

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of Dorothy L. Shearlds, Deceased
O.C. No. 901 DE of 2015
Control No. 194954

Sur First and Final Account of Kernard Shearlds, Administrator

The account was called for audit December 2, 2019
Counsel appeared as follows:

Before: Herron, J.

Baxter J. Macon III, Esquire, for the Accountant
Deree Norman, *pro se*, Objector

ADJUDICATION

Before the Court are objections to Kernard Shearlds's account of his administration of the Estate of Dorothy L. Shearlds, Deceased. For the reasons below, the objections are overruled in part and sustained in part, and the account is confirmed absolutely.

Background

Dorothy L. Shearlds ("Decedent") died intestate on November 1, 2005, survived by four children: Bernard Shearlds, Percy Shearlds, Slywowski Shearlds, and Kernard Shearlds ("Accountant"). Letters of Administration were granted to Accountant on June 5, 2014.

On August 20, 2019, Deree Norman ("Objector") filed a petition seeking to compel the distribution of Decedent's estate as well as Accountant's removal as administrator.¹

On September 20, 2019, the Court ordered Accountant to file an account of his administration of the estate.

¹ Objector is the administrator of the Estate of Bernard Shearlds, Deceased, and the Estate of Lydia F. Shearlds, Deceased—his step-father and mother, respectively. Bernard, as one of Decedent's surviving children, is entitled to inherit from Decedent's estate. Bernard died intestate on January 1, 2015. Letters of Administration were granted to Objector on August 7, 2019. Lydia, as Bernard's surviving spouse, is entitled to inherit from Bernard's estate. Lydia died intestate on April 4, 2015. Letters of Administration were granted to the Objector on January 5, 2017. Thus, the Objector stands in Bernard's shoes and has standing to object to the account.

Accountant filed his account on October 24, 2019. As filed, the account shows principal receipts totaling \$131,205.66. The account also shows disbursements for legal fees, accountant fees, Register of Wills fees, inheritance taxes, and a personal representative commission totaling \$7,220.57. Thus, the account shows a balance of \$123,985.09.

The account was called for the December 2019 audit. It is stated that notice of the audit was given to all parties in interest.

On November 12, 2019, Objector filed objections to the account. The Court consolidates and rephrases the objections as follows:

1. The \$28,794.34 deduction taken at the time of the sale of Decedent's home is unsubstantiated;
2. The \$1,000.00 for Accountant's attorney's fee is unsubstantiated;
3. The \$200.00 accounting fee is unsubstantiated;
4. The \$154.00 Register of Wills fee was not paid by Accountant, but by Objector;
5. The \$618.37 for inheritance taxes is unsubstantiated;
6. The \$5,248.20 for a personal representative commission is unsubstantiated; and
7. The reduction of Bernard's share of Decedent's estate from \$30,996.27 to \$21,357.27 based on advances to Bernard's estate totaling \$9,639.00 for his wife's (i.e., Lydia's) funeral and autopsy.

See Objections ¶¶ 1–7.

On January 29, 2020, a pre-trial conference was held on the record. At that time, the objection to the Register of Wills fee of \$154.00 was withdrawn as Accountant's counsel conceded Objector had paid the fee. N.T. 01/29/2020, at 19–21. Also, the objection to the inheritance tax payment of \$618.37 was withdrawn after Accountant's counsel produced a receipt for the additional inheritance taxes. *Id.* at 24.

A hearing on the remaining objections was held on February 12, 2020. At the hearing, the Court heard testimony from both Accountant and Objector. The Court also admitted into evidence several exhibits.

Discussion

First, the objection to the deduction from the sale of Decedent's home. Most, but not all, fiduciaries act upon the advice of counsel and other professionals. While the advice of an attorney, for example, does not provide "blanket immunity" for all of a fiduciary's acts, it is "a factor to be considered in determining [the fiduciary's] good faith." *In re Trust of Mintz*, 282 A.2d 295, 301 (Pa. 1971); *see also In re Estate of Dempster*, 162 A. 447, 448 (Pa. 1932) ("Where a . . . fiduciary acts in good faith, under the advice of a competent lawyer, he is not liable for mistakes of law, if such there be, or for errors in judgment."). What is true for an attorney's advice is equally true, *mutatis mutandis*, where a fiduciary relies on representations made by a settlement agent.

Here, Objector characterizes the \$28,794.34 deduction as unsubstantiated, but the sum is substantiated by the U.S Department of Housing and Urban Development ("HUD") settlement statement. The HUD settlement statement lists the gross amount due to seller as \$160,022.81, the total reduction amount as \$28,731.52, and the cash to seller as \$131,291.29. Ex. O-1, at unnumbered 1.

An examination of Exhibit O-1 reveals discrepancies between the amounts listed on the HUD settlement statement and those listed in the account. These discrepancies, however, are *de minimis* and likely due to typographical errors when preparing the account. Moreover, these discrepancies do not negate the fact the HUD settlement statement substantiates the deduction listed in the account.

Nevertheless, Objector took great pains to identify several inaccuracies in the HUD settlement statement. N.T. 02/12/2020, at 8–23. These inaccuracies do not, however, impugn Accountant’s good faith. Accountant neither prepared the HUD settlement statement nor had any reason to believe it was inaccurate. The Accountant relied on both the settlement agent who prepared the HUD settlement statement and the expertise of his attorney, Michael E. Davis, who oversaw the sale of Decedent’s home. Any errors are attributable to them. Thus, the objection is OVERRULED.

Second, the objection to Accountant’s attorney’s fee of \$1,000.00. “It is fundamental that an attorney seeking compensation from an estate has the burden of establishing facts which show that he or she is entitled to such compensation.” *In re Estate of Wanamaker*, 460 A.2d 824, 825 (Pa. Super. Ct. 1983). An attorney’s fee must be reasonable, and Pennsylvania courts are guided by several factors when determining the reasonableness of attorney’s fees. *In re Trust of LaRocca*, 246 A.2d 337, 339 (Pa. 1968).

The facts and factors to be taken into consideration in determining the fee or compensation payable to an attorney include: [1] the amount of work performed; [2] the character of the services rendered; [3] the difficulty of the problems involved; [4] the importance of the litigation; [5] the amount of money or value of the property in question; [6] the degree of responsibility incurred; [7] whether the fund involved was “created” by the attorney; [8] the professional skill and standing of the attorney in his profession; [9] the results he was able to obtain; [10] the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, [11] the amount of money or the value of the property in question.

Id.

On its face, the amount of \$1,000.00 for Accountant’s attorney’s fee is reasonable. The fee represents less than one percent of the value of the estate—a reasonable fee by any metric. *See, e.g., In re Estate of Johnson*, 4 Fid. Rep. 2d 6, 8 (O.C. Chester 1983) (stating a reasonable attorney’s fee for estates worth \$100,000.01 to \$200,000.00 is between \$5,750.00 and

\$9,750.00). Applying the *LaRocca* factors, the Court still finds the fee reasonable. Here is a modest, solvent estate composed of a single asset with nominal debts requiring only a few routine legal services. For that, \$1,000.00 is a reasonable attorney's fee. If anything, the fee is too low. Thus, the objection is OVERRULED.

Third, the objection to the accounting fee of \$200.00. As the Supreme Court of Pennsylvania explained, "Where a fiduciary claims credit for disbursements made by him the burden rests upon the fiduciary to justify them. Proper vouchers or equivalent proof must be produced in support of such credits. Accountant's unsupported testimony is generally insufficient." *In re Estate of Strickler*, 47 A.2d 134, 135 (Pa. 1946); *see also In re Trust of Kelsey*, 12 Fid. Rep. 2d 209, 212 (O.C. Phila. 1992) ("If there is an objection to a credit, then the accountant must offer some documentary evidence to show that the payment was made and was proper. This is logical since the proof thereof would be in the possession of accountant and most readily available to him.").

Here, Accountant credits the estate \$200.00 for an accounting fee. Accountant vouched for this fee by presenting a statement issued by E. Caldwell Tax Services. Ex. O-9. Moreover, Accountant testified that he sought the services of an accounting professional due to his unfamiliarity with estate taxes and the like. N.T. 02/12/2020, at 32. The Court accepts this explanation and finds the accounting fee justified and reasonable. Thus, the objection is OVERRULED.

Fourth, the objection to Accountant's personal representative commission. "The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated percentage." 20 Pa. C.S. § 3537. However, a decedent's personal representative, either an executor or an

administrator, is a fiduciary, *id.* § 102, and fiduciaries must exercise “such common skill, prudence and caution as a prudent man, under similar circumstances, would exercise in connection with the management of his own estate.” *In re Estate of Lohm*, 269 A.2d 451, 454 (Pa. 1970). When a fiduciary breaches any of their duties resulting in a loss to the principal’s estate, a surcharge is the appropriate penalty. *See In re Estate of Pew*, 655 A.2d 521, 541 (Pa. Super. Ct. 1994).

Here, the Court finds it reasonable and just to disallow the requested personal representative commission since the record shows Accountant failed to exercise the skill, prudence, and caution expected of a fiduciary. Notably, Accountant treated the estate as a personal ATM when he disbursed \$2,000.00 to his son, Shawn, who was experiencing “some financial problems.” N.T. 02/12/2020, at 64. While this breach of fiduciary duty did not, in the final analysis, harm the estate in any appreciable way since Shawn reimbursed the estate the \$2,000.00, *id.* at 65, the Court will not reward Accountant’s subpar conduct by approving a personal representative commission. Thus, the objection is SUSTAINED.

Last, the objection to the deductions from Bernard’s share of the estate. “Funeral expenses are a charge which the law imposes upon the estate of the decedent. If a survivor of the decedent orders the funeral, the funeral director may compel the survivor to pay the expenses; however, the survivor then holds a claim against the estate for reasonable expenses incurred. Thus, the [decedent’s] estate is the entity primarily liable for funeral expenses.” *Wright v. Allstate Ins. Co.*, 414 A.2d 395, 396 (Pa. Super. Ct. 1979) (emphasis added) (citations omitted).

Here, Bernard’s estate had an obligation to pay for Bernard’s funeral and burial; it had no obligation to pay for Lydia’s funeral and autopsy. These expenses, if “fair and reasonable [in] proportion to the amount of the estate of the decedent and . . . her station in life,” *In re Estate of*

Cullen, 8 Pa. Super. 494, 499 (1898), should have been paid by Lydia's estate or by Lydia's heirs who would then hold a claim against her estate. Either way, Bernard was not liable for these expenses. Thus, the deductions from Bernard's share are improper, and the objection is SUSTAINED.

Conclusion

All objections having been addressed, the account shows a balance of principal of \$123,985.09. Adjusted to reflect the foregoing discussion removing the \$154.00 Register of Wills fee and the \$5,248.20 executor commission, the new balance of principal totals \$129,387.09. This sum, composed as stated in the account, plus income received since the filing thereof, subject to distributions already properly made, is awarded as set forth in the petition of adjudication as follows:

Principal/Income

Kernard Shearlds	25%
Percy Shearlds	25%
Slywowski Shearlds	25%
Estate of Bernard Shearlds	25%

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

AND NOW, this 22nd day of May 2020, the account is confirmed absolutely.

A motion for reconsideration may be filed pursuant to Pa. O.C. Rule 8.2. An appeal from this adjudication may be taken to the appropriate appellate court within thirty (30) days from the issuance of this adjudication. *See* Pa. R. App. P. 902, 903.

BY THE COURT:



JOHN W. HERRON, J.

Baxter J. Macon III, Esquire
Deree Norman, *pro se*