

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Rose L. Weiss,  
Deceased  
1463 DE of 2009  
Control No. 102943

Sur First and Final Account of Michael Weiss, Executor

The account was called for audit December 6, 2010  
January 3, 2011

By: **HERRON, J.**

Counsel appeared as follows:

Bernice J. Koplín, Esquire – for the Accountant  
A. James Millar, Esquire – for the Commonwealth

ADJUDICATION

Rose Weiss died on September 24, 2009. Under her Will dated June 26, 2006, she named Susan Bartow as executor, but provided that if Ms. Bartow ceased to serve, her son, Michael Weiss, should serve as executor in her place. By Register of Wills decree dated December 14, 2009, the resignation of Susan Bartow as executrix was accepted. Letters testamentary d.b.n. were subsequently granted to Michael Weiss (“Michael”) by Register’s decree dated January 7, 2010. On October 27, 2010, Michael Weiss filed an account of his administration of the estate covering the period September 24, 2009 through October 15, 2010. The account was originally scheduled for the December 6, 2010 Audit list, but at the request of Marc Weiss (“Marc”), one of decedent’s sons, it was rescheduled for the January 3, 2011 Audit list.

The accountant raised two issues for adjudication. In addition, Marc Weiss filed objections and amended objections to the account. As a first issue for adjudication, the accountant seeks court approval of the distribution of \$1,000 each to the ACLU Foundation of Pennsylvania and to the National Alliance on Mental Illness-Pennsylvania Branch in accordance

with Article 3.3, paragraphs C.10 and C.13 of Rose Weiss' will. In Article 3 of her will, Rose Weiss had provided for charitable bequests to eighteen charities. The executor distributed those bequests to sixteen of the charities after they executed a receipt, release, and refunding and indemnification agreement. He was, however, unable to get a response from the remaining two charities to his numerous letters, and therefore now seeks court approval of those distributions which is hereby granted.

As a second question for adjudication, the accountant requests that litigation expenses incurred by the estate in response to litigation initiated by Marc Weiss be allocated to Marc's share of the distributions. As of the account's filing date, those expenses totaled \$27,150.00 in attorney fees and expenses.

Preliminarily, it is necessary to briefly address Marc's many efforts to postpone and delay these proceedings which he initiated. He has repeatedly asked for more time because of a disability described generally as slowness, exhaustion and physical concerns requiring special accommodation. While this Court is sympathetic to these issues and any physical manifestations of discomfort experienced by Marc, no adverse effects have been observable and, in fact, he received continuances and considerable time to prepare his case for the hearing. This Court lacks the ability to appoint counsel for him as he has requested, because as a matter of law he is not entitled to appointment of counsel in these civil proceedings. Marc's request for a postponement of the December 6, 2010 audit was granted,<sup>1</sup> he was granted additional time to file written objections and his request for postponement of the March 16, 2011 hearing was granted.<sup>2</sup> All together he has had almost 5 months time since the filing of the account to prepare for the

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1 See 12/6/2010 Order.

2 See 3/7/2011 Order.

hearing on his objections and yet during the hearing made no fewer than six (6) impassioned and lengthy arguments for additional time to prepare and to retain counsel. In addition, Marc filed several written requests prior to the hearing including one just two hours before the proceedings commenced finally on March 28, 2011. Marc, as the moving party, has an obligation to proceed. Moreover, the Court has a concomitant duty to balance Marc's requests for continuances against the accountant's right to a final adjudication. On this record, the Court is convinced that Marc was not entitled to a further continuance of these proceedings.

The sole objection presented at the hearing was whether the legal fees were reasonable and fair.<sup>3</sup> The accountant Michael Weiss, who is Marc's brother, claimed legal fees to administer the estate of \$25,425 on a gross estate of \$1,835,403.62.<sup>4</sup> On its face, this sum is reasonable and certainly justified under the analysis of Johnson Estate, 4 Fid.Rep.2d 6 (Chester Cty. O.C. 1983) since the fees constitute less than 2% of the gross Estate and easily withstand analysis under the several factors outlined in LaRocca Estate, 431 Pa. 542, 246 A2d 337 (Pa. 1968):

The facts and factors to be taken into consideration in determining the fee or compensation payable to an attorney include: the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree or responsibility incurred; whether the fund involved was 'created' by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question. Id., 431 Pa. at 546, 246 A.2d at 339.

At the hearing, the accountant presented detailed time records, admitted as Ex. "C," with over 134 entries explaining the services rendered by counsel at reasonable hourly rates of \$200

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3 Marc has filed a series of objections to the account on January 3, 2011, January 5, 2011 and February 10, 2011. On the whole, these objections were vague, frivolous and sought to delay consideration of the account at the audit.

4 See Account at 25.

and \$300 per hour, depending on the lawyer performing the task. The only evidence offered by Marc was his argument that counsel for the estate was generally untruthful based upon her preliminary assertion that Marc wrote her letters daily and her subsequent admission that this was an exaggeration. Yet Marc in his own testimony admitted that he frequently telephoned counsel's office, insisted that personnel sign for receipt of his letters and acknowledged he sent two or three letters to counsel every two weeks for a year or so. Through his own testimony, Marc admits to sending counsel between 52 and 78 letters demanding responses to a plethora of complaints. Based on this record, counsel's initial mischaracterization of daily letters from Marc is understandable and excusable given the unreasonable barrage of mail and falls far short of any meritorious challenge to the reasonableness of fees. Marc's challenge to the reasonableness of the fees on the grounds of untruthfulness is therefore rejected as frivolous, while counsel's testimony is both credible and reliable.

Michael testified that he instructed counsel to avoid addressing Marc's voluminous writings and pleadings whenever possible to keep the fees reasonable because those fees would ultimately reduce both his and Marc's share of the estate. Suffice it to say that Marc presented no testimony that the fee was excessive and pointed to no legal services rendered which were unreasonable, unjustified or inflated. In fact, he repeatedly acknowledged his own inability to present any reason whatsoever for challenging the fees as excessive. Accordingly, this Court finds that the objections to legal fees are entirely frivolous and devoid of any merit whatsoever.

In addition to the fee for administering the estate, counsel separately charged \$27,820, \$740 and \$771 (as yet unpaid) for legal services in defending the estate against Marc's unsuccessful efforts to block cremation of the decedent's body, their mother. In support of this

claim, the accountant presented time sheets admitted into evidence as exhibits “D” and “E,” with over 121 entries all of which are detailed and reasonably explain the legal services rendered during the litigation. Even if the fees for administering the estate and conducting the litigation were all added together, they constitute just 3 % of the gross estate and thus withstand any challenge as to reasonableness. The crucial issue here, however, is that the litigation fees were necessitated by Marc’s obdurate insistence that cremation of his mother’s body was against his religious convictions and would prevent his deceased mother from ever returning from the afterlife. In collateral proceedings before this Court, Marc, then represented by counsel, challenged the convincing testimony presented by Michael that their mother on many occasions asked to be cremated just as her parents and husband had. Credible testimony had also been presented at that hearing from decedent’s sister and her attorney, both of whom knew of this wish. Moreover, Marc presented no testimony that his mother ever changed her mind or on any occasion ever asked for burial. In short, these lengthy and unsupported arguments for burial represented Marc’s personal and strongly held desire for the disposition of his mother’s remains against her own frequently voiced wishes for cremation, and in this sense unfairly and unnecessarily taxed the Estate with the costly legal burden of defending Michael’s decision to honor his mother’s instructions on the disposition of her remains. The Superior Court eventually quashed Marc’s appeal upon his failure to file a brief after granting numerous extensions of time to do so.

While Marc’s objection to the reasonableness of the legal fees is denied, the accountant raises a more difficult question: whether Marc’s distributive share of the estate should be taxed the amount of the litigation legal fees relating to the burial/cremation issue. Upon consideration

of the record, the accountant's request to impose those costs on Marc's share of the estate is denied because, while misguided and costly, Marc's single minded focus on preventing cremation was a sincerely held moral and religious belief that was neither vexatious nor motivated by ill will.

A different conclusion is merited, however, with regard to the legal fees incurred to defend against Marc's frivolous objections to the account. The Accountant is therefore authorized to reserve up to \$20,000 of Marc's distributive share to pay counsel fees to defend against these groundless, vexatious claims that lacked any reasonable basis whatsoever. Marc's inability to point to a single legal charge as excessive or unreasonable confirms the pointlessness of his objections. As a matter of equity, Marc's proclivity to argue, challenge and litigate these frivolous objections merits shifting the related fees and costs to Marc's distributive share of the estate rather than unfairly taxing the accountant's inheritance.

According to the accountant, Pennsylvania transfer inheritance tax in the amount of \$98,500.00 was paid on December 14, 2009 and in the amount of \$8,599.35 on June 28, 2010. Official Pennsylvania Inheritance Tax receipts were attached. A. James Millar Esquire, made an entry of appearance on behalf of the Commonwealth of Pennsylvania claiming such Transfer Inheritance Tax as may be due and assessed without prejudice to the right of the Commonwealth to pass on debts and deductions. A reserve in the amount of One Hundred Thousand Dollars (\$100,000.00) is requested because final clearance of the Pennsylvania Tax Return and Fiduciary Tax Returns has not yet been received by the executor. In addition, as previously discussed, \$20,000 of this reserve would be earmarked for defense against Marc Weiss' continued litigation against the Estate.

