

**Matter of Kollman**

2023 NY Slip Op 33065(U)

September 6, 2023

Surrogate's Court, New York County

Docket Number: File No. 2018-1646/A

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

September 6<sup>th</sup> 2023

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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Probate Proceeding, Will of

ROSITA KOLLMAN,

File No. 2018-1646/A

Deceased.

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G I N G O L D , S .

In this probate proceeding in the estate of Rosita Kollman, the nominated executors under a prior instrument ask the court for permission to file objections (SCPA 1410). Proponent and one of the beneficiaries under the propounded will oppose the motion. The charities named in the prior instrument support the motion.

Rosita Kollman (Decedent) died April 24, 2018 at age 92, leaving a probate estate of approximately \$6,000,000. Her only distributee is a nephew. Shortly after decedent's death, Shmuel Spiegel (Spiegel) filed a petition to probate an instrument, dated October 31, 2013 (2013 Will). The 2013 Will nominated as executors Spiegel and Robert Falk (Falk), who had predeceased. Under such will, after the disposition of tangible personal property, the instrument contains two pre-residuary cash bequests: (1) \$3,000,000 to the First Roumanian American Congregation, of which Spiegel is the head Rabbi, and (2) \$100,000 to decedent's nephew. The residuary estate is bequeathed in equal shares to Falk (or in default to his estate) and Nachum Kohlman (Kohlman), Decedent's stepson.

Sylvia Lisker Sporn (Lisker) and her son, Lenny Sporn (Sporn), then filed a cross-petition to probate an earlier instrument, dated April 7, 2008 (2008 Will), of which they were the nominated executors. In the 2008 Will, the Decedent's entire estate passes to Tel-Hashomer Hospital and/or Schneider Hospital (Hospitals) "and/or such other hospitals and/or charitable institutions, in such amounts, and in such proportions, and under such terms and conditions as my Executors, in their sole and unquestioned discretion shall determine." In the event that such executors fail to exercise such discretion, the residuary estate passes to the Hospitals.

Lisker and Sporn (Movants) now seek the court's authorization to object to the 2013 Will, since their only financial interest in the 2008 Will is fiduciary commissions (SCPA 1410). Their proposed objections allege, *inter alia*, that Decedent lacked capacity because, at the time the 2013 Will was executed, she was the subject of a pending MHL Article 81 proceeding, and that such instrument was procured by fraud and undue influence, by certain individuals, including Spiegel, Kohlman, and Falk, who was Decedent's accountant, as well as the attorney draftsman.

The standard for permitting the filing of objections in the circumstances here is "for good cause shown" (SCPA 1410). Courts have found good cause under SCPA 1410 in a variety of circumstances, including where there was a longstanding

relationship between the fiduciary and the decedent (see *Matter of Silverman*, 91 Misc 2d 125 [Sur Ct, NY County 1977]; *Matter of Molnar*, 76 Misc 2d 126 [Sur Ct, NY County 1973]), where the fiduciary was granted discretionary powers under the instrument (see *Matter of Marks*, 142 Misc 2d 733 [Sur Ct, NY County 1989]; *Matter of Kramer*, NYLJ, August 9, 2000 at 21, col 3 [Sur Ct, Queens County 2000]; also see *Matter of Nubile*, NYLJ, Sept. 12, 2022 at 17, col 1 [Sur Ct, Bronx County 2012] [court allowed fiduciary to participate in SCPA 1404 discovery where prior will granted fiduciary discretionary powers]), and where the later instrument was substantially changed from previous instruments (see *Matter of Rubenstein*, NYLJ, Jan. 9, 2012 at 20, col 5 [Sur Ct, NY County 2012]; *Matter of Kramer*, NYLJ, August 9, 2000 at 21, col 3 [Sur Ct, Queens County 2000]).

Here, Movants, to whom Decedent conferred discretionary power to select charitable beneficiaries in addition to the Hospitals under the 2008 Will, have sufficiently demonstrated good cause. They have shown that they are not seeking to promote their financial interest in potentially seeking commissions. Rather, their aim is to preserve Decedent's intent by challenging the validity of the 2013 Will. Indeed, Lisker had a long and close relationship with Decedent, which would enable her to assist the court in determining Decedent's true intentions.

The allegations raised in the proposed objections, as amplified by the motion papers, raise substantial issues about the validity of the will. The subject will differs substantially from Decedent's prior instruments<sup>1</sup> and was allegedly executed at a time when she was the subject of a MHL Article 81 proceeding.

In addition, two of the parties benefitting from the propounded will, Falk and Spiegel, allegedly had confidential relationships with Decedent. While such allegations are disputed, they cannot be resolved at this stage of the proceeding. The fact that no other party has challenged the propounded will is another factor to be considered, as the court has an independent obligation to determine the validity of the instrument (see SCPA 1408[1]). The court has considered the arguments in opposition to the motion, but has found them to be without merit.

Based on the foregoing, the court finds that Movants have shown good cause under SCPA 1410. Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the objections which the court accepted for

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<sup>1</sup> Filed with the court is a copy of a will, dated March 5, 2009 (2009 Will), which contains dispositive provisions identical to the 2008 Will, but with Falk nominated as co-executor with Spiegel, in place of Sporn. Spiegel's counsel, in his affirmation opposing the motion, states that the original of the 2009 Will cannot be located.

filing subject to a determination of Movants' standing, are allowed as filed.

Dated: September 6<sup>th</sup>, 2023

  
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