

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IMO: WILLIAM J. LINK ESTATE                    )   Register of Wills File No. 292-S

MASTER'S REPORT  
(Executor's Commission)

Date Submitted: November 29, 2010

Draft Report: April 25, 2011

Final Report: May 5, 2011

Joseph Link, *pro se*, Exceptant.

Dennis C. Link, *pro se*, Executor of the Estate of William J. Link.

GLASSCOCK, Master

Before me are exceptions to the second amended final account of the Estate of William J. Link. Exceptions were taken by Joseph J. Link, a son of the decedent. The executor is Dennis C. Link, also son of the decedent. The exceptions were disposed of at a hearing on August 24, 2010, excluding the exception relating to the executor's commission.<sup>1</sup> According to the final account, the executor allowed himself a commission of \$55,557.91. Joseph<sup>2</sup> pointed out at the hearing that an executor's commission of this size is extraordinary in light of the modest size of the estate and the simplicity of the estate plan. The issue has been briefed and this my report on the issue of Dennis's commission.

This is a simple estate. The decedent provided by will that, should his wife predecease him (as actually happened) his personalty was to be distributed among his surviving children "as equally as may be practical in the sole discretion" of the executor. The remainder of the estate, after the payment of taxes and expenses, passed to the trustee of the William and Anna Link Trust (the "trust"). Dennis is trustee of that trust, in addition to being executor of the William J. Link Estate. The trustee's duties are equally simple under the terms of the trust: upon the death of the survivor of William and Anna Link, "the then remaining principle of this trust, including income which has accrued but

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<sup>1</sup> I also reserved decision on the exception to the administrative fee paid to Mrs. Link, wife of the executor, for work done on behalf of the estate. This exception was not address in the exceptant's post-hearing brief, and I deem it waived. In any event, I find the amount paid Mrs. Link reasonable, and any exception to this payment not waived is denied.

<sup>2</sup> I refer to individuals by their first names in this report, not out of disrespect, but in the interest of clarity.

not yet been distributed, shall be paid as follows:” 10 % to each of the ten designated children of the decedent.<sup>3</sup> According to the inventory, the estate consisted of a piece of residential real estate valued at \$485,000; \$5,830.78 worth of stocks and bonds; and cash and certificates of deposit in the amount of \$92,213.68. The debts of the estate were only \$6,172.97. The administrative costs and funeral expenses were less than \$30,000 and the great bulk of the estate expense is the \$55,557.91 that Dennis allowed himself for a commission.

The administrator of an estate is entitled to compensation for his services. 12 Del. C. § 2305 provides that commissions shall be allowed as provided by Rule of this Court. Rule 192 directs this Court in its review of the commission sought by a personal representative. That Rule provides that the amount of any commission must be reasonable, and that this Court may reduce a commission that it finds unreasonable. In order to evaluate the reasonableness of a commission, Rule 192 (b) directs this Court to consider (1) the time spent, (2) the risk and responsibility involved, (3) the novelty and difficulty of the questions presented, (4) the skill and experience of the personal representative, (5) any provisions of the will regarding compensation, (6) comparable rates for similar services in the locality, (7) the character and value of the estate assets, (8) the character and value of the assets not part of the probate estate but which must be valued for purposes of taxes, (9) the time constraints imposed upon the personal

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<sup>3</sup> Trust, Article Third. An eleventh child, Veronica, was not a beneficiary of the trust.

representative, (10) the loss of other business necessitated by acceptance of the administration, (11) the benefits obtained for the estate by the administration. According to Dennis, he expended 293.6 hours in the administration of the estate. He seeks to be compensated for that time at a rate of up to \$200 per hour. I note that the estate was not large and that the risk and responsibility involved were at the lower end of estate administrations. There were no novel or difficult questions presented to the executor. I also note that Dennis holds an advanced degree and appears to be quite knowledgeable and competent. It is difficult to see, however, how the skill and experience he commands added value to the administration of this simple estate. The will itself is silent regarding compensation. Aside from the fact that, according to Dennis, he had to trace the lineage of certain stock assets held by the decedent, the character and value of assets were modest and not of a type to require an extraordinary effort on the part of an administrator. Dennis avers that his professional life imposed significant time constraints and that the opportunity cost of his time was high, and asks that this factor be given substantial weight. Given the length of time this estate and trust has remained open, however, it is clear to me that time constraints and opportunity costs should be a modest part of my analysis here. The most important factors to me, therefore, are time expended (and whether the amount of time expended was reasonable) and compensation for that time in light of comparable rates for similar services in the locality, as well as the value of the probate assets.

Unfortunately, neither the rate charged nor the hours incurred by Dennis are reasonable under the circumstances. Dennis charged an hourly rate of up to \$200 per hour. He argues that this represents his opportunity cost, and states that he avoided hiring professionals such as an attorney or accountant by virtue of applying his superior knowledge to the issues raised in this estate. Nothing in this estate seems to have required more expertise than can have been brought to bear by a paralegal, however, and much of the duties could have been readily performed by a thoughtful layman. Moreover, Dennis seeks to be compensated for 293.63 hours he devoted to the administration of the estate. This estate should not have required nearly 300 hours of administrative time.

Dennis has filed a time log of his time expended with respect to the estate. Many tasks Dennis undertook required what appear to be unduly large amounts of time. For example, the earliest notation for time expended is for October 12, 2006: “phone w/Roberta Smith, Sussex County Register of Wills, Re: Probate - 2:30 p.m., 10/27/06 at Georgetown...need original will, death certificate, registration fee and short certificate payment. Discussed requirements. Continued to work on files.” For this phone call and the additional “work on files” Dennis billed the estate for four hours of time. On January 8, 2007, he billed the estate for a phone call with a painter concerning the exterior power washing and interior painting of the home. Dennis billed the estate one hour for this discussion. On March 30, 2007, Dennis billed the estate for 12.5 hours of time working on the rather minimal estate inventory. The rate for services charged for these hourly amounts range between \$165

and \$200 per hour. Dennis claims that this fee is reasonable because he avoided hiring an attorney, an accountant, etc. However, he cannot have it both ways. No attorney, for example, would reasonably expect to be compensated for the amounts of time that Dennis spent preparing for his initial meeting with the Deputy Register of Wills. Moreover, many hours billed are a result of the holding and management of assets—rather than their distribution in kind or following sale—in a manner not contemplated by the will or trust. It is the large number of hours for which compensation is sought, together with a high hourly rate, that have lead to a proposed \$55,000 commission on an estate with assets consisting of \$98,000 and a house.

This Court has had occasion in the past to modify a commission based on a finding that the hourly rate sought was not reasonable, or the hours expended were not proportional to the needs of the estate. *See, e.g., Estate of Howell*, Del, Ch., No.17760-NC, Noble, V.C. (Dec. 20, 2002)(Letter Op.)at 6 (finding time expended and claimed hourly commission of \$67.50 excessive, in case involving trustee’s commission).

In his post-hearing brief, Dennis attempts to justify the commission he has taken in several ways. He states that the “administration of the estate and trust was uniquely complex due to the extremely large number of beneficiaries (10) and related communication and contact needs....” First, in my experience, ten beneficiaries is not an extraordinary number. Second, the major beneficiary of the estate was the trust, and the trust required immediate distribution in ten equal parts to the ten beneficiaries. This is not

a complicated testamentary scheme. Dennis also states in his briefing that large amounts of time were required to be devoted to the sale of the real property.

Collapse of the housing market made sale of the property impossible to date, requiring continuing administration until the property is sold. The listing real estate professional consultant at this time, advised that it is likely that three to five more years may be necessary for sale of a property with this value and this location and unstable real estate market.

But nothing in the will or trust requires sale of the property. The will simply provides that the real property, as an asset of the decedent, is to pass to the trust. The trust provides that the assets (upon the death of the survivor of Anna and William) shall be distributed to the ten beneficiaries. The trust gives the trustee discretion as to how this distribution should be made: through distribution in kind to the beneficiaries as co-tenants, or through private sale or auction and the distribution of the proceeds thereof. What the trust does make clear is that, “upon the death of the survivor of us, the then remaining principle of this trust, shall be paid....”

To reiterate, there is nothing in this estate that makes it complicated or difficult of administration. While the executor did avoid legal expense, the great bulk of the work in administering this estate and trust would not have overmatched the skill and training of a paralegal. Although much of the work of completing an estate does not require that level of training,<sup>4</sup> I am mindful that the alternative value of his time was high for the this executor, and that he was specifically chosen by the decedent to administer the estate. It

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<sup>4</sup> In Howell (Letter Op.) at 6, the Vice Chancellor reduced the amount of compensation per hour from \$65 to \$20- \$30, based on the nature of the work required of the administrator/trustee.

is therefore appropriate to compensate the executor at the rate charged for paralegal time in Sussex County which ranges (according to my informal survey) between \$75 and \$100 per hour. Because in my experience an estate of this kind can be handled by an efficient administrator in between 150 and 180 hours, even allowing for the tracing of the current assets represented by the estate's superannuated stock certificates (the sole issue in this simple estate requiring more than a standard amount of administrator's time) a fee in the range of \$11,250 to \$18,000 would be reasonable.

Pursuant to Rule 192, a second method for calculating a reasonable fee is available: based on the size of the estate. Prior to a modification in 1996, this Court had a version of Rule 192 that provided that a combined attorney's fee and executor's commission could not exceed an amount provided for in a schedule set out in the Rule, absent a petition to deviate and a finding by this Court that a greater fee was warranted. Similarly, a combined commission and fee at or below the rate set forth in the schedule was *prima facie* reasonable, absent a showing from an objector that given the circumstances a smaller commission and fee should be allowed. Under the rule, deviations from the schedule were to be evaluated by the same factors that determine a reasonable fee under our current Rule 192. That Rule, while omitting the schedule, continues to provide that a commission (and fee) may be established "exclusively on the value of the probate estate, or exclusively on the value of assets includible in the estate for purposes of any tax." In his post-hearing briefing, Dennis points out that a



commission based on the size of the estate is an appropriate way, under the rule, to compute his compensation. Since I have found the time expended and hourly rate suggested by the executor to be excessive, and because the executor has pointed out that he did work which could have been assigned to an attorney for the estate, and thus ostensibly saved the estate from paying this theoretical attorney's fee, it is useful to look at the schedule as it existed before 1996 as a ceiling for both commission and fee. A \$583,044.46 estate under old Rule 192 would have allowed as a *prima facie* reasonable combined fee and commission an amount not in excess of 2.8% of the total estate. In other words, the combined total allowable (without a showing of unusual circumstances) in this estate would have been \$16,325. This is in the range that I have found reasonable under the circumstances of this case. Therefore, it is appropriate to adopt a commission based on 2.8% of the estate, or \$16,325. The executor shall, therefore, amend the final accounting to reflect a commission of \$16,325.

Dennis made it clear at the hearing that he was seeking a commission on his work as both executor of his father's will and trustee of the trust, and that he would not seek a separate trustee's commission. However, he could not tell me what was in the trust, other than the assets arising from the estate. I told Dennis that if he wished to be compensated for his service as trustee of the non-probate assets in the trust, he would need to provide me with a copy of the instrument creating the trust as well as disclose precisely what non-probate assets composed the trust corpus. Dennis has provided me with the trust

document but did not disclose the assets of the trust. Therefore, in making an analysis of a reasonable fee based on the probate estate, I have not considered the value of any non-probate assets in the trust. Dennis did state in his post-hearing brief that the current value of the trust is \$772,400. If this is correct, the non-probate, pre-mortem assets of the trust are valued at around \$189,000. If compensation as trustee (rather than executor) had been sought for the assets of the trust, including the pre-mortem assets, such a commission would be far lower than the amount I have allowed here, owing to the more modest trustee's commission permitted by our rule.<sup>5</sup>

In the post-hearing briefing in this matter, the exceptant asked that I remove Dennis as the executor of the *estate*, because of the delay in selling the house and stock, and distributing the assets to the beneficiaries. The beneficiary to whom those assets should be distributed, however, is the trust. Presumably the assets have been or may now be transferred to the trust and this estate may be closed. Of course, if the exceptant believes that Dennis is breaching his fiduciary duty to the trust beneficiaries *as trustee*, he may bring an action on that basis as he finds appropriate.

/s/Sam Glasscock, III  
Master in Chancery

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<sup>5</sup>See Chancery Court Rules, Rule 132.