

Matter of Booker

2017 NY Slip Op 32622(U)

December 14, 2017

Surrogate's Court, New York County

Docket Number: 2010-3123/F,G

Judge: Nora S. Anderson

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SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court

Date: December 14, 2017

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In the Matter of the Application of
Troy Booker, an Interested Person, for
the Removal of Wesley Booker, as
Administrator D.B.N., in the Estate of

File No. 2010-3123/F,G

HENRY BOOKER,

Decision and Order

Deceased.

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A N D E R S O N, S.

This is a proceeding to remove Wesley Booker as administrator of the estate of Henry Booker and to appoint the Public Administrator as administrator d.b.n.

The long history of this estate requires brief discussion. Decedent died intestate on September 3, 2010, survived by four children. Two of them, Adrienne Booker and Wesley Booker, were appointed co-administrators on May 26, 2011. At the time of his death, decedent owned a valuable brownstone in Manhattan. When Adrienne, as co-administrator, transferred the property to herself, Wesley commenced a proceeding seeking 1) to vacate the deed, 2) to remove Adrienne as his co-fiduciary, and 3) to compel her to account. By order dated July 14, 2015, the court directed Adrienne to account within 30 days of service of notice of entry of the order, which was effected on July 20, 2015. She failed to account as directed. Thereafter, the parties stipulated to 1) the entry of a consent order which vacated the deed, thus restoring title to the estate, and 2) allowing Adrienne another opportunity to account by November 16, 2015. Again, Adrienne failed to

account.

Although in seeking Adrienne's removal Wesley himself had alleged that Adrienne had engaged in misconduct, including collecting the substantial rental income from the brownstone and using the funds to satisfy her personal debts, Wesley did not take any further action. He did not seek an order holding Adrienne in contempt for her failure to account or to recover for the estate the funds that he alleged she had taken for herself.

Citing Wesley's own inaction, the guardian ad litem for decedent's son Troy Booker, who is under a disability, asked the court for permission to commence a proceeding to remove both Adrienne and Wesley and to recoup the funds Adrienne had allegedly converted. In an October 26, 2016 decision, the court sua sponte revoked Adrienne's letters of administration for failure to account (SCPA § 719[1]) and authorized the guardian ad litem to commence the instant proceeding seeking removal of Wesley and the appointment of a successor fiduciary (see *Matter of Booker*, NYLJ, Oct. 31, 2017, at 19, col 1 [Sur Ct, NY County 2016]).

The matter was first on the court's calendar for October 6, 2017, but was adjourned at Wesley's request to October 31, 2017. On October 31, 2017, Wesley appeared without counsel and did not file responsive papers. After a conference with a court attorney, Wesley was given a week to decide if he wanted to oppose the

petition and file a responsive pleading. One week later, Wesley informed the court that he would retain counsel the next day and file an answer by November 15, 2017. However, one month later, Wesley has not appeared by counsel or filed a responsive pleading to contest the allegations against him. Nor has he contacted the court to request additional time to do so.

One of the many reasons that the guardian ad litem was compelled to bring this proceeding on behalf of Troy Booker was his concern that Wesley was woefully mismanaging the estate's largest asset, the brownstone. It is undisputed that the building is now in foreclosure as a result the failure of Adrienne and Wesley to pay the mortgage when due, notwithstanding the substantial rents collected from the building. In addition, Wesley, despite having had every opportunity, has yet to respond to the allegations of serious misconduct, including the charge that he has joined Adrienne in converting the estate's rental income for personal use. Wesley has not denied these allegations in a pleading, and the court therefore deems them to be true (SCPA § 509).

As a fiduciary, Wesley is obligated to administer the estate in the best interests of all the distributees. Instead, he has indisputably failed to act for the benefit of the estate by, at the very least, allowing whatever equity remains in the brownstone to be depleted. Based upon the undisputed facts,

Wesley's removal is warranted under SCPA § 711. So, too, is the appointment of the public administrator to serve as administrator d.b.n., since Tyrene Washington, the only other distributee who might qualify to serve as administrator, has filed a waiver and consent. Accordingly, it is hereby

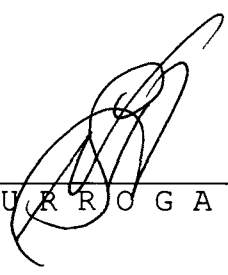
ORDERED, ADJUDGED and DECREED that the petition is granted; and it is further

ORDERED, ADJUDGED and DECREED that respondent Wesley Booker is hereby removed as administrator of the estate of Henry Booker for the reasons stated herein and that his letters of administration are revoked; and it is further

ORDERED, ADJUDGED AND DECREED that the Public Administrator of New York County is hereby appointed administrator d.b.n., and letters of administration shall issue accordingly; and it is further,

ORDERED, ADJUDGED AND DECREED that Wesley Booker is directed to account for his proceedings as administrator within 60 days of service of this order with notice of entry.

Dated: December 14, 2017


SURROGATE