

Case 9:15-cv-81298-KAM Document 158-5 Entered on FLSD Docket 10/25/2016 Page 1 of 4

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE /GUARDIANSHIP DIVISION "TY"**

CASE NO. 502011GA000006XXXXSB

**IN RE: GUARDIANSHIP OF
OLIVER BIVINS,**
Incapacitated.

**ORDER ON HYBRID/CONTINGENCES FEE PORTION OF APPLICATION
OF ATTORNEYS FOR WARD FOR FEES AND COSTS**

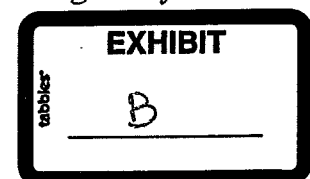
THIS CAUSE came before the Court on the Application of Ciklin, Lubitz & O'Connell and Bill T. Smith, Jr. PA. for attorney fees and costs for representing the Ward pursuant to that certain Representation Agreement dated November 30, 2012, which was approved by Order on Petition for Authorization to Pursue Petition to Determine Beneficiaries and for the Guardian to Enter Into a Hybrid Fee Agreement dated November 30, 2012.

Opposition to this fee request came from Julian Bivins, son of the Ward.

This matter was very well tried by the lawyers.

Based upon the testimony and evidence presented, the Court makes the following findings of facts and conclusions of law.

1. There is no dispute that the Ciklin, Lubitz law firm and Bill T. Smith, Jr., PA. law firm and the Guardian, Curtis Rogers, entered into a Representation Agreement dated November 30, 2012, which was approved by the Court on even date, that contained the following pertinent provisions:
 - a. The lawyers shall bill for legal services performed for the Guardian at a reduced hourly rate.
 - b. In addition to the foregoing, the Guardian agrees to pay the lawyers for any recovery obtained from the litigation and adversary matters relating to any



and all interest that the Ward may have in any property of the Lorna Bivins estate.

2. At the hearing on this matter, the lawyers showed that the legal services performed relating to the Lorna Bivins estate was coded in billing numbers 501 and 514.
3. By separate orders, the parties agreed to the amount of hourly fees to be paid pursuant to the Representation Agreement for matters 501 and 514, as well as all other hourly fees.
4. Left to decide in this order is the contingency fee recovery.
5. Both the attorneys for the Guardian and the attorney for Julian Bivins agreed that the Ward received from the Lorna Bivins estate two parcels of property, commonly referred to as the 330 South Ocean Blvd. Palm Beach, Florida property and the 808 Lexington Avenue New York, New York property.
6. The primary area of dispute were
 - (1) the value of the property recovered.
 - (2) the value of any set offs or debits, if any, to the Ward.
 - (3) the reasonableness of the fee sought, in general.
7. Upon carefully considering the valuation testimony of the witnesses and the exhibits relating thereto, the Court finds that the 50% value of the 333 South Ocean Blvd property recovered is \$602,652.00 and the 50% value of the 808 Lexington Avenue property recovered is \$2,600,000.00 for a gross amount of \$3,202,652.00 less \$232,500.00 which is 50% of the mortgage, leaving a net

50% ownership value of \$2,970,152.00, as of September 13, 2013.

8. To achieve this benefit to the Ward, the parties entered into a Comprehensive Settlement Agreement which was approved by Court order dated September 17, 2013. The next issue is one of set off or debits to the recovery of the Ward as the result of this settlement. It was evident that the Guardian made a cash payment to Oliver Jr's lawyer of \$150,000.00 as a material part of this settlement. Disputed was whether there should also be a \$130,000.00 set off for a purported transfer tax imposed by New York taxing authorities. If this tax is assessed, the Court finds that the amount of the assessment is an appropriate setoff. Julian Bivins' expert claimed the tax would be about \$130,000.00. The Guardian in a letter claimed the tax would be about \$70,000.00. The disposition of this particular dispute will be that once it is determined whether, and if so, the amount of transfer tax actually paid by the Guardian, there shall be a fee adjustment made to counsel. So for calculation purposes, the Court is using \$280,000.00 as a set off on the above mentioned recovery for a net sum of \$2,690,152.00 to which the contingency fee shall apply. If the transfer tax is less, the lawyers are entitled to 12% of the reduced amount.
9. The last issue in whether there should be a further fee reduction on the theory that the total amount of fees, that is, both hourly and contingency fees are unreasonable for this Ward to pay.
10. This Court finds that a guardianship case is an equitable matter and the focus is always on the best interest of the Ward. In this case, the Ward's best interests were extremely well considered by the work and efforts of his lawyers.
11. As a result, the Court declines to make any further fee reduction, and thus the contingency fee will be paid on a recovery amount of \$2,690,152.00, subject to the transfer tax matter.

12. As such, the fee awarded pursuant to the Representation Agreement is as follows:

(1) 18% of \$900,000.00 = \$162,000.00

(2) 15% of 1 million = \$150,000.00

(3) 12% of \$690,152.00 = \$82,818.24

for a total of \$394,818.24, which shall be paid by the Guardian for funds available of the Ward.

13. The Court reserves jurisdiction to enforce the Order.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 23rd day of May, 2014.

MARTIN H. COLIN
Circuit Court Judge

SIGNED & DATED
MAY 23 2014
JUDGE MARTIN H. COLIN

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