

Matter of Holmes

2017 NY Slip Op 30678(U)

March 24, 2017

Surrogate's Court, Nassau County

Docket Number: 335596/D

Judge: Margaret C. Reilly

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This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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**Accounting by Public Administrator of Nassau County
as the Administrator of the Estate of**

**DECISION
File No. 335596/D
Dec. No. 32643**

**JOHN JAMES HOLMES,
a/k/a JOHN JAMES FRANKLIN HOLMES,**

Deceased.

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PRESENT: HON. MARGARET C. REILLY

The following papers have been considered in the preparation of this decision:

| | |
|---|---|
| Petition and Amended Petition for Judicial Settlement of Account | 1 |
| Account | 2 |
| Reports of Guardian ad litem | 3 |
| Affirmation fo Legal Services | 4 |
| Affidavit of Tax Services | 5 |
| Transcript of Default.. . . . | 6 |

I. Procedural History

This is a petition for the judicial settlement of an account of the Public Administrator, as administrator of the Estate of John James Holmes. Letters of administration issued to the Public Administrator on February 19, 2015. The account covers the period from February 19, 2015 through September 30, 2015.

The decedent on January 1, 2002. He was survived by nieces and nephews and a guardian ad litem was appointed to represent missing and unknown distributees. He filed his report and has no objections to the relief requested. The petitioner seeks discharge of all liabilities, authorization for commissions, fixing and determining attorneys’ fees and

accountants' fees, releasing and discharging the surety and authorization to distribute the net estate to the claimant, the Department of Social Services.

The decedent's spouse, Florence Holmes, predeceased the decedent. Her estate was distributed to the estate of John James Holmes. A claim for services provided to Florence Holmes by the Department of Social Services was presented to the Public Administrator, as John James Holmes is a legally responsible relative. The claim is in the approximate amount of \$178,000.00.

On the return date of the citation in the accounting proceeding, Geraldine Carter, a niece, appeared. She was directed to file objections which she did. At a conference on the matter with Ms. Carter and the attorney for the Public Administrator, the matter was set down for an examination pursuant to SCPA § 2211. On the date of the examination, Ms. Carter did not appear and her default was noted.

II. Account

The account reflects principal and income received in the total amount of \$74,809.72. This amount was reduced by funeral and administration expenses in the amount of \$5,045.00 leaving a total cash balance on hand of \$69,764.72. The account is approved.

III. Fees

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*see Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the

complexity of the questions involved (*see Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*see Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*see Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*see Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*see Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*see Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]).

A. Guardian ad Litem Fee

The guardian ad litem filed a report in which he stated that he spent approximately six hours on this matter. He reviewed the records and prepared his report. Based upon the foregoing criteria the fee of the guardian ad litem is approved in the amount of \$1,800.00.

B. Accountant Fee

With respect to accountants' fees, normally, an accountant's services are not compensable out of estate assets unless there exist unusual circumstances that require the expertise of an accountant (*see Matter of Meranus*, NYLJ, Mar. 31, 1994, at 28, col 2 [Sur Ct, Suffolk County]). The fee for such services is generally held to be included in the fee of the attorney for the fiduciary (*see Matter of Musil*, 254 AD 765 [1938]). "[T]he purpose of this rule is to avoid duplication. Where the legal fees do not include compensation for

services rendered by the accountant, there is no duplication and the legal fee is not automatically reduced by the accounting fee (*see Matter of Tortora*, NYLJ, July 19, 1995, at 26, col 2 [Sur Ct, New York County]).

An affidavit has been submitted by the accountant and the requested fee of \$1,250.00 is approved.

C. Public Administrator

The petition seeks attorney fees in the amount of \$12,500.00. The attorney avers that he spent approximately 48.75 hours of services on this matter. He performed the following services: reviewed the records; communicated with personnel at the Public Administrator's office; communicated with distributees; conducted searches for potential distributees; attended conferences at the Surrogate's Court; prepared for the SCPA § 2211 examination and attended same; prepared the accounting and will prepare additional documents to finalize the estate. Considering all of the criteria set forth above, the court approves the fee for the counsel to the Public Administrator, in the amount of \$12,500.00

IV. Commission

The Public Administrator is **GRANTED** commissions, pursuant to SCPA § 2307 (1). The reasonable and necessary expenses of the Public Administrator's Office is **GRANTED**, pursuant to SCPA § 1207 (4).

V. Conclusion

Within sixty (60) days of the date of this decision, the Public Administrator shall bring his account down to date.

Upon the signing of the decree, the surety shall be released and the net estate paid to the Department of Social Services in satisfaction of its claim.

Settle decree.

Dated: March 24, 2017
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

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