

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA  
COUNTY  
ORPHANS' COURT DIVISION

574 DE of 1999

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ESTATE OF JEAN McCOLLIGAN

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**Sur Accounts entitled:  
First and Final Account of Jean McColligan**

Counsel appeared as follows:

Alan M. Bredt, Esq.                   for Accountant

John A. Alice, Esq.                   for Objectant

**Procedural History**

On 1 March 1999, Letters Testamentary were granted to Elizabeth McColligan as Executrix of Decedent's Estate. On 26 June 2002, Elizabeth McColligan filed a First and Final Account, Petition for Adjudication and Statement of Proposed Distribution in the Orphans' Court of Philadelphia. [Accountant's Exhibit 1]. The audit was listed for 5 August 2002. John McColligan filed Objections to the Account on 1 August 2002. Trial was held 10 March 2003.

**Facts**

Jean McColligan, (hereinafter referred to as “Decedent”) died testate on 5 February 1999. Decedent was survived by her daughter, Elizabeth McColligan, (hereinafter referred to as “Sister” or “Accountant”), and her son, John McColligan, (hereinafter referred to as “Brother” or “Objectant”).

Decedent’s Will, dated 11 June 1998 directs, *inter alia*, that Brother be given the first option to purchase Decedent’s real property located at 3123 Willits Road, Philadelphia, PA, (hereinafter referred to as “the Residence” or “Willits Road”), from Decedent’s Estate. Further, Decedent’s Will provides for an equal division of Decedent’s Residuary Estate between Sister and Brother, and names Sister as Executrix.

At Decedent’s date of death, the Estate’s assets included the Residence, a number of bank accounts, a car and various pieces of jewelry. Correspondingly, the Estate’s liabilities included the remaining principle balance of an outstanding Mortgage, (hereinafter referred to as “the Mortgage”), on the Residence, a \$68,182.82 debt to the Estate of Elizabeth Stanley, and certain credit card debt. The credit cards in question were opened during Decedent’s lifetime in Decedent’s name, but the remaining credit card balances at Decedent’s death are exclusively attributable to Brother’s usage of the respective credit cards.

Pursuant to the provisions of Decedent’s Will, the Estate’s attorney drafted an “Agreement to Purchase Real Property,” (hereinafter referred to as “the Agreement”), for the purpose of facilitating Brother’s purchase of the Residence [N.T. 11, 31]. The Agreement was admitted into evidence at trial as Objectant’s Exhibit 1, [O-1], and provided:

- The purchase price was \$73,000.00 [N.T. 12] which amount was a discounted amount due to the fact that (Brother) is the Decedent’s son, [O-1, para. 2].
- The money to pay the purchase price was to come from

(Brother's) share of his Aunt Elizabeth Stanley's estate (hereinafter referred to as "Aunt's Estate") to the extent that such interest shall meet the obligation of (Brother) hereunder. If said bequest is insufficient to cover the purchase price hereunder and costs of closing then any additional funds owed hereunder shall be paid by (Brother) at time of closing. [O-1, para. 2(a); N.T. 27]  
Under the Agreement the Closing was scheduled for 1 December 1999. [O-1, para 14].

During Sister's co-Administration of Aunt's Estate, it became apparent that Aunt's Estate would not be settled by the date set for closing on Decedent's Residence. The record betrays no evidence suggestive of Brother playing any role in delaying settlement of Aunt's Estate. The record is unclear as to whether Sister played any role in delaying settlement of Aunt's Estate. Regardless, the anticipated funds coming from Aunt's Estate to assist in Brother's purchase of Decedent's Residence would not be available by the scheduled closing date. [N.T. 12, 16-17].

Brother and Sister entered into a "Real Estate Lease," (hereinafter referred to as "the Lease") for the purpose of facilitating Brother's occupation of the Residence with his family. The Lease was admitted into evidence at trial as Objectant's Exhibit 2, [O-2]. The Lease was for a term of one year beginning 23 November 1999 and ending 22 November 2000. Brother paid \$15,500.00 for rent and as a down payment against the purchase price of the Residence. [O-2; N.T. 18].

Upon occupying the Residence, Brother became aware that a Mortgage existed on the Residence. The Mortgage was in arrears. The Residence was going into foreclosure or was then in foreclosure. Brother made payments against the Mortgage arrearages and thereby rescued the residence from foreclosure. Pertinent to Brother's occupation of the Residence, the Lease reads: "All money paid as rent shall be applied as down payment toward the purchase price," [O-2].

At the date of trial, Brother and his family maintained occupation of the Residence, Brother having assumed the Mortgage from Decedent's Estate. Pursuant to the terms of the Lease, Brother's down payment of \$15,500 *along with* monies expended to rescue the Residence from foreclosure *plus* additional and continued mortgage payments of "(a)pproximately \$325.00 a month" [N.T. 34 at 25] represent the combined "down payment (that Brother has made) toward the purchase price (of the Residence)". Testimony reveals that when Brother first learned of the Mortgage it was approximately \$33,000.00 [N.T. 35 at 6].

By the date of trial, Aunt's Estate had settled. Brother had received *a share* of Aunt's Estate. Brother's *exact share* of Aunt's Estate remains in dispute. In accordance with the Agreement, all monies owed to Brother from Aunt's Estate would be applied directly toward the purchase price of the Residence. It follows that any additional monies owed to Brother from Aunt's Estate will proportionately reduce the remaining amount owed by Brother in closing on the Residence. To date, Brother has not yet closed on the Residence because Brother reasonably does not know the exact amount of money required to do so.

In all negotiations surrounding the Agreement and Lease, Sister enjoyed a position of superior information and influence over Brother:

- Sister's attorney drafted the Agreement;
- Sister's attorney drafted the Lease;
- The Agreement cited an unspecified "share of (Brother's) Aunt's Estate" to be used toward the purchase price of the Residence;
- As Executrix of Decedent's Estate, Sister had made mortgage payments against the Mortgage on the Residence, and therefore knew of the Mortgage;
- Sister knew or should have known that Brother had negotiated to purchase the Residence free-and-clear of any mortgage;
- Sister never informed Brother of the Mortgage; and
- As a co-Administratrix of Aunt's Estate, Sister had a

disproportionate amount of influence over the share of Aunt's Estate that would be applied to reduce Brother's purchase of Decedent's Residence.

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### ***OBJECTIONS***

Objectant raises 24 objections to Accountant's First and Final Accounting. The Objections are categorized and addressed as follows:

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### ***GENERAL OBJECTIONS***

Objections 23 & 24 concern the very nature of the Account.<sup>1</sup> Therefore, the Court's review of Objections 1 through 22 addresses the general objections raised as to the Account's form and Objectant's right to object. Objections 23 & 24, therefore, are dismissed or sustained accordingly.

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**fn1**

Which Objections read:

23 The Account fails to comport with the requirements and form of Court approved Accounts.

24. Objectant reserves the right to file additional Objections as may be revealed during discovery and/or the audit of this account.

*VALUE OF DECEDENT'S RESIDENCE*

Objection 1 challenges Accountant's valuation of Decedent's Residence and seeks a surcharge in the amount of the difference.<sup>2</sup> Objectant cites Accountant's quoted value of \$60,500.00 as it appears within the First and Final Account and contrasts the negotiated value of \$73,000.00 as it appears within the Agreement. Accountant and Objectant arrived at the price of \$73,000.00 after negotiating off of the independent appraisal [O-3] which valued the residence at \$75,000.00.

The Court notes that Objectant has the duty of proving that Accountant has breached an applicable fiduciary duty, and that a related loss has occurred. See Estate of Stetson, 463 Pa. 64, 84, 345 A.2d 679 (1975), upon:

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)

It is clear from the negotiated value of \$73,000.00 that Accountant undervalued the Residence in the submitted First and Final Account by \$12,500.00. Accordingly, this Court SUSTAINS Objection 1 and grants a surcharge in the amount of \$12,500.00.

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<sup>2</sup> Executrix incorrectly states the value of Decedent's Real Estate located at 3123 Willits Road, Philadelphia, PA, as \$60,500.00 when Executrix entered into an Agreement of Sale with Objectant to sell the property to Objectant for \$73,000.00.

## *MORTGAGE*

Objection 4 challenges Accountant's claimed mortgage payments on Decedent's Residence between February 1999 and October 2000.<sup>3</sup> Accountant claims payments of \$7,227.54. Objectant contends that only \$6,253.38 was actually paid and seeks a surcharge of \$974.16 representing the difference.

Under Decedent's Will, Objectant exercised his right of first refusal on Decedent's Residence. Pursuant thereto, Accountant on behalf of Decedent's Estate negotiated with Objectant for the sale of Residence at an agreed upon price of \$73,000. After hearing testimony from both Accountant and Objectant on the issues surrounding the Mortgage, the Court holds that:

- Accountant knew that a Mortgage existed on the Residence;
- Accountant knew that Objectant was negotiating to purchase the Residence free of any mortgages; and
- Accountant knew that Objectant was unaware of the existence of the Mortgage.

These findings are further supported by the fact that Accountant made payments against the Mortgage amounting to \$6,253.38 during the period in question. Had Accountant actually been unaware of the existence of a mortgage, Accountant would not have made mortgage payments during the period in question. Accordingly, Objection 4 is SUSTAINED and a surcharge granted in the requested amount of \$947.16.

Further, upon executing the Real Estate Lease and occupying the Residence, Objectant discovered the existence of the Mortgage in

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**fn3**

Which Objection reads:

4. Executrix incorrectly states mortgage payments to Commonwealth Bank for 3123 Willits Road in the amount of \$7,227.54 between February 1999 and October 2000 when \$6,253.38 was actually paid.

question. Objectant rescued the property from foreclosure, paid all mortgage arrearages and began making mortgage payments on a monthly basis in the amount of \$325.00.

Despite a Mortgage existing on the Residence, despite negotiating for the sale of the Residence free of any mortgage, and despite the fact that the Account reflects full payment of the \$33,138.88 mortgage, the Estate *never paid the outstanding Mortgage*. On the contrary, Objectant has been paying off what is otherwise an Estate liability.

Accordingly, the Account entry under “Realty” reflecting payment of the outstanding Mortgage shall be STRICKEN. Objectant shall continue to make payments against the Mortgage he has assumed, and all agreements necessary to expedite the sale and transfer of the Residence to Objectant shall be executed. In so granting, Objection 2 is SUSTAINED.<sup>4</sup>

Pursuant to these findings and in assuming the Mortgage, credits on behalf of Objectant against the negotiated amount of \$73,000 shall be applied as follows:

Agreement to Purchase Real Estate:	\$73,000.00
Real Estate Lease - Down Payment:	(\$15,500.00)
Assumed Mortgage:	<u>(\$31,138.88)</u>

*Net Amount needed to purchase Residence: \$26,361.12*

Further, Objectant shall retain all equity existing in the Residence from whatever source derived.

Therefore, at closing, Objectant shall tender \$26,361.12 to the Estate in cash, settlement monies from Decedent’s Estate, or any combination thereof in exchange for the complete transfer of title to 3123

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fn4

Which Objection reads:

2. Executrix has refused and continues to refuse to honor the terms of the Agreement of Sale entered into with Objectant for 3123 Willits Road.



Willits Road.

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*EXPENSES & DISBURSEMENTS*

Objections 5, 6, 7, 8 , & 9 challenge Accountant's entitlements to reimbursements of expenses, fees and commissions claimed from the Estate.<sup>5</sup> In passing upon these objections, this Court will be guided by the statements of our Supreme Court in Strickler Estate, 354 Pa. 276 (1946) at 277, which reads in pertinent part:

"Where a fiduciary claims credit for disbursements made by him, the burden rests upon the fiduciary to justify them. Proper vouchers or equivalent proof must be produced in support of such credits. *Accountant's unsupported testimony is generally insufficient: ...*" (citations omitted) (*Emphasis added*)

This Court will also take note of the opinion of Hunter, J., for our *court-en-banc*, in Rothermel's Estate, 47 D & C 478 (1943), at 479-480, which reads in pertinent part:

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fn5

Which Objections read:

5. Executrix incorrectly states an entitlement to reimbursement for \$7,500.00 as reimbursement for funeral expenses, etc. under note 2 of account.
6. Executrix incorrectly states an entitlement to reimbursement for \$1,112.22 as reimbursement for March 29, 1999 expenses.
7. Executrix incorrectly states an entitlement to reimbursement for \$1,000 as reimbursement for purported April, 10, 1999 expenses.
8. Executrix incorrectly states the amount of legal fees and commissions.
9. Legal fees and personal representative commissions are excessive and Executrix should be surcharges accordingly.

"It has long been the rule that the Orphans' Court will not dispense with the exhibition by fiduciaries of proper vouchers for payments made: .... *Book entries alone are not sufficient, nor can the oath of the fiduciary be substituted for the correct and business-like practice of taking receipts. ....*"  
(citations omitted) (*Emphasis added*)

Finally, this Court will take note of the statement of our Supreme Court in Commonwealth Trust Co. Case, 331 Pa. 569 (1938), at 575, wherein it is said that,

"It is, however, not a sufficient defense against surcharge for a trustee to show for what purpose trust funds were spent; it must justify every expenditure as a proper one according to the terms of the instrument under which it is acting, or the power and authority conferred upon it."

Once a fiduciary has justified or vouched for a disbursement which appears in the account, an objectant must prove that said disbursement should not have been made. See Estate of Stetson, supra.

While Accountant attested to the expenditures challenged in Objections 5, 6, 7, 8, & 9, Accountant has not provided receipts. "(T)he oath of the fiduciary (cannot) be substituted for the correct and business-like practice of taking receipts. See Rothermel's Estate, supra. Accountant, therefore, has not acceptably vouched for the following expenses and disbursements: Objection 5 is SUSTAINED and a surcharge granted in the amount of \$7,500.00 "for funeral expenses, etc. under note 2 of account;" Objection 6 is SUSTAINED and a surcharge granted in the amount of \$1,112.22 "for March 29, 1999 expenses;" Objection 7 is

SUSTAINED and a surcharge granted in the amount of \$1,000.00 “for purported April 10, 1999 expenses;” Objections 8 & 9 are SUSTAINED and surcharges granted in the amounts of \$800.00 (12/10/99 Elizabeth McColligan Executrix Fee), \$2,500.00 (2/7/00 Elizabeth McColligan Executrix Fee), \$400.00 (2/12/00 Frank & Rosen, Gary Freedman, Esq. legal fee).

Objection 22 erroneously objects to the actual amount paid and reported for Real Estate taxes for 1999.<sup>6</sup> Accordingly, Objection 22 is DISMISSED.

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#### *VALUATION OF PERSONAL PROPERTY*

Objections 10 & 11 challenge Accountant’s valuation of Decedent’s car at \$500.00 and jewelry at \$349.00.<sup>7</sup> Objectant has the burden of proof on this matter. See Estate of Stetson, supra, and, Miller’s Estate, supra. Having considered the testimony of Objectant and Accountant, and there being no evidence to the contrary, this Court holds that Objectant has failed to prove a more accurate assessment of the actual value of the car or of the jewelry. Objections 10 & 11 are DISMISSED.

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**fn6**

Which Objection reads:

22. reads: Executrix incorrectly reflects the real estate taxes paid on 3123 Willits Road as \$2,789.00 for 1999, when the real estate taxes were actually \$1,401.57.

**fn7**

Which Objection reads:

22. Executrix incorrectly states the value of the 1989 Pontiac Sunbird as \$500.00 when it should have been valued for less; Objection 11. reads: Executrix incorrectly states the value of Decedent’s jewelry as \$349.00 when it should have been valued for more.

*CREDIT CARD DEBT*

Objections 16, 17, 18, 19, 20, & 21 <sup>8</sup> specifically concern the credit card balances on credit cards held in the name of Decedent, but inured to the benefit of Objectant.

An accurate accounting of a Decedent's estate requires an assessment of the Decedent's assets and liabilities. Such assets and liabilities include the accounting concepts of "accounts receivable" or "receivables," and "accounts payable" or "payables," respectively. The Account presently before the Court is incomplete with regard to its assessment of credit card related assets and liabilities.

Four (4) credit cards *were opened* during Decedent's lifetime in Decedent's name. Testimony supports the conclusion that Objectant used each of those credit cards entirely for his own personal usage. No evidence exists to the contrary.

On Decedent's date of death, a balance existed on each credit card in question. Those credit cards and their respective balances are as follows:

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**fn8**

Which Objections read:

16. Executrix incorrectly reflects Chase Credit with a balance of \$10,392.62 when debt was compromised to zero.
17. Executrix incorrectly reflects Chase Credit as a deduction of \$10,392.62 on the Pennsylvania Transfer Inheritance Tax when the debt was compromised to zero.
18. Executrix incorrectly reflects Wachovia with a balance of \$3,101.00 when the debt was compromised to \$2,170.00
19. Executrix incorrectly reflects Wachovia as a deduction of \$3,101.00 on the Pennsylvania Transfer Inheritance Tax when debt was compromised to \$2,170.00.
20. Executrix incorrectly reflects National City Visa with a balance of \$7,539.00 when debt was compromised to \$6,408.00.
21. Executrix incorrectly reflects National City Visa as a deduction of \$7,539.00 when debt was compromised to \$6,408.00.

<i>Balances</i>	<i>Original</i>
1. Chase	\$10,392.62
2. Wachovia	\$ 3,101.00
3. National City Bank	\$ 7,539.00
4. AT&T Universal	<u>\$ 4,000.00</u>
<i>Total Balance Owed:</i>	\$25,032.62

Objectant objects only to the accounting regarding the Chase, Wachovia, and National City Bank credit cards. Objectant does not object to the accounting regarding the AT&T Universal credit card.

After Decedent's death and without the knowledge of Accountant, Objectant proceeded to contact each respective credit card company. While acting on behalf of the Estate, Objectant negotiated those credit card balances as follows:

	<i>Original Balances</i>	<i>Negotiated Balances</i>
1. Chase	\$10,392.62	\$0
2. Wachovia ("Discover") <sup>9</sup>	\$ 3,101.00	\$2,170.00
3. National City Bank	\$ 7,539.00	\$6,408.00
4. AT&T Universal	\$ 4,000.00	<u>\$4,000.00</u>
<i>Total Balance Owed:</i>		\$12,578.00
<i>Amount Compromised / Forgiven:</i>		\$12,454.62

Objectant's negotiations inured to the direct benefit of the Estate in terms of the Estate's reduced credit card liability to the respective credit card companies, *and also inured* to the direct benefit of Objectant in terms of Objectant's reduced credit card responsibility to the Estate. Additionally, Objectant's negotiations inured to the *indirect* benefit of Accountant, as Accountant is also a one-half beneficiary of the Estates.<sup>10</sup> The less the

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<sup>fn 9</sup> Exhibit A-1. The Account entry concerning the Wachovia credit card corresponds to the "12/29/99 Discover Card" entry found on page "-2-" of the First and Final Account.

<sup>fn 10</sup> This indirect benefit inured as follows: The negotiated decrease in the Estate's liabilities resulted in a proportionate increase in the Estate's net asset value. Accountant has a one-half interest in Estate's proportionately larger net asset value. Accountant

Estate's liabilities, the greater its assets for distribution amongst the beneficiaries.

It follows that an accurate accounting of the Estate's debts, in terms of credit card liability, should reflect the *Negotiated Balances*, not the *Original Balances*. It further follows that an accurate accounting of the Estate's assets, in terms the Estate's credit card debt, should reflect an *account receivable* from Objectant in the amount of \$12,578.00. Objectant's candor at trial did nothing to convince the Court that the credit balance on each of the four (4) credit cards was entirely owing to Objectant's personal usage.<sup>11</sup>

Accordingly, objections 16, 18, & 20 are SUSTAINED and surcharges granted for the respective balance differentials between the Original Balances and the Negotiated Balances. Objections 17, 19, & 21 are SUSTAINED and the Pennsylvania Transfer Inheritance Tax forms shall be amended or supplemented as appropriate to reflect the compromised credit card balances. FURTHER, the outstanding credit card balances totaling \$12,578.00 shall be deducted from any disbursements due Objectant.

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*FAMILY SETTLEMENT AGREEMENT  
ON THE ELIZABETH STANLEY ESTATE*

Testimony relevant to the Family Settlement Agreement on the Elizabeth Stanley Estate transpired at page 39 line 3, as follows:

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therefore benefited by one-half of the amount of liabilities negotiated away.

<sup>fn 11</sup> N.T. (p. 44, ln. 23 to p. 46, ln. 12).

The Court: Did you sign a family settlement agreement on the Elizabeth Stanley Estate?  
(Objectant): Yes, I signed it.  
The Court: Did your sister sign it?  
(Objectant): I believe so, yes.  
The Court: So all parties signed an agreement to that Estate, is that correct?  
(Objectant): Yes.

Objections 13, 14, & 15, address matters concerning the Estate of Elizabeth Stanley.<sup>12</sup> In reasoning that the Estate of Elizabeth Stanley had been amicably settled under the Family Settlement Agreement on the Elizabeth Stanley Estate, the Court disallowed further questions directly concerning the Estate of Elizabeth Stanley. Accordingly, Objections 13, 14, & 15, which raise further specific questions concerning the Estate of Elizabeth Stanley are DISMISSED.

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*PRINCIPAL DEBT OF THE  
ESTATE OF JEAN McCOLLIGAN  
FORGIVEN BY  
ESTATE OF ELIZABETH STANLEY*

Objections 12 & 3 address matters concerning a \$68,182.82 principal debt owed by Decedent's Estate to Aunt's Estate, and Accountant's failure to both account for the debt in terms of a liability to

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fn12

Which Objections read:

13. Executrix fails to account for transfer of \$40,000.00 plus \$8,182 in interest to her from Decedent's estate and should be added back into Decedent's estate.
14. No Pennsylvania Transfer Inheritance Tax has been paid on the aforementioned transfer of \$40,000.00 received by Executrix.
15. Executrix fails to reimburse Estate for \$8,182.00 in interest paid on \$40,000.00 loan.

Decedent's Estate and a consequential asset to Decedent's Estate through its forgiveness.<sup>13</sup>

Testimony relevant to the present matter follows at page 39 line 15:

- Mr. Alice: Well, were you aware of that debt of Jean McColligan, your mother, to the Stanley Estate, when you signed that family settlement  
\*\*\* Were you aware of that \$68,000 debt from your mother to the Estate of Elizabeth Stanley when you signed the family settlement agreement in Elizabeth Stanley's Estate?
- (Objectant): I know (sic) there was a debt owed by my mother, yes.
- Mr. Alice: Did you understand the amount?
- (Objectant): I understood the amount to be \$68,000.

Questioning continued at page 40 line 7:

- Mr. Alice: What is your expectation that you have to present to your sister to purchase the property on Willits Road. How much do you expect to pay?
- (Objectant): Well, if I was 50 percent owner as according to the will, that's \$36,500. My contention still is, through the disclaimer, that I paid her (Accountant) \$50,000, so she owes me money back. That's my understanding.
- The Court: How much do you think she owes you?
- (Objectant): I would say about \$13,500, approximately.

The immediate consequence of entering into the Family Settlement Agreement on the Estate of Elizabeth Stanley was that the agreement

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fn13

Which Objections read:

12. Executrix fails to reflect \$68,182.82 as a principal debt of Decedent owed to Elizabeth Stanley.
3. Executrix incorrectly states "lease / purchase deposit" for 3123 Willits Road as \$15,500.00 when Executrix had received \$34,091.41 plus \$15,500 for a total of \$49,591.41.



settled the Estate of Elizabeth Stanley *once and for all*. By signing the Family Settlement Agreement on the Estate of Elizabeth Stanley, Objectant agreed to forego any further claim to potential proceeds that he would have received through that Estate.

A *residual consequence* of settling the Estate of Elizabeth Stanley was that any and all outstanding accounts receivable from respective debtors were cancelled, i.e. the settled Estate would no longer pursue its debtors. In such a way, the \$68,182.82 that Decedent's Estate would have had to pay to Aunt's Estate in the absence of a Family Settlement Agreement, was forgiven by the settled Stanley Estate.

The \$68,182.82, therefore, should have appeared in the Account presently before the Court as a *forgiven debt*, i.e. an asset. Yet, Accountant fails to include any entry addressing that forgiven debt within the Account. Accordingly, Objection 12 is SUSTAINED and a surcharge granted in the amount of \$68,182.82.

It follows that the \$68,182.82 net increase to Decedent's Estate representing the forgiven principal debt would reasonably be divided equally between the Sister and Brother as respective ½ beneficiaries of Decedent's Estate, i.e. \$34,091.41 per beneficiary.

Accordingly, Objection 3 addresses this credit and equal division between Sister and Brother. Objection 3 is thereby SUSTAINED to the extent that the \$68,182.82 be accounted for within the Estate and appropriately distributed between the beneficiaries.

The above awards are made subject to payment of such transfer inheritance tax as may be found to be due and assessed.

Leave is hereby granted to Accountant to make all transfers and assignments necessary to effect distribution in accordance with this Adjudication.

**AND NOW, this 23<sup>nd</sup> day of December 2003, unless exceptions are filed to this Adjudication within twenty (20) days, the First and Final Account, as modified by the rulings in this Adjudication, is confirmed absolutely.**

**BY THE COURT**

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**JOSEPH D. O'KEEFE, A.J.**