

Matter of Lawhead

2023 NY Slip Op 33503(U)

October 10, 2023

Surrogate's Court, New York County

Docket Number: File No. 2018-1121/E

Judge: Rita Mella

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

EM
Date October 10th 2023

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

-----X
In the Matter of the Petition to Fix Legal Fees of Joseph
Carasso, Esq., in the Estate of

DECISION and ORDER
AFTER TRIAL

MICHAEL BLAIR LAWHEAD,

Deceased.

File No.: 2018-1121/E

-----X
M E L L A, S.:

This is a proceeding to fix legal fees for services rendered to the co-Administrators of the estate of Michael Blair Lawhead (SCPA 2110), who died intestate on March 14, 2018.

Petitioner Joseph Martin Carasso is the former lawyer for respondent co-Administrators Donaldson V. Lawhead, Tammara D. Lawhead, and Brandon V. Lawhead, who are, respectively, the father, mother, and brother of decedent. They engaged Petitioner shortly after decedent's death. Unhappy with his services and the size of the legal bills, Respondents discharged Petitioner less than eight months later, in October 2018. Petitioner is seeking outstanding legal fees of \$27,881.92, in addition to \$22,978.08 that he previously received, and disbursements of \$698.04, in addition to \$1,965.00 previously received, for a total of \$50,860.00 in legal fees and \$2,663.04 in disbursements. All of the requested legal fees are based on time charges incurred before Carasso's discharge.

The court held a trial over most of three days. The fees as fixed herein are based on the evidence adduced at that trial examined in light of the applicable factors established in *Matter of Potts* (213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1926]), and *Matter of Freeman* (34 NY2d 1 [1974]), for determining the reasonable value of legal services to estate fiduciaries. Those factors include: “[T]he nature and extent of the services, the actual time spent, the necessity therefor, the nature of the issues involved, the professional standing of counsel, and the

results achieved” (*Matter of McCormack*, 168 AD3d 566, 567 [1st Dept 2019], quoting *Matter of Burk*, 6 AD2d 429, 430 [1st Dept 1958]).

The Difficulties Involved

The estate administration was complicated by the highly contentious relationship between decedent’s family members and his partner, who had been in a relationship with decedent for approximately seven years and who was residing with decedent in his New York City cooperative apartment at the time of his death. On the day of decedent’s sudden and unexpected death, his brother and sister traveled from Minnesota, where they reside, to the New York apartment. In short order, they removed cash from the apartment and began attempts to collect decedent’s personal property from the residence and from the studio apartment and storage space that decedent also owned in the same building. There was a heated exchange between decedent’s partner and his siblings which culminated with the police being called by decedent’s sister and also by his partner. These events led to the partner’s denying further access to the apartment and interfering with the family’s efforts to enter decedent’s vacation home in Hudson, Columbia County, New York. The partner claimed occupancy rights in the apartment and in the Hudson real estate, and disputes then arose over rights to the personal property located in these residences as well.

The numerous controversies were ultimately settled, but not before involvement of the New York City Police Department and the sheriff of Columbia County, the co-Administrators’ commencement of three proceedings in this court against decedent’s partner and a federal lawsuit brought by the partner against the co-Administrators for trespass and conversion, among other claims.

Results Achieved and Benefits Resulting from the Services

After the co-Administrators retained him, Petitioner promptly obtained Letters of Administration for them. He also obtained documentation and communicated with individuals as necessary to gain access to decedent's residence apartment, studio apartment, storage space, and the Hudson real estate. He commenced three proceedings for recovery or discovery of decedent's apartments and personal property, and obtained an Order to Attend in a fourth proceeding in this court, compelling a witness who he believed would be helpful in providing information about estate assets to appear and be examined. He was discharged before those proceedings could be adjudicated, but the pendency of the proceedings was no doubt a factor in the ultimate resolution of the disputes between the co-Administrators and decedent's partner.

Respondents complain that Petitioner did not carry out their alleged instructions: to engage in what they term "early mediation" and to offer decedent's partner \$30,000 to leave the apartment, while working on a parallel track to obtain an order for the partner's eviction. As explained above, Petitioner did in fact bring a proceeding to evict the partner. He did not offer \$30,000 to settle the matter, but the parties dispute the precise terms of the co-Administrators' instructions. In any event, there is no evidence that an offer of \$30,000 would have resolved the dispute with decedent's partner, which ultimately settled for about \$125,000. It is noted that Respondents have not shown how any failure of Petitioner to adopt their litigation strategy would affect the reasonableness of his fee. Nor was Petitioner's failure to advise Respondents to submit insurance claims to defend against the partner's tort claims relevant to this proceeding. Whether Petitioner had an obligation to so advise them need not be determined in the context of this SCPA 2110 proceeding.

The benefits conferred on the estate by Petitioner's work were limited, but this can largely be explained by the complications arising from the ill will that the clients developed towards Petitioner and the early termination of Petitioner's services.

Time Necessarily Spent

Carasso's retainer agreement called for billing at a rate of \$400 per hour for attorney time, and \$100 per hour for law clerk or paralegal time. His invoices reflect approximately 126 hours billed as legal services and three hours billed as paralegal services. A major point of contention is whether Petitioner was justified in spending this time and whether certain of his activities should have been billed at the lower rate, if at all.

Among Respondents' specific complaints are that Petitioner spent excessive time on the numerous modifications and entire restructuring of some of his pleadings before his petitions could be accepted for filing by this court; that much of Petitioner's work was not authorized; that Petitioner should not be compensated for consultations with other attorneys; and that many of his efforts were not only unnecessary but also inflamed some of the disputes noted above that complicated the estate's administration.

In assessing the necessity and reasonableness of the time spent, the court acknowledges the difficulties presented by the lack of clarity in the law concerning the rights of a non-marital partner in these particular circumstances, and the overlapping jurisdiction of the Surrogate's Court and the New York City Civil Court with their differing procedures and remedies for terminating an occupancy and recovering possession of a cooperative apartment. The court also observes that it is not unusual for attorneys' submissions to this court to require modifications before they can be accepted for filing.

Further, much of the work that Respondents complain was unauthorized falls within the category of “related matters,” expressly covered by the retainer agreement for Petitioner’s representation of the fiduciaries. Given that it is impossible to anticipate every aspect of an estate administration beforehand it was not unreasonable for Petitioner to take on such tasks as contacting the upstate sheriff about access to the Hudson real estate, seeking documentation from various sources for confirmation of decedent’s interests in the cooperative corporation, or talking to other lawyers about potential tort and workers’ compensation claims that could arguably have brought more assets into the estate. It should also be noted that many of the items that Respondents claim were unauthorized were billed at de minimis amounts, at least to the extent they can be identified.

Nevertheless, the time attributed to preparation of petitions and their many revisions was somewhat excessive. This might have been the result of Petitioner’s lack of familiarity with certain Surrogate’s Court proceedings, including discovery proceedings under SCPA 2103. For instance, Petitioner should have been aware that subpoenas he issued without a pending proceeding in this court were invalid and unenforceable. They would have been unenforceable as well in the absence of an order before an action was brought in another court (CPLR 3102[c]). Additionally, he should not be compensated for efforts to prepare a petition that required substantial corrections for procedural infirmities or for work that should have been billed at clerical rates as contemplated in the retainer agreement.

It is difficult to assess the nature of the time spent because many of the entries in Petitioner’s time records are “bundled,” that is, they list a number of tasks performed on a particular date without specifying the time spent on each. Numerous entries are also vague, stating only “receive and review” emails, faxes, texts, and the like, with no further description. In

fixing Petitioner’s fee, the court is guided by the determination in the *Potts* decision that “items as to time actually [spent] in work” on the affairs of the estate are not of much importance (*Potts*, 213 App Div at 61). Further, “a Surrogate is not obliged to accept at face value an attorney’s summary of the hours expended” (*Matter of Bobeck*, 196 AD2d 496, 497 [2d Dept 1993]). All in all, insofar as the time spent is a factor in determining Petitioner’s fee, a considerable reduction in the number of hours reported is warranted.

Amount Involved and Customary Fee Charged by the Bar

At the trial, Brandon Lawhead initially valued the estate at \$750,000, net of the mortgage on the real estate and loan against the cooperative apartment. In an amendment to earlier testimony, Brandon estimated total assets at over \$1.9 million.

The total fees sought here might be deemed within a reasonable range—and would come within the bounds of the customary fee charged for services of the nature performed in this case—had Petitioner represented the estate through completion of the administration. Here, however, he was discharged after eight months, well before the estate’s administration was concluded. Nor did Carasso perform many of the duties typically undertaken by estate counsel when customary fees are a relevant measure. There is no indication, for example, that Carasso prepared or reviewed income and estate tax documents or assisted in the sale of the decedent’s residences.

Conclusion

It is well established that the Surrogate has broad discretion and the ultimate authority to fix the compensation of counsel to estate fiduciaries (*Matter of Verplanck*, 151 AD2d 767 [2d Dept 1989]; *Stortecky v Mazzone*, 85 NY2d 518 [1995]), and is “not required to provide detailed calculations of its fee award” (*Matter of Hofmann*, 38 AD3d 366, 367 [1st Dept 2007]; *see also*

Matter of Guattery, 278 AD2d 738,739 [3d Dept 2000]). Balancing the excessive time charges against the unusual circumstances presented by this administration, the court fixes Petitioner's total legal fees at \$30,000. Disbursements are fixed at \$2,033.04, after disallowance of \$630 in expenses related to arrangements for the unauthorized depositions at which no one appeared. The total of \$32,033.04, less \$24,943.08 previously paid, amounts to \$7,089.96.

In view of the above, it is

ORDERED, ADJUDGED and DECREED that Petitioner Joseph Martin Carasso is entitled to receive \$7,089.96, and that the co-Administrators of the estate of Michael Blair Lawhead shall remit to Petitioner Joseph Martin Carasso \$7,089.96, with nine percent interest from the date of this Decision and Order (CPLR 5003, 5004).

The clerk shall email this Decision and Order to the parties.

Dated: October 10, 2023



SURROGATE