

Matter of Tappan

2018 NY Slip Op 32102(U)

July 10, 2018

Surrogate's Court, Nassau County

Docket Number: 2015-382700A, B

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**AMENDED
DECISION**

**In the Matter of the Application of Eliza Tappan
as Administrator of the Estate of**

**File No. 2015-382700A, B
Dec. No. 34834**

MICHAEL A. TAPPAN, JR.,

Deceased,

To Resign as Administrator.

PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition in Support of Application to Resign as Administrator.	1
Attorney Affirmation, Filed August 7, 2015.	2
Attorney Affirmation, Filed November 25, 2015.	3
Renunciation by John Tappan of Successor Letters of Administration.....	4
Renunciation by Sara Tappan of Successor Letters of Administration.	5
Verified Answer in Opposition.....	6

The court on its own motion is vacating the decree entered herein on October 5, 2016 and recalling its prior decision herein dated July 25, 2016 and replacing it with the following.

I. Procedural History

Before the court is a petition filed by Eliza Tappan, the administrator of the estate of her father, Michael A. Tappan, Jr., for: (1) permission to resign as administrator of the estate; (2) the appointment of the Public Administrator of Nassau County as administrator, d.b.n., pursuant to SCPA §1007; and (3) the issuance of letters of administration, d.b.n., to the Public Administrator of Nassau County.

II. Background

The decedent, Michael A. Tappan, Jr., died unexpectedly on November 19, 2014. He was survived by: his wife, Sara, who had waived any rights to his estate and to serve as fiduciary pursuant to a Separation Agreement dated January 30, 2009; and by two children: Eliza (the petitioner), age 22; and John, age 18. Petitioner sought and was issued letters of administration in her father's estate on January 28, 2015.

III. The Petition to Resign

Petitioner advises the court that she is an undergraduate student at the University of Utah, and that her decision to seek appointment as the administrator of her father's estate was made during her holiday break from college, while she was in shock over her father's unexpected death and under the belief that it would be in her best interests and in the best interests of her brother, and what her father would have wanted her to do. Further, she believed that the decedent possessed substantial assets, including numerous cars, marine vessels and an interest in real property located at 62 Floyd Place, East Norwich, New York. However, after receiving letters from this court, the petitioner learned that the real property is under foreclosure and without equity, the marine vessels are of little or no value, and the automobiles, other than a 2006 Subaru Outback which was transferred to John pursuant to EPTL §5-3.1, are either owned by other parties or are of limited value. Petitioner further learned that the decedent owned no other assets of value at the time of his death and that the estate has no value. As a full-time student in Utah, who is also working full-time, the

petitioner cannot be in New York on a regular basis, and is unable to assume and perform her duties as administrator.

According to petitioner, the duties required in connection with the decedent's estate are limited to filing: (a) an inventory; (b) tax returns for years preceding the decedent's death; and (c) 2014 federal and New York State tax returns. In addition, the administrator must dispose of cars and marine vessels that are located on private property owned by third parties. Petitioner maintains that due to her age, location in Utah, compromised emotional state as a result of the unexpected loss of her father, and unfamiliarity with tax documentation and court requirements, she is unable to properly discharge her duties as administrator. Accordingly, she asks to be allowed to resign as administrator and further asks the court to appoint the Public Administrator of Nassau County as administrator, d.b.n. Sara and John each filed a renunciation of successor letters of administration, consenting to the appointment of the Public Administrator as administrator, d.b.n., or any other person entitled to receive letters.

IV. Opposition to the Petition to Resign

Counsel for the Public Administrator filed opposition to the application, asking the court to dismiss the petition and deny the relief sought. He states that the Public Administrator does not have the financial resources to serve as a "liquidation company" for an estate without any value. Based upon the petitioner's statements, there would be no assets with which to pay the Public Administrator's fees, commissions and legal fees should he be appointed as administrator, d.b.n. of this estate. Counsel argues that the decedent was

survived by a spouse and two children who are qualified to serve, and that there is no reason to appoint the Public Administrator.

V. Analysis

An administrator in office has no “automatic right to resign” (*Matter of Mathias*, NYLJ, Mar. 19, 2009, at 37, col 3 [Sur Ct, Bronx County] [citations omitted]). Pursuant to SCPA § 715, a fiduciary seeking to resign may file a petition with the court asking for permission to resign. “Whether or not a fiduciary will be permitted to resign is a question for the determination by the court” (2 Warren’s Heaton, Surrogate’s Court Practice, § 33.12 [1] at 33-132 [7th ed 2015]; *see also*, *Matter of Cuccia*, NYLJ, June 16, 2000, at 30, col 4 [Sur Ct, Kings County]). Generally, once a fiduciary has qualified for office and undertaken the responsibilities of office, an application to resign will be denied unless the petitioning fiduciary offers a legitimate reason for resigning and names a successor fiduciary willing to serve in his or her place (*see*, *Matter of Cohen*, NYLJ, Apr. 24, 2007, at 29, col 4 [Sur Ct, New York County]).

At the same time, permission to resign may be granted where a fiduciary presents valid reasons for being unable to continue to serve, such as health issues or where the fiduciary resides far from New York (*see*, *Matter of Montrone*, NYLJ, June 9, 1995 at 1, col 4 [Sur Ct, Queens County]). In considering a fiduciary’s petition to resign, the primary consideration for the court is the best interest of the estate (*Barch v Avco Corp.*, 30 AD2d 241, 248 [4th Dept 1968]).

VI. Conclusion

Based on all of the foregoing, the court determines that the petitioner has not established sufficient basis to permit her resignation as administrator.

Accordingly, the request for permission to resign is **DENIED** and the petition is dismissed.

This decision constitutes the order of the court.

Dated: July 10, 2018
Mineola, New York

E N T E R:

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

cc: Barbara Albom, Esq.
Attorney for Petitioner
166 Mercer Street, Suite 3A
New York, New York 10012

Richard T. Kerins, Esq.
Attorney for Public Administrator of Nassau County
Mahon, Mahon, Kerins & O'Brien
254 Nassau Boulevard
Garden City South, New York 11530