

Matter of Contessa (DeLuca)
2017 NY Slip Op 31261(U)
May 23, 2017
Surrogate's Court, Nassau County
Docket Number: 2013-374086
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**Accounting of Jeffrey DeLuca Public Administrator of
Nassau County as Administrator of the Estate of**

**HELEN CONTESSA a/k/a HELEN RUTH
CONTESSA a/k/a HELEN R. CONTESSA**

Deceased,

PRESENT: HON. MARGARET C. REILLY

DECISION

**File No. 2013-374086
Decision No. 32442**

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

Petition for Judicial Settlement of Account.....	1
Accounting by Administrator.....	2
Waivers and Consents (2).....	3
Affidavit Bringing Accounting to Date.....	4

I. PROCEDURAL HISTORY

Before the court is the first and final account of the Public Administrator for the estate of Helen Contessa a/k/a Helen Ruth Contessa a/k/a Helen R. Contessa (Helen Contessa). Letters of administration issued to the Public Administrator on March 1, 2013. The Public Administrator petitioned the court for judicial settlement of the account and objections were filed by Catherine DiGennaro, decedent’s daughter and respondent. A trial was scheduled for April 18, 2016, with respect to the respondent’s objections, whereby respondent failed to appear. The court noted her default. A pre-trial conference was then scheduled for May 16, 2016, and a further conference was scheduled for June 14, 2016. Respondent failed to appear on June 14, 2016. An order was issued directing the respondent to appear on July 25, 2016. Upon her default, the matter was set down for inquest on September 19, 2016. As a result of the inquest, the account of the Public Administrator was filed on September 22, 2016.

II. BACKGROUND

The decedent, Helen Contessa, was survived by two children, Catherine DiGennaro and Salvatore Contessa, an incapacitated person. Each sibling is entitled to one-half (1/2) of the decedent's residuary estate. Caroline Goodman has been appointed Salvatore's Article 81 guardian.

III. THE ACCOUNT

The account, as brought down to date by affidavit, filed by the Public Administrator, covers the period from March 1, 2013 through May 1, 2015 and shows charges of \$98,419.36 and credits of \$56,740.54, leaving a balance of \$2,590.00 in personal property and \$42,713.82 in cash remaining on hand.

The Public Administrator seeks: approval of the account; approval of commissions; the fixing of fees for the service of the attorney and the accountant; the release and discharge of surety; and authorization to distribute the net estate to the two (2) surviving children of the decedent.

IV. FEES

A. Legal Fees for the Administrator's Attorney

"The Surrogate's Court bears the ultimate responsibility for deciding what constitutes a reasonable attorney's fee, and the evaluation of what constitutes a reasonable attorney's fee is a matter within the sound discretion of the court. In evaluating what constitutes a reasonable attorney's fee, factors to be considered include the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained" (*Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008][internal quotation marks and citations omitted]; *accord*, *Matter of Freeman*, 34 NY2d 1, 9, [1974]; *Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]). The legal fee must bear a reasonable relationship to

the size of the estate (*see Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]).

The court received an affirmation of services from counsel to the Public Administrator. It reflected billable charges totaling \$63,968.50 for 232.10 hours of service rendered through January 5, 2015. The billing records reflect expense charges of \$961.84. The summary of disbursements reflects \$93.60 for in-house copies and \$24.21 for postage. With respect to disbursements, the tradition in Surrogate's Court practice is that the attorney may not be reimbursed for expenses that the court normally considers to be part of overhead, such as photocopying, postage, telephone calls, and other items of the same matter (*Matter of Graham*, 238 AD2d 682 [3rd Dept 1997]; *Matter of Diamond*, 219 AD2d 717 [2d Dept 1995]). In *Matter of Corwith* (NYLJ, May 3, 1995, at 35, col 2 [Sur Ct, Nassau County]), this court discussed the allowance of charges for photocopies, telephone calls, postage, messengers and couriers, express deliveries and computer-assisted legal research. The court concluded that it would permit reimbursement for such disbursements only if they involved payment to an outside supplier of goods and services, adopting the standards set forth in *Matter of Herlinger* (NYLJ, Apr. 28, 1994, at 28, col 6 [Sur Ct, New York County]). The court prohibited reimbursement for ordinary postage and telephone charges other than long distance. Of the itemized disbursements the \$93.60 for in-house copies and \$24.21 for postage are not reimbursable.

Counsel requests a fee of less than twenty-five percent (25%) the anticipated total billing, based on the size of the estate and the fact that the primary beneficiary is a person under disability.

The time records annexed to the affirmation cover the period between November 13, 2013 and January 5, 2015. During this nearly two-year period, counsel prepared and filed the documents necessary for the Public Administrator to serve as the personal representative of the decedent's estate, reviewed financial records, attended conferences and SCPA §1404

examinations, assisted with voiding the deed for real property and preparing contract of sale for same, prepared and filed the judicial accounting and supporting documents, sent and received correspondence and appeared in court.

Counsel has voluntarily offered to reduce their fees to \$20,000.00. Counsel fees are granted in the amount of \$20,000.00 to the Public Administrator, all of which remains due and outstanding. In addition, the Public Administrator is allowed, pursuant to SCPA §1207(4), the reasonable and necessary expenses of the office.

Even though this is a large percentage of the estate, the fee reflects a reduction of almost eighty percent (80%) of actual billable hours.

B. Fee of the Administrator's Accountant

The court has also been asked to review the accountant's fees. Typically, an accountant's services are not compensable from estate assets unless there exist unusual circumstances that require the expertise of an accountant (*Matter of Meranus*, NYLJ, Mar. 31, 1994, at 28, col 2 [Sur Ct, Suffolk County]). The fee for such services is generally held to be included in the fee of the attorney for the fiduciary (*Matter of Musil*, 254 App Div 765 [2d Dept 1938]). The purpose of this rule is to avoid duplication (*Matter of Schoonheim*, 158 AD2d 183 [1st Dept 1990]). "Where the legal fees do not include compensation for services rendered by the accountant, there is no duplication and the legal fee is not automatically reduced by the accounting fee" (*Matter of Tortora*, NYLJ, July 19, 1995, at 26, col 2 [Sur Ct, New York County] [internal citation omitted]).

Although a fee of \$1,150.00 is shown to be due and outstanding to Lisa Rispoli, CPA, an affidavit of services has not been provided. Since the gross estate is under the statutory filing requirement, Federal and New York State estate tax returns were not required. The court cannot award fees for services performed without adequate information detailing the nature of the services performed (*In re Valente's Estate*, 24 AD2d 945, 946 [1st Dept 1965]).

IV.CONCLUSION

The account as filed, is approved, excluding payment to accountant, Lisa Rispoli, CPA, in the amount of \$1,150.00 which is denied, without prejudice, with leave to renew.

Within sixty (60) days of the date of service of this decision, the Public Administrator shall bring this account down to date.

The commission of the administrator is approved subject to audit. The decree shall discharge the surety.

Settle decree.

Dated: May 23, 2017
Mineola, New York

E N T E R:

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

cc: Peter K. Kelly, Esq.
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