

**Matter of Pachis**

2025 NY Slip Op 34574(U)

October 7, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2021-58/C&D

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

October 7, 2025

ESTATE OF ALICIA PACHIS, also  
known as ALICIA H. PACHIS, also  
known as ALICIA HELENA PACHIS Deceased  
File Nos.: 2021-58/C and D

In this ostensibly settled contested probate estate where the only issue is the appointment of the co-executors directed in the decedent's will dated June 2, 2014, the New York State Attorney General ("AG") representing the charitable beneficiaries and unknown heirs, and the nominated co-executors, Reginald Asiedu, Esq., ("Asiedu"), and Leonard Sammarco ("Sammarco") the decedent's friend, with counsel Luc Ulmet ("Ulmet"), entered into a stipulation on January 28, 2025, inter alia: consenting to the joint appointment, withdrawing a cross-petition filed by Asiedu seeking probate to himself (File No. 2021-58/D) and a nominated successor executor and withdrawing the objections filed by Asiedu to Sammarco's appointment. After Sammarco amended his probate petition to include Asiedu as co-executor (File No. 2021-58/C), a decree was entered admitting the instrument to probate and appointing Sammarco and Asiedu as co-executors upon their filing a bond in the penal sum of \$100,000.

However, the directed bond was not filed, and the nominated co-fiduciaries were not appointed.

Notwithstanding their stipulation to serve jointly, each co-executor filed a pending motion/cross-motion seeking the other's disqualification. The AG also filed a cross-motion seeking disqualification of both Sammarco and Asiedu and the appointment of the Bronx County Public Administrator (the "PA") as Administrator c.t.a for this estate.

### Background

The decedent died on July 7, 2020, at the age of 94. She never married nor had any children. Her only distributee is a half-sister who never appeared in these proceedings. After noting that it was to be stored in a safe deposit box, the instrument delineates decedent's family history, contains detailed funeral instructions and provides for the disposition of decedent's estate as well as numerous bequests to charities, including the Fresh Air Fund, Lenox Hill Hospital, The Salvation Army, NYU School of Medicine, Woodlawn Cemetery, New York Bay Cemetery Co., and Unity School of Christianity. J.P. Morgan Chase is named as first alternate successor executor, with The Salvation Army as second alternate successor executor should J.P. Morgan not serve. Despite detailed instructions in the instrument to be buried at Woodlawn Cemetery, decedent was interred in Potter's field on Hart Island on June 23, 2021 and remains there to date.

Notwithstanding the notations in the will that the instrument would be kept in a safe deposit box at Emigrant Bank, Asiedu sought and was issued an order on March 21, 2021 authorizing him to search the decedent's rental apartment to obtain the will.

The original instrument was not produced until three years later, after Sammarco obtained a safe deposit box opening order on September 3, 2024, permitting him to search the contents of the decedent's safe deposit box at Emigrant Bank. On or about September 20, 2024, Sammarco filed an inventory, detailing decedent's assets and their location, without a valuation. Sammarco then filed the original instrument with the court (File no. 2021-58/B) and his own probate petition (File no. 2021-58/C). The Court notes that on October 4, 2024, Sammarco filed a petition seeking Preliminary Letters issue to himself in which he valued the estate as consisting of personal property valued between \$50,000.00 to \$100,000.00, despite being aware that the decedent owned over 40,000 shares of securities.

On the January 28, 2025 return date of Sammarco's probate petition, jurisdiction was obtained over all interested parties including the decedent's half-sister and Asiedu. All beneficiaries listed under the instrument, including several charities, were given notice of the application and the AG submitted a notice of appearance. Prior to the return date of citation, Asiedu filed objections to Sammarco's probate petition and his

cross-petition. Sammarco filed a motion to dismiss Asiedu's objections which was made returnable on the same date as Sammarco's probate proceeding.

On the return date, an off-calendar conference was held with the court's Law Department and the parties entered into a stipulation: 1) amending Sammarco's probate petition to include Asiedu as co-executor of the estate; 2) withdrawing Asiedu's objections and cross-petition upon the amendment of the initial petition; and 3) withdrawing Sammarco's motion. The Court notes that on February 2, 2025 and February 26, 2025, Sammarco filed amended petitions by affirmation, without reference to the increased value of the estate.

Pursuant to the parties' agreement a decree was signed on April 4, 2025, admitting the decedent's will to probate and appointing Asiedu and Sammarco as co-executors upon their filing a bond in the penal sum of \$100,000.00, which at that time was the listed value of the estate. The bond was never posted and letters never issued.<sup>1</sup> Thereafter, Asiedu wrote to the court requesting a conference alleging, inter alia, that Sammarco hindered the administration of the estate, refused to provide information, and actively concealed information. He further alleged that, despite being informed by Sammarco and Ulmet that the estate was actually valued between five (\$5,000,000.00) and ten (\$10,000,000.00)

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<sup>1</sup> The Court notes that the decedent's will clearly reads in article seventeen that executors be bonded.

million dollars, they refused to provide him with specific information, and documentation with respect to those additional assets, and their actions hindered the administration of the estate.

Ulmet subsequently filed an affirmation seeking to amend Sammarco's probate petition to list assets valued at just under \$17,000,000.00 and requesting the court to amend its decree and direct a bond in the additional authority sought. Ulmet then filed a motion seeking, inter alia, the removal of Asiedu as co-executor and the appointment of a different nominated co-executor. In support of the motion, Ulmet alleges that Asiedu is not qualified to serve as a fiduciary as he failed to move the administration of the estate forward since 2021 and exhibits hostility towards Sammarco and Ulmet to such a degree that he interferes with the proper administration of the estate.

Asiedu's cross-motion seeking to have Sammarco removed as co-fiduciary similarly also alleges hostility and non-cooperation by Sammarco and Ulmet in moving the estate forward. Asiedu further alleges that Sammarco and Ulmet are conflicted as a result of a contract Sammarco entered into without authority. Specifically, on October 12, 2024, Sammarco entered into a retainer agreement with Linking Assets Inc. ("Linking Assets") to locate the decedent's assets as "distributee<sup>2</sup> and co-executor" of the decedent's estate without having been appointed co-

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2. The Court notes that the October 12, 2024 Linking Asset letter incorrectly identifies Sammarco as a distributee.

executor by this court. The retainer agreement, inter alia, states that Linking Assets will be awarded 15% of the estate's value for their findings. In his motion, Asiedu alleges that Ulmet and Sammarco have engaged in actions that are harmful to the estate and in addition to "colluding" with Linking Assets, have also taken actions that have impeded his ability to administer the estate including attempting to intervene with the surety company to prevent him from qualifying for a bond.

The AG's cross-motion seeks to have the decree dated April 4, 2025 vacated, and a determination that both nominated co-executors are disqualified from serving. In support, the AG notes that the decedent died nearly five years ago and neither co-executor has taken steps to move this matter forward but instead have engaged in actions that have been detrimental to the estate. The AG stresses that the co-executors' inaction is unconscionable and that they have egregiously neglected their fiduciary duties.

On May 20, 2025, the second return date of the motions by Asiedu and Sammarco, the court held a conference on the record where it was evident that the parties cannot cooperate, and it was clear the animus and hostility is hindering the administration of this estate.

Therefore, prior to determining these three applications the court found it necessary to appoint a temporary fiduciary to marshal the substantial estate assets. By decision dated July 9, 2025, this Court revoked its prior decree issuing letters on bond and appointed the Public Administrator as temporary fiduciary to protect the estate.

On July 22, 2025, the court conducted a subsequent off-the-record conference with the AG, Asiedu and Sammarco where positions remain unchanged and their hostility continued to impede the administration of the estate.

In deciding these three applications, the Court must balance case law's preference for the fiduciary named by the decedent with its duty to protect the estate from mismanagement, delay, or harm. Although the testator's choice of fiduciary is given great weight, that preference may yield where the record establishes statutory grounds for removal.

#### Eligibility to Receive Letters

The Court is mindful that removing a fiduciary is a serious judicial act, one that overrides the testator's deliberate choice and must be exercised sparingly (*Matter of Leland*, 219 N.Y. 387 [1916]; *Matter of Mercer*, 119 A.D.3d 689 [2<sup>nd</sup> Dept. 2014]). However, the Court's main responsibility is to protect the estate's assets, ensure that fiduciary duties are discharged with care and intention, and protect the rights of the beneficiaries. Furthermore, friction, hostility or antagonism between a

fiduciary and beneficiaries can also disqualify the fiduciary, but only when such enmity threatens to interfere with the administration of the estate (see *Matter of Venezia*, 25 AD.3d 717, 718 [2<sup>nd</sup> Dept. 2006]; *Matter of Sadowski*, 21 A.D.3d 1034, 1035 [2<sup>nd</sup> Dept. 2005], *Matter of Morningstar*, 21 A.D.3d 1285, 1287 [2<sup>nd</sup> Dept. 2005]; *Matter of Duell*, 258 A.D.2d 382, 382–383 [1<sup>st</sup> Dept. 1999]; *Matter of Boyle*, 224 A.D.2d 374, 375–376, [1<sup>st</sup> Dept. 1996] ). The Court in *Matter of Morningstar* further emphasized that “well-documented hostility” justifies removal only where it endangers the beneficiaries’ interest or the proper administration of the estate (*Matter of Morningstar, supra*, 1287).

Balancing the testator’s nomination against the Court’s statutory duty to preserve the estate, the Court finds that statutory grounds for disqualification and withholding of letters have been established. Under SCPA 707(1)(d), a fiduciary may be found unfit by reason of improvidence<sup>3</sup> or want of understanding and pursuant SCPA 709, the Court may withhold or revoke letters where such objections are sustained. In the *Matter of Estate of Britton*, 173 Misc.2d 300 [Sur. Ct. Westchester County 1997], the Court stated want of understanding as a ground for objection to the issuance of letters defined as an absence of intelligence sufficient to comprehend the nature and extent of fiduciary duties (see,

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<sup>3</sup> In *Matter of Rimland*, 205 A.D.2d 693 [2<sup>nd</sup> Dept. 1994], the Court emphasized that while a testator’s choice of fiduciary must be given great deference, nominated fiduciary may nonetheless be removed upon showing of improvident management of assets, misconduct in the execution of duties, or unfitness for office.

10A Cox, Arenson and Medina, New York Civil Practice—SCPA 707(1)(d). There must exist such a condition of irresponsibility which so pervades the moral fiber of the individual, so as to render him generally, and under all ordinary circumstances, unfit to act in a fiduciary capacity (*Matter of Flood's Will*, 236 N.Y. 408 [1923]). Failure to post a required bond prevents qualifications under SCPA 708 and warrants vacating of the decree issuing letters (*Matter of Brown*, 2017 WL 11927248 at 1 [Sur.Ct New York County. 2017]).

Moreover, case law underscores the balance at stake. In *Matter of Duke* (87 N.Y.2d 465 [1996]), the Court of Appeals emphasized that a testator's choice of fiduciary should not be lightly disturbed, and removal without a hearing may not rest on mere suspicion. Unlike in *Duke*, where the Court of Appeals cautioned that removal of a fiduciary should not be based on unsubstantiated allegations or mere friction among parties, here Asiedu and Sammarco improvidence and want of understanding are both documented and undisputed. The record contains affirmations and filings that clearly establish that: the directed bond was never posted, they grossly undervalued the estate assets<sup>4</sup>, the amended petitions filed by Sammarco failed to state the estate's true value, and Sammarco entered into a retainer agreement obligating the estate to pay a 15% fee prior to

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<sup>4</sup> In *Matter of Gadziala*, 54 Misc. 3d 1212[A], 2017 N.Y. Slip. Op. 50121[U] [Sur. Ct Oneida County 2017], a fiduciary's improvidence or dishonesty in money matters creates a reasonable apprehension that the estate's funds will not be safe.

issuance of letters<sup>5</sup>. Co-executor Asiedu allowed six months to pass before taking any action regarding the estate, and when he finally did, his efforts were misguided. For example, he requested an order to search the decedent's apartment to find a will which he drafted that expressly stated it was secured in a safe deposit box. Confronted with his own failure, Asiedu shifted responsibility to the PA as a means of concealing his nonfeasance. All of these acts commissioned by Adiedu and Sammarco, coupled with prolonged neglect in marshaling assets and the open hostility toward each other, are not speculative, they are matters of record submitted directly before the Court.

Most troubling is the failure to honor the decedent's clear directives. The instrument explicitly detailed the decedent's instructions. She wished to be laid to rest beside her mother, yet more than five years later that has not occurred. Equally disregarded is her testamentary plan to dedicate most of the estate to charities, denying the community the benefits that she intended. These lapses go beyond delay, they compromise both the integrity of the estate and the dignity of her legacy.

Accordingly, the Court concludes that the nominated co-executors are unfit to serve as fiduciaries pursuant to SCPA 707(1)(d) and the

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5. Appellate Division in *Bigaj v. Gehl*, 167 A.D.2d 837 [4<sup>th</sup> Dept. 1990], made it clear that before testamentary letters are issued a nominated executor had no power to dispose of the property (*see*, EPLT 11-1.3; *Matter of Yarm*, 119 A.D.2d 754 [2<sup>nd</sup> Dept. 1986] and lacked the capacity to enter into a binding contract (*see*, *Cohn v. United States Trust Co.*, 127 A.D.2d 523 [1<sup>st</sup> Dept. 1987]).

issuance of letters must be withheld under SCPA 709. In addition, the failure to post the required bond necessarily defeats qualification under SCPA 708 and compels vacatur of the decree. The July 9, 2025, order revoking the decree and appointing the PA was warranted and it is this Court's determination that permanent disqualification is necessary to safeguard this long delayed estate and conduct proper probate proceedings.

#### Bypassing Successor Executors/Beneficiaries

The Court has determined that statutory grounds under SCPA 707 and 709 have been established demonstrating that the nominated co-executors are unfit to serve as fiduciaries. While the AG's request to appoint the PA seeks to promote efficient estate administration, the court cannot override the statutory preference for the testator's expressed wishes. The order of priority in issuing letters is prescribed by law and "mandatory, and the court has no discretion to pass over one class in favor of another" (*Matter of Boyle*, 224 A.D.2d 374 [1<sup>st</sup> Dept.1996]). Under SCPA 1418, the appointment of an Administrator c.t.a must follow the statutory sequence (*Matter of Murphy*, 304 N.Y. 232 [1952]). Therefore, all persons named in the instrument and otherwise entitled to serve shall be given notice and an opportunity to accept or decline appointment in accordance with the statutory scheme. If no eligible fiduciary remains

willing and able to serve, the PA shall be considered for permanent appointment.

Accordingly, the decree dated April 4, 2025 remains vacated. The PA shall continue to serve as temporary administrator, to ensure the preservation and proper management of the estate pending the determination of a permanent fiduciary and take immediate steps to arrange for the decedent's disinterment from Hart Island and reburial at Woodlawn Cemetery beside her mother, consistent with the will. This appointment is not intended to bypass other persons entitled to serve under the statutory order of priority, all of whom shall be afforded the opportunity to appear, respond<sup>6</sup>, and be heard before the Court determines any final appointment.

As temporary administrator, the PA shall cause citation to issue to all other parties named as successor executors in the instrument as well as to all beneficiaries under the instrument. The PA shall serve under this temporary appointment until a final appointment of a fiduciary is made by the Court.

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<sup>6</sup> The Court notes that both Woodlawn Cemetery and The Unity School of Christianity have filed papers in support of the AG's motion. In addition, The Unity School of Christianity's papers disavowed their previous June 10, 2025 support of co-executor Sammarco by withdrawing their June 10, 2025 affidavit of support.

The Acting Chief Clerk shall mail a copy of this decision, which constitutes the order of the court to Asiedu, Ulmet, the AG, the PA, and all appearing counsel.

Proceed accordingly,

  
HON. NELIDA MALAVÉ-GONZÁLEZ  
SURROGATE