

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1181

CA 08-02616

PRESENT: CENTRA, J.P., FAHEY, PERADOTTO, AND GREEN, JJ.

IN THE MATTER OF THE ACCOUNTING BY ANGELO
MANTIONE, AS EXECUTOR OF THE ESTATE OF
JOSEPHINE M. DEGRACE, ALSO KNOWN AS JOSEPHINE
DEGRACE, ALSO KNOWN AS JOSEPHINE DIGRACE,
DECEASED, PETITIONER-RESPONDENT; MEMORANDUM AND ORDER

EVELYN BONITO, OBJECTANT-APPELLANT.

MICHAEL J. STACHOWSKI, P.C., BUFFALO (MICHAEL B. JONES OF COUNSEL),
FOR OBJECTANT-APPELLANT.

RICHARD O. ROBINSON, P.C., BUFFALO (RICHARD O. ROBINSON OF COUNSEL),
FOR PETITIONER-RESPONDENT.

Appeal from an order of the Surrogate's Court, Erie County
(Barbara Howe, S.), entered September 16, 2008. The order denied the
objections of objectant to the accounting filed by the executor of
decedent's estate.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: The objectant in this proceeding appeals from an
order denying her objections to the accounting filed by the executor
of decedent's estate. Surrogate's Court concluded that the objectant
failed to acquire an interest in a joint account opened by decedent in
her name and that of the objectant and that the executor, as
decedent's attorney-in-fact, had not wrongfully converted the
objectant's interest in the account by withdrawing the entire balance.
We affirm. Although there is a presumption that parties to a joint
account are entitled to an equal share of the account (see Banking Law
§ 675 [b]), that presumption was rebutted by evidence establishing
that decedent "established the account for convenience and not with
the intention of conferring a present beneficial interest on the
[objectant]" (*Matter of Friedman*, 104 AD2d 366, 367, *affd* 64 NY2d
743).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court