

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

ORPHANS' COURT DIVISION

ESTATE OF LOUIS BASELICE, DECEASED
O.C. NO. 1897 DE OF 2003
CONTROL NO. 066007

OPINION SUR OBJECTIONS TO
EXECUTOR'S COMMISSION

Following a hearing and testimony heard on June 18, 2007 and, accordance with a joint request of the parties, this Court has agreed to render a preliminary decision without benefit of the transcript or briefs of counsel. By agreement of the parties, exceptions may be filed to this preliminary decision and, in that event, the parties will be required to order the transcript of the hearing and thereafter file proposed findings of fact, conclusions of law and a brief in support of their respective positions, following which this Court may entertain oral argument and thereafter file a formal opinion.

FACTS

Louis Baselice died testate on September 9, 2002 and thereafter Donato Baselice was appointed executor in accordance with the probated will dated February 7, 1999. Among decedent's assets, there were several rental properties. These properties required the executor to expend time to negotiate with purchasers, collect rents and arrearages from tenants and address difficult litigation involving a tenant who claimed the right to purchase an estate property on a right of first refusal. This particular tenant, Gary Silver, Esquire, launched several legal maneuvers against the estate in an effort to purchase the

property and these claims were exhaustively litigated before this Court and the Superior Court resulting in several opinions, all of which were favorable to the estate.

In his account, the executor claims that he spent 3,000 hours attending to all facets of the administration of the estate and claimed a fee of \$100,000.00. During the hearing, however, the executor reduced his claim for commission to \$87,000.00 and reduced the estimated hours spent to a figure between 2,300 and 3,000. The executor testified that he maintained no time records, however, at various times he did maintain a journal which in diary fashion identified certain tasks that he was performing as executor. The actual amount of time the executor spent is vigorously challenged by objectors as inflated and unnecessary.

The executor testified at considerable length with regard to time he spent devoted to cleaning services performed on the several properties comprising the estate. For example, he testified that during the period December, 2002 to June, 2003, he spent six hours on either two or three Saturdays every month cleaning the five unit rental property located at 840 Snyder Avenue. He further claimed that he spent an additional four hours every Saturday and four to five hours two days a week cleaning 901 and 903 Cantrell Street. He testified that he spent one Saturday cleaning the property at 1334 Jackson Street. Finally, he claimed that he spent between 60 and 80 hours total cleaning the property located at 1000 Snyder Avenue. When these time estimates are added, it appears the executor worked 12 hours almost every Saturday for six months just performing cleaning services.

In the mistaken belief that he deserves the same rate of compensation for performing cleaning services for the estate as he would receive in his business, he argues

that his cleaning services warrant \$35.00 per hour. To the contrary, this Court finds that an executor as a fiduciary has the responsibility of charging reasonable compensation given the nature of the responsibilities rendered and the level of expertise required. For example, when cleaning services are involved, a reasonable rate of compensation is quite likely considerably less than \$35.00 per hour and, in these circumstances, the fiduciary should engage professional cleaners to render such services rather than assessing the estate their own hourly rate of compensation earned in their business or professional activities or, in the alternative, charge the “going rate” for such services in the community.

In summary, the executor testified that he spent approximately 302 hours to 436 hours cleaning the properties located at 840 Snyder Avenue, 901-903 Cantrell Street, 1334 Jackson Street and 1000 Snyder Avenue.

In addition to the cleaning services rendered, the executor calculated that he spent approximately 10 hours paying bills, 300 hours supervising the eviction litigation, 720 hours supervising the Gary Silver, Esquire litigation, 75 hours hiring professionals, 30 to 60 hours with Dante Mattioni, Esquire on litigation matters and between 300 and 400 hours addressing the petition to remove him as executor. When added together, these hours total between 1,737 and 2,001 hours, not the 3,000 hours initially claimed by the executor. However, these estimated hours simply lack credulity and this Court finds no credible basis to award any compensation based on any arbitrary hourly rates times an unsupported guesstimate of total hours spent.

Moreover, the total number of hours claimed spent appear quite unwarranted and unreasonable. The only testimony offered by objectors with regard to the executor’s

claim consisted of the testimony of Arthur Baselice that he maintained all the properties and performed on a regular basis cleaning services, repair and maintenance services whenever required. He disputed the executor's testimony by stating that the properties required very little cleaning, repair or maintenance. The testimony of Arthur Baselice was credible and persuasive.

On the basis of the record, this Court concludes that the unsupported testimony of Donato Baselice is simply insufficient to convince this Court to recognize his claim for commissions in the amount of \$87,000.00. This estate valued at approximately \$750,000.00 also incurred the costs of professionals who were engaged to collect rents, negotiate the sale of the real estate, attend to legal issues and perform accounting services. Thus, the executor hired professionals to render substantial assistance during the administration of the estate and did not contribute any sophisticated level of service himself.

While the time estimates, justifications for performing certain services and total compensation claimed all appear inflated, unreasonable and unsupportable, there is no question that the estate administration was ably handled in certain respects with one glaring exception. The executor withdrew \$100,000.00 in estate funds and deposited these monies in his own account for approximately one week until he returned these funds to the estate on the advice of counsel. Otherwise, the executor appears to have acted prudently, including the hiring of professionals to perform specialized services, legal, real estate and accounting, which all benefited the administration. And, on his own, the executor managed to obtain a \$12,000.00 refund of Pennsylvania inheritance

taxes by arguing successfully in Harrisburg for a reduction in tax based upon unanticipated legal expenses.

In the final analysis, the executor achieved reasonable results for the estate but nothing which appears extraordinary. A commission of \$35,000.00, or approximately 5% of the gross estate, is sufficient to compensate him fairly.

It is, therefore, ORDERED and DECREED that the objection to an excessive executor's commission is sustained and it is ORDERED that the executor's commission be reduced from \$87,000.00 to \$35,000.00 and that any proposed statement of distribution conform with this opinion.

BY THE COURT:

JOHN W. HERRON, J.

Dated: July 2, 2007