

**Matter of Stopak (Glassman)**

2024 NY Slip Op 33698(U)

October 11, 2024

Surrogate's Court, New York County

Docket Number: File No. 2017-3840/A

Judge: Rita Mella

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

New York County Surrogate's Court  
DATA ENTRY DEPT.  
OCT 11 2024

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In the Matter of the Petition of Victoria Stopak to Compel  
Barnbas Breed to Account for his Proceedings as Executor  
In the Estate of

MARC GLASSMAN,

Deceased,

DECISION and ORDER

File No.: 2017-3840/A

Pursuant to SCPA 2205.

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In the Matter of the Petition of Victoria Stopak, to Compel  
Barnabas Breed to Account as Trustee of the

MARC BRUCE GLASSMAN FAMILY TRUST,

File No.: 2017-3840/B

Under Agreement Dated December 28, 1998.

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In the Matter of the Petition of Victoria Stopak, to Compel  
Barnabas Breed to Account as Trustee of the

MARC BRUCE GLASSMAN PERSONAL TRUST,

File No.: 2017-3840/C

Under Agreement Dated December 28, 1998.

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M E L L A, S.:

Victoria Stopak (Stopak) has petitioned, pursuant to SCPA 2205, to compel Barnabas Breed, Esq., (Breed) to account for his proceedings as Executor of the estate of her late husband, Marc Glassman (Glassman) and to account as Trustee of two inter vivos trusts created by Glassman. Breed objects to the relief sought.

Glassman died on September 26, 2017. His will, dated December 28, 1998, was admitted to probate and Breed, the attorney drafter, was granted letters testamentary. Other than tangibles (which were to go directly to Stopak), the estate assets pour over into two inter vivos

trusts, the Marc Bruce Glassman Personal Trust (Personal Trust) and the Marc Bruce Glassman Family Trust (Family Trust), both of which decedent established on the same day that he executed the will, and both of which named Breed as the sole trustee. Stopak is the sole income beneficiary of the Personal Trust, and the income and permissible principal beneficiary of the Family Trust. Upon Stopak's death, the remainder in the Personal Trust pours over into the Family Trust and is to be distributed to decedent's niece and nephew, as remainder beneficiaries.

In May of 2023, Stopak commenced the instant proceedings to compel Breed to account as Executor and as Trustee of the Personal Trust and Family Trust. Stopak points out that over five years have elapsed since Glassman's death without an accounting having been rendered, and alleges that Breed has impermissibly taken estate and trustee commissions and has paid himself legal fees without court order or the beneficiary's consent. In the case of the estate administration, Stopak alleges Breed has charged legal fees for the performance of executorial duties.

In response to the proceedings, Breed filed a petition to judicially settle his account as Executor in July of 2023, although he has not yet taken the necessary steps for citation to issue. Breed also filed verified answers in each proceeding in which he seeks dismissal of the petition and an award of costs. With regard to the proceeding to compel him to account as Executor, he contends that it is moot because he already filed his voluntary account and that, in any event, Stopak lacks standing, is barred by the statute of limitations, is barred by ratification, laches, waiver, estoppel, reliance, complicity and failure to timely complain. Breed argues that the estate was "closed" on December 31, 2018, and that Stopak's silence for the last five years amounted to a ratification of his conduct as Executor. Breed further asserts two alleged counterclaims in which he characterizes the situation as a "classic case of an aggressive

beneficiary attempting, after the estate was closed, to harass and intimidate her fiduciary to obtain the fiduciary's resignation or removal, and thereby gain personal control (sic) the estate account, regardless of the future interests of the remainder beneficiaries." Breed argues that "Petitioner's harassment constitutes a malicious interference with the estate administration and is an abuse of process, in an effort to re-open and gain control of the estate."

With respect to the petitions to compel him to account as Trustee, Breed similarly argues that an accounting is unnecessary because he has provided information and financial records to Stopak, including monthly account statements, income tax and estate tax returns, and other financial reports and/or correspondence. He asserts the affirmative defenses that Stopak lacks standing, Stopak fails to state a cause of action, the relief is barred by the statute of limitations, and of ratification, laches, waiver, estoppel, complicity, and failure to timely complain. And, again, Breed counterclaims that the request for an accounting is part of a campaign of harassment and malicious interference designed to gain control of the Trusts.

The parties met with a court attorney but were unable to resolve their differences. Both parties agreed, however, to have the court determine the instant proceedings to compel Breed to account as Executor and Trustee on the papers submitted and without further discovery or submissions.

### Discussion

The court may require an executor or trustee to account on the petition of any person interested, or on its own initiative, upon it appearing that filing such account would be in the best interests of the estate (SCPA 2205[1]; *Matter of Kenan*, 2023 NY Slip Op 31132[U] [Sur Ct, NY County 2023]). It is in the discretion of the court to determine what constitutes the best interests of the estate (*Matter of Taber*, 96 AD2d 890 [2d Dept 1983]; *Matter of Thoms*, 76 Misc 2d 132,

134 [Sur Ct, Monroe County 1973]).

In this case, the court, in the exercise of its discretion, determines that requiring Breed to judicially accounting for his proceedings as Executor and Trustee is in the best interests of the estate and the trusts. Although Breed offers in his answers a number of grounds for denial of the petitions, they are largely unsupported by facts or authority, and therefore do not support the denial of the relief sought.

With respect to the Executor's account, since Breed has already filed a petition for its judicial settlement, Stopak's petition to compel Breed to account as Executor is granted solely to the extent of directing Breed to cause citation to issue and service to be made without delay on all persons interested in the accounting proceeding (SCPA 2210).

With respect to the Trustee's accounts, the court considered that Breed has provided regular information and informal accountings to Stopak, and that courts have refused to order an accounting in situations where a judicial accounting would provide no more information than what the Petitioner has already received and which would cause the trust to incur significant expenses (*see, e.g., Matter of Kenan, supra*). However, here, the financial information allegedly produced by Breed is not responsive to Stopak's concerns regarding the commissions and legal fees paid to Breed without court order.

Based on the foregoing, and in the exercise of the court's discretion, Breed is directed to account for his acts as Trustee of the Personal Trust and the Family Trust, by filing such accounts along with petitions for their respective judicial settlement, and any other submissions required to obtain the issuance of a citation in the accounting proceeding, within ninety (90) days from the date this Decision and Order is served on him with notice of entry. Breed shall then cause citation to issue and service to be made, without undue delay, on all person interested in

the respective accounting proceedings pursuant to SCPA 2210.

This decision constitutes the order of the Court.

Clerk to notify.

Dated: October 11, 2024

  
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SURROGATE