

**IN THE COURT OF PROBATE**

**ESTATE OF HILDA WINTER - #50348**

**Cite as: Winter Estate (Re), 2017 NSPB 1**

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**DECISION**

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Date: September 11, 2017

Registrar Cora Jacquemin

Counsel: A. Lawrence Graham, Q.C. - Proctor for the Estate  
Timothy C. Matthews, Q.C. – Counsel for Mr. Joachim Winter  
Theresa Graham – Counsel for Mr. Igor Winter

Joachim Winter {"Joachim"} and Igor Winter {"Igor"} take the position that the executor, Mr. Ivo Winter {"Ivo"} should not receive any commission from the estate of their mother, Ms. Hilda Winter. There has been nothing put forward from Itta Winter, the daughter of the deceased.

Joachim and Igor believe the evidence demonstrates the executor has wasted the estate; that he has neglected to finalize the estate in a timely manner; has failed to provide information when requested; has not disclosed information on the sale of assets; has failed to appropriately deal with the assets of the estate, specifically the Van Dyke painting. Additionally, Joachim claims he has failed to declare estate assets properly, specifically the Austrian property; has delegated too many of his responsibilities and has not taken advantage of services offered by family members.

Counsel for the executor submits that he has conscientiously and pro-actively moved these estates forward in order to obtain the best results possible. That the delays were a result of litigation challenging his authority to administer the estate which had to run its course. Ivo was also waiting for assets to be sold and/or transferred. Mr. Graham states that Ivo hired professionals to assist him, both here in Nova Scotia and abroad in an effort to liquidate the assets and move the estate forward.

Letters Testamentary were granted to Ivo Winter on August 23, 1999. At that time

the value was indicated at \$1,000,000: Personal property - \$499,500.00 and Real Property - \$500,500.00.

The Warrant of Appraisalment and Inventory was filed on April 17, 2001. It listed the assets of the estate which included 5 parcels of land; bank accounts; a car; 4 pieces of 'Major Art'; a detailed list of over 450 individual items of furniture and appliances in the Halifax House and the Arichat House; securities and a safety deposit box.

The total value of the estate was listed in the Warrant of Appraisalment and Inventory at \$4,238,539.75: Personal Property - \$2,816,839.75 and Real Property \$1,421,700.00.

When the final accounts were filed, they indicated a 'total value administered' by the Executor as \$6,051,757.60; a gain of more than 5 million dollars.

I reject the suggestion this was not a complicated estate and that it should have been simple to administer. This was an extraordinarily complex estate, with multiple properties and multiple assets located in multiple locations which required complex negotiations and significant amounts of time to complete. Any one of the issues faced during the administration of this estate would have delayed the closing. Even so, the administration of Ms. Winter's estate has been sporadic at times.

While the amount of time it has taken to close the estate cannot be ignored when commission is being determined, any delay in the administration of an estate

needs to be weighed against the results that have been achieved in the totality of the administration.

Delays in closing an estate, in and of themselves, are not necessarily a basis to completely deny commission to an executor. One of the guiding principles for setting commission is: *Results obtained and degree of success associated with the efforts of the fiduciary*. Simply put: The executor's commission should bear some relevance to the work he has performed. Ivo Winter's work has resulted in a gain of almost 5 million dollars for the estate.

In light of the complexity of the estate and the intricacies surrounding the valuation and disposition of the estate assets, it was entirely reasonable to employ the services of surveyors, overseas counsel, accountants and tax experts, rather than rely on member of the family. The refusal of assistance from family members should not be seen as an unwillingness to cooperate.

I do not know why Ivo stated under oath that he had not planned to 'charge' executor's fees. Mr. Winter cannot charge executor's fees: He can request a commission based on the work performed as executor of the estate of his mother and he has decided to do so.

I am awarding a commission of 2.25% to the executor of the estate. Based on the value of the estate administered – minus the value of the real property - of \$4,630,057.60, this amount is \$104,176.30.

**Safety Deposit Box:**

Igor Winter is seeking reimbursement of the costs associated with the safety deposit box which he indicated he has been paying each year since the settlement agreement was reached in 2004.

There is nothing before me to indicate Igor was under any obligation to keep paying the fees for the safety deposit box. He could have advised Ivo Winter that he was going to cease payments, but he chose not to do so. I fail to see how this constitutes evidence of delay on the part of Ivo Winter. The Executor will return the key to Igor and release any interest on the part of the estate.

**Costs:**

I refer to the article “Costs and Estate Litigation” 18 E.T.R. (2d) 218, Ian Hull sets forth considerations favourable to an award of costs out of an estate:

- where the litigation arises out of the acts or fault of the deceased;
- where the order sought is for the protection of the trustee, such as an interpretation problem or where other directions or advice of the court are sought;
- where there are reasonable grounds for the litigation such as proof in solemn form;
- where suspicious circumstances are demonstrated;
- where the court’s scrutiny or supervision is warranted.

I do not believe that the passing of the final accounts meets the criteria of the above noted categories. Therefore, I am not prepared to award costs to Joachim Winter or Igor Winter.

CNMJ