

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

The Raymond and Ruth Perelman Education Foundation
Under Agreement of Trust Dated August 21, 1995, as amended
O.C. No. 519 IV of 2013
Control No. 173247

The Raymond and Ruth Perelman Judaica Foundation
Under Agreement of Trust Dated August 21, 1995, as amended
O.C. No. 521 IV of 2013
Control No. 173248

The Raymond and Ruth Perelman Community Foundation
Under Agreement of Trust Dated August 21, 1995, as amended
O.C. No. 520 IV of 2013
Control No. 173245

The Raymond G. Perelman Charitable Remainder Unitrust under
Agreement Dated April 25, 1996
O.C. No. 529 IV of 2013
Control No. 173252

The Raymond and Ruth Perelman Family Charitable Foundation under
Agreement of Trust Dated April 25, 1996
O.C. No. 528 IV of 2013
Control No. 173250

Estate of Ruth C. Perelman, Deceased
O.C. No. 153 DE of 2012
Control No. 173254

OPINION

Introduction

The joint settlement petition pending before this court raises the issue of whether the estate of a deceased co-trustee of a charitable trust may be paid \$2.5 million dollars for fees calculated on her entire tenure as co-trustee where the Attorney General objects to the amount of fees but not to the estate's entitlement to fees. For the reasons set forth below, the objections are overruled and the joint settlement petition is approved.

Raymond And Ruth Perelman Education Foundation, In



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Background

In August 1995, Raymond and Ruth Perelman established three charitable foundations by separate deeds of trust:

The Raymond and Ruth Perelman Judaica Foundation (hereinafter “Judaica”), by Agreement of Trust dated August 21, 1995;

The Raymond and Ruth Perelman Community Foundation (hereinafter “Community”), by Agreement of Trust dated August 21, 1995;

The Raymond and Ruth Perelman Education Foundation (hereinafter “Education”), by Agreement of Trust dated August 21, 1995

Nearly a year later, Ruth and Raymond Perelman established two additional charitable foundations:

The Raymond and Ruth Perelman Family Charitable Foundation (hereinafter “Family Charitable”), by Agreement of Trust dated April 25, 1996;

The Raymond G. Perelman Charitable Remainder Unitrust (hereinafter “Charitable Unitrust”), by Agreement of Trust dated April 25, 1996

Both Ruth and Raymond served as co-trustees of these foundations, until Ruth was removed as co-trustee of the Community, Judaica, and Education Foundations by Raymond on August 18, 2009. Ruth died on July 31, 2011. She served as co-trustee of the Charitable Unitrust Foundation until the time of her death.¹ Under her will dated July 28, 2010, she named her son, Jeffrey Perelman, as executor.

Ruth Perelman’s will was admitted to probate by the Philadelphia Register of Wills on October 3, 2012 with letters testamentary granted to Jeffrey Perelman. Raymond Perelman filed an appeal, asserting that this court lacked jurisdiction because Ruth had been a domiciliary of Florida. He also asserted that the will was invalid due to undue influence but he eventually abandoned that claim. The issue of Ruth’s domicile was also litigated in Florida courts. This court ruled that Ruth Perelman’s domicile was in Philadelphia at the time of her death by decree and opinion dated July 23, 2013. Raymond appealed this ruling, but it was affirmed.²

Meanwhile, in late April 2013 Jeffrey Perelman, as executor of his deceased mother’s estate, filed petitions seeking to inspect the books and records of the five charitable foundations established by his parents. With these petitions, Jeffrey sought to have a citation issued compelling

¹ 10/25/17 Raymond Perelman Joinder to Jeffrey Perelman’s Proposed Findings of Fact and Conclusion of Law.

² See generally Perelman Estate, 3 Fid. Rep. 3d 307 (Phila.O.C. 2013).

his father, Raymond Perelman, to respond to these discovery requests, individually and as Trustee, and stated that notice would be given, inter alia, to the Pennsylvania Office of the Attorney General (hereinafter "Attorney General"). The April 30, 2013 decree that ordered the citation directed to Raymond Perelman, explicitly required notice to the Attorney General; the petitioner subsequently filed formal proof of this notice.

In seeking access to the books and records of the charitable foundations, the petitions alleged that the Judaica, Community and Education Charitable Foundations may have been liable for various violations of the Internal Revenue Code of 1986. Because Ruth Perelman had served as a co-trustee of these Foundations, the petitioner claimed that her estate was entitled to inspect the books and records of the Foundations to assess any potential liability the estate might encounter. The petitioner also claimed that Ruth's estate was entitled to compensation for her years of service as a co-trustee. In essence, Jeffrey, as executor of his mother's estate, was claiming that she may have engaged in tax violations, either of a negligent or fraudulent nature, in her role as trustee, and the estate could avoid the imposition of interest and penalties, if any were due, by voluntarily disclosing the wrongful conduct. Clearly, this manufactured theory was advanced to obtain Raymond's records in furtherance of the litigation by and between father and son spanning many years. At the same time Jeffrey was seeking information about his mother's possible breach of duty as trustee in tax matters, he was also seeking compensation for her faithful services as trustee.

The information sought in these petitions was extremely broad. For instance, Ruth's estate asked to inspect all books and records of the Foundations including but not limited to:

- Records for all bank and brokerage accounts that support the cash, savings and temporary cash investments reported on Federal Form 990-PF including bank statements, brokerage statements, account reconciliations, cancelled checks, deposit slips or advices, wire transfer records, ledgers and any other records that evidence the receipt and disbursement of funds by the Foundations;
- Leases, rental agreements, invoices or any other agreements that support the rental income amounts reported by the Foundations and identify the parties who were charged rent;
- Accounts receivable records that support the amounts reported by the Foundations including journals and/or ledgers listing all transactions for each customer or party and aging reports showing all outstanding /unpaid transactions;
- All documents relating to any collection activities in connection with the amounts reported as accounts receivable on the Foundations' Federal Form 990-PF;
- The Foundations' accounting records that support the Federal Form 990-PF including detailed general ledgers, trial balances, cash receipt and disbursement journals, check registers and journal entries. To the extent these records currently exist in an electronic format, this request shall include such files in their native file format;

- Investment records including account statements, confirmations, transaction advices, any Federal Form 1099s, ledgers, agreements and/or any other records that evidence the purchase, sale, pledge, transfer or receipt of income from any securities loans, notes or mortgages owned or held by the Foundations and;
- Bills of sale, agreements, correspondence and any other documents or records related to the ownership, purchase, sale or transfer of title to any assets owned or held by the Foundations, other than securities (e.g. equipment, land, buildings, etc.).³

The petition also sought access to such documents as articles of incorporation, by-laws, board of directors' resolutions and shareholder packages.

Raymond Perelman vigorously objected to this petition, which triggered more than 4 years of intense litigation with documents, petitions, briefs and arguments presented at the very highest level of legal expertise. When an early opinion by this court sustaining preliminary objections was appealed, the Pennsylvania Superior Court reversed the ruling that Jeffrey Perelman lacked standing to pursue this discovery. Instead, in Raymond G. Perelman Charitable Remainder Unitrust, 2015 Pa. Super. 53, 113 A.3d 296 (2015), the Pennsylvania Superior Court ruled that Jeffrey Perelman had standing as the executor of Ruth Perelman's estate to seek a broad array of documents from the charitable foundations on two grounds. First, the executor of Ruth Perelman's estate had standing to examine the records of the charitable foundations to determine whether the estate might have liability to the IRS for actions by the charitable foundations during Ruth's tenure as trustee. Second, the estate was entitled to examine the records of the charitable foundations to determine whether Ruth, and then her estate, were entitled to compensation for her services as trustee. The Superior Court specifically rejected the notion that as a matter of law the estate had no claim to compensation because Ruth had not sought any compensation during her lifetime, since "merely declining to seek compensation is not sufficient to defeat the right at a later time to seek it." Raymond G. Perelman Charitable Remainder Trust, 113 A.3d at 309. The court suggested that additional discovery on this compensation issue was valid "[i]nasmuch as one permissible method of calculating compensation involves deriving compensation as a percentage

³ See, e.g. 4/24/13 Jeffrey Perelman, Petition for Citation, Raymond and Ruth Perelman Education Foundation, O.C. No. 519 IV of 2013 at 6. The Petition filed for the Raymond and Ruth Perelman Family Charitable Foundation, O.C. No. 528 IV of 2013, likewise, emphasized the Foundation's potential liability and the potential fee due to Ruth's estate for her services as co-trustee but it did not outline the specific types of records petitioner sought to inspect. The petition filed for the Raymond G. Perelman Charitable Remainder Unitrust, O.C. No. 529 IV of 2013, asserted that this trust was the sole shareholder of RGP Holding, Inc. and petitioner sought access to a wide range of documents related to RGP Holding, Inc. and all subsidiary and related entities.

of trust assets under management, the need is manifest for more information than a mere trust provision indicating in general terms that compensation may be awarded.” *Id.*, (citations omitted).

To assist the court in analyzing the numerous complex documents sought in this litigation, Justice Russell M. Nigro (Ret.) was appointed as Special Discovery Master (hereinafter “Master”) by decree dated April 13, 2016. Raymond Perelman was ordered to provide the Master with a wide array of documents. If the court concluded that Raymond Perelman should be subject to a deposition, the Master was given the authority to determine which documents were relevant and should be released to Jeffrey Perelman. By decree dated July 21, 2016, the court ordered the deposition of Raymond Perelman, subject to the recommendations of Special Discovery Master Justice Russell M. Nigro (Ret.), The scope of this deposition was limited to the “actions Ruth Perelman took as trustee” of the Perelman charitable entities. The deposition was subsequently held on September 6, 2016.

In response to petitions by Raymond Perelman, on October 14, 2016 Jeffrey Perelman filed a notice of the claim dated October 13 for compensation in the amount of \$2,500,000 by the Ruth Perelman estate for her years of service as co-trustee of the charitable foundations. This notice stated that the estate of Ruth Perelman was seeking this compensation based on the terms of the relevant agreements of trust as well as the record. Throughout this period, the Special Discovery Master conducted conferences with the parties that were recorded on transcripts, and eventually directed them to file proposed findings of fact and conclusions of law.

Finally, in September 2017, the parties filed a joint petition to settle “any and all disputes among, on the one hand, Jeffrey E. Perelman and/or Ruth C. Perelman’s Estate, and, on the other hand, Raymond G. Perelman, and/or the Charitable Entities. . . . including but not limited to any disputes concerning the administration or distribution of the Charitable Entities, and Jeffrey E. Perelman’s Petitions, Jeffrey E. Perelman’s October 13, 2016 written claim for commissions for Ruth C. Perelman’s services as trustee of the Charitable entities (the “Compensation Claim”), Raymond G. Perelman’s December 9, 2016 Petition to Approve Bond and Terminate Discovery (the “Bond Petition) and any alleged tax liability relating or pertaining to the Charitable Entities, or the assets thereof, and all possible related disputes.”⁴

The joint settlement agreement has several significant provisions. First, Ruth Perelman’s Estate will be paid \$2.5 million by the Charitable Foundations and all litigation will be dismissed

⁴ 9/1/17 Joint Settlement Petition, Ex. A “Settlement Agreement,” ¶12.

with prejudice. Second, Raymond individually will post a \$10 million bond. Third, the parties will be released and Ruth's Estate will be indemnified by Raymond and the Charitable Foundations. Finally, Jeffrey Perelman waives any claim for compensation from the charitable foundations for his legal fees to date.⁵ The Attorney General, however, filed objections to the proposed payment of \$2,500,000 to Ruth Perelman's Estate. While he concedes that "the co-trustee may be entitled to some commission," he asserts that the "the amount claimed is unjustified and unreasonable under the circumstances of this case and is unsupported by the evidence presented."⁶ In response to an October 2, 2017 decree and the direction of the Honorable Russell M. Nigro, Special Discovery Master, the parties filed proposed findings of fact and conclusions of law. Jeffrey Perelman supplemented his proposed findings, which were joined by Raymond Perelman, with comprehensive documentation. The Attorney General offered no documentation in support of his objections. The gist of the Attorney General's argument is twofold. First, that Ruth was not an active trustee and whatever role she played as a trustee was worth far less than \$2.5 million dollars. And second, that the agreement to settle for this sum is simply another chapter in the endless litigation between the father and the son and the settlement should not be funded with charitable funds but rather by Raymond's personal funds. While we disagree with the Attorney General's objections for reasons stated below, we commend the Attorney General for taking an active role in this matter and voicing a public concern. Nonetheless, upon review, the record presented by the joint petitioners provides adequate support for their proposed settlement agreement.

Legal Analysis

The joint petition to approve the settlement agreement was filed pursuant to 20 Pa.C.S.A. §3323; 20 Pa.C.S.A. §7792. Whenever a settlement involving a claim against an estate or trust is proposed, a petition seeking court approval should be filed. Section 3323 provides that "the court, on petition by the personal representative or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a master, may enter a decree authorizing the compromise or settlement to be made."⁷ When considering a petition under section 3323, "a reviewing judge must exercise his or her

⁵ 9/1/17 Joint Settlement Petition, ¶4 and Ex. A, "Settlement Agreement, ¶¶ D & F; See also 10/23/17 Jeffrey Perelman Statement of Proposed Findings of Fact and Conclusions of Law ¶ 9.

⁶ 9/13/17 Attorney General Memorandum of Law at 1.

⁷ Under 20 Pa.C.S.A. §7792, Section 3323 applies to trustees.

independent power of review.” In re Barnes Foundation, 453 Pa. Super. 243, 253, 683 A.2d 894, 899 (Pa. Super 1996), citing 20 Pa.C.S.A §3323. In the present case, the Special Master provided invaluable assistance in reviewing the massive discovery documents and directing the parties to file Proposed Findings of Fact and Conclusions of Law as a basis for reviewing the proposed settlement, and, in particular, the proposal to award the estate of Ruth Perelman \$2,500,000 in fees as compensation for her services as co-trustee of the Perelman charitable trust..

A. Based on the Record Presented, the Proposed Payment of \$2,500,000 to the Estate of Ruth Perelman is a Reasonable Fee for her Services as Co-Trustee of the Perelman Charitable Trusts for more than a Decade

It is undisputed that a trustee is entitled to reasonable compensation based on the terms of the relevant trust agreement or as a matter of law. See 20 Pa.C.S.A. §7768(providing for reasonable trustee fees either where those fees are specified in the trust document or where they are not specified). As guidance for determining reasonable fees, section 7768(d) notes that a “court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust’s market value.” The uniform law comment to section 7768 provides more detailed guidance for determining reasonable trustee fees:

Relevant factors in determining this compensation, as specified in the Restatement, include the custom of the community; the trustee’s skill, experience and facilities; the time devoted to trust duties; the amount and character of the trust property; the degree of difficulty, responsibility and risk assumed in administering the trust, including in making discretionary distributions; the nature and costs of services rendered by others; and the quality of the trustee’s performance.

The trust agreements for the Judaica, the Community and the Education Foundations were presented as exhibits in support of the joint settlement petition. All three of these trust agreements provide for reasonable trustee compensation.⁸ The petitioners concede that the Charitable Unitrust’s governing document does not provide for trustee compensation, but they properly note that under 20 Pa.C.S.A. §7768(a), Ruth would have been entitled to reasonable compensation as a trustee. They state that the Family Charitable Foundation was never funded.⁹

⁸ See 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex.A-1 the Raymond and Ruth Perelman Community Foundation, Item FIRST (5); Ex. A-2 the Ruth and Raymond Perelman Education Foundation, Item FIRST (5), and; Ex. A-3 the Raymond and Ruth Perelman Judaica Foundation. Item FIRST (5).

⁹ 9/1/17 Jeffrey Perelman Memorandum of Law at 3 & n.2 & n.3.

In disputes over trustee compensation, the burden of proof is on the fiduciary to show that the fees sought are reasonable. See Salus Estate, 421 Pa. Super. 87, 99, 617 A.2d 737, 743 (1992)(but if the trustee fails to come forward with specific records to substantiate the amount requested, the court can fashion an award of just and reasonable fees based on trust accounts that provide evidence of the size and complexity of the trust estate). In this case, the petitioners present a variety of documents to support their claim for Ruth’s trustee fee. Although the Attorney General argues that Ruth’s estate is not entitled to compensation because she never sought any compensation during her lifetime, this assertion was explicitly rejected by the Pennsylvania Superior Court in this case. See Raymond G. Perelman Charitable Remainder Unitrust, 113 A.3d 296, 309 (Pa. Super. 2015)(“We also find unpersuasive the orphans’ court’s and Raymond’s contentions that, as a matter of law, no claim will lie for compensation because Ruth failed to seek it during her lifetime and thereby waived any such claim by the Estate”); In re Reed, 467 Pa. 371, 357 A.2d 138 (Pa. 1976)(Claim by estate of deceased trustee for termination fee from principal was valid). Since none of the trust documents provide an exact formula for computing reasonable trustee compensation, the petitioners focus, inter alia, on the size of the total assets of the charitable entities as set forth in “the annual tax returns produced in discovery and reviewed by the Attorney General’s Office and the Special Discovery Master.” The total value of these assets are set forth in Exhibit B to Jeffrey Perelman’s Proposed Facts and Conclusions of Law.¹⁰ The chronological parameters of this analysis for the Judaica, Community and Education Foundations extend from April 30, 1996 to August 18, 2009 when Ruth was removed as trustee of these three foundations.¹¹

¹⁰ 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, ¶¶ 19-20 & Ex. B; 10/25/17 Raymond Perelman Joinder to Jeffrey Perelman’s Proposed Findings of Fact and conclusions of Law.

¹¹ In Jeffrey’s initial memorandum of law filed on September 1, 2017, he premised the “starting point” for computations of the market value of the trust assets from 1996 through 2011. See 9/1/17 Jeffrey Perelman Memorandum of Law at 5. The subsequent Proposed Findings of Fact and Conclusions of Law filed by Jeffrey Perelman on October 23, 2017, focus more narrowly on the assets of these three foundations from April 30, 1996 to April 30, 2010. See Jeffrey Perelman 10/23/17 Proposed Facts and Conclusions of Law at 5. The Joinder of Raymond Perelman on October 25, 2017 properly suggests that the end point for these calculations should be 2009 when Ruth was removed as trustee. Fortunately, Exhibit B attached to the 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law provides FMV figures for these three foundations for each year between 1996 through 2011. This exhibit states that as of April 30, 2009, these three foundations had a total value of \$182,703.745.

**Community, Education and Judaica Foundations
FMV of Assets per Fiscal Year**

Valuation Date	Total Value
As of 4/30/1996	\$48,516,140
As of 4/30/1997	\$63,984,612
As of 4/30/1998	\$86,044,069
As of 4/30/1999	\$104,189,315
As of 4/30/2000	\$104,805,189
As of 4/30/2001	\$119,992,192
As of 4/30/2002	\$127,315,471
As of 4/30/2003	\$125,857,385
As of 4/30/2004	\$151,695,687
As of 4/30/2005	\$160,976,302
As of 4/30/2006	\$171,533,616
As of 4/30/2007	\$179,938,108
As of 4/30/2008	\$182,497,949
As of 4/30/2009	\$182,703,745 ¹²

Based on these figures for the fair market value of the 3 foundations' assets over the span of 1996 through 2009, a trustee fee of \$2,500,000 would be reasonable as constituting less than 2% of the foundations' assets. See 20 Pa.C.S.A. § 7768(d) (“In determining reasonable compensation, the court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage to the trust’s market value”); Raymond Perelman Charitable Remainder Unitrust, 113 A.3d at 308-09 (“one permissible method of calculating compensation involves deriving compensation as a percentage of trust assets under management”). See also In re Taylor’s Estate, 281 Pa. 440, 126 A. 809 (Pa. 1924) (trustee/executor commissions of 4% on principal and 5 % on income was reasonable based on the size of the estate and the services performed).

Jeffrey Perelman has proposed a calculation of fees for Ruth’s estate premised, inter alia, on the Applications for Recognition of Exemption, Form 1023, that the foundations filed with the Internal Revenue Service that listed *pro forma* expense statements for Ruth of \$100,000 per year.¹³ He then juxtaposes these *pro forma* Application expense statements to the annual tax

¹² See 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. B. According to Jeffrey Perelman’s Proposed Findings of Fact paragraphs 19-20, these figures were derived from annual tax returns produced in discovery and reviewed by the Attorney General’s Office and the Special Discovery Master.

¹³ 9/1/17 Jeffrey Perelman Memorandum of Law at 3 & 5.

returns. He notes that in April 30, 1996, the Judaica, Education and Community Foundations had assets totaling \$48,516,140 and by April 30, 2010 these assets increased to \$196,224,997.¹⁴ He explains this calculation as follows:

One starting point for a compensation analysis is the compensation Raymond and Ruth included in the pro forma expense statements provided to the IRS under penalties of perjury. Those statements reveal that, for only the Judaica, Education and Community Foundations, Ruth was to be paid \$100,000 in the early years. If the \$100,000 annual compensation is indexed to the market value of the assets, which increased from \$48,516,140 to \$196,224,997, the annual compensation for years 1996 through 2011 for those trusts alone totals **\$4,539,725.90**. Alternatively, if a terminating commission of 2% had been claimed with respect to only the Judaica, Education and Community Foundations, the compensation for those trusts would total **\$3,924,499.94**.¹⁵

A problem with this analysis is that it encompasses years after which Ruth had been removed as trustee of the Judaica, Community and Education Foundation.¹⁶ Moreover, this calculation of compensation based on *pro forma* expense schedules in the Applications for Recognition of Exemption, Form 1023 that were filed with the IRS and are set forth in Exhibits A-9, A-10, and A-11,¹⁷ unduly complicates the proposed analysis of the market value of the trust as set forth in 20 Pa.C.S.A. § 7768. What is significant, however, is that the Attorney General does not dispute the figures presented as to the fair market value of the assets of Community, Education and Judaica Foundations.

In addition to these three Foundations, the petitioners state that the assets of the Charitable Unitrust as set forth in its 2011 tax return reviewed by the Attorney General totaled \$68,086,728.¹⁸ This is a valid date to include in the overall view of the trust assets relevant to Ruth's compensation since she served as a trustee of this trust until her death on July 31, 2011.¹⁹

In addition to the total value of the trusts as a factor in determining reasonable trustee fees, courts focus on "the nature and extent of the fiduciary's service" and "not on some arbitrary formula." Ischy Trust, 490 Pa. 71, 80,415 A.2d 37, 42 (Pa. 1980). The prime source for

¹⁴ 9/1/17 Jeffrey Perelman Memorandum of Law at 4.

¹⁵ 9/1/17 Jeffrey Perelman Memorandum of Law at 5.

¹⁶ See 10/23/16 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Exs. A-6, A-7, A-8 (August 18, 2009 trust amendments).

¹⁷ See 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A-9, Ex. A-10 & Ex. A-11 (Part IV, line 17 (rider)).

¹⁸ 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, ¶25.

¹⁹ 10/25/17 Raymond Perelman Joinder to Jeffrey Perelman's Proposed Findings of Fact and Conclusions of Law.

determining Ruth's role in the administration of the trusts is the deposition of her husband, Raymond Perelman. At the time of this deposition, Raymond was 99 years old. The Attorney General discounts this deposition as "a rather sad and confused proceeding in which a 99 year old man of questionable memory and failing eyesight is being hounded by vigorous cross-examination..."²⁰ To rebut this characterization of Raymond Perelman's capacity, the petitioners present the testimony of Dr. Lawrence Beck before the Honorable Steven Tolliver regarding Raymond's deposition testimony in an unrelated Montgomery county proceeding.²¹ Dr. Beck, who was one of Raymond Perelman's personal physicians for nearly 10 years, testified that Raymond had a number of physical impediments and most particularly "severe sensory neural hearing loss."²² Dr. Lawrence disagreed, however, with characterizations by opposing counsel in the course of depositions that Raymond Perelman was not "cognitively aware:"

I would, if I may, I would disagree with the two statements that he is not cognitively aware of what's going on or able to answer the questions honestly, given some limitations, I'll be happy to discuss, in a hundred year old normal brain.²³

As a practical matter, Raymond Perelman, as the settlor and long term co-trustee of the charitable foundations is in the best position to offer first-hand information about the role Ruth played in the administration of those trusts. His deposition testimony, despite the lapses in memory of specific details, provides invaluable insight into this issue.

In dealing with the substance of Raymond's deposition, the Attorney General asserts there "is nothing in the documents or depositions that suggests her [i.e. Ruth's] involvement as being anything more than the wife of a wealthy and successful man."²⁴ Raymond Perelman, in contrast, presents an image of Ruth as playing a vital role as alter ego, confidante and adviser as to charitable contributions. In explaining how Ruth came to be co-trustee in the five Perelman charitable foundations, Raymond stated: "we needed two trustees and I thought I want my wife

²⁰ 9/13/17 Attorney General Memorandum at 5.

²¹ Dr. Lawrence Beck's testimony was presented before Judge Steven C. Tolliver of the Montgomery County Court of Common Pleas on September 18, 2017 regarding a Dragonetti action pending in that county. Counsel for Raymond Perelman presented Dr. Beck's testimony after questions arose concerning Raymond's capacity during two depositions. Dr. Beck had attended two of these depositions on July 24, 2017 and August 16, 2017. See Jeffrey Perelman 10/23/17 Proposed Findings of Fact and Conclusions of Law, Ex. C, Conference before the Honorable Steven C. Tolliver, Sr. (September 18, 2017) at 17, 27-28.

²² Jeffrey Perelman 10/23/17 Proposed Findings of Fact and Conclusions of Law, Ex. C at 15.

²³ Jeffrey Perelman 10/23/17 Proposed Findings of Fact and Conclusions of Law, Ex. C at 15.

²⁴ 9/13/17 Attorney General Memorandum at 4.

to be the second one.”²⁵ To cement Ruth’s role in the family charities, four of the five charitable foundations bear the names of both “Raymond and Ruth Perelman.” Throughout his deposition, Raymond testified that he had no secrets from Ruth and that they discussed everything, including how to distribute the assets of their various charitable foundations.²⁶ When attempts were made to pin him down as to the specifics of these long ranging communications, Raymond somewhat peevishly but accurately observed: “I talked to her about a million things in a period of a year. I can’t remember everything I asked her. I hid nothing from her, so the answer would be, I guess I did.”²⁷ Raymond confirmed that he and Ruth attended charitable galas and functions together to support their charities. More specifically, he agreed that Ruth co-chaired an Academy of Music gala in 2006 when the Raymond and Ruth Education Foundation donated \$100,000 to it as evidenced by the 990-PF form for 2006.²⁸ The documents presented in support of the joint settlement agreement reveal the diversity—and extreme generosity-- of the foundations’ charitable contributions to varying causes such as the Kimmel Cancer Center at Jefferson, the Philadelphia Museum of Art, the Please Touch Museum, the Palm Beach United Way, the Perelman Donor Advised Fund of the University of Pennsylvania, the Komen Philadelphia Race for the Cure, to name just a few of the recipients of funds from the Perelman Community Foundation in 2008.²⁹ The lists of recipients of charitable contributions outlined in the 990-PF forms submitted for the years 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2006, 2007, 2008,

²⁵ Jeffrey Perelman 10/23/17 Proposed Findings of Fact and Conclusions of Law, Ex. A, Raymond Perelman deposition at 12.

²⁶ Raymond described how he and Ruth determined their charitable contributions in response to questioning:

Q: What were the charitable causes that Mrs. Perelman was interested in?

A. I probably discussed every one with her.

Q. Okay. And in fact, it was your habit to discuss each of them, was it not, Mr. Perelman?

A. Yes.

10/23/17 Jeffrey Perelman, Proposed Findings of Fact and Conclusions of Law, Ex. A, 9/6/16 Deposition of Raymond Perelman at 21

Raymond also testified as to Ruth’s role as confidante:

A. I’m sure if sometime during our conversation I told Ruth what I was doing. I had nothing to hide from my wife. I loved her and she loved me and I trusted her and she trusted me. They’re inexorable. What difference does it make whether I said to Ruth I’m going to give Penn \$100,000? She didn’t care.

10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A, 9/6/16 Deposition of Raymond Perelman at 43.

²⁷ 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A, 9/6/16 Raymond Perelman deposition at 55.

²⁸ 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A, 9/6/16 Raymond Perelman deposition at 23 & 44; Ex. A- 4 (990-PF Form for 2006) .

²⁹ 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A-4 (990-PF Form for Raymond and Ruth Perelman Community Foundation 2008).

2009 and 2010 underscore that the selection of donees was not automatic but rather was a dynamic, ongoing process. Although Raymond signed these forms, Ruth was listed as a trustee on each of them until 2010.³⁰

Another factor considered in determining a trustee's compensation is the "responsibility and risk assumed in administering the trust." 20 Pa.C.S.A. §7768 (Uniform Law Comment). The Pennsylvania Superior court in reviewing Ruth's role as trustee validated executor Jeffrey Perelman's concern that she and by extension her estate might be liable for any potential IRS issues.³¹ The documents presented to support the joint settlement petition likewise underscore the potential risks Ruth might face as both a director, officer or key employee of various companies owned by the foundations and as a trustee of the foundations as set forth in a December 1, 1995 Indemnification Agreement:

WHEREAS, it is essential to the Companies to retain and attract as directors, officers and key employees the most capable persons available;

WHEREAS, Ruth is a director, officer or key employee of the Companies [owned by the Foundations] or one or more of subsidiaries thereof, and she is a Trustee of the Foundations;

WHEREAS the parties to this Agreement recognize the substantial risk of claims being asserted personally against directors, officers and key employees of companies and significant costs of defending against such claims;

....

WHEREAS, as an inducement to secure Ruth's continued service to the Companies and **Foundations**, the Companies and **Foundations** wish to provide in this Agreement for the indemnification of Ruth to the extent permitted by law.³²

As the Pennsylvania Superior court noted in this case, indemnification agreements would not necessarily immunize Ruth from legal liability. But they do reflect the nature of the risks she assumed.³³

B. The Attorney General as an Indispensable Party in this Matter Was Provided with the Requisite Notice to Represent the Charitable Interests

There is no dispute that the Attorney General is an indispensable party to the more than 4 year litigation involving the Perelman charitable foundations. In re Garrison's Estate, 391 Pa.

³⁰ See generally 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A-4 (Form 990-PF for the Raymond and Ruth Perelman Community Foundation)

³¹ Raymond Perelman Charitable Remainder Unitrust, 113 A.3d at 305-06.

³² 10/23/17 Jeffrey Perelman Proposed Findings of Fact and Conclusions of Law, Ex. A-13 (emphasis added). For a chart listing the companies held by the charitable foundations, see Ex. A-12.

³³ Raymond Perelman Charitable remainder Unitrust, 113 A.3d at 306-307 (noting inherent limitations of indemnification agreements).

234, 239, 137 A.2d 321, 324 (Pa. 1958); Estate of Pruner, 390 Pa. 529, 532, 136 A.2d 107, 110 (Pa. 1957). In disputes involving charitable interests, the attorney general is charged with representing the general public:

The beneficiary of charitable trusts is the general public to whom the social and economic advantages of the trusts accrue. But because the public is the object of the settlors' benefactions, private parties have insufficient financial interest in charitable trusts to oversee their enforcement. Consequently, the Commonwealth itself must perform this function if charitable trusts are to be properly supervised. The responsibility for public supervision traditionally has been delegated to the attorney general to be performed as an exercise of his *parens patriae* powers.

Estate of Pruner, 390 Pa. at 531-32, 136 A.2d at 109.

As an indispensable party, the attorney general must be given notice of proceedings involving charitable interests and made "a party of record because the public as the real party in interest in the trust is otherwise not properly represented." In re Garrison, 391 Pa. at 239, 137 A.2d at 324.

The Attorney General emphasizes this precedent and concedes that it was given notice of the proposed settlement agreement.³⁴ The record moreover indicates that the Attorney General was provided with notice of this litigation from its inception in 2013. The only aspect of the joint proposed settlement that the attorney general challenges is the payment of \$2,500,000 to Ruth Perelman's estate as compensation for her services as co-trustee. In challenging this fee, the Attorney General asserts that "it is illogical for the Attorney General to be an indispensable party to a case and to represent parties in interest yet have no authority in its settlement."³⁵ Throughout these years of litigation, the Attorney General has had every opportunity to state its position. In terms of the proposed joint settlement, this court has carefully considered the Attorney General's objections, but ultimately it is for the court and not for the Attorney General to decide on the reasonableness of the proposed fees to Ruth Perelman's estate.

It is well established that "[p]rimarily, the responsibility for passing upon the reasonableness of compensation to be awarded to a fiduciary and/or counsel must be placed upon the orphans' court." In re Thompson, 426 Pa. 270, 277, 232 A.2d 625, 629 (Pa. 1967). See also Wallis Estate, 421 Pa. 104, 110, 218 A.2d 732, 735 (Pa. Super 1966) ("The supervision of compensation to be awarded to personal representatives is primarily the responsibility of the court of first instance"); Raymond Perelman Charitable Remainder Unitrust, 113 A.3d at

³⁴ 9/22/17 Attorney General Answer, ¶16 (admitting notice of the Settlement Agreement).

³⁵ 9/22/17 Attorney General Memorandum at 3.

308(where trust document lacks specification as to trustee compensation, “a court may determine what constitutes ‘reasonable’ compensation provided by law”); Estate of Salus, 421 Pa. Super. 87, 94, 617 A.2d 737, 740 (Pa. Super. 1992) (“the determination of what compensation is fair and just [for a fiduciary] in a particular case is a task we have consistently and necessarily left to the sound discretion of the chancellor”). In the first instance, a review of the record presented by the joint petitioners at the direction of the Special Discovery Master support the claimed fees for Ruth Perelman’s estate. On the other hand, the arguments of the Attorney General objecting to these fees while valid are unpersuasive for several reasons. First, the Attorney General concedes that Ruth Perelman, as co-trustee, “may be entitled to some commission” but it maintains “the amount claimed is unjustified and unreasonable under the circumstance of this case and is unsupported by the evidence presented.”³⁶ But in conceding that Ruth was entitled to some commission, the Attorney General fails to provide any guideline whatsoever for determining what a reasonable fee would be based on the record presented. Second, the Attorney General also argues that Ruth’s estate is not entitled to commissions because neither Ruth nor Raymond Perelman sought fees as trustees during their lifetimes.³⁷ This position was specifically rejected by the Pennsylvania Superior Court when it reviewed this matter on a prior appeal, noting, inter alia, that the trustee documents explicitly provided for trustee compensation.³⁸

The Attorney General at one point in its pleading suggests that the joint settlement would be a nullity if it did not include the attorney general, citing Little Estate, 403 Pa. 534, 538, 170 A2d 106, 108 (1961).³⁹ The facts of Little Estate, however, differ markedly from those of this proposed settlement. Little Estate did not focus on the issue of reasonable trustee fees, the determination of which is typically left to the orphans’ court. Instead, in Little Estate a testator devised \$10,000 to his cousin if the cousin outlived his wife. If the cousin did not outlive his

³⁶ 9/13/17 Attorney General Memorandum of Law at 1.

³⁷ 10/23/17 Attorney General Proposed Findings of Fact and Conclusions of Law, ¶40 (“Inasmuch as Raymond has never taken any commissions and Ruth never claimed compensation from these trust during her lifetime, given the evidence presented, it would be unconscionable to award funds to Jeffrey that Ruth never earned and never sought”).

³⁸ Raymond Perelman Charitable Remainder Trust, 113 A.3d at 308. The Super Court stated that “we also find unpersuasive the orphans’ court and Raymond’s contention that, as a matter of law, no claim will lie for compensation because Ruth failed to seek it during her lifetime and thereby waived any such claim by the estate.” Id., 113 A.3d at 309.

³⁹ See, e.g. 9/22/17 Attorney General Memorandum of Law at 3.

wife, the bequest became part of the residuary estate which a court construed as a gift to charity. The cousin challenged this contingent bequest in court, arguing, inter alia, that he was entitled to an immediate payment of this \$10,000 based on a family settlement agreement he negotiated that would deviate from or change the terms of the Will. The Little court held that this family agreement was invalid because it was never executed or approved by Attorney General of Pennsylvania, “who represented in his official capacity the residuary charities and who was therefore an indispensable party in interest.” Id., 403 Pa. at 539, 170 A.2d at 108. The factual distinctions between the Little case and the instant case are clear. In Little, the parties sought preemptively to terminate a charitable gift by family agreement without the consent of the Attorney General. In this case, the sole element of the settlement agreement that the Attorney General challenges is the reasonableness of the co-trustee fees.

A subsequent interpretation of Little Estate underscores its limited scope. In In re Barnes Foundation, 453 Pa. Super. 243, 683 A.2d 894 (Pa. Super.1996), the Pennsylvania Superior Court interprets Little Estate as dealing with a deviation from the terms of a trust. In so doing, the court rejects any suggestion that a court would be bound by a position espoused by the Attorney General rather than by an exercise its own independent review:

Additionally, although the law requires the participation of the Attorney General’s Office in any proceeding to modify the terms of a charitable trust, Little’s Estate, 403 Pa. 534, 170 A.2d 106 (1961), appellant cites no support for the proposition that the Court is bound by the position espoused by the Office of the Attorney General, and a reviewing judge must exercise his or her independent power of review. See 20 Pa.C.S.A.3323 In re Barnes Foundation, 453 Pa. at 253, 683 A.2d at 899 (citing 20 Pa.C.S.A. §3323).

Certainly, when a court is asked to determine the reasonableness of trustee fees in a settlement submitted pursuant to 20 Pa.S.C.A. §3323, a court must exercise its “independent power of review” while taking into consideration positions espoused by the Office of the Attorney General.

It is true that one lower court opinion interpreted Little Estate as requiring the consent of the Attorney General for an agreement that affects charitable interests to be binding. Justan Estate, 8 Fid. Rep. 2d 223 (Phila. O.C. 1975)(Where testator bequeathed one third of his residuary estate to a hospital/charity, and his heirs by agreement provided that the hospital’s share would be reduced by half, the contract was not binding without the Attorney General’s approval). In a more recent opinion, however, Judge Pawelec took the contrary position that the

attorney general's approval of a settlement agreement was not mandatory for its enforcement. See Mitchell Estate, 2 Fid. Rep. 2d 178 (Phila. O.C.1981). With facts similar to Justan Estate, in a holographic will the testator left all his money to a hospital with his car and furniture to be sold for cash. When the only surviving heir, testator's cousin, challenged the will, the parties entered into a settlement agreement. The Attorney General objected to this agreement, asserting that it therefore could not be enforced. The Mitchell court rejected this position as to the mandatory need for approval by the Attorney General for an enforceable settlement agreement:

The court cannot agree with the Attorney General's contention that its approval is mandatory for entering into such a settlement. We, of course, recognize the right of the Attorney General, in its capacity as *parens patriae*, to inquire into the terms of a settlement entered into by a charitable organization, and, if dissatisfied, to come into court and place its objection on the record for the court to hear and pass upon it. We believe that the Attorney General would be remiss in its duty if it did not, in fact, scrutinize such agreements carefully. Our research, however, fails to disclose a case in which a charity, represented by able counsel, after full arms' length negotiation with a potential claimant to a fund and with notice to the Attorney General, is not permitted to settle a claim without the Attorney General's consent. Mitchell Estate, 2 Fid. Rep. 2d at 179 (distinguishing Little Estate, 403 Pa. 534, on the fact that there was no arms' length negotiation with an adversary).

In its memorandum of law, the Attorney General urges that in light of its objections to the settlement, this Court, like the court in Mitchell, should at the very least exercise its own "visitorial powers" either directly or through its Master before considering and approving the settlement under PEF code section 3323"⁴⁰ In scrutinizing the record presented at the direction of the Special Discovery Master, this court has exercised its "visitorial powers" to conclude that the settlement agreement should be approved in its entirety. Not only is the \$2,500,000 proposed fee for Ruth Perelman's estate reasonable, but the settlement agreement would bring an end to the more than 4 years of litigation that has plagued these charitable foundations. Likewise, the joint settlement agreement contains a significant provision as to the legal fees incurred in this litigation: "Except as otherwise provided in this Agreement, Jeffrey E. Perelman and Ruth C. Perelman's Estate agree not to seek to have the Charitable Entities or any other undersigned party pay any legal fees and costs incurred by Jeffrey Perelman or Ruth C. Perelman's Estate in connection with any matters pertaining to the Charitable Entities, or the assets thereof...."⁴¹

⁴⁰ 9/22/17 Attorney General Memorandum at 5.

⁴¹ 9/1/17 Joint Settlement Petition, Ex. A Settlement Agreement, ¶F.

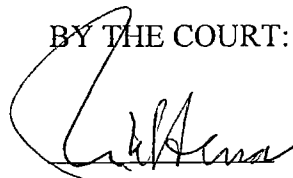
Finally, a factor considered in determining the compensation of a trustee is “the amount and character of the trust property.”⁴² The formidable “amount” of the trust property has been presented in the 990 PF forms. These forms also document the charitable “character” of these trust assets that have been contributed to a wide array of causes since the inception of the foundations in 1995 and 1996. The generosity of the Perelman foundations has been staggering. While the Attorney General complains that the proposed payment of fees to Ruth Perelman’s estate “would deprive the charities of \$2.5 million,”⁴³ that figure is dwarfed by the contributions the Perelmans—Ruth and Raymond-- have made to their community.

Conclusion

For all these reasons, the joint settlement petition is approved.

Date: January 24, 2018

BY THE COURT:



John W. Herron, J.

⁴² 20 Pa.C.S.A. §7768 (Uniform Law Comment).

⁴³ 9/22/17 Attorney General Memorandum at 4.