

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Giuseppe Martelli, Deceased
O.C. No. 1781 DE of 2011
Control No. 113516
Control No. 113520
Control No. 113521

OPINION

Introduction

This opinion addresses the issue of whether two brothers who were named as co-executors of their deceased father's estate and co-trustees of trusts established under their father's Will should be removed from their fiduciary positions due to their failure to comply with court orders to file accounts for the estate and trusts that were requested by Donna Maria Martelli, their co-fiduciary and sole beneficiary of the trusts during her lifetime. Not only did the brothers fail to comply with various court orders to file accounts, but in so doing they admitted they had not established accounts for the estate or trusts and they were unable to cooperate with the sole life beneficiary. In addition, they resorted to numerous, punitive petitions to have Donna Maria removed as a co-fiduciary or to force the sale of trust/estate properties.¹ For the reasons set forth below, the best interests of the estate and trusts are served by the removal of Leonard and Joseph Martelli as co-executors of their father's estate and as co-trustees of the Family and Marital Trusts established under his will. Although these issues were raised in separate petitions relating to the estate, Family Trust and Marital Trust, this opinion will encompass all of the petitions to explain the reasons for removing the co-executors and co-trustees and for requiring them—yet again—to file accounts of their administration of the estate, Marital Trust and Family Trust.

Factual Background

In his Will, Giuseppe Martelli ("Giuseppe") evinced the unmistakable intent to benefit—and protect—his wife Donna Maria. He provided that all his "articles of personal and household use, including automobiles," should go "to my spouse." His Will created Marital and Family

¹ See, e.g., ***Removal Petitions***: 2/21/12 Leonard & Joseph Martelli Petitions to Remove Donna Maria Martelli as co-trustee and executor from Marital Trust, Family Trust and Estate (control no. 120498, no. 120497, no. 120489) and 4/17/12 responses thereto by Donna Martelli; ***Sale of Real Property Petition***: 5/14/12 Joseph & Leonard Martelli Petition for sale of real property (control no. 120482) and 6/4/12 Donna Maria Martelli Answer thereto.

Trusts that were intended primarily for Donna Maria's benefit. The Marital Trust, for instance, provided that the "entire net income shall be paid to her at least quarterly." Moreover, as "much of the principal, even to the extent of exhausting the principal, as my Trustee may from time to time think desirable for her welfare, comfort, support or other needs shall be paid to her."² More directly, Giuseppe provided that as to the marital trust:

I intend my Trustee to use principal liberally for my spouse to enable her to maintain insofar as possible the standard of living to which she has been accustomed during my lifetime; and

3. She shall have the unrestricted right to withdraw any part or all of the principal at any time."³

The provisions of the Family Trust created by Giuseppe's Will were equally clear in expressing his intent to benefit his wife since in bold face the Will characterized the Family Trust as: "**Trust Primarily for Spouse.**"⁴ More specifically, Giuseppe provided that with the Family Trust:

1. The net income shall be paid to her, in quarterly or other convenient installments; and
2. As much of the principal, even to the extent of exhausting the principal, as my Trustee may from time to time think desirable, taking into account funds available from other sources, for the health, support, maintenance or education of my spouse either shall be paid to her or shall be applied directly for those purposes. However, none of the principal of this trust shall be paid to or applied for the benefit of my spouse unless the principal of the Marital Trust has been exhausted. I intend my Trustee to use principal liberally for my spouse to enable her to maintain insofar as possible the standard of living to which she has become accustomed during my lifetime.⁵

Rather than name a single executor or trustee, Giuseppe named his wife Donna Maria and his sons Leonard Martelli and Joseph Martelli to serve as Co-Executors of the estate and Co-Trustees of the Family and Marital Trusts. If for any reason any of these individuals were unable to serve, Giuseppe specified that his daughter Danielle Martelli should act in his place.⁶ Upon the death of Donna Maria, Giuseppe provided for the distribution of any remaining assets to his children.

² December 13, 2000 Will of Giuseppe Martelli (hereinafter "Martelli Will"), at II A (emphasis added)(attached as Ex. A to 12/30/11 Donna Maria Martelli Petitions for an Accounting of the Estate (control no. 113516), Marital Trust (control no. 113521) and Family Trust (control no. 113520)).

³ Martelli Will at II A 2 & 3(emphasis added).

⁴ Martelli Will at III A.

⁵ Martelli Will at III A 1 & 2 (emphasis added).

⁶ Martelli Will, XX 1.

Giuseppe Martelli died on June 6, 2010. His Will was probated on June 8, 2011. On December 30, 2011, Donna Maria filed three petitions for citations directed at Joseph Martelli and Leonard Martelli seeking an account of their administration of the estate of Giuseppe Martelli and the Marital and Family trusts established under his Will.⁷ She stated that at the time of Giuseppe's death, his business interests included, but were not limited to, a fifty-one (51%) interest in Martelli Investment Corporation which owned and leased real property at 471-73 Leverington Avenue in Philadelphia. From this property, Giuseppe had derived income during his lifetime. Donna Maria noted that her husband's business interests had also included real property located at 6174-82 Ridge Avenue. Donna Maria expressed concern that upon Giuseppe's death, title to these business interests and real property had not been placed in the name of his estate and transferred to the Marital and/or Family Trust. Moreover, once such title had been transferred, the trusts should have paid all income to her. She asserted that not only had this transfer of title not occurred, but the respondents, Leonard and Joseph, had diverted income from these business interests to their personal use. She therefore sought an accounting for the estate, Marital Trust and Family Trust.⁸

Joseph and Leonard responded to this request for accounts with scathing vitriol, launching scorn and personal attacks against Donna Maria. They berated her lack of knowledge as to the percentage of ownership that Giuseppe had in Martelli Investment Corporation, asserting that his ownership interest had been 100% rather than 51%. Scornfully, they stated: "So either Donna Maria Martelli is UN-knowledgeable about her own personal finances, or she has intentionally falsified the information contained in her petition for an accounting of the Estate of Giuseppe Martelli, Deceased."⁹ They asserted that they had made repeated attempts to gain Donna Maria's cooperation in finalizing the administration of the estate, but she refused to do so due "to her mental health problems in combination with her mixing prescribed Zanax to treat her anxiety disorder (mental illness) with alcohol daily. Let it be know (sic) that Donna M. Martelli has been under psychiatric care off and on for close to thirty years, an admitted alcoholic, dependent on prescribed narcotics, and an admitted agoraphobic."¹⁰ Their response

⁷ Donna Maria filed a petition for an account of the estate under control no. 113516, for the marital trust under control no. 113521 and for the family trust under control no. 113520. This opinion addresses all three petitions and the responses thereto.

⁸ See, e.g. 12/30/11 Donna Maria Martelli Petitions for an Estate Accounting (control number 113516), ¶¶ 9-23.

⁹ 2/17/12 Joseph and Leonard Martelli Answer (control number 113516, no. 113521, no. 113520) at ¶ 10.

¹⁰ 2/17/12 Joseph and Leonard Martelli Answer (control no. 113516, no. 113521, no. 113520), ¶13, & ¶¶ 14-15.

continually reiterated personal diatribes against Donna Maria, while making critical admissions about their failure to effectively administer the trusts or estate. They conceded, for instance, that Giuseppe's business and real property interests should have been titled or transferred to the decedent's estate, Marital Trust or Family Trust but this had not been done. Their failure to perform this basic responsibility, they blamed on Donna Maria and her psychiatric problems. They maintained that all of the income derived from Giuseppe's business interests had been deposited directly into Donna Maria's personal checking account at her insistence.¹¹

In response to these three petitions for an accounting and the responses of Joseph and Leonard, this court by decree dated March 12, 2012 ordered Joseph and Leonard to file accounts for the estate, marital trust and family trust. Rather than file those accounts, Joseph and Leonard filed exceptions to those decrees. The exceptions were overruled based on Pa. O.C. Rule 7.1 that exceptions may only be filed to "any order, decree, or adjudication which would become a final appealable order under Pa.R.P. 341(b) or Pa.R.A.P. 342." An order that a fiduciary file an account is not a final dispositive ruling under these rules. By decree dated April 25, 2012, Leonard and Joseph were once again reminded that the March 12, 2012 order remained in full force and that they were ordered to file accounts.

Despite these dual orders that they file accounts of their administration as co-executors and co-trustees of their father's estate, Marital Trust and Family Trust, Leonard and Joseph did not comply and file the three accounts. Instead, on May 24, 2012 they filed an "Answer." Defiantly, they admitted: "let it be known, once again, that there are no Estate or Trust accounts that exist pertaining to the Estate of the Deceased, Giuseppe Martelli. The only account that estate funds are being deposited into is Donna Maria Martelli's personal checking account."¹² As proof, they attached a letter dated February 9, 2012 from David M. Bank Real Estate, the management company Giuseppe had employed, to Donna Maria Martelli c/o Joseph Martelli, POA, showing total deposits of \$67,558.05 from retail leases at 6174-80 Ridge Avenue. The respondents reiterated that Donna Maria had been uncooperative and urged the court to remove her and to allow them to sell the real property asset owned by the Martelli Investment

¹¹ 2/17/12 Leonard and Joseph Martelli Answer (control no. 113516), ¶13-15.

¹² 5/25/12 Leonard and Joseph Martelli Answer (control no. 113516), ¶1. See also 5/25/12 Leonard Martelli and Joseph Martelli Answers (control no. 113520 & no. 113521) ¶ 1.

Corporation located at 471-473 Leverington Avenue.¹³ They also asserted that Donna Maria, acting in concert with her daughter Patricia Divalerio, removed “all accounting from the estate office in June of 2011” which included tax and financial records. As a consequence, they maintained, they were unable to provide an accounting.¹⁴ In response to this refusal to file accounts, Donna Maria on June 4, 2012 filed three more petitions seeking an accounting for the estate, Marital Trust and Family Trust as well as the payment of \$535 in counsel fees and costs as sanctions for their dilatory, obdurate and bad faith conduct.¹⁵

The responses of Joseph and Leonard Martelli to the request for an accounting of their father’s estate and the Marital and Family trusts he created by Will demonstrate that they failed abjectly in establishing the proper administration of his estate or his trusts. Their embittered relationship with Donna Maria demonstrates a complete breakdown in any cooperative venture. Their unrelenting personal diatribes against Donna Maria manifest the impossibility of their remaining as co-executors or co-trustees. This embittered relationship is further demonstrated by the onslaught of petitions Joseph and Leonard filed against Donna Maria and her alleged ally, her daughter Patricia Divalerio, after they were requested by Donna Maria to file their accounts in December 2011. In February 2012, for instance, Leonard and Joseph retaliated against Donna Maria by filing petitions for her removal as co-executrix and co-trustee of the two trusts. In March, the two brothers filed petitions directed to Donna Maria seeking an accounting by her of the estate administration and the two trusts. In May 2012, Leonard and Joseph Martelli filed a petition seeking court approval of the sale of two real properties that presumably were intended to provide income to Donna Maria. Finally, in May 2012, Leonard and Joseph filed a petition directed against Patricia Divalerio to require her to pay inheritance tax on real property she had jointly owned with Giuseppe but which was transferred to her prior to her father’s death. Each of these petitions have been ruled upon by separate decree.

Donna Maria opposed her removal as fiduciary and as new matter advocated that Joseph and Leonard should be removed instead.¹⁶ The responses of Donna Maria to the petitions seeking

¹³ See, e.g., 5/25/12 Joseph and Leonard Martelli Answer (control no. 113516), ¶¶ 4-8. In this Answer, respondents propose this sale to pay estate taxes. In their 5/14/12 Petition to Sell Real Estate, in contrast, they offer no reason for the sale other than the dissension with Donna Maria and their power to do so. See, ¶ 5.

¹⁴ 5/25/12 Joseph and Leonard Martelli Answer (control no. 11356) ¶ 11.

¹⁵ 6/4/12 Donna Martelli Petition for Accounting (control no. 121688)(for the estate). Donna Maria filed her petition for an accounting for the Marital Trust under the Control Number 121690 and for the Family Trust under Control Number 121689.

¹⁶ See, e.g., 4/17/12 Donna Maria Answer to Removal Petition (control no. 120489), ¶ 41.

her removal as co-trustees and co-executor, however, have also provided a positive solution to this intense familial conflict. In that response, Donna Maria admits that after her husband's death, she had requested Joseph's assistance in the day-to-day operations of the businesses because she "lacked experience managing such interests and because, during their marriage, Decedent managed the Business Interests and Real Property Interests."¹⁷ She further claimed that she was excluded from the administration of the estate and trusts by respondents. The petitions seeking her removal as executrix and co-trustees, she claims, were an effort to "muddy the waters already polluted by Joseph's improper actions and breaches of fiduciary duty" with regard to the estate and trusts.¹⁸ She notes as well that the respondents admit this breach by acknowledging their failures to transfer title of decedent's business interests to his estate or trusts. She also alleges that they diverted income from those business interests to themselves for their own personal use. She therefore requests their removal and suggests that the court appoint a temporary, independent substitute executor and co-trustee.¹⁹

Legal Analysis

Removal of a trustee or personal representative, especially one who has been specifically named by a settlor or testator, is a drastic action. Estate of Croissant, 482 Pa. 188, 193, 393 A.2d 443, 446 (1978). The PEF code provides for the removal of personal representatives or trustees where merited under the circumstances. Section 3182, for instance, provides the following grounds for removal of a personal representative:

The court shall have exclusive power to remove a personal representative when he:

- (1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or
- (5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

20 Pa.C.S. § 3182

In this instance, Joseph and Leonard Martelli have admitted their failure to transfer title of decedent's business interests to the estate, thereby conceding the requisite "failure to perform any duty imposed by law" justifying their removal as co-executors of the estate. In outlining procedures for removal of a personal representative the PEF code provides:

§ 3183 Procedure for and effect of removal.

¹⁷ 4/17/12 Donna Maria Answer (control no. 120489), ¶21.

¹⁸ 4/17/12 Donna Maria Answer (control no. 120489) ¶30.

¹⁹ See e.g., 4/17/12 Donna Maria Answer to Removal Petition (control no. 120489), ¶¶ 46-47.

The court on its own motion may, and on the petition of any party in interest alleging adequate ground for removal shall, order the personal representative to appear and show cause why he should not be removed, or, when necessary to protect the rights of creditors or parties in interest, may summarily remove him.

20 Pa.C.S. § 3183 (emphasis added).

Similarly, 20 Pa.C.S. §7766 outlines the grounds for removing a trustee:

(b) *When court may remove trustee.* – The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable co trustee or successor trustee is available and:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among co-trustees substantially impairs the administration of the trust;

(3) the trustee has not effectively administered the trust because of the trustee’s unfitness, unwillingness or persistent failures.....

20 Pa.C.S. §7766.

In this case, Leonard and Joseph freely admit that their inability to cooperate with Donna Maria has resulted in their failure to establish the requisite accounts for the two trusts and the estate.²⁰ Pennsylvania courts generally conclude that hostility among co-fiduciaries alone does not justify their removal unless it can be shown that this results in mismanagement of the trust or estate. See generally Beichner Estate, 432 Pa. 150, 156, 247 A.2d 779, 782 (1968). In this case, however, the hostility between Joseph and Leonard, on one hand, and Donna Maria, on the other, had the admitted effect of preventing the effective administration of either the trusts or estates. More than a year after Giuseppe’s death, his sons admit that no trust or estate accounts had been established. While deference must be paid to Giuseppe’s designation of his sons as co-fiduciaries together with Donna Maria, the “settled law in Pennsylvania is that ‘the pole star in every trust ...is the settlor’s ...intent and that intent must prevail.’” Moreover, the “settlor’s intent may be divined by considering the trust document as a whole” Estate of Warden, 2010 Pa. Super. 121, 2 A.3d 565, 572 (2010). When read as a whole, the clear intent of Giuseppe Martelli’s Will was to provide for and protect Donna Maria. The Marital Trust states that she “shall have the

²⁰ 2/17/12 Joseph and Leonard Martelli Answer to Petition for Estate Account (control no 113516), ¶¶13-15; 2/17/12 Joseph and Leonard Martelli Answer to Petition for Marital Trust Account (control no. 113521) ¶¶ 13-15; 2/17/12 Joseph and Leonard Martelli Answer to Petition for Family Trust Account (control no. 113520) ¶¶ 13-15.

unrestricted right to withdraw any part or all of the principal at any time.”²¹ The provisions for the Family Trust were introduced in bold face as “**Trust Primarily for Spouse.**”²²

As the sole life beneficiary of the two trusts, Donna Maria was clearly entitled to an accounting. Moreover, a “personal representative may be directed by the court to file an account of his administration at any time.” 20 Pa.C.S. § 3501.1. Yet when this court granted Donna Maria’s three petitions for an accounting by decree dated March 12, 2012, Joseph and Leonard filed exceptions that admitted no trust accounts existed while launching, once again, into personal diatribes against Donna Maria.²³ The outrageous tenor of those exceptions is captured by the following assertion:

Until it is determined that Donna Maria Martelli is not being treated for mental illness, Joseph and Leonard Martelli take the position that she is not of right mind in requests that she is making with regards to an accounting of the estate of Giuseppe Martelli, deceased. 4/18/12 Exceptions (control no. 113516) ¶1.

In overruling these exceptions by decree dated April 25, 2012, this court reemphasized that Joseph and Leonard Martelli were still required to file accounts. Instead of doing so, on May 25, 2012 they filed “Answers” and not the formal accounts contemplated by Pennsylvania Orphans’ Court Rules or local Philadelphia Orphans’ Court rules.

In addition to failing to file accounts as twice ordered by this court, Leonard and Joseph Martelli launched a series of vindictive petitions that demonstrate the inability of the co-fiduciaries to cooperate: in February they filed petitions seeking removal of Donna Maria as co-executrix and co-trustee; in May 2012, they filed a petition seeking court approval to sell commercial properties that are integral to the trusts/estate on dual theories that this sale is necessitated by the lack of cooperation among the fiduciaries and that as two trustees against one they have the power to do so.²⁴ This logic, of course, flies in the face of the clear intent of their father’s Will that would allow all principal to be depleted to maintain Donna Maria’s lifestyle as sole life beneficiary of the trusts.

Courts when confronted with a lack of cooperation among trustees or personal representative that seriously impairs the administration of a trust or estate have removed those fiduciaries. See, e.g. *Trusts: Alwood Trust*, 26 Fid. Rep. 2d 107 (York Cty. O.C. 2004)(Court

²¹ Martelli Will at II A 3.

²² Martelli Will at III A.

²³ See, e.g., 4/18/12 Joseph Martelli and Leonard Martelli Exceptions (control no. 113516), ¶1.

²⁴ 5/14/12 Joseph Martelli and Leonard Martelli Petition for Sale of Real Property, ¶¶ 5 & 7.

removed both co-trustees due to their inability to cooperate to the detriment of the trust and appointed a substitute neutral trustee); Griffith Trust, 8 Fid. Rep. 2d 56 (Allegheny Cty. O.C. 1987)(Both co-trustees removed for failure to cooperate); *Estates*: Manhart Estate, 23 Fid. Rep. 2d 273 (Monroe Cty. O.C. 2002)(Co-executor removed for failure to cooperate resulting in mismanagement of estate); Tillman Estate, 13 Fid. Rep. 2d 351 (Montgomery Cty. O.C. 1993)(Co-administrators removed where their lack of cooperation impinged on administration of the estate). Likewise, respondents Joseph Martelli and Leonard Martelli are hereby removed as co-executors and co-trustees. They shall file accounts of their administration of the estate of Giuseppe Martelli as well as of the Marital Trust and Family Trust.

While this court concludes that there are ample grounds for removing Leonard and Joseph Martelli as fiduciaries of the estate and trusts under both section 3182 and 7766,²⁵ there is concern that because of Donna Maria's admitted unfamiliarity with the business interests of her deceased husband, she would be unable to manage those affairs alone. Donna Maria, likewise, raises this concern and suggests that "considering the complicated nature of the Estate," as well as the alleged breaches of fiduciary duty by Joseph and Leonard Martelli, the interests of the trusts and estate could best be served "if the court appointed an independent fiduciary" to assist in the administration of the estate and trusts.²⁶ This recommendation makes good sense and accordingly, pursuant to 20 Pa.C.S. § 4301, this court names Paul C. Heintz, Esquire, to serve as temporary fiduciary for the estate of Giuseppe Martelli as well as the Marital Trust and Family Trust established under Giuseppe's Will. See, e.g. Alwood Trust, 26 Fid. Rep. 2d at 121 (court to appoint neutral replacement trustee after removing co-trustees for lack of cooperation that hampered the welfare of the trust). The respondents, Joseph Martelli and Leonard Martelli, are further ordered to turn over all books and records of the trusts and estate to Mr. Heintz upon their completion of their accounts within thirty days of the decree removing them as fiduciaries.

²⁵ Donna Maria Martelli likewise requested removal of Leonard and Joseph Martelli in response to their petitions to have her removed as a co-fiduciary of the trusts and estates. See 4/17/12 Donna Maria Martelli Answer to Removal Petition (Estate)(control no. 120489), ¶41; 4/17/12 Donna Maria Martelli Answer to Removal Petition (Family Trust)(control no. 120497) ¶41; 4/17/12 Donna Maria Martelli Answer to Removal Petition (Marital Trust)(control no. 120498), ¶ 41.

²⁶ 4/17/12 Donna Maria Martelli Answer to Removal Petition (Estate) (control no. 120489), ¶46; 4/17/12 Donna Maria Martelli Answer to Removal Petition (Family Trust)(control no. 120497), ¶46; 4/17/12 Donna Maria Martelli Answer to Removal Petition (Marital Trust)(control no. 120498).\, ¶ 46.

BY THE COURT:

Date: _____

John W. Herron, J.