

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

1364

CA 09-00836

PRESENT: SCUDDER, P.J., HURLBUTT, MARTOCHE, CENTRA, AND PERADOTTO, JJ.

IN THE MATTER OF THE JUDICIAL SETTLEMENT OF
THE SECOND INTERMEDIATE ACCOUNT OF THE CHASE
MANHATTAN BANK (SUCCESSOR BY MERGER TO THE
CHASE LINCOLN FIRST BANK, N.A., SUCCESSOR IN
INTEREST TO LINCOLN FIRST BANK OF ROCHESTER,
FORMERLY KNOWN AS LINCOLN ROCHESTER TRUST
COMPANY), AS TRUSTEE OF THE TRUST FOR THE
BENEFIT OF BLANCHE D. HUNTER (WHO DIED
DECEMBER 29, 1972) AND MARGARET H. DODGE
UNDER "FIFTH" OF THE WILL OF CHARLES G.
DUMONT, DECEASED, PETITIONER-RESPONDENT.

MEMORANDUM AND ORDER

UNIVERSITY OF ROCHESTER AND AMERICAN RED
CROSS, OBJECTANTS-APPELLANTS.

WILLIAMS & WILLIAMS, ROCHESTER (MITCHELL T. WILLIAMS OF COUNSEL), FOR
OBJECTANTS-APPELLANTS.

HARRIS BEACH PLLC, PITTSFORD (PAUL J. YESAWICH, III, OF COUNSEL), FOR
PETITIONER-RESPONDENT.

Appeal from an order of the Surrogate's Court, Monroe County
(Edmund A. Calvaruso, S.), entered July 21, 2008. The order granted
the petition for reimbursement of attorneys' fees, disbursements and
expenses in the amount of \$1,159,794.86.

It is hereby ORDERED that the order so appealed from is
unanimously modified on the law by reducing the total reimbursement
award to petitioner for attorneys' fees, disbursements and expenses to
\$350,000 and as modified the order is affirmed without costs.

Memorandum: In a prior appeal, we reversed that part of a
judgment in which Surrogate's Court granted the objections to the
superseding account filed by petitioner (trustee) and imposed a
surcharge plus interest and commissions based upon its determination
that the trustee should have divested itself of a concentration of
stock of Eastman Kodak Company on or before January 31, 1974 (*Matter
of Chase Manhattan Bank*, 26 AD3d 824, 827-828, lv denied 7 NY3d 824,
922). In the instant appeal, objectants appeal from a subsequent
order of the Surrogate granting the petition of the trustee for
reimbursement of attorneys' fees, disbursements and expenses
associated with its defense to the objections to its superseding
account and the appeal from the Surrogate's order imposing the
surcharge. In determining the proper amount of reimbursement sought

by a trustee for those items, a Surrogate should consider the "time spent, the difficulties involved in the matters in which the services were rendered, the nature of the services, the amount involved, the professional standing of the counsel, and the results obtained" (*Matter of Potts*, 213 App Div 59, 62, *affd* 241 NY 593; *see Matter of Freeman*, 34 NY2d 1, 9). Here, we conclude that the Surrogate properly considered those factors, with the exception of "the amount involved" (*Potts*, 213 App Div at 62). The Surrogate ordered that the trustee was to be reimbursed from the trust for its attorneys' fees, disbursements and expenses in excess of \$1.1 million, which constitutes approximately 40% of the corpus of the trust. "If the size of the estate is limited, compensation to a [trustee's attorneys] may be less than what the services would otherwise command" (*Matter of Martin*, 21 AD2d 646, 647, *affd* 16 NY2d 594; *see Matter of Kaufmann*, 26 AD2d 818, *affd* 23 NY2d 700; *Matter of McCranor*, 176 AD2d 1026, 1027). We therefore modify the order by reducing the total reimbursement award to the trustee to \$350,000 (*see generally McCranor*, 176 AD2d at 1027).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court