

a TEdec Case Note

The Leogrande Case

(821 NYS 2d 862, *Surrogate's Court, Nassau County, New York*, dated September 28, 2006, John B. Riordan, Judge)

In the Matter of the **Petition to Compel an Accounting** by Donald R. Leogrande and Joseph Leogrande, Jr., as Trustees of the Trust by agreement dated January 22, 1986, made by Joseph w. Leogrande, Sr. for the benefit of Joseph Leogrande, Sr. and others, Deceased. (821 NYS 2d 862, *Surrogate's Court, Nassau County, New York*, John B. Riordan, Judge).

Although the actual holding of this case is limited, the discussion of the Court in connection with the **obligation of a fiduciary** to account to the beneficiary, the **burden of proof** upon the fiduciary, and the criteria the Court will look at to **overturn or nullify a release** based upon an the lack of or an inadequate accounting, is compelling. So that you would know the current state of New York Law with regard to these matters, we set forth excerpts from the decision, as follows: (Items in bold - emphasis added.)

1. **Regarding Settlement Agreements:** With respect to the co-trustees' argument that petitioner is not entitled to a judicial accounting because the Settlement Agreement, together with the releases, were intended to completely resolve any and all actual or potential disputes between the parties, the **court recognizes that it is well-settled that stipulations are favored by the courts and will not be set aside lightly** (*Hallock v. State of New York*, 64 NY 2d 224, 485 NYS 2d, 510, 474 NE 2d 1178 [1984]; *Matter of Stark*, 223 AD 2d 450, 650 NYS 2d 608 [1996]; *Matter of Slaughter*, 206 AD 2d 539, 614 NYS 2d 767 [1994]; *Matter of Kaplan*, 150 AD 2d 687, 541 NYS 2d 559 [1989]; *Matter of Hecht*, 23 AD 2d 1001, 266 NYS 2d 342 [1965]). **Stipulations are especially favored** where the parties have been represented by counsel (*Matter of Stark*, 233 AD 2d 450, 650 NYS 2d 608 [1996]; *Heimuller v. Amoco Oil Co.*, 92 AD 2d 882, 459 NYS 2d 868 [1983]). Stipulations of settlement which put an end to litigation promote efficient dispute resolution and are essential to the litigation process (*Hallock v. State of New York*, 64 NY 2d 224, 485 NYS 2d 510, 474 NE 2d 1178 [1984]; *Gage v. Jay Bee Photographers, Inc.*, 222 AD 2d 648, 636 NYS 2d 106 [1995]; *Matter of Kanter*, 209 AD 2d 365, 618 NYS 2d 794 [1994]). **Nevertheless, since a stipulation of settlement is a contract between the parties** (*Gage v. Jay Bee Photographers, Inc.*, 222 AD 2d 648, 636 NYS 2d 106 [1995]; *Matter of Quade*, 121, AD 2d 780, 503 NYS 2d 193 [1986]), **the Court may, in its discretion, relieve a party from a stipulation upon a showing of those grounds necessary to avoid a contract such as fraud, collusion, mistake or accident** (*Matter of Marques*, 299 AD 2d 551, 750 NYS 2d 517 [2002]; *Gage v. Jay Bee Photographers, Inc.*, 222 AD 2d 648, 636, NYS 2d 106 [1995]; *Matter of Slaughter*, 206 AD 2d, 537, 614 NYS 2d 767 [1994]).
2. **General Discussion Regarding Duty of Fiduciary to Account; when the Court will Nullify the Release:** It is well-settled that a fiduciary has a duty "to make complete disclosure of all relevant data pertaining to the estate (see *Matter of Rappaport*, 96 NYS 2d 741, 743 [1950]; see also *Matter of Grove*, NYLJ, June 27, 1989 at 23, col. 1) and to render a full and accurate account of his proceedings as fiduciary (see, *Matter of Donner*, 82 NY 2d 754 [606NYS 2d 137, 626 NE 2d 922]; *Matter of Lasser*, NYLJ, March 13, 1996 at 30, col. 5)" (*Matter of Gunther*, NYLJ, Jan. 11, 2002 at 22). **A fiduciary may settle his account, however, by an out-of-court informal accounting and "such an informal accounting is as effectual for all purposes as a settlement pursuant to a judicial decree"** (*Matter of Kahn*, 144 NYS 2d 253, 255 [1955], *affd.* 2 AD 2d 893, 156 NYS 2d 1016[1956]).

“Once a party has signed a receipt and release, he is bound by its terms” (*Matter of Torres*, NYLJ, June 30, 1998 at 27; see also *Matter of Voislowsky*, 135 Misc 877, 240 NYS 203 [1924]; *Matter of Leyden*, NYLJ, March 2 1955 at 30, col. 6; *Matter of Gutwirth*, NYLJ, May 5, 1995 at 30, col. 2). **An agreement to discharge the fiduciary and settle an account will be binding provided** “(1) all interested parties who would be necessary parties in a judicial proceeding settling the account sign the agreement; (2) the fiduciary has made full disclosure of his proceedings in an account circulated to all signatories to the agreement; and (3) all signatories to the agreement are competent adults” *Matter of Gunther*, NYLJ, Jan. 11, 2002, at 22). **Failure to make full disclosure will nullify the release** (*Matter of Gee*, 46 NYS 2d 662 [1943]; *Matter of Amuso*, 13 Misc. 2d 686, 176 NYS 2d 175 [1958]). If the agreement is made fairly and without coercion, fraud or undue influence, the executor cannot be compelled to account (*Matter of Kahn*, 144 NYS 2d 253 [1955] *affd.* 2 AD 2d 893, 156 NYS 2d 1016 [1956]; *Matter of Gunther*, NYLJ, Jan. 11, 2002, at 22; *Matter of Leyden*, NYLJ, March 2, 1995 at 30). **“The accounting party, however, cannot rely solely on the release and he bears the burden of establishing that the beneficiary was dealt with fairly in obtaining the release** (*Matter of Amuso*, 13 Misc. 2d 686 [176 NYS 2d 175] [1958]). **This would typically be done by submitting the informal account on which the release was based”** (*Matter of Leyden*, NYLJ, March 2, 1995 at 30).

3. **Where the Trustee(s) Owns the Majority of Closely-Held Company, the Fiduciary Duty Extends Not Only to the Trust but also to the Operations of the Corporation:** Joseph, Sr. originally owned a 51% stock interest in Windsor Fuel, Inc. which he transferred to the trust. At the time of transfer, Joseph, Sr. was president of Windsor, chairman of the board of directors and the majority stockholder. In 1980, Joseph, Sr. exercised a first option to purchase all of the shares of Windsor owned by his brother, Charles. Joseph, Sr. simultaneously assigned his rights to purchase to Donald and Joseph, Jr. Donald and Joseph, Jr. thereafter allegedly forced a sale of the remaining shares, thereby giving them in their individual and fiduciary capacities a 100% ownership in Windsor. In *Matter of Hubbell*, 302 NY 246, 254, 97 NE 2d 888 [1951], **the Court of Appeals held that where the trustees own, in their individual and representative capacities, the entire outstanding stock of a corporation, their fiduciary duty extends not only to the trust but also to the operations of the corporation.** Accordingly, Donald and Joseph, Jr. are accountable for the administration of the corporate affairs of Windsor Fuel Oil Co.

Implications: The bottom line is that a proper accounting (providing full disclosure of all financial transactions in the estate or trust) will protect your client and your law firm. Without a full and complete accounting your client and your professional liability are at risk.