

Matter of Fernandez (Fernandez de Cerda)

2025 NY Slip Op 31307(U)

April 11, 2025

Surrogate's Court, New York County

Docket Number: File No: 2015-2413/B/C/D

Judge: Rita Mella

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New York County Surrogate's Court
DATA ENTRY DEPT.
APR 11 2025

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

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In the Matter of the Application of Jose Cerda
Fernandez as Administrator of the Estate of

FRANCISCA AURELIA FERNANDEZ DE CERDA,
a/k/a FRANCISCA A. FERNANDEZ ALONZO,
a/k/a FRANCISCA A. FERNANDEZ,

DECISION and ORDER

Deceased,

File No.: 2015-2413/B/C/D

For leave to Collect, Allocate, and Distribute the
Net Proceeds of the Settlement of Certain Causes
of Action for the Conscious Pain and Suffering and
Personal Injuries of Decedent and to Render and
Have Judicially Settled and Account of the
Proceedings as such Administrator.

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

Before the court is the petition of Jose Cerda Fernandez, as Administrator of the estate of Francisca Aurelia Fernandez de Cerda, as amended in accordance with a Stipulation executed by the Administrator, the decedent's distributees not living with a disability, and Jordan Hecht, Esq., as counsel for the Administrator and as Escrow Agent (the Escrow Agent), dated January 16, 2025 (the Stipulation). The petition seeks leave to allocate, account and distribute the net settlement proceeds of causes of action for decedent's conscious pain and suffering and wrongful death.

The compromise and settlement of the causes of action was approved by Supreme Court Order dated May 4, 2022, where that action had been pending. The same Order fixed the fees and disbursements of Petitioner's attorney, and further directed that settlement proceeds be held in an interest-bearing escrow account pending further order from this court regarding allocation and distribution, and resolution of all guardianship issues concerning two of decedent's distributees, each allegedly living with a disability.

Based upon the petition of Jose Cerda Fernandez, the court appointed Benjamin Hering, Esq, as guardian ad litem (GAL) to appear in this proceeding on behalf of these two distributees. The GAL filed an interim report on January 22, 2025, opining on all requested relief in the petition, as amended.

Because of the length of time that is taking to resolve the aforementioned guardianship proceedings, which are taking place in the Dominican Republic where these two distributees reside, Petitioner requests that the court grant, in the interim, certain unopposed portions of the relief sought. This includes: 1) an award of partial distribution of net settlement proceeds to those distributees who are not subject to the guardianship proceedings; 2) an award of partial compensation to the GAL; and 3) reimbursement to the Hecht, Kleegeer & Damashek, P.C., firm of \$1,250 for the filing fee for this compromise and account proceeding.

The court grants the unopposed portions of the petition to the following extent.

First, the request to allocate 100% of the entire settlement recovery of \$1,750,000.00 to the cause of action for decedent's wrongful death, and none to the cause of action for conscious pain and suffering, is granted.

Second, the request for permission to allow for a partial distribution to decedent's four distributees not living with a disability is granted to the extent that the Escrow Agent and the Administrator are permitted to pay \$150,000 to each such distributee from the net settlement proceeds held by the Escrow Agent in the interest-bearing escrow account.

Third, the request that the court fix and award a partial payment to the GAL for legal services rendered is granted to the extent that the court at this time fixes such partial payment at \$3,000.

Fourth, the request for approval and reimbursement to Hecht, Kleeger & Damashek P.C. firm, as counsel for Petitioner, for a disbursement in the amount of \$1,250, as and for a filing fee in this court, is granted.

In accordance with the court's decision and resolution of these matters, it is hereby

ORDERED, ADJUDGED and DECREED that the entire settlement award of \$1,750,000, is allocated 100% to the cause of action for wrongful death and none to the cause of action for conscious pain and suffering; and it is further

ORDERED, ADJUDGED and DECREED, that Jordan Hecht, Esq., as counsel for the Administrator and as Escrow Agent, and Jose Cerda Fernandez, as Administrator of the estate of Francisca Aurelia Fernandez Alonzo, are authorized to and shall pay from the net settlement proceeds the following amounts:

TO: The Hecht, Kleeger & Damashek, P.C. firm, As and for reimbursement for its filing fee:	\$1,250.00
TO: Benjamin A. Hering, Esq. as and for a partial payment of compensation for services as GAL	\$3,000.00
TO: Jose Cerda Fernandez, as an advance distribution in partial satisfaction of his share of the net settlement Proceeds pursuant to EPTL 5-4.4, and the parties' Stipulation dated January 16, 2025	\$150,000.00
TO: Amauris Cerda Fernandez, as an advance distribution in partial satisfaction of his share of the net settlement Proceeds pursuant to EPTL 5-4.4, and the parties' Stipulation dated January 16, 2025	\$150,000.00
TO: Yesenia Nunez Cerda, as an advance distribution in partial satisfaction of her share of the net settlement Proceeds pursuant to EPTL 5-4.4, and the parties' Stipulation dated January 16, 2025	\$150,000.00

TO: Simeon Cerda Alonso, as an advance distribution
in partial satisfaction of his share of the net settlement
Proceeds pursuant to EPTL 5-4.4, and the parties'
Stipulation dated January 16, 2025

\$150,000.00

And it is further

ORDERED, ADJUDGED and DECREED that the giving of a bond or other security in connection herewith be dispensed with, and that the restrictions on the Letters of Administration be modified to allow for these particular actions to be effected, but that, as to the balance of the settlement proceeds, the restrictions remain in full force and effect; and it is further

ORDERED, ADJUDGED and DECREED that the balance of the settlement proceeds continue to be held by the Administrator's counsel and Escrow Agent in the interest-bearing escrow account until further order of this court.

A copy of this decision and Order shall be emailed to counsel whose names and email addresses appear at the foot of this Decision and Order.

Dated: April 11, 2025



SURROGATE

TO:

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