COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Residuary Trust Under Deed for Irving Corn, dated 5/20/71, as amended 2/15/72
O.C. No. 1290 IV of 1983
Control No. 120601

Sur Second Intermediate Account of Milton Fradkin (Surviving Co-Trustee), Ramon R. Obod (Successor Co-Trustee, accepted 7/7/83, confirmed 11/3/83) and Ruth Fradkin (Successor Co-Trustee, accepted 1/13/98, confirmed 3/19/98)

The account was called for audit April 2, 2012 **Before: Herron, J.**
deferred audit November 4, 2013
Counsel appeared as follows:
Adam Silverstein, Esquire
Robert Rosin, Esquire

ADJUDICATION

Introduction

The objections of Leslie Fradkin to the account that was filed by the trustees of the Irving Corn Trust raise three broad issues. The first issue is whether he validly objects to the distribution of the marital trust to his grandmother, Anna Corn, which was clearly permitted under the terms of Irving Corn's trust agreement. His second objection to the distribution of a profit sharing plan to his grandmother is likewise without merit based both on the terms of the trust document and on his lack of standing. Finally, his efforts to surcharge the co-trustees (who are his parents) for their investment decisions is without support from the record or by the trust document that granted the co-trustees broad investment discretion.

Background

Irving Corn ("Irving") died on March 8, 1982. Prior to his death, Irving established a trust for the benefit of his wife, Anna Corn, ("Anna") by deed dated May 20, 1971 as amended February 15, 1972. The intent of the trust to benefit Anna was expressed in various ways. In creating the trust, Irving initially appointed Anna as trustee together with their son-in-law Milton Fradkin and Girard Trust Bank. The principal of the trust was divided between a marital and residuary trust, both initially for the benefit of Anna Corn. The entire net income of the marital

trust was to be paid to Anna at least quarterly. She was also given broad access to the principal of the marital trust which provided that "[a]s much of the principal as she may from time to time request in writing, shall be paid to her."[1] In addition to this right to withdraw as much of the principal from the marital trust as she desired, Anna was given the discretion under the trust document to designate who should receive whatever principal remained in the marital trust upon her death by limited power of appointment through her will. She was given the same authority as to the principal remaining in the residuary trust. By her will dated June 29, 1991, with a February 1, 1996 Codicil, Anna exercised her power of appointment over the principal in the residuary trust, directing the trustees to hold 50% in trust for her grandson, Leslie Fradkin, and 50% in trust for her granddaughter Elyse Fradkin.[2] In so doing, she bypassed Leslie Fradkin's parents, who are co-trustees Milton and Ruth Fradkin. Leslie's father, Milton Fradkin has been a co-trustee of the trust since its inception.[3] On June 30, 1997, Anna Corn died.

Under the terms of Article Fourth of Anna's Will, therefore, fifty per cent of the remaining principal in the residuary trust is being held for Leslie Fradkin and fifty per cent is being held for Elyse Fradkin. Upon their deaths, any remaining income and principal is to be paid to their issue. If they do not have issue, these sums would go to Anna's grandniece, Melissa Freidenreich, who is therefore a contingent remainder beneficiary of the Residuary Trust.

In October 2011, Anna's grandson, Leslie Fradkin, filed a petition seeking an accounting by the Co-Trustees. Several months later on February 29, 2012, the surviving co-trustees (Milton Fradkin, Ramon R. Obod and Ruth Fradkin) filed an account of their administration of the residuary trust covering the period April 15, 1983 through November 30, 2011.[4] The account

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1 2/29/12 Account, Ex. A (May 20, 1971 Irving Corn Trust, Article First, A. (1) & (2)).

2 2/29/12 Account, Ex. B (Will dated June 29, 1991, with Codicil dated February 1, 1996 of Anna Corn, Article FOURTH).

3 See Ex. A-1 (4/16/14 Deposition of Milton Fradkin at 8-9, 44).

4 The initial co-trustees Irving Corn appointed were his wife, Anna Corn, his son-in-law, Milton Fradkin, and Girard Trust Bank. After Irving's death, Selwyn Horvitz was appointed as an additional co-trustee in accordance with the trust amendment dated February 15, 1972. Selwyn Horvitz resigned as co-trustee by instrument dated April 15, 1983 and Ramon R. Obod was thereafter appointed substitute co-trustee pursuant to the procedures set forth in Article THIRTEENTH of the trust document, and this appointment was approved by decree dated November 3, 1983 of Judge Jamison. Girard Bank also resigned as co-trustee in 1983, as approved by Judge Jamison on November 2, 1983. After Anna Corn died on June 30, 1997, her daughter Ruth C. Fradkin was appointed to succeed her as co-trustee. See 2/29/12 Account, Petition for Adjudication, Rider 5.

stated that the marital trust had been fully distributed to Anna prior to her death.[5] In addition to filing the account, the co-trustees sought approval of the resignation of Ramon Obod as co-trustee. The account was scheduled for the April 2, 2012 Audit List. On March 19, 2012, counsel for the accountants filed notice that the Attorney General of the Commonwealth of Pennsylvania, as parens patriae, had no objection to the Account based on the facts contained in the Notice.

On March 19, 2012, Leslie Fradkin, as "pro se beneficiary of the residuary trust," began filing a series of prolix, incomprehensible and voluminous objections. He first objected to the petition seeking approval of Ramon Obod's resignation as co-trustee. Among the assertions in these perplexing objections were Leslie Fradkin's apparent claims that the signature of Irving Corn, as settlor, had been forged (ostensibly in 1971 or 1972).[6] Not only was such an objection relating to the creation of the trust untimely and irrelevant, but it would have undermined Leslie Fradkin's standing as a beneficiary of the trust whose essential validity he appears to be challenging. On March 24, 2012, Leslie Fradkin filed a pro se objection to the Second Intermediate Account that once again was prolix, incomprehensible and voluminous. In these objections, for instance, Leslie Fradkin alleged that a Forensic Report # 1 "will provide proof that this Trust was NOT created for "Lawful Purposes "and IS, in fact, contrary to Public Policy as specified in §7734."[7] The other "Alice in Wonderland" ramblings in these objections defy comprehension. On April 16, 2012, Leslie Fradkin filed amended objections to the second intermediate account that also set forth incoherent assertions, including claims of "the alleged **Unauthorized** transfer of Wealth and assets from Irving Corn's Defiance Manufacturing Company, Inc. and his Estate, after the execution of the alleged "Forged" Trust, to the PETITIONERS, Executors, Trustees and Fox Rothschild, utilizing up to **Seven** different Corporations named "DEFIANCE"...."[8] On May 2, 2012, Leslie Fradkin appears to have

5 See 2/29/12 Account, Petition for Adjudication, Rider 9, fn. 1.

6 See 3/19/12 Fradkin Objections, ¶ 1 at 2 ("Objectant presents, to this Honorable Court, evidence which will (a) Establish evidence of forgery of the Signature of Irving Corn, in his capacity as Settlor and/or Testator with respect to the Residuary Trust Under Deed of Irving Corn, dated 5/20/71 as Amended 2/15/72 ("the Trust"))(emphasis in original).

7 3/26/12 Fradkin Objections, II Statutory Grounds for Objection, ¶ 6(a)(1). This paragraph then launches into an incomprehensible discussion of a "TIME PARADOX."

8 4/16/12 Fradkin Amended Objections, II Statutory Grounds for Objection, ¶ 3 (b).

withdrawn his objections to Ramon Obod's petition to resign as co-trustee.

On May 23, 2012, attorney Robert Rosin entered his appearance as counsel for Leslie Fradkin. A hearing was scheduled for May 30, 2012, but it was rescheduled various times by joint request of counsel. A hearing that had been rescheduled to November 13, 2012 was postponed to allow for completion of settlement negotiations. In June 2013, the accountants Ramon Obod and Milton Fradkin filed a petition to enforce a settlement ostensibly reached in November 15, 2012, but this request was denied for reasons set forth in an August 7, 2013 Audit Memorandum. The account was at that point returned unaudited with the provision that any party might petition to have it relisted for an adjudication. The accountants subsequently petitioned to have the account relisted for a deferred Audit List. On November 1, 2013, Leslie Fradkin, this time represented by counsel Robert Rosin, Esquire, filed a new set of concise, coherent objections to the account. A three month discovery schedule was thereafter established by November 6, 2013 decree.

Legal Analysis

After a period of discovery, a hearing was held on May 7, 2014 to consider Leslie Fradkin's new objections to the account. The first written objection was that the accountant "has failed to include among the assets of this Inter Vivos Trust, the net estate of Decedent Irving Corn, adjudicated on September 19, 1983 by the Surrogate's court of the County of New York."[9] At the hearing, the objector's counsel clarified this objection, asserting that the Second Intermediate Account as filed failed to include assets of the marital trust[10] which the objector maintained totaled $1.2 million dollars. He sought to document this $1.2 million shortfall by comparing the New York Surrogate's Adjudication (Ex. P-1) and Schedules J & K (Ex. P-2) that showed a balance for the marital trust of $1,902,000. In contrast, the Second Intermediate Account on pages 24 and 25 states a present balance of $643,432.30 while page 2 shows principal receipts of $760,339.28, which the objector asserted, amounts approximately to the $1.2 million shortfall.[11] In response to this objection, the accountants explained that the marital

9 11/1/13 Fradkin Objections at ¶1.
10 5/7/14 N.T. at 4-7 (Rosin).
11 5/7/14 N.T. at 13-16 (Rosin); Ex. P-1; Ex. P-2.

trust had been distributed to Anna Corn at her request.[12] In support, they presented a June 21, 1983 letter from Anna Corn that stated:

> June 21, 1983
>
> To: Trustees of Marital Trust Under Deed of Trust of Irving Corn, Deceased, dated February 15, 1972
>
> Pursuant to the provisions of Subparagraph A-2 of Article FIRST of the Deed of Trust of Irving Corn, Deceased, I hereby request distribution to me of 351 shares of Voting common Stock of 10,726 shares of the Preferred Stock of Defiance Development Co., Inc. now held in the marital trust.
>
> Very truly yours,
> Anna Corn

Ex. A-2

The accountants acknowledge that the marital trust had contained $1.2 million dollars after it was funded, but assert that Anna Corn immediately requested distribution of all of those assets with her June 1983 letter.[13] When the objector questioned the authenticity of this letter, the accountants presented the testimony of Ramon Obod, who has served as co-trustee since 1983. Mr. Obod authenticated the letter and its signature as belonging to Anna Corn. As Mr. Obod convincingly testified, "It looks like all other signatures of hers that I have seen."[14] The accountants also presented the deposition testimony of Milton Fradkin on this issue. According to the deposition of co-trustee Milton Fradkin, the marital trust had been funded initially with shares of the family business Defiance Manufacturing Company ("Defiance" or "Defiance Company") and by 1983 the marital trust owned 351 shares of common stock and 10,726 shares of preferred stock in the company. Anna Corn thereafter withdrew all the shares of stock owned by the marital trust pursuant to her unlimited power to invade capital. The Defiance Company then redeemed the stock, and the money Defiance paid for the stock was placed into Anna's Paine Webber cash fund account for a total of $1,235,320. As a consequence, by July 18, 1983, the marital trust no longer owned any shares of the company stock.[15] Under the trust document, Anna Corn was the sole beneficiary of this marital trust until her death and thus had full discretion to spend this asset as she wished. Additional proof that Anna in fact exhausted all the

12 5/7/14 N.T. at 12-13 (Silverstein).
13 5/7/14 N.T. at 12-13 (Silverstein).
14 5/7/14 N.T. at 26-27 (Obod).
15 Accountants' Ex. A-1 (4/16/14 Deposition of Milton Fradkin at 19-31). See also Ex. A-1,document 5 & document 12 (10,726 shares of stock transferred to Anna Corn on June 21, 1983 and redeemed June 23, 1983).

funds in the marital trust is the Will she executed on June 29, 1991. In that June 1991 Will, Anna in exercising her power of appointment explicitly referred only to the residuary trust that Irving had established under Article SECOND of his trust.[16] Anna's meticulously specific reference to only the residuary trust strongly supports the accountant's position that the marital trust had been totally distributed to her and thus no longer existed. Based on all of the evidence presented, Leslie Fradkin's first objection is therefore overruled.

The second objection raised by Leslie Fradkin is that the account failed to include as an asset the settlor's interest in an employee Profit Sharing Account established by the Defiance Company in the approximate amount of $147,113. According to the deposition of Milton Fradkin, this profit sharing account had originally been established to provide incentive to all employees in the New York office but it was liquidated around 1979 at which point money was distributed to Irving Corn as well as other employees.[17] A participant in this plan could designate a beneficiary, and Milton testified that Irving had designated his wife Anna as his beneficiary. In 1982 when Irving died, his interest in the profit sharing plan had vested at $147,113.[18] Documents presented in conjunction with Milton Fradkin's deposition, though not always clear, show that 100% of the profit sharing proceeds was ultimately paid to Anna Corn, and thus were not included in the second intermediate account.[19] The objector asserts that assets from this plan would have been part of Irving Corn's estate that poured into his trust.[20] A basic point, however, frustrates this claim by Leslie Fradkin. Objector Leslie Fradkin was not a beneficiary of the residuary trust until either Anna Corn exercised her power of appointment naming him as a beneficiary in her June 29, 1991 Will or until the time of her death on June 30, 1997. Not until he was actually named a beneficiary by Anna Corn did Leslie Fradkin have any interest whatsoever in Irving Corn's trust. Based on this evidence and the terms of the controlling trust document, Leslie Fradkin's second objection is overruled based both on the record and on Leslie's Fradkin's lack of standing to object to his grandmother's disposition of these profit

16 See 2/29/12 Account, Ex. B (June 29, 1991 Will of Anna Corn, Article FOURTH).

17 Ex. A-1 (4/16/14 deposition of Milton Fradkin at 73); see also Ex. A-1, document 30 (Terms of Profit Sharing Plan).

18 Ex. A-1 (4/16/14 deposition of Milton Fradkin at 74-75).

19 See Ex. A-1, documents 32-39. Document 37 contains notation under the balance sheet for Defiance Manufacturing Employees Profit Sharing Plan 12/31/87 that 100% had been distributed to Anna Corn.

sharing assets. This is because in Pennsylvania, it is settled that "standing requires that an aggrieved party have an interest which is substantial, direct and immediate." In re McGillick Foundation, 537 Pa. 194, 199, 642 A.2d 467, 469 (1994). Based on this established precedent, Leslie Fradkin was neither aggrieved nor had standing as to the profit sharing plan that was distributed to his grandmother before she named him as a beneficiary of Irving Corn's trust.

The final three objections are related since they seek to surcharge the co-trustees "for the sums proven to be due the Inter Vivos trust of Irving Corn together with the reasonable earnings lost by the Trustees' failure to fully and properly invest and re-invest the same."[21] In seeking to surcharge the co-trustees, Leslie Fradkin bears the burden of showing a breach of trust by the trustees that caused a related damage or loss to the beneficiaries. Estate of Dobson, 490 Pa. 476, 484, 417 A.2d 138, 142 (Pa. 1980). A surcharge "is the penalty imposed for failure of a trustee to exercise common prudence, skill and caution in the performance of its fiduciary duty, resulting in a want of due care." In re Dentler Trust, 2005 Pa. Super 146, 873 A.2d 738, 745 (2005), *app. denied* 587 Pa. 707, 897 A.2d 1184 (2006). The standard of care generally imposed on a trustee is "that which a man of ordinary prudence would practice in the care of his own estate." Trust of Munro, 373 Pa. Super. 448, 453, A.2d 756 (1988), *app. denied* 520 Pa. 607, 553 A.2d 969 (Pa. 1988). If a trustee represents that he has greater skill than a person of ordinary prudence, then he would be held to that higher standard. Mendenhall Trust, 484 Pa. 77, 80, 398 A.2d 951, 953 (Pa. 1979).

In 1999, the Pennsylvania legislature adopted the Prudent Investor Rule. This rule generally requires that a fiduciary "shall reasonably diversify investments, unless the fiduciary reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes, terms and other circumstances of the trust and requirements of this chapter." 20 Pa.C.S. §7204(a). This requirement for diversification, however, explicitly does not apply to trusts such as the Irving Corn Trust that became irrevocable prior to December 25, 1999. 20 Pa.C.S. § 7204(b)(1). Moreover, the PEF code provides that the duty and liability of a trustee can be established by the settlor:

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20 See 5/7/14 N.T. at 33-34 (Rosin).

21 11/1/13 Leslie Fradkin objections, ¶5. See 5/7/14 N.T. at 42 (Rosin)(requesting that objections 3 & 4 be

§ 7319. Directions of testator or settlor

(a) General rule.—The testator or settlor in the instrument establishing a trust may prescribe the powers, duties and liabilities of the fiduciary regarding the investment or noninvestment of principal and income and the acquisition, by purchase or otherwise, retention, and disposition, by sale or otherwise, of any property which, at any time or by reasons of any circumstance, shall come into his control; and whenever any such provision shall conflict with this chapter, such provision shall control notwithstanding this chapter, unless the court having jurisdiction over the trust shall otherwise decree pursuant to subsection (b) of this section.
20 Pa.C.S. § 7319

To determine whether a trustee has acted prudently in making investment decisions, Pennsylvania courts therefore focus on the "terms of the trust, the nature of the power accorded to the trustee and all the circumstances surrounding the trust." In re Scheidmantel, 2005 Pa. Super. 6, 868 A.2d 464, 487 (2005). The polestar for any interpretation of the trust document is the settlor's intent. Id., 868 A.2d at 488.

The trust document executed by Irving Corn in 1971 affords broad discretion to the co-trustees in making investment—or noninvestment—decisions. Article EIGHTH of the trust document, for instance, provides that the trustees have the following powers:

> A.To retain any investments and property at any time received by them, for such lengths of time as they, in their absolute discretion, may deem proper, without any liability by reason of such retention, without being restricted by any principle of investment diversification, and whether or not such investments or property conform to what are known as "Legal Investments," any statute now or hereafter in force to the contrary notwithstanding. . . .
>
> J. **To deposit and keep on deposit in savings or other bank accounts, any or all moneys at any time received by them for such periods of time as they, in their absolute discretion, may deem desirable, and to delegate the power to draw thereon to any of them. . . .**
>
> R. So that Trustees shall have the broadest powers in dealing with any business that I or any other person may add, by will or otherwise, to the trusts hereunder, and without intending to limit the powers vested in them by the other provisions of this Deed of Trust or by law, I authorize Trustees:
>
> 1. To retain, without being restricted by any principle of investment diversification, any part or all of such interests as long as Trustees consider it

considered together)

advisable to do so; . . . .

7. In general, in their absolute discretion, to deal with any such business interest with the same freedom of action that I would have if I were living and were the absolute owner thereof.

Irving Corn, Inter Vivos Trust, Article EIGHTH (emphasis added)

At the hearing, counsel for Leslie Fradkin asserted that the co-trustees had breached their fiduciary duty by keeping up to 45 per cent of the trust account in savings accounts rather than prudent, triple A investments.[22] The trust document executed by Irving Corn, however, explicitly gave the trustees the authority "[t]o deposit and keep on deposit in savings or other bank accounts, any and all moneys at any time received by them for such periods as they, in their absolute discretion, may deem desirable." In light of this broad, almost unfettered discretion, the final three objections of Leslie Fradkin are dismissed.

As a final matter, Ramon Obod has filed a Petition seeking approval of his resignation as co-trustee of the Residuary Trust under Deed of Irving Corn dated May 20, 1971, as amended February 15, 1972. According to the petition filed simultaneously with the account, the present co-trustees are Ruth Fradkin, Milton Fradkin and Ramon Obod. In his deposition, however, Milton Fradkin states that as a practical matter his wife, Ruth Fradkin, is unable to serve as co-trustee because she suffers from Alzheimer's disease.[23] If Ramon Obod resigns, there would be only one active trustee for this trust, which would be Milton Fradkin, who is 91 years old. To protect the interests of the present income beneficiaries and of the remainder beneficiary, it is prudent to require the appointment of a substitute trustee for Ramon Obod prior to approving his resignation as co-trustee. A hearing will therefore be held on August 27, 2014 to consider the petition to approve the resignation of Ramon Obod as co-trustee in accordance with Article THIRTEENTH of the Trust. Mr. Obod shall revise his petition to include a proposed substitute co-trustee and alert this court once it has been filed.

The accountant states that no Pennsylvania Transfer Inheritance Tax and Estate tax has been paid during the period of this account because the decedent was a New York resident at the

22 5/17/14 N.T. at 50-51, 44 (Rosin).

23 5/16/14 Milton Fradkin deposition at 9.

time of his death.

A reserve in the amount of $25,000 is requested subject to increase based on the nature and extent of objections filed to the account. The account shows a balance of principal before distribution of $ 731,633.91 and a balance of income before distribution of $ 1,131,228.30 for a total of $1,862,862.21. This sum, composed as stated in the account, plus income received since the filing thereof, subject to distributions already properly made, and subject to any additional transfer inheritance tax as may be due and assessed, is awarded as set forth in the Proposed Statement of Distribution as follows:

Income

Proposed Distributees	**Amount/Proportion**
Milton Fradkin, Ruth C. Fradkin, and Ramon Obod, Surviving Trustees of the Trust Under Deed of Irving Corn	100%

Principal

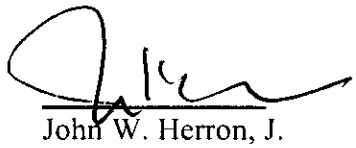
Milton Fradkin, Ruth C. Fradkin and Ramon Obod, Surviving Trustees of the Trust Under Deed of Irving Corn	100%

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

A schedule of distribution, containing all certifications required by Phila. O.C. Div. Rule 6.11.A(2) and, in conformity with this adjudication, shall be filed with the Clerk within ninety (90) days of absolute confirmation of the account.

AND NOW, this 9th day of JULY 2014, the account is confirmed absolutely.

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