

**SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

Accounting by Marianne Nestor Cassini, as the Executor  
of the Estate of

**OLEG CASSINI,**

**Deceased.**

**PRESENT: HON. MARGARET C. REILLY**

**DECISION & ORDER**

**File No. 343100/G  
Dec. No. 38578**

The following papers were considered in the preparation of this decision:

Motion .....	1
Affirmation in Support of Motion & Exhibits .....	2

In the context of a contested accounting filed by Marianne Nestor Cassini (petitioner) as the former executor of the estate of Oleg Cassini (decedent), before the court is a motion brought by John J. Barnosky, Esq. (Barnosky), and Alexandre Cassini Belmont (Belmont) (collectively, objectants), as the executors of the estate of Christina Cassini and successor administrators of the estate of Daria Cassini, for an order granting an interim award of attorneys' fees and disbursements in favor of the objectants in the amount of \$1,000,000.00 (Motion for Interim Fees), to be paid from the estate of Oleg Cassini (Estate).

The motion is unopposed.

**BACKGROUND**

The background and procedural history of this Estate administration has been reviewed in prior decisions and will not be repeated here except as it pertains to the Motion for Interim Fees, as discussed below.

## **MOTION FOR INTERIM FEES AND AFFIRMATION IN SUPPORT**

This is a motion to approve payment from the Estate of \$1,000,000.00 to counsel for the objectants as an interim award of legal fees.<sup>1</sup> In his affirmation in support of the Motion for Interim Fees to be paid by the Estate, Robert M. Harper, Esq. (Harper), as counsel for the objectants, acknowledges that New York courts typically subscribe to the American Rule (American Rule) concerning fees. Pursuant to this rule, parties prevailing in litigation may not shift their legal expenses to the parties who have not prevailed. However, as noted by counsel, courts will sometimes allow for the payment of legal fees to be shifted from one party to another. One such situation arises when an agreement, statute or rule provides for an exception to the American Rule, and another circumstance arises when the losing party has acted maliciously or in bad faith. Harper acknowledges that absent special circumstances, a request to shift the burden of fees will be denied.

Another exception to the American Rule, according to counsel, arises when an estate fiduciary engaged in wrongdoing for which the fiduciary is surcharged, or when the fiduciary obstructs and prolongs an estate administration. Harper states that whether or not the Estate benefitted financially from the legal services provided by counsel for the beneficiaries of the Estate, their counsel is deemed to have stepped in to represent the interests of the estate when the fiduciary failed to do so.

Harper argues that the court's record establishes that the legal services rendered to the

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<sup>1</sup> The court notes that Barnosky and Robert M. Harper, Esq. both signed the motion as attorneys for the objectants. They are members of the same law firm, Farrell Fritz, P.C., which will receive the payment if the interim fee is approved.

objectants by Farrell Fritz, P.C. (Farrell Fritz), benefitted the estate as a whole, yielding many benefits, financial and otherwise. Counsel specifically notes that as a result of the efforts of Farrell Fritz, the court found that Oleg Cassini, Inc. (OCI), and Cassini Parfums, Ltd. (CPL), are significant assets of the estate, and not assets of the petitioner in her individual capacity as she had claimed.

In his affirmation, Harper states that Farrell Fritz has expended more than \$3,000,000.00 in recorded billable time beginning in 2012 through the first half of 2019. Annexed to the affirmation as Exhibit 16 are 170 pages of time records. According to these records, 49 individuals provided billable legal or support services for the Estate.

The time records are followed by 44 pages of detailed disbursements. These include: postage; copying; binding; messenger services; overnight delivery; deed preparation; conference calls; court reporters; printing costs; purchase of documents; certification of documents; travel; meals; calendar service; title search; recording fees; filing fees; transcripts; computer/legal research; witness fees; medical report; process service; faxes; Marshall fees; relativity/data hosting; parking; mileage; tolls; document retrieval; and investigation costs. The categories of disbursements with the highest combined charges were photocopying and computer/legal research. The disbursements total \$251,059.55.

### **ANALYSIS**

The motion seeks an order granting an interim award of legal fees to counsel for the objectants, to be paid by the Estate. SCPA 2110 provides the following, in subparagraphs (1) and (2), in relevant part:

“At any time during the administration of an estate and irrespective of the pendency of a particular proceeding, the court is authorized to fix and determine the compensation of an attorney for services rendered to a fiduciary or to a devisee, legatee, distributee or any person interested . . . The court may direct payment therefor from the estate generally or from the funds in the hands of the fiduciary belonging to any legatee, devisee, distributee or person interested.”

In fixing compensation for legal services, “[t]he Surrogate's Court bears the ultimate responsibility for deciding what constitutes a reasonable attorney's fee” (*Matter of Harrison*, 119 AD3d 687, 688 [2d Dept 2014], quoting *Matter of Goliger*, 58 AD3d 732, 732 [2d Dept 2008]). In determining what constitutes a reasonable fee, the court may consider factors such as “the time and labor expended, the difficulty of the questions involved and the required skill to handle the problems presented, the attorney's experience, ability, and reputation, the amount involved, the customary fee charged for such services, and the results obtained” (*Matter of Szkambara*, 53 AD3d 502, 502-503 [2d Dept 2008] [citations omitted]).

The objectants have also asked the court to direct payment of the legal fee and related disbursements by the Estate. “As a general rule counsel may only be compensated by clients who retain them. However, where . . . counsel has in effect benefitted the entire estate . . . counsel may be compensated from estate assets even though counsel was not retained by the fiduciary of the estate (*Matter of Altman*, 1 Misc 3d 566, 567 [Sur Ct, Bronx County 2003]; see also, *Matter of Burns*, 126 AD2d 809 [3d Dept 1987]; *Matter of Grupe*, 30 AD2d 701, 701 [2d Dept 1968]). For payment to be made from the estate, the services provided must have been substantial (*Matter of Kinzler*, 195 AD2d 464 [2d Dept 1993]).

### Interim Fee

The court has carefully reviewed the arguments presented by counsel for the objectants in support of this unopposed motion. This is the first request made by the objectants for the partial payment of a legal fee for ongoing services since 2012. The amount requested represents less than one-third of fees billed to date. The services provided by counsel for the objectants unquestionably and significantly benefitted the entire estate.

The request for the court's approval of an interim fee for counsel in the amount of \$1,000,000.00 is **GRANTED**. The Public Administrator of Nassau County (Public Administrator), who is serving as the Administrator c.t.a., is directed to pay this amount from the Estate assets to Farrell Fritz.

### Disbursements

With respect to counsel's request for reimbursement of expenses in the amount of \$251,059.55, the court notes that some of these disbursements, as shown in Exhibit 16 to the Motion for Interim Fees and discussed below, cannot be approved by the court. In *Matter of Corwith* (NYLJ, May 3, 1995, at 35, col 2 [Sur Ct, Nassau County]), this court discussed the allowance of charges for photocopies, telephone calls, postage, messengers and couriers, express deliveries and computer-assisted legal research. The court concluded that it would permit reimbursement for such disbursements only if they involved payment to an outside supplier of goods and services. The court adopted the standards set forth in *Matter of Herlinger* (1994 N.Y. Misc. LEXIS 707 [Sup Ct, New York County]), in which the court

stated that “reimbursement will not be allowed for (i) services performed "In house" (such as photocopying and word processing), and (ii) services which are provided merely as an adjunct to the attorney's performance of legal services (such as local travel and meals), which are deemed part of normal law office overhead” (*id.* at \*1-2). The court in *Herlinger* concluded that an attorney may not charge clients for disbursements typically considered part of a law firm’s overhead unless the attorney provides a corresponding decrease in the attorney’s hourly rates (*id.* at \*2 ).

Furthermore, disbursements expended for mileage and parking constitute overhead that should be absorbed by an attorney, and these expenditures will be disallowed by the court (*Matter of Pectal*, 22 Misc 3d 1112[A]\* [Sur Ct, Dutchess County 2009]). Similarly, tolls are non-compensable expenses (*Matter of Rapant*, 2007 NYLJ LEXIS 1073 [Sur Ct, Westchester County]).

For the above reasons, the following disbursements totaling \$136,779.80 have been disallowed: postage \$1,138.52; copying \$90,967.32; conference calls \$177.86; travel \$1,279.24; meals \$8,823.51; computer/legal research \$33,551.30; faxes \$64.00; parking \$267.50; mileage \$496.15; and tolls \$14.40. Approval of the remaining disbursements, totaling \$114,279.75, is **GRANTED**.

### CONCLUSION

The relief requested by the petitioners is **GRANTED**, to the extent that the court approves an interim fee of \$1,000,000.00 and an interim payment of disbursements totaling

\$114,279.75. The Public Administrator is directed to pay the combined total of \$1,114,279.75 to Farrell Fritz, as counsel to the objectants, within forty-five (45) days of the issuance of this decision and order.

This constitutes the decision and order of the court.

Dated: December 6, 2021  
Mineola, New York

**ENTER:**

  
**HON. MARGARET C. REILLY**  
Judge of the Surrogate's Court

cc.: Frank R. Seddio, Esq.  
Seddio & Associates, P.C.  
9306 Flatlands Avenue  
Brooklyn, New York 11236

John J. Barnosky, Esq.  
Robert M. Harper, Esq.  
Farrell Fritz, P.C.  
400 RXR Plaza  
Uniondale, New York 11556

Kenneth Mahon, Esq.  
Mahon Mahon Kerins & O'Brien, LLC  
254 Nassau Boulevard  
Garden City South, New York 11530

Jeffrey A. Miller, Esq.  
Westerman Ball, Ederer, Miller, Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, New York 11556

Ms. Peggy Nestor  
15 E. 63rd Street  
New York, New York 10065