IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF **ARIEL LEMUEL ABDIEL MELCHIOR, SR.,** Deceased,	PROBATE NO. ST-02-PB-109

Memorandum Opinion

This matter is before the Court on the Attorneys' Fees Affidavit[1], filed on February 8, 2012, by Andrew L. Capdeville, Esq., on behalf of the Law Offices of Andrew L. Capdeville, P.C., wherein it seeks approval of attorneys' fees in the sum of $84,860.00 for 300.80 billable hours.[2] Norma Melchior Gomez, executrix of the Estate, opposes the application for $84,860.00 in legal fees. The Court finds as follows:

1. The Decedent died testate in July 2002.

2. On December 3, 2002, this matter was initiated with the filing of a Petition for Admission of Will to Probate by the Law Offices of Andrew Capdeville, P.C.

3. There were no objections to the appointment of the Co-Executors nominated in the Decedent's Last Will and Testament or its admission to probate, and on April 11, 2003, the Decedent's Last Will and Testament was admitted to probate and

[1] The hearing on the Final Account was held on December 5, 2011, and the Adjudication was entered on May 12, 2012, but the issue of attorney's fees remained pending.

[2] The Affidavit appears contradictory; Paragraph 6 on Page 36 recites that 307.80 total hours were spent on the matter, but it then concludes that after a reduction of 7 hours the total billable hours is 800.80. On the other hand, Page 34 reflects the total number of hours as 307.80. Therefore, the Court concludes that 800.80 is a typographical error and that 300.80 is the total number of hours for which compensation is being sought. The application is for an award of $84,860.00 in legal fees.

Letters Testamentary were issued thereon to Ariel Melchior, Jr. and Norma Yolanda Melchior Gomez.[3]

4. The Verified Inventory reported the assets of the Estate as follows: 1) a partial (25%) interest in Unit No. 3, Building 6, Pinnacle Condominiums, valued at $96,250.00; and 2) personal property consisting of "miscellaneous household furnishings, antiques, art, photographs and portraits" with a value of $85,000.00. The assets of the Estate therefore had a total estimated value of $181,250.00.[4]

5. The Fifth Quarterly Accounting for the period covering April 1 to June 30, 2004, reported that the Decedent's partial interest in the condominium was sold on or about May 14, 2004.[5] That quarterly accounting also reported a Creditors Claim filed by Dudley Topper and Feuerzeig, LLP for the sum of $20,338.94.

6. Upon the filing of the aforesaid Fifth Quarterly Accounting, the only remaining assets consisted of the personal property described as "miscellaneous household furnishings, antiques, art, photographs and portraits" and the proceeds of the sale of the condominium.

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[3] Co-Executor Ariel Melchior, Jr. later died, and on February 24, 2101, Co-Executrix Norma Melchior Gomez notified the Court that she would act as the sole Executrix, as permitted under the Decedent's Last Will and Testament.

[4] See Verified Inventory dated May 7, 2003.

[5] Counsel for the Estate later provided contradictory reports regarding the condominium. Part VI of the Twenty-Ninth Quarterly Accounting reports that the condominium was transferred into the Family Trust prior to decedent's death and was never a part of the Estate. Counsel for the Estate later corrected the record and reported that the decedent's interest in the Pinnacle condominium was sold as reported in the Fifth Quarterly Accounting. See Page 2 of the Amended Verified Final Inventory, filed on March 24, 2011. The Court will accept as true that the Decedent died seized of a partial interest in the condominium and it was sold during probate.

7. The Creditors Claim was then settled in late 2005.[6]

8. As of December 2005, the Estate appeared ready to proceed to Final Account and closure.

9. Instead, another twenty (20) quarterly accountings were filed and the Final Account was not filed until September 23, 2011.

10. The Estate was kept open for no apparent reason, from 2005 to 2011, thereby unnecessarily increasing costs and attorney's fees. The only activity in those years was the reporting of $2,412.00 in income and the payment of a number of relatively small expenses.

11. During the intervening six years, the file was handled by three primary attorneys in the Law Offices of Andrew Capdeville, and there was some duplication of efforts each time the file was assigned to a new attorney. During the course of the probate a total of five different attorneys in the office worked on the file.

12. Attorney Gwynneth Moolenaar was the last lawyer to work on the matter. Attorney Moolenaar does a substantial amount of probate work and has a working knowledge of the rules and procedures. She appears to be the first attorney handling the matter to understand the steps needed to close the Estate. When she assumed the file she made efforts to arrange for the distribution of the personal property in advance of the closing of the Estate, and petitioned the court for partial distributions. On the other hand, Attorney Moolenaar's court filings show that she made simple matters more

[6] See Eleventh Quarterly Accounting covering period of October 1, 2005 through December 31, 2005.

complex than required, and as a result there was a concomitant increase in the attorneys' fees. She directed and oversaw the unnecessary appraisal of the personal property of the estate. There was no apparent need for the appraisals and nothing within the Decedent's Last Will and Testament would have suggested the need for appraisals of the personal assets.[7] The Decedent's Will gave the Co-executors great discretion in distributing assets that were not specifically bequeathed. Paragraph Third (e) of the Will directed that the personal property (except stocks and money) be "*divided into three shares of approximately (but not exactly) equal value" effecting as far as possible their choices, but the decision of my Executor with respect to any item shall be final, even if said representative is a legatee.*" This language reflects the intent of the Testator to keep his estate simple and the costs at a minimum. Instead, great effort was used to appraise all of the personal property, including books, paintings, Lladro figurines, and old issues of the *Virgin Islands Daily News.* Even the items specifically bequeathed were individually appraised. The cost of the appraisals and the attorney's time overseeing these appraisals was unnecessary.

13. The two years that Attorney Moolenaar worked on the Estate accounts for the greatest portion of the attorney's fees. She charged 195.2 hours over the course of two years for a total of $58,620.00. All of Attorney Moolenaar's work on this Estate occurred *after* the Creditor's Claim was resolved and *after* the real estate was sold. All

[7] The Court recognizes that 15 V.I.C. §314 requires the appraisal of property. However, the long established custom and practice in probate matters is to seek a waiver of the statutorily required appraisals, where possible, to reduce the costs of the probate. Generally, appraisals are only required where there is a sale of real property, it is necessary for the computation of inheritance taxes, or the interests of a minor are affected.

of Attorney Moolenaar's work was at a time when the Estate merely held miscellaneous household furnishings, antiques, art, photographs and portraits.

14. In addition, a large amount of attorney's time was spent on issues and property that were not included in the Estate. The Verified Final Account reflects extensive time spent on "non-estate" matters, including issues regarding the Estate of George Wade (whose Estate is an heir of this Estate), coordination with Puerto Rico legal counsel regarding a condominium in Puerto Rico in which decedent had an interest, and dissolution of a corporation in which decedent had an interest.[8]

15. It is apparent that the Decedent had many and varied affairs that fell outside the probate assets, and legal counsel was called upon to assist. However, there is little justification for those outside matters being billed to the probate Estate. Furthermore, the Melchior family was billed the sum of $52,986.62 for non-estate work.[9] Therefore, there is no indication why non-estate work of such magnitude was being billed to the Estate.

16. Norma Melchior Gomez initially supplied an Affidavit Approving Attorney's Fees, where she essentially approved the request for fees, albeit with some reluctance. On the one hand, she states that the time and hours claimed therein were performed as stated and in a satisfactory and professional manner by most of the attorneys and she agrees to settle with counsel for the sum of $75,000.00. However, on the other hand she states: 1) that the request for $86,000.00 is outrageously high; 2) that no monthly

[8] See Verified Final Account filed on September 23, 2011
[9] See Paragraph 6(i) of Norma Melchior Gomez's Affidavit Approving Attorney Fees.

invoices were provided to her, thus making it difficult to equate charges, especially those that go back to 2003; 3) that the attorney's fees and charges were increased without proper notification, and 4) that the Melchior family is in receipt of two other packets of invoices (as of August 23, 2011) totaling $52,986.62 for non-estate work.

17. Also on file with the Court is a photocopy of a letter from Norma Melchior Gomez to the Court, dated February 27, 2012, which, *inter alia*, recommends that the services rendered by the Law Offices of Andrew L. Capdeville, P.C. be given a value no greater than $25,000.00. There is no indication whether a copy of the February 27, 2012 letter was provided to her legal counsel.

<u>Rule and Analysis for Attorney's Fees</u>

Attorney's fees ... are subject to the reasonableness standard of Model Rule 1.5(a) and its counterpart in the ABA Code of Prof. Resp., DR 2-106(A), (B). *Rainey v. Hermon*, 2011 V .I. Supreme LEXIS (2011) (quoting *Christian v. Gordon,* 43 V.I. 179, 184 (V.I. Terr. Ct. 2001). Rule 1.5(a) states:

> A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.

ABA Model R. Prof. Cond. 1.5(a). The Court will apply each factor to the present probate proceeding.

(1) <u>The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly</u>.

As delineated above, the Decedent died testate, there were no objections to the admission of the will to probate, all heirs executed consent forms, there was no collateral or direct litigation, and there were no significant changes in the income or expenditures. A partial interest in a condominium was sold. The Court notes that a claim was filed against the Estate, although neither the sale of real estate (particularly where the Decedent's Last Will and Testament granted the Co-Executors the power to sell real estate) nor the settling and resolution of a claim can be deemed as "novel" issues requiring great legal skills.

(2) <u>The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer</u>.

There is nothing in the file that indicates that the acceptance of this probate proceeding would preclude the law firm from accepting additional employment or additional clients and cases, nor is there any indication that it was so precluded.

(3) <u>The fee customarily charged in the locality for similar legal services.</u>

The hourly rates charged over the course of the ten years this probate matter was open appear within the range of hourly fees charged in the Virgin Islands over the course of the years the probate was pending.

(4) <u>The amount involved and the results obtained.</u>

There is no dispute that the law firm obtained the desired result. However, the number of hours were excessive, particularly when 195 hours were spent to conclude an estate at a time when it only held miscellaneous household furnishings, antiques, art, photographs and portraits, regardless of the sentimental value or art value of the items.

(5) <u>The time limitations imposed by the client or by the circumstances.</u>

There is no indication of what expectation the Client had regarding the length of time this probate would take or whether counsel made any representation to the client. However, the record shows that for at least six years quarterly accountings were being filed by rote with no apparent regard to the need to file a final account.

(6) <u>The nature and length of the professional relationship with the client.</u>

There is no indication of the nature and length of the professional relationship with the Co-Executors. However, the Decedent's Last Will and Testament contains specific language identifying Attorney Andrew Capdeville as Decedent's legal counsel and granting Attorney Capdeville tie breaking privileges in any dispute between the Co-Executors.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

As detailed above, the change in attorneys assigned to handle this probate contributed to an increase in the fees as each new attorney had to familiarize herself with the file. In addition, there was also a significant amount of time spent on non-probate matters. At this time there is no means by which the Court can determine if any of the charges in the invoices issued to Norma Melchior Gomez for $52,986.62 for non-probate work duplicates any of the charges for non-probate work currently before the Court. In addition, simple matters were made more complex than required, unnecessary appraisals were ordered and an exorbitant amount of time was spent on simple things.

(8) Whether the fee is fixed or contingent.

This factor does not apply in probate matters. *In the Matter of the Estate of David Vialet,* 24 V.I. 16, 26 (1998) (stating the contingency element of attorney's fees is inapplicable to probate proceedings).

CONCLUSION

The Court finds that the amount of attorneys' fees requested in this matter are unreasonable and cannot be justified. The Court has reviewed the Attorneys' Fees Affidavit and finds that the number of hours spent to administer this Estate is unreasonable as no complex or extraordinary issues arose in the course of this matter

Accordingly, the Court will deny the request from the Law Offices of Andrew L. Capdeville, P.C. for the sum of $84,860.00 in legal fees, but will approve fees in the amount of $35,000.00 for the full and complete administration of this Estate.

DATED: June 12, 2013

KATHLEEN MACKAY
Judge of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:
JEWEL A. SPRAUVE
Court Clerk Supervisor 6/12/13