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Decedent's Estates—Commission for Executor's Services

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the annuity was devised to the annuitant and it is not up to the courts to give to the annuitant any more, or any less, than was designated by the testatrix. By selecting the earlier date the dissent feels the Court is awarding the annuitant less than the value of the annunity, as his life expectancy decreases at a lesser rate than his life increases. They also reason that since it was the beneficiaries of the trust who brought the action, it should not be the annuitant who suffers any loss. In support of their argument the dissent cited *Dunham v. Deraismes*,[43] where the date of the computed value was the date the Court awarded the commutation. In that case the annuitant had been paid fifteen installments of the annuity before commutation was directed by the Court.[44] The *Dunham* case was distinguished by the Appellate Division in that the date of commutation was not specifically litigated. Also, the fifteen payments, if credited to an earlier computed value, would have left the annuitant with little or no recovery.

With the maximum interest directed by the Court, the Court seems justified in its result in that it is preventing legal protraction from affecting the final computed value. If the date was left to the date of the courts decision it can easily be seen that it would be to the best interest of the annuitant to extend the litigation as long as possible. This would distract from the efficiency of the courts and would not be an aid to prompt judicial settlements.

Commissions For Executor's Services

An executor or administrator of a will receives as compensation for his services, in the absence of agreement to the contrary, certain fixed statutory commissions paid out of the net income of the estate, and an additional commission of the value of the estate.[45] If an executor is required to manage real property as part of his services, he is then entitled to an additional commission (6%) on the gross rentals collected.[46] The executor, by a written agreement, may agree to accept less than the statutory commissions for this service.[47]

The issue was raised in *Estate of Schinasi*[48] whether or not the executor trustee (a New York City bank) had waived these additional commissions for the management of realty. The will, which created the testamentary trust, was silent as to additional fees for the realty management. However, in the intermediate accountings in the Surrogate's Court dating back to 1933, it seemed to have been assumed by all parties that the wording of the will did not preclude

43. 165 N.Y. 65, 58 N.E. 789 (1900).
44. 286 App. Div. 794, 146 N.Y.S.2d 730 (1st Dep't 1955).
45. N.Y. SURROGATE'S COURT ACT §285(1).
46. *Id.* §285(6); In re Smathers' Will, 309 N.Y. 487, 131 N.E.2d 896 (1956).
47. In re Hayden's Estate, 172 Misc. 669, 16 N.Y.S.2d (Surr. Ct. 1939), *aff'd*, 261 App. Div. 900, 26 N.Y.S.2d 490 (1st Dep't 1941), *motion for leave to appeal denied*, 285 N.Y. 858, 34 N.E.2d 920 (1941).
48. 3 N.Y.S.2d 22, 163 N.Y.S.2d 664 (1957).

the executor-trustee from taking the additional percentage on gross rentals. This litigation was commenced after the discovery by the trust's life tenant, of a letter in the hands of the bank written to the settlor of this trust by the bank's chief trust officer, stating that the bank would accept certain rates for its "services" as executor-trustee of the settlor's estate. These rates were less than the statutory minimums and as with the will, this letter was silent as to commissions for real estate management.

The decision rested on the interpretation the Court gave to the word 'services' contained in the bank's letter. The Court held that the word 'services' encompassed both the ordinary administrative duties of the executor-trustee and the management of the real property, as both duties were services to be performed by the trustee.

The bank, admittedly knowing of the existence of the letter, had a duty to show this correspondence to all interested parties.[49] Its failure to do so, the improbability of the banks officer consenting to accept reduced commissions without an idea of the estate's composition, and the fact that the bank could have refused to qualify as executor-trustee after it had learned of the estate's contents, led the Court to use its authority to reopen the Surrogate's prior decrees[50] and force the bank to return the rental commissions it had withheld. This case presents an example of the familiar legal principle that when one of the parties prepares the wording to an agreement and the meaning of this wording later comes into dispute, any ambiguity is construed against the maker of the agreement[51]

DOMESTIC RELATIONS

Bastards: Support Payments By Putative Father

Early this year, the Court of Appeals in reviewing a paternity proceeding reached the decision that support payments assessed against the father of an illegitimate child should not be limited by the station in life of the mother but that the father's financial ability together with the mother's standard of living should be considered in determining the amount of such payments.[1] In this case, the mother's station in life was much inferior to that of the father. The lower

49. In re Bond and Mortgage Guarantee Co., 303 N.Y. 423, 103 N.E.2d 721 (1952).

50. N.Y. SURROGATE'S COURT ACT §20(6); In re Short's Will, 229 N.Y. 374, 128 N.E. 225 (1920).

51. Giller v. Bank of America, 160 N.Y. 549, 55 N.E. 292 (1899); Rentways, Inc. v. O'Neill Milk and Cream Co., 308 N.Y. 342, 126 N.E.2d 271 (1955).

1. Schaschlo v. Taishoff, 2 N.Y.2d 408, 161 N.Y.S.2d 48 (1957).