

Matter of Marcano

2026 NY Slip Op 32061(U)

May 27, 2026

Surrogate's Court, New York County

Docket Number: File No. 2025-126

Judge: Rita Mella

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ENTERED

MAY 27 2026

DATA ENTRY DEPT
New York County Surrogate's Court

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

-----X
In the Matter of the Probate Proceeding, Will of

RAYMOND MARCANO,

DECISION and ORDER
SETTING DEADLINES
FOR DISCOVERY AND
FILING OF OBJECTIONS
File No.: 2025-126

Deceased.

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

The following papers were considered by the court in determining this motion to preclude the filing of probate objections (CPLR 2219[a]):

Papers

Numbered

Amended Notice of Motion, and Affirmation of Alan Vaitzman, Esq.,
In support

1, 2

At the call of the calendar on March 31, 2026, the court denied the motion of Luz Minerva Marcano (Movant or Proponent) to preclude Sharlene Marcano (Respondent) from filing objections to probate in the estate of Raymond Marcano. The following memorializes the court's determination from the bench.

Decedent died on January 31, 2024, at age 60. His sole distributees were Movant (his wife) and Respondent (his daughter). Under the propounded instrument, dated July 27, 2007 (2007 Instrument), decedent left his entire estate to Movant and nominated her as Executor.

The citation in the probate proceeding was initially returnable on June 9, 2025, but prior to the return date Respondent requested an adjournment to allow her time to consult with counsel and stated that she intended to object to probate of the 2007 Instrument because a later will exists. The court notified the parties by email that the citation return date would be adjourned to July 7, 2025, for Respondent "to retain/consult counsel and/or file verified objections." Such

email also stated that, if “no subsequent requests are made,” it would be assumed that Respondent would not be objecting to probate and “the file [would] move forward.” After Respondent failed to request pre-objection discovery (SCPA 1404) or file verified objections (SCPA 1410), Proponent filed the instant motion, arguing that “the time to file objections had expired.”

The court observed on the record on March 31st, that the motion’s return date had been adjourned twice at Respondent’s request and that she did not file opposition papers by a court-ordered deadline. The court also considered the delay occasioned by Respondent’s failure to seek discovery or file objections. However, the court noted that it has an independent responsibility to ensure the validity of every instrument admitted to probate (*see* SCPA 1408; *Matter of Velasquez*, 121 AD3d 576 [1st Dept 2014]).

Here, contrary to Movant’s contention, the time to file objections had not expired. The court typically issues a scheduling order with deadlines for pre-objection discovery and the filing of objections, but had not yet done so prior to the filing of the instant motion, leaving Respondent without a timeline for pursuing her discovery or objections, if any. In any event, even if there had been such a deadline, the court has discretion to extend the time to request SCPA 1404 discovery or to file objections in furtherance of its obligation, pursuant to SCPA 1408, to determine that a will is properly admitted to probate (*Matter of Rizzi*, 60 AD3d 953 [2d Dept 2009]; *Matter of Orlowski*, 281 AD2d 422 [2d Dept 2001]; *Matter of Kryk*, 15 Misc 3d 1133 [A][Sur Ct, Monroe County 2007]).

Under these circumstances, and after having heard from the parties, the court denied the motion to preclude the filing of objections. The court also denied as premature the balance of

Movant's requested relief, *i.e.*, admission of the propounded will to probate and issuance of letters testamentary.

Accordingly, the court hereby orders and directs that:

- (1) Any and all pre-objection discovery pursuant to 1404 shall be noticed or demanded on or before June 30, 2026;
- (2) All pre-objection probate discovery and disclosure shall conclude no later than September 4, 2026, 2026;
- (3) Verified Objections to Probate, if any, shall be filed with the court and served on Proponent's counsel, no later than September 18, 2026;
- (4) If Verified Objections are filed, Proponent shall, if applicable, promptly provide a proposed citation to the court for issuance pursuant to SCPA 1411, and then effect service on all interested parties;
- (5) There shall be no extensions of any of the above deadlines without prior court approval. If the parties are in agreement regarding the extension of any deadline, then prior to the deadline sought to be extended, they shall provide a stipulation of all parties extending such deadline with a letter explaining what discovery has been taken to date, what discovery remains to be taken, and the reasons for the requested extension. If the parties are unable to stipulate to the extension of a deadline, then the party seeking such extension must make a request in writing prior to the deadline sought to be extended and must indicate that the consent of all other parties was requested but not secured. Please further note that any correspondence with the court, including emails, must be copied on the other appearing parties; ex-parte communications may be disregarded and not read;

(6) The failure of any party to comply with the terms of this Decision and Order may result in sanctions, including without limitation, waiver, preclusion, or dismissal or discovery, claim or counterclaim or the issuance of a default judgment or decree.

The Clerk of the Court shall email this Decision, which constitutes the order of the court, to counsel for Movant and to Respondent at the email addresses listed below.

Dated: May 27, 2026

TO:

Alan Vaitzman, Esq.
Counsel for Movant Luz Minerva Marcano
AVaitzman@MorganLegalNY.com



SURROGATE

Sharlene Marcano
Pro Se Respondent
sharla616@gmail.com