

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Estate of Ronald A. White,  
Deceased  
O.C. No. 308 DE of 2005  
Control No. 065434

Sur First and Final Account of Aruby Odom White and Santi White, Executors

The account was called for audit June 5, 2006 By: **HERRON, J.**

Counsel appeared as follows:

Douglas M. Lurio, Esquire - for the Accountant

AMENDED ADJUDICATION

Ronald White died on November 4, 2004. Under his Will dated January 24, 2002 and an October 5, 2004 codicil, he appointed his wife, Aruby Odom White, his child, Santi White, and American Guaranty and Trust Company as executors. Letters testamentary were granted on November 17, 2004 to Aruby Odom White and Santi White and proof of their publication was presented. Ronald White was survived by his wife and by three children: Ali White, Simone White and Santi White. On May 2, 2006, the accountants Aruby Odom White and Santi White filed an account for the period November 4, 2004 through April 30, 2006. The Accountants state that all parties of interest had notice of the audit. According to the accountants, no Pennsylvania transfer inheritance tax has been paid due to the insolvency of the estate. The decedent's spouse, Aruby Odom White, has claimed the family exemption.

No objection was filed to the Account. By adjudication dated August 1, 2006, this court confirmed the account absolutely. Counsel for the accountants thereafter requested that the claim for attorney fees for Lurio & Associates in the amount of \$1,880 set forth in the entry of

appearance slip be granted. In response, the adjudication was vacated so that the accountant might submit a memorandum of law as to the propriety of allowing such fees in light of 31 U.S.C.A. § 3713 which provides in relevant part:

Section 3713. Priority of Government Claims

- (a)(1) A claim of the United States Government shall be paid first when—
  - (A) a person indebted to the Government is insolvent and—
    - (i) the debtor without enough property to pay all debts makes a voluntary assignment of property;
    - (ii) property of the debtor, if absent, is attached; or
    - (iii) an act of bankruptcy is committed; or
  - (B) the estate of a deceased debtor, in the custody of the executor or administrator, is not enough to pay the debts of the debtor.

This federal insolvency statute must be interpreted in conjunction with the PEF code which sets forth a classification and order of payment where the assets of an estate are insufficient to pay all claims that is “subject to any preference given by law to claims due to the United States.” 20 Pa.C.S.A. §3392. In its Memorandum, petitioner presents convincing support for the claim that the attorney fees of \$1,880 should be awarded to Lurio & Associates based on Pennsylvania precedent focusing on the predecessor statute to section 3713. In this case, the counsel fees requested were incurred in preparing notice letters to creditors and in responding to inquires by Commerce Bank concerning the priority of the bank’s lien. As the accountant emphasizes, Pennsylvania courts have recognized the priority of the costs of administering an insolvent estate over claims by the United States Government for delinquent taxes.

Judge Klein, who dealt with the interplay between federal debts and the expenses of administration in an adjudication for an insolvent estate, observed that it “has long been held that funeral expenses and expenses of administration are preferred over federal debts” under the

predecessor statute to section 3713 which was 31 U.S. C. A. §3466.<sup>1</sup> He therefore confirmed payment of such administrative expenses as the executrix commissions and attorney fee. This approach had been followed in numerous previous cases. See, e.g., Schwalm Estate, 89 Pa. D & C. 88 (Schuylkill Cty. O.C. 1953) (U.S. Government acknowledged that reasonable administrative fees of an insolvent estate have priority over federal government tax claim); Maier Estate, 79 Pa. D. & C. 351 (Phila. O.C. 1952)(recognizing general principle that United States tax claim given priority over all claims except for costs of administration of insolvent estate). See also United States v. Weisburn, 48 F. Supp. 393, \*\*15(E.D. Pa. 1943)(U.S. government claims did not have priority over attorney fees incurred in the administration of an estate).

A rationale for denying priority to the Government tax claim over the costs of administering an insolvent estate is that the costs of administering an estate do not arise from the requests or obligations of the decedent, but instead they are liabilities imposed against an estate by law. Gobrecht's Estate, 47 Pa. D. & C. 134, 136 (Lehigh Cty. O.C. 1943). Another basis for refusing to give federal tax claims priority over the costs of administration is that “[i]nsolvent estates require adequate legal services” and the “services of the attorney must, again of necessity, be provided for since the law does not require the attorney to gamble on what percentage of his rightful fee may be ultimately coming to him upon the conclusion of the estate.” Estate of Henke, 39 Misc. 2d 705, 708-09, 241 N.Y. S.2d 788, 791-92, 1963 N.Y. Misc. LEXIS \*\*\*8-9 (N.Y. Surr. Ct. N.Y. 1963).

A more recent case from outside the jurisdiction explicitly analyzed the present Federal Insolvency Statute, 31 U.S.C.A. § 3713, to conclude that expenses of administration should take

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<sup>1</sup> Hackney Estate, 24 Fid. Rep. 639, 641 (Phila. O.C. 1974). The adjudication quoted section 3466 as providing: “Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor in the hands of the executors or administrators is insufficient to pay all debts due from the deceased, the debts due to the United States shall be first satisfied....” Id. at 641. According to the historical notes for Section 3713, it was

precedence over claims of the federal government. Estate of Funk, 221 Ill.2d 30, 849 N.E. 2d 366, 2006 Ill. LEXIS 615, 302 Ill. Dec. 574 (Illinois Sup. Ct. 2006). In reaching this conclusion, the Illinois Supreme Court emphasized, inter alia, the equitable doctrine that one who shares in a benefit should contribute to the expenses incurred to realize that benefit. Id., 221 Ill.2d at \*89, 849 N.E. 2d at \*399. Based on this analysis and precedent, the law firm Lorio & Associates is entitled to their claim for attorney fees of \$1,880.

The account shows a balance of principal before distribution of \$195,611.18 and a balance of income before distribution of \$ 7,223.22 for a total of \$202,834.40. This sum, composed as stated in the account, plus income or credits received since the filing thereof, subject to distributions already properly made, is awarded as set forth in the Accountant's Petition, subject to the claim for attorney fees on the entry of appearance slip:

**Income**

Internal Revenue Service 100%

**Principal**

Internal Revenue Service 100%

Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

AND NOW, this \_\_\_\_ day of NOVEMBER 2006, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C.

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effective September 13, 1982.

Rule 7.1A and Pa. O.C. Rule 7.1. as amended, and Pa.R.A.P. 902 and 903.

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John W. Herron, J.