPA 1408). The letters of temporary co-administration issued to Ruhling and the Madmonis' attorney are revoked in the decree to be entered hereon.

Decree signed.

  
HON. NELIDA MALAVE-GONZALEZ  
SURROGATE