

**COURT OF COMMON PLEAS OF PHILADLEPHIA  
COUNTY  
ORPHANS' COURT DIVISION**

**#4 Jan 2002  
Contol No. 011005  
No. 666 of 1998**

**Estate of ANNA KARBIWNYK, Deceased**

**Sur accounts entitled First and Partial Account Of  
Mark J. Matthews, Administrator D.B.N.**

**Exhibit/Bring-Down - Additional Charges and Credits  
to the First and Partial Account**

**Second Exhibit/Bring-Down - Additional Charges and Credits  
to the First and Partial Account**

**Before O'KEEFE, ADM. J.**

**These accounts were called for audit January 7, March 4 & April 16,  
2002**

**Counsel appeared as follows:**

**MARK J. MATTHEWS, ESQ., Accountant - appeared  
p.p.**

**ANNE S. MAXWELL, ESQ., - for Stephen Karbiwnyk,  
Heir and Objectant**

**ROBERT E. J. CURRAN, ESQ., - for Walter Karbiwnyk,  
Heir and Objectant**

**RAYMOND KARBIWNYK, Heir and Objectant -  
appeared p.p.**

**JAMES P. GOLDEN, ESQ., of HAMBURG & GOLDEN, P.C.  
- for the Commonwealth of PA, for taxes**

**This Court now has before it for Audit the First And Partial Account of Mark J. Matthews as Administrator D.B.N. of the estate of Anna Karbiwnyk, deceased. The First and Partial Account has been amended and supplemented by two documents entitled “Exhibit/Bring-Down”, and, “Second Exhibit/Bring-Down”.**

**Anna Karbiwnyk was born on December 2, 1915 and died on January 18, 1999, intestate and unmarried, leaving her three sons, Raymond, Walter and Stephen, to survive her, as her heirs-at-law and next of kin under the intestate laws.**

**Anna Karbiwnyk’s husband, John, died on May 18, 1998.**

**On June 16, 1998, Stephen filed a Petition to have his mother declared an incapacitated person, and, to have himself and Walter appointed to serve as Plenary Co-Guardians of the mother’s person and estate. Judge Pawelec entered a Decree on June 18 fixing July 21 as the date for a Hearing on Stephen’s Petition.**

**On July 9, 1998, Judge Pawelec entered a Decree appointing Anne S. Maxwell, Esquire, as counsel to represent the interests of Anna Karbiwnyk in the incapacity proceeding.**

**On July 20, 1998, Raymond’s wife, Paulette, took Anna Karbiwnyk to see Mark Matthews, Esquire. Mr. Matthews drafted a Power Of Attorney appointing Paulette to act as Anna’s Agent, and, appointing Raymond to act as Alternate Agent if Paulette should be unable to act.**

**At a hearing held on July 21, Anne Maxwell, Esquire, appeared as Court Appointed Counsel for Anna Karbiwnyk, and, Mark Matthews, Esquire, appeared as “Privately Retained Counsel” for Anna Karbiwnyk.**

**On November 2, 1998, Anne Maxwell, Esquire, filed a Petition to void the Power Of Attorney dated July 20, 1998.**

**On November 27, 1998, Anne Maxwell, Esquire, filed a Petition for Disqualification of Mark Matthews, Esquire, as counsel for Anna Karbiwnyk. A Hearing on said Petition for Disqualification was held on December 29, 1998.**

**On January 28, 1999, Judge Pawelec entered a Decree noting the death of Anna Karbiwnyk on January 18, 1999, and, dismissing all outstanding Petitions as being moot.**

**Also on January 28, 1999, the Register of Wills granted Letters of Administration to Raymond, Walter and Stephen Karbiwnyk as Co-Administrators of their mother’s estate. Mark Matthews, Esquire, served as counsel to the three brothers as Co-Administrators.**

**On September 14, 1999, Walter, now represented by Anne S. Maxwell, Esquire, filed a Petition to have his brother, Raymond, removed as a Co-Administrator, charging Raymond with failing to perform his duties as a Co-Administrator, and, with wasting the assets of the estate.**

**On October 5, 1999, Raymond, now represented by Samuel A. Rossitto, Esquire, filed a Response to the Petition for his removal.**

Judge Pawelec held a Conference which was attended by Anne S. Maxwell, Esquire, representing Stephen; by Samuel A. Rossitto, Esquire, representing Raymond; by Robert E.J. Curran, Esquire, representing Walter; and, by Mark Matthews, Esquire, who had represented the three brothers as Co-Administrators.

On November 18, 1999, Judge Pawelec entered a Decree noting that Raymond, Walter and Stephen had resigned; removing all three from their offices as Co-Administrators; and, directing the Register of Wills to issue Letters of Administration D.B.N. to Mark Matthews, Esquire, upon the filing of an appropriate Petition to the Register.

On November 26, 1999, the Register granted Letters of Administration D.B.N. to Mark J. Matthews as the sole Administrator of Anna Karbiwnyk's estate.

On February 2, 2000, Mark Matthews, Esquire, as Administrator D.B.N., filed a Petition seeking authority to sell Anna Karbiwnyk's former residence on Lawrence Street, and, the contents thereof, at public sale. Judge Pawelec approved said Petition by Decree dated February 24, 2000.

On March 31, 2000, Mark Matthews, Esquire, as Administrator D.B.N., filed a Petition to compel Paulette and Raymond Karbiwnyk to turn over assets and papers of Anna Karbiwnyk, and, to file an Account of their administration of Anna's affairs under the Power of Attorney dated July 20,

1998. Said Petition also sought to surcharge Paulette and Raymond. Paulette filed a Response to this Petition on April 28, 2000.

On April 4, 2000, Mark Matthews, Esquire, as Administrator D.B.N., filed a Petition to compel Raymond Karbiwnyk to turn over assets and papers of Anna Karbiwnyk, and, to file an Account of his administration of Anna's estate as a Co-Administrator. Said Petition also sought to surcharge Raymond. Raymond filed a Response to this Petition on May 19, 2000.

On June 2, 2000, Judge Pawelec issued a Decree directing Paulette and Raymond to file an Account as Agents under the aforementioned Power of Attorney.

Also on June 2, 2000, Judge Pawelec issued a Decree directing Raymond to deliver certain coins and silver bars to Mark Matthews, as Administrator D.B.N.; and, directing Raymond to file an Account as a Co-Administrator.

On September 21, 2000, Mark Matthews, as Administrator D.B.N., responding to allegations made by Paulette and Raymond in their aforementioned Responses, filed a Petition seeking leave to take the Depositions of Raymond, Paulette, Walter and Stephen, and, to seek production of documents, in an effort to ascertain the true assets and liabilities of the estate of Anna Karbiwnyk. Said Petition for Discovery was Granted by Decree of this Court dated July 24, 2001.

**On October 5, 2000, Judge Pawelec cited Paulette and Raymond to show cause why a Writ of Attachment should not issue against them for their failure to file Accounts as directed in his Decrees of June 2, 2000.**

**On July 24, 2001, this Court issued Writs of Attachment against Paulette and Raymond for their failure to file Accounts as directed by Judge Pawelec in his Decrees of June 2, 2000. Said Attachments were made Returnable on August 30, 2001.**

**On September 7, 2001, this Court once again issued Writs of Attachment against Paulette and Raymond. Said Attachments were made Returnable on November 6, 2001.**

**On October 11, 2001, Mark Matthews, as Administrator D.B.N., filed a Petition seeking to “surcharge” Paulette and Raymond for attorney fees and costs allegedly incurred by the decedent’s estate as a, “....result of their obdurate, vexatious and bad faith conduct.”**

**At the request of Edward T. Rostick, Esquire, representing Mark Matthews, Esquire, as Administrator D.B.N., the aforementioned Attachments were Dissolved by Decrees of this Court dated November 1, 2001, because Paulette and Raymond had submitted to oral Depositions, and, had produced records.**

**To this date, Paulette and Raymond have never filed Accounts in accordance with the Decrees of Judge Pawelec dated June 2, 2000.**

On December 4, 2001, Mark Matthews, Esquire, as Administrator D.B.N., filed a First and Partial Account of his administration of Anna Karbiwnyk's estate.

On January 4, 2002, Stephen filed Objections to the First and Partial Account, which Objections were joined in by Walter.

At the call of the Deferred Audit List on March 4, 2002, Mark Matthews, Esquire, handed up a document entitled "Exhibit/Bring-Down" which amends and supplements the First and Partial Account.

On April 4, 2002, Raymond filed Objections to the First and Partial Account, and, to the Exhibit/Bring-Down which had been handed up on March 4, 2002.

On April 16, 2002, this Court heard the testimony of Raymond and Mark Matthews, and, received certain Exhibits into evidence.

By Letter dated July 15, 2002, Mark Matthews submitted a document entitled "Second Exhibit/Bring-Down" which further amends and supplements the First and Partial Account.

In his "Second Exhibit/Bring-Down", Mark Matthews, Esquire, charges himself with receipt of assets valued at \$291,915.75, and, takes credit for disbursements totaling \$75,093.35, leaving a combined balance of \$216,822.40 now remaining in his hands as Administrator D.B.N., which balance is composed of the following items, to wit: silver bars having an appraised value of \$11,705.55; cash, including silver coins carried at face

value, totaling \$89,970.55; prior distributions to Stephen and Walter totaling \$80,056.30; and, a certain debt of Raymond and Paulette to Raymond's parents, John and Anna Karbiwnyk, in the face amount of \$35,000.00, which debt is evidenced by a Bond and Warrant dated February 1, 1982.

In the "Second Exhibit/Bring-Down", the accountant requests that the sum of \$22,500.00 be awarded back to him to be held in reserve for the following purposes, to wit: \$10,000.00 to be held in reserve for payment of Pennsylvania Inheritance tax, including interest and penalties, if any; \$5,000.00 to be held as a reserve for payment of Fiduciary Income Taxes to the United States and the Commonwealth; \$2,500.00 to be held as a reserve for payment of "estimated ancillary charges"; \$3,000.00 to be held as a reserve for purchase of a Headstone for the grave of John and Anna Karbiwnyk; and, \$2,000.00 to be held as a reserve for payment of additional attorney fees to Mark Matthews, Esquire, for "Court appearance & Briefs re: Ray's Objections". Any balance of said reserve funds, left after making the aforementioned payments, is to be distributed to Raymond, Walter and Stephen as heirs.

Subtraction of \$22,500.00 in requested reserves from the combined balance of \$216,822.40 leaves assets having an account value of \$194,322.40 available for distribution, in equal, one-third shares of \$64,774.24, to Raymond, Walter and Stephen.

In his "Second Exhibit/Bring-Down", the accountant proposes to distribute assets valued at \$64,774.13 to each of Walter and Stephen,



each said sum to be composed of silver bars, cash and silver coins having a total account value of \$24,745.98, and, prior distributions having a total account value of \$40,028.15.

In his "Second Exhibit/Bring-Down", the accountant proposes to distribute assets valued at \$64,774.13 to Raymond, said sum to be composed as follows, to wit: silver bars, cash and silver coins having a total account value of \$7,510.31 to be paid to Raymond; cash in the sum of \$5,000.00 to be paid to Edward T. Rostick, Esquire; cash in the sum of \$2,263.82 to be paid to Mark Matthews, Esquire; cash in the sum of \$7,500.00 to be paid to Walter; cash in the sum of \$7,500.00 to be paid to Stephen; and, assignment of the Bond and Warrant in the face amount of \$35,000.00 to Raymond.

Walter and Stephen have withdrawn their Objections to the First and Partial Account.

At Page 2 of his First and Partial Account, Mark Matthews charges himself with receipt of \$2,274.50 in proceeds of sale of the contents of Anna Karbiwnyk's house on North Lawrence Street. In his Objection "e", Raymond demands proof that said amount was received for said contents. At the Hearing in this matter, Mark Matthews introduced Exhibit "P-2" which is a copy of the Auctioneer's computer print out showing a total of \$2,274.50 received. Due proof of receipt having been provided, Raymond's Objection "e" is Dismissed

At Page 2 of his First and Partial Account, Mark Matthews charges himself with receipt of Silver Bars having an appraised value of \$11,795.55, and, with receipt of Silver Coins and Rolled Coins having a face value of \$2,392.50. In his Objection "f", Raymond demands proof of the value of the Silver Bars, Silver Coins, and, Rolled Coins. At the Hearing in this matter, Mark Matthews introduced Exhibit "P-3" which is a copy of an Appraisal of the Silver Bars by First Pennsylvania Coin & Jewelry. Matthews then testified that he carried the Silver Coins and Rolled Coins at their face value because they were not in mint condition, and, he felt that the cost of an appraisal of the Silver Coins might exceed the face value of such coins. Because Raymond has offered no evidence to suggest that the Silver Bars, Silver Coins and Rolled Coins have values other than those ascribed to them by the accountant, his Objection "f" is Dismissed. See Bard's Estate, 339 Pa. 433 (1940), and, Estate of Stetson, 463 Pa. 64 (1975).

Attachment "C" to the First and Partial Account lists numerous disbursements totaling \$64,729.41. Raymond's Objection "g" appears to be a general Objection to all disbursements in Attachment "C". At the Hearing in this matter, Raymond was asked to specifically identify those disbursements to which he had objection, and, to state specific grounds for each objection.

At Page 1 of Attachment "C", Mark Matthews takes credit for payments totaling \$1,024.00 to a Court Reporter for transcripts of Hearings before Judge Pawelec. Raymond testified that the transcripts were paid for

while his mother was still alive. Because the entries in Attachment “C” indicate that the transcripts were paid for after the decedent’s death, and, because Raymond offered no independent proof that they were paid on dates other than those recited in Attachment “C”, this Court Dismisses Objection “g” insofar as it pertains to payments for transcripts. See Bard and Stetson, supra.

At Page 1 of Attachment “C”, Mark Matthews takes credit for paying \$4,950.31 to Anne Maxwell, Esquire, for her services as Court Appointed Counsel to the decedent in the incapacity proceeding. Raymond testified that he never hired Anne Maxwell to represent his mother. However, Judge Pawelec did appoint Ms. Maxwell to represent the decedent, and, the fees in question are a legitimate debt of the decedent’s estate. Accordingly, this Court Dismisses Objection “g” insofar as it pertains to the aforementioned payment to Anne Maxwell, Esquire.

At Page 2 of Attachment “C”, Mark Matthews takes credit for paying \$900.00 in safe deposit box rentals to Premier Bank. Raymond testified that he understood that the Silver Bars, Silver Coins, and, Rolled Coins, were to be sold and the proceeds deposited into an estate account. Because this Court feels that the accountant acted prudently in keeping the Bars and Coins in a safe place, it Dismisses Objection “g” insofar as it pertains to the aforementioned payments of safe deposit box rentals.

At Page 2 of Attachment “C”, Mark Matthews takes credit for paying \$322.07 to Keith’s Mobile Lock Shop to change the locks on the

decedent's residence on North Lawrence Street. Raymond testified that said expense was unnecessary because the accountant had a key to the premises. Because this Court feels that the accountant acted prudently in changing the locks to the decedent's residence, it Dismisses Objection "g" insofar as it pertains to the aforementioned payment to Keith's Mobile Lock Shop.

At Page 2 of Attachment "C", under the heading "Court Fees", Mark Matthews takes credit for paying a total of \$1,379.00 for several items. At Page 3 of Attachment "C", under the heading "Postage and Delivery", Matthews takes credit for paying a total of \$61.77 for several items. Also at Page 3 of Attachment "C", under the heading "Professional Services", Matthews takes credit for paying a total of \$2,423.40 for several items. Raymond testified that he objects to payment of the aforementioned items entirely out of his share of the decedent's estate. Since the items in question were treated as general expenses, and, charged equally against the shares of all three Heirs, this Court Dismisses Objection "g" insofar as it pertains to the aforementioned items.

At Page 5 of Attachment "C", under the heading "Auction Sale Fees & Commissions", Mark Matthews takes credit for paying a total of \$7,528.93 in commissions and advertising fees in connection with the sale of the decedent's residence on North Lawrence Street, and, the sale of the contents of said residence. At Page 3 of Attachment "C", under the

heading "Real Estate Seller Concession as Agreed", Matthews takes credit for allowing a concession of \$3,870.00 to the buyer of the residence. Raymond testified that he was assured that his mother's residence would be sold by a real estate broker and not by an Auctioneer; that \$10,000.00 in expenses of sale could have been saved by selling to a ready, willing and able cash buyer whose name he did not produce; and, that he objected to payment of the aforementioned items entirely out of his share of the decedent's estate. Mark Matthews testified that Judge Pawelec approved a Public Sale of the residence and contents on a Petition to which no party had filed any response; that Paulette and Raymond attended the Auctions; that the Concession to the Buyer was necessary to close the transaction, and, produced a profit to the decedent's estate; and, that the items in question were treated as general expenses, and, charged equally against the shares of all three Heirs. This Court holds that Raymond cannot question the payment of commissions and advertising fees to the Auctioneer because he failed to respond to the Petition seeking authority to sell at Public Sale. This Court gives no credence to uncorroborated testimony about a ready, willing and able cash buyer whose name was not produced at the Hearing. This Court accepts the testimony of Mark Matthews and finds, as a fact, that the Concession to the Buyer was necessary and produced a profit to the decedent's estate. Furthermore, this Court notes that the items in question are charged equally against the shares of all three Heirs. Accordingly, Objection "g" is Dismissed insofar

as it pertains to the questioned “Auction Sale Fees & Commissions”, and, insofar as it pertains to the questioned “Real Estate Seller Concession as Agreed”.

At Page 5 of Attachment “C”, under the heading “Legal Fees”, Mark Matthews takes credit for making two payments, totaling \$1,034.51, to Anne Maxwell, Esquire. Raymond has demanded an explanation of what services were performed to earn said payments. The burden is on the accountant to justify said payments. See Estate of Phillips, 420 Pa.SuperiorCt. 228 (1992). Because Mark Matthews offered no evidence in support of the questioned payments, they will be stricken from the account; the accountant will be surcharged in the amount of \$1,034.51; and, said surcharge will be added back to the sums available for distribution to the Heirs.

Attachment “F” to the Exhibit/Bring-Down lists numerous disbursements totaling \$20,427.03. Raymond’s Objection “j” appears to be a general Objection to all disbursements in Attachment “F”. However, at the Hearing, Raymond objected only to the payment of the total amount of \$20,427.03 entirely out of his share of the decedent’s estate. Since \$18,427.03 of the disbursements in question were treated as general expenses, and, charged equally against the shares of all three Heirs, this Court Dismisses Objection “j” insofar as it pertains to said amount of \$18,427.03. Insofar as Objection “j” pertains to payment of \$2,000.00 in

**Legal Fees to Edward Rostick, Esquire, it will be addressed in the following discussion of Raymond's objection to the proposal to pay \$5,000.00 from his share of the estate to Mr.Rostick.**

**As previously noted, in his "Second Exhibit/Bring-Down", the accountant proposes to pay the sum of \$5,000.00 to Edward Rostick, Esquire, from Raymond's share of the decedent's estate. In his Objection "b", Raymonds objects to this proposed payment. At the Hearing, Mark Matthews testified that he was forced to employ Mr.Rostick to compel Paulette and Raymond to submit to Depositions; to compel Raymond to turn over assets of the decedent; and, to compel Paulette and Raymond to file accounts of their activities as Agents and Co-Administrator. Matthews offered Exhibit "P-4" which is a bill from Mr.Rostick dated September 11, 2001. Matthews further testified that Raymond's vexatious conduct and refusal to cooperate in the administration of the decedent's estate turned the administration into a prolonged marathon. Raymond testified that he and Paulette stood ready to voluntarily submit to Depositions, and, that he did cooperate in the administration of his mother's estate. Upon consideration of the record made at the Hearing, and, the voluminous pleadings on the Docket, this Court believes the testimony of Mark Matthews, and, regards Raymond's testimony as being incredible. This Court finds that Raymond has engaged in dilatory, obdurate, vexatious and arbitrary conduct which resulted in Mr.Rostick's claim of \$5,000.00. Accordingly, this Court Dismisses Raymond's Objection "b", and,**

approves payment of \$5,000.00 from Raymond's share of the estate to Mr.Rostick. See 42 Pa.C.S.A. Section 2503 (7) and (9); Weiss Estate, 4 Fiduc Rep 2d 71 (O.Ct., Phila., 1983); and, Brenckle v. Arblaster, 320 Pa Superior Ct 87 (1983).

As previously noted, in his "Second Exhibit/Bring-Down", the accountant proposes to treat a certain debt of Raymond and Paulette to Raymond's parents, John and Anna Karbiwnyk, in the face amount of \$35,000.00, which debt is evidenced by a Bond and Warrant dated February 1, 1982, as part of Raymond's share of the decedent's estate. In his Objection "a", Raymond objects to this proposal. Exhibit "P-1" is a copy of the Bond and Warrant in question. It recites that it was signed, sealed and delivered in the presence of Walter. At the Hearing, Mark Matthews testified that he has caused suit to be filed, on the said instrument, in the Trial Division of this Court. Exhibit "P-5" is a copy of the Complaint which Matthews filed against Raymond and Paulette on January 11, 2002. In said Complaint, Matthews, as Administrator D.B.N., demands judgment in the amount of \$267,080.89, being: unpaid principal of \$35,000.00; interest from February 1, 1982 to January 1, 2002 totaling \$219,362.89; and, attorney's fees of \$12,718.00. At the Hearing, Raymond denied any obligation on the Bond and Warrant. When this Court asked Raymond why he signed Exhibit "P-1", Raymond gave the following responses:

“ THE COURT: Excuse me. Why did you sign this P-1? Did you answer that before?



**THE WITNESS:** It could have been blank, Your Honor. My father may have asked me to sign it, but I will tell you, I will tell you this right now, any legal documents that I have ever done or had done are never handwritten with, okay, terms, dates, amounts.

**THE COURT:** But this is indeed your signature and your wife's signature?

**THE WITNESS:** It looks like it, sir. I can show you some documents that we received through our loss prevention at the bank that can be superimposed on anything you want. ...." NTS at 48

Raymond further testified that his father made a gift of \$30,000.00, not \$35,000.00, to Raymond, in January of 1981, to enable Raymond to purchase a business and store front property at 153 West Wyoming Avenue. Having observed Raymond's demeanor on the stand while he testified, and, considered his interest in the outcome of this matter, this Court does not believe Raymond's testimony concerning the Bond and Warrant. This Court finds, as a fact, that Raymond and Paulette borrowed \$35,000.00 from Raymond's parents, and, that Raymond and Paulette signed the Bond and Warrant to evidence their obligation to repay said the borrowed sum with interest on the terms set forth in the instrument. Because Raymond gave incredible testimony that his father made a gift and not a loan, this Court further finds that no payments of principal or interest have been made on account of the obligation evidenced by the Bond and Warrant. Raymond is thus indebted to his mother's estate in the principal amount of \$35,000,00, and, owes interest on said unpaid principal,

in accordance with the terms of the Bond and Warrant, at the rate of 10% per annum, since February 1, 1982, which interest amounted to \$219,362.89 as of January 1, 2002. Accordingly, this Court Dismisses Raymond's Objection (a), and, approves the proposal to treat his debt of \$35,000.00 as part of his share of the estate.

In his Objection "k", Raymond objects to the fact that the accountant made prior distributions of \$40,000.00 to each of Walter and Stephen. At the Hearing, Raymond testified that he was not even advised that said prior distributions had been made to his brothers, and, that no one offered to make a prior distribution to him. In light of the fact that Raymond has had the use of \$35,000.00 of his parents' money since February 1, 1982, and, has paid no interest on account of his debt, this Court sees no merit in his Objection "k". Accordingly, this Court Dismisses Objection "k".

As previously noted, in his "Second Exhibit/Bring-Down", the accountant proposes to pay the sum of \$7,500.00 to each of Walter and Stephen from Raymond's share of the decedent's estate. The relevant entries read as follows, to wit, "Reimbursement for Guardianship Attorney fee (to be hereafter surcharged to Raymond Karbiwnyk)." In his Objection "c", Raymond objects to these proposed payments. At the Hearing, Mark Matthews testified that he took a retainer of \$15,000.00 from the decedent on the night of July 20, 1998, and, appeared on her behalf in the incapacity proceeding before Judge Pawelec. Raymond stated that he should not be

required to pay a fee which his mother already paid in her lifetime. In their brief, Walter and Stephen take the positions that Mark Matthews represented Raymond, not his mother, in the incapacity proceeding; that Matthews should have been paid by Raymond and not his mother; and, that, Raymond thus owes each of them one-third (1/3) of said sum of \$15,000.00. At the Hearing, Mark Matthews testified that Walter and Stephen had agreed to accept \$7,500.00 each in full and final satisfaction of their claims to share in the interest which Raymond owes to his mother's estate on the aforementioned Bond and Warrant. Having considered the testimony and the positions taken by the parties in their Briefs, this Court Holds that, regardless of whether or not Mark Matthews received payment for his services from the decedent in her lifetime, Raymond owes a considerable amount of interest to his brothers on the Bond and Warrant, and, that the proposed payments of \$7,500.00 to Walter and Stephen should be made in full and final satisfaction of their claims to interest on the Bond and Warrant. Accordingly, this Court Dismisses Raymond's Objection "c", and, approves the proposed payments of \$7,500.00 to each of Walter and Stephen from Raymond's share of the estate.

As previously noted, in his "Second Exhibit/Bring-Down", the accountant proposes to pay himself the sum of \$2,263.82 from Raymond's share of the decedent's estate. The relevant entry reads as follows, to wit, "Attorney fees paid to Mark J. Matthews, Esq. (Guardianship Matter)". In

his Objection “d”, Raymond objects to this proposed payment. At the Hearing, Mark Matthews testified that Anne Maxwell represented the decedent as Court Appointed Counsel in the incapacity proceeding; that he undertook to represent the decedent in the same proceeding on the night before the Hearing of July 21, 1998; and, that there has always been an unresolved dispute as to whether he represented Raymond or the decedent in the incapacity proceeding. At the Hearing, Matthews offered little or no testimony or evidence as to what services he rendered to earn the \$15,000.00 retainer which he received from the decedent on July 20, 1998, or, as to what services he rendered to earn the additional sum of \$2,263.82 which he now proposes to pay himself from Raymond’s share of the decedent’s estate. Exhibit “1.c” to Matthews’ Brief is a copy of “Time & Expense Records” showing \$17,263.82 to be owing to him for his services in the incapacity proceeding. However, this Court will not consider Exhibit “1.c” because it was not offered or received into evidence at the Hearing. In the absence of direct, competent evidence, in the record, as to what services were rendered to earn the sum of \$17,263.82, this Court holds that Mark Matthews has failed to prove that he is entitled to pay himself \$2,263.82 from Raymond’s share of the decedent’s estate. Raymond’s Objection “d” is sustained. The proposal to pay \$2,263.82 to Mark Matthews from Raymond’s share of the estate is not approved.

James P. Golden, Esquire, representing the Commonwealth of Pennsylvania, entered an appearance claiming such Pennsylvania transfer

inheritance tax as may be due and assessed, "without prejudice to the right of Commonwealth to pass on DEBTS and DEDUCTIONS", and the awards herein contained will accordingly be made subject thereto.

All claims and Objections having been addressed and determined, the "Second Exhibit/Bring-Down" shows a combined balance of principal and income, before distributions, of \$ 216,822.40

To which add surcharge of accountant per  
foregoing discussion of  
1,034.51

making a balance available for distribution of \$  
217,856.91

which, composed as indicated in the "Second Exhibit/Bring-Down", together with income received since the filing thereof, if any, is awarded as follows, to wit: \$22,500.00 to the accountant, to be held in reserve, as requested; and the balance then remaining, or residue, in equal, one-third (1/3) shares, to Raymond Karbiwnyk, Walter Karbiwnyk and Stephen Karbiwnyk.

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

The above awards of principal and income to Walter Karbiwnyk and Stephen Karbiwnyk are made subject to prior distributions heretofore properly made to them in the amount of \$40,028.15 each.

The above awards of principal and income to Raymond Karbiwnyk shall include his aforementioned debt of \$35,000.00 which is evidenced by the aforementioned Bond and Warrant.

The above awards of principal and income to Raymond Karbiwnyk are made subject to payment of the following sums, to wit: cash in the sum of \$5,000.00 to Edward T. Rostick, Esquire; cash in the sum of \$7,500.00 to Walter Karbiwnyk; and, cash in the sum of \$7,500.00 to Stephen Karbiwnyk.

All of the above awards of principal and income are made subject to all payments heretofore properly made on account of distribution.

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 First And Partial Account, as amended and supplemented by the “Exhibit/Bring-Down”; as amended and supplemented by the “Second Exhibit/Bring-Down”; and, as modified by 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.**

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**O'Keefe, Adm. J.**