Matter of Blumenkrantz
2020 NY Slip Op 34499(U)
July 7, 2020
Surrogate's Court, Bronx County
Docket Number: 212 P 1961/B/C
Judge: Nelida Malave-Gonzalez
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SURROGATE'S COURT, BRONX COUNTY

July 7, 2020

ESTATE OF MAX BLUMENKRANTZ, Deceased
File No.: 212 P 1961/B/C

In these two contested accounting proceedings commenced by BNY Mellon, N.A., (the "bank" or "trustee"), the corporate trustee of a testamentary trust, a bifurcated bench trial was held on certain outstanding objections to each of its two accounts. The objectants are decedent's two grandsons who are each remainder beneficiaries of the testamentary trust established for their mother, and beneficiaries of the separate distributive share account established by the trustee with their remainder interest upon the death of their mother in 2000. This portion of the trial was limited to evidence and testimony with respect to the trustee's accountings for that trust and the distributive share account. The parties filed post-trial briefs and the matter was submitted for decision.

The background of this proceeding was previously addressed in a decision of this court denying, in part, the trustee's motion for summary judgment seeking dismissal of the 32 objections filed to the two accounts, and granting, also in part, the objectants' cross-motion, sustaining objections 13 and 18 (Matter of Blumenkrantz, NYLJ, Feb. 13, 2014, at 32, [Sur Ct,

Bronx County 2014]). The objections that remained for trial included objections 2, 3, 5, 11, 15, 16, 19, 20, 25, 27 - 31, and a portion of objection 1, as well as objections 6, 7, 12, 14 and 17 concerning attorneys' fees. After the trial, the parties submitted two stipulations, the first dated June 9, 2016, concerned objections to attorneys' fees, wherein the parties agreed, inter alia, that the fees requested were for work actually performed and billed at a reasonable rate, however, the objectants were not waiving their right to object to the fees on the basis that they were incurred as a result of the actions of the trustee (See Petitioner's Exhibit 157; hereinafter "P's"). The second stipulation, dated June 10, 2016, withdrew objections 11, 15 and 19 (P's 159). Finally, although objections 13 and 18 concerning the 10 year delay in deeding the property to the objectants were sustained, the court found that the objectants had not proven what damages, if any, resulted from that delay. Accordingly, the second portion of the trial on damages will take place once a determination is made about the trustee's liability on the other remaining objections.

The following facts are not disputed by the parties. The decedent died on January 16, 1961 survived by his spouse, Helen, and three daughters. His will was admitted to probate by a decree of this court dated March 7, 1961 and pursuant to Article SIXTH of the instrument the residuary estate was held in trust for Helen. Upon her death in 1962 that trust was divided into three equal shares which were further held in trust for each daughter as lifetime income beneficiary of their respective shares, with the

remainder of each daughter's share distributed to her issue upon her death. All three daughters are now deceased: Ruth Sperling died on June 16, 1995, survived by her only child, Judith Sperling Nathanson (Judith); Lillian Feldman died on February 8, 2000 survived by Gary and Marshall Feldman, the two objectants; and Sylvia Schester died on June 23, 2010 survived by Norma Breslaw and Edith Norris.

The original assets of the Article SIXTH trust consisted of cash, stocks and an 80% interest in commercial real property located in Englewood, New Jersey (the "property" or "realty"). The decedent's spouse, and subsequently her estate, held the other 20% interest in that same realty which was similarly held in trust for the benefit of each daughter with the remainder to their issue. Although not the trustee for the spouse's share of the property, the bank entered into an agreement with the spouse's trustees to manage her portion of the realty, and was accordingly responsible for overseeing and managing the entire property, for nearly half a century. The bank received commissions as trustee of the decedent's share of the property that remained in trust, and was paid a separate fee for its management of the entire property.

In January of 1994 a tenant at the property stopped paying rent and filed for bankruptcy in the spring of that year abandoning the property and leaving it in complete disrepair. In May of 1996 the trustee, as landlord of the entire property, entered into a long-term lease with a new tenant, Englewood Health Care Properties, Inc. (Englewood or "tenant"), which

made improvements to the property for use as medical office space (the "lease").[1] In consideration of Englewood''s expenditure on those improvements, the lease based the rent for the property on its value as warehouse space, without taking into account the improvements made converting it to a medical office. The lease commenced on May 15, 1996 for an initial 10 year period, and allowed option to renew Englewood the lease three additional times, each for a five-year term.

The lease permitted assignments with the landlord's approval, and had detailed procedural requirements tenant was to follow in order to obtain that approval. The lease prohibited the tenant from receiving any consideration from the assignee upon assignment, and to the extent the tenant received such consideration, it was to be turned over to the landlord. There were two exceptions, including, as relevant here, "if the assignee was a successor corporation of the original tenant, the tenant could be reimbursed for the then unreimbursed expenses for capital improvements to the real property." The property was ultimately converted into medical office space by Englewood and used as a dialysis center.

By 1998 the entire one-third share of the property held in trust for decedent's daughter Ruth was deeded outright to Judith. Judith thereafter mortgaged her one-third share of the property which was

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[1]The objectants now contend that the tenant only partially improved the property, alleging that anywhere from one-fourth to one-third of the property remained unimproved, resulting in the tenant's default under the terms of the lease and therefore, they were not entitled to renew the lease. This specific issue was not raised in any of the objections and the court did not allow testimony on these new allegations, over the objectants' continued opposition. The court afforded the objectants an opportunity to provide an offer of proof as to what the testimony would have been had the court allowed it in (Record 1713 - 1715).

foreclosed upon and sold at auction to a third party in June of 2001. A partition action was commenced by the third party, in which the objectants intervened, and was settled without the necessity of the sale of the property. As of the trial, the third party continued to hold title to that one-third interest in the realty.

In May of 1999, the trustee consented to Englewood's request to assign its interest in the lease to Northern New Jersey Dialysis (NNJD). The trustee treated NNJD as assignee, accepting rent from NNJD on the same terms provided to the original tenant for the remaining seven years of the initial 10-year lease term. In 2006 the trustee allowed NNJD to renew the lease for an additional five-year term and upon renewal NNJD was afforded the same terms with respect to rent as provided for under the original lease with Englewood, basing the rent on an improved warehouse space and not a medical office.

A letter agreement was entered into by the trustee with Team Resources, the real estate broker engaged by the trustee who referred the original tenant in 1996. That agreement provided for payment of a brokerage commission of five percent of the fixed rent for the initial 10-year lease period and an additional commission of five percent if the lease were renewed by the tenant for the first renewal option. Based on that agreement, the trustee paid Team Resources an additional brokerage fee of five percent of the fixed rent for the first renewal period beginning in May of 2006, when NNJD as assignee, renewed the lease. On October 28, 2010, following the

death of the last daughter to post-decease, the trustee distributed the remaining two-thirds interest in the property to the objectants, Norma Breslaw and Edith Norris.

The Trial

The trial concerned the objections filed to the trustee's accounts for the administration of the trust created for Lillian Feldman, the objectants' mother, as income beneficiary, covering the accounting period from April 29, 1997 through June 30, 2007 (Feldman trust account), and for the distributive share account set up by the trustee on March 29, 2000, after Lillian's death, to hold the remainder interest of her two sons, covering the accounting period from March 29, 2000 through June 30, 2007 (Feldman share account). Both accounts have since been updated to include the accounting period July 1, 2007 thorough May 31, 2011. Aside from the objections to attorneys' fees, the majority of the outstanding objections, and thus most of the testimony elicited at trial centered around the management of the realty.

The objectants called three fact witnesses including the two objectants, Dr. Marshall Feldman and Gary Feldman, and Marjorie Thompson, a former employee of the bank assigned as trust officer to oversee the trust from approximately July, 2005 until April, 2006. They also called an expert witness, John Rodgers, Esq. who testified about, inter alia, the trustee's handling of the trust assets, including the real property.

The trustee called three fact witnesses, including Joseph

Marraro, a commercial property manager for over 30 years, employed by the bank from approximately 1990 until 2007, who testified about his management of the property. Kenneth Houghton, a fiduciary specialist employed by the bank since at least 1989 and who was the trust officer assigned to oversee the trust from approximately 1994 until 2004; he testified about the bank's policies with regard to administering trusts, his personal involvement in administering this particular trust and his communications with the trust beneficiaries. Matthew Wieland, Esq., an attorney working for outside counsel who negotiated the lease on behalf of the bank, testified about that negotiation and also about his involvement in the lease assignment in 1999. Finally, the bank called an expert witness, Joseph Samulski, Esq., who testified about, inter alia, the decisions made by the trustee with respect to the dissolution of the Feldman trust, the creation of the Feldman share account and the management of the real property.

The Lease

Mr. Marraro, a real estate management specialist testified that he was assigned to the bank's Trust Properties department, which he described as a "support service" for the overall trust and estates arm of the bank. He was the property manager for the realty from the early 1990s until his departure from the bank in 2007. He testified credibly and in detail about the condition of the property in 1994 when a former tenant stopped paying rent and went bankrupt, basing his testimony, in part, on the fact that he visited the property at least three times each year, and more frequently when

necessary, explaining "when something came to our attention [he] needed to go inspect." (Record 1504-1505).

He described the property as a poorly maintained warehouse building that was dirty, with broken windows, worn out floors and no working heating or cooling system, and in need of a lot of work upon the bankrupt tenant's departure. He stated "the property was pretty beat up at that point because you had a tenant in possession that was struggling financially and inevitably went out of business. So they were not keeping up on maintaining the property in a way that . . . they were required [to] under the lease" (Record 1001).

In 1994, upon the bankrupt tenant's departure the bank devised a plan to have the property improved and generating income for the trust, which included cleaning up the property as best it could to put it in presentable shape to show potential tenants. Mr. Marraro explained that Team Resources was engaged as broker through an open listing and introduced Englewood to the trustee as a potential tenant. He testified that he was familiar with the lease (Respondent's Exhibit C) having been involved in discussing the negotiations and progression of the terms of the lease with Mr. Wieland, the drafter of the lease. He opined that the lease accomplished the bank's goal stating, "I was extremely happy with [the lease], with the amount the tenant invested in the property and with the dollar amount of the rent in comparison to what the market was at the time for that location" (Record 1047-1048).

Mr. Wieland, a real estate leasing attorney since 1985, testified that he had likely negotiated several hundred commercial leases during his 30 plus year career, noting that the majority of those leases contained assignment provisions and only some had renewal provisions. In 1995, as an associate with outside counsel to the bank he was assigned by his firm to draft leases for the property with several proposed tenants and was in contact with Mr. Marraro throughout the negotiation process. He acknowledged that at some point the lease provided for two tenants, but in the end "ultimately one tenant ended up having to take the entire property, more than they were looking to take . . ." (Record 1543-1544).

Mr. Wieland testified about the negotiations concerning several provisions of the lease, particularly, section 16.01(g) regarding assignments, which prohibited the tenant from receiving any consideration from the assignee upon assignment. The final version of the lease was eventually amended to provide, inter alia, that if Englewood Dialysis Center were the assignee, the tenant (Englewood Health Care Properties) would be able to be reimbursed "for the unreimbursed sums expended by tenant for capital improvements of the premises." (Record 1588). When questioned on cross-examination as to whether he believed entering into the lease was a prudent decision made by the bank, Mr. Wieland stated he could not say as he was not involved in the bank's decision-making process on whether to enter into the lease.

On direct examination Dr. Marshall Feldman testified that he

was not very familiar with the realty, having only visited the property once or twice as a child. During cross examination it was revealed that he in fact had knowledge of the bank's handling of the trust assets, including the realty, admitting he knew that a prior tenant had gone bankrupt and stopped paying rent for some time. Additionally, documents were entered into evidence showing that Dr. Feldman was sent information by the trustee on several occasions concerning the Feldman trust assets as well as updates on the status of the lease negotiations (P's 3 and 4). Dr. Feldman further admitted that he was in contact with his cousin Judith in or around 1996, identifying email exchanges between the two, which was admitted into evidence. In those emails the two discussed several matters, including possibly requesting a full accounting for the prior accounting period, the trustee's handling of the trust, in particular the realty, and potentially removing the trustee (P's 83). Finally, Dr. Feldman acknowledged submitting a proposal to the bank providing an alternative to the bank's decision to hold back rent for a period of time under the 1996 lease in order to create a reserve for the property which proposal was ultimately rejected (P's 102).

Mr. Houghton, the trust officer of the trust for ten years, testified that he was responsible for the normal day to day administration of the trust, including making income distributions, communicating with the beneficiaries and ensuring that the real estate was being properly managed. He explained that Trust Properties was the division of the bank that was responsible for overseeing and managing real estate held in trust accounts, including

inspecting the property periodically and making sure that the property was in good shape. He stated he was aware that in or around 1995 a tenant of the property filed for bankruptcy and that this impacted cash flow as the trust was no longer receiving rent for this property. He was not involved in the negotiation of the lease but confirmed receipt of the letter from Dr. Feldman in July of 1996, suggesting an alternative to holding back the income from the real property in order to create a reserve. He testified that legally the trust would not have been able to use other assets from the trust as they were only allowed to use income generated from the real property to pay for expenses of the trust and not principal.

Receipts and Releases for 1964 -1997 Trust Administration

Mr. Houghton testified that upon the death of Ruth Sperling in 1995, he contacted a law firm to prepare income only accounts covering the management of the trust from 1964 until April 29, 1997 and to prepare receipts and releases to be sent to all interested parties. He explained the bank was hoping to settle its account for this period informally, and ultimately receipts and releases were received from all parties. Dr. Feldman testified that he reviewed the receipt and release and acknowledged signing it on March 27, 1998. He denied that he delayed signing the document and acknowledged that the release covered the time period during which the lease was executed. Gary Feldman acknowledged reviewing and signing the receipt and release on February 14, 1998 (P's 6 and 8).

1999 Assignment

Mr. Marraro testified that he received a letter dated March 30, 1999 from an attorney representing the tenant at that time informing the bank of the tenant's intent to assign the lease and that he spoke to Mr. Wieland, who was copied on the letter, about the request. Mr. Wieland testified that he spoke with the attorneys for the original tenant, the assignee and perhaps other bank employees in connection with the request to assign the lease. He also testified that he reviewed numerous documents concerning the assignment and requested further documentation from the assignee, including financial information and other relevant documents, so that he was satisfied that the assignment complied with the terms of the lease (P's 127 and 129). There was further documentation and testimony that the entity the lease was being assigned to was entering into a deal to purchase Englewood Dialysis Center and therefore, the original tenant could be reimbursed for the amount it expended in renovating the property which was determined by the bank not to be consideration from the assignee to Englewood (P's 128 and 130).

2000 Distribution and Receipts and Releases

Mr. Houghton testified that upon Lillian's death in 2000 the trustee carved out her share of the trust creating the distributive share account, placing half of the remaining cash, securities and realty from the trust into that account. Both objectants testified they requested an in-kind distribution of the securities and all parties agreed that distribution of the stock occurred by September of 2000. After that distribution approximately

$60,000 in cash and the real property remained as a reserve, and Mr. Houghton acknowledged that this constituted close to 60% of all assets distributed from the Feldman trust and remaining in the distributive share account.

Mr. Houghton explained that the reserve was kept to cover any future expenses in connection with the trust, including filing a formal accounting, if necessary. He stated that at the time, there was no reason to believe the accounts would not be settled informally as they had in previous accounting. However, as not all interested parties returned the receipts and releases for the relevant accounting period, the trustee was ultimately required to file the accountings and continued to hold the reserve, including the realty. He testified that most of the securities held in the trust and distributed to the objections were "blue chip" stocks which are fairly stable, explaining that a "marketable security" is a stock that could be converted into cash within a relatively short period of time.

Dr. Feldman acknowledged signing a receipt and release on July 1, 2000 (P's 18), but explained that by 2006 he was becoming increasingly dissatisfied with the handling of the trust. He testified about sending a letter to Mr. Houghton in December of 2003 asking about, among other things, the status of the transfer of the deed of his share of the property and he stated that the reasons he was given for the delay changed over time (Record 750). Finally, Dr. Feldman explained that after having a difficult time obtaining timely and accurate tax information from the trustee, he wrote a

letter to Ms. Thompson in 2006 asking for a full accounting of the trustee's actions and inquiring how he would go about withdrawing his receipt and release (Record 756-757). A redacted copy of that letter dated March 7, 2006 addressed to Ms. Thompson was admitted into evidence (Respondent's 31A).

2001 Foreclosure and Ensuing Partition Action

Mr. Marraro testified that he learned of a possible foreclosure sale of the property sometime on May 22, 2001 when the then current tenant telephoned him to inform him that a sheriff's sale notice had been placed on the property. He acknowledged that he was extremely troubled by the phone call believing that perhaps the entire property was subject to foreclosure and requested that a copy of the notice be sent to him by fax. A document which contained a facsimile transmission sheet showing that it was transmitted and received on May 24, 2001, and on which was handwritten, inter alia, "6/4/01, Joe, Here is another copy of the notice" was admitted into evidence (P's 112). Mr. Marraro's sworn testimony was that he received this fax on June 4, 2001. Based on the writing it appears that the facsimile was resent at his request, and he testified that he did not remember receiving the initial fax that may have been sent on May 24, 2001. On cross-examination he explained that given facsimile technology at the time, it was possible that the facsimile may have been received on May 24th, but not seen by anyone at the bank.

Mr. Marraro testified that by June 6, 2001 he was able to

determine based on the documentation and ensuing phone calls that it was only Judith's one-third share that was being foreclosed upon and described the actions he took thereafter. Those actions included, contacting Mr. Rappaport, Ken Houghton from the bank's trust division and Judith on at least two occasions. He also testified that he contacted the local sheriff's office handling the foreclosure sale and was given the same information that he was given by Mr. Rappaport, which was that Judith was the only party that could request an adjournment. In describing his contact with Judith he stated that he sent her information and attempted to convince her to act on the foreclosure by seeking an adjournment or filing for bankruptcy. In spite of his pleas to take some action, Judith was extremely distraught and ultimately refused to do anything.

He continued, "we realized this was a bad problem, and since she wasn't being helpful, you know, advise the trust attorney. We discussed it within the bank in conversations that I had with Ken Houghton, the trust officer, we were trying to put our heads together as to what would be useful, and it was decided that we were to call the beneficiaries . . . to see if they could come up with the money to purchase this at foreclosure sale to keep it within the family"(Record 1103 - 1104). When he spoke to the objectants he told them "since its now going to foreclosure sale [there is a] . . . risk of another foreign party that could potentially buy the one-third interest and this is a bad thing. This would create a potential hostile co-ownership. We really do need to do something about it" (Record 1107). He went on to explain that

he tried to help Dr. Feldman figure out a way to finance the purchase suggesting he might consider a home equity loan. He reiterated having a potential hostile co-ownership "could cause headaches going forward, which it did" (Record 1109).

On cross-examination and in response to why he waited from the initial phone call on May 22nd until he received the fax on June 4th to take any action, he stated he was waiting to get all of the facts and to make sure he knew what they were dealing with in terms of the foreclosure. When pressed about his failure to contact an attorney with the bank, Mr. Marraro adamantly testified he believed that legally there was nothing the bank could do to stop the foreclosure, based on his conversation with the sheriff's department and the mortgagee's attorney and reiterated that Judith was the only person that could do anything. Mr. Wieland testified he did not believe he was contacted by the bank at the time of the foreclosure but offered that perhaps someone else from his firm may have been contacted, although he could not say for sure and did not give a name.

Dr. Feldman testified that he learned of the foreclosure at 3pm on Friday, June 8, 2001 when Ken Houghton called him and that he spoke to his brother and possibly one of his cousins over the ensuing weekend about the possibility of purchasing the property. He was told by Mr. Houghton to contact Mr. Marraro and testified that he spoke to Mr. Marraro the following Monday, June 11th, who told him he should contact the attorney representing the mortgagee, Abe Rappaport, Esq. He was informed

by both Mr. Marraro and Mr. Rappaport about the logistics of the foreclosure sale.

Dr. Feldman testified that he and his brother likely had sufficient funds to purchase the property but did not do so because he did not have enough information about the condition and value of the real property to be able to make an informed decision about bidding on the property. He also testified that he believed, based on a conversation with his brother and with the sheriff's office, that since he was an interested party, the sale could be postponed and he was under the impression that this was routinely done. He testified that the only assistance Mr. Marraro offered in regard to the foreclosure sale was to suggest that he contact Mr. Rappaport, but he was never advised to contact any attorney representing the bank. He admitted on cross-examination that he could have traveled to New Jersey on the day of the foreclosure.

Gary Feldman testified that he believed he learned that his cousin Judith's share of the property was to be foreclosed upon from a phone call he received at work from either his brother Marshall, or someone from the bank, and that he was pretty certain he received the phone call the Friday before the foreclosure was to take place. Although on cross-examination it was revealed that during his deposition testimony in 2009 he was unsure of the date of the phone call, who it was from or how long the call lasted.

Mr. Feldman further testified at trial that the only information he

was given by anyone from the bank was that he could bid on the property. He explained that he was not familiar with the value of the property and did not believe he ever received an appraisal of the property which he requested in order to determine whether it made sense for him to attempt to bid on the property at the foreclosure sale. He explained that as he did not have sufficient information about the property or familiarity with foreclosure sales, he sent a request to the sheriff's office with a money order in a nominal amount asking for an adjournment. He said he either received a phone call and/or a letter informing him that the adjournment was not granted and the money order was returned. On cross-examination Mr. Feldman admitted that he did not have a copy of the letter he sent, or any evidence of the money order or letter he may have received from the sheriff's office enclosing the money order. He also admitted that during his deposition he was not entirely sure of the manner in which he sent the letter requesting the adjournment but he was now sure it was by express mail. There was also testimony elicited at his deposition that he may have been told to contact Mr. Rappaport as he testified at his deposition that he could not say for sure whether he ever contacted Mr. Rappaport.

Similar to Dr. Feldman's testimony, Mr. Feldman's testimony was essentially that he learned of the foreclosure sale a few days before it was to occur and he did not have enough information to make an informed decision about whether to purchase the property. He also admitted that although he may have had the resources to purchase the property, he had

no idea the property would have sold for $110,000 to $120,000, and in any event his assets were held in the form of stocks which would have taken him a few days to sell. He stated ultimately he did not bid on the property due to logistics, and he did not know what a maximum bid would have been and had no idea that it would have sold for "so little."

Mr. Houghton testified he learned about the foreclosure proceeding from Mr. Marraro but offered no testimony about any actions he may have taken with regard to the foreclosure. On direct he stated that upon learning of the foreclosure of Judith's one-third share, he did not consider the possibility of purchasing that share to add to the remaining trust as it would have made that trust much less diversified. On cross-examination he acknowledged that having a hostile co-owner was a problem and at some point a discussion was held by the bank about possibly selling the trust's share of the property because of the hostile co-ownership. However, he explained that given the complicated manner in which the property was held, it would have required a meeting with all interested parties and that never took place.

Mr. Marraro testified that he was contacted by an attorney purporting to represent the objectants in October, 2001 requesting certain documents concerning the realty which he provided. In 2002, he also provided the objectants and their attorney a copy of a summons and complaint for a partition action commenced by the one-third owner of Judith's former share. He explained, "it was anticipated since the property purchased

at a foreclosure sale "by an entity ended up being [a] hostile co-owner who then as expected then caused trouble and caused a headache by suing the rest of the ownership to sell the rest of the property . . . the foreclosure shark could flip its interest for more money" (Record 1120 - 1121).

Dr. Feldman testified that he and his brother engaged an attorney after the foreclosure in or about August, 2001 and then again in 2002 when the new owner instituted a partition action. He testified that he did in fact have a contract to purchase the property during the partition action, but did not ultimately go through with the contract. Dr. Feldman attempted to testify about his difficult dealings with the new owner of Judith's one-third share. However this testimony was objected to by the bank, with counsel arguing that the testimony, if relevant, went to damages, not liability. The court ruled that this testimony would not be allowed during this phase of the trial, but Dr. Feldman could be recalled and questioned on this topic during the hearing on damages, if appropriate.

2006 Renewal and Payment of Commission

Mr. Marraro testified that the tenant gave notice of its intent to renew both verbally and in writing sometime in 2005 and the bank proceeded in accordance with the terms of the lease by obtaining an appraisal. He testified that the lease was in fact renewed by the tenant in May of 2006, and that Team Resources was appropriately paid a commission for that renewal based on the February 26, 1996 commission letter with Team Resources. On cross-examination Mr. Marraro testified he received written notice of

renewal from the tenant in October, 2005 and acknowledged that according to the lease the landlord was required to obtain an appraisal and notify the tenant of what the renewal rent would be within 60 days of receiving that notice. However, he explained that while the strict terms of the lease stated it should be done within 60 days "as long as you're in communication with the tenant and the tenant is working with the process and it's normal to have it done when it's accomplished" (Record 1902). An appraisal dated April 28, 2006 was admitted into evidence (P's 38) and the tenant accepted the terms of the renewal shortly thereafter, although there is no documentation to that effect as the lease did not require any further documentation upon renewal. Mr. Marraro stated that the renewal rent was based on that appraisal and the tenant ultimately agreed to the renewal which was an increase of the original rent and in accord with the terms of the renewal provisions of the lease.

Expert Testimony

The objectants' expert, John A. Rodgers, an attorney who worked in various capacities in the trust division of several banks, brokerage firms and other entities for over four decades, testified that for the last decade he worked with a number of firms and attorneys as an expert witness. Although during voir dire numerous questions were raised about his current curriculum vitae, which contained several inaccuracies in dates, admissions and responsibilities, Mr. Rodgers was recognized as an expert in the field of trust and estates by the court.

His testimony, as relevant, was that perhaps for diversification purposes the bank should have considered whether or not to sell the realty, which compromised a significant portion of the trust, before entering into a long-term lease. He further opined that the trustee should have taken the age of the trust beneficiaries into account when it was deciding whether to enter into a lease that could tie the property up for 25 years. He also testified about several aspects of the lease which he believed were not prudent, such as the lease not providing a specific time frame for the tenant to make the improvements to the property, leaving it completely up to the tenant as to when and how those improvements were to take place. Finally, he testified that upon renewal in 2006, if the trustee had the opportunity to rent the property at market rate it should have done so, and he believed it was a departure from good and accepted banking and trust practices not to have done so, acknowledging that there can be times when it might be worth risking litigation.

The trustee's expert, Mr. Samulski, a practicing trust and estates attorney since 1985, is the bank's Chief Fiduciary Officer and has been employed by the bank since 2004. Prior to his employment at the bank he was the head of the law department in the New York County surrogate's court and previously worked as a trust and estates attorney for the firm currently representing the bank in this proceeding, becoming a partner in that firm in 1995. He was accordingly recognized as an expert in the field of trust and estates by the court.

Mr. Samulski did not offer an opinion as to whether the decision to enter into this lease was a prudent decision nor did he offer testimony about the renewal. His testimony, as relevant to this decision, concerned the trustee's actions taken during the foreclosure proceeding. Mr. Samulski testified that to the extent the bank was notified of the foreclosure proceeding "the bank would have had a fiduciary duty to assess that fact in light of how it would impact the continuing of the Schester trust to make a decision what, if anything, to do as a result of that upcoming foreclosure." He opined that it would not have been prudent for the bank to have purchased the one-third share that was being foreclosed upon for the Schester trust since it would have made that trust less diversified. Moreover, as that portion of the property was no longer generating income it would not have been a good idea.

When questioned about the Feldman's share of the realty, Mr. Samulski testified that upon the termination of the Feldman trust, the trustee no longer had an obligation to manage the investments from a purely investment point of view. He continued, "[a]t the time the trust terminates, the trustee's responsibility are to preserve the assets and distribute them out to the remaindermen . . ." (Record 2141). When asked about the trustee's obligation toward the Feldman share of the realty upon learning of the foreclosure, Mr. Samulski testified, somewhat surprisingly, "I don't believe the bank had any duties. I think it would have been appropriate for the trustee to apprise the beneficiaries of the fact that the foreclosure was taking place.

The foreclosure in and of itself did not "impact the Feldman's share of the property that was held in trust. . . . it would have been better practice to have apprised the remaindermen of the fact that another portion of the property was going through some sort of foreclosure" (Record 2141 -2142). On cross examination, Mr. Samulski reiterated that he did not believe that the trustee had an absolute duty to do anything with regard to the Feldman's share of the realty and repeated that it would have been appropriate to notify the remaindermen of the foreclosure when the bank became aware of it.

He also testified that he believed it was important that a bank have a separate trust properties department with expertise in the area of property management as "from a fiduciary point of view you want to ensure that [real property is] getting a consistent oversight in management . . ." (Record 2143). He also expressed his belief that it was appropriate for the bank to receive additional compensation for the management of that real property as it was incumbent on the trustee to ensure that the property was being managed and administered in accordance with the terms of the lease, and that the income was being received . . ." (Record 2146).

Analysis and Findings

As this court previously noted "[i]n an accounting proceeding the accounting party has the burden of proving that she has fully accounted for all assets of the estate, and this burden does not change in the event the account is contested. While the party submitting the objections bears the burden of coming forward with evidence to establish that the account is

inaccurate or incomplete, upon satisfaction of that showing the accounting party must prove by a fair preponderance of the evidence that his or her account is complete" (Matter of Schnare, 191 AD2d 859, 861 [3d Dept 1993], lv denied 82 NY2d 653 [1993] [internal citations omitted]). Here all complained-of actions by the trustee were taken after the 1995 enactment of the Prudent Investor Act (EPTL 11-2.3). Courts charged with reviewing a trustee's actions under this act must determine compliance "in light of facts and circumstances prevailing at the time of the decision or action of a trustee" focusing on "a standard of conduct, not outcome or performance" (EPTL 11-2.3 [b] [1]).

"Notably, an entity that holds itself out as having special investment skills, such as a bank, is held to a higher standard--that of a prudent investor 'of discretion and intelligence having special investment skills (EPTL 11-2.3 [b] [6])'" (Matter of Hyde, 44 AD3d 1195, 1198 [3d Dept 2007], lv denied 9 NY3d 1027 [2008]). Generally, the determination of whether a fiduciary's conduct measures up to the appropriate standards of prudence, vigilance, and care is an issue of fact for the trial court (see Matter of Winston, 39 AD3d 765, 767 [2d Dept 2007], lv denied 9 NY3d 806 [2007] [internal citations omitted]). Although the trial and most of the testimony was limited to the time frame involved in the particular objections, the court will assess the trustee's actions throughout its almost half a decade long management of this real property, particularly if that management may have impacted actions taken during the relevant time period at issue on the

outstanding objections (see Matter of Jane 90 NY2d 41, 50 [1997]; see also, Matter of Hunter 27 Misc 3d 1205[A] [Sur Ct, Westchester County 2010]).

The court will first address the trustee's argument that the receipts and releases, signed by the objectants covering the accounting period from 1997 through the filing of its account herein, bars them from pursuing any of their objections encompassed in this accounting. Putting aside the fact that this argument was not made when the trustee moved for summary judgment, the trustee has filed its account, and more significantly has spent years litigating the outstanding objections, including participating in a trial of those objections. In addition, it is clear that Dr. Feldman put the trustee on notice that he was withdrawing his receipt and release and requested instructions from the trustee on how to formalize his withdrawal. Accordingly, the court finds that the objectants are not bound by the receipts and releases they signed in connection with this accounting period and their objections are not dismissed on that basis.

Objections Concerning Rent Upon Assignment

In its decision of January 17, 2014, the court determined that the assignment of the lease in 1999 was based on a proper interpretation of the lease and the question remaining was whether allowing the assignee to pay the lower rent upon assignment was proper. According to the documentation and testimony offered by the trustee, it appears that the tenant did not receive consideration for the assignment and the assignment was ultimately approved (P's 108, 109, 110). The trustee further provided

documentation to show that the parent company of the assignee was purchasing Englewood Dialysis Center in connection with the assignment (P's 128 and 130) and therefore the assignee would have been entitled to the lower rent. This testimony and evidence was not rebutted by the objectants, accordingly objection 1 is dismissed in its entirety.

Objections Concerning Foreclosure

The objections concerning the foreclosure proceeding allege that the bank negligently handled the foreclosure, including, inter alia, failing to timely notify the objectants, resulting in possible losses to the realty and unnecessary costs and expenses (Objections 5 and 30). Mr. Marraro, the bank employee assigned to manage the property during the relevant time period, testified that upon receiving the initial phone call informing him of the foreclosure sale he was extremely concerned believing that perhaps the entire property may have been at risk. He further acknowledged the possibility of a hostile co-ownership and the serious risks that could pose. It is therefore inexplicable why Mr. Marraro did not immediately follow up, including visiting the property, to determine for himself what was happening, as he testified he routinely did if a problem arose at the property.

He explained it was not until he received the fax from the tenant, and made further phone calls that he learned it was only Judith's share. It was at that time, admittedly two weeks after he learned of the potential risk, that he began making phone calls to determine how best to handle the impending foreclosure of Judith's one-third share, and to inform

the objectants and other beneficiaries. Noticeably absent from his testimony was what actions he took between the initial phone call on May 22nd, until receiving the fax on June 4th, but he offered that he was waiting until he obtained all relevant information.

Three of the trustee's witnesses, including Mr. Marraro, testified about the risks a hostile co-ownership could pose to the property. Significantly absent from any of their testimony was any evidence that an attorney was consulted by the bank to determine what options the bank might have with regard to the foreclosure, including seeking a postponement, if not setting it aside. Nor was an attorney for the trustee consulted to confirm the information Mr. Marraro alleged he had been given by the sheriff's department and the attorney for the mortgagee. It was clear that Mr. Marraro's statement that "legally" there was nothing the trustee could do was not based on a legal analysis done by the trustee, but instead from information he obtained from individuals who had no interest in having the foreclosure sale postponed. Moreover, a review of the attorneys' fee requests does not show any fees incurred during the time period that the foreclosure occurred, although there are fee requests for the ensuing partition action.

The testimony established that the objectants were given a few days notice prior to the foreclosure sale to determine how they should proceed. Dr. Feldman testified that it was possible for him to have shown up for the foreclosure and bid on the property, and Mr. Feldman testified that he

likely had the resources to purchase the property at that time. Both also testified that they were seeking more time in order to determine how best to proceed, and Mr. Marraro had no plausible explanation for waiting for more than two weeks to inform the objectants of the foreclosure. In any event, what the objectants could have done with just a few days notice of the sale is irrelevant, and perhaps intended to deflect from the fact that the trustee, who was managing the entire property and still held title to a significant portion of the property on behalf of others, including the objectants, had a fiduciary obligation to protect that property.

The court finds Mr. Samulski's suggestion that at the time of the foreclosure "[he] did not believe the bank had any duties" toward the objectants' share of the realty, as they were entitled to their share and already "owned a hundred percent interest of all of the assets" to be somewhat incredible, particularly given his testimony about the Schester share which was still held in "trust." When questioned about the foreclosure proceeding with respect to the Schester share of the property, Mr. Samulski testified that it was important for the trustee to determine what impact the foreclosure would have on that portion of the property and what actions, if any, it should take with respect thereto. However, he later testified, surprisingly, that the trustee had no duties toward the objectants' share of the property and believed that the foreclosure did not impact the Feldman's share of the property. Although ultimately he was forced to acknowledge that it would have been "better" practice for the trustee to have informed the

objectants of the foreclosure when they learned of it.

Given that the trustee had not deeded over the objectants' share of the property at that point, almost 18 months since they had become legally entitled to the property, it is difficult to understand how the trustee would have had no duties with respect to the objectants share of the realty. Particularly given Mr. Samulski's testimony that the trustee's obligation to the objectants' share of the property was to "preserve assets." Certainly, appropriately handling a foreclosure action that might impact the entirety of the real property would fall under "preserving assets." Not to mention his testimony with respect to the Schester share, wherein he acknowledged the trustee's obligation to the trust beneficiaries of that share.

In its summation the bank argued that as the trustee and the objectants had "actual" notice of the foreclosure, any attempt to set aside the foreclosure would have been futile, and cited cases in support of this proposition. This argument is an after the fact attempt to defend the bank's handling of the foreclosure, as there is no evidence in the record that this analysis was done at the time the bank learned of the foreclosure, nor is there any evidence that an attorney was consulted on behalf of the trustee. In fact, there was no testimony that any legal action was taken by the trustee to either adjourn the foreclosure, or at a minimum determine if it were legally possible to do so in order to allow all parties, including the objectants, more time to determine a course of action, or to perhaps move to set aside the foreclosure. The bank may very well have lost the argument that it had not

been properly noticed and may have ultimately failed at setting aside the sale, however, it defies logic that the bank did not seek legal counsel or even attempt to obtain an adjournment to buy itself and the objectants more time. The cases cited by the trustee with regard to "actual" notice being sufficient to satisfy the notice provision under NJ law, were cases seeking to actually set aside a sale. No cases were provided addressing the issue of whether a co-owner of property, a portion of which was to be foreclosed upon, who was not "properly" noticed about the sale, could request an adjournment of that sale. Moreover, while it is true that the objectants had "actual" notice of the foreclosure and chose not to appear on the day of the sale, that in no way excuses the trustee's failure to seek legal counsel, or take any action to attempt to postpone the sale.

The court determines that the decision by the trustee to wait for almost two weeks to decide what action to take with respect to property it held "in trust," and which it was managing and receiving compensation for that management, and its failure to seek legal advice to determine what recourse it might have, were not the actions of a prudent fiduciary, and certainly not one with special skills. Accordingly, the court finds this inaction by the trustee to have been negligent resulting in costs to the trust, including the ensuing partition action and possible loss in value of the property due to hostile co-ownership, and objections 5 and 30 are sustained. What actual damages were incurred as a result must await a hearing.

Objections as to renewal rent and payment of commission on renewal

Objections 25 and 28 object to the trustee's actions with

respect to the renewal in 2006 including that the trustee failed to comply with the renewal provision requiring a timely appraisal, and thereafter collected insufficient rent upon renewal. Objections 2 and 27 allege that the broker commission was improperly paid upon renewal. The trustee insists that any claims regarding the prudence and negotiation of the lease in 1996, including the renewal provision, were actions covered by the receipts and releases the objectants signed in 1998, and therefore any objections about the renewal are barred by those receipts and releases.

The court agrees that "[a] release executed in the absence of bad faith, fraud or duress, and with full knowledge of the estate's status, will generally be upheld as valid" (Matter of Capone, 258 AD2d 581 [2nd Dept 1999]). Furthermore, the objectants have presented no allegations or evidence that there was any bad faith, fraud or duress on behalf the trustee in obtaining those receipts and releases. Although the court acknowledges these facts, the renewal took place in 2006 well after the receipts and releases were signed, and more significantly during a time when the objectants were legally entitled to their share of the property. Having already determined that the trustee's delay in deeding the property to the objectants was negligent, the court further finds, as explained below, that this negligence was compounded when it chose to renew the lease on the terms it did in 2006.

While not required to, the trustee presented testimony from several witnesses explaining its decision to initially hold back the real property noting that it was less volatile than the stocks that were promptly

distributed to the objectants. Accepting that the real property was arguably more stable than the stocks, and perhaps a reason to hold on to the realty initially, waiting 10 years to distribute the real property to the objectants, representing almost half of the value of their remainder interest that the will unambiguously provided they should receive upon their mother's death, was unreasonable. Accordingly, the court determines that under the unique facts of this case, given that the trustee was negligent in holding on to the real property, the actions the trustee took during that time period are not encompassed within those prior receipts and releases.

Based on the credible testimony of the trustee's witness, Mr. Marraro, the 1996 lease, requiring the tenant to improve the property at no cost to the trust, making it medical office space in exchange for lower rent was a good business decision on the part of the trustee. This is particularly so given that the trustee had been an absentee landlord when the prior tenant was in possession. As Mr. Marraro testified, the property had fallen into complete disrepair and the tenant was allowed to remain in possession of the property even though it was not paying rent, and was not in compliance with the terms of the lease.

What was not explained or addressed by any witness, was whether allowing the tenant to continue to benefit from lower rent for the next 15 years was a prudent decision made by a corporate trustee with expertise in both trusts and property management. When Mr. Marraro and Mr. Wieland were questioned about the renewal provision, they both explained that the lease allowed the tenant to exercise its right to renew by

merely sending a notice of its intent to renew, and had the trustee refused to renew it likely would have faced litigation.

There does not appear to have been any consideration given to the age of the trust beneficiaries and that their shares of the trust would likely be turned over to the remaindermen during the possible 25 year term of this lease, and no provision was made in the lease to provide flexibility to the trustee in the event the trustee made a decision based on the needs of the beneficiaries, or for other business reasons did not want to renew the lease. Clearly circumstances had changed from when the lease was signed in 1996, and the court cannot find that the trustee was bound to renew the lease on the terms it did in 2006. There was a hostile co-owner who had already attempted to force the sale of the realty, the objectants were entitled to their portion of the realty for six years by that point, and had been requesting an explanation from the trustee why they had not been deeded their share of the property.

Mr. Houghton testified that the trustee contemplated selling the realty given this hostile co-ownership. He explained, however, that the trustee never got around to discussing it because it would have required a meeting of all the parties and that never took place. There was no testimony at all from any of the trustee's witnesses that any further discussions were had about how the trustee should handle the property after the foreclosure and subsequent partition action in 2002. And it appears that by 2006, although the sale of the property had been discussed, it was not even considered when the renewal notice was received. Instead, apparently

without any discussion, the trustee renewed the lease and did so without complying with the renewal terms under the lease. Instead of getting the property appraised promptly after the tenant notified the trustee of its intent to renew, the appraisal took place months later, and the letter to the tenant offering the terms of renewal was sent within just a few weeks left to the end of the initial lease term. The lease itself provided that the tenant was to be notified within 60 days of giving notice. Mr. Marraro testified that the fact that it did not comply with the strict terms of the lease was of no consequence. However, the court finds that this was yet another example of the trustee not properly managing this property as a trustee with special skills, who was holding property in trust on behalf of others who were legally entitled to the property. The trustee insisted that the only party to benefit from this provision was the tenant, however, given that the tenant was not obligated to accept the terms offered on renewal, had the tenant decided to reject the renewal terms, the trustee would have been in a position of having a mere 2-3 weeks to find a new tenant. While that did not in fact happen, the court cannot condone what appears to have been a pattern by the trustee of not properly managing this property with the diligence required of a trustee with special skills.

Being mindful that the court must determine whether the actions of the trustee were prudent, based on the circumstances as they were at the time and not based on hindsight, given the court's prior finding that the trustee's actions in failing to distribute the real property to the objectants for close to 10 years after their mother's death, and that the

renewal took place during that time period, the court cannot find that renewing the lease on such favorable terms was a prudent decision made by a corporate trustee with expertise in real property management who was continuing to hold title to this property on behalf of others. The test for determining whether a fiduciary has acted appropriately is made on the basis of prudence and not performance, and in view of the circumstances as they existed at the time and not based on hindsight (Matter of Jane, 90 NY2d 41, 50). Moreover, "while a court should not view each act or omission aided or enlightened by hindsight . . ., it may, nevertheless, examine the fiduciary's conduct over the entire course of the investment in determining whether it acted prudently (id. at 50). Considering the trustee's lackluster history in the management of this property, allowing it to fall into disrepair, not being aware of a significant risk to the property and failing to act promptly once apprised of that risk, and its failure to make any kind of assessment as to whether to proceed with the renewal, and thereafter not even complying with the renewal terms once it chose to do so, this court cannot find that the trustee acted with the "good faith, care, diligence and prudence" required of a fiduciary (Matter of Hubbell, 302 NY 246 [1951] in deciding to renew the lease in 2006 on the terms that it did. The court further finds that the decision to pay the brokerage commission for that renewal period was also a negligent decision given the court's determination that the lease renewal itself was a negligent decision by the trustee. Accordingly, objections 2, 25, 27 and 28 are sustained. Finally given the court's finding that the trustee negligently managed the realty, objection 3 objecting to payment of

management fees is also sustained, however, at this time the court will not determine whether the entire fee will be disallowed, as that will be determined at the trial on damages.

Remaining Objections Including Attorney's Fees

Objection 16 complaining of the trustee's alleged failure to transfer sufficient funds to the Feldman trust for the period April, 1998 through September, 1999 and Objection 31, concerning trustee commissions taken on funds that were inappropriately held by the trustee are dismissed as there was no testimony or additional evidence submitted to substantiate these claims.

Objection 20, questioning expenses incurred by the trustee for the preparation of income tax summaries which objectants maintain were negligently prepared resulting in objectants incurring unnecessary fees is sustained. Dr. Feldman testified about the problems he encountered in his attempts to obtain accurate information and documentation from the trustee in order to file appropriate tax returns. He testified that based on conversations he had with the trustee's accountants, the mistakes were the result of misinformation about the way in which Judith's share of the property was deeded to her. He explained that this mistake occurred during several tax years in spite of his complaints. The trustee offered no documents or testimony to rebut Dr. Feldman's testimony and objected to Dr. Feldman's attempt to testify about damages he incurred, insisting that that testimony would only be relevant during the damages phase of the trial, if at all. Accordingly, objection 20 is sustained, but what damages the objectants

incurred must await trial on damages.

Objection 29 objecting to the trustee's failure to increase the distributions of income to the objectants after the rent was raised in 2006 until Dr. Feldman complained is sustained. There was testimony by both sides about the increase in the rental income after the 2006 renewal, including the bank's witnesses testifying that the increase was a definite benefit to the objectants as the rent was doubled upon renewal. However, a review of the account, specifically Schedule A-2 for the relevant time period, shows that the income distribution remained the same for almost an entire year, from May, 2006 the renewal month until April, 2007 when a large lump sum payment of $36,000 was distributed, labeled "distribution of excess income," and thereafter the monthly distributions were doubled. Dr. Feldman testified that he repeatedly made inquiries about the failure to distribute the increase in rent and it was not until he hired an attorney that the trustee began distributing the increased rent to the objectants. Moreover, although not admitted at trial, the responses to the interrogatories submitted on behalf of the bank during discovery states that the increase was given when it was because "it was requested." During the trial, there was no explanation or testimony offered by the trustee to justify this apparent decision to hold back the rent increase for an entire year, and Dr. Feldman's testimony was not rebutted, accordingly, objection 29 is sustained.

Objections 6, 7, 12, 14, and 17 all concern attorneys fees. As previously noted the parties entered into a stipulation with respect to those fees, wherein the parties agreed that the objectants were waiving any

objection as to the reasonableness of the amount of the fees charged and agreeing that it was for work that was actually performed. However, the objection as to whether the fees were unnecessarily incurred as a result of the trustee's behavior remained outstanding. Four separate affirmations of legal services were submitted in support of the various fees requested and pertained to the following services, fees and expenses for: (1) preparation of the accountings in connection with these proceedings, with a request for $45,809 in fees and $1,750 in disbursements, for a total request of $ 47,559 (P's 160[A]); (2) the negotiation and drafting of the 1996 lease, with a request of $16,000 in fees and disbursement of $1,250, for a total request of $17,250 (P's 160 [B]); (3) services incurred during the bankruptcy of a former tenant between 1994-1997, with a request for $17,650 in fees and $1,325 in disbursements, for a total request of $18,975 (P's 160 [C]); and (4) services rendered in connection with the partition action in 2002, with a request of $31,794 in fees and $1,436.67 in disbursements, for a total request of $33,231.17 (P's 160 [D]).

The surrogate's court has broad discretion to determine what constitutes a reasonable attorney's fee after consideration of various factors including the time and money involved, the degree of difficulty of the matter in which services were rendered, the extent of the attorney's experience and the results obtained (see SCPA 2110; Matter of Freeman, 34 NY2d 1 [1974]; Matter of Wallace, 68 AD3d 679 [1st Dept 2009]). In fixing counsel fees, the court will weigh the factors delineated in Matter of Freeman, 34 NY2d 1, 9 (1974) to determine an appropriate fee, including: the 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. The surrogate's court is vested with the inherent authority to assess the propriety of a judicial accounting and fix and determine counsel fees even if no objections are filed (Matter of Stortecky v Mazzone, 85 NY2d 518 [1995]; SCPA 2211).

The court recognizes that while prior to March 4, 2002 a New York attorney was not formally required to provide a retainer agreement to a client (22 NYCRR 1215), a retainer agreement would have provided some clarity as to the level and nature of services that counsel was obligated to provide. In any event, considering all of the relevant factors, the court finds that the services rendered and fees and costs paid for the lease negotiation and bankruptcy are reasonable, and were warranted given the positive results obtained, including in the bankruptcy proceeding, wherein counsel was able to extract some back rent owed. With regard to the fees sought in this accounting proceeding, at first blush, the amount appears exorbitant. However, given the protracted and contentious nature of these proceedings, the amount sought is reasonable and reimbursement is warranted as a result.

A different determination is reached with regard to the fees incurred as a result of the partition proceeding. As the court found that the

trustee was negligent in its handling of the foreclosure proceeding, these fees were a direct result of that negligence, and therefore the appropriateness of these fees will be addressed during the hearing on damages (see Margesson v. Bank of NY, 291 AD2d 694, 698 [3rd Dept 2002]). Accordingly, objections 7, 12, 14, and 17 are dismissed in their entirety as are subsections (a) and (b) of objection 6 with the remaining subsections of objection 6 sustained.

In conclusion, objections 1,7,12,14,16,17 and 31 are dismissed in their entirety and objection 6 in part. Objections 2, 3, 5, 20, 25, 27-30 and 6 (c), (d) and (e) are sustained, and what damages occurred as a result shall be addressed at the trial to be held on damages.

This constitutes the decision and interim decree of the court.

HON. NELIDA MALAVE-GONZALEZ
SURROGATE