

Matter of Lewner
2020 NY Slip Op 34365(U)
December 16, 2020
Surrogate's Court, New York County
Docket Number: 2016-2053/B/C
Judge: Nora S. Anderson
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SURROGATE'S COURT: NEW YORK COUNTY

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In the Matter of the Application of
Craig Lewner, as Administrator of
the Estate of Josef Lewner, Deceased,
a Person Interested in the Estate of

File No. 2016-2053/B/C

LEAH LEWNER

Deceased,

To Remove Charles Lewner as
Preliminary Executor.

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A N D E R S O N , S .

Petitioner, as administrator of the estate of Josef Lewner,
commenced this proceeding to revoke the preliminary letters
testamentary of Charles Lewner ("respondent") issued in the
estate of Leah Lewner and to appoint the Public Administrator as
temporary administrator. For the reasons set forth below, the
court grants the petition in its entirety.

Decedent died on May 19, 2016, survived by her spouse
(Josef), one son (respondent), and two grandchildren (children
of a predeceased son). Preliminary letters testamentary issued
to respondent on June 10, 2016, pursuant to a testamentary
instrument dated December 4, 2015.

According to respondent's petition for probate, the estate was valued at \$8,750,000, with annual rental income (generated from an interest in a multiple dwelling building located in Manhattan) and cash exceeding \$3,000,000. The propounded instrument leaves the entire estate to an inter vivos trust, and respondent is the sole beneficiary of such trust, to the exclusion of Josef.

Petitioner alleges that respondent is unfit to serve as a fiduciary (SCPA 1412[6][a],[b], and[c]; SCPA 719; and SCPA 711[2][8]), noting numerous instances of respondent's failure to perform his fiduciary duties in this estate, as co-administrator of Josef's estate (this court suspended respondent's letters of co-administration incident to the petition for his removal brought by his co-fiduciary), and as Josef's sometime-guardian and special guardian (respondent was allowed to resign as guardian in the wake of applications for his removal).

More specifically, petitioner alleges that, in the more than four years since decedent's death, respondent has failed to file estate tax returns and income tax returns, including decedent's final income tax returns as well as fiduciary income tax returns for the estate, despite the fact that the estate assets include rental property that should be generating

substantial income. These delinquencies leave this large estate exposed to liability for very considerable interest and penalties. A letter annexed to the present petition as an exhibit, written by respondent's own counsel, substantiates the petition's allegations that taxes had yet to be paid years after her death.

The court's own records confirm that respondent has failed to prosecute the probate proceeding since he commenced it in 2016. He has also failed to file the inventory of assets required by court rules (22 NYCRR 207.20). Moreover, respondent failed to appear on the return date or to file a responsive pleading or any other submission denying the petition's allegations. Accordingly, those allegations are to be deemed admitted (SCPA 509).

The court recognizes that the removal of a testator's nominee is not to be taken lightly, even if the will has yet to be probated. The court is required to exercise its removal power sparingly and to nullify the testator's choice only upon a clear showing of serious danger to the estate (*Matter of Vermilye*, 101 AD2d 865 [2d Dept 1984]; *Matter of Farber*, 98 AD2d 720 [2d Dept 1983]). Based on the foregoing, it is clear that respondent's

actions and inactions have seriously jeopardized the estate and warrant his removal.

The preliminary letters testamentary issued to Charles Lewner are hereby revoked. Letters of temporary administration shall issue to the Public Administrator. Charles Lewner is directed to turn over custody, possession and control of all assets of the estate of Leah Lewner to the Public Administrator as temporary administrator. In addition, Charles Lewner is directed to file an account of his proceedings, together with a petition for its judicial settlement, within 30 days after service of a copy of the decree to be entered herein with notice of entry.

Submit decree. Clerk to notify.

Dated: December 16 , 2020

NSA

S U R R O G A T E