

Matter of Tartell (Drucker)

2023 NY Slip Op 32371(U)

July 13, 2023

Surrogate's Court, New York County

Docket Number: File No. 2019-15B/C

Judge: Rita Mella

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of Barbara Tartell, as
Temporary Administrator of the Estate of

ELLIOTT DRUCKER,
a/k/a ROBERT SAVAGE,

DECISION

File No.: 2019-15/B/C

An Absentee,

For a Declaration that Absentee is Dead and Appointing
Her Administrator of his Estate.

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M E L L A, S.:

In this proceeding, Barbara Tartell (Tartell) a half-sister of absentee Elliott Drucker (Drucker), obtained Letters of Temporary Administration pursuant to SCPA 902(3), and now seeks a declaration that Drucker is dead, pursuant to EPTL 2-1.7(a), so that his estate may be administered and distributed.¹

In connection with the prior application for Letters of Temporary Administration, on January 8, 2020, a hearing was held before a court attorney-referee for the purpose of determining that Drucker was absent without being heard of after diligent inquiry (SCPA 901[2]) and for the purpose of fixing a date on which Drucker was last seen or heard of (SCPA 902[3]). In the current proceeding, Petitioner is relying on the evidence previously submitted and the court's decision dated August 24, 2020, in which it was determined that the last date Drucker was seen or heard of was January 2, 2018.

¹ Petitioner is seeking a declaration of death pursuant to EPTL 2-1.7(a) and not an order pursuant to SCPA 911(3), which provides that five years after the issuance of an order pursuant to SCPA 902(3), the temporary administrator may seek an order permitting a distribution of the absentee's property.

At the hearing, documents were offered into evidence and testimony taken from the following witnesses: 1) Petitioner Tartell; 2) Pamela Wolff, a former managing agent of the absentee's apartment building; and 3) Detective McDonough of the Missing Person's Squad of the New York City Police Department's (NYPD). Petitioner also provided reports from an investigation conducted by a private investigator (BCS Investigation Inc.). A guardian ad litem (GAL), who had been appointed to protect the interests of Drucker, participated in the hearing.

Documentary evidence as well as witness testimony established that Drucker was born in Germany in 1948 and moved to the United States with his mother in 1952. Drucker was allegedly divorced with no children and was said to have maintained employment into the 1980s. Witnesses testified that he later became increasingly reclusive and a compulsive hoarder and would intermittently refer to himself by the name Robert Savage. The evidence showed that Drucker was not without financial means, with assets valued in excess of \$2.4 million dollars. In addition, Drucker was the lifetime beneficiary of a trust created by his mother, which held assets valued at approximately one million dollars.

In late December 2017, Drucker purportedly disappeared. Wolff, who lived in a nearby apartment, testified that she had had regular contact with Drucker for many years. She reported that over the last few years before his disappearance, Drucker had begun to appear unkempt and that she observed him going through waste bins in the middle of the night. The last time she saw Drucker was on December 27, 2017, when he came to visit Wolff and her husband. Thereafter, Wolff did try to contact Drucker, knocking on his door, leaving a message on his landline phone (he did not own a cell phone), and putting a note under his door. When Wolff found out that Drucker had not paid his February 2018 maintenance, which she reported was very unusual, Wolff contacted Tartell who Drucker had listed as an emergency contact person

and who periodically called Wolff to check on Drucker's well-being. Upon learning from Wolff of Drucker's disappearance, Tartell immediately came to New York and contacted the NYPD.

Detective Michael McDonough of the NYPD's Missing Persons Squad (the Squad) testified that the Squad investigated Drucker's disappearance by questioning other tenants, canvassing the neighborhood and searching the apartment with a canine unit. The Squad also reached out to local hospitals and contacted various government entities, including the New York City Department of Homeless Services, the NYC Human Resources Administration, the U.S. Postal Service (to see if there was an address change filed), the New York City morgue, the New York County Office of the Public Administrator, and the U.S. Social Security Administration. The Squad checked Drucker's fingerprints (which were on file) to rule out the possibility that he was incarcerated and publicized Drucker's disappearance, by sending fliers to all New York City precincts, and placing Drucker's name and description on a national database (National Missing and Unidentified Person Systems). These considerable efforts notwithstanding, the Squad received no leads as a result.

Detective McDonough testified that he subpoenaed Drucker's financial records, which showed there was no activity after January 2, 2018. Tartell also reviewed Drucker's mail and financial records and determined that no activity had occurred on any of Drucker's accounts. After his disappearance, Drucker's wallet, as well as his bank and credit cards, were found in his apartment.

Based on the evidence submitted at the hearing, the court, in a decision dated August 24, 2020, determined, pursuant to SCPA 902(3), that January 2, 2018 was the last date on which Drucker was last seen or heard of. In its decision, the court also appointed Tartell as Temporary Administrator of Drucker's estate for the purpose of continuing a diligent search and preserving

his assets, including the payment of maintenance on his cooperative apartment. Tartell now petitions for a declaration by the court that Drucker is dead and requests that she be appointed Administrator of his estate.

Tartell avers that Drucker's whereabouts have remained unknown since January 2, 2018. She reports that she spoke with Detective McDonough who indicated that the Squad has obtained no new information regarding Drucker's disappearance since his testimony at the January 8, 2020 hearing. As Temporary Administrator, Petitioner has been able to confirm that no activity or transactions have been recorded on any of Drucker's bank or investment accounts or holdings other than the transactions made by her to manage the estate.

The GAL filed a comprehensive report stating that "all reasonable avenues have been explored to locate my ward" and recommending that the court declare that Drucker is dead.

To invoke the statutory presumption of death granted in EPTL 2-1.7(a), Petitioner must establish Drucker's continuous absence for three years, that a diligent search was conducted, the lack of any satisfactory explanation for the absence and that, during the absence, there was no communication with the absentee (*see Matter of Hettich*, NYLJ, Jul 28, 2000, at 33, col 2 [Sur Ct, Westchester County]; *Matter of Putterman*, NYLJ, Feb 13, 2013, at 28 [Sur Ct, Nassau County]; *Matter of Cirillo*, 31 Misc 3d 1230 [A], 2011 NY Slip Op 50910 [U] [Sur Ct, Bronx County 2011]).

The uncontroverted proof establishes, by a preponderance of the credible evidence, that Drucker has been absent since January 2, 2018, and that, notwithstanding a diligent search, he has not been seen or heard of since then, and his absence is not otherwise explained. As there is no satisfactory explanation for his continuous absence, it is presumed that Drucker died three years after the date of his unexplained absence (EPTL 2-1.7[a]).

Accordingly, Elliott Drucker is declared dead as of January 2, 2021.

Letters of Administration shall issue to Barbara Tartell upon her duly qualifying according to law.

Settle decree, including a provision for the court to fix the GAL's compensation.

Dated: July 13, 2023



SURROGATE