

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Isaac Friedman, Deceased
No. 1919 DE of 2005
Control No. 100607

Sur First and Final Account stated by Abraham Rosenberg, Administrator D.B.N.

The account was called for audit April 5, 2010 **Before: Herron, J.**
Counsel appeared as follows:
Marianna Schenk, Esquire – for the accountant
Lewis R. Olshin, Esquire – for the Accountant
Howard Greenberg, Esquire – for Beverly Mintz
Irwin Ralph Friedman – Pro se

ADJUDICATION

Isaac Friedman (hereinafter “Isaac”) died on August 2, 2002. After Isaac’s death, his family became embroiled in litigation before the Register of Wills and Orphans’ Court over, inter alia, the validity of a will dated August 20, 1998. Following evidentiary hearings, this court concluded that the petitioner who sought to probate the will had presented clear and convincing evidence that the testator had testamentary capacity and there had been a lack of undue influence. By order dated January 22, 2007, therefore, the petitioner’s appeal from the decision of the Register of Wills refusing to probate the August 1998 Will was granted. This order was subsequently appealed to the Pennsylvania Superior Court. The parties discontinued this appeal, however, by entering into a complex Family Settlement Agreement on February 22, 2007 (“Family Settlement Agreement”) that the Superior Court formally approved by order dated April 2, 2007. With this agreement, the parties acknowledged that controversies and litigation had emerged among Isaac’s heirs, which they hoped to eliminate through the appointment of a neutral fiduciary of the Isaac and Aurora estates as well as an arbitrator “to

resolve any disputes which may arise in the future in an amicable and economical manner.”¹ All the parties explicitly agreed that Rabbi Rosenberg should serve as the administrator of the estates of both Isaac and Aurora Friedman as well as arbitrator of any family disputes regarding implementation of the Family Agreement.² The matter was remanded for the appointment of Rabbi Abraham Rosenberg as administrator.³

Rabbi Abraham Rosenberg was granted letters of administration d.b.n. for the Estate of Isaac Friedman by decree dated December 18, 2007. On March 3, 2010, Rabbi Rosenberg, as administrator d.b.n. of Isaac’s estate, filed an account covering the period December 18, 2007 through December 15, 2009. Irwin Ralph Friedman (hereinafter “Friedman”) filed objections to this account on June 7, 2010.

A hearing was initially scheduled for consideration of these objections for September 29, 2010, but it was continued first until October 18th, and then December 14, 2010. At the December 14, 2010 hearing the ten objections Mr. Friedman raised to the account were either withdrawn or denied. In the course of this hearing, Mr. Friedman withdrew objections 4,⁴ 5, 6,⁵ 8,⁶ 9⁷ and 10⁸. Objection 1 relating to a bring down statement was denied. In that objection, Mr. Friedman asserted that the administrator should have attached as an exhibit to the account a bring-down statement for the period from February 20,2007 through December 18, 2007. This objection was without merit, however, because the administrator by letter dated February 19,

1 See 3/3/10 Issac Friedman Account, Ex. A (2/22/2007 Family Settlement Agreement, “Background”)(hereinafter 2/22/2007 Family Settlement Agreement”).

2 2/22/2007 Family Settlement Agreement, Paragraph 1, A.

3 See In Re: Estate of Isaac Friedman, Deceased, No. 419 EDA 2007 (Order dated April 2, 2007).

4 See 12/14/10 Isaac Friedman Hearing (hereinafter “ N.T.”) at 94.

5 See 12/14/10 N.T. at 95.

6 See 12/14/10 N.T. at 95-96.

7 See 12/14/10 N.T. at 118-27.

8 See 12/14/10 N.T. at 97-98.

2009, had provided all parties with a copy of the Restated and Final Account by Frank DeSimone, the prior Administrator Pendente Lite of Isaac's estate, which Mr. Friedman conceded in proposed orders he submitted to this court prior to the hearing.⁹

Only three objections therefore remained. In these three remaining objections, Mr. Friedman challenged the attorney fees of two law firms --Duane Morris LLP and Schwartz & Salomon, P.C.-- as well as the administrator's fee for Rabbi Rosenberg on the grounds that they exceeded the guidelines suggested by Johnson Estate, 4 Fid. Rep. 2d (O.C. Chester Cty. 1983). Upon consideration of the record presented, these three objections were denied as without merit for the following reasons.

It is well established that an attorney or administrator seeking compensation for his services to an estate bears the burden of proof . Estate of Sonovick, 373 Pa. Super. 396, 400, 541 A.2d 374, 376 (1988). Fiduciaries are entitled to reasonable and just compensation based on the actual services they provide. Id., 373 Pa. at 399, 541 A.2d at 375. Under section 3537 of the PEF code, for instance, a "court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated scale." 20 Pa.C.S. §3537. Attorneys are also entitled to reasonable compensation based on their actual services to an estate. Estate of Preston, 385 Pa. Super. 48, 56-57, 560 A.2d 160, 164-65 (1989). The standard applied to determine the reasonableness of fees claimed by an attorney or fiduciary was set forth by the Pennsylvania Supreme Court in LaRocca Estate, 431 Pa. 542, 246 A.2d 337 (1968) as follows:

The facts and factors to be taken into consideration in determining the fee or

⁹ 12/14/10 N.T. at 11-15; See Admin. Ex. 15; Proposed Order 1 by Irwin Ralph Friedman (admitting that he was "satisfied that I was provided subsequent to my filing with a copy of the restated first and final account of Frank DeSimone" but requesting an additional accounting by the property manager Michael Cohen).

compensation payable to an attorney include: the amount of work to be performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was “created” by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services in question, and, very importantly, the amount of money or the value of the property in question. LaRocca Estate, 431 Pa. 542, 546, 246 A.2d 337, 339 (1968).

A. The Accountant Satisfied His Burden of Proof that the Fees for Duane Morris Were Reasonable

The Isaac Friedman estate is complicated, with a balance of principal and income before distributions of over three million dollars and encompassing several commercial properties with complex leases requiring negotiation and scrutiny. Nonetheless, the objector asserts that the fees claimed by Duane Morris are unreasonable under the fee guidelines of Johnson Estate. The proper standard, however, for determining the reasonableness of these fees is the analysis of the various factors set forth in LaRocca Estate. To meet its burden of proof, the testimony of Marianna Schenk, who served as primary counsel to the administrator of both the Isaac and Aurora Friedman estates, was presented together with documentary support for the fees claimed. In particular, Ms. Schenk presented and explained invoices Duane Morris had prepared for its services during and prior to the accounting period. Ms. Schenk testified that Duane Morris had represented Rabbi Rosenberg prior to his appointment as administrator. In the early phases of this representation, Duane Morris had reviewed the implications of the Family Settlement Agreement to advise Rabbi Rosenberg of his complicated responsibilities as administrator and arbitrator pursuant to that agreement. Duane Morris also assisted Rabbi Rosenberg in obtaining his appointment as administrator. The fees for this period totaled \$64,524.56 and are set forth in

Ex. A to the account.¹⁰ To document this claim, invoices for the period June 1, 2007 to December 7, 2007 were presented at the hearing as Admin. Ex. 18. These invoices provide detailed descriptions of the specific services performed, the amount of time spent on a particular task and the charge for that service.

During the period after Rabbi Rosenberg's appointment as administrator, Duane Morris assisted him in the administration of the complicated estates. As counsel, Duane Morris advised Rabbi Rosenberg on a myriad of issues including the various partnerships and corporate entities that needed to be restructured. Counsel had to review underlying corporate documents to assure that state filings had been done. Duane Morris also assisted the administrator with the real properties owned by various corporate entities and the estate. Some of these properties were commercially rented requiring negotiation with property managers. There was, for instance, a property in New Jersey—the Lakewood property—that had to be subdivided and sold. Duane Morris was involved in renegotiating a lease with a tenant to achieve its agreement to pay back common maintenance charges, which resulted in a pay back of \$95,000. Duane Morris provided assistance to Joseph Solomon who was responsible for preparing all inheritance tax returns related to both Friedman estates. Duane Morris, however, did not prepare those returns and Ms. Schenk persuasively explained how its services were not duplicative of those provided by Joseph Solomon.¹¹ For these services during the accounting period, Duane Morris claimed fees in the amount of \$111,867 which it once again supported with detailed invoices.¹² These invoices provide day-to-day descriptions of the services Duane Morris rendered to the estates, the amount of time dedicated to a particular task, and the amount charged for that service.

¹⁰ 12/14/10 N.T. at 21-25 (Schenk). See also Admin. Ex. 18.

Finally, Ms. Schenk noted that fees in the amount of \$19,486 had been paid to Duane Morris from one of the underlying partnerships as set forth in Ex. E of the account.¹³ In addition, an individual beneficiary, Beverly Mintz, had assumed responsibility for \$18,327.40 in fees incurred in connection with the sale of real estate that was allocated to her under the Family Settlement agreement as set forth in Ex. G to the account.¹⁴ Based on this record, petitioner demonstrated the reasonableness of the Duane Morris fees.

B. The Accountant Established the Reasonableness of the Counsel Fees of Schwartz & Solomon, P.C. Based on the Record Presented

In objection seven, Mr. Friedman challenges the fees of \$83,310.61 for Schwartz & Salomon, P.C. for its services regarding tax issues. Ironically, the Family Settlement Agreement--which the objector signed--explicitly required Rabbi Rosenberg “to promptly engage the services of Joseph Solomon Esq. (“Solomon”) to prepare Federal Estate and Pennsylvania and New Jersey Inheritance Tax returns and fiduciary income tax returns for both Estates and to serve as tax counsel to each of the Estates.”¹⁵ As the Family Settlement Agreement acknowledges, Joseph Solomon had provided legal services to objector at an earlier time.¹⁶ Nonetheless, the objector challenged Joseph Solomon’s fees as unreasonable.

To support the reasonableness of these legal fees, testimony by Joseph Solomon as well as invoices were presented. Mr. Solomon’s testimony made it clear that his services to the estates were distinct from those provided by Duane Morris since he focused exclusively on tax issues, achieving significant financial benefits for the estate. From the outset, Mr. Solomon

11 See 12/14/10 N.T. at 28-32.

12 12/14/10 N.T. at 23; Admin. Ex. 18.

13 12/14/10 N.T. at 34.

14 12/14/10 N.T. at 22-23

15 2/22/2007 Family Settlement Agreement, Paragraph 6 (A).

encountered challenges because no estate tax had been paid for Isaac's estate since his death in 2002. Joseph Solomon made sure that returns were filed within a month of Rabbi Rosenberg's appointment; meanwhile, he had to deal with an ongoing audit of Aurora Friedman's estate by the Internal Revenue Service. In responding to that audit, he obtained the favorable result that no tax was due. The filing of a tax return for Isaac's estate also prompted an IRS audit. Once again, Joseph Solomon obtained a favorable result for the estate with a refund check of approximately \$80,000 and obtained an abatement of \$40,000 for the late payment penalties imposed by the IRS. In addition, Mr. Solomon filed tax returns for the "so-called Friedman partnership" established under the Family Settlement Agreement as a depository of funds the parties had contributed to defray costs during the administration of the estate. The specific details of the services Joseph Solomon provided to the estate were buttressed by the time sheets he presented as Admin. Ex. 20.¹⁷ These time sheets detail the services performed, the time spent, and the hourly rate. For all of these reasons, Mr. Friedman's seventh objection was denied.

C. The Accountant Established that the Fees of the Administrator d.b.n. Were Reasonable

In his third objection, Mr. Friedman challenges the total fees of \$191,756.23 for Rabbi Rosenberg. Under the Family Settlement Agreement that the objector signed, Rabbi Rosenberg was specifically designated to serve both as administrator of the estates of Isaac and Aurora Friedman and as arbitrator of family disputes.¹⁸ Early in his involvement with the parties, Rabbi Rosenberg faxed a letter dated 5/6/2007 to the objector clearly setting forth his fee arrangements: "I will bill the estate for my services at an hourly rate (including travel time) of \$360.00. I will

16 *Id.* See also 12/14/10 N.T. at 105-06 (Solomon).

17 12/14/10 N.T. at 105-112 (Solomon); Admin. Ex. 20.

18 2/22/29967 Family Settlement Agreement ("Background") at page 1 & Paragraph 1(A).

also bill the estate for out of pocket expenses.”¹⁹

Rabbi Rosenberg established the reasonableness of his fees through his testimony and an exhibit documenting his daily billings and the scope of his work.²⁰ Rabbi Rosenberg thus presented an extensive listing of the daily fees he charged for services to the estate from the date he was hired until the date of the accounting, December 15, 2009.²¹ Rabbi Rosenberg conceded that he did not keep time sheets like those maintained by law firms, but he pointed out that no one had asked for timesheets and it had not been his practice as an arbitrator to maintain such records. He testified, however, that he did mark down each day how much time he spent on an estate matter; since his hourly rate is \$360, it would have been possible to calculate the time spent by dividing the amount charged each day by the hourly rate. He explained that he had not been hired as a lawyer, but as a Rabbi who conducts arbitrations.²²

In addition to presenting the daily list of charges, Rabbi Rosenberg documented the scope of work he tackled in his dual capacity as fiduciary and arbitrator.²³ The scope of work was complicated because he had to deal with two estates. Moreover, there were an additional four legal entities that he had to consider. As he explained, “[t]he simple task of monthly reconciliation of bank accounts that a usual Estate deals with one or 2 bank accounts, was much more time consuming due to having two accounts for each estate, three entity accounts, and many partnership accounts, besides reviewing accounts of the property managers.”²⁴ In addition to dealing with two estates, the terms of the family settlement agreement were complicated, the

19 Admin. Ex. 4.

20 See Admin. Ex. 5.

21 12/14/10 N.T. at 53-54 (Rabbi Rosenberg).

22 12/14/10 N.T. at 74-77 (Rabbi Rosenberg).

23 12/14/10 N.T. at 54-55 (Rabbi Rosenberg).

24 Admin. Ex. 5, (“Scope of Work”) at 1, n.2.

criteria for achieving a fair distribution of assets to the beneficiaries were complex, and he had to deal with the “suspicious nature of some of the beneficiaries.”²⁵

To illustrate the services he performed, Rabbi Rosenberg submitted into evidence a letter that was sent to all parties dated January 7, 2008 that documents the complex issues confronting him as well as the broad nature of the services he provided to them in administering their parents’ estates.²⁶ Rabbi Rosenberg also presented an example of the kind of report he prepared and sent to the beneficiaries to keep them abreast on the details of the administration of the estates.²⁷ He further testified as to his involvement in negotiations with tenants and the preparation of the estate accountings.²⁸ In light of the administrator’s highly credible testimony and the documentary evidence of the services he performed in the administration of the Friedman estates, the objection to Rabbi Rosenberg’s fees is denied.

The denials of Mr. Friedman’s objections should not be construed as suggesting that they were frivolous, but merely that they were not supported by an analysis of the record. Moreover, Mr. Friedman’s willingness to withdraw numerous objections helped focus the hearing to facilitate an expeditious analysis of the key issues.

According to the accountant, Pennsylvania Inheritance Tax in the amount of \$81,383.43 was paid on February 13, 2008. On August 26, 2008, an additional payment of Pennsylvania Inheritance tax in the amount of \$5,52.11 was made. The accountant requests a reserve of \$65,000 for Duane Morris attorney fees and \$100,000 for Pennsylvania realty transfer taxes associated with the transfer of the three Pennsylvania real properties to the decedent’s children in

25 Admin. Ex. 5, (“Scope of Work’) at 1.

26 Admin. Ex. 16. See also Admin. Ex. 15 92/19/08 faxed letter).

27 Admin. Ex. 17.

28 12/14/10 N.T. at 64-67.

accordance with the Family Settlement Agreement.

The account shows a balance of principal before distribution of \$ 3,067,707.07 and a balance of income before distribution of \$147,396.54 for a total of \$ 3,215,103.61. 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.

Leave is hereby granted to the accountant 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 28th day of FEBRUARY 2011, 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.