

In the Queens Probate proceeding regarding the Last Will and Testament of Eugene J. Rocque, I successfully probated a copy of the decedent's Lost Will. Under New York law an original of a Will that is known to have been in the possession of a decedent at the time of his death is presumed to have been revoked by the decedent if the original cannot be located.

The requirements for probating a Will where the original cannot be located are set forth in Surrogate's Court Procedure Act section 1407 entitled "Proof of lost or destroyed will".

In the Rocque case the decedent had been prone to hoarding and his cooperative apartment was the subject of extensive cleaning both before and after his death. This intensive cleaning resulted in the loss of the original Will. Only a copy of his Will was found in the apartment after his death. Based upon the evidence that I presented to the Court, Queens Surrogate Peter J. Kelly, in a decision dated August 14, 2019 rendered in favor of my client, found that the decedent did not revoke his Will and that the copy of the Will was to be admitted to probate. Thus, the copy of the Will was accepted by the Court to allow the distribution of the decedent's estate to his niece, my client, in accordance with the terms of the Will. If the copy of the Will was not admitted to probate, the decedent would have been deemed to have died intestate and his assets would have been distributed to his children who were estranged from him for many years.

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT: QUEENS COUNTY

-----X
Probate Proceeding, Lost Will of

EUGENE J. ROCQUE,

File No. 2018-4098

Deceased.
-----X

This is a proceeding to probate the lost will of Eugene J. Rocque.

After a hearing, the Court finds that the decedent duly executed his will on June 22, 2012, and that, at the time of execution, the decedent was in all respects competent to make a will and not under restraint.

The Court also finds that the original will was retained by the decedent in his cooperative apartment. In 2017 the cooperative corporation commenced legal proceedings against the decedent due to hoarding, insect infestation and unsanitary conditions allegedly existing in decedent's apartment. This litigation resulted in extensive cleaning and restoration at a time when the decedent was hospitalized. This cleaning and restoration resulted in the disposal or destruction of many of the decedent's documents and possessions. After decedent's death on March 23, 2018, another clean out of the apartment was conducted. As a result, the petitioner could not locate the original will but was only able to locate a photostatic copy of the will.

Finally, the attorney-draftsman testified that subsequent to June 22, 2012, the decedent did not contact him to prepare any new will or other testamentary document.

The Court finds that the instrument was not revoked by the decedent.

The Court further finds that the instrument offered is a true and complete conformed copy containing the same provisions as the original will dated June 22, 2012.

Accordingly, the petition is granted. The lost will is admitted to probate and letters testamentary shall issue to the petitioner.

Settle decree.

Dated: August 14, 2019



SURROGATE