



Compulsory Accounting and Contempt

By Robert M. Harper

For the party that compels an accounting in the Surrogate's Court, a fiduciary's failure to account is, to say the very least, frustrating. In many instances, the party seeking an accounting – who likely already suspects wrongdoing on the fiduciary's part – is left to wonder what the fiduciary is hiding and how the fiduciary can flout a court order. Frustrating as it may be, however, the party petitioning for an accounting does have several remedies to pursue, including civil contempt. This article discusses the procedure for securing a contempt order and the consequences arising from it.

The duty to account is among the most fundamental of all fiduciary obligations and the failure to honor it may warrant civil contempt. Following personal delivery upon a fiduciary of a certified copy of the order directing an accounting and the commencement of a contempt proceeding, a fiduciary that refuses or willfully neglects to account may be held in civil contempt of court.¹ Civil contempt is especially appropriate when the fiduciary knowingly disobeys a lawful order of the court, thereby prejudicing another party's rights.²

Matter of Sofi is instructive.³ In *Sofi*, Bronx County Surrogate Lee L. Holzman issued an order directing the executors of an estate to account. Notwithstanding the fact that certified copies of the order were personally delivered to the executors, they failed to file their account within the period

prescribed by the surrogate, causing the petitioners to make a contempt application. Referencing the executors' non-compliance with the accounting order, Surrogate Holzman held them in contempt of court.

However, a contempt order – without more – may be insufficient to secure what the party that compelled an accounting really desires, *i.e.*, an accounting of the fiduciary's conduct. When a fiduciary has failed to account and been held in contempt of court, the next step may involve seeking a warrant of commitment from the Surrogate's Court.

That is precisely what happened in *Matter of Brissett*.⁴ There, the executor of an estate was directed to account for her fiduciary conduct, held in contempt of court for failing to do so, and afforded an opportunity to purge herself of contempt by accounting within 30 days of service upon her of the contempt order. As the executor failed to purge herself of contempt, Surrogate Holzman signed a warrant of commitment, directing the sheriff of the City of New York to take the executor into custody and bring her before the court. The sheriff did so shortly thereafter.

In addition to a contempt order and a warrant of commitment, the party aggrieved by a fiduciary's failure to account may wish to seek the fiduciary's removal and an order permitting that party to take and state the fiduciary's accounting.⁵ For while the removal of a fiduciary would normally necessitate a hearing, a hearing is not always required in the case of a fiduciary who fails

to comply with an accounting order.⁶

In sum, when a fiduciary fails to comply with a compulsory accounting order, the party that compelled the accounting need not waste away in despair. The party should weigh the options available to secure the fiduciary's compliance with the accounting order, including by civil contempt. This may ultimately inspire the fiduciary to render an accounting, allowing the interested parties to litigate the merits of the fiduciary's conduct.

Note: Robert M. Harper is an associate at Farrell Fritz, P.C. concentrating in estate and trust litigation. He is Co-Chair of the Bar Association's Membership Services and Activities Committee and Vice-Chair of the Governmental Relations and Legislation Committee of the New York State Bar Association's Trusts and Estates Law Section.



Robert M. Harper

- 1 S.C.P.A. §§ 606 and 607; Judiciary Law § 753; *Matter of Armata*, N.Y.L.J., 4/28/2006, at 32, col. 2 (Sur. Ct., Suffolk County).
- 2 *Matter of Abel*, N.Y.L.J., 3/5/2010, at 32, col. 6 (Sur. Ct., Bronx County).
- 3 *Matter of Sofi*, N.Y.L.J., 3/15/2010, at 28, col. 2 (Sur. Ct., Bronx County).
- 4 *Matter of Brissett*, N.Y.L.J., 7/26/2010, at 26, col. 6 (Sur. Ct., Bronx County).
- 5 *Matter of Gaddy*, N.Y.L.J., 3/24/2009, at 36, col. 3 (Sur. Ct., New York County); S.C.P.A. § 2206 (setting forth the procedure for taking and stating a fiduciary's account).
- 6 *Matter of Chase*, 44 A.D.3d 1180 (3d Dep't 2007).