Matter of Estate of Delaney
2026 NY Slip Op 32083(U)
June 11, 2026
Surrogate's Court, New York County
Docket Number: File No. 2017-2414/B/C/D
Judge: Hilary Gingold
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JUN 11 2026

DATA ENTRY DEPT
New York County Surrogate's Court

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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In re: Estate of George Delaney

DECISION AND ORDER
File No.: 2017-2414/B/C/D

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GINGOLD, S.

The following papers were read in making its determination in this contested accounting proceeding:

Petition - Compel Fiduciary to Account 1
Petition - Suspend, Modify, Revoke or Remove a Fiduciary 2
Affidavit of Urgency with Exhibits A-G 3-10
Answer/Objection with Exhibits 1-8 11-21
Affirmation in Opposition 22
Voluntary Affidavit 23
Amended Voluntary Affidavit 24
Affidavit of Assets and Liabilities 25
Notice of Appeal 26
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Before the court is a petition filed by a distributee of the Estate of George Delaney, seeking to remove the Administrator and appoint the Public Administrator, as Administrator, D.B.N. and compel an accounting. The Administrator opposes this relief and seeks to vacate two settlement orders. The applications are granted in part and denied in part, as discussed herein.

Procedural and Factual History

George Delaney (hereinafter, "George") died intestate on June 16, 2017, survived by three brothers, Andrew, John and Paul. A Certificate of Voluntary Administration was issued to Andrew on June 21, 2017. Full Letters of Administration were issued to Andrew on March 20, 2023[1]. The assets now in dispute in George's estate came from the estate of their mother, Maura Rubencamp (hereinafter, "Maura") who died testate in December 2016. The Ulster County Commissioner of Finance (hereinafter "Commissioner") was appointed Administrator, C.T.A., in Maura's estate after preliminary letters were denied to John after George died.

By final decree entered January 11, 2023, Surrogate Court of Ulster County (Sara McGinty, S.) ordered distributions from Maura's estate to George's estate identified as $49,147.33 remaining after administration and estate expenses, and a 2004 Mercedes Benz valued at $5,071.[2] As is relevant to this dispute, the decree also directed that Maura's property in Bearsville, New York (hereinafter, "Bearsville Property") be transferred by executor's deed to John. Under the terms of Maura's 2013 will, that property had been left to George and John, as joint tenants with rights of survivorship. Despite the clear delineation of ownership, Andrew's position has remained unchanged – namely, that 50% of the Bearsville Property passed to George's estate upon his death.

In October 2022, Surrogate McGinty dismissed Andrew's initial objections to the Commissioner's final judicial accounting of Maura's estate due to lack of standing on the ground that Andrew lacked full Letters of Administration in George's estate. After acquiring Letters of Administration in George's estate, on or about May and June 2024, Andrew renewed his objections to the Commissioner's final accounting, in both his individual capacity as well as Administrator of George's estate. In a letter/decision dated July 11, 2024, Surrogate McGinty dismissed Andrew's renewed objections as untimely. Andrew filed an appeal to the Appellate Division, Third

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[1] Exhibit C of Andrew's Answer/Objections erroneously states that Letters of Administration issued in March 23, 2024.

[2] The decree dated January 11, 2023, is a partial decree and provides a value for the 2004 Mercedes Benz, the cash value but does not separately reference a value to personal property and artwork.

Department, and based on court records, the Third Department denied Andrew's appeal (J. Pritzker, March 12, 2026, CV-24-1374).

On October 17, 2025, the return date before this court on John's application to compel an accounting and remove Andrew as administrator of George's estate and appoint an Administrator, D.B.N., John, Andrew, and the Public Administrator appeared. Andrew admitted receiving the cash value of Maura's assets to administer in George's estate. John claimed he is entitled to a full 1/3 interest in George's estate as a distributee, or $16,381.00. Moreover, he claimed that he is the owner of the Bearsville Property, as tenant by right of survivorship following George's death. Further, John argued that Andrew was intentionally "blocking" the sale of said premises by clouding title with his appeal, making it impossible to sell the home and subjecting it to foreclosure. Andrew admitted on the record he paid himself and Paul, as distributees, $13,000 each out of George's estate, as well as administrative expenses. Andrew's position is John is not entitled to a distribution because John converted artwork and the car, both of which were in John's control.

Following the call of the calendar, a conference was held and John and Andrew agreed to settlement terms, which the court memorialized in two orders dated October 23, 2025. The essential terms of the first October 23, 2025 order (First Order) included that John would 1) withdraw, without prejudice, his petition to compel an accounting from Andrew, and 2) accept $9,400 from George's estate as his full intestate share, which was to be paid directly to his former counsel in Maura's estate. Andrew agreed to permit John to sell or dispose of real and personal property and would in good faith pursue an insurance claim allegedly owed to Maura.[3] The terms of the second October 23, 2025 order (Second Order) concerned a bequest of artwork in Maura's will. Andrew and John agreed that the artwork located at the Bearsville Property had little to no

[3] No further information has been provided to this court as to the insurance claim.

value [4] and Paul could retrieve his 1/3 selection of artwork by the end of 2025. The court orders memorialized the terms and were both mailed and emailed to Andrew and John and mailed to Paul. Shortly thereafter, Andrew sent the court a copy of his Notice of Appeal to the First Department seeking to vacate both orders in their entirety.

Non-Appearance

Although not received in proper form, the request to modify or vacate the orders was entertained for an in-person appearance on January 28, 2026 in order to move the matter forward. On January 22, 2026, the court received a letter from Andrew dated January 12, 2026, requesting an adjournment to April, May or June, citing health-related reasons and his age of 64. An email was also received on January 22, 2026 referencing messages from John to Andrew further highlighting the brothers' discord despite their physical distance. Andrew resides in California and John in Ulster County.

In consideration of the inconvenience of travelling a great distance to the court, the court permits virtual appearances. The court notified Andrew that he would be allowed to appear virtually on January 22, 2026, and sent him a link. Andrew responded:

> "I write further to my prior notification to the Court that I have a pre-existing medical appointment on January 28, 2026, which renders me unavailable to appear on that date. I did not request, and do not consent to, substitution of a remote appearance in place of the scheduled proceeding. Due to the previously advised medical conflict, I am unable to appear in any format on January 28, 2026."

The court informed Andrew by email that in the absence of a supporting statement of his inability to appear remotely, the appearance would go forward as scheduled. His response was "I do not consent to the disclosure of personal medical information or the submission of affirmations

[4] No clear value was provided by the parties as to artwork, or whether it was sold or is in possession of one or more brother.

from treating physicians via email, particularly where such information is not otherwise required by statute or prior court order." The court clarified it was not asking his medical provider to disclose personal information but rather something on their office letterhead with respect to his inability to attend this virtual hearing. No further documentation was submitted in any format and the matter proceeded as scheduled. The hearing was held with John, who appeared remotely, and the Public Administrator appearing in person. Andrew chose not to appear in person or remotely.

The granting of an adjournment for any purpose is a matter resting within the sound discretion of the trial court (*Matter of Steven B.*, 6 N.Y.3d 888, 889 [2006]; *Matter of Sicurella v. Embro*, 31 A.D.3d 651 [2d Dept 2006]), and its determination will not be disturbed absent an improvident exercise of that discretion (*see Davidson v. Davidson*, 54 A.D.3d 988 [2d Dept 2008].) This court has explicit provisions in its part rules concerning adjournments, in particular, Part 4 states, "all adjournment requests must be in writing and either on consent of all parties or on prior notice to all parties, be approved by the Court to be effective and all communications with the Court must be contemporaneously sent to all other parties, including self-represented parties." There was no consent from John or the court to an adjournment. Notwithstanding a first request by any party, it is in the court's discretion whether to grant an adjournment.

Andrew was given the option of appearing remotely and failed to provide the court with supporting documentation: a routine request for substantiating a good cause reason for failing to appear or accommodation. In making its determination, the court must undertake balanced consideration of all relevant factors (*see Matter of Claburn v. Claburn*, 128 A.D. 2d 937, 938 [3d Dept 1987]).

The acrimony between the brothers has now permeated into a second estate, with seemingly no end: Andrew's self-serving statements of his inability to appear and move this matter forward, placed the Bearsville property at grave risk of foreclosure and undue harm to John in losing the property. Given Andrew's admissions, all funds have been distributed in George's estate. The court can only conclude, absent documentation of his inability to even appear remotely, despite months of notice, that Andrew's absence was merely an effort to prolong the dispute, and cause the Bearsville Property to wind up in foreclosure. It is the court's understanding that the property valued at approximately $675,000, was encumbered by a lien of approximately ten percent (10%) of its value. Accordingly, the court finds that Andrew defaulted in his appearance and turns to the immediate relief requested.

<u>Stipulations</u>

Stipulations of settlement are favored by the courts and are not lightly cast aside. For a stipulation to be binding and enforceable it must satisfy one of three conditions set forth in CPLR 2104. The agreement must be made between counsel in open court or made in a writing subscribed by the party or his attorney; or reduced to the form of an order and entered. Where a settlement agreement was not signed by defendant or his attorney and was reached at conference which was not recorded and which was informal, and taking place in court's robing room, the settlement agreement was not enforceable (*Signer v Abramowitz*, 45 A.D.2d 677 [1st Dept 1974]). Here, the stipulations, although reduced to two orders, were unsigned by the parties, and objections were raised by Andrew shortly after he received them. There being no allocution on the record, the "First Order" is set aside. As to the "Second Order", it is set aside to the extent that bequests of artwork, if any, already selected by Paul shall not be disturbed.

<u>Compel Accounting</u>

Based upon the record in this proceeding, the court concludes it is in the best interests of this estate to grant John's petition for Andrew to account for his proceedings as administrator

(SCPA 2205[1]). Here, Andrew contends John owes George's estate $12,500 as reimbursement for George's 50% share of Maura's personal property or artwork and $5,071for the Mercedes Benz as valued in the decree. There were no independent evaluations of artwork and the only evidence provided was one email from Andrew reaching out to an estate service.[5] Andrew says the artwork was valued by John and George in their original probate petition. He asserts that furniture and artwork was sold by John under the alias John Rubencamp, and the 2004 Mercedes Benz was sold by John for $600. The partial decree in Maura's estate does not delineate artwork or personal property, leaving it unclear and open to interpretation what values were given to artwork or personal property that constitute George's estate. Based on the record, the court grants John's petition to compel an accounting. Accordingly, the court finds a judicial accounting within sixty (60) days of this decision and order is appropriate.

<u>Request for Removal of Administrator</u>

John commenced the instant proceeding to remove Andrew, as Administrator pursuant to SCPA 711 and 719. Pursuant to SCPA 719, where any of the facts provided in 711 are brought to court, letters may be suspended, modified or revoked, without process. SCPA 711[2] provides that an interested person may petition the court for a decree suspending, modifying or revoking letters issued to a fiduciary on the basis the fiduciary:

> "[w]asted or improperly applied the assets of the estate... or otherwise improvidently managed or injured the property committed to his charge, ... or by reason of other misconduct in the execution of his office or want of understanding, he is unfit for the execution of his office or where he has willfully refused or without good cause neglected to obey any lawful direction of the court contained in any decree or order or any provision of law relating to the discharge of his duty."

[5] Andrew's Answer, Ex. 6

A fiduciary has a responsibility to marshal, manage and preserve estate assets. Andrew failed to show that he took any steps in this court to ensure property was preserved. He alleges that he first asked John to return the car in 2021. John admits that the car was sold, but that it did not occur until after Surrogate McGinty's 2023 decree. Andrew provided scant evidence of diligent efforts made to marshal the artwork upon learning that the assets were being sold. He took no steps to file a turnover proceeding or take any other action to claw-back diverted estate assets or set aside a proportionate share of assets until further determination. Instead, Andrew chose to distribute assets to himself and Paul, while at court agreeing with John that the artwork had little to no value. Andrew did, however, file an action in his capacity as administrator against John individually in the New York County Supreme Court in or about August 2024.[6]

The court may revoke letters of administration if there is a demonstrated "friction, hostility, antagonism between [the] fiduciary and beneficiaries [and] can also disqualify the fiduciary, but only when such enmity threatens to interfere with the administration of the estate" (*Matter of Palma*, 2007 NY Slip Op 3805 [App Div 3d Dept]). Andrew and John have made serious allegations of misconduct against one another over the course of close to ten years, initiated countless legal proceedings and largely eviscerated Maura's original estate assets with fees and expenses associated with vexatious litigation. "The mere fact that an executor has a claim against an estate or is involved in litigation with it or is indebted to the estate or is even in a position of conflict of interest does not justify removal; however, where conflict of interest motivates the fiduciary to seek personal advantage and gain at expense and to detriment of the estate, that will be sufficient to establish the propriety of his removal" (*Matter of Israel*, 64 Misc 2d 1035, 1041 [Sur Ct, Nassau County 1970]). The court finds that Andrew improperly managed the assets in

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[6] John Petition, Ex E, New York County Supreme Court, Index No. 151093/2024

George's estate and took advantage of his role as administrator effectively blocking the sale of the Bearsville Property. He shall not be given any further opportunity to interfere with John's right to sell the subject property. The Third Department has denied Andrew's appeal. No assets remain in George's estate. Therefore, the court finds that it is in the interest of the parties that John's application is granted, in part. Accordingly, Andrew's Letters of Administration are revoked and Letters of Administration, D.B.N. are granted to John. Should there be any other assets in George's estate not already identified or if a distribution to John is warranted following accounting, at such time, the court shall entertain a petition for appropriate relief.

Conclusion

In the manner provided in SCPA 2205, the court may at any time, upon it appearing that it is for the best interests of the estate, make an order requiring a fiduciary to file an intermediate or final account within such time and in such manner as directed by it. Moreover, a petition to compel an account made pursuant to 2206 may request multiple relief (a) pursuant to 711 and 719 to suspend and/or remove a fiduciary who fails to appear on the return date of process without showing a satisfactory excuse therefore, appointing an eligible person to succeed a fiduciary whose letters have been suspended or revoked., .

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the request to vacate the First October 23, 2025 Order is granted; and it is further

ORDERED, ADJUDGED and DECREED that the request to vacate the Second October 23, 2025 Order is granted subject to the limitation set forth above; and it is further

ORDERED, ADJUDGED and DECREED that Andrew Delaney shall account as to the sums listed in the partial decree within sixty (60) days of the date of this Decision and Order is served on him with notice of entry; and he shall file together with his account, a petition for its judicial settlement and all information necessary for citation to issue to necessary parties, and that he cause citation to be issued and service to be made without undue delay, on all persons interested in the accounting proceeding pursuant to SCPA 2210; and it is further

ORDERED, ADJUDGED and DECREED that Letters of Administration heretofore issued to Andrew Delaney are revoked; and it is further

ORDERED, ADJUDGED and DECREED that Letters of Administration, D.B.N. shall issue to John Delaney, to serve in place and stead of Andrew Delaney, without bond, and it is further

ORDERED, ADJUDGED and DECREED that Andrew Delaney shall file an account of his transactions as Administrator together with a petition for its judicial settlement on or before September 30, 2026. Andrew Delaney shall then cause citation to be issued and service to be made without undue delay on all parties interested in his accounting proceeding pursuant to SCPA 2210.

This constitutes the order of the court.

The clerk of the court shall email and mail the within order to the parties at the addresses noted below.

Dated: June 11, 2026

SURROGATE