

Matter of Walder

2026 NY Slip Op 31472(U)

April 10, 2026

Surrogate's Court, New York County

Docket Number: File No. 2013-467/I

Judge: Rita Mella

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ENTERED

APR 10 2026

DATA ENTRY DEPT
New York County Surrogate's Court

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

-----X
Accounting by Steven L. Kay, as the Administrator CTA
of the Estate of

DECISION and ORDER
File No.: 2013-467/I

HELENE WALDER
a/k/a HELENE A. WALDER,

Deceased.

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

The Court considered the following submissions in determining the instant motion (*see* CPLR 2219[a]):

<u>Documents Considered</u>	<u>Numbered</u>
Notice of Motion for Summary Judgment; Affirmation of Andrew W. Winters, Esq., in Support, with Exhibits; Affidavit of Steven L. Kay, Esq.	1-3
Affirmation of Paul T. Shoemaker, Esq., in Support of Summary Judgment, with Exhibits	4
Affirmation of Yolanda Kanesh, Esq., in Support of Accounting and in Partial Opposition to Stated Award of Legal Fees, with Exhibit	5
Reply Affirmation of David S. Fischer, Esq., in Opposition to Legal Fee Request, with Exhibits	6

In this contested estate accounting proceeding in the estate of Helene Walder (Decedent), Steven L. Kay, the Administrator c.t.a. (Petitioner or Movant), moves for an order, pursuant to CPLR 3212, granting summary dismissal of the objections of Decedent's daughter, Barbara J. Walder (Barbara), and judicially settling his interim account for the period of October 27, 2017 through December 31, 2021. For the reasons stated below, the motion is granted in part and denied in part.

Relevant Facts

The pertinent facts are as follows. Decedent died testate on November 17, 2012, survived by her two adult daughters, Barbara and Nancy J. Walder (Nancy). The nominated executors named in Decedent's October 26, 2006 Will renounced appointment. Thereafter, Barbara and Nancy filed dueling probate petitions, wherein each sought appointment as administrator c.t.a. While neither Barbara nor Nancy disputed the Will's validity, they litigated the issue of who would serve as fiduciary of the estate. The dispute was ultimately settled by stipulation, resulting in the Will's admission to probate by decree dated October 26, 2017, and the appointment of Petitioner¹ as Administrator c.t.a.²

Although Barbara attempted to repudiate the settlement agreement, Nancy successfully enforced the agreement in a separate proceeding. In the Decision and Order granting Nancy's petition to enforce the settlement agreement (*Matter of Walder*, NYLJ, June 6, 2017, at 23, col 1 [Sur Ct, NY County]), the court stated:

“Any questions of legal fees or sanctions raised in the above-captioned proceedings are deferred until a final accounting. In addition, a pending application by one of Barbara's former attorneys to fix his firm's legal fee and direct that it be paid from the estate is not addressed in this decision in view of other unsettled estate issues which might have an impact on any award of legal fees.”

The former attorney referenced is Paul T. Shoemaker (Shoemaker) of Greenfield Stein & Senior, LLP (GSS), who had filed a petition on behalf of GSS in 2014 (File No. 2013-467/F) asking the court to fix the reasonable value of the legal services rendered by GSS to Barbara pursuant to SCPA 2110 (SCPA 2110 Proceeding).

¹ Petitioner was Barbara's attorney when the settlement agreement was executed.

² Nancy was issued Letters of Temporary Administration on March 20, 2014. Those letters were revoked upon Petitioner's appointment as Administrator c.t.a.

On March 17, 2021, Petitioner filed the underlying accounting proceeding (Accounting Proceeding) seeking judicial settlement of his account as Administrator c.t.a. for the period from October 26, 2017 to December 31, 2020. Thereafter, he amended and supplemented his account so that it now covers the period from October 26, 2017 to December 31, 2021. In addition to seeking judicial settlement of his account, Petitioner also asks for court approval of the following: 1) reimbursement of funeral expenses to Barbara; 2) payment of \$20,000 each to GSS and Nancy's prior counsel, Tannenbaum Helpern Syracuse & Hirschtritt LLP, now Tannenbaum Helpern LLP (Tannenbaum) upon their submission of affidavits of legal services with time detail; and 3) distribution of specified sums to Barbara and Nancy. As relevant here, Barbara, Nancy, GSS, and Tannenbaum were all duly served with citations setting forth this relief.

After jurisdiction was obtained over all necessary parties in the accounting, Barbara, appearing as a self-represented party, filed verified objections to the account (Objections) on February 28, 2024. In her Objections, which are in narrative form and do not refer to any schedules in the account, Barbara alleges misconduct on the part of Petitioner, Shoemaker, the Tannenbaum attorney who previously represented Nancy, and various court personnel, and strenuously objects to payment of any legal fees to GSS and Tannenbaum. On March 22, 2024, Shoemaker, on behalf of GSS, filed an affirmation in support of the SCPA 2110 Proceeding and in reply to the Objections, asserting that Barbara's allegations lack specificity and that he did not engage in any wrongdoing. No other party to this proceeding filed either objections to Petitioner's account or responded to the Objections.

No other party having filed objections after having an opportunity to do so, the court issued a Post-Objection Discovery Order dated December 6, 2024. On July 31, 2025, following GSS's filing, the month before, of a combined Note of Issue in the Accounting Proceeding and

the SCPA 2110 Proceeding, Movant filed the instant summary judgment motion, along with an affidavit pursuant to SCPA 2209 averring to the accuracy and completeness of his account. Barbara did not oppose the motion. GSS filed papers in support of the summary judgment motion, except for the part related to GSS's legal fees. Likewise, Tannenbaum filed papers in support of summary judgment except as to its legal fees.

Parties' Arguments

Movant asserts that Barbara's "pleading does not set forth succinct and clear claims" and is instead "replete with winding, incoherent thoughts with allegations of fraud sprinkled through" (Winters' Aff. ¶16). He further states that although "discovery obligations were thoroughly explained to [Barbara]" during an October 24, 2024 court conference (Winters' Aff. ¶21), Barbara neither served responses to Movant's discovery demands nor served her own discovery demands. Movant contends that through his sworn account and affidavit, he met his initial burden of demonstrating that he has fully accounted for all estate assets. He opines that Barbara failed to come forward with evidence establishing that the amounts set forth in the account are inaccurate or incomplete, and instead set forth only conclusory allegations that are unrelated to the accounting, belied by the record, and/or barred by the doctrine of res judicata to the extent that they concern the prior litigation involving the appointment of a fiduciary. Accordingly, Movant reasons that he is entitled to summary judgment.

In his submission, Shoemaker asserts that Barbara offered no evidence in support of her Objections to any aspect of the accounting. However, Shoemaker complains that Movant's accounting allows for payment of only \$20,000 of GSS's approximately \$65,000 in legal fees and that no basis is provided for the proposed fee reduction.

As for Tannenbaum,³ it takes issue with Movant’s proposal to pay it only \$20,000, arguing that the firm should not receive the same compensation as GSS. More specifically, it asks the court to increase the amount awarded “so that the reasonable fees to be awarded to [Tannenbaum] . . . would be no less by percentage than the amount to be awarded to GSS who represented Barbara in the matter” (Kanes’s Aff. ¶8).

Nancy’s current counsel also filed papers in response to the motion, but solely in opposition to Tannenbaum’s request for a fee above \$20,000. He notes that Tannenbaum did not file objections to Movant’s account, nor did the firm file an affirmation of legal services. In addition, counsel questions whether the reasonable value of the legal services Tannenbaum provided to Nancy exceeds \$20,000.

Discussion

The Account in General

A movant for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law and tender sufficient evidence in admissible form to show the absence of any material issues of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Upon such a showing by the movant, the burden shifts to the opposing party to offer proof that demonstrates the existence of a material issue of fact, requiring a trial (*see Alvarez v Prospect Hosp.*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d at 562). Notably, “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” to raise a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d at 562).

³ Due to service deficiencies, although Tannenbaum’s papers are dated August 28, 2025, they were not accepted for filing until November 28, 2025.

In the context of an accounting proceeding such as this, the fiduciary's sworn account, completed and filed in accordance with the Surrogate's Court Official Forms for judicial accountings, satisfies the fiduciary's initial burden of establishing entitlement to judgment that the account is complete and accurate (*see Matter of Rudin*, 34 AD3d 371, 372 [1st Dept 2006] [stating that "[t]he trustees made out a prima facie case that their account was accurate and complete by submitting the account as amended and a supporting affidavit"]). Here, Movant has established his prima facie case that the account is complete and accurate by submitting his sworn account.

Under these circumstances and in the absence of any opposition to the motion by Barbara, the motion for summary judgment is granted in part and the Objections, to the extent that they allege misconduct on Movant's part in connection with matters related to Movant's account, are dismissed. This includes Barbara's vague and conclusory objection that Movant mishandled funds held in various brokerage accounts (*see Zuckerman v City of New York*, 49 NY2d at 562; *Matter of Alan H. Goodman 2011 Revocable Trust*, 241 AD3d 1152, 1153 [1st Dept 2025] [finding that summary judgment was properly granted where "[o]bjectant failed to present evidence sufficient to raise a triable issue of fact as to improper payments or the omission of any Trust asset from the Accounting"]; *Matter of White*, NYLJ, Jan. 19, 2001, at 30, col 2, *20 [Sur Ct, Nassau County] [summary judgment warranted where objectant "submitted merely conjecture"]).

As for the remaining Objections, they concern Movant's purported conduct during the long ago concluded probate proceeding. Not only are these allegations conclusory and unsubstantiated, but they are irrelevant to this accounting proceeding (*see Matter of Capolarello*, 86 Misc 3d 309, 311 [Sur Ct, Queens County 2024] [dismissing an accounting objection "on the

basis that it is irrelevant to the controversy presently before the court”]). Accordingly, summary judgment is granted as to these Objections, and they are dismissed as well.

GSS’s Legal Fees

As for Barbara’s objection to the payment of any legal fees to GSS, even assuming that Movant made out a prima facie case, a hearing is necessary to fix GSS’s compensation because GSS is contesting Movant’s proposal to pay GSS only \$20,000 and GSS, having already filed the SCPA 2110 Proceeding, has not waived its right to a hearing (*see* 22 NYCRR 207.45[b]). At such hearing, Barbara’s Objections concerning the legal services provided by GSS may be addressed. The court notes that Barbara filed a verified answer in the SCPA 2110 Proceeding, wherein she questioned the cost and quality of the legal services rendered. The court is, therefore, issuing today an order pursuant to SCPA 501(2)(a) consolidating this aspect of the accounting with the SCPA 2110 Proceeding for purposes of the hearing. The parties will be contacted for a court conference regarding the upcoming hearing.

Tannenbaum’s Legal Fees

Although Tannenbaum appeared in this accounting proceeding on February 29, 2024, it failed to file a responsive pleading, *i.e.*, objections (*see* SCPA 302), to that part of Movant’s petition which sought to fix its fees in the amount of \$20,000.⁴ Thus, Tannenbaum cannot litigate the issue of its fees in the Accounting Proceeding.

Nevertheless, there remains the issue of Barbara’s Objections to Movant’s proposed payment of \$20,000 to Tannenbaum. To obtain summary dismissal of that objection, Movant

⁴ In fact, Tannenbaum did not even submit an affirmation of legal services in support of its fees (*see* 22 NYCRR 207.45[a]).

must make out a prima facie case that Tannenbaum is entitled to a fee award of \$20,000.⁵ Here, Tannenbaum represented Nancy over the course of several years, including the period during which Nancy received Letters of Temporary Administration for Decedent's estate. Additionally, in his motion papers, Movant highlights the fact that "there was a significant bona fide disagreement between [Barbara and Nancy] requiring extensive legal work, litigation, and Court intervention" (Winters' Aff. ¶40). The conclusion that Tannenbaum provided at least \$20,000 in legal services as Nancy's counsel is further supported by the legal work reflected in numerous letters drafted by Nancy's Tannenbaum attorney in 2013 and 2014, which Barbara appended to the Objections and which Movant submitted in support of the motion.

The court notes that accountings are equitable in nature, and in fixing the compensation of attorneys who provide legal services to fiduciaries, the court is "not required to provide detailed calculations for its fee award" (*Matter of Hofmann*, 38 AD3d 366, 367 [1st Dept 2007]). Based on this record, the court concludes that Movant made a prima facie case. In the absence of any opposition by Barbara, and Tannenbaum having failed to formally object to Movant's proposed payment of \$20,000, summary judgment is granted as to this objection, which is accordingly dismissed.

The court has considered the parties' remaining contentions and finds them to be without merit or academic in light of the above determinations.

Conclusion

For the foregoing reasons, Movant's motion for summary judgment is granted to the extent that the account is judicially settled except as to GSS's legal fees, and the Objections are dismissed except for those pertaining to GSS's legal fees. However, Movant's request to

⁵ Nancy, the individual to whom Tannenbaum rendered the legal services at issue, concurs with Movant's assessment that a fee award of \$20,000 is proper.

distribute Nancy's share of the estate to Nancy outright cannot be granted, in the absence of a proper application requesting that the creation of the supplemental needs trust envisioned in Article FOUR (B) of Decedent's Will be dispensed with because Nancy does not meet the definition of a person under disability or for any other reason.

This decision constitutes the order of the court.

The Clerk of the Court is directed to email a copy of this Decision and Order to the individuals listed below.

Dated: April 10, 2026


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