

Matter of Perry

2025 NY Slip Op 31700(U)

April 22, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2020-754

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

April 22, 2025

ESTATE OF ESTELLE PERRY, Deceased
File Nos.: 2020-754 AND 2020-754/A

In this estate, the decedent's grandson who is the designee of the decedent's daughter and not a distributee of the decedent (the "grandson"), filed a petition seeking letters of administration to himself. Although waivers and consents to his petition were filed for a son and daughter, citation never issued to the remaining distributee, a granddaughter (the "granddaughter"). An alleged creditor seeking to terminate the decedent's interest in a cooperative apartment (the "cross petitioner") filed a cross petition seeking letters of administration to the Public Administrator ("PA"). The grandson served and filed objections to the cross petition asserting, inter alia, that "a family member should serve."

On the return date of supplemental citation to the granddaughter on the creditor's cross petition, counsel for the petitioner, the cross petitioner and the PA appeared, and jurisdiction was not confirmed

over the granddaughter, who had moved. The court also noted that, since the grandson is a designee, a waiver and consent had to be filed for the granddaughter, and the two proceedings were adjourned without date to verify that jurisdiction was obtained over the granddaughter on the cross petition. An off calendar conference was held with a member of the court's Law Department, at which counsel for the petitioner, cross petitioner and the PA participated.

As the issues presented remained unresolved, the matters were restored to the court's calendar. On the adjourned return date of supplemental citation to the granddaughter, counsel for the grandson, cross petitioner and the PA appeared. Another attorney also appeared for the granddaughter, indicated opposition to the grandson's serving as fiduciary and requested that letters of administration issue to the PA. The attorney for the PA, who previously filed an affirmation declining the appointment, stated that the PA might serve should no eligible interested person qualify. After counsel for the grandson asserted that his client could obtain a bond, the attorney for the granddaughter requested additional time to confer with her client. The court accordingly granted a one week adjournment to ascertain whether the granddaughter would consent to the grandson's appointment and directed the attorney for the grandson to furnish proof of bond eligibility. The attorney for the petitioner filed an affirmation amending the relief requested to appoint an eligible distributee, the grandson, as designee of the creditor or the PA.

On the third adjourned date, counsel for the grandson, cross petitioner, PA and the granddaughter appeared on the first call of the calendar. At that time, it appeared that the documents concerning the grandson's eligibility for a bond were not distributed to the attorneys for the other parties. The granddaughter's attorney indicated that she preferred that the PA serve but might not object to the grandson's serving should he be able to file a bond, and the court directed counsel to e-mail documents concerning a bond to other counsel. Upon call of the second calendar, only the attorneys for the grandson and the cross petitioner appeared. Thereupon, the attorney for the cross petitioner renewed opposition to the grandson's petition and requested that the PA serve, and the court marked both applications "submitted for determination."

Given that the grandson is a designee, he lacks the consent of all eligible distributees, may not qualify for a bond and there is no other qualified distributee, the court determines that the grandson is ineligible to serve as the fiduciary of the estate (see SCPA 1001 [6]). Additionally, the primary estate asset is at great risk, as unpaid maintenance arrears and costs of collection continue to accrue.

Accordingly, this decision constitutes the order of the court dismissing the grandson's petition for letters (File No. 2020-754) and his objections filed to the creditor's application (File No. 2020-754/A) and granting the creditor's amended cross petition to the extent of the prior relief sought. Letters of administration shall issue to the Public Administrator upon

her duly qualifying.

Settle decree.


HON. NELIDA MALAVÉ-GONZÁLEZ
SURROGATE