

COURT OF COMMON PLEAS OF
PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Anne Flaxer,
Deceased
1427 DE of 2003

Sur First and Final Account of Judith Helene Douglas, Executor

The account was called for audit November 3, 2003 **BY: HERRON, J.**
Counsel appeared as follows:
Kathleen M. O'Connell, Esquire - for the Accountant
Dana Nissenfeld – Pro Se

ADJUDICATION

Anne Flaxer died on July 9, 2002. She executed a Will dated October 24, 2001 and letters testamentary were granted to Judith H. Douglas on July 26, 2002. Anne Flaxer was not survived by a spouse but she was survived by two daughters, Judith H. Douglas and Elise M. Flaxer. Proof of publication of the letters was presented. On August 27, 2003, the accountant Judith H. Douglas filed an account for the period July 26, 2002 through May 31, 2003.

According to the Accountant, Pennsylvania Transfer Inheritance Tax and Estate Tax was paid in the amount of \$10,406.91 on October 4, 2002. Official Pennsylvania Inheritance and Estate Tax Receipts were attached. The Accountant states that all parties of interest had notice of the audit and that a claim was asserted against the Estate by Dana Nissenfeld for \$49,100.00.

Ms. Nissenfeld appeared pro se at the Audit asserting that she had an oral contract of employment with the decedent and should receive compensation for her services, but according to the docket she did not file formal objections.

The Pennsylvania State Orphans' Court Rules state that "Objections to an account or

statement of proposed distribution shall be made or filed at such place and time, shall be in such form, and such notice thereof shall be given as local rules shall prescribe.” Pa. Orphans’ Ct. Rule 6.10. Philadelphia Orphans’ Court Rule 6.10.A provides that “Objections to an account or statement of proposed distribution must be in writing and shall be filed with the Clerk of the Orphans’ Court no later than the time and date fixed for the original call of the account for audit, unless otherwise specified by Order of Court.” Despite Ms. Nissenfeld’s failure to file formal objections,¹ this court ordered the accountant to file an Answer to the Claim. Ms. Nissenfeld subsequently responded to this answer by undated letter. In the interest of judicial economy, the accountant by letter dated December 11, 2003 noted that while Ms. Nissenfeld’s letter response did not conform to the local rules she would waive procedural objections so that the merits could be addressed. For the reasons set forth below, this court concludes that Ms. Nissenfeld’s claim for \$49,100 is without legal basis.

In her Answer filed on November 10, 2003 to the Nissenfeld Claim for compensation, the Accountant asserts that the claimant failed to present proof of an agreement by the decedent to compensate Nissenfeld for preparing decedent’s income tax returns, for monitoring decedent’s Vanguard account or for monitoring decedent’s Merrill Lynch account. The accountant notes that these services were performed more than three years before the decedent’s death and if Nissenfeld had expected compensation, she should have presented a bill at the time the services were rendered. As new matter, the accountant asserts that to the extent Nissenfeld’s claim rests

¹ The file contained a September 15, 2002 letter from Dana Nissenfeld to Kathleen O’Connell, counsel for accountant. In that letter, Ms. Nissenfeld asserted a claim of \$49,100 for services rendered from 1996 through October 1999 for the following services: (1) preparation of tax returns for 1996-1998; (2) monitoring a Vanguard Account; and (3) monitoring a Merrill Lynch Account. Various Merrill Lynch Account documents were presented in the folder with the letter. Attached to Ms. Nissenfeld’s letter is a response letter dated September 20, 2002 from Kathleen O’Connell denying the claim.

on an oral agreement with the decedent to provide compensation, it is barred by 20 Pa.C.S.A. section 2701. See Estate of Balter, 703 A.2d 1038 (Pa. Super. 1997)((applying section 2701 where claim asserted that decedent made an oral promise to bequeath her jewelry of equal value to a pin made of precious stones). This court concurs that Section 2701 is applicable and provides as follows:

- (a) **Establishment of contract.** – *A contract to die intestate or to make or not to revoke a will or testamentary provision or an obligation dischargeable only at or after death can be established in support of a claim against the estate of the decedent only by:*
- (1) *provisions of a will of the decedent stating material provisions of the contract;*
 - (2) *an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or*
 - (3) *a writing signed by the decedent evidencing the contract.*
- 20 Pa.C.S.A. § 2701 (emphasis added).

The October 24, 2001 Will of Anne Flaxer that was admitted to probate in Article Third states; “To my granddaughter, Dana Nissenfeld, I leave nothing.” The probated Will likewise makes no reference to any services performed by Ms. Nissenfeld nor to any agreement to compensate her for any services. See October 24, 2001 Will of Anne Flaxer. 2 In her undated letter, Ms. Nissenfeld makes no assertion that the probated Will either states “material provisions of the contract” or expressly references “a contract and extrinsic evidence proving the terms of the contract” as required by 20 Pa.C.S.A. § 2701 (1) or (2). Instead, Ms. Nissenfeld concedes: “The only evidence I have in writing to be compensated by my Grandmother (Anne Flaxer) for all my efforts in handling her financial matters is reimbursement from her original will (see enclosed).” Undated Letter by Dana Nissenfeld to Judge Herron.

2 In her Will, Anne Flaxer bequeathed \$10,000 to Shani Hope Stepansky; the residue was bequeathed to Judith

The Nissenfeld letter attached a Will dated August 15, 1996. The terms of the subsequent October 24, 2001 Will, however, expressly revoked all prior wills. Ms. Nissenfeld has not indicated any attempt on her part to appeal the decree of the Register of Wills that admitted the October 2001 Will to probate. In any event, the 1996 Will offers no support to her claim for \$49,100 for services rendered. Instead, in that 1996 Will, Anne Flaxer likewise made no reference whatsoever to any services rendered by Dana Nissenfeld nor did she reference a contract to compensate for such services. Instead, Anne Flaxer merely bequeathed the sum of \$10,000 to each of her grandchildren, Dana Nissenfeld and Shani Stepanski. The proffered, albeit revoked, 1996 Will thus offers no support for the \$49,100 claim of Dana Nissenfeld which is thus denied.

The account shows a balance of principal before distribution of \$222,070.60 and a balance of income before distribution of \$11,340.15 for a total of \$233,410.75. This sum, composed as stated in the account, plus income or credits received since the filing thereof, subject to distributions already properly made and subject to any additional inheritance tax as may be due is awarded as set forth in the Accountant's Petition for Adjudication and Statement of Proposed Distribution with \$10,000 to Shani Stepansky and the remaining 100% of Income and Principal to Judith Helene Douglas.

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

AND NOW, this _____ day of JANUARY, 2004, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the

Helene Douglas.

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 7.1A and Pa. O.C. Rule 7.1. as amended, and Pa.R.A.P. 902 and 903.

John W. Herron, J.