

Matter of Hadlock

2014 NY Slip Op 30241(U)

January 23, 2014

Surrogate's Court, Nassau County

Docket Number: 2012-371707/A

Judge: Edward W. McCarty III

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

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In the Matter of the Account of Proceedings of
Anne S. Hadlock,
as Trustee of the

File No. 2012-371707/A

Dec. No. 29392

FRANCIS G. SACCO
CREDIT SHELTER TRUST.

-----X
In the Matter of the Account of Proceedings of
Anne S. Hadlock,
as Trustee of the

File No. 2012-371707/B

Dec. No. 29393

FRANCIS G. SACCO
QTIP TRUST.

-----X
In the Matter of the Account of Proceedings of
Anne S. Hadlock and Madonna A. Sacco,
as Co-Trustees of the

File No. 2012-371708/A

Dec. No. 29395

JEAN P. SACCO FAMILY TRUST,
formerly known as
THE FRANCIS G. SACCO AND
JEAN P. SACCO FAMILY TRUST.

-----X
In the Matter of the Account of Proceedings of
Anne S. Hadlock,
as Trustee of the

File No. 2012-371708/B

Dec. No. 29394

JEAN P. SACCO 2006
IRREVOCABLE TRUST.

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Submitted for decision are petitions for the judicial settlement of three accounts filed by Anne S. Hadlock, as trustee of (1) the Francis G. Sacco Credit Shelter Trust (the "credit shelter trust"); (2) the Francis G. Sacco QTIP Trust (the "QTIP trust"); and (3) the Jean P. Sacco 2006 Irrevocable Trust (the "2006 trust"). Also submitted is a petition for the judicial settlement of the account filed by Anne S. Hadlock and Madonna A. Sacco, as co-trustees of the Jean P. Sacco Family Trust, formerly known as the Francis G. Sacco and Jean P. Sacco Family Trust (the "family trust"). Jurisdiction is complete. No objections have been filed and none of the

interested parties have appeared.

The 2006 trust was the subject of an interim accounting proceeding which culminated in a decree issued by this court on June 24, 2013. Both the QTIP trust and the credit shelter trust were created pursuant to the terms of the 2006 trust.

In connection with each of the four trusts, petitioners ask the court to settle the account and approve commissions and legal fees.

FEES

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]). In discharging this duty to review fees, the court cannot apply a selected few factors which might be more favorable to one position or another, but must strike a balance by considering all of the elements set forth in *Matter of Potts* (123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]), and as re-enunciated in *Matter of Freeman* (34 NY2d 1 [1974]) (see *Matter of Berkman*, 93 Misc 2d 423 [Sur Ct, Bronx County 1978]). Also, the legal fee must bear a reasonable relationship to the size of the estate or trust (*Matter of Kaufmann*, 26 AD2d 818 [1st

Dept 1966], *affd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]). A sizeable estate or trust permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]; *Matter of Reede*, NYLJ, Oct. 28, 1991, at 37, col 2 [Sur Ct, Nassau County]; *Matter of Yancey*, NYLJ, Feb. 18, 1993, at 28, col 1 [Sur Ct, Westchester County]). Moreover, the size of the estate or trust can operate as a limitation on the fees payable (*Matter of McCranor*, 176 AD2d 1026 [3d Dept 1991]; *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]), without constituting an adverse reflection on the services provided.

In connection with each of the four accounts filed by petitioners, the court has thoroughly reviewed the affidavit of legal services and counsel's time records. Contemporaneous records of legal time spent on estate and trust matters are important to the court in determining whether the amount of time spent was reasonable for the various tasks performed (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]; *Matter of Phelan*, 173 AD2d 621 [2d Dept 1991]).

(1) The Credit Shelter Trust

The account for the credit shelter trust shows total charges of \$1,101,783.52 and a balance of \$1,059,613.88 on hand. Legal services in connection with the credit shelter trust were rendered between June 5, 2013 and November 12, 2013. The account spans the period between February 25, 2012 through July 31, 2013, and the petition reflects that the account was filed due to the death of the trust beneficiary.

Counsel has requested a fee of \$7,500.00 for services rendered and to be rendered in connection with this account. For services rendered by counsel in connection with the credit shelter trust, the court fixes the fee of counsel in the amount of \$7,500.00, of which \$4,055.00 has been paid and \$3,445.00 remains unpaid. In addition, the court approves reimbursement of

disbursements in the amount of \$210.00, all of which has been paid.

(2) The QTIP Trust

The account for the QTIP trust shows total charges of \$224,456.94 and a balance of \$206,358.85 on hand. Legal services in connection with the credit shelter trust were rendered between June 3, 2013 and November 12, 2013. The account spans the period from February 25, 2012 through July 31, 2013, and the petition reflects that the account was filed due to the death of the trust beneficiary.

Counsel has requested a fee of \$7,500.00 for services rendered and to be rendered in connection with this account, and an additional fee of \$3,250.00 for the preparation and filing of the estate tax return. For services rendered by counsel in connection with the QTIP trust and the preparation and filing of the estate tax return, the court fixes the fee of counsel in the amount of \$10,750.00, of which \$7,936.25 has been paid and \$2,813.75 remains unpaid. In addition, the court approves reimbursement of disbursements in the amount of \$510.00, of which \$210.00 has been paid and \$300.00 remains unpaid.

(3) The Family Trust

The account for the family trust shows total charges of \$ 424,091.88 and a balance of \$370,090.33 on hand. Legal services in connection with the irrevocable trust were rendered between June 3, 2013 and November 12, 2013. The account spans the 19-year time period between August 14, 1995 and July 31, 2013, and the petition reflects that the account was filed due to the death of the trust donor.

Counsel has requested a fee of \$15,000.00 for services rendered and to be rendered in connection with this account. As of November 12, 2013, counsel had provided legal services billed at \$14,555.00. For services rendered by counsel in connection with the family trust, the

court fixes the fee of counsel in the amount of \$15,000.00, of which \$9,500.00 has been paid and \$5,500.00 remains unpaid. In addition, the court approves reimbursement of disbursements in the amount of \$210.00, all of which has been paid.

(4) The 2006 Trust

The account for the 2006 trust shows total charges of \$566,053.25 and a balance of \$555,395.75 on hand. Legal services in connection with the irrevocable trust were rendered between May 1, 2013 and November 12, 2013. The account spans the period from May 1, 2013 to July 31, 2013, and the petition reflects that the account was filed due to the death of the trust donor.

Counsel has requested a fee of \$7,500.00 for services rendered and to be rendered in connection with this trust. For services rendered by counsel in connection with the 2006 trust, the court fixes the fee of counsel in the amount of \$7,500.00, of which \$2,095.00 has been paid and \$5,405.00 remains unpaid. In addition, the court approves reimbursement of disbursements in the amount of \$335.62, of which \$297.60 has been paid and \$38.02 remains unpaid.

CONCLUSION

Each of the four accounts, as filed, is approved.

The commissions of the trustees are approved subject to audit.

This constitutes the decision of the court.

Submit decree.

Dated: January 23, 2014

EDWARD W. McCARTY III
Judge of the
Surrogate's Court