

Matter of Anderson
2021 NY Slip Op 31973(U)
July 6, 2021
Surrogate's Court, Bronx County
Docket Number: 2019-643/C
Judge: Nelida Malave-Gonzalez
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SURROGATE'S COURT, BRONX COUNTY

July 6 , 2021

ESTATE OF LEROY ANDERSON, Deceased
File No.: 2019-643/C

In this proceeding, after letters of administration were awarded to the respondent, who represented that he was the decedent's brother, a sister of the decedent (the sister), filed a petition with an order to show cause seeking, inter alia, to revoke the letters of administration awarded to the respondent and to compel an account, based, inter alia, on his filing multiple documents misrepresenting that he and the sister were the decedent's only distributees and that service of citation was complete upon the sister in the administration proceeding. She also seeks counsel fees and costs in bringing this application. On the return date of the order to show cause with temporary restraining order, jurisdiction was complete upon the respondent, the 10 other alleged distributees, Travelers Casualty and Surety Company of America ("Travelers"), the administrator's bond surety, and The Vanguard Group ("Vanguard"), the decedent's 401K plan depository. The petitioner and

Travelers appeared by counsel, the respondent appeared and indicated that he wished to consult with an attorney, and the 10 other alleged distributees and Vanguard failed to appear or indicate opposition to the application to date. On the adjourned date of the order to show cause, and at several additional conferences held with a member of the court's Law Department, the respondent appeared by counsel. Thereafter, counsel for the petitioner, respondent and Travelers entered into a written stipulation dated May 24, 2021 pursuant to which, inter alia, the respondent was to serve and file opposition to the application by June 1, 2021, the petitioner was to serve and file a reply by June 15, 2021 and the matter was to be marked "fully submitted for decision" as of that date. On May 28, 2021 the respondent's attorney filed an affirmation that his client "has made a determination that he does not want to object to the relief sought in the order to show cause and accordingly no objections will be filed." No opposition has been filed by any party to date.

The decedent died intestate on November 6, 2017 at age 73. He never married or had children. While proceeding pro se, the respondent filed an affidavit seeking voluntary letters and a petition for letters of administration wherein he stated, inter alia, that he was the decedent's brother and that he and the sister are the decedent's only distributees. The authority of the voluntary administrator was revoked in the decree dated October 16, 2019 awarding letters of administration to the respondent upon filing a bond in the penal amount of \$220,000. Upon Travelers filing a notice

confirming that it issued a bond in the sum of \$220,000, said letters of administration issued to the respondent on November 7, 2019. The respondent then filed an application seeking to enlarge his authority to collect the 401K proceeds approximating \$510,000. By order dated January 15, 2020, the decree was amended to increase the respondent's authority to collect total assets of \$730,000 upon filing an additional bond of \$510,000. However, an additional bond was never filed.

In support of the application, the sister states that the decedent was predeceased by two brothers and survived by the herself, two brothers, and three other siblings who post-deceased. She therefore asserts that, in addition to herself, the decedent's only other distributees are the two surviving brothers and eight nieces and nephews. She continues that in actuality the respondent is a former co-worker of the decedent who fraudulently misrepresented his status as a brother and distributee to the court. In support, she annexes a copy of the decedent's death certificate listing the sister as informant, heirship affidavits from herself and a disinterested party listing the respondent's grandparents, parents and other family members, none of whom is the respondent. She also asserts that the respondent's proof of delivery of the citation upon her was "forged" as "delivery complete" on the tracking information appended to the affidavit of service and in further support annexes the "actual" USPS tracking report indicating that "Delivery Failed and a notice was left because an authorized recipient was not available."

The sister continues that it was only when she attempted to file a petition seeking letters of administration to herself accompanied with waivers and consents from all of the other distributees that she was notified by the Administration Department that letters of administration had already issued to the respondent. She concludes that she intends to refile her application seeking letters of administration d.b.n. and it is imperative that the respondent expeditiously serve and file an account, his letters of administration be revoked and the restraints enjoining the respondent and Vanguard from disposing of or transferring estate funds continue.

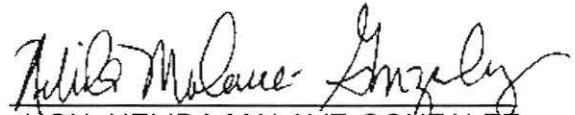
An inaccurate statement as to kinship in a petition for letters mandates the revocation of a fiduciary's letters on the ground that the letters were obtained by a false statement of material fact, especially where, as here, the fiduciary failed to list numerous distributees who have priority over the respondent in the granting of letters under SCPA 1001 (see SCPA 711 [4]; Matter of Barash, 32 Misc 2d 548 [Sur Ct, Nassau County 1962]). In revoking the letters of a fiduciary the court is carrying out its responsibility to have the proper person administer and protect the estate (see Matter of Lewis, NYLJ, Dec. 5, 2007 at 36, col 2 [Sur Ct, Bronx County 2007]; Matter of D'Onofrio, 97 Misc 250 [Sur Ct, Bronx County 1978]). On this state of the record, the unopposed allegations that the respondent held himself out as the decedent's brother, although there is no evidence whatsoever that he was related to the decedent in any degree, coupled with the deliberate omission of 10 distributees in multiple documents filed with the court, and

that he tampered with the USPS acknowledgment of delivery of the citation upon the sister are deemed proof thereof (see SCPA 509).

Accordingly, the sister's petition is granted as follows: (1) The letters of administration issued to the respondent are to be revoked pursuant to SCPA 711(4); (2) the respondent shall file his account, a petition for its judicial settlement and all of the papers required to obtain the issuance of a citation in the accounting proceeding within 45 days of service upon the respondent of a certified copy of the order to be entered hereon. The respondent shall then, without delay, cause the citation to be served upon all parties required to be served in an accounting proceeding pursuant to SCPA 2210 and appear before the court from time to time as required for the purpose of the settlement of his account; (3) the restraints in the order to show cause upon the respondent and Vanguard are to continue until further order of the court; (4) inasmuch as the sister has attempted to file a petition seeking letters of administration with waivers and consents from all of the other distributees, letters of administration d.b.n. shall issue to the sister upon her refiling an appropriate petition and otherwise qualifying according to law; and (5) the request for counsel fees and costs is granted to the extent authorized in SCPA 2302 (2) (a) (1), without prejudice to bringing a similar application in the accounting or other appropriate proceeding and establishing facts and citing authority that such request is not governed by

the usual rule that the prevailing party cannot obtain counsel fees from the other party.

Settle decree and proceed accordingly.

A handwritten signature in black ink, appearing to read "Nelida Malave-Gonzalez". The signature is written in a cursive style with some loops and flourishes.

HON. NELIDA MALAVE-GONZALEZ
SURROGATE