

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19935
O/kmg

_____AD3d_____

Argued - June 16, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
HOWARD MILLER, JJ.

2007-09516

DECISION & ORDER

In the Matter of Harvey Greenfield, deceased.
Louis Rosenthal, appellant; Gerard Cabrera,
etc., et al., respondents.
(Proceeding No. 1)

In the Matter of Rosemarie Carlson, deceased.
Louis Rosenthal, appellant; Gerard Cabrera,
etc., et al., respondents.
(Proceeding No. 2)

In the Matter of Fannie Lupman, deceased.
Louis Rosenthal, appellant; Gerard Cabrera,
etc., et al., respondents.
(Proceeding No. 3)

In the Matter of Henry Holder, deceased.
Louis Rosenthal, appellant; Gerard Cabrera,
etc., et al., respondents.
(Proceeding No. 4)

In the Matter of Freida Holder, deceased.
Louis Rosenthal, appellant; Gerard Cabrera,
etc., et al., respondents.
(Proceeding No. 5)

(File Nos. 2978/00, 4848/01, 2517/04, 4251/96,
4597/97)

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Alexander M. Dudelson, Brooklyn, N.Y., for appellant.

Peter S. Schram, P.C., New York, N.Y., for respondents Peter S. Schram and Gerard Cabrera as Public Administrator in Proceeding No. 1.

Cullen & Dykman, LLP, Brooklyn, N.Y. (Joseph J. Borges and Richard Freeman of counsel), respondent pro se and for respondent Gerard Cabrera as Public Administrator in Proceeding Nos. 2, 4, and 5.

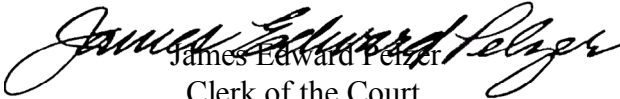
In five estate accounting proceedings, Louis R. Rosenthal, former counsel to the Public Administrator of Kings County, appeals from an order of the Surrogate's Court, Kings County (Lopez-Torres, S.), dated September 7, 2007, which denied those branches of his separate motions which were for the Surrogate to recuse herself from determining the allocation of legal fees between himself and successor counsel to the Public Administrator of Kings County in the subject proceedings.

ORDERED that the order is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

Absent a legal disqualification under Judiciary Law § 14, a court is the sole arbiter of its recusal (*see People v Moreno*, 70 NY2d 403, 405; *Schreiber-Cross v State of New York*, 31 AD3d 425, 425; *Chang v SDI Intl. Inc.*, 15 AD3d 520, 520; *EECP Ctrs. of Am. v Vasomedical, Inc.*, 277 AD2d 349, 350). "This discretionary decision is within the personal conscience of the court" (*People v Moreno*, 70 NY2d at 405; *see People ex rel. Smulczeski v Smulczeski*, 18 AD3d 785, 786). The appellant failed to set forth any proof of bias or prejudice to warrant the conclusion that the Surrogate's refusal to recuse herself was an improvident exercise of discretion (*see Modica v Modica* 15 AD3d 635, 636; *Matter of Firestone v Siems*, 272 AD2d 544, 545; *Anjam v Anjam*, 191 AD2d 531, 532-533; *Manhattan School of Music v Solow*, 175 AD2d 106, 108-109).

RIVERA, J.P., LIFSON, SANTUCCI and MILLER, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

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