

**Matter of Edwards**

2025 NY Slip Op 34612(U)

August 19, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2016-722/B

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

August 19, 2025

In the Matter of the Living Trust  
Established by

ENA EDWARDS, also  
known as ENA ISABEL EDWARDS, Deceased  
File No.: 2016-722/B

and

THE ESTATE OF ALPHONSE LEROY EDWARDS, Deceased  
File No.: 2023-2126

In this long pending accounting proceeding commenced by Fitzroy Edwards ("Fitzroy"), a son of the decedent and a trust beneficiary under the Ena Edwards Living Trust dated February 29, 2000 ("the trust"), while serving in his prior capacity as sole successor trustee, Norma Edwards-Rowe ("Mrs. Edwards-Rowe"), the spouse of Alphonse Edwards ("Alphonse"), a post-deceased son and trust beneficiary, and Natasha Edwards (Natasha), the administrator of Alphonse's estate ("the movants") separately move by order to show cause seeking to compel relief from the three successor trustees: Fitzroy, Susan H Accetta, Esq. ("Accetta") and Michael L. Landsman, Esq. ("Landsman") (collectively "the trustees"). Accetta and Landsman were appointed as additional successor co-trustees pursuant to a "so-ordered" stipulation dated May 8, 2019 to serve jointly with Fitzroy. Specifically, the movants seek an order directing the trustees, inter alia, to:

(1) file a detailed statement explaining why Mrs. Edwards-Rowe has not been paid her distributive share, despite available trust funds, and her alleged entitlement to those funds; (2) immediately pay Mrs. Edwards-Rowe the sum of \$64,840 as a distribution owed to her from the sale of realty owned by the trust on October 25, 2019 located at 624 Meade Street in the Bronx ("Meade Street"), and an additional \$34,857.27 alleged to be due from the sale of another improved parcel on August 2, 2020 of another improved parcel located at 4032 Bronxwood Avenue ("Bronxwood"), with 9% statutory interest imposed from both dates of sale and accruing; and (3) imposition of sanctions should the trustees fail to comply with this court's orders.

On the return date of the supplemental orders to show cause, the movants appeared pro se and three grandsons who are trust beneficiaries appeared and consented to both applications on the record. Fitzroy and other trust beneficiaries also appeared pro se and indicated opposition, as did an attorney who appeared for Accetta and Landsman. After all appearing respondents admitted service of the two orders to show cause, waiving any jurisdictional defects, the court determined that jurisdiction was complete and directed that opposition, if any, was to be served and filed by May 23, 2025, replies, if any, were to be served and filed by May 30, 2025, and both matters were to be marked "submitted" on that date.

Opposition was timely filed on behalf of Accetta and Landsman. However, the court only recently received documents in opposition from

Fitzroy and other trust beneficiaries including Albert Edwards (“Albert”), the decedent’s step-son, and Dory K. Edwards (“Dory”), a granddaughter, that were apparently timely delivered to the courthouse and misdirected to another court. Albert’s submission lacks an affidavit of service, and Fitzroy and Dory’s affidavits of service are incomplete. Although those documents are accepted for filing, they are marked as “defective submissions” as not served upon all necessary parties and will not be considered on these motions. However, the court has noted the statements made in support and opposition by the appearing parties on the record herein.

### **BACKGROUND**

The trust instrument lists the decedent as grantor, who is designated as primary trustee and lifetime income beneficiary. Upon her death or inability to serve, Fitzroy is the first nominated successor trustee. Alphonse, Albert, and another son, Arnold F. Edwards (“Arnold”), are serially designated additional successor trustees. Upon the grantor’s death, other than certain enumerated items, all personal trust property was to be distributed at the trustee’s discretion. The Meade Street and Bronxwood Avenue properties were to be sold at the trustee’s discretion and after a hold back for legal fees and trust administration expenses, the remaining sale proceeds were to be distributed as follows, per stirpes: (1) 60% divided equally among the grantor’s children, Kathleen Maria Edwards, Fitzroy, Alphonse and Arnold, who predeceased; and (2) the balance was to be divided equally among Albert, two other relatives and the issue of Keith

Edwards, Audley Edwards and Karl Edwards. The residuary was to be distributed to Alphonse, Arnold and Fitzroy in equal shares. According to the account, the trust assets at the time of Ena Edwards' death on March 11, 2014 consisted of the Meade Street and Bronxwood properties respectively valued at \$306,000 and \$424,000, cash on hand in the sum of \$1,053.69 and \$15,718.04 deposited in four bank accounts.

No estate proceedings were commenced for Ena Edwards. After Albert, the nominated successor trustee, filed a proceeding to compel Fitzroy to produce the trust document, their attorneys entered into a stipulation, inter alia, that: (a) all funds to be collected by the trustee were to be maintained in an escrow account; (2) Fitzroy was restrained from selling, transferring or encumbering the realty until further court order; (3) Fitzroy was to file an accounting proceeding within 45 days and acquire jurisdiction over all necessary parties and provide updates; and (4) Fitzroy would provide updates to Albert and the other trust beneficiaries upon request.

As no account was timely filed pursuant to the stipulation, Albert commenced a compulsory accounting proceeding seeking to compel Fitzroy to judicially account. Prior to the issuance of citation in that proceeding, Fitzroy filed a petition and interim account and obtained jurisdiction of the then-stated interested parties. Significantly, Fitzroy correctly stated in the interim accounting petition that Alphonse post-deceased Ena Edwards on March 25, 2014. At that time, no fiduciary was appointed for Alphonse's estate. Although Fitzroy named Alphonse's four

marital children and four non marital children as Alphonse's distributees in the accounting documents, Alphonse's surviving spouse, Mrs. Edwards-Rowe was omitted.

Albert filed objections to Fitzroy's account with discovery demands. Wayne Edwards, a trust beneficiary who continued to reside at one of the trust properties allegedly without paying rent, filed a claim for care taking services. After a note of issue, statement of readiness and statements of issues were filed, Fitzroy, Albert, Accetta, Landsman, and the principals of Stern Keiser and Holm & O'Hara, Accetta's Law Firm, entered into another written stipulation that was "so-ordered" on June 16, 2021 providing, inter alia, that: (1) Fitzroy would serve as co-successor trustee with Accetta, one of Fitzroy's attorneys at that time and Albert's attorney, Landsman (collectively "the co-trustees"); (2) the two attorney trustees would not receive commissions but would be paid for legal services rendered to the trust; (3) Fitzroy would not receive additional commissions and consented to a \$26,000 reduction in his distributions from the trust as a beneficiary as a result of his inability to account for funds in that amount; (4) the co-trustees were to informally account to the beneficiaries; (5) the Meade Street property was to be sold for \$630,000, and \$40,000 from the proceeds were to be utilized to pay expenses associated with Bronxwood, which was to be sold; (6) the net sale proceeds for both properties were to be deposited in a non-interest-bearing escrow account; (7) the trustees were to distribute 75% of the net sale proceeds to the trust beneficiaries within 90 days of closing of

title for each property; and (8) the distributions to Wayne Edwards were to be reduced to 3.33% on account of unpaid use and occupancy at Bronxwood; (9) Accetta's law firm, Stern Keiser & Panken LLP ("Stern Keiser") would serve as counsel to the trustees, effectuate the sale of Meade and Bronxwood, supervise distributions and wind down the trust; (9) Albert was to withdraw all proceedings and the objections to Fizroy's account with prejudice; and (9) Landsman's firm, Holm & O'Hara LLP ("Holm & O'Hara") was to be paid \$45,000 upon the closing of title to Meade and \$30,000 when Bronxwood was sold; (10) having previously been paid \$28,000, Stern Keiser would receive additional payments of \$25,000 and \$22,000 respectively upon the sale of Meade and Bronxwood.

After the sale of Meade Street on October 25, 2019, the trustees made the stipulated payments on or about August 14, 2020 to most of the trust beneficiaries, including Alphonse's eight children, but omitted Mrs. Edwards-Rowe. Every beneficiary receiving a distribution accordingly executed a receipt, release and refunding agreement, including the eight children of Alphonse.

It is uncontroverted that Alphonse's spouse and distributee, Mrs. Edwards-Rowe, should have received a distribution from the trust pursuant to EPTL 4-1.1 (a) (1). Instead, the eight children were overpaid approximately \$25,148 collectively, or \$3,148 each. Numerous settlement conferences were held with the beneficiaries and trustees seeking to address this issue. All eight children decline to refund the overpayments or any

portion thereof.

The Bronxwood closing took place on June 16, 2022. The gross sales price was \$620,000. Extensive funds having been expended for closing costs and adjustments, repairs and curing of violations, leaving approximate net sale proceeds of \$474,078.75. Despite the terms of the so-ordered stipulation, no additional distributions have been paid by the trustees to date.

Natasha, while formerly represented by Accetta, filed a petition seeking letters of administration in Alphonse's estate that lists herself, Mrs. Edwards-Rowe and the three other marital children, all of whom executed waivers and consents, as the only distributees. Having filed the directed \$95,000 bond pursuant to a decree dated January 30, 2024, Natasha was awarded letters of administration on March 19, 2024. Natasha filed two additional affidavits amending the petition that also omitted the four non marital children, even in the capacity of alleged children whose status as distributees is disputed.

### **THE EMERGENCY ORDERS TO SHOW CAUSE**

Natasha's affidavit in support of her order to show cause urges that the court compel the trustees to immediately distribute Mrs. Edwards-Rowe's full "statutory" share of the trust that was wrongfully withheld since 2019, despite the "so-ordered" agreement mandating distributions within a specified time period. The first distribution was to be paid upon the sale of Meade in October, 2019 and the second when Bronxwood sold in August,

2022. Natasha alleges that there are trust funds on hand totaling \$457,764 available for distribution. Despite her entitlement, Mrs. Edwards-Rowe has received nothing and, as a consequence, has suffered financial hardship and cannot pay medical expenses or seek appropriate treatment for disabling medical conditions.

Mrs. Edwards-Rowe's affidavit in support of her own emergency order to show cause seeking identical relief confirms financial and medical hardships. She annexes an unsigned statement from a licensed physical therapist stating her recovery from a serious medical event is jeopardized for lack of access to necessary treatment due to financial inability and she requires continuous rehabilitative therapy, essential medications and routine medical monitoring to prevent health setbacks.

#### **THE ATTORNEY TRUSTEES' OPPOSITION**

Accetta and Landsman timely served and filed partial opposition to the relief requested. While they do not oppose paying Mrs. Edwards-Rowe the amounts to be determined that she is owed from the trust as a distributee of Alphonse, they vigorously oppose any assessment of interest and assert her omission was caused by other interested parties, including Natasha.

In explanation of the failure to list Mrs. Edwards-Rowe as Alphonse's spouse, counsel for Accetta and Landsman affirms that an application to distribute the trust assets emanated from the proceeding filed by Albert seeking an order to provide information concerning the trust assets,

followed by a petition seeking Fitzroy's removal. That petition listed the interested parties and purported to be a comprehensive list of all trust beneficiaries, including all eight children of Alphonse, but did not include Mrs. Edwards-Rowe. Fitzroy's petition for settlement of the instant intermediate account, filed by his then-attorney, Accetta, also listed Alphonse's eight children but failed to include his spouse.

Counsel notes that none of the interested parties cited in the removal and accounting proceedings informed Acetta or Landsman that Mrs. Edwards-Rowe was Alphonse's distributee. The names of the interested parties to whom trust funds were distributed on August 14, 2020 pursuant to the May 2, 2019 stipulation were taken from those stated in the prior proceedings. All of the persons who received the initial distributions signed receipts, releases and refunding agreements. It was only after the 2020 distributions that the trustees became aware that they had not included Mrs. Edwards-Rowe as a distributee and recognized that they would have to "make up distributions" which were paid to Alphonse's other distributees.

Numerous settlement conferences were held with the parties and a member of the court's Law Department concerning distribution of the remaining trust assets and attempting to ensure that Mrs. Edwards-Rowe received the amounts due to her under the trust. At one point, it appeared that several beneficiaries who are not Alphonse's children would contribute to make up the shortfall. Negotiations terminated after Natasha asserted additional demands for interest and additional legal fees were incurred by the

trust.

In her petition seeking to be appointed fiduciary of Alphonse's estate, Natasha listed only Alphonse's four marital children and represented that they and Mrs. Edwards-Rowe were Alphonse's only distributees. Counsel states that Accetta prepared and filed the administration documents for Natasha without charge as an accommodation because a fiduciary appointment was required to finalize the proposed settlement. Natasha now blames the trustees for making the improper distributions in 2020 and denies any responsibility for failure to inform the trustees at that time that Ms. Edwards-Rowe was omitted. Fitzroy, Albert and the other trust beneficiaries also failed to apprise Accetta and Landsman concerning Mrs. Edwards-Rowe's status.

Regarding imposition of interest, counsel opines that CPLR § 5004 states only that the rate of statutory interest is nine percent and does not provide guidelines for when it may be imposed. As the instant motions have not yet been determined, no pre-verdict interest is owed pursuant to CPLR § 5001 since there is no award of damages as yet. There is also no award pursuant to a decision, order or decree that might trigger post verdict interest pursuant to CPLR §§ 5003 or 5011. Counsel emphasizes that the settlement agreement provided that the trust assets were to be placed in a non-interest-bearing account, the trustees are not earning commissions and do not benefit by a delay in distribution. They have not filed a final accounting proceeding, as the settlement agreement provided only for an

informal account, or a full account if directed by the court after determination of a proceeding to compel a final account. Counsel urges that all the circumstances that might give rise to the imposition of statutory interest are lacking herein. She also notes that an accounting proceeding is equitable in nature, and an award of statutory interest, if any, is in the court's discretion.

Counsel avers that it is Alphonse's children, who refuse to refund their over distributions, who should be paying interest to Mrs. Edwards-Rowe. Natasha, as administrator of Alphonse's estate, should recover the demanded interest from them, because they, not the trustees, have enjoyed the use of the funds from the initial distribution. She has not responded to the trustees' offer to transfer \$10,000 to the estate provided that Natasha, as administrator, sign a receipt and refunding agreement and agree that all of the funds are to be paid to Mrs. Edwards-Rowe without offset for administration expenses of Alphonse's estate. Both Natasha and Mrs. Edwards-Rowe have not responded to the increased offer of a \$25,000 advance under the same conditions, and Natasha makes it clear that she will not engage in settlement discussions without imposition of interest.

Finally, counsel requests that the court direct the trustees to make a \$25,000 interim payment directly to Mrs. Edwards-Rowe and future distributions, if any, directly to Alphonse's other distributees, instead of to Natasha as administrator of Alphonse's estate.

**OPPOSITION ASSERTED ON THE RECORD**

The other respondents, including Albert, Fitzroy and Dory, whose opposition documents lack proof of due service, opposed the relief sought by Natasha and Mrs. Edwards-Rowe on the record. While they concede that a distribution of the sale proceeds should have been paid to Mrs. Edwards-Rowe, they assert that they did not cause the omission and they maintain that Alphonse's eight children should refund the over payments. In the event that they fail to do so, the other respondents urge that their forthcoming distributions should not be diminished to make up the shortfall or an assessment of additional interest. They note that the stipulated additional distribution after the sale of Bronxwood has not been made to any trust beneficiary, including Natasha and Mrs. Edwards-Rowe, and they, too, have not been able to utilize or earn interest on the unpaid funds.

#### **THE MOVANTS' REPLIES**

Mrs. Edwards-Rowe served and filed a document styled as an "Affidavit of Uncontested Relief and Request for Final Determination on Submission Compelling Statutory Distribution and Interest under EPTL 11-1 (c)," which the court deems to constitute her reply to the presented opposition, asserting that no opposition was served or filed as of the May 23, 2025 submission date. Accordingly, she urges that the court should disregard "procedural distractions and collateral assertions raised by others in this matter and their arguments, including unauthorized appearances and issues beyond the scope of her uncontested application, which lack legal merit, and must not delay legal resolution of the issues presented."

Mrs. Edwards-Rowe asserts that although the attorney trustees, as well as her brothers-in-law, Fitzroy and Albert, were aware of her legal status as Alphonse's distributee, they excluded her from distribution without notice. She also alleges that in 2023, the co-trustees and other beneficiaries rejected Natasha's offer on her behalf to accept only the outstanding distributions owed, without payment of additional interest.

Natasha's reply document reiterates that, despite Mrs. Edward-Rowe's entitlement to distribution and statutory interest as a "priority creditor" pursuant to EPTL 4-1.1, all of the funds owed to Alphonse's estate were erroneously diverted to his children and other persons described as "issue" without notice to the spouse. Natasha continues that, as a "lay person," she did not understand the legal consequences of Alphonse's having survived the grantor until June, 2023 when she appeared pro se in the initial settlement discussions. Upon being appointed administrator of Alphonse's estate in March, 2024, she conveyed his spouse's good-faith offer to accept principal only and waived five years' statutory interest. She corroborates that the trustees, who were aware of Mrs. Edwards-Rowe's entitlement to the funds, rejected this offer and failed to take corrective action. Natasha concludes that their inaction and failure to assert valid opposition constitute a waiver of objections to the relief sought.

#### **DETERMINATION**

It is apparent that Fitzroy, while acting as the sole trustee and

represented by Panken, correctly stated in his account that Alphonse post-deceased the trust grantor and noted the eight children, but failed to list Mrs. Edwards-Rowe as Alphonse's spouse. Fitzroy, Accetta and Landsman also excluded Mrs. Edwards-Rowe when making the distributions pursuant to the "so-ordered" stipulation, which does not state the names of the beneficiaries to be paid or their respective percentile interests.

A Report of Death for Alphonse in Jamaica, West Indies as a United States citizen abroad, filed by Natasha in the administration proceeding, clearly indicates that Mrs. Edwards-Rowe is Alphonse's surviving spouse in possession of his personal effects. The court cannot fathom why Fitzroy, Norma Edwards-Rowe's brother in law, and the two co-trustees who are seasoned trusts and estates attorneys, failed to obtain the Report of Death Abroad certificate for Alphonse and any additional documents corroborating his distributees. As a result, they overlooked the spouse and overpaid the eight children, four of whom are not listed as distributees in Alphonse's administration proceeding that was filed by Accetta for Natasha.

The attorney trustees imply that it was incumbent upon Alphonse's eight children, who were overpaid, to have informed them of the spouse's omission. However, there is nothing in the record indicating that the children, all of whom are pro se, were aware that Mrs. Edwards-Rowe was also entitled to a distributive share. It is evident, given the lack of opposition by the co-trustees and other trust beneficiaries on that issue, that Mrs. Edwards-Rowe did not cause the omission, and who the court finds is

entitled to a distribution from the sale proceeds pursuant to the “so-ordered” stipulation, as a distributee of Alphonse’s estate.

Given that Natasha, as administrator of Alphonse’s estate, has not yet accounted for his estate assets and his distributees have not yet been determined, the exact amount of his surviving spouse’s distributive share of the proceeds pursuant to EPTL 4-1.1 (a) (1) cannot be ascertained at this time. Where, as here, Alphonse was survived by a spouse and issue, Mrs. Edwards-Rowe’s distributive share would be \$50,000 plus one-half of the residue, and his children would equally share in the remaining half. It is not known whether there are other assets in Alphonse’s estate that might offset the distributions claimed by the movants.

The better practice would have been to require the appointment of a fiduciary for Alphonse’s estate prior to making distributions, as is commonly done in accounting proceedings in estates with post-deceased parties. This avoids similar omissions and ensures that the distributions are paid to a court appointed fiduciary who in turn will ensure that payments are properly applied toward debts, claims and estate expenses prior to payment to the distributees. At this time, the court will allow an interim distribution to be paid to Mrs. Edwards-Rowe, with the exact amount she will ultimately be entitled to determined in the amended accounting proceeding to be filed by the co-trustees as further directed herein.

It is apparent that the co-trustees – Fitzroy, Accetta and Landsman – failed to review critical documents, including Alphonse’s Report

of Death Abroad certificate that clearly stated Mrs. Edwards-Rowe was the surviving spouse, and overlooked Mrs. Edwards-Rowe, resulting in miscalculation of the the distributions to Alphonse's other distributees. It is also evident that, although Mrs. Edwards-Rowe should be made whole, the other trust beneficiaries, except for Alphonse's eight children who were overpaid and Fitzroy, in his capacity as a trustee, should not be burdened by the consequences of the shortfall in the currently available funds.

That branch of the relief requesting the imposition of statutory interest in favor of Mrs. Edwards-Rowe for the proceeds withheld from the sale of Meade Street is granted to the extent that the court will consider the imposition of interest on the to-be-determined proceeds withheld from Mrs. Edwards-Rowe from the sale of Meade Street in an amended accounting proceeding to be filed by the trustees. As imposition of interest and the rate of interest is at the court's discretion (see CPLR 5001 [a]; Matter of Janes, 90 NY d 41; Matter of Billmyer, 142 AD 3d 1000 (2<sup>nd</sup> Dept 2016)); the rate of three percent will be imposed upon the determined amounts owing, pro rated from the dates of payment to Alphonse's children to the issuance of payment to Mrs. Edwards-Rowe. The request for statutory interest on the sums owed to Mrs. Edwards-Rowe from the sale of Bronxwood is denied, no distributions having been paid to any party because of the issues presented.

Although jurisdiction was obtained over all eight of Alphonse's children in Fitzroy's accounting proceeding and the instant orders to show cause, the four non marital children were omitted from Natasha's

administration petition, even in the capacity of alleged children whose status as a distributee is disputed. As a result, citation did not issue, since waivers and consents were filed for the other distributees listed in the petition: Mrs. Edwards-Rowe and the three other marital children. Jurisdiction was never obtained over the other four presumptive distributees. Accordingly, the letters of administration issued to Natasha are suspended (see SCPA 711[4]; Matter of Govenor, 23 Misc 2d 994 [Sur Ct, NY County 1960]). Natasha is directed to immediately file an affidavit amending the administration petition adding the four other interested parties and expeditiously obtain jurisdiction over them. In the interim, any qualified party may petition to be appointed administrator d.b.n. of Alphonse's estate and seek to revoke the suspended letters.

Accordingly, on this state of the record, considering the equities, this decision constitutes the order of the court: (1) granting Mrs. Edwards-Rowe's motion seeking distributive payments withheld from the sale of Meade and Bronxwood to the extent of directing the co-trustees to make an immediate \$50,000 interim payment to her; (2) denying that branch of Mrs. Edwards-Rowe's motion seeking an imposition of statutory interest upon withheld distributions from the sale of the Bronxwood property; (3) granting that branch of Mrs. Edwards-Rowe's motion requesting an imposition of interest from the withheld distribution from the sale of Meade Street to the extent of awarding her interest at a three percent rate on the to-be-determined distributive share for Meade Street as of the date of payments

to the Alphonse children to the dates of respective payments directed by the court, with payment to be deferred and determined in the trustees' amended accounting proceeding, to be paid by surcharge upon the trustees; (4) directing the trustees to file an amended account and all necessary papers to cause the issuance of citation on or before 45 days hereof; (5) directing the trustees to make future distributions concerning post-deceased trust beneficiaries to the duly appointed fiduciaries of their estates; (6) suspending the letters of administration awarded to Natasha pursuant to decree dated January 30, 2024; (7) directing Natasha to immediately amend the administration petition in Alphonse's estate to include the four other alleged children and expeditiously acquire jurisdiction over them; and (8) directing Natasha to serve and file a verified statement of all assets and income collected and expenses paid in Alphonse's estate on or before September 1, 2025; and (9) dismissing Natasha's motion in all respects as duplicative, as the relief sought has been rendered moot by the court's determination of Mrs. Edwards-Rowe's companion application.

The Chief Clerk is to mail a copy of this decision and order to Mrs. Edwards-Rowe, Natasha, Fitzroy, Andrew Panken and counsel for Accetta and Landsman. Copies are also to be e-mailed to the other beneficiaries.

Proceed accordingly.

  
HON. NELIDA MALAVÉ-GONZÁLEZ  
SURROGATE