ALM | LAW.COM

New York Law Journal

Mid-Year Review

By Ilene Sherwyn Cooper
July 3, 2025

Having passed the year's midway point, we examine opinions throughout the state affecting the field of trusts and estates. Consider the following decisions of interest.

Contested Accounting Results in Surcharge

Before the Surrogate's Court, Ulster County, in *In re McAnaney,* was a contested administrator's accounting proceeding compelled by the fiduciary's sister. The record revealed that the petitioner, one of the decedent's three children, was appointed administrator of his estate in 1999.

During the early years of her stewardship, she had liquidated essentially all of decedent's assets, netted approximately $517,800 for the estate, and distributed to each of the distributees an aggregate amount of $218,422 in 1999 and 2000.

The only estate asset retained by the petitioner was a five-unit dwelling, which the estate continued to own and maintain so that the decedent's son, petitioner's brother, could have a place to live rent-free, in accordance with the decedent's purported wishes.

While initially there were estate funds available to pay the operating costs of the premises, the carrying charges consumed nearly all of the $316,946 in reported expenses of estate administration.


Photo: Rick Kopstein
Ilene Sherwyn Cooper.

Additionally, petitioner paid her brother over $68,000 in unidentified cash distributions not made to her sister, for his alleged role as caretaker of the property. Following the distributions of estate funds made in 2000, the cash in the estate was depleted, and unbeknownst to the petitioner's siblings, petitioner absorbed the cost of maintaining the property from her personal assets.

Ultimately, the property was sold in 2022, netting the estate $512,000, of which petitioner claimed $250,800 in "management fees", and reported only $60,050 available for distribution to her sister.

Thereafter, in response to her sister's compulsory accounting proceeding, the petitioner filed an account of her stewardship covering the period July 10, 1999 through Nov. 25, 2024.

Objections were filed by the petitioner's sister, who alleged, *inter alia,* that the petitioner had failed to timely administer the estate as a result of her retaining the housing unit, and mismanaged estate funds by incurring over 20 years of operating expenses that could otherwise have been distributed to the distributees had the property been sold sooner.

Based on the record and its review of the accounting, the court found that the petitioner breached her fiduciary duties throughout her tenure as evidenced, most particularly, by her failure to maintain clear and accurate books and records of her stewardship.

To this extent, the court pointed to various discrepancies and missing information in the schedules of petitioner's accounting, including substantiation of the expenditures that she repaid to herself without prior court approval. As a consequence, the court found that petitioner's reimbursement to herself was improper and directed that the funds be restored to the estate.

Further, the court found that petitioner's advance payment of commissions to herself was improper, and that her multifaceted misconduct provided ample grounds for denying her commissions entirely. Petitioner was therefore directed to restore the advance payment to the estate.

Additionally, the court observed that the fiduciary invested estate funds in an ordinary or low-interest checking account for the initial period of her stewardship, and thereafter, failed to earn any interest on estate funds in violation of the Prudent Investor Act.

While the court noted that petitioner's conduct in delaying the sale of the estate property was also imprudent, it denied the objectant's request for damages on this issue due to her failure to provide the date by which the petitioner could reasonably have been expected to sell the premises.

On the other hand, the court found that the dissipation of estate funds to address the housing needs of the decedent's son was prejudicial to the objectant, who would have otherwise had use of the funds had the property been timely sold.

The court held that the remedy for the impartiality exhibited by the petitioner would be a reallocation of estate distributions to equalize the benefits between the decedent's son and the objectant.

Finally, the court found that the petitioner had engaged in self-dealing by procuring an SBA Loan for her personal benefit and then repaying the loan using estate funds. Applying the "no further inquiry" rule, the court set aside the payment of the Loan by the estate, and surcharged the petitioner accordingly. *In re McAnaney,* 2025 NYLJ LEXIS 1066 (Sur. Ct., Ulster County)

Gift of LLC Interest

In *In re Ingberman*, the Surrogate's Court, New York County, determined that the decedent's post-deceased daughter had not made a gift of her entire interest in four LLC's, or had transferred her income interest in two LLC's to her brother.

The decedent died survived by her daughter, Jeanette, and her son, Israel, both of whom were appointed the executors of her estate. Thereafter, the decedent's daughter died, and Israel, as the surviving executor, accounted, indicating therein that in 2008 and 2009 Jeanette had made the subject gifts. Jeanette's husband, as administrator of her estate, objected.

At the trial of the matter, Israel testified that he had a very close relationship with his sister, and visited her daily while she was hospitalized. However, he admittedly did not know she was married until she was in hospice, and stated that he was not aware of her financial circumstances in 2009, and that he did not ask her about them.

While serving as co-executor with his sister, Israel took the lead in administering the estate, and had the primary contact with the estate attorney.

Further, despite the provisions of the decedent's will, which divided the subject LLC interests equally between Jeanette and Israel, Jeanette executed an assignment of those interests to him in 2009 purportedly based on the family's understanding that these assets would remain in the family and be given to him as of the date of the decedent's death.

The assignment was executed near the hospital where Jeanette was receiving outpatient treatment, with only Israel and Jeanette present, and thereafter, was sent to estate counsel. The assignment was not sent to the entities, and on the date of Jeanette's death, title in the LLCs remained in the name of the estate.

In addition to the assignment, in 2008, the executors signed letters addressed to two of the LLCs directing that the income therefrom be distributed to an account belonging to Israel. He testified that he required this income in order to obtain a personal bank loan.

Despite the foregoing, Israel testified that following the date of the letters and the assignment of the LLC interests, income from the entities continued to be paid to the estate, and he continued to make equal distributions thereof to himself and his sister.

Yet, Jeanette wrote checks to Israel in the amounts distributed to her, retaining only a portion to pay her taxes. Further, counsel for the estate testified that Jeanette stopped receiving K-1s from the estate following the date of the assignment, and Jeanette's accountant testified that she never expressed any position with respect to the ownership of the LLC interests.

Witnesses for the objectant testified, *inter alia,* that income deposited into the estate account following the date of the assignment was treated as belonging to Israel based on conversations had with either Israel or estate counsel, that Jeanette was anxious and frustrated about her assets, and was looking forward to receiving her inheritance, and that it was anticipated that Jeanette's husband would inherit everything she received from the decedent's estate.

The court held that the proof adduced at trial failed to establish by clear and convincing evidence that a valid inter vivos gift had been made of the subject LLC interests. To a large extent, the court found that Israel's testimony was not credible, and contradicted by the testimony of disinterested witnesses, and uncontroverted documentary evidence.

Further, the court found that neither Israel's conduct nor Jeanette's conduct after the execution of the assignment established that Jeanette relinquished dominion and control over her interest in the entities, or that Israel accepted same, notwithstanding the presumption that a gift of value to a donee is accepted.

As to the purported gift of Jeanette's income interest in two LLCs, the court found that the letters relied upon to establish same were executed by Israel and Jeanette in their fiduciary capacities, without Jeanette's input, for the purpose of improving Israel's loan prospects, and only directed the deposit or payment of income to Israel's bank account.

In view thereof, the court held that Israel had failed to establish that a gift had been made of the funds. *In re Ingberman.* 2025 NYLJ Misc LEXIS 1226 (Sur. Ct. New York County)

Turnover Directed Pursuant to SCPA 2103

Before the Appellate Division, Third Department, in *In re Telian*, was an appeal from an order of the Surrogate's Court, Delaware County, which, in a proceeding pursuant to SCPA 2103, *inter alia,* granted petitioners' motion for summary judgment, and directed respondent to turn over certain real property to the decedent's estate.

The record revealed that pursuant to a judgment of divorce between the decedent and respondent, which incorporated the terms of a stipulation of settlement between the parties, the respondent agreed to convey the subject real property to the decedent and forego any interest therein, in return for the decedent conveying respondent a specified sum of money.

Despite decedent taking possession of the property, he failed to remit full payment to the respondent, who refused to execute a deed to the premises. Litigation ensued resulting in an order of the Supreme Court directing respondent to execute a deed and the decedent to execute a mortgage over the subject property in respondent's favor for the unpaid balance of the monies owed. Nevertheless, both parties failed to comply.

The decedent subsequently passed away, and respondent took possession of the property. As a result, petitioners, as administrators of the decedent's estate, instituted a proceeding pursuant to SCPA 2103, seeking to determine the assets of the decedent's estate, and ultimately moved for summary judgment arguing that despite the subject property being titled in the respondent's name, it was an asset of the decedent's estate.

The respondent cross-moved for summary judgment arguing that since the decedent had failed to satisfy the requirements of the stipulation and court order that she remained the titled owner of the property. The Surrogate's Court granted the petitioners' motion, and respondent appealed.

The Appellate Division affirmed. The court concluded that by providing the stipulation and court order, the petitioners had satisfied their burden of demonstrating that the decedent had an interest in the subject property at the time of his death, and that it was therefore an asset of his estate.

The court found that the respondent's failure to execute a deed transferring the property to the decedent did not negate the decedent's interest, but instead demonstrated the persistent non-compliance by the decedent and the respondent with the stipulation and order.

Nevertheless, despite granting petitioners' motion, the court found that respondent was not without a remedy. The Surrogate's Court directed the estate to satisfy respondent's debt, and the Appellate Court concurred, noting that compliance with the prioritization set forth in SCPA 1811 (2) was required, together with the payment of statutory interest from the date of entry of the Supreme Court order. *In re Telian,* 2025 N.Y. App. Div. LEXIS 3694 (3d Dept 2025).

Ilene Sherwyn Cooper *is a partner at Farrell Fritz*

Reprinted with permission from the July 3, 2025 edition of the NEW YORK LAW JOURNAL © 2025 ALM Global Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-256-2472 or asset-and-logo-licensing@alm.com. # NYLJ-7082025-66612