

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

New York County Surrogate's Court
DATA ENTRY DEPT.
DEC 30 2014

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Petition of Amy Ruth Peraza, as Administrator c.t.a.
of the Estate of

JOHN P. PERAZA,

Deceased,

DECISION

File No.: 2011-1709/G

for Advice and Direction, Pursuant to SCPA 2107 (2).
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M E L L A, S.:

Amy Ruth Peraza, administrator c.t.a. of the estate of her uncle, John P. Peraza, seeks advice and direction as to the disposition of the proceeds of six of the ten annuities in decedent's defined benefit pension plan (*see* SCPA 2107). Decedent died on January 19, 2011, at age 72. His spouse predeceased him on July 27, 2010; decedent was survived by four siblings. He left a \$31 million gross estate, including the defined benefit pension plan ("the pension plan"), of which he was sole trustee, valued at \$2,752,244.22, and the value of the six annuities at issue was about \$1 million.

Decedent purchased the annuities with pension plan funds, and the annuities were the only assets of the pension plan. He designated his wife as beneficiary of the pension plan, and Mary Ellen Fey and Stephen Lepofsky, his sister and brother-in-law, respectively, as contingent beneficiaries. He designated his wife — and no contingent beneficiary — as beneficiary of each of the six annuities at issue.

Ms. Peraza, in addition to being administrator c.t.a. of decedent's estate, is also trustee of the pension plan. In each of her two fiduciary capacities, Ms. Peraza proposes that the proceeds of the six annuities be distributed to Ms. Fey and Mr. Lepofsky, pursuant to both the Employee

Retirement Income Security Act of 1974 ("ERISA") and the terms of the pension plan. Ms. Peraza argues that Section 3.05 of the pension plan, which reads: "In the event of any conflict between the provisions of the Plan and the terms of any Policy, the Plan provisions shall control," mandates the same result as does ERISA. Ms. Fey and Mr. Lepofsky also argue that the proceeds of the six annuities should be distributed to them.

By contrast, Troy Emmi, decedent's nephew and one of seven residuary beneficiaries,¹ contends that the disposition of the proceeds of the annuities is governed, not by ERISA, but by the law of contracts, and that, pursuant to such law, the proceeds of the six annuities should be distributed to the estate.²

¹ Ms. Peraza is also a residuary beneficiary.

² Although, in his answer filed on December 11, 2013, Mr. Emmi wrote: "it is lawful under this ERISA plan, to accept the beneficiary designations on the six annuity contracts as modifications to the Pension's original beneficiary designation form," in his memorandum of law filed on May 1, 2014, Mr. Emmi contends: "the Plan is not subject to ERISA because ERISA does not apply to Plans such as Mr. Peraza's in which Mr. Peraza was the sole proprietor with no employees." On May 2, 2014, Mr. Emmi filed an amended answer in which he eliminated the reference to ERISA.

In her reply memorandum of law, petitioner argues that Mr. Emmi's amended answer be "stricken" (*see* CPLR 3025 [b]):

"Troy's sole modification of his Answer appears to be the deletion of the word "ERISA"

"The deletion of this wording is in direct contravention of the representations made by all parties in open Court, including Troy's attorneys, that the Pension Plan was controlled by ERISA"

No motion, however, is before the court.

The court, however, need not address the question of whether the pension plan is governed by any title under ERISA. Whether or not ERISA applies, the analysis — in view of the terms of the defined benefit pension plan itself — is simple. To the extent decedent, as trustee of the pension plan, purchased annuities, such annuities are assets of the pension plan, and, accordingly, the proceeds are payable to the designated beneficiaries of the pension plan: Mary Ellen Fey and Stephen Lepofsky, in equal shares.

This decision constitutes the order of the court.

Dated: December 30, 2014



S U R R O G A T E