

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION
Estate of Madeline Ballard, Deceased
O.C. No. 686 DE of 2010
Control No. 105138

Sur First and Final Account of James T. Henry, Executor
The account was called for audit June 7, 2010 By: **Herron, J.**
Counsel appeared as follows:
Martin G. Goch, Esquire – for the Accountant
Leigh W. Bauer, Esquire – for the Objectant

ADJUDICATION

Madeline H. Ballard died on June 15, 2008. Under her Will dated June 12, 2008, she named Martin G. Goch, Esquire as Executor, with the provision that if he was unable to serve, James T. Henry would then serve as executor. Letters testamentary were granted to James T. Henry on September 4, 2008, and proof of their publication was presented. On May 4, 2010, James Henry filed an account of his administration of the Ballard Estate covering the period from September 4, 2008 to the present.

Marvetta Daniels, the sole residuary heir of this estate, filed an objection to the Executor's Account contesting the reasonableness of the legal fee and the Executor's commission. At the June 7, 2010 Audit, a hearing was scheduled to consider these objections. For reasons explained hereinafter, this Court agrees with Objector and finds that both the legal fee and the Executor commission are excessive and orders appropriate reductions.

Questions for Adjudication: Legal Fees and Executor Commission

The First and Final Account filed on May 4, 2010 reflects a gross estate of \$191,145.52 consisting of real estate valued at \$156,177.63 and the balance in cash and personalty. After distribution of seven specific bequests of cash and personalty totaling \$11,580, payment of debts including a significant mortgage, condominium assessment and settlement costs, funeral

expenses and inheritance tax, a balance of only \$47,331 remained prior to payment of the legal fee, executor's commission and distribution to the sole residuary heir. Counsel for the Executor ("Counsel") seeks a legal fee of \$11,917.27, an executor's fee of \$11,917.27 and proposes paying the exact same amount of \$11,917.27 as the distribution to the Objectant, the sole residuary heir.

At the evidentiary hearing on July 13, 2010, Counsel and the Executor each failed to meet their burden to demonstrate the reasonableness of the fee and commission claimed. However, and to their credit, each one maintained detailed time records which were offered into evidence. Objectant's counsel conceded the accuracy of these records and that the hours expended, 69 hours of counsel time and 608.5 hours by the Executor, were in fact truthful; however, he maintained that the small value of the estate, the composition of the assets and problem free nature of the estate did not warrant anywhere near the time expended by either Counsel or the Executor. When asked how the fee and commission were determined, Counsel indicated that he charged \$250 an hour which amounted to \$17,250. The Executor charged \$20 an hour which amounted to \$12,160. At that point, Counsel realized that if these sums were paid in full, the residuary heir would receive a far smaller distribution than either Counsel or the Executor. Accordingly, Counsel decided to reduce his fee, reduce the executor's commission slightly and distribute the remaining balance equally, thus arriving at the figure of \$11,917.27 for himself, the Executor and the Objectant.

Legal Analysis

It is well established that an attorney or administrator seeking fees for his services to an estate bears the burden of proof. Estate of Sonovick, 373 Pa. Super 396, 400, 541 A.2d 374, 376 (1988). Fiduciaries are entitled to reasonable and just compensation based on actual services

rendered. Id., 373 Pa. at 399. Attorneys, likewise, are entitled to reasonable compensation based on their services to an estate. Estate of Preston, 385 Pa. Super. 48, 56, 560 A.2d 160, 164 (1989). The standard for reviewing the reasonableness of fees claimed by an attorney was outlined by the Pennsylvania Supreme Court in LaRocca Estate, 431 Pa. 542, 246 A.2d 337 (1968). Both parties agree that the LaRocca test applies, which provides:

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 of 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. LaRocca Estate, 431 Pa. at 548-49, 246 A.2d at 339.

In applying the analysis found in LaRocca Estate, this Court must consider eleven separate factors in order to assess the reasonableness of the fee and commission. In this estate, there were only 3 categories of assets: real estate, cash and personalty. Nearly three-quarters of the Estate’s value consisted of decedent’s residence at the time of her death. The real estate was sold in a poor housing market with a seller’s assist and this certainly took some time and effort; however, a realtor was involved and paid a commission. The seven specific bequests were easily paid from the cash and personalty on hand upon decedent’s death. The inheritance tax return and inventory were simple and easily prepared and, in fact, an accountant was hired to prepare one tax return. In short, this relatively small and simple estate had no problems or peculiarities warranting any degree of extraordinary effort by either Counsel or the Executor. Neither was able during the hearing to point to a single issue or problem encountered during the administration of the estate which would account for the large fee and commission claimed relative to the actual labor required to administer this simple estate. In short, the amount of work

performed was simply unnecessary and the fee and commission fail the first (amount of work performed), second (character of services rendered), third (difficulty of the problems involved), fifth (amount of money or value of property in question), sixth (the degree of responsibility incurred), ninth (the results obtained), last and most important test of LaRocca (the amount of money or the value of the property in question).

Both Counsel and the Executor are well credentialed. Counsel has been practicing law for over 30 years, is a certified estate planner, teaches law and has administered over 100 estates and written many wills. In fact, he wrote three wills for Decedent and was named by her as the executor, but renounced that role in favor of the alternate named. The Executor is a first cousin of the decedent and is both a retired City fire captain and retired OSHA inspector for the Federal government. Each took their role seriously and attempted in every way to perform their duties faithfully and this Court finds no fault with their motives. And, yet when the hours of work expended so clearly exceed what should be a reasonable number, LaRocca requires a downward adjustment.

Objectant's counsel, in particular, criticizes the Executor's visits to used furniture stores to establish the value of the decedent's furniture rather than simply hiring an appraiser. He also found fault with the Executor's practice of photocopying at the public library every piece of mail received. He faulted as unnecessary the Executor's claim: "I was working a 5-day week, 5 hours a day." During one period, the Executor remained at the condominium unit for entire days to dust, water the plants, and maintain a running inventory of the contents. He spent two days looking for a fur coat at furrier stores rather than telephoning such businesses. He had an "all day" meeting with the realtor at the condominium. While taking pride in performing his duties and expressing an earnest desire to do it right, 600 hours is simply unfathomable as a reasonable

amount of time for the work involved and reflects the “longer way” rather than the shorter and expedient, results oriented approach, which would have resulted in no more than 215 hours at most.

While Counsel’s \$250 hourly fee is unquestionably reasonable, this Court agrees with Objector’s counsel’s argument that this simple and problem free estate did not warrant 69 hours of legal work. Objector’s counsel also argues that an amended inheritance tax return should have been filed seeking a refund of the incorrect tax paid. At the hearing, estate’s counsel conceded that the tax return was filed prior to the sale of the decedent’s condominium and that excess tax was paid, but argued that an amended return could still be filed at this time. The tax return as filed clearly fails to reflect certain deductions noted in the settlement sheet, such as the \$9,000 seller’s assist and the settlement charges of \$21,956.90. This Court accepts the representation that an amended return will be filed in order to recoup the 15% tax paid on an inflated valuation.

Accordingly, for the reasons stated, this Court reduces the legal fee from the proposed \$11,917.27 to \$9,500 (38 hours) and the Executor’s commission from the proposed \$11,917.27 to \$4,300 (215 hours). With appropriate adjustments made to the Account as reflected in this adjudication, the total amount of the reduced fee and commission is awarded to the Objectant as part of her residuary share of the estate together with any tax refund obtained. With these adjustments, the First and Final Account is confirmed absolutely, this _____ day of July 2010.

Leave is hereby granted to the accountant to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An appeal from this Adjudication may be taken to the appropriate

Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1.A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

BY THE COURT:

John W. Herron, J.