

Matter of Rosetti

2023 NY Slip Op 34839(U)

October 20, 2023

Surrogate's Court, Albany County

Docket Number: File No. 2019-360/L

Judge: Stacy L. Pettit

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State of New York

Surrogate's Court, Albany County

In the Matter of the Removal of JOAN ROSETTI as Trustee of the Rosetti Family Irrevocable Trust dated September 2, 1992, commonly known as the Rosetti Family Irrevocable Trust I.

In the Matter of the Removal of RICHARD C. ROSETTI as Trustee of the Rosetti Family Irrevocable Trust dated January 4, 1993, commonly known as the Rosetti Family Irrevocable Trust II.

In the Matter of the Removal of RICHARD C. ROSETTI as Trustee of the Rosetti Family Irrevocable Trust dated July 1, 1997, commonly known as the Rosetti Family Irrevocable Trust III.

DECISION AND ORDER

File Nos. 2019-360/L
2019-360/M
2019-360/N
2019-360/O
2019-360/P

In the Matter of the Removal of JOAN ROSETTI as Trustee of the Rosetti Family Irrevocable Trust dated December 7, 2010, commonly known as the Rosetti Family Irrevocable Trust V.

In the Matter of the Removal of RICHARD C. ROSETTI as Trustee of the Rosetti Family Irrevocable Trust dated December 7, 2010, commonly known as the Rosetti Family Irrevocable Trust VI.

Appearances: Christopher Massaroni, Thomas Collura, Michael Zahler, Attorneys for Petitioner Richard G. Rosetti, Hodgson Russ, LLP, Albany

James Towne, Jr., Robert H. Coughlin, Jr., Eugene P. Devine, Attorneys for Respondents Richard C. Rosetti and Joan Rosetti, Towne Law Firm, PC, Albany

William J. Dreyer, Attorney for Matthew Falvey, Alexandra Falvey Watson and Megan Falvey McVey, Dreyer Boyajian LLP, Albany

Pettit, S.,

Pending before this Court is a motion by respondents Richard C. Rosetti and Joan Rosetti seeking “to resettle and reargue” the order to show cause issued by this Court on September 5, 2023, which order temporarily suspended respondents as trustees pending the hearing and determination of these proceedings to permanently remove respondents as trustees, and restrained and enjoined respondents from withdrawing any funds from any trust account, including any account of an entity owned by the trusts. Petitioner Richard G. Rosetti has opposed the motion and it is now submitted for decision.

“Resettlement of an order is a procedure designed solely to correct errors or omissions as to form, or for clarification. It may not be used to effect a substantive change in or to amplify the prior decision of the court” (Matter of Joan HH. v Maria II., 174 AD3d 1189, 1190 [3d Dept 2019], quoting Foley v Roche, 68 AD2d 558, 566 [1st Dept 1979]; accord Hutchings v Garrison Lifestyle Pierce Hill, LLC, 188 AD3d 1332, 1333 [3d Dept 2020]; see CPLR 2221; Matter of Town of N. Elba v New York State Dept. of Envntl. Conservation, 160 AD3d 74, 78 [3d Dept 2018]). On a motion for reargument, “a party must demonstrate that the court overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier decision” (Davis v Zeh, 200 AD3d 1275, 1279 [3d Dept 2021], quoting Weaver v Weaver, 198 AD3d 1140, 1143 [3d Dept 2021] [internal quotations marks and citation omitted]; see CPLR 2221 [d] [2]; Greene Major Holdings, LLC v Trailside at Hunter, LLC, 148 AD3d 1317, 1318–1319 [3d Dept 2017]).”

Respondents’ arguments in support of their motion focus on petitioner and his role as successor co-trustee. Specifically, respondents contend that petitioner should be disqualified as


trustee under SPCA 711 (8), based on (1) the animosity and hostility between petitioner and the co-trustee, his sister, Jacqueline Rosetti Falvey, and the beneficiaries; (2) respondents' allegation that petitioner is a direct competitor of the businesses of the trusts; and (3) respondents' allegation that petitioner has disqualifying attributes. Respondents further request clarification of the scope of petitioner's role as successor co-trustee and his access to trust records. Respondents suggest that an independent trustee be appointed or, alternatively, that petitioner's scope of authority and access to records be limited until a final determination is made. Respondents request that the order be resettled to provide that the trustees must act jointly. Respondents also request that petitioner prioritize the records he needs access to and provide a list to their counsel or to the Court to prevent unfettered access to all records.

Respondents' motion focuses solely on the appointment and authority of petitioner as successor co-trustee. This Court's order did not appoint successor trustees or outline any of their duties; rather, it temporarily removed the current trustees and restrained them from withdrawing funds from the trusts. The appointment and authority of trustees is determined by the trust instruments and the relevant law. Respondents' motion requests relief that seeks to amplify and substantively amend the Court's prior order, which is improper on a motion for resettlement (see Matter of Town of N. Elba v New York State Dept. of Env'tl. Conservation, 160 AD3d at 78; Foley v Roche, 68 AD2d at 566). Although respondents state that their motion is also one for reargument, they fail to identify matters of fact or law that were overlooked or misapprehended by this Court when it issued the order suspending respondents as trustees (see CPLR 2221 [d] [2]). Accordingly, it is hereby

ORDERED that respondents' motion is denied.

This constitutes the decision and order of the Court. You are hereby notified that this order has been entered this date in the office of the Clerk of Albany County Surrogate's Court. At the time of the filing of this decision and order, NYSCEF shall transmit by e-mail to the e-mail service addresses of record a notification that the decision and order has been filed and is accessible through NYSCEF. Such notice shall not constitute service of notice of filing or entry by any party (see 22 NYCRR 207.4a [h]).

Dated and Entered: October 20, 2023



Hon. Stacy L. Pettit, Surrogate