

Matter of Brooks

2017 NY Slip Op 30911(U)

April 13, 2017

Surrogate's Court, New York County

Docket Number: 2013-51/J

Judge: Rita M. Mella

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

New York County Surrogate's Court

Date: APRIL 13, 2017

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In the Matter of the Petition of GENEYA BROOKS, as
Administrator of the Estate of

ALPHONSO D. BROOKS,

Deceased,

DECISION

File No.: 2013-51/J

to Have the Court Fix the Attorney's Fees of Charles
Sabel, Esq., and to Compel Charles Sabel to Deliver the
Papers and Funds of the Estate.

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M E L L A, S.:

Geneya Brooks, administrator of the estate of Alphonso D. Brooks, has petitioned for the court to determine, pursuant to SCPA 2110, the legal fees of her prior counsel, Charles Sabel, Esq. The petitioner asks that legal fees be awarded in a significantly-reduced amount from that requested. Sabel has objected to the reductions. All parties have consented to have this matter determined on the submissions without the need for a trial.

Background

A brief history here will put this dispute in context. Alphonso D. Brooks died on November 1, 2012, survived by two adult daughters, Geneya Brooks and Sara Smith, and two infant sons, Alphonso Brooks and Alexander Brooks. Geneya Brooks ("Brooks") became the administrator of her father's estate on May 7, 2013, after which ensued litigation surrounding the sale of certain real property. That litigation having concluded, Nancy Thomas, the guardian of the infant sons, petitioned to compel Brooks to account for her proceedings as administrator. At a conference following the return date of the compel accounting proceeding, Brooks appeared by attorney Charles Sabel ("Sabel"), whom she had just retained to address the accounting matter. Pursuant to a decision of this court dated May 18, 2016, Brooks was directed to account within

60 days of the service of the order. Service was effectuated on June 10, 2016.

On the eve of the date the accounting was due, Sabel contacted the attorney for Thomas and obtained consent to a short extension of the due date for the accounting. Sabel attempted to file the accounting, but it was insufficient and rejected by the court for filing. Sabel allegedly made revisions to the account, but by then relations between him and his client, Brooks, had irreparably broken down, and the relationship was terminated. Brooks retained a new attorney, Tatia Barnes, but Sabel asserted a retaining lien seeking outstanding legal fees before he would turn over the client files.

In the meantime, Thomas petitioned the court to remove Brooks as administrator for her failure to account. Brooks then filed the instant petition to fix the legal fees of Sabel at a reduced rate and sought to have the client files turned over so that she could complete the papers and commence the accounting. On the record, on November 22, 2016, Sabel agreed to turn over the files, a briefing schedule was set on the issue of legal fees, and Brooks was directed to file her accounting by January 13, 2017. Brooks filed the petition on January 10, 2017, and the removal petition, which had been adjourned to January 20, 2017, was denied as moot.

Current Proceeding

Sabel submitted an invoice to Brooks for legal services and disbursements of \$21,784.25¹ based on 55.15 hours of legal work at an hourly rate of \$395 per hour. He had already obtained a payment of \$10,000 and was seeking the balance. In her petition, Brooks argued that the services listed on the bill were “redundant, vaguely described and unreasonably expended based on the missed deadlines and detrimental end results.” In particular, Brooks rejected the 35.25 hours of

¹ The original invoice erroneously calculated the total to be \$22,102.15.

telephone and electronic communications for which Sabel had billed. She argued that this was unreasonable considering the fact that the work for which Sabel was hired, to prepare and file an accounting in response to the order of the court, was not accomplished.

Sabel responded by asserting that all of the charges were reasonable and necessary and that ninety percent of the phone and email communications were with Brooks. He alleged that the accounting was difficult because of incomplete information he was receiving from Brooks and that, toward the end, she became unreliable. It was Brooks, alleged Sabel, who refused to sign the final version of the accounting papers, preventing him from filing them with the court.

Discussion

The determination of a reasonable attorney's fee in a matter concerning an estate is within the sound discretion of the Surrogate (*Matter of Stortecky*, 85 NY2d 518 [1995]; *Matter of Marsh*, 265 AD2d 253 [1st Dept 1999]). The Surrogate is in the best position to assess the factors relevant to fixing an attorney's fee, including the time expended, the size of the estate, the billing practices in the community, the complexity of the matters, the skill required, the attorney's experience, ability and reputation, the responsibilities involved and the benefit to the estate resulting from the services rendered (*see Matter of Freeman*, 34 NY2d 1 [1974]; *Matter of Potts*, 213 App Div 59 [4th Dept 1925], *aff'd* 241 NY 593 [1925]).

In this case, the attorney has sufficient experience in the area of trusts and estates and his hourly rate is in accordance with the customary rates charged by attorneys of commensurate experience in the field. The fact that over sixty percent of the hourly charges is attributable to email and phone communication with the client is noteworthy. Sabel and Brooks appear to have been in contact nearly every day during the period of his representation. And from the exhibits

submitted to the court, many, if not most, of these contacts were initiated by Brooks (*see Matter of Antin*, NYLJ, Apr. 11, 2016, at 21, col 4 [Sur Ct, NY County] [excessive legal fees were a “self-inflicted wound”]). It is difficult to know whether such communications benefited the estate. Although it is certainly to be expected that an attorney would charge his or her client for time spent engaging in email consultations, in this case, it is not clear why the communications occurred with such great frequency.

What is clear, however, is that attorney Sabel was hired for a very specific purpose, which was to prepare a petition and estate accounting, on Brooks’s behalf, in response to the order of the court. And it was that task which was not completed. And Brooks was at risk of being removed by the court as a result.

The court concludes that a reduction in legal fees, although not as extreme as that requested by petitioner, is warranted in this case. The court fixes the legal fees of Charles Sabel at \$17,605.25. The administrator shall also pay Sabel \$61.15 to reimburse him for disbursements, which have not been contested and are appropriate.

This decision constitutes the order of the court.

Clerk to notify.

Dated: April 13, 2017



SURROGATE