

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

Estate of Estelle Segal, Deceased
O.C. No. 658 IC of 2016
Control No. 181837

Estelle Segal, An Incapacitated Person



20160065806079

OPINION SUR APPEAL

Gloria Byars (“Appellant”), former Guardian of the Estate of Estelle Segal, appeals the Court’s September 10, 2018, Opinion and Order surcharging Appellant for losses to Ms. Segal’s estate.

The Court issued a contemporaneous Opinion when it ordered the surcharges against Appellant which details the procedural and factual history up to September 10, 2018. The Court believes it need not rehash either here. Instead, this Opinion picks up where its counterpart left off.

On October 12, 2018, Appellant filed a notice of appeal. The Court issued a 1925(b) order on October 29, 2018. On November 19, 2018, Appellant timely filed her Statement of Errors Complained of on Appeal. Appellant raises the following issues in her Statement of Errors Complained of on Appeal:

1. Accountant appeals the denial of her request for Guardian Fees in the amount of \$2,250.00 on grounds that these fees were not contested by the Estate and were earned through Accountant’s many actions as guardian to the benefit of her ward, Ms. Segal;
2. Accountant appeals the surcharge of \$35,405.11 for unaccounted for expenditure of principal;
3. Accountant appeals the surcharge of \$8,400.00 for payments made to DEPCO, LLC on grounds of self-dealing and notes that the Estate did not request return of this payment; and
4. Accountant appeals the surcharge in the amount of \$6,106.06 based on the Court’s questioning of the timing of its payment.

Appellant's defense for each surcharge is a variation on a theme: Had Appellant attended the hearing on August 28, 2018, she would have presented testimony, documents, and other supporting evidence to rebut the surcharges. However, neither Appellant nor her counsel, Sharon D. Alexander, Esquire, appeared at the August 28 hearing based on the "erroneous" belief opposing counsel, James M. Tyler, Esquire, would request a continuance. Erroneous indeed.

No such agreement was ever reached between Ms. Alexander and Mr. Tyler. At the outset of the hearing on August 28, the Court noted for the record the absence of both Ms. Byars and Ms. Alexander. Hr'g Tr. 6:4–6. The Court asked Mr. Tyler if he had any information on their whereabouts. *Id.* at 6:6–7. Mr. Tyler detailed an email exchange between himself and Ms. Alexander. *Id.* at 6:8–7:8. The Court then read one of Ms. Alexander's emails into the record. *Id.* at 7:21–8:9. In particular, Ms. Alexander's email contained the following: "I know we have a hearing set for August 28th. I, however, will still be out of the country on this date." *Id.* at 8:3–5. Ms. Alexander then stated she expected to return to the United States on September 1, 2018. *Id.* at 8:5–6.

Having read the email into the record, the Court said, "I don't understand a practicing lawyer intentionally failing to appear at the hearing and at the very least failing to ask the Court to continue the matter." *Id.* at 8:10–13. Mr. Tyler explained it was never his "plan to request another continuance." *Id.* at 8:15–16. At this point, the Court stated it believed Ms. Byars and Ms. Alexander both "intentionally absented themselves from the process and the hearing," *id.* at 9:23–10:2, and so the hearing went forward without them.


Appellant and her counsel's failure to appear at the August 28 hearing was but another installment in an ongoing saga of obdurate and dilatory conduct detailed in the Court's

September 10 Opinion. Time and again Appellant has failed to obey the Court's orders and decrees. For example, once removed as Ms. Segal's guardian, the Court ordered Appellant to file an account of her actions as Ms. Segal's guardian within thirty (30) days of her removal. While Appellant ultimately filed her account, it was nearly four months late and failed to follow the applicable Orphans' Court Rules governing the form and content of such filings. Molasses in January is known to move with more gusto than Appellant and probably knows how to obey simple instructions, too. Delays and absences as well as errors, omissions, and inconsistencies in various accounts have plagued this case from the beginning. Now Appellant has the gall to appeal the outcome of a hearing from which they intentionally absented themselves? Appellant's antics both in this and related litigation has resulted in an inexcusable waste of trial, and now appellate, judicial resources.

It is the Court's position Appellant's claims are not only without merit, but each of these claims was already discussed thoroughly and adjudicated correctly in its Opinion and Order dated September 10, 2018. Anything the Court could write to supplement its earlier Opinion and Order would be redundant.

Therefore, based on the record, the Court's Opinion and Order dated September 10, 2018, surcharging Appellant for losses to the Estate of Estelle Segal, should be AFFIRMED.

BY THE COURT:



JOHN W. HERRON, J.

Dated this 4th day of December 2018

Sharon Alexander, Esquire
James M. Tyler, Esquire