

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

S. McDowell Shelton, Deceased
O.C. No. 1569 DE of 1994

OPINION SUR APPEALS

Introduction

Bishop S. McDowell Shelton died on October 13, 1991. Prior to his death, he served as General Overseer of the Church of the Lord Jesus Christ of the Apostolic Faith and President of the Church Corporation known as the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. After his death, a bitter struggle developed over control of the church and its assets in the civil trial division among Kenneth Shelton, Roddy Shelton and Anthonee Patterson.¹ This dispute spilled over on to the administration of Bishop McDowell Shelton's estate in Orphans' Court. When Daman Mayim, Executor under the Will of S. McDowell Shelton, filed his interim account for the Estate in February 1996, objections were filed, inter alia, by Roddy J.N. Shelton, II and Bishop Antonee Patterson.²

Since the issues raised in the civil litigation were relevant to the pending objections, on January 19, 1999, Judge Pawelec of the Philadelphia Orphans' Court issued an order that there should be no further distribution from Bishop S. McDowell

¹ See generally Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Fincourt Shelton, et al., No. 376 C.D. 2000, slip. op. (Pa. Comm. April 10, 2001); Anthonee Patterson v. Kenneth Shelton et al, No. 1967 C.D. 2006, slip. op. (Pa. Comm. January 31, 2008) attached as Exs. A & B to 6/5/08 Objections to the Supplemental Account by Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

² Objections to the Interim Account were filed on June 20, 1997 by Bishop Anthonee Patterson as President and on behalf of the Board of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., on May 2, 1996 by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., and on April 1, 1996 by Roddy J. N. Shelton, II.

Shelton's estate "except water and sewer rents and real estate taxes pertaining to the real property of Supernol, Inc. without further order of the Court."

Despite this order, the Executor took it upon himself in August 2007 to distribute more than \$1.6 million from the McDowell Shelton estate to an account for the benefit of a church led by Bishop Anthonee Patterson. In sworn testimony, Daman Mayim admitted that he was aware of Judge Pawelec's 1999 order forbidding distributions but nonetheless arranged for the transfer of \$1.6 million in funds in August 2007.³ Bishop Anthonee Patterson in testimony that was evasive and calculated likewise conceded that his church had accepted this distribution despite his full knowledge of Judge Pawelec's 1999 Order.

The accounts that have been filed for Bishop McDowell Shelton's estate⁴—and the objections they prompted—have yet to be adjudicated. Instead, Daman Mayim acted as a vigilante executor, deciding on his own who should be the beneficiary of assets nominally in McDowell Shelton's estate after obtaining an indemnification agreement signed by Bishop Anthonee J. Patterson, President of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.⁵

It is essential to restore the illegally distributed assets to the S. McDowell Shelton Estate so that the legal rights of all parties can be properly adjudicated. For this reason, by decrees dated September 24, 2008, October 13, 2008 and October 20, 2008, this court ordered Daman Mayim as well as Bishop Anthonee Patterson, individually, and the Church of the Lord Jesus Christ of the Apostolic Church in Darby (hereinafter "Darby

³ 9/16/08 N.T. at 28-29 (Mayim).

⁴ On April 7, 2008, Daman Mayim filed a Supplemental Account and on June 13, 2008 he filed a Revised Supplemental Account.

⁵ Ex. C-1.

Church”) to return to the estate those sums distributed in patent violation of Judge Pawelec’s January 19, 1999 Order.

These rulings in no way constitute a final determination of the respective rights of any party. Instead, the orders merely seek to restore assets to the estate so that those rights may be determined in a legal proceeding where all parties will be given an opportunity to be heard. In addition, because of his patent—and unrepentant—violation of the 1999 Order, Daman Mayim was removed as executor.

Daman Mayim, Bishop Anthonée Patterson and the Darby Church have filed appeals of these orders. This opinion is in response to those appeals.

Factual Background

A. Unresolved Objections to the Interim Account Filed by the Executor Under the Will of S. McDowell Shelton

Bishop S. McDowell Shelton died on October 13, 1991 leaving a Will dated September 30, 1977. In his Will, Bishop Shelton named Johnsey Scott, a/k/a Elder Daman Mayim (hereinafter “Daman Mayim”) as Executor. Letters testamentary were granted to Mr. Mayim on October 18, 1991.

In his September 30, 1977 Will, Bishop McDowell provided for the division of “all of our Estate.” After providing that 1 per cent was to go to “our son, Johnsey Scott a/k/a Elder Daman Mayim,” the Will provided that the balance of the estate was to be divided and distributed to the testator’s adopted sons in equal shares “as shall survive me, and shall be members in good standing of the APOSTOLIC faith at the time of my death:”

1st Prince Regent, Elder Shelton Nehemiah a/k/a Elder Roddy J. Nelson,
Shelton I at law

Prince Jonathan, Deacon Jonathan Shelton a/k/a Deacon Arthur D. Franklin Shelton at law
Prince II Ysaac, the Merciful; Elder Shelton Ysaac a/k/a Elder Erik Shelton at law
Prince III Benjamin Jude, Elder Shelton Benjamin Jude a/k/a Elder W. Edward B. Shelton at law
Prince Asher, Minister Shelton Asher a/k/a Minster Fincourt B. C. Shelton at law
Prince VII Yediduth-Limmud Omega, Elder Shelton Yediduth Limmud Omega a/k/a Elder Kenneth Norton Thomas Shelton at law.

Under the express terms of the Will, “[t]he good standing at the time of my death of my above-named adopted sons shall be determined at such time by the successor BLESSEDNESS in conjunction with a majority of the Council of Priests of the HOUSE OF SHELTON, such determination to be based on an APOSTOLIC EPISTLE to be prepared by me on the subject of Church membership.”⁶

The Church of the Lord Jesus Christ was founded in 1919 and located at 22nd and Bainbridge Street in Philadelphia. The secular arm of the Church is known as the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., which was established as a nonprofit corporation in 1947.⁷ Prior to his death, Bishop McDowell Shelton was the General Overseer of the Church and President of the Corporation. Upon his death, a bitter and prolonged dispute broke out over who had the legal right to control the Church, the Church Corporation and their assets. Beginning in June 1992, in fact, as many as three equity actions were filed in the Civil Division of the Court of Common Pleas to determine who had the right to control the Church

⁶ September 30, 1977 Will of Bishop S. McDowell Shelton, Paragraph Second.

⁷ See Anthonee J. Patterson v. Kenneth Shelton, No. 1967 C.D. 2006 & No 1968 C.D. 2006, slip op. at 2 (Pa. Comm. Jan.31, 2008), attached as Ex. A. to 6/5/08 Objections to the Supplemental Account by Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

Corporation and its assets.⁸ Not surprisingly, the administration of Bishop Shelton's personal estate likewise became a source of controversy among the various parties.

On December 20, 1994, Roddy J.N. Shelton, II, filed a petition seeking an accounting by the executor of Bishop Shelton's estate. On April 17, 1995, Johnsey Scott a/k/a Daman Mayim was ordered by Judge Kathryn Lewis to file an account. Daman S. Mayim, as Executor, filed an Interim Account on February 27, 1996 for the S. McDowell Shelton estate. The interim account covered the period October 13, 1991 through January 31, 1996. That account listed principal receipts of \$3,677,576.69 with disbursements of \$987,896.26 and distributions of \$363,600 to beneficiaries. The principal balance remaining was listed as \$2,326,080.43 with a balance of income remaining of \$460,351.92. The combined balance remaining was \$2,786,432.35.

Three sets of objections were filed to this Interim Account. On April 1, 1996, Roddy J.N. Shelton, II filed objections.⁹ On May 2, 1996, the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. filed its objections to the Account.¹⁰ Finally, on June 20, 1997 Bishop Anthonee J. Patterson, as

⁸ See Anthonee J. Patterson v. Kenneth Shelton, No. 1967 C.C. 2006 & No. 1968 C.C. 2006, slip op. at 2-3, 5 n.5 (Pa. Comm. Jan. 31, 2008), attached as Ex. B to 6/5/08 Objections to the Supplemental Account filed by Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith. The 3 cases were under the following captions: Fincourt Shelton et. al. v. Kenneth Shelton, et al., June Term 1992, No. 1887; Church of the Lord Jesus Christ of the Apostolic Faith, Inc. et al. v. Fincourt Shelton and Anthonee Patterson et al., July Term 1994, No. 914; Church of the Lord Jesus Christ of the Apostolic Faith and Roddy J. Nelson Shelton et al. v. Kenneth Shelton et al., August Term, 1994, No. 3654.

⁹ See 4/1/1996 Objections by Roddy J.N. Shelton, II at ¶ 3. He objected to the statement in the account that substantial estate assets had been paid for repairs, taxes and energy costs for real property located at 8036 Lowber Street "without the property's value having been assessed or the relationship to the estate identified." He also objected that \$800,000 in two certificates of deposit were not included in the account.

¹⁰ In its objections, the Church organization claimed that it is the owner of the Parish House and its furnishings located at 2401 Pennsylvania Avenue, Units 21A-4 & 5. The Church organization also claimed that it is the owner of the bank account identified as Canadian Imperial Bank, which Bishop Shelton opened with Church funds but which the account erroneously listed as assets of the estate. The Church organization also claimed that it is the owner of the bank account identified as Bank Cantonale/Vaudoise-Lausanne, Switzerland. Finally, the objections stated "Supernol is listed as an asset of the estate with no showing of proof of ownership of the Pennsylvania Corporation."

President of and on behalf of the members of the Board of Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. filed objections, asserting, inter alia, that since the decedent, S. McDowell Shelton, had taken a “Vow of Detachment and Poverty in 1977” he was precluded from personal claims to any funds. Bishop Patterson further claimed that he had no personal claim to any estate funds but his interest was solely on behalf of the church.¹¹

The civil litigation over control of the church was therefore relevant to resolution of the objections concerning the proper distribution of estate assets. Under S. McDowell Shelton’s Will, for instance, the six named individual beneficiaries must be in good standing in the “Apostolic Faith.” Alternatively, if, as Daman Mayim maintains in his April 7, 2008 Supplemental Account, S. McDowell Shelton took a vow of poverty that deprived him of the right to hold personal property so that any property in his estate would belong to the church, the appropriate church beneficiary would have to be identified.

B. The January 19, 1999 Order by Judge Pawelec of the Orphans’ Court Prohibited Daman Mayim as Executor from Making Any Distributions From the Estate Except for Water and Sewer Rents and Real Estate Taxes Pertaining to the Real Property of Supernol Inc.

This matter was transferred in April 1996 to the Honorable Edmund S. Pawelec, who granted discovery requests directed against the executor. By decree dated October 7, 1996, Daman S. Mayim was ordered to produce all bank statements as well as state and federal tax returns relating to the decedent’s assets. In addition, he was to make himself available for depositions. Judge Pawelec further ordered that if Daman S. Mayim

¹¹ 6/20/97 Objections by Bishop Anthonée Patterson and members of the Board of Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., ¶¶ 3-6.

lacked information about those matters, counsel for the executor, James M. Cleary, was to appear for deposition.

The executor, however, failed to comply with this order. Consequently, nearly a year later, by decree dated June 18, 1997 Judge Pawelec granted a petition for a citation directed at Johnsey Scott a/k/a Daman S. Mayim to show cause why a writ of attachment should not issue against him for failure to comply with the October 7, 1996 discovery order. On September 25, 1997, Judge Pawelec issued another citation directed against the executor to show cause why he should not be prohibited from “affecting any and all alleged assets.” A year later, on September 15, 1998, Judge Pawelec awarded another citation directed to Daman Mayim to show cause why a writ of attachment should not issue for failure to comply with the October 7, 1996 court order by producing bank documents from the Banque Cantonale Vaudoise, Schweizerische Credit Suisse, and Canada Imperial Bank of Commerce.

Finally, on January 19, 1999, Judge Pawelec issued the following order to maintain the status quo:

And now, this 19th day of January 1999, pursuant to the Petition filed by the heirs of Roddy J.N. Shelton, and the conference held by the Court on January 11, 1999, it is hereby ORDERED and DECREED that there shall be no further distribution from the Estate, except water and sewer rents and real estate taxes pertaining to the real property of Supernol, Inc., without further order of the Court.

According to the Interim Account filed on February 2, 1996 by Daman Mayim, Supernol Inc. is an asset of the McDowell Shelton Estate. A Pennsylvania corporation, Supernol’s sole asset is residential real estate located at 8036 Lowber Street in Philadelphia with a “value not available at this time.”¹²

¹² 2/26/96 Interim Account at 2.

C. Resolution by the Commonwealth Court of the Civil Litigation Concerning the Dispute Among Bishop Kenneth Shelton, Bishop Anthonee Patterson and Bishop Roddy Shelton Control Over the Church Assets

For the next eight years after Judge Pawelec’s order, the filings on the Orphans’ Court docket regarding the S. McDowell Shelton estate diminished significantly except for petitions regarding inheritance tax payments and discovery issues. The civil litigation, in contrast, was ostensibly resolved by a Commonwealth court opinion as to who had the legal right to control the secular corporation of the church-- the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith that had been established as a nonprofit corporation in 1947. In an opinion dated April 10, 2001, the Commonwealth Court concluded that Kenneth Shelton had been properly elected as General Overseer at the September 1992 annual meeting of the General Assembly. He thereby automatically became President of the Board of Trustees with control over the Church corporation.¹³

Despite this ruling by the Commonwealth Court, companion civil litigation initiated by Anthonee Patterson was submitted to arbitration. In an initial decision dated April 26 2006, the arbitrator concluded that title to the Church corporation’s property rested with the faction led by Anthonee Patterson who “acted in harmony with the laws,

¹³ Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Fincourt Shelton et. al., No. 376 C.D. 2000, slip op. at 8-9 & 25 (Pa. Comm. April 10, 2001), attached as Ex. B. to 6/5/08 Objections to the Supplemental Account filed by Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith. The Commonwealth Court concluded that the “affairs of the Church are managed by the General Overseer/Bishop. The Corporation and all assets are managed by the President and Board of Trustees. Whoever serves as General Overseer of the Church also serves as President of the Board of Trustees of the Corporation.” Id. at 2.

usages and customs accepted by the General Assembly.”¹⁴ The arbitrator required an accounting by Kenneth Shelton while requiring the parties to name a mutually agreeable receiver to take control of the church property, accounts and records.¹⁵ On May 8, 2006, the arbitrator issued a supplemental adjudication and order accepting Bishop Patterson’s recommendation of GlassRatner Management and Realty Company (GlassRatner) to act as receiver and take control of the assets of the Church that were held by the Trustees of the Corporation.¹⁶ The trial court affirmed the arbitrator’s decision in favor of Patterson and against Shelton, and judgment was entered on July 20, 2006. Kenneth Shelton appealed this order, asserting, inter alia, that the arbitrator exceeded the scope of the arbitration by deciding doctrinal issues and by going beyond the 1991-1994 framework set forth in the underlying complaint.

By a subsequent opinion dated January 31, 2008, the Commonwealth Court reemphasized that its April 10, 2001 order had established that Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation.¹⁷ It concluded that the only issue before the arbitrator was whether Kenneth Shelton misappropriated assets during the period 1991 through 1994. Accordingly, the arbitrator had exceeded the

¹⁴ Anthonee Patterson v. Fincourt Shelton et. al, No. 1967 C.D. 2006 & No. 1968 C.D. 2006, slip op. at 7 (Pa. Comm. Jan. 31, 2008) attached as Ex. A to 6/5/08 Objections to Supplemental Account filed by Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

¹⁵ Anthonee Patterson v. Kenneth Shelton, No. 1967 C.D. of 2006, slip op. at 7-8 (Pa. Comm. Jan. 31, 2008), attached as Ex. A to 6/5/08 Objections to the Supplemental Account filed by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

¹⁶ Anthonee Patterson v. Kenneth Shelton, No. 1967 C.D. of 2006, slip op at 8-10 (Pa. Comm. Jan. 31, 2008), attached as Ex. A to 6/5/08 Objections to the Supplemental Account filed by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

¹⁷ Anthonee Patterson v. Kenneth Shelton, No. 1967 C. D. of 2006, slip op. at 12 (Pa. Comm. Jan. 31, 2008), attached as Ex. A. to 6/5/08 Objections to the Supplemental Account filed by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

scope of arbitration by going beyond this time period, and-- more importantly—by deciding the issue of who should be in control of the Church’s property.¹⁸

D. Emergency Petition By Kenneth Shelton to Protect Estate Assets in a Swiss Account, to Obtain an Updated Account and to Remove Daman Mayim as Executor

On October 19, 2007, Kenneth Shelton filed a petition in Orphans’ Court seeking an accounting by the executor Daman S. Mayim, noting that the 1996 Interim Account only covered the period October 13, 1991 through January 13, 1996. Shelton asserted that he was a party in interest as a residual beneficiary under the Will of Bishop McDowell Shelton, which provided that the residue of the estate was to be distributed to the decedent’s six adopted sons who were members in good standing of the Apostolic faith at the time of Bishop McDowell Shelton’s death. In addition to seeking an accounting, Kenneth Shelton sought a court order to move estate assets located in a Swiss bank account to Philadelphia. According to the petition, the Swiss bank account at Banque Cantonale Vaudoise in Switzerland had an approximate value of \$1,000,000. Kenneth Shelton was concerned that Daman Mayim had traveled to Switzerland seeking access to these funds and that the executor might attempt to make distributions despite the court order of January 19, 1999 prohibiting such distributions.¹⁹

Daman Mayim, in response, specifically denied that “the assets held in the Swiss Bank are assets of the Estate.”²⁰ He also stated that he had “not completed the administration of the Estate, as there is reason to believe that there are no assets of the

¹⁸ Anthonee J. Patterson v. Kenneth Shelton, No. 1967 C.D. 2006, slip op. at 12-13, 17 (Pa. Comm. Jan. 31, 2008), attached as Ex. A to 6/5/08 Objections to the Supplemental Account filed by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

¹⁹ 10/19/07 Kenneth Shelton Petition for an Accounting, ¶¶ 1-2, 6-7, 11-17.

²⁰ 12/18/07 Daman Mayim Response, ¶ 21.

Estate of S. McDowell Shelton, deceased, to be accounted for by the Executor, and therefore he is not prepared to file an account.”²¹

By decree dated February 6, 2008, the Honorable Joseph O’Keefe assigned all proceedings regarding the S. McDowell Shelton estate to this court. In light of the alarming admissions by the executor in his response to Kenneth Shelton’s petition, this court by decree dated March 4, 2008 ordered Daman Mayim to file a supplemental account restating all estate assets since the filing of the last account.

A few weeks later, Kenneth Shelton filed an emergency petition to prohibit Daman Mayim from access to the bank assets titled in the name of the McDowell Shelton estate that were located at the Banque Cantonale Vaudoise in Switzerland. The petition also sought clarification for the Swiss courts that the January 19, 1999 order prohibiting the executor from distributing or dissipating estate assets was still in effect and covered the Swiss Bank account. When the executor had filed his interim account in 1996, he reported the account at Banque Cantonale Vaudoise as an estate asset with a balance of \$505,000 as of January 31, 1996. After Kenneth Shelton learned that Daman Mayim had traveled to Switzerland together with Anthonee Patterson and Fincourt Shelton allegedly seeking access to the Swiss Bank account, he filed a petition with the Swiss Court to freeze that account.²²

Kenneth Shelton maintained that at a hearing before that Swiss court, Daman Mayim had stated that he intended to distribute those assets and that the Orphans’ Court order of January 19, 1999 was no longer in effect. Shelton was also concerned that at an informal conference before this court, the executor’s attorney, James Cleary, presented

²¹ 12/18/07 Daman Mayim Response, ¶ 27.

²² 3/28/08 Kenneth Shelton Emergency Petition, ¶¶ 2-8.

contradictory statements as to whether there were any estate assets remaining in the Swiss account. After the conference the parties agreed to draft a consent decree for the transfer of the funds in the Swiss bank account to Philadelphia, but Daman Mayim refused to sign the proposed order. Consequently, Kenneth Shelton sought a court order prohibiting Mayim from any access to the Swiss account or from pursuing any additional litigation to obtain access to that account.²³ In response to these serious allegations, this court scheduled a hearing for March 28, 2008.

The first issue addressed during the March 28, 2008 hearing was the January 19, 1999 order by Judge Pawelec prohibiting the executor from making any distributions from the Estate of S. McDowell Shelton. As this court observed:

If you want me to say the Order is still in full force and effect, I'm going to say it's still in full force and effect. This estate is a Philadelphia County estate. That order is in full force and effect. There is no order in existence on the docket anyway from Judge Pawelec, who issued the order to the contrary. It's never been vacated.
3/31/08 N.T. at 7.

Counsel for the executor, when asked to state his position as to whether Judge Pawelec's order was still in effect, admitted that it was still binding:

I have no contrary information to offer, Your Honor, regarding this issue. The order is still in full force and effect, to the best of my knowledge.
3/31/08 N.T. at 11 (Cleary).

On April 7, 2008, the Executor filed a Supplemental Account covering the period February 1, 1996 through April 7, 2008. In its statement of proposed distribution, the Supplemental Account listed "The Church of the Lord Jesus Christ of the Apostolic Faith, 873 Main Street, Darby, PA, 19023" as beneficiary for the balance of income and principal "held by estate in error." It also listed this Darby Church as a claimant with the

²³ 3/28/08 Kenneth Shelton Emergency Petition, ¶¶ 2-26.

notation that “[t]he June 20, 1997 Claim of the Church is that S. McDowell Shelton took a vow of poverty and that as such he could not have any assets in his name alone pursuant to the bylaws of the church.” The Supplemental Account suggested that estate assets had declined over the course of years. While the January 31, 1996 account listed a “combined balance remaining” \$2,786,432.35,” the account filed on April 7, 2008 stated a total combined balance remaining as of April 3, 2008 of \$1,189,805.03. This sum was listed as consisting of \$320,000 in “demand loans” and \$869,805.03 at “Banque Cantonale Vaudoise 12/31/07.”

Kenneth Shelton filed objections to this Supplemental Account as to its form and substance. In particular, he objected to the entry dated August 8, 2007 that \$1,609,567.62 was distributed to “The Church of the Lord Jesus Christ of the Apostolic Faith, Darby PA (under the leadership of Anthonee Patterson).”²⁴ He also objected to the proposed distribution of assets to “The Church of the Lord Jesus Christ of the Apostolic Faith (under the leadership of Anthonee Patterson)” because that Church is not a beneficiary of the estate. Moreover, Kenneth Shelton emphasized that this court has not yet adjudicated any Church’s claim for a distribution. He maintained that the only Church with standing to assert a claim against the estate was The Church and The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith under the leadership of Kenneth Shelton.²⁵ Kenneth Shelton also filed a petition for a citation to show cause why Daman Mayim should not be removed as executor, why Daman Mayim

²⁴ 4/17/08 Kenneth Shelton Objections, ¶ 14..

²⁵ 4/17/08 Kenneth Shelton Objections, ¶¶ 14 & 24.

should not be surcharged for the loss of estate assets, and finally why his counsel, James Cleary, should not be surcharged for the loss of Estate assets.²⁶

Upon review of the Supplemental Account which indicated that the executor had violated the January 19, 1999 order of Judge Pawelec, this court by decree dated April 21, 2008 preliminarily removed Daman S. Mayim as Executor pending further hearings. In so doing, the order noted that the Account reflects a disbursement on August 8, 2007 in the amount of \$1,609,567.62 to “The Church of the Lord Jesus Christ of the Apostolic Faith Partial Settlement of Claim” as well as a disbursement of \$13,467.08 payable to “The Church of the Lord Jesus Christ Reimbursement Travel Expenses – Switzerland.”²⁷

In early June 2008, James Cleary, who was attorney for Daman Mayim, filed a petition to withdraw as counsel as well as a petition to compel Bishop Anthonee J. Patterson, the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. and the Church of the Lord Jesus Christ of the Apostolic Faith to return the funds of approximately \$1,623,009.27 that they received in 2007 from the Executor without court approval.²⁸ Cleary maintained that when Bishop Anthonee Patterson and the other respondents received the funds, they “were aware of the January 19, 1999 Order which would prohibit them from receiving any funds from the executor without court approval.”²⁹ Moreover, Bishop Patterson and the Church are claiming that all the funds—including those received in 2007—are not estate funds but instead belong to the church. Cleary urged that until the evidentiary hearing on the issue of whether the funds belonged to the estate or to the church could be held, the money distributed to

²⁶ 4/21/08 Kenneth Shelton Petition, Proposed Order.

²⁷ 4/21/08 Order.

²⁸ 6/6/08 James Cleary Petition, ¶10. By decree dated June 10, 2008, Mr. Cleary’s petition to withdraw as counsel was granted.

²⁹ 6/6/08 James Cleary Petition, ¶ 15.

Anthonee Patterson and the Church should be returned and placed in escrow.³⁰ By decree dated June 10, 2008, a citation was awarded directed to Bishop Anthonee Patterson and the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. to appear and show cause why these funds should not be returned.

Anthonee Patterson, as President of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, responded that Bishop S. McDowell Shelton had taken a Vow of Poverty and Detachment of Personal Ownership. Consequently, Bishop McDowell Shelton did not own any assets nor did he receive a salary from the Church Corporation. Bishop Patterson also asserted that the order dated January 19, 1999 by Judge Pawelec “did not preclude the Executor from settling claims under the provisions of the Will.”³¹

On June 13, 2008 a Revised Supplemental Account of Daman Mayim for the Estate of S. McDowell Shelton was filed. A hearing was scheduled for August 18, 2008 and Daman Mayim was given 30 days to retain successor legal counsel. In the interim, counsel were advised to cooperate in informal discovery requests.³² By orders dated June 30, 2008 and July 29, 2008, the hearing was rescheduled to September 16, 2008.

D. Critical Admissions by Daman Mayim and Bishop Anthonee Patterson during Hearings Held on September 16, 2008 and October 7, 2008

On September 16, 2008, Daman Mayim appeared at a hearing to testify as to his activities as executor in the administration of the Estate of S. McDowell Shelton. In the course of that testimony, he made critical admissions. He admitted that as executor of the

³⁰ 6/6/08 James Cleary Petition, ¶ 16-17.

³¹ 7/29/08 Anthonee Patterson Answer, ¶¶ 8-9.

³² See June 16, 2008 Order.

McDowell Shelton estate, he made a distribution of \$1.6 million on August 8, 2007 to the church led by Bishop Anthonee Patterson.³³ He admitted that when he made that distribution, he was aware of the order by Judge Pawelec and its restrictions on expenditures of funds by the estate.³⁴ He testified that he based this decision on the arbitrator's decision and on his own understanding of church doctrine and McDowell Shelton's Will.³⁵ In making this distribution, he was nonetheless aware that there were three different "groups of the church" that were claiming the estate assets: Kenneth Shelton and the church at 22nd and Bainbridge Streets; Rodney Nelson Shelton of Penn Street, and; Bishop Anthonee Patterson and the church located in Darby.³⁶ Mayim admitted that his attorney Cleary had told him not to make the distribution.³⁷ He admitted that when he arranged for the transfer of estate funds he did not know the number of the account to which the \$1.6 million was transferred but Bishop Anthonee Patterson had supplied the bank with information about where to wire the money.³⁸ He admitted that after the transfer, he did not retain the paperwork but instead those papers were kept by Anthonee Patterson.³⁹ With this transfer of the \$1.6 million, Bishop Patterson signed an indemnification agreement.⁴⁰ A month or so after distributing the \$1.6 million to Bishop Patterson, Daman Mayim also gave him some jewelry from the estate.⁴¹

Mayim further admitted that in July or August 2007, he traveled to Switzerland with Bishop Patterson and Fincourt Shelton to see if he could gain access to the funds in

³³ 9/16/08 N.T. at 28, 41-42 (Mayim).

³⁴ 9/16/08 N.T. at 32, 37-38 (Mayim).

³⁵ 9/16/08 N.T. at 69 (Mayim).

³⁶ 9/16/08 N.T. at 29 (Mayim).

³⁷ 9/16/08 N.T. at 36 (Mayim).

³⁸ 9/16/08 N.T. at 40-43 (Mayim).

³⁹ 9/16/08 N.T. at 43-44 (Mayim).

⁴⁰ 9/16/08 N.T. at 83 (Mayim). See Ex. C-1

⁴¹ 9/16/08 N.T. at 61 (Mayim).

the Swiss account.⁴² In his opinion, the \$869,805 listed in the account (Ex. P-2) belongs to the church that should go to Anthonee Patterson.⁴³

In addition to these direct distributions to Anthonee Patterson, Mr. Mayim was questioned about other expenditures he had made from funds in the S. McDowell Estate. He acknowledged that in 2002 or 2003 he took over the Estate check book which had formerly been managed by James Cleary so that all post-2004 checks were written by Mayim.⁴⁴ He admitted that he had resided at 8036 Lowber Street since 1975 and that he spent a lot of money on that house.⁴⁵ In fact, both the supplemental account filed on April 7, 2008 and the Revised Supplemental Account filed on June 13, 2008 detail those expenditures. Mr. Mayim also admitted that after the death of Malcolm Shelton, he did not pay any rent nor did his former wife who lives on the first floor of that property.⁴⁶

Finally, Mr. Mayim admitted that during the years he was keeping records, he did not file income tax forms for the estate⁴⁷ nor was he personally aware that state or federal tax forms had been filed for the estate though he received \$130,000 as executor fees.⁴⁸

Based on this testimony, the court concluded that Daman Mayim made an illegal distribution of more than \$1.6 million from the McDowell Shelton estate in breach of the 1999 order of Judge Pawelec without cause. Based on the patent violation of that order,

⁴² 9/16/08 N.T. at 39 (Mayim)

⁴³ 9/16/08 N.T. at 65, 63-64 (Mayim).

⁴⁴ 9/16/08 N.T. at 76-78 (Mayim).

⁴⁵ 9/16/08 N.T. at 68, 50-51 (Mayim).

⁴⁶ 9/16/08 N.T. at 60-61 (Mayim).

⁴⁷ 9/16/08 N.T. at 59 (Mayim).

⁴⁸ 9/16/08 N.T. at 65 (Mayim).

Mr. Mayim was surcharged for all the illegal distributions which were to be returned to the estate pending adjudication of the accounts and resolution of the objections.⁴⁹

On October 7, 2008, Bishop Anthonee Patterson testified at a hearing concerning, inter alia, the distributions from Daman Mayim. He initially denied personally receiving a transfer to \$1.6 million on August 8, 2007. Instead, he stated that he merely supplied Mayim with the number of a church account at Wachovia bank –which he could not remember “off hand”--to which transfers were made on August 8 and again on August 13, 2007.⁵⁰ According to Bishop Patterson, a total of \$1,609,567.62 was transferred, but it is no longer in the account because “[t]he money is used. It was spent.”⁵¹

Approximately \$600,000 to \$700,000 had been spent on renovations of property located at 2401 Pennsylvania Avenue, where the total contract for renovations had been \$1.5 million.⁵² In addition, the money had been spent on lawyer fees.⁵³ Bishop Patterson testified that he could not give exact sums because “[a]t some point our computer crashed and all of my financial information was on this computer.”⁵⁴ Moreover, “[w]hen we got it on the computer, we were shredding the actual documents at this time and we should have kept it. We haven’t been successful in getting the information.”⁵⁵

The exact fate of the \$1.6 million that was transferred, however, is less than clear because Bishop Patterson also testified that after the money was transferred to the church account, it was transferred to “Several. I don’t know all of them right now but it went

⁴⁹ 9/16/08 N.T. at 91-92.

⁵⁰ 10/7/08 N.T. at 124-26 (Patterson).

⁵¹ 10/7/08 N.T. at 127 (Patterson).

⁵² 10/7/08 N.T. at 130 (Patterson).

⁵³ 10/7/08 N.T. at 128-29 (Patterson).

⁵⁴ 10/7/08 N.T. at 130 (Patterson).

⁵⁵ 10/7/08 N.T. at 131 (Patterson).

from that account to a church account either here or wherever there was a need.”⁵⁶ He explained that there “are several church’s (sic.) accounts all over in Florida, Houston, Maryland and Charlotte and other places.”⁵⁷ He could not identify all the financial institutions, “but Bank of America would be one.” When asked who had authority to determine where the \$1.6 million was transferred, Bishop Patterson conceded: “Ultimately me.”⁵⁸ Despite these various transfers among church accounts, Bishop Patterson maintains that all of the money was completely gone by June or July of 2008.⁵⁹

In receiving this \$1.6 million, Bishop Patterson admitted that he had been made aware of the 1999 order by attorney Cleary,⁶⁰ but after the arbitration award and its court confirmation in July 2006, Bishop Patterson began taking control of all church properties.⁶¹ On October 13, 2006, he took possession of the 2401 Pennsylvania parish house and remained there until the 2008 opinion by the Commonwealth Court.⁶² Bishop Patterson determined that there was no personal property in the premises belonging to the estate, but he did place various items including a Steinway piano into storage.⁶³ Although Bishop Patterson conceded that he made all the payments to the contractors for the renovations of that property and personally signed all the checks,⁶⁴ all of the receipts for this work are “gone.”⁶⁵ In any event, Bishop Patterson maintained that he did not

⁵⁶ 10/7/08 N.T. at 131-32 (Patterson).

⁵⁷ 10/7/08 N.T. at 132 (Patterson).

⁵⁸ 10/7/08 N.T. at 132 (Patterson).

⁵⁹ 10/7/08 N.T. at 136-37, 195 (Patterson).

⁶⁰ 10/7/08 N.T. at 133-34 (Patterson).

⁶¹ 10/7/08 N.T. at 136 (Patterson).

⁶² 10/7/08 N.T. at 188-89 (Patterson).

⁶³ 10/7/08 N.T. at 163-64 (Patterson).

⁶⁴ 10/7/08 N.T. at 168 (Patterson).

⁶⁵ 10/7/08 N.T. at 167 (Patterson).

personally receive the \$1.6 million but those assets went to the church and were spent by the church.⁶⁶

Bishop Patterson also maintained that the transfer of \$8,441.65 was a reimbursement for church expenses related to his trip to Switzerland in July 2007 with Daman Mayim and Fincourt Shelton.⁶⁷ Similarly, the \$5000 payment from the McDowell Shelton estate in July 2007 was related to his appearances before the Swiss court.⁶⁸

Based on this testimony by Bishop Patterson, by decree dated October 20, 2008, this court ordered Anthonee J. Patterson and the Darby Church to return to the Estate of S. McDowell Shelton any funds received from the estate including: a) the \$1,609,567.62 cash distribution made on August 8, 2007 and/or August 13, 2007; b) the \$8,441.65 cash distribution from the Estate made on June 19, 2007; c) the \$5,000 cash distribution from the Estate made on July 27, 2007; d) all jewelry from the Estate; and e) any property removed from 2401 Pennsylvania Avenue, Philadelphia.⁶⁹ The purpose of this order was to reconstitute the S. McDowell Shelton estate as expeditiously as possible so that the claims against the estate—as well as all substantive issues such as the effect of any vow of poverty taken by decedent McDowell Shelton on the assets of his estate—can be systematically addressed.⁷⁰

Legal Analysis

The orders dated September 24, October 13 and October 20, 2008 under appeal surcharging Daman Mayim, as executor, for the illegal transfer of assets from the Estate of S. McDowell Shelton to the Church of the Lord Jesus Christ of the Apostolic Faith led

⁶⁶ 10/7/08 N.T. at 206 (Patterson).

⁶⁷ 10/7/08 N.T. at 140-41 (Patterson).

⁶⁸ 10/7/08 N.T. at 148 (Patterson).

⁶⁹ October 20, 2008 Decree.

⁷⁰ 10/7/08 N.T. at 228.

by Anthonee Patterson and requiring the Church and Bishop Patterson to return those assets are not final adjudications of the rights of any party to those assets. Instead, these orders are preliminary steps aimed at restoring the S. McDowell Shelton estate so that a definitive determination of the parties' respective rights can be made by a court of law and not by the arbitrary, illegal acts of a renegade executor.

In their statements of matters complained of on appeal, Daman Mayim, Bishop Patterson and his Church of the Lord Jesus Christ argue that prior to ordering the return of the illegally transferred estate assets, this court should have addressed such substantive issues as the effect of McDowell Shelton's vow of poverty, the terms of McDowell Shelton's will and whether the assets at issue belong to the McDowell Shelton Estate or to a church. These substantive issues must, of course, be addressed but in the proper, deliberative procedural context after the assets of the McDowell Shelton estate have been restored to it and all parties in interest have an opportunity to present their arguments and evidence.

1. Daman Mayim, as Executor, was Properly Surcharged and Ordered to Restore Assets of the Estate of McDowell Shelton Estate That He Transferred in Violation of Judge Pawelec's 1999 Order

Under section 711 of the PEF code, orphans' court has mandatory jurisdiction over the administration and distribution of real and personal property of a decedent's estate. 20 Pa.C.S. § 711(1). It also has statutory jurisdiction over the removal of fiduciaries of estates. 20 Pa.C.S. § 711(12). Under Pennsylvania law, "[a]n executor...is an officer of the orphans' court and accountable to such court for all his actions of commission and omission in the performance of his fiduciary duties." In re: Estate of Westin, 2005 Pa. Super. 158, 874 A.2d 139, 144, 2005 Pa. Super. LEXIS 945, 948-49,

(2005), *quoting* In re Estate of Thompson, 426 Pa. 270, 276, 232 A.2d 625, 628 (1967).

It is the duty of an executor “to take custody of the estate and to administer it so as to preserve and protect the property for distribution to the proper persons within a reasonable time.” Estate of Campbell, 1997 Pa. Super. LEXIS 793, 798, 692 A.2d 1098, 1101 (1997)(emphasis added).

An executor can be surcharged for loss to the estate due to the fiduciary’s failure to meet his duty of care. In re: Padezanin, 2007 Pa. Super. 350, 937 A.2d 475, 485 (2007). Although normally the party seeking to surcharge an executor has the burden of showing the executor’s wrongful conduct, “where a patent error has occurred, the burden of going forward with evidence demonstrating prudent management is on the executor.” Ellis Estate, 460 Pa. 281, 285, 333 A.2d 728, 730 (1975). Examples of patent errors by an executor include negligently incurring duplicative realtor commissions in the sale of real property, overpaying taxes, failing to pay taxes or failing to comply with the formal requirements of probate. *See, e.g., Ellis Estate*, 460 Pa. at 285, 333 A.2d at 730; Estate of Campbell, 692 A.2d at 1104.

In the instant case, Daman Mayim as executor knowingly violated Judge Pawelec’s 1999 order not to make any “further distribution from the Estate, except water and sewer rents and real estate taxes pertaining to the real property of Supernol, Inc., without further order of the court.”⁷¹ According to his own testimony, Daman Mayim wrongfully transferred more than \$1.6 million in assets from the Estate of McDowell Shelton to an account specified by Bishop Patterson and well as \$13,441 for his travel expenses and those of Fincourt Shelton and Anthonee Patterson incurred during a trip to Switzerland in the summer of 2007 without seeking a court order for permission to do so.

⁷¹ Ex. P-1.

The supplemental accounts filed by the executor on April 7, 2008 and June 13, 2008 detail improper “repair expenses” for the property located in 8036 Lowber Street that were charged to the S. McDowell Shelton Estate without prior court approval.⁷²

These distributions were not only patent violations of Judge Pawelec’s 1999 order, they constituted at risk distributions for which an executor may be surcharged. Where an executor distributes estate assets prior to an adjudication of his account to settle claims, he does so at his own risk and may be surcharged. White’s Estate, 22 Pa. D & C. 510 (Phila. O.C. 1935), *aff’d*, 322 Pa. 85, 185 A. 589 (1936). As the Pennsylvania Orphans’ Court Rules state:

Except where otherwise provided by a rule adopted by the Supreme Court or by an Act of Assembly, any distribution made by a fiduciary shall be made at his own risk unless directed by an adjudication, decree of distribution or order of the court.

Pa. O.C. Rule 6.11(b).

Although Daman Mayim has filed a 1996 interim account, and two supplemental accounts in 2008, no adjudication or order of distribution from a court has been obtained. The accounts are still pending as are the objections filed by various claimants. The surcharge of the errant executor is necessary to restore the S. McDowell Shelton estate so that the accounts may be finally adjudicated and the assets distributed to the rightful beneficiaries.

2. Daman Mayim Was Properly Removed as Executor to Protect the Assets of the McDowell Shelton Estate From Further Transfers

The orphans’ court has the exclusive statutory authority to remove a personal representative where he “is wasting or mismanaging the estate...or has failed to perform any duty implied by law.” 20 Pa.C.S. § 3182 (1). Moreover, the court has authority to

⁷² See, e.g., 4/7/08 Supplemental Account; 6/13/08 Revised Supplemental Account at 6-8.

remove an executor “when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.” Id., §3182(5).

Throughout his testimony at the September 16, 2008 hearing, Daman Mayim demonstrated a flagrant disregard for his fiduciary duties. He admitted that he had transferred more \$1.6 million in estate assets to Bishop Patterson despite his awareness of the 1999 order by Judge Pawelec forbidding distributions from the estate without a prior court order. Although he was aware that three different church groups claimed an interest in the estate assets and objections had been filed to the accounts he had filed, Mr. Mayim nonetheless made an at risk distribution to Bishop Patterson and his church. He admitted that in making this transfer, he failed to retain any paperwork or documentation. He also expressed the unrepentant belief that the \$869,805 in the Swiss bank accounts belonged not to the estate but to the church led by Bishop Patterson.

Mr. Mayim also admitted that he had expended estate funds for repairs of the property located at 8036 Lowber Street without seeking court permission to do so. Finally, he was unable to confirm that income or estate taxes had been paid.

In light of this testimony, Mr. Mayim was properly removed as executor. The removal of an executor selected by a decedent is a drastic remedy that should be undertaken only when the estate is endangered. In re Estate of Lux, 480 Pa. 256, 269, 389 A.2d 1053, 1059(1978). In the instant case, it was necessary to remove Mr. Mayim as part of the general attempt to protect the estate and restore its assets.

3. Bishop Anthonee Patterson, individually or as claimed representative of the Church of the Lord Jesus Christ of the Apostolic Faith in Darby, and the Trustees of the General Assembly of the Church of the Lord Jesus Christ, Inc. Were Properly Ordered to Return Those Assets of the McDowell Shelton Estate Illegally Transferred to Them by the Executor

By orders dated September 24 and October 20, 2008, this court ordered Bishop Patterson, individually or as representative of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. in Darby and the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith to return the following assets to the Estate of McDowell Shelton that were illegally transferred to them by Daman Mayim:

1) \$1,609,567.62; 2) \$8,441.65; 3) \$5,000; 4) any and all jewelry transferred to them, and 5) any and all personal property removed from 2401 Pennsylvania Avenue.

Section 711(17) of the PEF code gives orphans' court mandatory jurisdiction over the "adjudication of the title to personal property in the possession of the personal representative, or registered in the name of the decedent or his nominee, or alleged by the personal representative to have been in the possession of the decedent at the time of his death." 20 Pa.C.S. § 711(17). It has long been held that while Orphans' Court is of limited jurisdiction, it has "full and complete power to compel a third party to restore property to the estate of a decedent if such property was at one time in the possession of the administrator or executor, or if it was in the possession of the decedent at the time of his death." Freed Estate, 86 Pa. D & C. 592, 593, 4 Fid. Rep. 119 (Phila. O.C. 1954)(citations omitted). The assets of an estate do not belong to an executor; instead, he holds those assets in the capacity of a personal representative "for the benefit of everyone having an interest in the estate, including the Commonwealth, creditors and decedent's next of kin." Id., at 597. See also Estate of Gilbert, 342 Pa. Super. 82, 492 A.2d 401

(1985)(daughter of decedent was ordered to return assets to her deceased father's estate where she could not show that the alleged gifts were a result of his free will).

The testimony by Daman Mayim and Bishop Anthonee Patterson at the hearings on September 16, 2008 and October 7, 2008 clearly established that assets of the McDowell Shelton estate in the possession of the executor were transferred to Bishop Anthonee Patterson and his church. In addition to the general authority of the court to order the return of estate assets, Bishop Patterson, as President of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. ("indemnitor"), had signed an indemnification agreement for the benefit of the executor, Daman Mayim. Under that agreement, the indemnitor agreed "to indemnify, defend and hold harmless Mayim/Indemnatee, his successors and assigns and their respective agents from and against any claim or claims that are asserted against Mayim/Indemnatee because of Mayim' Indemnatee's conveyance of certain assets to Corporation/Indemnitor."⁷³

In ordering the return of these assets to the estate of McDowell Shelton, this court is no way making a final determination as to the merits of the claims of any party in interest. On the contrary, all parties-in-interest are free to assert their respective claims at a hearing to be held on the various objections to the accounts that have been filed. See generally, Webb Estate, 8 Pa. D. & C. 2d 215, 220, 7 Fid. Rep. 169 (Pa. O.C. 1956), *aff'd*, 391 Pa. 584, 138 A.2d 435 (1958)(because the administration of a decedent's estate is one indivisible judicial proceeding, the administrator is under the control of the orphans' court so that "any property received by him as administrator may be regarded as in the custody of the court").

⁷³ Ex. C-1.

Conclusion

For all of these reasons, the orders being appealed were properly entered and are essentially interlocutory in nature. The appeals should be quashed so that the substantive issues raised by the accounts and objections thereto can be addressed expeditiously.

BY THE COURT:

Date: December 31, 2008

John W. Herron, J.