

Probate District: BW

Probate Court File No. 14419

IN THE COURT OF PROBATE

Cite as: Boliver Estate (Re), 2013 NSPB 1

IN THE MATTER OF: The Estate of TEMPLE COLBY BOLIVER, deceased

DECISION

Decision: April 8, 2013

Counsel: J. Patrick Morris, Q.C. for Estate of Temple Colby Boliver
Richard Temple Boliver, on his own behalf
Royce Colby Boliver, on his own behalf

BACKGROUND:

On March 5, 2013, a hearing was held before me as Registrar of Probate regarding the passing of accounts of Robin Christine Boliver, as Personal Representative of the Estate of Temple Colby Boliver.

Temple Colby Boliver made a Last Will and Testament on July 24, 2009 appointing his daughter, Robin Christine Boliver, as Executrix.

Paragraph 3, 4 and 5 of the Last Will and Testament states as follows:

"3. I DIRECT my executrix and Trustee to pay all my just debts, funeral and testamentary expenses, estate taxes and succession duties, if any, as soon as conveniently may be done after my death. I direct my Executrix and Trustee to pay my debts and expenses from the proceeds of sale of my real property.

*4. I GIVE all of my real property to my Trustee upon trust, and I direct my Trustee to use her discretion in the realization of my real estate, with power to my Trustee to sell and convert into money all of my real estate at such time or times, in such manner and upon such terms as my Trustee may in her sole and absolute discretion decide upon, with power and discretion to postpone such conversion of my real estate or any part or parts thereof for such length of time as my Trustee may think best, and I hereby declare that my Trustee may retain any portion of my real estate whether or not there is a liability attached thereto for such length of time as my Trustee may in her discretion deem advisable. I direct my Trustee to divide the net proceeds of such sale or sales into equal shares, and after payment of my debts and expenses, to pay the same to my six children, **Robin Christine Boliver**, of Lawrencetown, County of Annapolis, Province of Nova Scotia, **Randolph Quinn Boliver** of Conquerall Bank, County of Lunenburg, Province of Nova Scotia, **Renee Jean Boliver** of Bridgewater, County of Lunenburg, Province of Nova Scotia, **Richard Temple Boliver** of Kingston, County of Kings, Province of Nova Scotia, **Royce Colby Boliver** of Torbrook, County of Annapolis, Province of Nova Scotia, and **Ronald Peter Boliver** of Halifax, HRM, Province of Nova Scotia.*

5. ***I GIVE*** all of the rest and residue of my estate, including all of my personal property, to my daughter **Robin Christine Boliver**, for her own use absolutely.”

Temple Colby Boliver died on June 5, 2010. He was predeceased by his wife, Kathleen Edith Boliver, leaving surviving six children namely, Robin, Randolph, Renee, Richard, Royce and Ronald. An Application for a Grant of Probate was filed with the Probate Court in Bridgewater and a Grant of Probate was issued on June 10, 2010 appointing Robin Christine Boliver as Personal Representative. The application included real property valued at \$145,700.00 and personal property at \$485.28. An Inventory was filed on August 26, 2010 and there was no change in the valuation.

On January 4, 2013, an Application to Pass Accounts without a Hearing was filed with the Court and a date of March 5, 2013 was set for the passing of the accounts. A Final Account was provided to the Court along with the Proctor’s Bill of Costs and the Clearance Certificate (to the date of death) and a Clearance Certificate (for final distribution).

ISSUES:

Two Notices of Objection were filed with the Court of Probate, one filed by Richard Temple Boliver and the other by Royce Colby Boliver. Both Notices of Objection objected to the same issues as follows:

OBJECT THE ACCOUNTS OF THE PERSONAL REPRESENTATIVE ON THE FOLLOWING GROUNDS:

1. Questionable accounting discrepancies in Schedule C of disbursements
2. Sale price obtained for 1996 Mercury Grand Marquis

OBJECT TO THE AMOUNT OF COMMISSION CLAIMED BY THE PERSONAL REPRESENTATIVE ON THE FOLLOWING GROUNDS:

1. Did not act in the best interest of the beneficiaries
2. Already charged multiple amounts to the estate for her services

OBJECT TO THE SOLICITOR’S BILL OF COSTS ON THE FOLLOWING GROUNDS:

1. Several discrepancies in estate accounting
2. Solicitor charges multiple times for balancing of the estate accounts
3. Over charged for legal expenses on the sale of the Property, Real Estate and documents

HAVE ANOTHER OBJECTION:

1. Rent to own agreement
2. Estate property given to grandchildren (namely executrix's children)
3. Sell of property far below market value

DECISION:

It is difficult to deal with each objection on an individual bases, therefore I will deal with them all at the same time, one of the objections being the questionable accounting discrepancies in Schedule C of the disbursements.

In reviewing the final account I must admit that I found it very confusing. Testimony from the Personal Representative advises that the estate did not have much cash in the beginning and therefore money was paid into the estate. As shown in the final account, bank statements and spreadsheet monies were paid in by numerous parties at various times and then paid back to them at various times and in varying amounts. It would have made things much simpler and easier to understand if the money had only been paid into the estate by the Personal Representative and paid back to her in the amounts that she had loaned the estate. I think what was also very confusing was that everyone was given the Final Account as prepared for the Court and the spreadsheet that had been prepared by the Chartered Accountant and in comparing the two they do not resemble each other.

Richard Boliver and Royce Boliver questioned numerous disbursements, they being Nova Scotia Power invoices, travel expenses, renovations to the house, gas, Visa (line of credit), and Eastlink.

Also, one of the concerns of Richard and Royce was that money was being paid in and out by various individuals besides the Executrix. I have extensively reviewed the monies paid into the estate and the disbursements as shown on the final account. I can agree with the accounts that the

monies paid in to the estate and reimbursed to Robin, Ryan and Stephen are correct.

I do note that there were a number of reimbursements to Robin for gas and meals. I will allow one gas disbursement per month as I do not feel the estate should bear the expense of more than this. The total amount of the gas expended was \$954.29 and there were varying amounts paid each month, never the same amount which leads me to believe the gas tank was filled not only to travel to visit the property but for her own use. I will allow a total gas allowance of \$600.00. Robin Bolivar will have to reimburse \$454.29 to the estate. There were also expenses for meals, most of which appear to be lunches. I will allow the government rate of \$12.00/per lunch. There were 7 meals @12.00 = \$84.00. The total cost of the meals charged to the estate as a disbursement is \$96.22; therefore the sum of \$12.22 is to be reimbursed to the estate by the personal representative.

Another disbursement that was questioned was the Eastlink disbursements. From the statements this disbursement was for telephone. It is the usual practice to allow a telephone disbursement for two months after death. Robin Boliver explained that there wasn't any cell phone reception at the real property and so did not disconnect the telephone until November, 2010. The agreement for a rent to own the real property was signed on July 30, 2011 but she did disconnect the phone a number of months before the agreement was signed. Given that there was not a sufficient amount of money in this estate I would have thought the phone would have been disconnected at an earlier time. I will allow the first two Eastlink disbursements but will ask that Robin Boliver reimburse the estate \$142.53 for the remaining months that it was in service.

Richard and Royce questioned the invoices of Nova Scotia Power Corporation and that the Personal Representative's son was living on the property and the estate was paying the electricity. The last invoice paid by the estate to Nova Scotia Power was on March 26, 2011 and the Rent to Own Agreement was signed on July 30, 2011. Since the Rent to Own Agreement was signed on July 30, 2011 it would appear that her son had moved into the property at that time and would have been paying the Nova Scotia Power invoices.

They also questioned that the property was split and sold as two parcels. The terms of the Will allows the Personal Representative to sell the land using her discretion.

The final disbursement was to Robin Boliver for \$7,309.26 which represents her commission for her duties as Personal Representative for this estate. The awarding of an Executrix's commission is solely at the discretion of the Registrar of Probate at the time of closing. In this case the personal Representative did take her commission prior to the closing. What should have been done differently is that she, personally, should have loaned the estate money and not from various individuals as this made the accounting very difficult and confusing. Firstly, the amount of commission is based on the total value of the estate minus the amount of monies paid into the estate. The final account shows the total value administered by the Personal Representative as \$135,607.71. Included in this amount are the monies paid into the estate by Stephen Slauenwhite of \$11,000.00, Robin Boliver of \$660.00, Rodney Boliver of \$1,000.00 and Ryan Whynot of \$2,800.00 all of which total \$15,460.00. \$135,607.71 minus \$15,460.00 equals \$120,147.71. When determining commission for the Personal Representative, I apply Section 62(3) of the Probate Regulations. In determining the percentage I take into consideration the value of the estate, if there were investments, if the Personal Representative invested money, if they sold or divided the personal property, sold or transferred real property, banking and the amount of time it took to complete the administration of the estate. I will allow the full commission of 5% on the \$120,147.71 which equals \$6,007.39. Robin Boliver will have to pay back the difference of \$1,301.87.

With respect to the Proctor's Bill of Costs for probating the estate, Mr. Morris submitted two invoices, one dated May 12, 2012 for \$2730.39 (which has been paid), and one dated March 5, 2013 for \$1,457.86. In Lunenburg County the Barristers had prepared a guideline for Proctor's fees in estates. Based on this guideline Mr. Morris would be allowed the following:

For administering the estate, preparing documents, etc.	\$1,653.04
Preparation of the Executrix's account	339.02
Requesting Clearance Certificate - minimum	150.00
Letters (not covered above)	25.00
Perusal of letters	10.00
Preparation of Releases -	\$30.00 for 1 st then 25.00

Such additional charge, calculated on a time basis, for work which is the responsibility of the Executrix or for any additional work done on behalf of the estate.

I will allow Mr. Morris's accounts as there was quite of bit of time given to the preparation of the final accounts converting them from the accountant's sheets to the accounting required by the Probate Court.

Richard & Royce Boliver commented on the home property was sold to the Personal representative's son. It is usual, in a circumstance like this one, that the Personal Representative get consent from the beneficiaries if there is a sale to another family member. This was not the case here. Robin Boliver's son purchased the property through a Rent to Own Agreement. The agreement was signed on July 30, 2011 with a rent of \$500.00 per month and this money to be applied to his down payment. Ryan paid the \$500.00 in the months of August, September, October, November, December, January, February, March and April totaling \$4,500.00 and the house was transferred to him on May 1, 2012. I have reviewed the Agreement made between Robin Boliver, as Personal Representative and Vendor and Ryan Whynot as the Purchaser and it is in order and the monies were paid to the estate.

As far as personal property given to the grandchildren (namely the Personal Representative's children) the will clearly states that Robin Boliver receives all the rest and residue of the estate so once the assets are in her hands it is her decision as to what happens to them.

The matter of the motor vehicle was dealt with at the time of the hearing.

With respect to the property being sold below market value, Robin Boliver had the property on the market for some time and was unable to sell it. At this time it appears that it is a buyer's market out there, not the seller's and people are looking for houses that are ready to move into.

The amounts which Robin Boliver is to reimburse the estate may be deducted from her share in the estate.

I conclude that the Registrar of Probate has no jurisdiction to deal with the Proctor's invoices for the sale of the real property.