

Matter of Inman

2016 NY Slip Op 32306(U)

November 21, 2016

Surrogate's Court, New York County

Docket Number: 1954-2656/B

Judge: Nora S. Anderson

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SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court

Date: November 21, 2016

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In the Matter of the Accounting
Proceedings of Citibank, N.A., as
Continuing Trustee of the Trust Created
by Article EIGHTH of the Last Will and
Testament of

File No. 1954-2656/B

WALKER P. INMAN (SR.),

Deceased.

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A N D E R S O N, S.

In this accounting proceeding by Citibank, N.A., trustee of the trust established under the will of Walker P. Inman Sr., testator's grandchildren, the remaindermen of the trust, move for permission to examine the trustee pursuant to SCPA § 2211 and, to file objections if warranted. For the reasons stated below, the motion is denied.

Decedent died on September 19, 1954. Under Article EIGHTH of his will, he established a trust for the life income benefit of his son, Walker Inman Jr. ("Walker"), with remainder to his son's issue. The trust terminated upon the death of Walker on February 24, 2010. Movants are Walker's two children, twins, who were minors at the time of their father's death. The trustee holds the remainder for their benefit under a power in trust until they reach the age of 21.

In March 2014, the trustee sought judicial settlement of its second intermediate account for the period December 1, 1989, through the date of Walker's death. A guardian ad litem, nominated by the children under SCPA § 403 in another proceeding,

was appointed to represent the children's interests here. The guardian ad litem filed a report on the day her wards turned 18, raising no objection to the account. She reported, however, that one of her wards believed that the trustee had improperly distributed income to Walker when the trustee knew he was of "diminished capacity" and a "junkie." She explained to her ward that the trustee was obligated to distribute income to Walker under the terms of the instrument and that she believed that the trustee "could not be held liable for what [Walker] did with the money, once it was distributed."

After the guardian ad litem filed her report, she notified the court that her wards had turned 18 and that one of her wards did not wish the account to be settled because he believed the trustee had engaged in improper conduct with respect to his father's income distributions. At that point, the proceeding was considered fully-submitted and uncontested. Nonetheless, the court gave the remaindermen an opportunity to seek leave to file objections. This motion followed.

It is not disputed that movants must establish a meritorious basis for pursuing objections. Movants assert that the guardian ad litem did not adequately protect their interests because she did not attempt to hold the trustee liable for making income distributions to Walker, who they allege was of "diminished capacity" and could not "protect himself from financial harm and

exploitation." Accordingly, movants contend that they should be permitted to pursue such objections now.

The trustee makes three arguments in opposition. First, movants' interests were adequately represented in the accounting proceeding by the guardian ad litem. Second, as remaindermen of the trust, movants lack standing to object to mandatory income distributions, and, third, the trustee did not in any event breach its fiduciary duty in making those distributions.

Contrary to movants' contention, the guardian ad litem adequately fulfilled her responsibilities to movants. There is no dispute that the guardian ad litem's appointment was necessary to complete jurisdiction. She fulfilled her responsibilities by filing a timely and comprehensive report on behalf of her wards, addressing the substance of the account in detail, as well as the merits of movants' concerns regarding the trustee's conduct in making income distributions to their father. That movants do not agree with the guardian ad litem's conclusion that there is no basis upon which to object to the income distributions to Walker does not render her services inadequate.

In their motion papers, movants all but ignore the fatal defect in their application, one that was intimated in the guardian ad litem's report: Movants lack standing to object to any issue relating to the trustee's distributions of income to Walker. Generally, only a person who has a pecuniary interest in

the fund that could be affected by the fiduciary's alleged act or omission has standing to file objections (see *Matter of Rubin*, NYLJ, Aug. 6, 1991, at 25, col 4 [Sur Ct, NY County 1991], citing 5 Cox-Arenson-Medina, New York Civil Practice, SCPA § 2211.02[3]; see also *Matter of Malasky*, 290 AD2d 631 [3d Dept 2002]; *Matter of Rapaport*, NYLJ, June 6, 1989, at 21, col 1 [Sur Ct, Westchester County 1989]). Here, Walker was the sole mandatory income beneficiary of the trust during his life. Consequently, even assuming that movants' allegations of fiduciary misconduct could result in a surcharge, such surcharge would inure not to the benefit of movants, but rather, to Walker's estate.

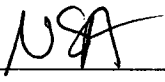
Movants do not argue this point. Instead, they contend (without citation to any authority) that their interest in the proceeding is "manifest" because they are the primary beneficiaries of their father's estate. This fact, however, does not give movants standing, since Walker's estate has a duly appointed fiduciary. Such fiduciary (movants' step-mother), who was appointed in Wyoming, was properly cited in this proceeding under SCPA § 2210, but defaulted.

Movants contend that their step-mother is hostile to them and that it is therefore up to them to protect their interests in this proceeding. This ignores that movants' step-mother has a fiduciary duty to them as beneficiaries of Walker's estate and that they could pursue available remedies for any breach of such

duties. Moreover, in the absence of specific authority to represent Walker's estate in this proceeding, movants' only interests in the trust are those of remaindermen (*cf.* SCPA § 702), *i.e.*, parties who lack standing to object to income distributions made to their father. Such circumstances require denial of this motion. Accordingly, the court need not address whether the trustee had a fiduciary duty to take steps to protect Walker from himself.

This decision constitutes the order of the court. Settle decree on accounting.

Dated: November 21, 2016



S U R R O G A T E