

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Joseph Carchidi,
Deceased
443 DE of 2008
Control No. 085499

Supplemental Accounting of Vincent Carchidi and Nicholas Carchidi for Funds
Maintained in Joint Names of Joseph Carchidi, Deceased, Vincent Carchidi, Nicholas
Carchidi, and Anthony Carchidi

The account was called for audit September 8, 2008
Counsel appeared as follows:

By: **HERRON, J.**

John Crampton, Esquire - for the Accountant
Bruce M. Dolfman, Esquire – for Objectant

OPINION

During his lifetime, Joseph Carchidi (“Joseph”) opened various bank accounts and certificates of deposit at United Savings Bank (hereinafter “joint bank accounts”) in his name and the names of his three brothers: Nicholas, Vincent and Anthony Carchidi. All of the money in those bank accounts came exclusively from Joseph. After Joseph’s death on June 16, 2007, his brother Anthony learned about those accounts for the first time. He filed a petition with this court seeking an accounting by his two brothers of checks they had written that were drawn from the USB joint bank accounts. In addition, Anthony sought an accounting of the estate assets by the executor of Joseph’s estate, Vincent Carchidi.

The executor filed his account on July 11, 2008. Vincent and Nicholas Carchidi filed their account of the funds maintained in the joint bank accounts on August 8, 2008. Anthony filed objections to both accounts.¹ A hearing was held, after which the parties submitted briefs.

¹ At the outset of the hearing, Anthony withdrew certain objections. The remaining objections to the estate account included 2 – 7, 9-12. Objections 1-3 to the account for the joint funds remained. 2/9/09 N.T. at 5.

Because the issues raised in the accountings for the estate and for the joint bank accounts differ, they will be addressed in a separate opinion and adjudication.

The accounting (hereinafter “USB Account”) that Vincent and Nicholas filed for the funds maintained in the joint bank accounts covered the period June 1, 2006 to June 15, 2007. As of June 1, 2006, the USB Account gave an inventory value of \$50,551.38 for the following assets:²

Certificate of Deposit #05-20032767	\$ 3,775.24
Certificate of Deposit #05-62033815	\$22,915.90
Checking Account (USB)	\$12,031.00
Savings Account (USB)	\$ 9,162.86
US Treasury 312 Civil Series	\$ 2,666.18

In addition, between July 3, 2006 and June 1, 2007, there were additional receipts totaling \$32,638.51 from “US Treasury 312 Civil Service.”³ By the final accounting date of June 15, 2007, the account summary states that there were principal receipts of \$83,189 with a balance of principal on hand of \$46,431.03 and a balance of income on hand of \$1,124.26 for a total of \$47,555.29.⁴

The USB Account also lists disbursements of principal for the period June 12, 2006 to June 15, 2007 in terms of the various checks that were drawn from the joint bank accounts. This information is not complete, however, since often only the check number, date and amount are set forth with no designation given for either the payee or the person who signed the check.⁵

In his initial, written objections to the USB Account, Anthony raised three objections to the USB Accounting. Objection Number 1 challenged check 4746 payable to Nicholas Carchidi

2 Ex. O-1 at 2.

3 Ex. O-1 at 2-3.

4 Ex. O-1 at 1 (“Summary of Account”).

5 See, e.g. Ex. O-1, at 4-29.

in the sum of \$610, but no evidence was presented at the hearing about this check nor was this check addressed in Anthony's brief. Objection Number 3 challenged reimbursements claimed by Nicholas and Vincent in the respective amounts of \$4250 and \$1750, but once again these issues were raised neither at the hearing nor in the briefs. They, therefore, will be deemed waived and are not addressed in this opinion. Instead, it is necessary to focus on the two checks that Anthony presented evidence on during the hearing and addressed in his brief: Check 4824 (Objection 2 to the USB Account) and Check 4839 (Objection 10 to the Estate Account). In addition, the related issue of whether the objectant should be charged for the cost of reproducing the checks that were necessary for the preparation of the accounting will be addressed.

The Proper Standard for Reviewing the Objections to Checks That Were Drawn From the Joint Bank Accounts Is the Multiple-Party Account Act, MPAA 20 Pa.C.S. §§ 6301-6306

As the objector to his brothers' account, Anthony has the initial burden of proof that the account is inaccurate. Dunn Estate, 54 Pa. D. & C. 2d 760, 761 (Mercer Cty. 1972). Anthony is challenging two checks that were drawn from the joint bank accounts that were established by decedent Joseph Carchidi. In so doing, the objections require a determination of the ownership of the funds in the joint bank accounts. A critical consideration is the date of the check and whether they were written before or after Joseph's death.

Ownership of funds in a joint bank account is determined by the relevant provisions of the Multiple-Party Account, MPAA, 20 Pa.C.S. §§ 6301-06. Section 6303 provides that a "joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent." 20 Pa.C.S. § 6303(a). There is no dispute that Joseph was the only person to

make deposits into the joint bank accounts.⁶ Consequently, up until his date of death, all of the funds in the joint account belonged to Joseph. After Joseph's death on June 16, 2007, ownership of the funds in the joint bank accounts is determined by section 6304 of the PEF code which provides that any "sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created." 20 Pa. C.S. § 6304(a). See also Deutsch, Larrimore & Farnish v. Johnson, 577 Pa. 637, 642-43, 848 A.2d 137, 140 (2004). While Section 6304(a) provides that the funds in the joint bank accounts belonged to the surviving brothers and not Joseph's estate, each brother's share is defined by Section 6303(a)⁷: the funds in the joint account belonged to each of the surviving brothers "in proportion to the net contributions by each." 20 Pa.C.S. §6303(a). Since neither Vincent, Nicholas nor Anthony made any contributions to the joint accounts, those funds remaining in the accounts after Joseph's death belonged in equal shares to each of the three brothers. No one brother had any more right than the other to dispose of those funds.

a. Check 4824 (Exhibit O-5)

Check 4824 that Anthony is questioning is dated June 18, 2007 or two day after Joseph's death.⁸ Consequently, this check is drawn from funds that fall outside of Joseph's estate and belonged instead to the surviving brothers equally. Anthony testified that he had not learned of

⁶ 2/9/09 N.T. at 37 (Vincent Carchidi).

⁷ Section 6304, for example, specifically refers to section 6303: "If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6303 (relating to ownership during lifetime) augmented by an equal per capita share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties." 20 Pa.C.S. § 6304(a).

⁸ This check is listed on page 8 of Ex. O-1.

the joint bank accounts until Joseph's death and had never had access to them prior to that time.⁹ Check 4824, introduced at the hearing as Ex. O-5, is made out to "cash" in the amount of \$800 and signed by Nicholas Carchidi.¹⁰ An issue at the hearing was a discrepancy between the date on the actual check and its presentation in the USB Account. Although on its face the check is dated June 18, 2007,¹¹ in the accounting filed by the two brothers this check is listed as having been paid on June 15, 2007 for "Joseph Carchidi monthly living expenses."¹² This misrepresentation of the date of the check for accounting purposes is critical: if the check had, in fact, been drawn prior to Joseph's death, the \$800 would have been properly used for his personal—or estate-- expenses. But after Joseph's death, the funds in the joint account belonged in equal shares to the three surviving brother. Consequently, the proffered explanation—or justification--by Nicholas that it was used for "Joseph Carchidi monthly living expenses" is unconvincing:

Q: Mr. Carchidi, what's the date on that check?

A: June 18th.

Q: And what day did your brother die?

A: June 16th.

Q: So you're saying that two days after your brother died, you wrote out a check to Cash that you signed for his living expenses, despite that he had passed?

A: Well, it was not living expenses after that, it was bills, the remaining bills, whatever he had, my brother and I, what we had to pay.

Q: But the amount is still \$800?

A: \$800, yeah.¹³

Because this check was executed after Joseph's death, Nicholas did not have the discretion to use these funds for estate purposes without the consent of the other two joint owners of the

9 2/9/09 N.T. at 13 (Anthony Carchidi).

10 Ex. O-5.

11 See Ex. O-5.

12 See Ex. O-1 at 8.

13 2/9/09 N.T. at 72 (Nicholas Carchidi).

account. Moreover, Nicholas was unable to document the alleged estate expenses that he paid with this check. For these reasons, Nicholas is ordered to return \$800 to the joint account.

a. Check 4839 (Exhibit O-3)

Anthony similarly objected to the accounting for check 4839, but he raised that objection in the context of the estate account filed by Vincent as executor.¹⁴ Check 4839, presented as Exhibit O-3, was signed by Vincent Carchidi and payable to him in the amount of \$2674.40. Significantly, it is dated July 16, 2007—or nearly a month after Joseph’s death. Under the principles previously discussed relating to the Multiple-Party Accounts Act, the funds in the jointly held account on July 16, 2007 belonged in equal shares to the three surviving brothers. When asked to explain what he did with this check, Vincent could not show where it was reflected in the Estate Account;¹⁵ his memory initially failed him as to what he had done with the check, but his attorney noted that the \$2,674.40 check had been deposited in the estate bank account as set forth in Exhibit R-2.¹⁶ This disposition was improper, however, because those funds did not belong to the estate. It belonged instead to the surviving three brothers in equal shares.

Moreover, even assuming that as Executor, Vincent had the discretion to use this check for estate purposes, his inability to document the estate expenditures would not have satisfied his burden of proof. When “a fiduciary claims credit for disbursements by him, the burden rests upon the fiduciary to justify them.” Strickler Estate, 354 Pa. 276, 277, 47 A.2d 134, 135 (1946).

To meet this burden, “proper vouchers or equivalent proof must be provided” and the

14 See 9/3/08 Anthony Carchidi Objections, ¶ 10. Anthony also challenged checks 4826 and 4837 but did not present any arguments or evidence as to these checks at the hearing or in his briefs.

15 2/9/09 N.T. at 50 (Vincent Carchidi).

16 See, e.g. 2/9/09 N.T. at 47-50 & 61-63 (Vincent Carchidi & John Crampton); 7/4/09 Respondents’ Brief at 9.

accountant's "unsupported testimony is generally insufficient." *Id.*, 354 Pa. at 277, 47 A.2d 135.

Vincent will therefore be required to return \$2,674.40 to the joint account.

Anthony Carchidi Should Not Be Charged With the Entire Cost for Obtaining Copies of Checks Necessary for Preparation of an Accounting of the Jointly-Held Funds in USB

In their brief, Nicholas and Vincent argue that Anthony should be charged for the \$1650 that was incurred in obtaining copies of checks from the bank so that they could prepare the account for the funds held in the joint names of all the brothers as ordered by decree dated June 9, 2008. In this way, the respondents seek to shift the cost of their own actions on to Anthony. According to the record, it was the two brothers—and not Anthony—who destroyed the check register. When Anthony first asked his brothers to see records of checks issued from the joint bank accounts, he was told that the checking account records had been destroyed or shredded.¹⁷ Nicholas conceded that he had written checks drawn from the joint accounts both before and after Joseph's death,¹⁸ but no explanation was offered as to why the account passbooks had been destroyed. Vincent's testimony as to the fate of these records was evasive and unclear:

Q: But it was Joseph's money that created the accounts?

A (Vincent): That was his, yeah.

Q: And after he died, you paid the bills from that joint account?

A: All the bills. All the bills came out of this.

Q: So after his death, you took possession of the checkbook and the savings book?

A: Yeah.

Q: And did you keep the check registers?

A: I didn't take care of the checks. My brother Nick took care of the checks.

Q: So you don't know what happened to the check registers, then?

A: Well, everything was done, everything was cleared, so we didn't think we needed it anymore.

Q: So what did you do, destroy it?

A: Well, I don't know what he did with it, you know.

Q: But you don't have it anymore; is that true?

¹⁷ 2/9/09 N.T. at 13-14 (Anthony Carchidi).

¹⁸ 2/9/09 N.T. at 68 (Nicholas Carchidi).

A: No, but the checks—
Q: No, do you have the registers?
A: No.¹⁹

By destroying the records of the bank account that belonged to all three brothers, the respondents created the necessity of obtaining copies of the checks from the bank to document the payees. Their explanation in their brief for why they destroyed the bank records is disingenuous:

Contrary to the assertions of the Petitioner-Objectant, records were destroyed by the Respondents after Petitioner-Objectant promised to repay the loan firstly out of ignorance of their possible fiduciary obligations to account and secondly in the belief that Petitioner-Objectant would be a man of his word and repay the money he legally and morally owed the Decedent to the Decedent's Estate as he stated after the Will reading.²⁰

The presumed "ignorance" of their obligation to retain records of the joint account checks does not immunize Vincent and Nicholas from the financial obligation incurred in reconstructing those records by ordering check copies from the bank. Moreover, their attempt to link the maintenance of records for the joint bank accounts with their claim that Anthony agreed to repay the \$35,000 that Joseph gave him in 1994 is a logical non sequitur. The cost for obtaining the checks in order to prepare the account shall be borne equally by all three brothers.

Date: _____

BY THE COURT:

John W. Herron, J.

¹⁹ 2/9/09 N.T. at 37-38 (Vincent Carchidi). Vincent testified that he did not have access to the joint accounts before Joseph's death. Id. at 36 ("No. My name was on it but I never had anything). Inexplicably, Nicholas was never asked what he did with these records. See, e.g. 2/9/09 N.T. at 68-75 & 89-97 (Nicholas Carchidi). Anthony testified, however, that Nicholas had told him that the records had been shredded. Id. at 14 (Anthony Carchidi).
²⁰ 7/4/09 Respondents' Brief at 8.