

Matter of Bergman

2013 NY Slip Op 32010(U)

August 29, 2013

Surrogate's Court, New York County

Docket Number: 2011-0735

Judge: Rita M. Mella

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

-----X
Probate Proceeding, Will of

DECISION AND ORDER

ARON BERGMAN, also known as
Aron Bergmann,

File No. 2011-0735

Deceased.

New York County Surrogate Court
DATA ENTRY
Date: AUGUST 29, 2013

-----X
-----X
In the Matter of the Application of Sam Horowitz
and Edith Horowitz, Temporary Administrators of
the Estate of

ARON BERGMAN,

Deceased,

File No. 2011-0735/B

for a Turnover of Personal Property Withheld and
Belonging to Decedent.

-----X
M E L L A, S.

Papers Considered

Numbered

Notice of Motion Dated June 27, 2013	1
Affirmation of Kenneth Joelson, Esq. In Support of Motion with Exhibits	2
Affirmation of Lori Anne Douglass, Esq. In Opposition to Motion With Exhibits and Memorandum of Law	3

Two proceedings are at issue in this motion by Jolanta Zebrowska, the nominated executor under decedent Aron Bergman's will: a turnover proceeding, brought against her by certain members of decedent's family, who were appointed temporary administrators for the purposes of pursuing such a proceeding, and a proceeding brought by Zebrowska seeking to probate a July 10, 2010 will of the decedent, to which several family members objected. Under the will, Zebrowska, described as a "friend and caretaker" of the decedent, was given a brokerage account the decedent maintained at Charles Schwab. The rest of decedent's estate was left to his family.

Previously, summary judgment motions in both proceedings resulted in a joint decision by then Surrogate Glen (*see Matter of Bergman*, NYLJ, Oct. 29, 2012, 1202576305790, at *1 [Sur Ct, New York County, Decided October 18, 2012, File No. 2011-0735]). In the turnover proceeding, Zebrowska was directed to turn over to the temporary administrators \$240,580 plus interest (*id.*). In the probate proceeding, the objections to probate were dismissed since no question of fact was raised by the evidence presented (*id.*). Before that decision was issued, the court inquired whether Zebrowska intended to pay the amounts ordered to be turned over from some source other than the Schwab account that was given to her in decedent's will. Because she was not going to pay them from some other source, the decision directed that the assets in the Charles Schwab account be used to satisfy the turnover order.

The current motion by Zebrowska seeks two things. First, Zebrowska seeks to resettle the decree in the turnover proceeding, claiming that she need only turn over the value of the Charles Schwab account, and not, as the March 19, 2013 turnover decree states, that she pay any deficiency between the amount ordered to be turned over and the value of the assets in the Charles Schwab account, if those should prove to be insufficient. As it happened, the assets in that account were insufficient to cover the amounts ordered to be turned over.

Zebrowska's motion was decided as follows. At the call of the calendar on August 21, 2013, the court denied the motion to resettle the court's March 19, 2013 turnover decree because the decree did not incorrectly reflect the court's decision. In denying the motion, the court stated that, in her decision from the bench on June 15, 2012, then Surrogate Glen directed the movant to turn over "all the money that was withdrawn, everything that the [temporary administrators] have asked for . . ." In her written decision of October 18, 2012, modifying the bench decision,

Surrogate Glen directed movant to turn over to the temporary administrators \$240,580 plus interest. The directions of the court were clear in both decisions. While the October 18th order directs that the amounts held in the Charles Schwab brokerage account up to \$240,580 plus interest be turned over to the temporary administrators, nothing in the decision limited the amount to be turned over by movant to the value of that account.

The second portion of Zebrowska's motion involves the probate proceeding, and it asks the court to issue letters testamentary to her. Although the objections to probate were dismissed in the prior summary judgment decision, the temporary administrators have now filed a cross-petition seeking to have letters of administration with the will annexed (letters of administration c.t.a.) issued to them. Their petition is based on allegations that raise concerns about Zebrowska's fitness to serve as executor.

Since the application for letters of administration c.t.a. was adjourned for supplemental citation on the successor executor nominated in the will, the court held that portion of Zebrowska's motion seeking the issuance of letters testamentary in abeyance pending resolution of the cross-petition or further order of the court.

Additionally, the temporary administrators' request for Rule 130-1.1 sanctions was denied at the calendar call.

This decision, together with the transcript of the August 21, 2013 proceedings, constitutes the order of the court.

Dated: August 29, 2013



SURROGATE