

Matter of Reich

2025 NY Slip Op 32532(U)

July 11, 2025

Surrogate's Court, New York County

Docket Number: File No. 2016-2996/C

Judge: Rita Mella

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ENTERED

JUL 11 2025

DATA ENTRY DEPT
New York County Surrogate's Court

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

-----X
Petition by Charles Reich, as Preliminary Executor of the
Estate of Lilian Reich, Pursuant to SCPA 1421, to
Determine the Validity and Effect of Her Notice of Election
In the Estate of

DECISION and ORDER

SEYMOUR REICH,

File No.: 2016-2996/C

Deceased.

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

The court considered the following papers on these two motions to seal:

<u>Papers Considered</u>	<u>Numbered</u>
Notice of Motion to Seal re: Legal Fees by Elizabeth Brimberg;	
Affirmation of Franklin R. Li, Esq., with Exhibits	1-2
Affidavit of Heather A. Benjamin, Esq., with Exhibits	3
Memorandum of Law in Support Motion to Seal re: Legal Fees	4
Affirmation of Judd Burstein, Esq., in Opposition to Motion to Seal re:	
Legal Fees, with Exhibits	5
Memorandum of Law in Opposition to Legal Fees Sealing Motion	6
Notice of Motion to Seal re: Ex. 28 in Park Ave. Apt. Valuation et al	
by Elizabeth Brimberg; Affirmation of Franklin R. Li, Esq.,	
with Exhibits	7-8
Memorandum of Law in Support of Motion to Seal re: Ex. 28	9
Affirmation of Judd Burstein, Esq., in Opposition to Motion to Seal re:	
Ex. 28, with Exhibits	10
Memorandum of Law in Opposition to Motion to Seal re: Ex. 28	11
Reply Memorandum of Law in Further Support of Motion to Seal re: Ex. 28	12
Reply Memorandum of Law in Further Support of Motion to Seal re:	
Legal Fees	13
Reply Affirmation of Franklin Li, Esq., in Further Support of Motion to Seal	
Re: Legal Fees, with Exhibit	14

Pending in this SCPA 1421 proceeding by Charles Reich (Charles), as Preliminary Executor of the Estate of his mother, Lilian Reich (Lilian), for a determination of the validity and effect of her notice of spousal election in the estate of his father, Seymour Reich (Seymour), are two motions by Elizabeth Brimberg (Elizabeth), who requests that certain submissions filed with the court be sealed from public view (Uniform Rules for Trial Courts [22 NYCRR] § 216.1).

Seymour's estate proceedings, and those in the separate, but related, proceedings in Lilian's estate, have a long history, which are set forth in other decisions and need not be repeated here. For present purposes, the following facts are necessary.

Several weeks prior to the trial of the underlying proceeding, Elizabeth withdrew her challenge to the validity of Lilian's spousal election. At that point, the only remaining issue was the value of the elective share, which, in turn, requires a determination of the value of Seymour's net estate to which Lilian's one-third elective share applies and the value of any testamentary substitutes that should be included in the calculation (*see generally* EPTL 5-1.1-A). In an attempt to submit the issues regarding the elective share calculation to the court, the parties entered into a stipulation in January of 2025 (2025 Stipulation), which identified four remaining disputes (Four Disputes) affecting the value of Lilian's elective share. Those Four Disputes as set forth in the 2025 Stipulation are: (1) the value of Seymour and Lilian's 640 Park Avenue Apartment because it passed to Lilian by operation of law and is considered a testamentary substitute (640 Park Issue); (2) the amount of Elizabeth's legal fees and expenses properly charged as an administration expense in Seymour's estate (Legal Fee Issue); (3) the amount of expenses of Seymour Reich & Co. properly charged as an administrative expense in Seymour's estate (Reich & Co. Issue); and (4) the amount of Elizabeth's executor's commissions in Seymour's estate, if any, that the court will allow as a proper expense (Commissions Issue).

The instant motions were filed in connection with the parties' submissions as set forth in the 2025 Stipulation. One motion is related to Elizabeth's submissions addressed to the 640 Park Issue, the Reich & Co. Issue, and the Commissions Issue. In this motion, she asks the court to seal Exhibit 28 (Exhibit 28 Motion) to an attorney affirmation, claiming it contains confidential

personal or estate financial information. In the other motion, Elizabeth asks the court to seal a portion of her submissions concerning the Legal Fee Issue, specifically, the affidavit of Heather Benjamin, Esq., which explains the work done by counsel (Benjamin Affidavit), and Exhibits 3 to 28 to that affidavit,¹ which include the attorney time records and invoices Elizabeth offered in support of her assertion that all of the legal fees she incurred as Executor of Seymour’s estate are proper administration expenses (Legal Fee Motion). According to Elizabeth, sealing is appropriate to avoid disclosing private and sensitive financial information that could affect the competitive standing of the attorneys representing Elizabeth. Charles opposed both motions.

Court filings are presumptively public, and “the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” (*Mosallem v Berenson*, 76 AD3d 345, 349-50 [1st Dept 2010]; see *Matter of Nguyen*, NYLJ, Feb. 23, 2016, at 22, col 6 [Sur Ct, NY County]). Court records may be sealed only “upon a written finding of good cause, which shall specify the grounds thereof” (22 NYCRR 216.1).

As to the Exhibit 28 Motion, the document at issue is a copy of a 2019 letter from Elizabeth’s counsel to the New York State Estate Tax Processing Center, attaching a two-page draft of Internal Revenue Service (IRS) Form 886-A that concerns the estate’s settlement of certain issues relating to the value of the 640 Park Avenue apartment and Seymour Reich & Co., incident to an IRS audit. Elizabeth asserts that these documents are relevant to the elective share calculation, but include confidential, non-public information about the estate’s tax returns and finances that should be sealed.

¹ Elizabeth initially sought to seal Exhibit 29 to the Benjamin Affidavit (a confidential mediation memorandum), but, upon Charles’s request, she agreed to withdraw that exhibit as part of her submission on the Legal Fee Issue.

However, she offers nothing more than conclusory assertions without any indication of possible harm that could flow from the public filing of Exhibit 28 (*see Matter of Hofmann*, 284 AD2d 92, 94 [1st Dept 2001] [conclusory claims of need for confidentiality are insufficient to warrant sealing]). In similar circumstances, courts have denied sealing (*see e.g. Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 448-49 [1st Dept 2018] [sealing of documents included in tax returns not warranted]), which cases the court will follow here and deny the request to seal Exhibit 28. To the extent that Elizabeth is arguing that personal information such as Seymour’s Social Security Number is on Exhibit 28, Section 207.64 of the Uniform Surrogate’s Court Rules already requires that such personal identifying information be redacted and thus does not serve as a proper basis for sealing the entire document (Uniform Rules for the Surrogate’s Court [22 NYCRR] § 207.64).

As to the Legal Fee Motion, Elizabeth argues that she “has an interest in the confidentiality of certain [Legal Fee Issue] disclosures . . . which contain sensitive confidential information pertaining to finances of, and the financial arrangements made by” Seymour’s estate (Franklin Li, Esq., Aff. ¶ 4). Courts regularly assess the reasonable and necessary legal fees and expenses that are to be paid from estates and trusts, and, in doing so, examine fee affirmations, invoices, and time records that have been filed with the court (*see Matter of Potts*, 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *see also Matter of Freeman*, 40 AD2d 397 [4th Dept 1973], *affd* 34 NY2d 1 [1974]; *see also Stortecky v Mazzone*, 85 NY2d 518, 526 [1995] [“Surrogate ha[s] the authority to inquire into the reasonableness of counsel’s fee even though agreed upon by the executor and assented to by the beneficiaries”]). These records are not Elizabeth’s personal financial records. Rather, they are the documents generated in due course

by the attorneys who provided professional services to her as Executor (*see generally Priest v Hennessy*, 51 NY2d 62, 69 [1980] [fee arrangements between attorney and client are not ordinarily confidential communications]; *see also Anonymous v Lerner*, 124 AD3d 487 [1st Dept 2015]).

The purported need to seal the Benjamin Affidavit and the supporting attorney invoices and time records on the ground that they contain private business information possibly affecting the competitive standing of Elizabeth’s attorneys is unavailing and fails to overcome the public need for access to such records (*see Hofmann*, 284 AD2d at 94 [When the “propriety of acts of fiduciaries and their attorneys are in question, [they] are matters of legitimate public concern.”]). Likewise, Elizabeth’s assertion that revealing the billing rates and attorney practices reflected in the invoices and time records would be on the order of revealing trade secrets or could be to the attorneys’ competitive disadvantage is purely speculative and not a basis for sealing (*see Peerform Holdings LLC v Strategic Farm, Inc.*, 2021 NY Misc Lexis 52951 [Sup Ct, New York County, May 5, 2021] [speculative, theoretical harm to competitive standing insufficient to warrant sealing]).

Where there is, as here, a countervailing public interest in access to the basis for a court’s determination of legal fees and expenses properly chargeable to an estate by a fiduciary, sealing is not appropriate (*see Matter of Brownstone*, 191 AD2d 167 [1st Dept 1993] [documents regarding fiduciary’s expenditures and actions that were otherwise non-privileged would not be sealed]; *see also Maxim, Inc. v Feifer*, 145 AD3d 516 [1st Dept 2016]; *Gryphon Domestic VI, LLC v APP Intl. Fin. Co. B.V.*, 28 AD3d 322 [1st Dept 2006]).²

² In view of this resolution, the court need not address the parties’ other arguments, including that Elizabeth waived

Accordingly, Elizabeth's motions to seal are denied, and the clerk is directed to file the submissions Elizabeth made under the 2025 Stipulation that include the documents she asked be sealed.

This decision constitutes the order of the court.

Dated: July 11, 2025



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her right to seek sealing in connection with the Legal Fee Motion.