

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

2 February 2000

No. 1622 DE of 1996

Estate of JIMMIE LEE JONES, Deceased

**Sur accounts entitled First and Final Account of Jeanette
Edwards, Executor, and, Amended Account**

Before O'KEEFE, ADM. J.

**This account was called for audit February 7, 2000 &
January 14, 2009**

Counsel appeared as follows:

**SHARON M. WILSON, ESQ., and TROY H. WILSON, ESQ.,
of WILSON & WILSON - for the Accountant**

**MARTIN I. KLEINMAN, ESQ., - for Fred Jones, Jr.,
Objectant**

**Jimmie Lee Jones died on March 7, 1996, leaving a Will dated March 24,
1994, which was duly probated. The testatrix was unmarried at the time of her death,
and, was survived by two children named Jeanette Edwards and Fred Jones, Jr.**

Letters Testamentary were granted to Jeanette Edwards, the Accountant, on April 4, 1996; proof of publication of the grant of same was submitted and is annexed to the audit papers in this matter.

Payment of transfer inheritance tax, \$4,531.00 on October 9, 1997, was duly vouched.

By the terms of her Will, a copy of which is annexed to the audit papers in this matter, the testatrix gave her tangible personal property to her children, Jeanette Edwards and Fred Jones, Jr., to be divided as they may agree. She directed that the residue of her estate be divided into two, equal shares: one to be paid to Jeanette Edwards, outright, and, the other to be held in trust for Fred Jones, Jr. The terms of the trust are set forth in Article FOURTH of the Will which reads as follows, in relevant part, to wit,

“ A. During the lifetime of FRED, as much of the income and/or principal as the Trustee, in her/his sole discretion, desirable for FRED'S maintenance, support and education either shall be paid to him or applied directly for those purposes by the Trustee. Any income not so expended shall be accumulated and thereafter treated as principal;

B. Upon the death of FRED (or upon my death in the event he fails to survive me), the then-remaining principal, together with any accumulated income, shall be paid outright, FREE OF TRUST, to my daughter, JEANETTE EDWARDS, or should she not then be living, per stirpes to her then-living issue.”

The testatrix gave her Executor and Trustee the power to borrow money and to pledge real and personal property as security therefore. She appointed her

daughter, Jeanette Edwards, to serve as Executor and Trustee.

On April 24, 1994, Jimmie Lee Jones executed a Power Of Attorney wherein she appointed her daughter, Jeanette Edwards, as her Agent or Attorney-in-Fact.

The First And Final Account of Jeanette Edwards, as Executor of the Estate of Jimmie Lee Jones, Deceased, and, an Amended Executor's Account, are now before this Court for audit. Annexed to said Executor's Account is the First and Final Account of Jeanette Edwards, as Agent under the aforementioned Power Of Attorney. See Section 3501.2 of the Probate, Estates and Fiduciaries Code.

The Account of Jeanette Edwards, as Executor, as amended, is stated for the period April 4, 1996 to November 30, 1999, and, shows receipts totaling \$28,558.07; disbursements totaling \$53,564.00; a deficit, before distributions, of \$25,005.93; distributions of cash to Fred Jones, Jr., in the total amount of \$1,125.00; and, a total deficit, after distributions to Fred Jones, Jr., of \$26,130.93.

The Account of Jeanette Edwards, as Agent, shows no receipts; no disbursements; and, no balance remaining.

The receipts in the Account of the Executor, as amended, include: cash in Mellon Bank in the amount of \$ 77.98, and, furniture valued at \$ 538.00.

On June 26, 1998, the Executor sold the decedent's property at 4553 North Marvine Street for a gross sales price of \$ 5,000.00. The receipts in the Account of the Executor, as amended, include the net proceeds of sale of premises 4553 North Marvine Street, being cash in the amount of \$ 2,295.37.

On September 10, 1997, the Executor borrowed the sum of \$ 20,500.00 from Equicredit Corporation, and, secured said loan by granting a mortgage on the decedent's property at 4909 North 11th Street. The receipts in the Account of the Executor, as amended, include the gross proceeds of said mortgage, being cash in the amount of \$ 20,500.00. However, the Executor received only \$ 3,982.00, in cash, as a result of the aforementioned mortgage. This is because the disbursements in the Account of the Executor, as amended, include \$ 16,518.00 in payments which were made, at settlement, from the aforementioned mortgage proceeds. Said payments include: \$ 1,937.00 in real estate taxes paid to the City of Philadelphia; \$ 546.00 in water and sewer charges paid to the City; \$ 1,048.00 in gas charges paid to PGW; \$ 4,531.00 in transfer inheritance tax paid to the Pennsylvania Department of Revenue; \$ 4,547.00 paid to satisfy a mortgage held by First Union National Bank; \$ 475.00 in fire insurance premiums; and, \$ 3,434.00 in other fees and closing expenses.

On November 18, 1999, in order to avoid foreclosure on the mortgage which she had granted to Equicredit Corporation, the Executor sold the decedent's property at 4909 North 11th Street to Mr.Quincey Burton. The receipts in the Account of the Executor, as amended, include the net proceeds of said sale, being cash received by the Executor, in the amount of \$ 5,145.72. In addition to the aforementioned cash payment to the Executor, Mr.Burton made \$ 36,715.46 in payments, at settlement, being: \$ 26,895.51 to satisfy the mortgage which had been granted by the Executor to Equicredit Corporation; \$ 1,909.65 in real estate taxes

paid to the City of Philadelphia; \$ 382.79 in water and sewer charges paid to the City; \$ 1,663.79 in gas charges paid to PGW; and, \$ 5,863.72 in other fees and closing expenses.

In her Petitions For Adjudication And Statements Of Proposed Distribution, as Agent and Executor, Jeanette Edwards takes the positions: that she never exercised her Power Of Attorney in the lifetime of her mother, the decedent; that the administration of the decedent's estate resulted in a deficit, before distributions, of \$ 25,005.93; and, that there are no assets available for distribution to the beneficiaries under her mother's Will.

Fred Jones, Jr., son of the testatrix, and, a residuary beneficiary, has filed Objections to the Account of his sister, Jeanette, as Executor, and, to the annexed Account of Jeanette as Agent.

In his Objections, Fred asserts that Jeanette, as Agent, should be surcharged and held liable for the sum of \$ 26,000.00 which Fred alleges was withdrawn, in June of 1993, from a certain bank account in United Bank. In response to this Objection, Jeanette takes the position that she never exercised her Power Of Attorney in the lifetime of her mother, the decedent.

The disbursements in the Account of Jeanette, as Executor, include a payment of \$ 8,255.00 to Baker Funeral Home. In his Objections, Fred asserts that this disbursement should be disallowed and stricken because the funeral bill was paid by his Aunt, Mamie Finch, in the amount of \$ 6,996.00, and, not by Jeanette. In response to this Objection, Jeanette insists that she paid the funeral bill, in the

amount of \$ 8,255.00 to Baker Funeral Home.

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for the sum of \$ 100,000.00 which Fred alleges was held by his mother's friend, Carrie Moss, In Trust For his mother, in bank accounts in Continental Bank and Mellon Bank. In his Objections, Fred states that Carrie Moss died in 1993. In response to this Objection, Jeanette asserts that her mother closed the accounts in question more than two years before her mother died.

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for the sum of \$ 35,802.00 which Fred alleges was held by his mother in a certain bank account in United Bank. In response to this Objection, Jeanette takes the position that the account in question was held by her mother In Trust For Jeanette.

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for the sum of \$ 4,346.00 which Fred alleges was held by his mother in a certain bank account in Mellon Bank. In response to this Objection, Jeanette takes the position that the account in question was held by her mother In Trust For Jeanette.

The disbursements in the Account of Jeanette, as Executor, include \$ 9,600.00 in mortgage payments made to Transworld Mortgage, and, \$ 6,294.00 in repairs, in connection with a property at 729 Wellens Street. In his Objections, Fred asserts that these disbursements should be disallowed and stricken because his mother did not own the Wellens Street property, and, it was not part of her

decedent's estate. In response to this Objection, Jeanette admits that her mother did not own the Wellens Street property at the time of her death. Nevertheless, Jeanette asserts that her mother had an oral agreement with the owners of Wellens Street whereby her mother would pay the mortgage on the property, and, the property would be deeded to her mother upon satisfaction of the mortgage. Jeanette further asserts that the owners of Wellens Street demanded an additional payment of \$ 13,000.00, in cash, from the decedent's estate. Finally, Jeanette asserts that she decided not to engage in costly litigation to recover the Wellens Street because the estate did not have money for litigation; because her brother, Fred, was in possession of the property from the date of their mother's death until November of 1997; because Fred took valuable property belonging to the estate and to a contractor repairing the property on behalf of the estate; because Fred threatened Jeanette; and, because Fred thwarted all efforts of Jeanette to repair the property.

The receipts in the Account of Jeanette, as Executor, include furniture valued at \$ 538.00. In his Objections, Fred asserts that the value of the decedent's furniture has been substantially "undervalued". In response to this Objection, Jeanette asserts that, on the date of her mother's death: her mother occupied the property at 4909 North 11th Street; Jeanette occupied the property at 4553 North Marvine Street; and, Fred occupied the property at 729 Wellens Street. Jeanette further asserts that Fred took possession of their mother's property on North 11th Street from the date of death until August 12, 1997, when he was forcibly evicted, and, that Fred destroyed everything of value in the North 11th Street property. Finally

Jeanette asserts that she, Jeanette, owned all tangible personal property in the Marvine Street property.

As previously noted, Jeanette, as Executor, sold the property on North Marvine Street, on June 26, 1998, for a gross sales price of \$ 5,000.00. The disbursements in the Account of Jeanette, as Executor, include a payment of \$ 1,500.00 to C&C Contracting, in August of 1996, for electrical, carpentry, flooring, masonry, and, plumbing work. In his Objections, Fred asserts that the North Marvine Street property was sold for substantially less than its fair market value. Fred further asserts that the disbursement of \$ 1,500.00 to C&C Contracting should be disallowed and stricken because it was made for the benefit of Jeanette and not for the benefit of the decedent's estate. In response to these Objection, Jeanette asserts that the Marvine Street property is located in the, "...Logan 'sinking homes' section of Philadelphia.", and, that the value of properties in the Logan area had plummeted.

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for a refund of \$ 1,026.00 in transfer inheritance tax. In response to this Objection, Jeanette takes the position that the Commonwealth ultimately reduced the amount of the refund to \$ 62.80, and, she was not going to expend counsel fees, which the estate did not have, to recover the sum of \$ 963.20.

As previously noted, Jeanette, as Executor, mortgaged the property at 4909 North 11th Street on September 10, 1997. She then sold it on November 18, 1999. The disbursements in the Account of Jeanette, as Executor, include payments to Equicredit in the total amount of \$ 5,520.00; a payment of \$ 95.00 to The Key

Works; and, a payment of \$ 110.00 to Home Tec & Designs. In his Objections, Fred asserts that the Executrix had no right to mortgage the North 11th Street property without prior Court approval, and, that it was sold for substantially less than its fair market value. Fred further asserts that the disbursements to Equicredit, The Key Works and Home Tec & Design should be disallowed and stricken because they were made for the benefit of Jeanette and not for the benefit of the decedent's estate. In response to these Objections, Jeanette asserts that the Will gives the Executrix discretion to mortgage estate property. Jeanette further asserts that she properly exercised her discretion to satisfy existing liens on the property, including an existing mortgage to First Union National Bank.

In support of her Accounts, as Agent and Executor, Jeanette offered her own testimony, and, one Exhibit which has been marked and received into evidence as Exhibit "A-1".

In support of his Objections to the Accounts of his sister, Jeanette, as Agent and Executor, Fred offered the testimony of Jeanette, as of cross-examination. Fred also offered his own testimony and six Exhibits which have been marked and received into evidence as Exhibits "O-1" through "O-6".

Jeanette testified that she got a Power Of Attorney from her mother about a couple of years before her mother died. Jeanette stated that her mother could not read well; that Jeanette handled her mother's affairs; that Jeanette made out the checks to pay her mother's bills; that her mother signed all checks; and, that Jeanette never used the Power Of Attorney in her mother's lifetime.

Jeanette testified that she paid \$ 8,255.00 to Baker Funeral Home for the funeral of her mother. Jeanette insisted that her Aunt, Mamie Finch, did not pay the funeral bill.

When counsel for Fred asked Jeanette, as on cross-examination, why her mother set up accounts in United Bank and Mellon Bank in the mother's name In Trust For Jeanette, Jeanette gave the following responses, to wit,

“ Q. On that same page it shows two bank accounts, In Trust For, Mellon Bank and United Bank of Philadelphia. Did your mother ever confide in you when she set up those In Trust For accounts why she set them up in this manner?

A. Yes.

Q. Why was that?

A. Because she didn't want her husband to get ahold of money in those accounts because at the time he was on serious drugs and alcohol.

Q. Did she want you to protect the money from your brother?

A. No.

Q. What did she want you to do with it?

A. She gave the money to me, she wanted to make sure he had a place to live.

Q. Where would that be?

A. 729 Wellens Street.” NT 27-28

Jeanette testified that, at the time of her mother's death, her mother owned and lived in the property at 4909 North 11th Street; her mother owned, and,

Jeanette lived in the property at 4553 North Marvine Street; and, her mother was purchasing, and, Fred lived in the property at 729 Wellens Street. When counsel for Fred asked Jeanette, as on cross-examination, whether Fred lived with their mother, on North 11th Street, prior to the mother's death, Jeanette gave the following response, to wit,

“ A. No. What happened was, because of his alcohol problem, my brother had forced me to take both my mother, and my father before his passing, to my house on Marvine Street, at which time he took over their house. And my mother had to get a restraining order in order to get back in her property. And then after she was back into the property, he managed to maneuver himself back into the property again. But he never actually lived there. He lived at Wellens Street. NT 63-64

Jeanette testified that her mother was purchasing Wellens Street under an oral agreement whereby her mother would pay the mortgage, and, the property would be deeded to her mother when the mortgage was satisfied. Jeanette stated that her mother paid the mortgage on Wellens Street in the mother's lifetime, and, that Jeanette continued to pay the mortgage and repairs after her mother died. Jeanette testified that Fred remained in possession of Wellens Street until she, Jeanette, had him forcibly evicted, by Court Order, in November of 1997. Jeanette stated that Fred removed everything from Wellens Street, including tools belonging to a contractor who was repairing the property. Jeanette testified that the owners of Wellens Street eventually demanded an additional payment of \$ 13,000.00, in cash, from the estate, and, that Jeanette had the estate's attorneys try to enforce her mother's agreement with the owners.

When her own counsel asked Jeanette whether Fred had threatened her, Jeanette gave the following response, to wit,

“ A. Yes. I was threatened continuously by Mr. Jones, and it started immediately upon the death of my mother during the process of the funeral arrangements, at which time he took over my mother’s house and which was the 11th Street property and would not allow me to come back in. And he even locked out relatives who were staying there for her funeral.” NT 56-57

Jeanette testified that Fred remained in possession of North 11th Street until she, Jeanette, had him forcibly evicted, by Court Order, on August 12, 1997. Jeanette stated that Fred removed most things of value from North 11th Street, and, that very little was left when she got the property back from Fred. Jeanette testified that she had to pay people to clean up the mess which Fred left in North 11th Street.

Fred’s Exhibit “O-1” is the Settlement Sheet pertaining to the \$ 20,500.00 mortgage which Jeanette, as Executor, placed on 4909 North 11th Street on September 10, 1997. As previously noted, Jeanette, as Executor, received only \$ 3,982.00, in cash, as a result of the mortgage, because of payments made at settlement, including: \$ 1,937.00 in real estate taxes paid to the City of Philadelphia; \$ 546.00 in water and sewer charges paid to the City; \$ 1,048.00 in gas charges paid to PGW; \$ 4,531.00 in transfer inheritance tax paid to the Pennsylvania Department of Revenue; \$ 4,547.00 paid to satisfy a mortgage held by First Union National Bank; \$ 475.00 in fire insurance premiums; and, \$ 3,434.00 in other fees and closing expenses

Jeanette testified that she lived in her mother's property at 4553 North Marvine Street from 1986 until 1998. Jeanette described the North Marvine Street property as being, "...in the sinking Logan section." NT 44-45 As previously noted, Jeanette, as Executor, sold the North Marvine Street property on June 26, 1998, for a gross sales price of \$ 5,000.00, and, received only \$ 2,295.37, in cash, as a result of the sale.

Jeanette stated that she moved into 4909 North 11th Street in 1998, and, resided there until the year 2000. Jeanette testified that she lived elsewhere from 2000 until 2004.

Fred's Exhibit "O-2" is the Settlement Sheet pertaining to the sale of 4909 North 11th Street by Jeanette, as Executor, to Mr.Quincey Burton, on November 18, 1999. As previously noted, Jeanette, as Executor, received only \$ 5,145.72, in cash, as a result of the sale, and, Mr.Burton made \$ 36,715.46 in additional payments at settlement, including: \$ 26,895.51 to satisfy the mortgage which had been granted by Jeanette, as Executor, to Equicredit Corporation; \$ 1,909.65 in real estate taxes paid to the City of Philadelphia; \$ 382.79 in water and sewer charges paid to the City; \$ 1,663.79 in gas charges paid to PGW; and, \$ 5,863.72 in other fees and closing expenses.

Jeanette testified that, on the date of the Hearing in this matter, January 14, 2009, she was renting the North 11th Street property from Mr.Quincey Burton.

Fred testified that, about a year before she died, his mother showed him the Will of Carrie Moss in which his mother was given a gift of \$ 100,000.00. Fred

stated that Carrie Moss died in 1994 or 1995. When his counsel asked Fed about bank accounts which Carrie Moss may have left In Trust For his mother, Fred gave the following responses, to wit,

“ Q. Do you know anything about any bank accounts that she might have had in trust for your mother?

A. No. I don't know anything because my sister took -- the day we buried my mother she came back and took all of the papers, the box and everything with all the papers and everything in it. The deeds and everything.

Q. Deeds to which property?

A. Wellens Street, Marvine Street, and 11th Street. My mother had deeds for all three of them.” NT 69

Fred testified that, on the date of the Hearing in this matter, January 14, 2009, he was living and working at the VA Medical Center in Coatesville, Pennsylvania. Fred stated that, at the time of his mother's death, he was unemployed, and, living with his mother at 4909 North 11th Street, but, he went back and forth between North 11th Street and Wellens Street. Fred insisted that he was not on drugs or alcohol when he lived in North 11th Street and Wellens Street. Fred admitted that he was evicted from North 11th Street, but, insisted that he was not evicted from Wellens Street.

Fred testified that he did not remove anything from North 11th Street or Wellens Street, and, that he did not trash either property. Fed stated that he left furniture and personal effects in both North 11th Street and Wellens Street. Fred testified that his fiancée, Brenda Jenkins, left minks, leathers, chinchillas, and, furs,

in North 11th Street.

In reaching my decision in this matter, I have found the testimony of Jeanette to be credible and convincing. On the other hand, I have found the testimony of Fred to be incredible and unconvincing.

In her Will, the decedent gave one-half of the residue of her estate to Jeanette, outright and free of trust. On the other hand, she imposed a trust upon residue passing to Fred, and, gave the assets remaining in said trust, on Fred's death, to Jeanette, outright and free of trust. I find that Jeanette and Fred are treated differently, in their mother's Will, because of Fred's problems with alcohol; because Fred forced his mother and father to leave their house on North 11th Street and take up residence with Jeanette on North Marvine Street; and, because the mother was forced to get a restraining order to get back into North 11th Street.

Because Fred offered no testimony or evidence regarding the sum of \$ 26,000.00 which was allegedly withdrawn, in June of 1993, from a certain bank account in United Bank, I dismiss the Objection in which Fred seeks to hold Jeanette liable, as Agent, for said sum. See Schwartz Estate, 68 D.&C. 154 (1949); Estate of Stetson, 463 Pa. 64 (1975); and, Miller's Estate, 345 Pa. 91 (1942).

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for the sum of \$ 100,000.00 which Fred alleges was held by his mother's friend, Carrie Moss, In Trust For his mother, in bank accounts in Continental Bank and Mellon Bank. In his Objections, Fred states that Carrie Moss died in 1993. On the witness stand, Fred testified that his mother showed him a Will

of Carrie Moss, in which his mother was given a gift of \$ 100,000.00; that Carrie Moss died in 1994 or 1995; and, that Fred knew nothing about any bank accounts which Carrie Moss may have left In Trust For his mother. Because Fred offered nothing other than his own, uncorroborated testimony regarding the gift of \$ 100,000.00 from Carrie Moss to his mother, I dismiss his Objection seeking to hold Jeanette liable, as Executor, for said sum. See Schwartz Estate, supra; Estate of Stetson, supra; and, Miller's Estate, supra.

In his Objections, Fred asserts that Jeanette, as Executor, should be surcharged and held liable for the sum of \$ 35,802.00 which Fred alleges was held by his mother in a certain bank account in United Bank, and, for the sum of \$ 4,346.00 which Fred alleges was held by his mother in a certain bank account in Mellon Bank. In responses to these Objections, Jeanette takes the position that the accounts in question were held by her mother In Trust For Jeanette. Section 6304 (b) of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. § 6304 (b), pertains to In Trust For bank accounts, and, reads as follows, in relevant part, to wit,

“ (b) Trust Account. -- At the death of the trustee...., any sum remaining on deposit belongs to the person or persons named as beneficiaries, if surviving, unless there is clear and convincing evidence of a contrary intent;”

Fred offered no testimony or evidence regarding bank accounts held by his mother In Trust For Jeanette in United Bank and Mellon Bank. However, as previously noted, Jeanette gave the following responses, as on cross-examination, concerning said accounts,

“ Q. On that same page it shows two bank accounts, In Trust For, Mellon Bank and United Bank of Philadelphia. Did your mother ever confide in you when she set up those In Trust For accounts why she set them up in this manner?

A. Yes.

Q. Why was that?

A. Because she didn't want her husband to get ahold of money in those accounts because at the time he was on serious drugs and alcohol.

Q. Did she want you to protect the money from your brother?

A. No.

Q. What did she want you to do with it?

A. She gave the money to me, she wanted to make sure he had a place to live.

Q. Where would that be?

A. 729 Wellens Street.” NT 27-28

I hold the aforementioned responses of Jeanette to be credible, clear and convincing evidence that her mother did not intend that the sums on deposit in the aforementioned In Trust For accounts should belong to Jeanette on the death of the mother. Accordingly, Fred's Objections regarding said accounts are sustained, and, the total amount of \$ 40,148.00 will be added to the deficit of \$ 25,005.93, before distributions, which is reflected in the Account of Jeanette, as Executor.

Because Jeanette testified truthfully about the In Trust For bank accounts in United Bank and Mellon Bank, and, because Fred's Exhibit "O-6"

contains copies of many checks written by Jeanette, I believe that Jeanette did pay \$ 8,255.00 to Baker Funeral Home for the funeral of her mother. Accordingly, I dismiss the Objection in which Fred asserts that the disbursement of \$ 8,255.00, for payment of the funeral bill, in the Account of Jeanette, as Executor, should be disallowed and stricken.

In passing upon Fred's Objections to the disbursements in Jeanette's Account, as Executor, for mortgage payments and repairs, in connection with the property at 729 Wellens Street, I note that Fred has the duty of proving that Jeanette has breached her fiduciary duty, and, that the estate has suffered a loss as a result of said breach of fiduciary duty. This is because,

"Surcharge is the penalty for failure to exercise common prudence, common skill and common caution in the performance of the fiduciary's duty and is imposed to compensate beneficiaries for loss caused by the fiduciary's want of due care." Miller's Estate, 345 Pa. 91, 93 (1942)

In making mortgage payments and repairs for the Wellens Street property, Jeanette continued to do what her mother had done while the mother was alive. Fred's Exhibit "O-6" includes a check to Transworld Mortgage, in the amount of \$ 621.04, which check was signed by the decedent on the day before she died, that is, on March 6, 1996. Fred remained in possession of Wellens Street until Jeanette had him forcibly evicted, by Court Order, in November of 1997. The owners of Wellens Street breached their agreement with the decedent, and, demanded an additional payment of \$ 13,000.00, in cash, from the estate. Jeanette ordered the estate's attorneys to try

to enforce the agreement between the owners. On the record made by the Parties in this matter, I hold that Jeanette did not breach her fiduciary duty by making mortgage payments and repairs for the Wellens Street property. Accordingly I dismiss Fred's Objections to the disbursements in Jeanette's Account, as Executor, for mortgage payments and repairs, in connection with the property at 729 Wellens Street.

I dismiss the Objection in which Fred asserts that the value of his mother's furniture has been substantially "undervalued". I do so because Jeanette owned the furniture in the North Marvine Street property; because Fred had possession of the North 11th Street property and the Wellens Street property until he was forcibly evicted from each; and, because Fred removed or destroyed everything of value in North 11th Street and Wellens Street.

I dismiss the Objection in which Fred asserts that the North Marvine Street property was sold for substantially less than its fair market value. I do so because the North Marvine Street property was located in the sinking Logan section of Philadelphia, and, because Fred offered no testimony or evidence as to the value of this property.

I dismiss the Objection in which Fred asserts that the payment of \$ 1,500.00 to C&C Contracting, in August of 1996, for electrical, carpentry, flooring, masonry, and, plumbing work, in the North Marvine Street property, should be disallowed and stricken. I do so because North Marvine Street was sold by Jeanette, as Executor, on June 26, 1998, for a gross sales price of \$ 5,000.00, and, the estate

received \$ 2,295.37, in cash, as a result of said sale.

I dismiss the Objection in which Fred asserts that Jeanette, as Executor, should be surcharged and held liable for a refund of \$ 1,026.00 in transfer inheritance tax. I do so because the Commonwealth ultimately reduced the refund to \$ 62.80, and, because common prudence and common caution do not require that counsel fees be expended to recover a sum as small as \$ 963.20.

I dismiss the Objection in which Fred asserts that the Executrix had no right to mortgage 4909 North 11th Street; that North 11th Street was sold for substantially less than its fair market value; and, that payments to Equicredit, The Key Works and Home Tec & Designs were made for the benefit of Jeanette and not for the benefit of the decedent's estate. I do so because the decedent's Will expressly gives the Executrix power to borrow money and to pledge real property as security therefore. I do so because Fred had possession of North 11th Street until he was forcibly evicted, by Court Order, on August 12, 1997. I do so because Fred turned North 11th Street into a mess. I do so because Jeanette used the mortgage proceeds to pay the following sums, at settlement, on September 10, 1997: \$ 1,937.00 in real estate taxes to the City of Philadelphia; \$ 546.00 in water and sewer charges to the City; \$ 1,048.00 in gas charges to PGW; \$ 4,531.00 in transfer inheritance tax to the Pennsylvania Department of Revenue; \$ 4,547.00 to satisfy a mortgage held by First Union National Bank; \$ 475.00 in fire insurance premiums; and, \$ 3,434.00 in other fees and closing expenses. I do so because Jeanette, as Executor, received \$ 3,982.00, in cash, as a result of the mortgage. I do so because, at settlement on the

sale to Mr. Burton, on November 18, 1999, Mr. Burton paid \$ 5,145.72 to Jeanette, as Executor; \$ 26,895.51 to satisfy the mortgage which had been granted by Jeanette, as Executor, to Equicredit Corporation; \$ 1,909.65 in real estate taxes to the City of Philadelphia; \$ 382.79 in water and sewer charges to the City; and, \$ 1,663.79 in gas charges to PGW. I do so because Fred offered no testimony or evidence as to the value of North 11th Street. Finally, I do so because the record shows that the decedent's estate benefited from the mortgage which Jeanette granted on North 11th Street; from the sale of North 11th Street by Jeanette; and, from the payments which Jeanette made to Equicredit, to The Key Works, and, to Home Tec & Design.

All Objections having been addressed and adjudicated, the Amended First and Final Account of Jeanette Edwards, as Executor, as filed, shows a deficit, before distributions, of \$ (25,005.93)

to which add surcharge regarding bank accounts held by the decedent In Trust For Jeanette in United Bank and Mellon Bank, of 40,148.00

making a balance available for distribution of \$ 15,142.07

which is awarded as follows, to wit: one-half to Jeanette Edwards, outright and free of trust; and, one-half to Jeanette Edwards, as Trustee of the trust for Fred Jones, Jr., for the uses and purposes set forth in Article FOURTH of the Will of Jimmie Lee Jones.

The above award to Jeanette Edwards, as Trustee, is made subject to distributions totaling \$ 1,125.00 which have heretofore been made to Fred Jones, Jr.

Leave is hereby granted to the accountant to make all transfers and

assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, _____, the Amended First and Final Account of Jeanette Edwards, as Executor, as modified by the rulings in this Adjudication, is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of issuance of the Adjudication. An Appeal from this Adjudication may be taken, to the appropriate Appellate Court, within thirty (30) days from the date of issuance of the Adjudication. See Phila. O.C. Div. Rule 7.1.A and Pa. O.C. Rule 7.1, as amended, and, Pa.R.A.P. 902 and 903.

ADM. J.