

Matter of Aglira

2022 NY Slip Op 32264(U)

July 11, 2022

Surrogate's Court, Bronx County

Docket Number: File No. 2013-1103/H

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

July 11, 2022

ESTATE OF MICHAEL AGLIRA, Deceased
File Nos.: 2013-1103/H and 2013-1103/I

In these two applications, Barry Hecht, Esq. (the “petitioner”), who was appointed co-administrator d.b.n. of this estate pursuant to a decree dated September 18, 2014 (see Matter of Aglira, NYLJ, Aug. 27, 2014 at 22, col 6 [Sur Ct, Bronx County 2014]) now petitions seeking leave to resign and judicially settle an intermediate account. On the return date of citation in both proceedings, which were held on the court’s virtual platform, the petitioner appeared remotely with the other administrator d.b.n., who consented to both applications on the record. Citations were also served upon the decedent’s distributees, the fiduciary of the estate of a post-deceased sister and two brothers, who did not appear and have not asserted opposition to the court to date. The New York State Department of Taxation and Finance thereafter consented to the relief sought in each application.

The decedent died intestate on May 1, 2013 in a house fire. The post-deceased sister, who previously represented to the court that she

was the decedent's sole distributee, was appointed administrator of the estate by decree dated June 26, 2013. After it came to the attention of the court that the decedent also had two brothers, pursuant to two "so-ordered stipulations" executed by the three siblings and their attorneys, the sister was granted permission to resign, and the two attorneys, who respectively represented the sister and the two brothers, were appointed successor fiduciaries of the estate. In addition to realty, the estate assets consist of ongoing annuity payments.

In support of the two applications, the petitioner states that he is retiring from the practice of law and does not wish to continue to serve as fiduciary in any capacity. He requests that the court award interim commissions to both co-administrators d.b.n. and seeks legal fees of \$5,250 and reimbursement of the \$420 filing fee herein. In further support of the fee request, petitioner's affirmation of services alleges that a total of 15 hours have or will be spent in the accounting proceeding, of which it is anticipated that one hour will be spent preparing a decree and 2.75 hours of services will be incurred in winding up the petitioner's duties as a fiduciary.

The court bears the ultimate responsibility for approving legal fees that are charged to an estate and has the discretion to determine what constitutes reasonable compensation (see *Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of Stellis*, 216 AD2d 473 [2d Dept 1995]; *Matter of Vitiole*, 215 AD2d 765 [2d Dept 1995]; *Matter of Verplanck*, 151 AD2d 767 [2d Dept 1989]). There is no hard-and-fast rule to determine what is

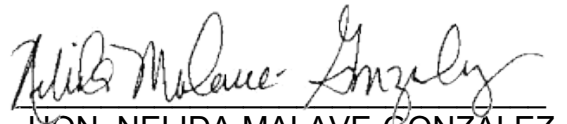
reasonable compensation in a particular case, and the court is not bound by counsel's summary of the hours expended (see *Matter of Vitole*, 215 AD2d at 765). In determining reasonable compensation, the court may consider a number of factors, including the time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services and the amount of the fee sought, the professional standing of the counsel, the size of the estate, and the benefit to the estate from the services provided (see *Matter of Freeman*, 34 NY2d 1 [1974]; *Matter of Potts*, 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925], *Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]). Fees for duties performed by an attorney which are executorial in nature and capable of being performed by a lay person may not be recovered (see *Matter of Passuello*, 184 AD2d 108 [3d Dept 1992]).

Although it appears that many of the services for which payment is sought are non-executorial in nature, the court cannot award a fee for services not yet performed or falling within the purview of the fiduciary's responsibilities. On this state of the record, the fees sought for services not yet expended for preparation of the decree are disallowed, as are the services to be incurred winding down the fiduciary appointment (see Uniform Rules of Surrogate's Court [22 NYCRR] § 207.45 [a]; *Matter of Passuello*, 184 AD2d at 108]).

Accordingly, in the absence of any opposition, and it appearing to be in the best interests of the estate, the application is granted. The petitioner may be paid \$3,937.50 for legal services and \$420 for costs

herein. Commissions are allowed as requested. The Chief Clerk is to mail a copy of this decision, which constitutes the order of the court, to the co-administrators d.b.n. The decree to be entered hereon is to be settled upon the co-administrators of the estate of the post-deceased sister and the two brothers, despite their failure to appear.

Settle decree.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE