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# Fiduciary Litigation

Our trust and estate fiduciary litigation practice represents clients in all manner of disputes. Our main practice is in the New York area, where we litigate in all the Surrogate's Courts, but we also practice in other jurisdictions, including Connecticut, New Jersey, and Florida, where we have additional offices. We also practice in the U.S. Tax Court. This practice group consists of more than 20 lawyers, all of whom are also members of the Firm's trust and estate department or litigation department, each of which has more than 40 attorneys.

Much of our practice is representing fiduciaries and beneficiaries in will and trust contests, the interpretation of will and trust provisions, kinship proceedings, discovery proceedings, contested accountings, and contested conservatorships. We also assist estate and trust beneficiaries in resolving disputes between family members without actual litigation. Furthermore, we have substantial experience in estate and gift tax controversies with the Internal Revenue Service. The Firm is fortunate to have as Counsel the Hon. Renee R. Roth, retired judge of the New York County Surrogate's Court. In her 26 years on the bench Surrogate Roth issued 132 reported opinions, many of which addressed novel issues including: the rights of children born through *in vitro* fertilization after the father's death; the rights of fathers of non-marital children in adoption cases; the reformation of wills to maximize tax benefits to the estate; and permitting flexibility in estate planning for incapacitated individuals.

Our foremost priority is to maintain the standards for which our firm is recognized, and to achieve the goals of our clients in the most advantageous and cost-effective manner possible, whether by trial, settlement, or otherwise.

Some substantial contested fiduciary matters which our attorneys have litigated (either before or after joining the Firm) are summarized in the following descriptions, which are largely representative of the range of contested fiduciary matters handled by our lawyers.

## Representative Trust and Estate Fiduciary Contested Matters

- *Estate of Sylvia Riese v. Commissioner, T.C. Memo 2011-60*, interpreting Section 2036 of the Internal Revenue Code to permit certain trust beneficiaries to avoid having their homes subjected to estate tax.

- *Matter of Obregon*, 91 N.Y. 2d 591, 696 N.E 2d 984 (1998), a victory in the New York Court of Appeals holding that Section 206 of the New York Surrogate's Court Procedure Act does not permit the estate of a Mexican national to use the New York courts to recover assets in the Cayman Islands.
- *Anderson v. Rudnick*, 559 So. 2d 1242 (FL 4th DCA 1990). Successful representation of a guardian, in the Florida trial court and on appeal, to continue to be able to protect the ward's assets against efforts by third parties to cause the ward to terminate a voluntary guardianship and expose the assets to risk of theft.
- *Estate of T. John Folks, Jr. v. Commissioner*, T.C. Memo 1982-43, a seminal case in the discounts applicable for the estate tax valuation of tiered family holding companies.
- *Estate of Bernice Newberger v. Commissioner*, T.C. Memo 2015-246, involved the valuation of painting by the artists Picasso, Motherwell and Dubuffet, among others, where the estate's date of death valuation, taking into consideration the impact of the 2009 market conditions, was substantially upheld.
- *Matter of Hudis*, 187 A.D.3d 910, 130 N.Y.S.3d 738 (2d Dept. 2020), a victory in the Appellate Division, Second Department, upholding a determination by the Nassau County Surrogate's Court that apportioned substantial legal fees against the client's co-beneficiary pursuant to SCPA 2110.
- Representation of an *inter vivos* trustee in defending against and securing complete dismissal of a sole beneficiary's relentless accusations of malfeasance, made in the course of multiple litigations in Surrogate's Court (and Supreme Court) over the course of four years.
- Representation of a trustee in obtaining a successful court interpretation of her authority to distribute trust-owned limited partnership interests to the lifetime beneficiary over the objection of the remainder beneficiaries.
- Representation of a contingent beneficiary in multiple state and federal proceedings involving a bankrupt estate with competing co-fiduciaries. After prolonged and intensive negotiations, we were able to secure a favorable buyout of our client's interest in the estate.
- Representation of a beneficiary in a heavily contested estate accounting proceeding, which primarily involved disputes with the client's brother concerning his lackadaisical administration of their mother's estate. After substantial private negotiations, we were able to secure a settlement to the benefit of all parties and help end the needless expenditure of legal fees.
- Representation of a nominated executor who sought the probate of her grandfather's Will in a contested Surrogate's Court proceeding. After the client's uncles objected to probate, and failed to move forward with certain depositions, our lawyers were able to summarily dismiss the objections and secure the probate of the Will.
- Representation of a beneficiary seeking substantial damages and surcharge in a Surrogate's Court proceeding against an executor of the estate of a majority owner of a substantial furniture importing business on account of failure by the executor to effect an adequate sale of the business interest.
- Handling of a substantial estate administration that presented difficult questions in three U.S. jurisdictions - New York, Florida and West Virginia - as well as in Germany, and involved contested kinship proceedings, conservator malfeasance, and disposition of substantial real estate holdings.
- Representation of decedent's children in negotiation and favorable settlement where surviving spouse claimed marital share of the estate notwithstanding her pre-death waiver of her right to the statutory marital share.
- Representation of a prominent New York area private school in connection with litigation related to construction of a substantial testamentary disposition. Our successful efforts resulted in a substantial

payment to our client.

- Successful settlement of a contested estate administration, which was being consumed by bitter fighting between sibling beneficiaries. Our team of lawyers was able to quell the conflict and reach a settlement that was fair to all and stemmed the flowing tide of excessive litigation fees.
- Representation of an executor in a Surrogate's Court proceeding, which sought to return funds to the estate from the decedent's accounts that were allegedly converted into joint accounts shortly before the decedent's passing. The effort resulted in a substantial recovery for the estate.
- Acting as an expert witness in a contested litigation involving the fiduciary standard for a trustee who has broad discretion to make distributions of trust principal.
- Representation of an estate of a deceased known artist in the U.S. Tax Court where the case is in the process of being settled substantially along the lines as reported on the estate tax return after the IRS had issued a statutory notice of deficiency in excess of \$20,000,000.
- Representation of an estate of an art collector in the U.S. Tax Court in a case involving the estate tax value of various items of artwork of known artists which was successfully settled in excess of amounts determined by the IRS Art Panel.
- Obtaining a full concession in a case filed on behalf of an estate in the U.S. Tax Court involving the value of stadium rights donated to a city.
- Obtaining a full concession from the Department of Justice in a refund case filed on behalf of an estate in U.S. District Court involving the deductibility of a foreign income tax.
- Obtaining a full concession on procedural grounds in a case filed on behalf of a trust in the U.S. Tax Court involving the deductibility of a donation of an historic façade.