

Matter of Crosier

2016 NY Slip Op 32038(U)

September 12, 2016

Surrogate's Court, Nassau County

Docket Number: 2011-367803/E

Judge: Margaret C. Reilly

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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 Application for Judicial Settlement DECISION
of the Account of Proceedings of Michael D. Solomon, File No. 2011-367803/E
as Executor of the Estate of Dec. No. 31892

**WILLIAM R. CROSIER,
a/k/a WILLIAM CROSIER,**

Deceased.

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PRESENT: HON. MARGARET C. REILLY

The following papers have been considered in the preparation of this decision:

Petition for Settlement of Account 1
Account 2
Citation 3
Report of Guardian ad Litem 4
Decision of Court Dated March 26, 2014 5
Affirmation of Legal Fees 6

I. PROCEDURAL HISTORY

Michael D. Solomon is petitioning for the judicial settlement of his final account as preliminary executor, of the estate of William R. Crosier.

II. BACKGROUND

William R. Crosier(the decedent) died on November 19, 2011, survived by three adult children: Joseph Crosier, Robert Crosier and Linda Morfi. His last will and testament, dated February 8, 2010 and codicil dated November 8, 2011 were admitted to probate by this court on April 13, 2016.

The petitioner's account was filed in August of 2015; citation issued on October 6, 2015. A guardian ad litem was appointed to represent the interests of three infants who are residuary beneficiaries. He filed his report and has no objections

III. RELIEF REQUESTED

A. Relief Sought by Petitioner

As stated in his petition and the citation, the petitioner seeks settlement of his account and approval of unpaid attorneys' fees and disbursements, specifically for approval of the following unpaid legal fees: to Andrew Bensi, Esq., the sum of \$2,200.00; to Solomon & Herrera, PLC, the sum of \$6,000.00 in legal fees and \$1,500 in disbursements; and to Forchelli, Curto, Deegan, Schwartz, Mineo & Terran, LLP, the amount of \$1,800.00 which represents a reduced amount of the fee awarded to a guardian ad litem. The current guardian ad litem has offered to waive his fee.

IV. THE ACCOUNT

The account, which covers the period from September 6, 2012 through April 27, 2015, shows total charges of \$36,233.59 and total credits of \$2,500.00, leaving a balance on hand of \$33,733.59.

V. FEES

Regarding the fees of the attorney for the estate, the court bears the ultimate responsibility for approving legal fees that are charged to an estate and has the discretion to determine what constitutes reasonable compensation for legal services rendered in the course of an estate (*see Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of*

Vitole, 215 AD2d 765 [2d Dept 1995]; *Matter of Phelan*, 173 AD2d 621, 622 [2d Dept 1991]). While there is no hard and fast rule to calculate reasonable compensation to an attorney in every case, the Surrogate is required to exercise his or her authority "with reason, proper discretion and not arbitrarily" (*Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; see *Matter of Wilhelm*, 88 AD2d 6, 11-12 [4th Dept 1982]).

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (see *Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (see *Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (see *Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (see *Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (see *Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (see *Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (see *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 (*see Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *aff'd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *aff'd* 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]).

The fee of the prior guardian ad litem, Donald Jay Schwartz, Esq., who is a member of the firm Forchelli, Curto, Deegan, Schwartz, Mineo & Terran, LLP, was fixed by decision of this court dated March 26, 2014 in the amount of \$10,000.00. The guardian ad litem subsequently agreed to a reduced fee in the amount of \$1,800.00. The application to pay Donald Jay Schwartz, Esq. the sum of \$1,800.00 is **GRANTED**.

Daniel Herrera, the attorney for the petitioner, submitted an affirmation of legal services in which he seeks approval of a legal fee of \$6,000.00 and disbursements in the amount of \$1,500.00. The attorney affirms that he has incurred legal fees in excess of \$30,000.00 but he is willing to accept a reduced fee of \$6,000.00. The attorney affirms that he performed the following services: met with the client; reviewed papers; prepared petitions to be filed with the court; engaged in multiple conferences with the various parties as well as the court; assisted with the sale of real property; and prepared numerous letters and emails. With regard to the disbursements, the attorney affirmed that he incurred costs for the following: filing fees, service of process (multiple times); title

search fees; fees for certified copies of the death certificate; as well as fees for due diligence searches and bank searches. The application to fix the fees in the amount of \$6,000.00 and disbursements in the amount of \$1,500.00 is **GRANTED**.

The citation requests that the court fix the fee of Andrew Bensi, Esq. in the amount of \$2,200.00, none of which has been paid. As the attorney did not file an affirmation of legal services, the application is **DENIED**.

The application to judicially settle the account is **GRANTED**.

The petitioner is directed to settle a decree simultaneously with the settlement and filing of an affidavit bringing the account down to date so that the endpoint of the discharge of the executor in the decree will be the closing date shown on the affidavit bringing the account down to date, rather than the closing date of the account as originally filed which was prior to the will's admission to probate.

Dated: September 12, 2016
Mineola, New York

E N T E R:

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

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