

Matter of DeRosa

2017 NY Slip Op 30550(U)

March 13, 2017

Surrogate's Court, Nassau County

Docket Number: 2011-363502/B

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**In the Matter of the Judicial Settlement of the
Accounting by Robert K. Baker, Executor,
under the will of**

DECISION

**File No. 2011-363502/B
Dec. No. 32170**

**ROSE M. DEROSA,
Deceased.**

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition for Judicial Settlement of Account.....	1
Accounting by Executor.....	2
Citation & Proof of Service.	3
Supplemental Citation & Proof of Service.	4
Affidavit of Alphonso V. DeRosa Objecting to Settle Decree.....	5

I. PROCEDURAL HISTORY

Before the court is a petition for the settlement of the final account of Robert K. Baker as executor of the estate of Rose M. DeRosa, filed on September 18, 2014. The executor requests that he be reimbursed for sums he expended for attorney and accountant fees totaling \$8,725.00 of which \$4,693.00 has been reimbursed and \$4,032.00 remains unpaid. The executor also seeks allowance of additional attorney’s fees due to Charlene K. Verkowitz in the amount of \$1,291.75. The account shows total charges to the executor in the sum of \$5,432.26. The account also contains a Schedule D claim in favor of the Nassau County Department of Social Services in the sum of \$369,183.15; the estate is therefore insolvent.

Alphonso V. DeRosa, decedent's son and a residuary beneficiary under the will, did not file objections to the will, but filed a letter objecting to the settlement of a decree approving the account, asserting that there were unclaimed funds on deposit with the New York State Comptroller.

II. BACKGROUND

The decedent, Rose M. DeRosa, died on December 1, 2010. Her will, dated June 2, 2008, set forth certain specific bequests of personalty¹ and left the residuary estate to her children and the children of any predeceased children. The estate is insolvent, having insufficient funds to pay administration expenses.

III. THE ACCOUNT

The Executor's account covers the period from December 1, 2010 through June 30, 2014. The principal account shows the receipt of \$5,429.62. The income account shows interest income collected in the amount of \$2.64 for total income of \$5,432.26. The estate's funds were reduced by administration expenses of \$4,693.00 to the executor as reimbursements, \$319.00 for insurance, and the purchase of a headstone for \$420.00 for a total of \$5,432.00, leaving a balance of on hand of \$0.26. The executor seeks: approval of the accounting; the fixing of fees for the services of the attorneys; reimbursement of monies personally advanced by the executor for professional fees; and authorization to distribute the net estate.

IV. FEES

¹ The specific bequests were made, except that Blue Danube dinnerware bequeathed to Leanne DeRosa, that was being held by Charlene Verkowitz has presumably been turned over to the executor pursuant to the court's order of March 3, 2016.

Regarding the fees of the attorneys for the executor, the court bears the ultimate responsibility for approving legal fees that are charged to an estate or trust and has the discretion to determine what constitutes reasonable compensation for legal services rendered (*see Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of Vitole*, 215 AD2d 765 [2d Dept 1995]; *Matter of Phelan*, 173 AD2d 621, 622 [2d Dept 1991]). The Surrogate is required to exercise his or her authority "with reason, proper discretion and not arbitrarily" (*see Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; *Matter of Wilhelm*, 88 AD2d 6, 11-12 [4th Dept 1982]).

The court has not received an affirmation of services from either of the executor's attorneys and accordingly cannot determine the propriety of the \$3,600.00 paid to attorney Pupke, the \$5,000.00 paid to attorney Verkowitz, or the additional \$1,291.75 sought by attorney Verkowitz. The attorneys are directed to file affirmations of legal services within 30 days of the date of this decision and order. Failure to comply with this direction may result in the denial of any fee for services and an order directing the disgorgement of fees already received.

V. THE UNCLAIMED FUNDS

The funds are in an indeterminate amount. Although the executor's attorney represented that efforts would be made to recover the unclaimed funds, to date neither the executor nor either of his attorneys have advised the court regarding the status of the unclaimed funds. If he has not already done so, the executor is directed to make application to recover the unclaimed funds within 14 days of the date of this decision and order.

VI. NASSAU'S CLAIM

No one has objected to Nassau's claim. It appears that the claim is presumptively valid and the executor has apparently allowed it.

VII. CONCLUSION

The executor's accounts are not approved, at this time. The executor is directed to file the necessary papers with the New York State Comptroller's Office to collect the unclaimed funds identified by Alphonso DeRosa, if he has not already done so. Counsels are directed to file affidavits setting forth the legal services they performed together with time sheets, within thirty days of the date of this order. The executor is directed to file not later than May 12, 2016 an affidavit bringing his account down to date with specific reference to the unclaimed funds.

A compliance conference is scheduled for May 31, 2017 at 9:30 a.m. at which the executor and his current attorney are directed to appear.

This constitutes the decision and order of the court.

Dated: March 13, 2017
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Robert K. Baker
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