

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

RECEIVED
SURROGATE'S COURT

FEB 17 2015

-----X
In the Matter of the Petition of BANKERS TRUST
COMPANY, and HERMAN MARKOWITZ, for settlement of
their Account as Co-Executors of the Last Will and Testament of

WESTCHESTER COUNTY

EDMUND J. McCORMICK,

1988
File No 3522-3522

Deceased,

OPPOSITION TO NOTICE
OF MOTION FOR
PERMISSION TO FILE
SUPPLEMENT TO
FINAL ACCOUNT

and for a direction pursuant to SCPA § 2215 for repayment of
excess distributions to an interested party, and for recovery of
Estate assets from EDMUND J. MCCORMICK, JR. and
BANK STREET INVESTMENT, INC. d/b/a McCORMICK
ORGANIZATION.

-----X
In the Matter of the Proceeding by ALFRED S. HOWES for
Settlement of Account as Co-Executor of the Last Will and
Testament of

EDMUND J. McCORMICK,

Deceased.

X

1. Suzanne McCormick, Widow a Legal Executrix and principle Beneficiary of the Estate of
Edmund J. McCormick, my husband, appearing Pro se¹ at this time affirms that the following is

_____ X
¹Pleadings and applications in this case are being filed by Plaintiff 'in Pro pria Persona,'
wherein applications and pleading are to be considered without regard to technicalities, Pro pria,
applications and pleading are not to be held to the same high standards of perfections as those of
practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir
1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir. 1995), also See In Re: HALL v.
BELLMON 935 F.2d 1106 (10th Cir. 1991). In Puckett v. Cox, it was held that a Pro se pleading
requires less stringent reading than one drafted by a lawyer 456 F2d 233 (1972 6th Circuit
USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957) "The Federal Rules rejects
the approach that pleading is a game of skill in which one misstep by counsel may be decisive to
the outcome and accept the principle that the purpose of an application or pleading is to facilitate
a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which
holds that all applications or pleading shall be construed to do substantial justice.

true in opposition to David G. Keyko' Notice of Motion and his attached Affidavit. (See Exhibit A - 12 pp., Including a copy of the mailing envelope)

2. Bankers Trust Company now known as Deutsche Bank Trust Company Americas has never been a Legal Executor of the Estate of Edmund J. McCormick at any time.

3. Bankers Trust Company the 'Professional Fiduciary was nominated in the Last Will and Testament of my husband Edmund J. McCormick along with four (4) other Co-Executors, including myself. See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated 6-19-13 Exhibit #1 (10 pp. , Selected)

4. The law firm of White & Case who represented the Estate applied for the probate of the Will and the Permanent Letters Testamentary ('Letters') which were issued on January 25, 1989. The 'Letters' named BANKERS TRUST COMPANY OF NEW YORK which was not a 'Legal' entity as of that date and in fact would not become a legal entity until September 7, 1999 over ten (10) years later and further was not nominated in the Will. An 'Exemplified Copy' of the Permanent Letters Testamentary (dated January 25, 1989) that is dated April 10, 1989 and was signed by the Westchester County Surrogate Judge Evans V. Brewster is attached. (See Exhibit B - 2 pp.). Also see Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated 6-19-13 Exhibits #5 (2 pp.)

5. Bankers Trust Company is now known as Deutsche Bank Trust Company Americas (as of March 14, 2002) and has never been known by any other name pursuant to the New York State Department of Financial Services Certificate dated May 21, 2012. See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #13 (5 pp.)

6. BANKERS TRUST COMPANY OF NEW YORK - the name that appears on the Permanent Letters Testamentary dated January 25, 1989, pursuant to the request of the law firm of White & Case became a legal entity according to the New York State Department of Financial Services (Certificate dated June 4, 2012) on September 7, 1999, (over ten years after the date of the Permanent Letters Testamentary dated January 25, 1989) and is now know as DEUTSCHE BANK TRUST COMPANY NEW YORK (as of March 14, 2002) and has never been known as Bankers Trust Company or Deutsche Bank Trust Company Americas pursuant to said Certificate. If this had been a mere mistake it would have been properly corrected with a Court Order, however as the record reveals the 'Pattern and Practice' of cover-up, obstruction and Fraud ensued. See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #14 (1 pp.)

7. Neither Bankers Trust Company nor BANKERS TRUST COMPANY OF NEW YORK have at anytime every had any legal standing in the Estate of Edmund J. McCormick, my husband, and therefore all filings must be rejected as Fraudulent on their face.

8. Bankers Trust Company became a SENTENCED AND CONVICTED FEDERAL FELON (3 Felons Counts) on July 26, 1999, in the Southern District of New York. See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibits #17 (4 pp), #18 (14 pp.), #19 (10 pp.) & #20 (13 pp.)

9. Pursuant to the Surrogate Court Procedure Act Felons are prohibited from acting in any Fiduciary Capacity. Further the stigma of any Felonies carry through to the 'new' entity involved- in any 'Name Change.'

10. The attorneys who are representing Bankers Trust Company have asserted that they have obtained 'Certificates of Relief From Disabilities' from the New York State Parole Board. The first was by cover letter dated December 2, 1999 and the second alleged so-called 'Corrected Copy' was by cover letter dated December 14, 1999. Federal Felony Convictions cannot be relieved by the State of New York See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibits #35 (3 pp.) & #36 (3 pp.)

11. The Estate of Edmund J. McCormick has no Estate Attorney and has not had one since early 1989. White & Case was the Estate Attorney of Record (for approximately two months) until shortly after the Permanent Letters Testamentary dated January 25, 1989 were issued. Thereafter, the record reveals that the law firm of White & Case abandoned the Estate by filing certain papers (a Petition/Motion) dated February 7, 1989 and filed March 7, 1989 with this court on behalf of their 'Enduring Client' Bankers Trust Company See Website <<http://mccormickestatefraud.wordpress.com>> - Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #40 (14 pp.)

12. The Surrogate Judge Evan V. Brewster of Westchester County issued an 'Order For Payment of Executor's Individual Claim' dated March 6, 1989 based on the "motion of White & Case, Esqs., attorneys for the petitioner," Bankers Trust Company. The law firm of White & Case at this time represented Bankers Trust Company their 'Enduring Client' which they stated was a 'Legal' Executor of the Estate of Edmund J. McCormick. The Order was filed on March 7, 1989. See Website <<http://mccormickestatefraud.wordpress.com>> Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit # 41 (5 pp.)

13. Judge James D. Pagonis who was appointed as the Acting Surrogate of Westchester County for the Estate of Edmund J. McCormick issued a Decision, Order, And Decree dated

April 5, 2013. (See attached Exhibit C - 16 pp) in which he purports to rule on Motions and Orders to Show Cause between the years 2001 to 2004.

14. First since Bankers Trust Company is not a 'Legal Executor' and has no legal standing the Pagones Order (Exhibit C) is invalid on it's face and further there are other defects.

15. Further, the Pagones Order (Exhibit C) on the 'Service List,' although my name appears, my attorney of record Jason Bogli, Esq., is not listed at all on the 'Service List.'. I note for the record that Edmund J McCormick, Jr., is not listed on the 'Service List' but his attorney David P. Geis, Esq., is listed. Over a week later when I received copy of this (Pagones) Order via First Class Mail I notified Mr. Bogli. He told me that he placed a call to the Dutchess County Surrogate Court and spoke with the Chief Clerk Erica DeTraglia regarding the failure (defect) to include him on the 'Service List.' as the attorney of record. Within 15 minutes of the call Mr. Bogli received a fax copy of the Pagones Order from David G. Keyko.

16. The name of Samuel J. Gilbert, Esq., appears on the Pagones Order (Erxhibit C) 'Service List.'. As is known attorney Gilbert has never filed any manner of papers in this Estate matter whatsoever. He solely acted as counsel to me in an attempt to open settlement negotiations with Mr. Keyko and he stated this as only negotiations to Mr. Keyko so that there would be no misunderstanding. In a series of missives addressed to Mr. Keyko, attorney Gilbert demands that his name be removed from the 'Service Lists.'

17. Handwritten notes made by attorney Gilbert to David Keyko (Via Fax) made Gilbert's position very clear that it was unauthorized on a letter that was dated March 13, 2013 from David G. Keyko to Erica DeTraglia Esq. This missive is further of importance because it records that Mr Keyko was forwarding certain documents since apparently the Court did not have copies

of these important Estate documents. See Website <<http://mccormickestatefraud.wordpress.com>>
Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #96 (3 pp.)

18. A missive dated April 25, 2013, from Samuel J Gilbert, Attorney at Law, to David G. Keyko (Pillsbury Winthrop Shaw & Pittman, LLP) again addresses the matter of the unauthorized listing of his name (Gilbert's) and the fact that it should be removed from the 'Service List' immediately. This missive clearly shows the fact that David G. Keyko was the one that was able to manipulate the Surrogate Court on the 'Service List' of the Pagones Order for his own reasons along with 'Confidential' Ex parte communications with the Surrogate's Court. See Website <<http://mccormickestatefraud.wordpress.com>> Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #100 (2 pp.)

19. During one of our attempts to secure copies of the underlying documents that were listed on the Pagones Order we went to the Dutchess County Surrogates Court in Poughkeepsie, NY and carefully went through some boxes and made copies of the documents that we could locate along with others that were relevant. The Chief Clerk Erica DeTraglia examined the copies that had been made and took some to them saying "you are not suppose to see these" and pulled the originals from the file as well. She then had one of the clerks (a man) sit and watch what we looked at and copied. We believe he attempted to entrap us by saying that we had looked at all the boxes, which we had not. We were informed that we could call and make an appointment to look at the documents in the future.

20. Among the documents that the Chief Clerk Erica DeTraglia removed were papers regarding the issuing a Certificate of Appointment of Executors from the Surrogate Court for the Estate of Edmund J. McCormick. In a series of correspondence with Deutsche Bank I had asked

the Trust Officer Brandi Goldenberg, Esq., to provide me with proof that Bankers Trust Company/Deutsche Bank was a legal Executor of the Estate of my husband Edmund J. McCormick. By letter dated January 28, 2011 Brandi Goldenberg, Esq. forwarded a copy of a Certificate of Appointment of Executors dated January 21, 2011 (See Exhibit #10). This document states in part that **“Deutsche Bank Trust Co. Americas f/k/a Bankers Trust Co. Of NY”** is a Legal Executor of the Estate of Edmund J. McCormick and was issued by Hon. James D. Pagones, Judge of the Westchester County Surrogate Court and Joseph M. Accetta, Chief Clerk. This official Certificate of Appointment of Executors dated January 21, 2011 is Fraudulent. See Website <<http://mccormickestatefraud.wordpress.com>> Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibits #8 (1 pp.), #9 (1 pp.) & #10 (3 pp.)

21. One of the documents that we saw but was denied us by Chief Clerk Erica DeTraglia was what appeared to be a Draft Certificate sent to the Court by David G. Keyko Esq. A friend recently went to the Surrogate Court in White Plains and looked at the very short listing of documents for the Estate on the computer. It was discovered that an unsigned or dated DRAFT Certificate of Appointment of Executors that lists the name of “Attorney: David G. Keyko, Pillsbury Winthrop Shaw Pittman LLP, 1540 Broadway, New York NY 10036” as having prepared it and plainly directed the Court to issue it in the manner he had laid out. It lists Deutsche Bank Trust Company Americas, 280 Park Avenue, New York NY 10017 as a Legal Executor and that is further aiding and abetting in the continuing and ongoing Fraud. A copy was obtained and is included as part of the document (See Exhibit D - 1 pp.)

22. On about May 17, 2013 attorney at law Jason Bogli filed with the Dutchess County Surrogate Court an ‘Opposition to Notice of Settlement With Response to Discovery Demands’ with regard to the Pagones ‘Order’ (Exhibit B) dated April 5, 2013 (Exhibit E - 15 pp. With

attached Exhibit). To my knowledge there has been no ruling on attorney Bogli's Opposition papers.

23. David G. Keyko in his Notice of Motion and Affidavit dated February 2, 2015 states that Deutsche Bank Trust Company Americas (formerly, Bankers Trust Company), as co-executor of the Estate of Edmund J. McCormick. For the record and as previous detailed above Bankers Trust Company, notwithstanding attorney at law Keyko's assertions, is not and never has been a Legal Executor of the Estate Edmund J. McCormick, my husband. The Fraudulent entity listed on the Permanent Letters Testamentary was BANKERS TRUST COMPANY OF NEW YORK not the nominated Executor Bankers Trust Company - The Emperor has no clothes. Attorney Keyko's client Bankers Trust Company has no Legal Standing, never has had any Legal Standing; and is a Convicted and Sentenced Federal Felon. As a result attorney Keyko's papers should be rejected based on their Fraudulent Face and being a Fraud on the Court.

24. Attorney Keyko states that Gail Markowitz, an alleged executor of the Estate of Herman Markowitz, (deceased co-executor) wants to undertake certain actions. It is my understanding that Herman Markowitz is deceased, however, I have never been officially notified. I certainly have no proof of the assertion that his daughter Gail Markowitz is an alleged Executor of the Markowitz Estate or where the Estate maybe domiciled. Is there an Estate attorney? Again, I have received no notice of same.

25. There was in fact another co-executor Alfred S. Howes, that had resigned January 23, 1992. It is my understanding that subsequently, at some point he was placed in a Guardianship by the Courts, further I believe he may have also died but I have no proof of this. I have no information nor have I seen anything that the Guardian ever filed documents with my husband's Estate regarding his stewardship as a Co-Executor. On a Certificate of Appointment of Fiduciary

dated April 20, 2004, the Chief Clerk of the Westchester Surrogate Court included a handwritten notation of the resignation. It also should be noted that this document is also Fraudulent since it lists Bankers Trust Company as a Legal Executor. See Website <http://mccormickestatefraud.wordpress.com> Filed Affidavit of Suzanne McCormick dated June 19, 2013 - Exhibit #7 (1 pp.)

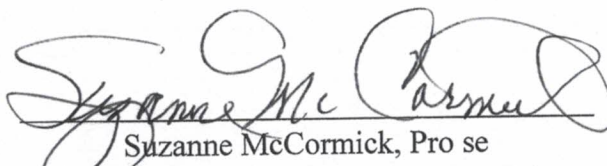
26. Since the Surrogate Court has stated for the record that there is no 'Docket Sheet' for the Estate of Edmund J. McCormick, notwithstanding the requirements of the Surrogate Court Procedure Act, it makes it impossible to map the documents and what has or has not taken place with regard to my husband's Estate. Also, after looking through the file boxes, it is evident that a great deal of the file is missing which is one of the reasons that Erica DeTraglia, the Chief Clerk of the Dutchess County Surrogate Court was asking David G. Keyko for records. This also fits with information given to us from a clerk in the Appellate Division, 2nd Department in Brooklyn who said that the Estate File had been shipped back to Westchester and had been 'Lost' and Westchester has attempted to blame the Appellate Division. See Website <http://mccormickestatefraud.wordpress.com> Surrogate Court Docket FOIL dated January 30, 2014

27. This Estate was effectively moved to the Dutchess County Surrogate Court in approximately 2003. Attorney Keyko, who is representing the Fraudulent Executor and Convicted and Sentenced Federal Felon is now filing his papers in White Plains in Westchester County. As a Legal Executor, I have not received any notice that the venue has been moved by the Court from Dutchess County. I have read that Surrogate Judge Anthony Scarpino has resigned as the Surrogate Judge recently. Is this filing more of attorney David G. Keyko's manipulation?

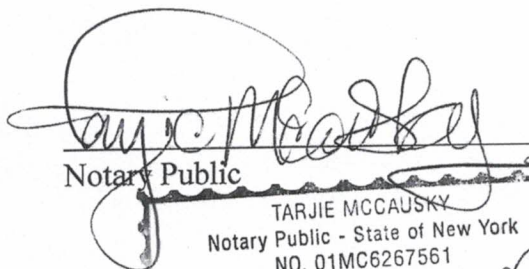
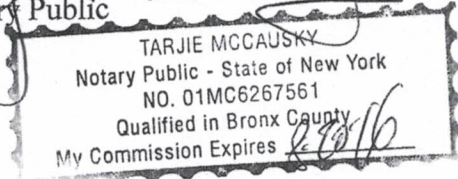
Therefore, I must object on a continuing and ongoing basis to these actions and request that the facts, that I solely as the Widow and Legal Executrix have uncovered, as well as the compelling documentary evidence be considered prior to any premature actions. I strongly object o any distributions of any Estate money since I have not received my full legacy due me one month after death, nor have I received my full marital deduction as I believe the Internal Revenue Form #706 indicates and which the Internal Revenue agent asked if I had received.

WHEREFORE, Suzanne McCormick opposes Mr. Keyko's Motion For Permission To File Supplement to Final Account at this time, and for such other and further relief as may be deemed just and proper in the interests of Justice.

Dated February 17, 2015


Suzanne McCormick, Pro se
Legal Executrix and Principal Beneficiary
Of The Estate of Edmund J. McCormick

Sworn to me this 17th day of
February 2015


Notary Public

TARJIE MCCAUSKY
Notary Public - State of New York
NO. 01MC6267561
Qualified in Bronx County
My Commission Expires 2/16

Erica DeTraglia, Esq.
Chief Clerk
Dutchess County Surrogate's Court
10 Market Street
Poughkeepsie, NY 12601

David G. Keyko, Esq.
Pillsbury, Winthrop, Shaw & Pittman, LLP
1540 Broadway
New York, NY 10036

David P. Geis, Esq.
18 Pope Avenue - P.O. Box 7927
Hilton Head Island, SC 29928

Robert Tiedeman III, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036

Richard E. Carmen, Esq.
Brief Justice Carmen Kesselman & Kleiman, LLP
805 Third Avenue, Suite 600
New York, NY 10022

EXHIBIT A

STATE OF NEW YORK

SURROGATE'S COURT: COUNTY OF WESTCHESTER

In the Matter of the Petition of BANKERS
TRUST COMPANY and HERMAN
MARKOWITZ for Settlement of Their
Account as Co-Executors of the Last Will
and Testament of

EDMUND J. McCORMICK,

Deceased,

and for a direction pursuant to SCPA
§ 2215 for repayment of excess
distributions to an interested party, and for
recovery of Estate assets due from
EDMUND J. McCORMICK, JR. and
BANK STREET INVESTMENT, INC.
d/b/a McCORMICK ORGANIZATION.

In the Matter of the Proceeding by
ALFRED S. HOWES for Settlement of
Account as Co-Executor of the Last Will
and Testament of

EDMUND J. McCORMICK,

Deceased.

File No. 3522-1988(A)

**NOTICE OF MOTION FOR
PERMISSION TO FILE
SUPPLEMENT TO
FINAL ACCOUNT**

PLEASE TAKE NOTICE, that upon the annexed Affidavit of David G. Keyko
and exhibits thereto, Deutsche Bank Trust Company Americas (formerly, Bankers Trust
Company), as a co-executor of the Estate of Edmund J. McCormick, deceased, will move the
Westchester County Surrogate's Court at 111 Dr. Martin Luther King, Jr. Boulevard, White
Plains, New York, on the 24th day of February, 2015 at 9:30 o'clock in the forenoon of that day,
or as soon thereafter as counsel may be heard, for an order allowing Deutsche Bank Trust

Company Americas and Edmund J. McCormick, Jr., as co-executors of the Estate of Edmund J. McCormick, deceased, and Gail Markowitz, as executor of the Estate of Herman Markowitz, deceased co-executor of the Estate of Edmund J. McCormick, deceased, to file a supplement to the Final Account previously filed herein (covering the period from November 27, 1988 through July 25, 1996), which was approved by Order and Decree of this Court dated April 17, 2014, to reflect the distributions made, expenses paid, receivables collected and assets on hand as of a more current date.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR Rule 2214(b), answering papers, if any, are required to be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
February 1, 2015

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: 

David G. Keyko
1540 Broadway
New York, NY 10036-4039
Tel: 212-858-1000

Attorneys for Petitioner Deutsche Bank Trust Company Americas

STATE OF NEW YORK

SURROGATE'S COURT: COUNTY OF WESTCHESTER

In the Matter of the Petition of BANKERS
TRUST COMPANY and HERMAN
MARKOWITZ for Settlement of Their Account as
Co-Executors of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased,

and for a direction pursuant to SCPA
§ 2215 for repayment of excess distributions to an
interested party, and for recovery of Estate assets
due from EDMUND J. McCORMICK, JR. and
BANK STREET INVESTMENT, INC. d/b/a
McCORMICK ORGANIZATION.

In the Matter of the Proceeding by ALFRED S.
HOWES for Settlement of Account as Co-
Executor of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased.

AFFIDAVIT OF
DAVID G. KEYKO

File No. 3522-1988(A)

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

David G. Keyko, being duly sworn, deposes and says:

1. I am a member the law firm of Pillsbury Winthrop Shaw Pittman LLP,
attorneys for Deutsche Bank Trust Company Americas (formerly, Bankers Trust Company,
hereinafter, the "Bank"). I make this affidavit in support of the motion for an order allowing the
Bank and Edmund J. McCormick, as co-executors of the Estate of Edmund J. McCormick,
deceased, and Gail Markowitz, as executor of the Estate of Herman Markowitz, deceased co-

executor of the Estate of Edmund J. McCormick, deceased, to file a supplement to the Final Account previously filed herein which covered the period from November 27, 1988 through July 26, 1996, which was approved by Order and Decree dated April 17, 2014, to reflect the distributions made, expenses paid, receivables collected and assets on hand as of a more current date. Unless otherwise indicated, this affidavit is based upon my knowledge of the relevant facts and a review of the filings in this matter.

Background

2. The decedent, Edmund J. McCormick, died on November 27, 1988 leaving a Will dated November 20, 1985 (the "Will"). The Will was duly admitted to probate by the Westchester County Surrogate's Court on January 25, 1989 whereupon Letters Testamentary were issued to the Bank, Suzanne V. McCormick ("Suzanne"), Edmund J. McCormick, Jr. ("Ed, Jr."), Alfred S. Howes ("Howes") and Herman Markowitz ("Markowitz"), the executors named under the Will.

Final Account

3. The administration of the decedent's estate (the "Estate") was prolonged and complicated. In November 1996, the Bank and Markowitz petitioned for judicial settlement of their Final Account of Proceedings covering the period from November 27, 1988 through July 25, 1996 (the "Final Account"). Howes had previously resigned as co-executor on March 12, 1992 and filed a separate Petition seeking judicial settlement of the Final Account for his period of service.

4. The Bank, Markowitz and Howes also requested that (i) they be allowed their commissions and be released and discharged, (ii) certain attorney and accounting fees be paid,

(iii) Ed, Jr. be required to repay certain sums to the Estate and (iv) Suzanne and Ed, Jr., as executors, either adopt the Account or account separately.

5. Neither Suzanne nor Ed, Jr. filed an account of their proceedings as executors. Instead, in September 1998 Suzanne and other family members filed objections to the Final Account, as beneficiaries under the Will, and Ed, Jr. filed objections to the Final Account as a co-executor and as a beneficiary under the Will.

6. Over the next several years litigation ensued which resulted in two settlements. By Stipulation and Order dated December 6, 2001 (the "2001 Settlement"), the beneficiaries other than Suzanne and Ed, Jr. settled their objections against the Bank, Markowitz and Howes and approved the Final Account and consented to its judicial settlement. By Decision, Order and Decree dated June 3, 2003 (the "2003 Settlement"), Ed, Jr. withdrew his objections to the Final Account and consented to its judicial settlement. Ed, Jr. also repaid certain sums to the Estate.

7. I understand that Howes died on November 8, 2007 and Markowitz died on July 4, 2012.

8. By Decision, Order and Decree dated April 5, 2013, Suzanne, the sole objectant to the Final Account, was ordered to comply with certain discovery directives by April 30, 2013 and to pay a certain sum to the Bank within 30 days of the April 5, 2013 Order, otherwise her objections to the Final Account would be dismissed.

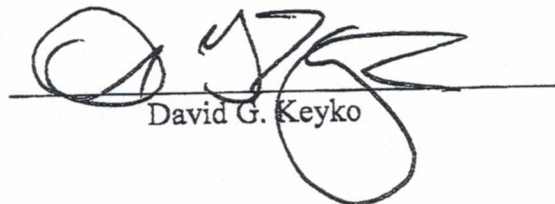
Order and Decree dated April 17, 2014

9. By Order and Decree dated April 17, 2014, a copy of which is attached as Exhibit A hereto, along with a copy of the Notice of Entry, Suzanne's objections were dismissed and the Final Account was judicially settled and approved.

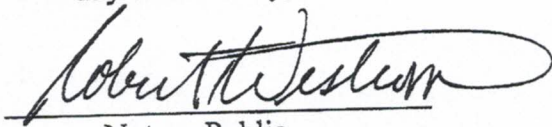
10. As a result of the settlements and the protracted litigation, the Final Account as submitted in 1996 and approved in 2014 does not reflect the distributions made, expenses paid and receivables collected during this 18 year period or the assets currently on hand.

11. The Bank, Ed, Jr. and the Estate of Herman Markowitz therefore seek permission to (i) file a supplement to the Final Account, (ii) petition the Court for its judicial settlement, and (iii) distribute the remaining assets on hand as directed by the Court.

WHEREFORE, it is respectfully requested that Deutsche Bank Trust Company Americas, Edmund J. McCormick, Jr. and the Estate of Herman Markowitz be allowed to file a supplement the Final Account, petition the Court for its judicial settlement and distribute the remaining assets on hand as directed by the Court.


David G. Keyko

Sworn to before me this
2nd day of February, 2015.


Notary Public

ROBERT T. WESTROM
Notary Public, State of New York
No. 01-WE4919195
Qualified in Richmond County
Certificate Filed in New York County
Commission Expires Feb. 28, 2018

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

In the Matter of the Petition of BANKERS TRUST
COMPANY and HERMAN MARKOWITZ for
Settlement of their Account as Co-Executors of the Last
Will and Testament of

EDMUND J. McCORMICK, Deceased,

and for a direction pursuant to SCPA §2215 for repayment
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McCORMICK, JR. and BANK STREET INVESTMENT,
INC. d/b/a McCORMICK ORGANIZATION.

In the Matter of the Proceeding by ALFRED S. HOWES
for Settlement of Account as Co-Executor of the Last Will
and Testament of

EDMUND J. McCORMICK, Deceased.

File No. 3522-1988

NOTICE OF ENTRY

FILED
SURROGATE'S COURT

MAY 23 2014

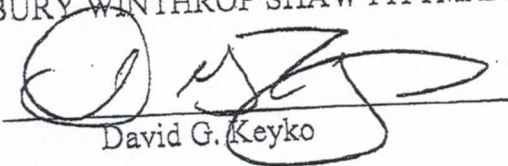
WESTCHESTER COUNTY
DEPUTY CHIEF CLERK

PLEASE TAKE NOTICE that an Order and Decree of which the attached
is a true copy, was duly entered in the office of the Clerk of the Surrogate's Court,
Westchester County and the office of the Clerk of the Surrogate's Court, Dutchess
County on April 17, 2014.

Dated: May 20, 2014

PILLSBURY WINTHROP SHAW PITTMAN LLP

By:


David G. Keyko

1540 Broadway
New York, New York 10036
(212) 858-1000

Attorneys for Bankers Trust Company

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New York, NY 10022

MS. SUZANNE McCORMICK
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ERICA DETRAGLIA, ESQ., CHIEF CLERK
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County of Dutchess
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Poughkeepsie, NY 12601

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Surrogate's Court of the State of New York
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MULVANEY & CARPENTER LLP
Wall Street Plaza
88 Pine Street, 21st Floor
New York, NY 10005

At a Surrogate's Court of the State of New York held in and for the County of Westchester at the Courthouse located at 111 Dr. Martin Luther King Blvd., White Plains, New York on the 17th day of ~~December 2013~~. *April, 2014*.

P R E S E N T:

HON. JAMES D. PAGONES, SURROGATE

In the Matter of the Petition of BANKERS TRUST COMPANY and HERMAN MARKOWITZ for Settlement of their Account as Co-Executors of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased,

and for a direction pursuant to SCPA §2215 for repayment of excess distributions to an interested party, and for recovery of estate assets due from Edmund J. McCormick, Jr. and Bank Street Investment, Inc. d/b/a McCormick Organization.

In the Matter of the Proceeding by ALFRED S. HOWES for Settlement of Account as Co-executor of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased.

File No. 1988-3522

ORDER AND DECREE

WHEREAS, on October 17, 2002, Bankers Trust Company, n/k/a Deutsche Bank Trust Company Americas ("Bankers Trust") filed a motion dated October 15, 2002 for an order

DUTCHESS COUNTY
SURROGATE'S COURT

APR 17 2014

FILED AND ENTERED

~~Bankers Trust v. Mrs. McCormick~~ ~~to comply with discovery and file written~~

the "Discovery Motion":

WHEREAS, by Decision, Order, and Decree dated April 5, 2013 (the "April 5 Order"), this Court granted Bankers Trust's Discovery Motion, and ordered that Mrs. McCormick's objections to the final accountings submitted herein shall be dismissed unless Mrs. McCormick "timely and fully" complied with certain discovery directives by April 30, 2013, and pay Bankers Trust \$5,000.00 and file with the Court written proof of payment within thirty (30) days of the April 5 Order (the "Directives"); and

WHEREAS, in accordance with the April 5 Order, Bankers Trust's counsel has submitted an affirmation stating that Mrs. McCormick has failed to comply with any of the Directives within the periods specified in the April 5 Order, and Mrs. McCormick has failed to submit any evidence to the contrary; it is hereby

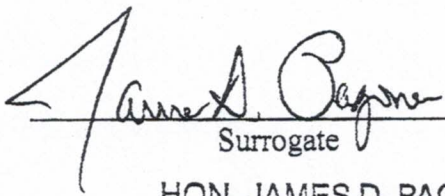
ORDERED, that Mrs. McCormick's objections to the final accountings in this proceeding are dismissed; and it is further

ORDERED, that the final accountings in this proceeding are approved.

Dated: Poughkeepsie, N.Y.

ENTER:

APR 17 2014



Surrogate

HON. JAMES D. PAGONES
Acting Surrogate for Westchester County

FIRST • CLASS

FIRST • CLASS

FIRST • CLASS

FIRST • CLASS

First Class Mail

pillsbury

Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway | New York, NY 10036-4039

DAVID G. KEYKO

MS. SUZANNE McMORMICK
231 Clinton Avenue
Dobbs Ferry, NY 10522

FIRST • CLASS

SS

EXHIBIT B

File No.3522-19 88.

COPY

LETTERS TESTAMENTARY

The People of the State of New York

Know All Men by These Presents that at the City of White Plains, County of Westchester, on the25TH..... day of..... JANUARY..... 19..... 89, before HON. EVANS V. BREWSTER, Surrogate of our said County, the Last Will and Testament of

EDMUND J. MC CORMICK

late of the VILLAGE of DOBBS FERRY in said County, deceased, was proved and

ALFRED S. HOWES, HERMAN MARKOWITZ

SUZANNE V. MC CORMICK, EDMUND J. MC CORMICK, JR.

& BANKERS TRUST COMPANY OF NEW YORK

the executORS named therein, having duly qualified according to law, ARE hereby authorized to administer the estate of said decedent pursuant to the provisions of the will, subject to the jurisdiction and supervision of this Court.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Surrogate's Court of the County of Westchester to be hereunto affixed.

Witness: Honorable Evans V. Brewster, Surrogate of our said County, at the City of White Plains, the 25TH day of JANUARY in the year of our Lord one thousand nine hundred and EIGHTY-NINE

[Signature]
Chief Clerk

Notes.

Attention is called to the provisions of EPTL 11-16 and SCPA 719 which makes it a misdemeanor and a cause for removal for an Executor, Administrator, Trustee or Guardian to deposit or invest Estate funds in his individual account in name. All Estate funds must be deposited in the name of the Executor, Administrator, Trustee or Guardian.

Nº 13052

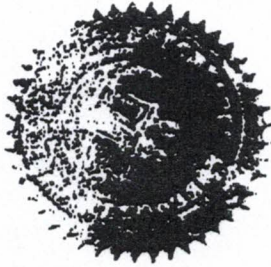
All which we have caused by these presents to be exemplified, and the Seal of our said Surrogate's Court to be herunto affixed.

Witness, HONORABLE EVANS V. BREWSTER, Surrogate of the County of Westchester, the 10TH day of APRIL 19 89



Chief Clerk of the Surrogate's Court

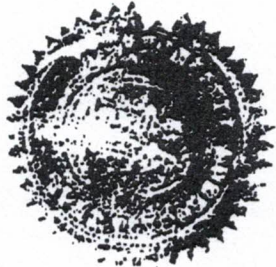
I, EVANS V. BREWSTER, Surrogate of said County, do hereby certify that PHILIP E. PUGSLEY whose name is subscribed to the preceding exemplification, is the Chief Clerk of the said Surrogate's Court of the County of Westchester, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Surrogate's Court, and that the attestation thereof is in due form and according to the form of attestation used in this State.



WITNESS, my hand and the Seal of said Surrogate's Court this 10TH day of APRIL 19 89 Evans V. Brewster Surrogate.

State of New York } ss. County of Westchester

I, PHILIP E. PUGSLEY Chief Clerk of the Surrogate's Court of the County of Westchester, do hereby certify that HONORABLE EVANS V. BREWSTER whose name is subscribed to the preceding Certificate, is the Surrogate of the County of Westchester, duly elected, sworn and qualified, and that the signature of said Surrogate to said Certificate is genuine.



IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the Seal of the said Court, this 10TH day of APRIL 19 89

Chief Clerk of the Surrogate's Court

EXHIBIT C

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

-----X
In the Matter of the Petition of BANKERS TRUST
COMPANY, and HERMAN MARKOWITZ, for
settlement of their Account as co-executors
of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased,

**DECISION,
ORDER, AND
DECREE**

File No. 1988-3522

and for a direction pursuant to SCPA §2215 for
repayment of excess distributions to an interested
party, and for recovery of Estate assets from
EDMUND J. McCORMICK, JR. and
BANK STREET INVESTMENT, INC.
d/b/a McCORMICK ORGANIZATION.

-----X
In the Matter of the Proceeding by
ALFRED S. HOWES for Settlement of
Account as Co-Executor of the Last Will and
Testament of

EDMUND J. McCORMICK,

Deceased.

-----X
**PAGONES, J.D., S.C.J., Acting Surrogate of
Westchester County Surrogate's Court**

On August 6, 2002, co-executor Bankers Trust Co., n/k/a Deutsche Bank (Deutsche) filed
a motion for an order compelling Bernard Gartlir to produce all documents he had previously
been ordered to produce by court order dated June 26, 2002.

On September 23, 2002, Deutsche filed a motion dated September 10, 2002 for an order
directing non-party Patrick Hanley to respond to certain deposition questions.

On September 26, 2002, co-executor Suzanne McCormick (Mrs. McCormick) cross-

moved for an order pursuant to CPLR 3214 to compel Deutsche to comply to a demand to produce and to compel a response to interrogatories.

On October 17, 2002, Deutsche filed a motion dated October 15, 2002 for an order directing Mrs. McCormick to comply with discovery and for sanctions.

On October 30, 2002, Mrs. McCormick moved, by Order to Show Cause, to remove Deutsche as executor and for the recusal of Surrogate Scarpino.

On March 22, 2004, Mrs. McCormick moved, by Order to Show Cause, to remove Deutsche and for an order compelling disbursement of income and principal from a trust.

On December 11, 2002, Surrogate Scarpino issued a decision denying Deutsche's motion to compel Hanley. The decision held further that the portion of Mrs. McCormick's cross-motion seeking copies of deposition video tapes was moot as Deutsche had agreed to provide them. Surrogate Scarpino also held that Deutsche, as well as co-executors Edmund McCormick, Jr. (Edmund) and Herman Markowitz (Herman) must comply with demands numbered 1, 2 and 5-7 served on August 22, 2002. Deutsche was required to respond to demand 4 by producing transcripts of certain audio tapes. Deutsche was further required to produce copies of all exhibits used at depositions, including the deposition of John Beck. Surrogate Scarpino conditioned the production of all documents upon Mrs. McCormick's "prior payment of the reasonable cost of the production." Surrogate Scarpino reserved decision on Mrs. McCormick's application to compel a response to interrogatories.

On February 6, 2003, Surrogate Scarpino granted the application for recusal. By order of the Administrative Judge for the Ninth Judicial District, dated February 24, 2003, all pending matters were assigned to Hon. Alfred J. Weiner, Surrogate of Rockland County.

Deutsche moved, on or about February 25, 2003, for an order deeming Mrs. McCormick's September 26, 2002 cross-motion abandoned for failure to submit an order pursuant to 22 NYCRR §207.37(a). On April 11, 2003, Surrogate Scarpino rendered a decision and order granting the motion to the extent that the Court entered Deutsche's proposed counter-order.

Before any of the remaining motions were decided, the Administrative Judge, on April 2, 2003, assigned all pending matters to this court.

Based upon a review of this court's records by the current Chief Clerk of the Dutchess County Surrogate's Court, who was appointed in November, 2010 to replace the retiring Chief and Deputy Chief Clerks, none of the above motions were ever docketed in Dutchess County and did not appear on any calendar in November, 2010. According to the current Chief Clerk, she was advised during her transition that all matters assigned to this court relative to this estate had been decided and there were no pending issues. Upon receipt of a letter, dated May 12, 2012, from Mr. Edmund McCormick, a comprehensive review was made to determine the existence of any pending matters. Each of the above undocketed and undecided motions was subsequently discovered among the eight boxes of submissions representing the proceedings in this estate. It appears that the motions remained undecided because they were not docketed on the calendar of pending motions and petitions.

Compel Gartlir to Produce

Deutsche moved by order to show cause for an order compelling attorney Bernard Gartlir to produce all documents as previously ordered by the court. Mr. Gartlir indicated, in response to that order, that he refused to produce certain documents, asserting privilege. After an *in*

camera inspection of the challenged documents Surrogate Scarpino, on September 23, 2002, rendered an oral decision to the motion to compel and orally directed Mr. Gartlir to produce certain documents. Mrs. McCormick was directed to settle an order if she wished Surrogate Scarpino's decision to be in writing. The record does not reflect that such an order was ever submitted by Mrs. McCormick.

Extend Discovery Schedule

On October 30, 2002, Mrs. McCormick moved, by order to show cause, to, *inter alia*, extend the discovery schedule which had been ordered at the inception of this proceeding. On November 23, 2001, Surrogate Scarpino issued a Discovery Order, which was amended on May 8, 2002. Movant has not offered sufficient justification to further extend the discovery order which had already been amended to accommodate the parties. For the foregoing reasons, Mrs. McCormick's application to extend discovery in this proceeding is denied.

Compel Response to Interrogatories

Surrogate Scarpino's Discovery Order provided that:

"all demands for Discovery and Inspection including interrogatories and motions for requests for production on non-parties are to be served on or before December 12, 2001."

Neither party requested nor moved for an extension of that deadline and no extension was established by the Court.

On August 20, 2002, Mrs. McCormick served interrogatories on Deutsche and Edmund. Deutsche had previously responded to interrogatories that were timely served by Mrs. McCormick. Deutsche timely rejected the August 20, 2002 interrogatories.

The interrogatories dated August 20, 2002 relate to Surrogate Scarpino's employment while at Banker's Trust, Deutsche's predecessor. Attorney Bogli avers that responses are necessary to address the issue of Surrogate Scarpino's recusal. Any such necessity is no longer relevant as Surrogate Scarpino has recused himself.

The interrogatories served by Mrs. McCormick on August 20, 2002 were not timely served pursuant to the discovery order of Surrogate Scarpino. Further, the interrogatories are not relevant to the issues presented in this contested accounting proceeding. For the foregoing reasons, it is ordered that Mrs. McCormick's motion to compel responses to interrogatories is denied.

Compel Mrs. McCormick to Disclose and Impose Sanctions

Deutsche moves for an order directing Mrs. McCormick "to comply with certain discovery obligations" and for the imposition of sanctions against Mrs. McCormick and her agents "for discovery abuses." Movant's attorney has not filed a separate affirmation of good faith, but his affidavit in support of this application comports with the requirements of 22 NYCRR §202.7.

Surrogate Scarpino's discovery order allows a party to serve a post-EBT demand for discovery and inspection "within 10 days after the EBT to which it relates." The order requires that such a demand "shall be responded to within 14 days after services thereof." (sic)

Movant Deutsche timely served a post-EBT demand for discovery and inspection on Mrs. McCormick on August 9, 2002. By letter, dated August 19, 2002, movant's counsel reminded Mrs. McCormick's attorney that responses were due on August 23, 2002. Mrs. McCormick failed to respond to the post-EBT demand and movant's counsel reminded her attorney by letter,

dated August 27, 2002, of her obligation pursuant to the order of the court. Mrs. McCormick failed to move for a protective order or to otherwise object to the post-EBT demand and has simply failed to respond. In response to the instant motion, Mrs. McCormick's attorney avers, without any evidentiary support, that he is working diligently to respond without offering any explanation for the continued failure. Counsel raises no objection to any of the demands and simply seeks more time to respond.

Movant Deutsche also asserts that Mrs. McCormick has secreted documents that were the subject of a subpoena, dated August 21, 2002, which was served on Alexander Lehmann. At Lehmann's non-party deposition on September 16, 2002, he acknowledged receipt of the subpoena including an attachment entitled "Documents to be Produced." Lehmann averred that, after he was served with the subpoena, he returned to Mrs. McCormick two boxes of documents, representing all the documents in his possession pertaining to this estate. At Lehmann's deposition, Deutsche's counsel demanded that Mrs. McCormick produce the two boxes of documents from Lehmann. Mrs. McCormick's counsel took the request "under advisement" and has since failed to respond to Deutsche's continuing written demands for the same. Instead, Mrs. McCormick has provided what purports to be a list of documents which Lehmann "examined" on behalf of Mrs. McCormick. Mrs. McCormick has offered no justification for her failure to produce the subpoenaed documents and proffers no explanation for her complicity in blatantly ignoring a lawful subpoena and secreting subpoenaed documents. Under the circumstances, preclusion is an appropriate remedy. (*Dalton v. Nalven*, 245 AD2d 540 [2d DEPT 1997])

Movant also complains about the conduct of non-party Patrick Hanley at the deposition of Lehmann. Deutsche has submitted the affidavit of Roberta Caiola, a shorthand reporter and notary public who was present before and during the deposition in question. Ms. Caiola avers

that she was setting up for the deposition when Lehmann was escorted into the room. At some point, before anyone else arrived, Deutsche's attorney Anne Schwab brought in a box and placed it on a chair on the opposite side of the table from Lehmann, stating that the box belonged to Deutsche's counsel, Mr. Keyko. Ms. Schwab then exited the room. Ms. Caiola avers that there were no loose papers on the table at any time after Ms. Schwab left the box. Ms. Caiola avers that she observed Hanley remove files from Attorney Keyko's box of litigation material and observed Hanley making notes from the documents he was examining. It goes without saying that such conduct is entirely improper. Hanley avers that the document he was examining was lying loose on the table. Attorney Schwab avers that when she escorted Mrs. McCormick into the deposition room she observed "Mr. Hanley going through Mr. Keyko's papers."

Specifically, Attorney Schwab affirms that:

"Mr. Hanley had removed some of the folders from the box, had put them on the table and was reviewing them and writing notes about their contents on a yellow legal pad."

Deutsche moves for sanctions to be applied in response to Hanley's conduct. Deutsche requests that Hanley be barred from assisting Mrs. McCormick further in this accounting proceeding and that all materials prepared by Hanley be disclosed to Deutsche.

Hanley does not deny that he examined Mr. Keyko's litigation material without permission or that he compiled several pages of notes from those privileged documents to be used for the benefit of Mrs. McCormick in this proceeding. Hanley only denies the manner in which he obtained the confidential material. Hanley dubiously contends that Attorney Keyko's litigation material was left out on the conference table like a "discarded newspaper". That disputed fact is not material to this application. The undisputed fact is that Hanley intentionally undertook to obtain an improper litigation advantage by using opposing counsel's privileged

work-product which would otherwise be protected from lawful disclosure. Hanley's egregious misconduct requires some sort of sanction. (*Lipin v. Bender*, 193 AD2d 424 [1st DEPT 1993], aff'd 84 NY2d 562 [1994]. In this instance, suppression pursuant to CPLR 3103 would not be an effective remedy because the documents which Hanley improperly examined were not physically removed and cannot not likely to be proffered as evidence since they consist of Mr. Keyko's notes regarding litigation strategy and similar attorney work-product. The privileged information which Hanley wrongfully garnered cannot be purged from his memory by an order of this court and there is no effective remedy to suppress the information Hanley may have already passed on to Mrs. McCormick or her counsel. If Hanley were Mrs. McCormick's attorney, disqualification would be appropriate under these circumstances. (*Matter of Beiny*, 129 AD2d 126 [1st DEPT 1987], appl. dism'd 71 NY2d 994 [1988]) Hanley's misconduct is compounded by his absolute failure to take responsibility for his actions, leaving the door open for the misconduct to be repeated in the future absent court intervention. (*Doody v. Gottshall*, 85 AD3d 1562 [4th DEPT 2011]) Hanley has been described by Mrs. McCormick's attorney as her "agent" and, alternately, her "assistant." As such, Hanley's misconduct is imputable to Mrs. McCormick. Deutsche has provided no authority for this court to prevent Hanley from "assisting" Mrs. McCormick or to require that all materials prepared by Hanley be disclosed without regard to any claim of attorney-client privilege or work product protection. Movant has established that Mrs. McCormick has frustrated disclosure by disobeying the unequivocal order of the court, utilizing her agent to frustrate document production by ignoring a subpoena and, through a second agent, improperly obtaining confidential attorney work-product. Mrs. McCormick has not offered any justification for her failure to disclose or to produce the subpoenaed documents. (*Frias v. Fortini*, 240 AD2d 467 [2d DEPT 1997])

This court finds that Mrs. McCormick has intentionally disobeyed an order of the court and has repeatedly, willfully frustrated Deutsche's attempts at disclosure. This court finds further that Mrs. McCormick's agent has intentionally violated the privilege attached to Mr. Keyko's attorney work-product in order to obtain a tactical advantage in this litigation. It has been held that under such circumstances dismissal of Mrs. McCormick's objections would be appropriate. (*DeMasi v. Dine*, 155 AD2d 583 [2d DEPT 1989], appl den'd 76 NY2d 703 [1990]; *Beard v. Peconic Foam Insulation*, 149 AD2d 555 [2d DEPT 1989]). While dismissal of Mrs. McCormick's objections would be appropriate based on all of the willful and contemptuous conduct by her and her agents, this court finds that monetary and other sanctions are preferable in the first instance. (*Geltman v. St. Agnes Hospital*, 186 AD2d 534 [2d DEPT 1992]; *Taub v. Wulwick*, 168 AD2d 492 [2d DEPT 1990])

Therefore, for all of the foregoing reasons, it is ordered that the objections of Suzanne McCormick to the final accountings submitted herein shall be dismissed unless, within thirty (30) days from the date of this order:

1. Suzanne McCormick shall remit the sum of \$5,000.00 to Deutsche Bank by its attorneys, Pillsbury Winthrop LLP and Mrs. McCormick shall provide written proof of payment to this court; and
2. Suzanne McCormick shall provide a full and complete response, without any objections, to Deutsche's post-EBT demand for discovery and inspection served on August 9, 2002 on or before April 30, 2013 unless already provided; and.
3. Suzanne McCormick shall produce all documents formerly in the possession of Alexander Lehmann and returned to Mrs. McCormick between August 21, 2002 and September

16, 2002 on or before April 30, 2013 unless already provided; and,

4. Suzanne McCormick shall make all of her non-privileged audio tapes related to this accounting proceeding available to Deutsche, through counsel, for copying at Deutsche's expense on or before April 30, 2013 unless already provided.

In the event that Suzanne McCormick fails to timely and fully comply with each of the above directives, then counsel for Deutsche may submit, on notice, an affirmation setting forth in what manner Suzanne McCormick has failed to comply along with a proposed order and decree dismissing her objections in this proceeding. Suzanne McCormick shall have ten (10) calendar days to respond to such a submission.

It is further ordered that Patrick Hanley shall not be present at any pre-hearing proceeding of any sort related to this estate.

It is further ordered that Alexander Lehmann and Patrick Hanley shall be precluded from testifying on behalf of Suzanne McCormick at any hearing in this proceeding because of their separate wrongful conduct.

Remove Deutsche as Co-Executor

SCPA §707(1)(d) provides that letters may not issue to a natural person or person authorized by law to be a fiduciary who is a felon.

SCPA §711 permits the court to revoke letters of a fiduciary who is not eligible pursuant to §707. SCPA §711 also permits the court to remove a fiduciary for misconduct.

Mrs. McCormick first asserts that Deutsche, f/k/a Bankers Trust, was convicted of a felony in Federal Court disqualifying it to serve as co-executor. It is undisputed that in 1999 the

bank entered into an agreement to plead guilty to a felony information charging Bankers Trust Company with making false entries on the books and records of a federally regulated bank. It is also beyond dispute, however, that on December 2, 1999 the New York State Board of Parole issued a certificate for relief from disabilities specifically relieving the bank "of the forfeitures, disabilities or bars" of "SCPA Section 707(1)d" (sic)

Mrs. McCormick's conclusory and unsubstantiated allegations of fiduciary wrongdoing are insufficient to establish any conduct by Deutsche which would endanger the safety of the estate so as to warrant a hearing concerning the alleged misconduct. (*Matter of Duke*, 87 NY2d 465 [1996]; *Matter of Petrocelli*, 307 AD2d 358 [2d DEPT 2003]) This court finds that Suzanne McCormick has failed to demonstrate that Deutsche is unfit or ineligible to serve as fiduciary so as to warrant removal. (*Matter of Marsh*, 179 AD2d 578 [1st DEPT 1992]) For all of the foregoing reasons, it is ordered that Suzanne McCormick's application to remove Deutsche as co-executor is denied.

Disburse Income and Principal

SCPA §2102(4) permits a person to commence a proceeding to require a fiduciary to pay a legacy, distributive share or interest in a trust. Suzanne McCormick moves for an order directing Deutsche to distribute income and principal pursuant to a trust established in the will of the decedent.

SCPA §2101(1)©) requires that a beneficiary institute such a proceeding by petition. Mrs. McCormick has filed a motion for the relief demanded. The court will not entertain such an application without the proper pleading.

Even if the court were to consider the merits of Mrs. McCormick's application, it is

insufficient on its face to warrant the relief requested.

Therefore, it is ordered that Suzanne McCormick's motion to distribute income and principal of the trust is denied.

The Court read and considered the following documents on these applications:

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The court has reviewed the parties' submissions and finds that factual issues have been raised which necessitate a hearing. Pursuant to SCPA §506(1), Attorney John K. Gifford, c/o Van DeWater & Van DeWater, LLP, P.O. Box 112, Poughkeepsie, New York 12602, (845) 452-5900, is appointed referee to hear and report his findings of fact and conclusions of law on all issues pertaining to the accounting should it go forward.

The referee may issue subpoenas, administer oaths, direct and supervise disclosure, and conduct a hearing. (CPLR §4201; SCPA §506[1].) The referee shall be compensated at the rate of \$300.00 per hour, including his reasonable and necessary expenses incurred. (SCPA §506[5]; CPLR §§8003[a] and 4321.) Suzanne McCormick is directed to remit to the referee the sum of \$3,000.00 as security for his fees no later than April 25, 2013. A final determination as to the amount of fees and the party or parties who will bear the responsibility of paying the referee's fees and expenses shall abide a subsequent order of this Court.

The parties are directed to conclude this matter no later than August 1, 2013. Leave of the court will be required to extend the aforementioned deadline. Leave of the referee is required to adjourn any hearing date. The hearing and any conferences are to be conducted in

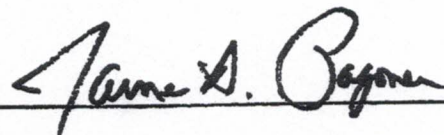
the Dutchess County Courthouse, 10 Market Street, Poughkeepsie, New York 12601. The referee may designate an alternate site in his discretion. A transcript of the testimony from any hearing conducted by the referee, together with the exhibits or copies thereof, shall be filed with the referee's report as to his findings of fact and conclusions of law within thirty (30) days after the matter has been finally submitted. (SCPA §506[3].)

The foregoing constitutes the decision, order and decree of the Court.

Dated: Poughkeepsie, New York

April 5, 2013

ENTER

A handwritten signature in black ink, reading "James D. Pagones", is written over a horizontal line.

HON. JAMES D. PAGONES, S.C.J.

TO: JOHN K. GIFFORD, ESQ.
Referee
Van DeWater & Van DeWater, LLP
P.O. Box 112
Poughkeepsie, New York 12602

SUZANNE McCORMICK
231 Clinton Avenue
Dobbs Ferry, New York 10522

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CHARLES G. BERRY, ESQ.
ARNOLD & PORTER
399 Park Avenue
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BRIAN J. CAREY, ESQ.
McELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP
Wall Street Plaza
88 Pine Street, 21st Floor
New York, New York 10005

NEIL GRIMALDI, ESQ.
2860 Buhre Avenue
Bronx, New York 10461

032613 decision,order&decree

EXHIBIT D

On the Date Written Below LETTERS are Granted by the Surrogate's Court, State of New York as follows:

Name of Decedent: Edmund J McCormick
Domicile of Decedent: County Of Westchester
Fiduciary Appointed: Suzanne V McCormick
Mailing Address: 231 Clinton Ave
Dobbs Ferry NY 10522

File #: 1988-3522
Date of Death: November 27, 1988

Deutsche Bank Trust Company Americas
280 Park Avenue
New York NY 10017

Herman Markowitz
35 Dogwood Lane
Irvington NY 10533

Edmund J McCormick Jr
714 West Shore Trail
Sparta NJ 07871

Letters Issued: AMENDED LETTERS TESTAMENTARY
Limitations: NONE

THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: January 23, 1992

IN TESTIMONY WHEREOF, the seal of the Westchester County Surrogate's Court has been affixed.

WITNESS, Hon James D Pagonos, Judge of the Westchester County Surrogate's Court.

COPY COPY COPY

Hon. James D Pagonos

These Letters are Not Valid Without the Raised Seal of the Westchester County Surrogate's Court

Attorney:
David G Keyko
Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York NY 10036

EXHIBIT E

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Case Number 1988-3522

-----X
In the MATTER of the Petition of
BANKERS TRUST COMPANY, and HERMAN
MARKOWITZ, for settlement of their Account
as co-executors of the Last Will and Testament of

EDMUND J. MCCORMICK,

Deceased,

and for a direction pursuant to SCPA §2215 for repayment
of excess distributions to an interested party, and for
recovery of Estate assets from
EDMUND J. McCORMICK, JR. and
BANK STREET INVESTMENT, INC.
d/b/a McCORMICK ORGANIZATION.

-----X
In the Matter of the Proceeding by
ALFRED S. HOWES for Settlement of
Account as Co-Executor of the Last Will and Testament of

EDMUND F. McCORMICK,

Deceased.

-----X
OPPOSITION TO NOTICE OF SETTLEMENT
WITH RESPONSE TO DISCOVERY DEMANDS

Jason Bogli, an attorney duly admitted to practice before the Courts of the State of New
York, affirms that the following is true under penalties of perjury:

The Order Was Entered April 17, Discovery Was Produced, and Response to Discovery

Demands Provided by May 17, 2013

1. I was not served by the Court with the order dated April 5, 2013. My name does not appear on the service list. Apparently, there was confusion as to whether Mrs. McCormick's attorney, Sam Gilbert was representing Mrs. McCormick in this litigation, but who did not file a notice of appearance. I also note White & Case, counsel for the estate, is not listed on the service list.
2. The Order concerns motions over twelve years and nine years old, respectively, and Notice of Entry was filed and served April 17, 2013.
3. The order at page 9 states that Suzanne McCormick shall produce responses "within thirty (30) days from the date of this order: . . ." The order was entered April 17, 2013. Documents have been previously produced and responses provided by May 17, 2013.
4. The only reasonable reading of the order would be that discovery is to be produced within 30 days of notice of entry. Otherwise, the Court would be requiring compliance with the order where date of service of the order was not confirmed on all of the parties.
5. If document responses were due by April 30, 2013, this would provide less than two weeks to search, produce, and provide responses in a case involving numerous boxes after no action had been taken for twelve years. Calculating the time from the Notice of Entry is also reasonable given the amount of time these motions have been pending, and the vast and complex nature of the case which the Court has recognized in the decision and in correspondence to the parties.

6. Dismissal of claims for failure to produce discovery should not be punitive, or to punish for contempt but one to insure that disclosure procedures are not frustrated" (*see*, 6 Weinstein-Korn-Miller, NY Civ Prac ¶ 3126.05). In this case, Bankers Trust's discovery demands have not been frustrated when discovery and responses were produced within 30 days of entry of the order after the motions remained inactive for nine (9) years.
7. A Vaughn Hearing is the appropriate manner in which to determine whether this Court should impose the sanction of dismissal. Instead of arbitrarily adopting one of the conflicting positions, the Court should consider less drastic remedies than the extreme sanction of dismissing plaintiff's complaint. See Vaughn v City of New York, 201 A.D.2d 556 (2d Dept. 1994).
8. Unless otherwise specified, Mrs. McCormick's agent refers to Patrick Hanley and is known to be the record keeper and custodian for Mrs. McCormick of documents produced in this litigation. Unless otherwise specified this affirmation is based on representations of Mrs. McCormick's agent.
9. Mrs. McCormick's agents indicates that after a good faith search, they have produced all documents in their possession responsive to the court order, and that they are not aware of any other documents responsive to these requests.

Mrs. McCormick Stays Order of Payment of Money Through Notice of Appeal

10. Mrs. McCormick submits that she has filed a Notice of Appeal which automatically stays the directives in the order for the payment of money, and that she has responded to the discovery requests contained in the order. CPLR 5519 (a).

Deutsche Post EBT Demand For Discovery Dated August 9, 2002

11. In response to the Court's Order: Suzanne McCormick shall provide a full and complete response without any objections to Deutsche's post EBT demand for discovery and inspection served on August 9, 2002 . . . unless otherwise provided:
12. In response to request no. 2, Mrs. McCormick has produced over two hundred (200) pages of documents responsive to Bankers Trust's discovery requests since the Court's April 5, 2013 decision. The settlement document was produced by Alex Lehmann and contains the documents on which he relied. Mrs. McCormick's agents indicates that Mrs. McCormick is not in possession of documents responsive to the requests which have not already been provided to counsel including requests 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. Mrs. McCormick has produced these documents with full reservation of all rights to object to this request, but has not withheld any documents.
13. As part of her ongoing discovery obligation, Mrs. McCormick's agent recently discovered documents which were previously produced to Mr. Keyko, upon information and belief, filed by Suzanne McCormick and on record with the Court and / or available as public records. The document was compiled by Patrick Hanley in response to the document request and consists of correspondence with the Court, Mr. Keyko, and government filings. They are:
 - a) Correspondence dated March 13, 2013 from Pillsbury Winthrop with hand written notes from Sam Gilbert indicating that Mr. Gilbert did not file a notice of appearance. This document had been previously produced to Mr. Keyko.
 - b) correspondence dated August 31, 2012 from Suzanne McCormick to Joseph Accetta,

Chief Clerk of Westchester County including Certificate of Appointment of Fiduciary dated January 21, 2011 (appointing “Deutsche Bank Trust Co. Americas f/k/a Bankers Trust Co. Of NY”); Letters dated April 2, 2004 (Appointing “Bankers Trust Company”); and Letters dated January 25, 1989 (appointing “Bankers Trust Company New York”) which seem to appoint different corporate fiduciaries. Letters are part of the Court file and various versions have been produced by the parties in this litigation. Pillsbury Winthrop indicates on court submissions that they represent Bankers Trust Company not Bankers Trust Company NY. See Exhibit E, including attachments A-1,B-1,B-2, C-1, D-1, and D-2.

c) New York State Department of Financial Services certification that Bankers Trust Company of New York did not exist until or before September 7, 1999 despite having been appointed as a fiduciary ten years before. See Exhibit F.

d) Deutsche Bank correspondence dated May 1, 2002 indicating Bankers Trust Company is now known as Deutsche Bank Trust Company Americas, and Bankers Trust Company of New York is now known as Deutsche Bank Trust Company New York. Pillsbury Winthrop indicates on court submissions that they represent Deutsche Bank Trust Company Americas not Deutsche Bank Trust Company New York. See Exhibit G.

e) Copy of New York SCPA section 2501 entitled, “Records to be kept by the Court.”

f). Correspondence from the Surrogate Court, Dutchess County dated June 29, 2004 indicating that Westchester County is maintaining dockets for the file.

g) Correspondence from Westchester Surrogate dated September 14, 2012 suggesting there is no index file for the docket. See Exhibit H.

Documents Formerly in The Possession of Alex Lehmann

14. The Court order indicates that “Suzanne McCormick shall produce all documents in the possession of Alexander Lehmann”
15. Suzanne McCormick and Patrick Hanley have no knowledge of documents which Alex Lehmann had in his possession other than documents already provided. Mrs. McCormick’s agent believes she already produced these documents and that they were the subject of inquiry at Alex Lehmann’s deposition, Mrs. McCormick produced ONE HUNDRED NINETY (190) pages of documents which were previously in Alex Lehmann’s possession. Mrs. McCormick’s agent is not aware of any other documents responsive to this request which have not already been provided, and makes no claim of privilege. Mrs. McCormick has fully complied with this directive.
16. Given the Court’s decision to bar on Alex Lehmann from testifying, such documents do not appear to be rationale, necessary, or relevant in this matter. It is well settled that the overriding objective of CPLR article 31 is not punitive but, rather, the liberal and full disclosure of all evidence which is rational and necessary or relevant to the issues to be tried. Miller v Duffy, 126 A.D.2d 527, 528. Failure to produce documents not essential to the litigation should not be the basis of dismissal. Mrs. McCormick is in compliance with this directive, and any perceived failure to produce discovery is not intentional or willful.
17. Further, this Court should conduct a “spoilation hearing” to determine the facts concerning the alleged “spoilation” of evidence. Suzanne McCormick was not aware at the time Alex Lehmann returned the documents that Bankers Trust had issued a subpoena

to Alex Lehmann, or that Bankers Trust wanted all the documents which Alex Lehmann ever had in his possession. There is no evidence that Suzanne McCormick ever discarded or destroyed any evidence. Presumably the documents are still in Suzanne McCormick's files, although not separated or identified as having been in Alex Lehmann's possession.

Mrs. McCormick Has No Audio Tapes Which Have Not Been Produced

18. In response to Court Order directing "Suzanne McCormick shall make all of her non-privileged audio tapes relating to this accounting proceeding available to Deutsche, through counsel, for copying at Deutsche's expense on or before April 30, 2013 unless already provided.

Mrs. McCormick's agent indicates that she is not aware of any audio tapes regarding the estate in her possession which have not already been provided. Mrs. McCormick is not claiming any audio tapes which she has in her possession relating to this accounting proceeding but which she is not producing because of privilege. Mrs. McCormick's and her agent indicate that she does not have additional audio tapes to produce for inspection, and as such could not offer them for inspection. Mrs. McCormick is in compliance with this order.

Bankers Trust Internet Search Is Irrelevant to McCormick's Compliance with Discovery

19. Bankers Trust argues that McCormick is not in compliance with discovery demands since Pillsbury Winthrop did an Internet search which revealed documents relevant to their discovery requests. Simply because Bankers Trust can obtain these documents via the Internet, does not mean they are in Suzanne McCormick's possession. If these

documents are readily available from other sources, Suzanne McCormick should not be sanctioned and penalized for not producing documents which can be obtained from the Internet. Bankers Trust has not been prejudiced in any way from McCormick not producing these documents since the Internet documents are readily available to the public.

Any Alleged Previous or Current Violation is Not Contemptuous

McCormick Attempted to Address Discovery Issues By Requesting Extensions, and Attempting to Identify Pending Motions Before the Court through a Docket Index

McCormick Moved To Extend Discovery Deadline

20. Shortly after Bankers Trust's discovery demands, McCormick moved to Recuse Surrogate Scarpino and extend discovery due to the complex and vast nature of the documents in this suit.

McCormick Sought To Submit Papers on Discovery and Sanctions to Court in 2004

21. On or about April 20, 2004, and after the case had been transferred from Westchester to Rockland to Dutchess, Suzanne McCormick requested that she be allowed to submit evidence in opposition to Bankers Trusts motion for discovery and sanctions. See Exhibit A.
22. On June 29, 2004, the court attorney responded to that request refusing the request and relying on an alleged unwritten advisement in a court conference setting the deadline for April 30, 2004 and classifying the motions as "fully briefed." See Exhibit A, Correspondence dated June 23, 2004 (citing April 20, 2004 request for briefing on discovery and sanctions motions) and See Exhibit B, Correspondence dated June 29, 2004 from court attorney.

The Court and Attorneys Admit Confusion Due To Transfer of Files, Complexity and Vast Size

23. The Court has recognized the complexity of the suit and its vast files, and the confusion which arose after the recusal of the Surrogate and transfer of files through three counties and back again.
24. According to April 5, 2013 decision, "none of the above motions were ever docketed in Dutchess County and did not appear on any calendar in November 2010. According to the current chief clerk, she was advised during her transition that all matters assigned to this court relative to this estate had been decided and there were no pending issues" Decision dated April 5, 2013 at p. 3.
25. As recited in the decision and correspondence attached hereto, there was obvious confusion in the Court as to what motions had been filed, what motions remained pending, and what issues remained to be resolved after the transfer of the case. See Correspondence dated March 6, 2013 (stating, "In Mr. McCormick's letter he referred to four (4) outstanding motions. Upon reviewing the extensive file, I was able to ascertain that there are potentially six (6) motions requiring Decision by the Court.").
26. It should be noted that the Court file consists of eight (8) boxes. Suzanne McCormick's files consist of boxes many times that amount which need to be reviewed in order to produce discovery.
27. The case was in limbo for some time having been transferred from Westchester to Rockland to Poughkeepsie and back again. There was general confusion among the clerk's offices, and parties as to where to file documents, and Suzanne's requests to obtain clarification as to pending and undecided motions and confirm Court filings

through a index docket were unsuccessful. See Exhibit D, Correspondence dated August 31, 2012 from Suzanne McCormick to Westchester Surrogate's Court and

Correspondence dated March 6, 2013 from Erica DeTraglia to all parties in this litigation.

28. On May 18, 2012 Attorney Geis wrote to the Court pray[ing] for guidance as to where to file motions. Attorney Geis wrote, "as there has been an issue of whether to bring my application to Westchester or Dutchess County Surrogates Court. Might I pray for guidance?" I am not aware of any guidance that was communicated to the parties. See Exhibit C, Correspondence dated May 18, 2012.

McCormick Requests Docket To Determine Pending and Undecided Motions

29. Suzanne McCormick asserts that the failure to maintain an index or reference system which can identify pending and undecided motions constitutes a violation of SCPA, Article 25, and prejudiced Suzanne McCormick's rights in addressing the pending motions well before the decision rendered by the Court.

Sanctions Are Not Appropriate Where Bankers Trust Did Not Actively Pursue Discovery

30. After years of confusion with the Court, shortly before the decision, correspondence from Bankers Trust's counsel to the Court did not include copies of the discovery or request compliance with the discovery requests that were not attached in the communication.
31. Bankers Trust has gone years without following up with the discovery requests. Where Bankers Trust failed to diligently pursue the discovery it sought, the imposition of the sanction of dismissal of McCormick's objections after twelve years is not fair, equitable, or reasonable.

32. Further, it is my understanding that Bankers Trust met with Attorney Sam Gilbert to discuss settlement, and I am not aware of any requests for discovery having been made in that meeting.
33. Given the facts that these motions had laid dormant for 12 years, and 9 years, respectively; the mass confusion surrounding the case; the complexity and vast nature of the case; the failure of Bankers Trust to diligently pursue discovery; the refusal to allow Suzanne McCormick the opportunity to present evidence on discovery and sanctions motions; and, refusing to provide her with a court docket clearly showing pending and undecided motions, it seems inequitable for the Court to impose the severe sanction of dismissal.

Sanctions of Dismissal Are Not Appropriate Where A Party Standing To Initiate Action, Request Discovery, and Move for Sanctions is to be Determined on Appeal

34. The subject matter of the motions in which McCormick seeks to remove Bankers Trust as an executor has direct bearing on Bankers Trust's standing to demand discovery, prosecute this accounting, and seek sanctions which remained undecided until April 5, 2013, and is now subject of an appeal.
35. McCormick argues that Bankers Trust is not the rightful executor of the Estate as the current entity ("Bankers Trust Company") is not the same entity identified on original letters issued by the Court in 1989 ("Bankers Trust Company of New York"), and cannot serve since the Bankers Trust is a felon.

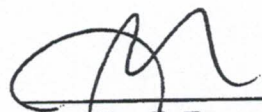
36. Bankers Trust therefore does not have standing to pursue the litigation including serving discovery, seeking sanctions, or even filing the underlying accounting proceeding.
37. To impose sanctions when such a threshold issue remains on appeal seems to be contrary to judicial economy in causing additional opinions to be rendered, and additional appeals to be filed.

A Court Hearing Should Be Held To Determine Appropriate Action in Regard to Both Spoilation and Discovery Issues

38. Further, a Court should hold a hearing and consider factual testimony as to the wilful nature of any alleged violation, especially where McCormick sought to provide additional information to the Court regarding the discovery and sanctions motions nine years ago.

WHEREFORE, Suzanne McCormick opposes entry of the proposed order, and for such other and further relief as may be deemed just and proper.

Dated: May 17, 2013



Jason Bogli, Esq.
198R Salmon Brook St.
Granby, CT 06035
860 653 7701

THE LAW OFFICE OF
JASON BOGLI, L.L.C.

198-R Salmon Brook Street
Granby, CT 06035
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jbogfilaw@cox.net

Jason Bogli
Attorney at Law
Admitted:
Connecticut and New York

June 23, 2004

VIA FIRST CLASS MAIL/ DELIVERY CONFIRMATION

Judge Pagones
Dutchess Surrogate Court
10 Market Street
Poughkeepsie, New York 12601
Attn.: Ken Bernstein, Assistant to Judge Pagones
& John Atherton, Chief Clerk

Re: Estate of Edmund J. McCormick
Index No. 3522-1988

Dear Your Honor:

I write to follow up on several items to which I have not received a response from the Court including copies of prior court orders, a response from the court on briefing schedules on pending motions, and Suzanne McCormick's request for a computerized record. I am forwarding this correspondence to the Court of Appeals as that Court is currently undertaking a jurisdictional inquiry of this matter, and to the administrative Judge for remedial action.

First, I have not received a response to my request of last year for a copy of the order which gives jurisdiction to the Surrogates Court of Dutchess. Suzanne McCormick has never been provided with an order or explanation as to how this case came from Rockland County and finally to Dutchess County. I searched the file on March 25, 2004 after our only court conference and did not find any such order, and no order has been entered or served on Suzanne McCormick. This order is important since the last court (Rockland) executed Bankers Trust's application for a settlement immediately before the case was transferred to this Court. Thereafter this Court granted that order without providing Suzanne McCormick an opportunity to respond (although such an opportunity was promised).

I write to also follow up on correspondence dated April 20, 2004 which requested: 1) briefing schedule on un-briefed applications to the Court made while

2004 JUN 28 PM 12:21

the case was in transit from Westchester County to Rockland County and from Rockland County to Dutchess County; 2) On April 20, 2004 of this year I also wrote to you to requesting that a computerized docket be maintained on this case. This case is extraordinary due to its complexity and the numerous transfers.

We are concerned about maintaining an accurate court record since the Clerk of this Court instructed us to file papers with Westchester County, the original recused court. Our understanding is that Westchester County would then be responsible for forwarding the documents to Poughkeepsie. We are concerned that without a computerized record, the parties will not be able to confirm whether Westchester has forwarded documents to this court and whether they are part of the Court record in Poughkeepsie. It is our belief that this Court should make decisions based upon a complete record, and that Poughkeepsie should create a record of the documents which are filed in this Court.

Therefore, Suzanne McCormick requests that this Court: 1) provided with an order or explanation as to how this case came from Rockland County and finally to Dutchess County; 2) provide a briefing schedule on un-briefed applications to the Court made while the case was in transit from Westchester County to Rockland County and from Rockland County to Dutchess County; 3) enter an order requesting that a computerized docket be maintained on this case. This case is extraordinary due to its complexity and the numerous transfers.

Respectfully submitted;


Jason Bogli

cc.

State of New York
Court of Appeals
20 Eagle Street
Albany, New York
12207-1095

Judge Nicolai, Administrative Judge
111 Dr. Martin Luther King Jr. Blvd. - 11th floor
White Plains, NY 10601

AFFIDAVIT OF SERVICE

AND

POSTAL RECEIPT

SURROGATE COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
In the Matter of the Petition of BANKERS TRUST
COMPANY, and HERMAN MARKOWITZ, for settlement of
their Account as Co-Executors of the Last Will and Testament of

EDMUND J. McCORMICK,

Deceased,

File No 3522- 3522

AFFIDAVIT OF SERVICE

and for a direction pursuant to SCPA § 2215 for repayment of
excess distributions to an interested party, and for recovery of
Estate assets from EDMUND J. MCCORMICK, JR. and
BANK STREET INVESTMENT, INC. d/b/a McCORMICK
ORGANIZATION.

----- X
In the Matter of the Proceeding by ALFRED S. HOWES for
Settlement of Account as Co-Executor of the Last Will and
Testament of

EDMUND J. McCORMICK,

Deceased.

_____ X

PATRICK HANLEY, being duly sworn says:

I am over the age of eighteen and I am not a party herein. On February 17, 2015, I served true copies of the attached OPPOSITION TO NOTICE OF MOTION FOR PERMISSION TO FILE SUPPLEMENT TO FINAL ACCOUNT with attached Exhibits dated February 17, 2015, upon:

Erica DeTraglia, Esq.
Chief Clerk
Dutchess County Surrogate's Court
10 Market Street
Poughkeepsie, NY 12601

David G. Keyko, Esq.
Pillsbury, Winthrop, Shaw & Pittman, LLP
1540 Broadway
New York, NY 10036

David P. Geis, Esq.
18 Pope Avenue - P.O. Box 7927
Hilton Head Island, SC 29928

Robert Tiedeman III, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036

Richard E. Carmen, Esq.
Brief Justice Carmen Kesselman & Kleiman, LLP
805 Third Avenue - Suite 600
New York, NY 10022.

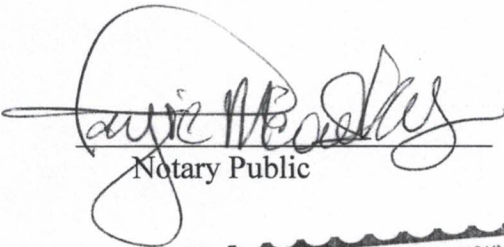
By mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, directed to counsel at the addresses set forth above.

February 17, 2015



PATRICK HANLEY

Sworn to me this 17th day
of February, 2015



Notary Public



WHITE PLAINS MPO STA.
WHITE PLAINS, New York
106061953
3590960133-0097
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