

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Chouake

2026 NY Slip Op 03304 · No. 2023-12169 · Decided May 27, 2026

SUMMARY

The Appellate Division, Second Department reversed the decree admitting Shoshannah Chouake’s will to probate insofar as appealed from. The court held that the petitioner failed to eliminate triable issues of fact regarding a confidential relationship with the decedent and whether the will resulted from undue influence. The court therefore denied summary judgment dismissing the undue-influence objection.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 27, 2026
DOCKET	2023-12169
DISPOSITION	reversed
PROCEDURAL POSTURE	In a contested probate proceeding, the objectant appealed from a decree admitting the decedent's will to probate after the Surrogate's Court granted the petitioner's motion for summary judgment dismissing the undue-influence objection.
STANDARD OF REVIEW	Summary judgment standard; the movant must establish entitlement to judgment as a matter of law and eliminate all triable issues of fact concerning undue influence.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Benjamin Chouake v. Sheldon Krause

TOPICS

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QUESTIONS PRESENTED

1. Whether the petitioner established as a matter of law that the decedent's will was not the product of undue influence.
2. Whether the evidence of the petitioner's relationship with the decedent, including his prior legal assistance, power of attorney, involvement in preparation of the will, and the decedent's terminal illness, left triable issues of fact concerning a confidential relationship and undue influence.

HOLDINGS

1. A movant seeking summary judgment dismissing an objection based on undue influence bears the prima facie burden of demonstrating that the will was not the product of undue influence and must eliminate all triable issues of fact.
2. When evidence establishes a confidential relationship between a decedent and beneficiary through circumstances demonstrating inequality or controlling influence, an inference of undue influence arises and the beneficiary must explain the circumstances of the transaction.

KEY QUOTATIONS

“On a motion for summary judgment dismissing an objection based upon undue influence, the movant bears the prima facie burden of demonstrating that the will was not the product of undue influence” ([*1])

“Where a confidential relationship is established between the decedent and the beneficiary, through evidence of circumstances that demonstrate inequality or a controlling influence, an inference of undue influence arises which requires the beneficiary to come forward with an explanation of the circumstances of the transaction” ([*2])

“The existence of a confidential relationship 'will ordinarily be a question of fact'” ([*2])

FACTUAL BACKGROUND

The decedent executed a will naming the petitioner, who was unrelated to her, as executor and a primary beneficiary. The petitioner was an attorney who had previously assisted the decedent in litigation concerning her mother's estate and held the decedent's power of attorney. He also communicated with the attorney who drafted the will while the decedent was in the final stages of a terminal illness.

PROCEDURAL HISTORY

The petitioner sought to admit Shoshannah Chouake's December 28, 2017 will to probate. Benjamin Chouake, the decedent's brother, objected on several grounds, including undue influence. The Surrogate's Court, Queens County, granted summary judgment dismissing the undue-influence objection and later admitted the will to

probate. The Appellate Division reversed insofar as appealed from, denied that branch of the summary-judgment motion, and modified the prior order accordingly.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The branch of the petitioner's motion seeking summary judgment dismissing the undue-influence objection is denied, and the April 6, 2023 order is modified accordingly. Costs are payable by the petitioner personally.

CASES CITED

- Matter of Rozof, 219 AD3d 1428, 1429-1430
- Matter of Michels, 192 AD3d 1110, 1112
- Matter of Bullock, 172 AD3d 853, 855
- Matter of Henig, 11 AD3d 614, 615
- Matter of Gobes, 189 AD3d 1402, 1404-1405
- Matter of DelGatto, 98 AD3d 975, 978
- Matter of Nealon, 104 AD3d 1088, 1089, affd 22 NY3d 1045

OPINION

Matter of Chouake 2026 NY Slip Op 03304

PER CURIAM.

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Matter of Chouake

2026 NY Slip Op 03304

May 27, 2026

Appellate Division, Second Department

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In the Matter of Shoshannah Chouake, etc., deceased. Sheldon Krause, respondent; Benjamin Chouake, appellant. (File No. 2212/18)

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 27, 2026

2023-12169

Angela G. Iannacci, J.P.

Linda Christopher

Barry E. Warhit

Carl J. Landicino, JJ.

Michael F. Mongelli, II, P.C. (Horn Appellate

Group, Brooklyn, NY [Scott T. Horn], of counsel), for appellant.

Greenfield Stein & Senior, LLP, New York, NY (Angelo M. Grasso and Tzipora Zelmanowitz of counsel), for respondent.

DECISION & ORDER

In a contested probate proceeding, the objectant appeals from a decree of the Surrogate's Court, Queens County (Peter J. Kelly, S.), dated August 22, 2023. The decree, insofar as appealed from, upon an order of the same court dated April 6, 2023, inter alia, granting that branch of the petitioner's motion which was for summary judgment dismissing the objection to probate of the decedent's last will and testament based on undue influence, admitted the will to probate.

ORDERED that the decree is reversed insofar as appealed from, on the law, with costs payable by the petitioner personally, that branch of the petitioner's motion which was for summary judgment dismissing the objection to probate of the decedent's last will and testament based on undue influence is denied, and the order dated April 6, 2023, is modified accordingly.

The petitioner commenced this proceeding to admit to probate the last will and testament of Shoshannah Chouake (hereinafter the decedent) dated December 28, 2017. The petitioner, who was not related to the decedent, was the executor named in the decedent's will and a primary beneficiary thereunder. The objectant, the decedent's brother, filed objections to probate on the ground, inter alia, that the will was the product of undue influence.

The petitioner moved, among other things, for summary judgment dismissing the objection based on undue influence. In an order dated April 6, 2023, the Surrogate's Court, inter alia, granted that branch of the petitioner's motion. In a decree dated August 22, 2023, the court, among other things, admitted the will to probate. The objectant appeals.

"On a motion for summary judgment dismissing an objection based upon undue influence, the movant bears the prima facie burden of demonstrating that the will was not the product of undue influence" (*Matter of Rozof*, 219 AD3d 1428, 1429; *see* *Matter of Michels*, 192 AD3d 1110, 1112). "Undue influence can be shown 'by all the facts and circumstances surrounding the testator, the nature of the will, his [or her] family relations, the condition of his [or her] health and mind, his [or her] dependency upon and subjection to the control of the person supposed to have wielded the influences, the opportunity and disposition of the person to wield it, and the acts and declarations of such person'" (*Matter of Bullock*, 172 AD3d 853, 855, quoting *Matter of Henig*, 11 AD3d 614, 615; *see* *Matter of Gobes*, 189 AD3d 1402, 1404-1405). Moreover, "[w]here a confidential relationship is established between the decedent and the beneficiary, through evidence of circumstances that demonstrate inequality or a controlling influence, an inference of undue influence arises which requires the beneficiary to come forward with an explanation of the circumstances of the transaction" (*Matter of Rozof*, 219 AD3d at 1430 [alteration, citation, and internal quotation marks omitted]; *see* *Matter of DelGatto*, 98 AD3d 975, 978). "The existence of a confidential relationship 'will ordinarily be a question of fact'" (*Matter of Rozof*, 219 AD3d at 1430, quoting *Matter of Nealon*, 104 AD3d 1088, 1089, *affd* 22 NY3d 1045).

Here, the petitioner failed to eliminate all triable

issues of fact as to whether the petitioner had a confidential relationship with the decedent and whether the execution of the will was the result of the petitioner's undue influence (*see* *id.*). The petitioner's submissions demonstrated that he was an attorney who previously assisted the decedent in litigation involving the estate of the decedent's mother and held a power of attorney for the decedent. Additionally, the record reflects that the petitioner communicated with the attorney draftsman regarding the preparation of the will, which occurred while the decedent was in the final stages of a terminal illness (*see* *Matter of Gobes*, 189 AD3d at 1405; *Matter of Bullock*, 172 AD3d at 855). Under the circumstances presented, the Surrogate's Court should have denied that branch of the petitioner's motion which was for summary judgment dismissing the objection based on undue influence.

IANNACCI, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur.

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PER CURIAM.

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with costs payable by the petitioner personally, that branch of the petitioner's motion which was for summary judgment dismissing the objection to probate of the decedent's last will and testament based on undue influence is denied, and the order dated April 6, 2023, is modified accordingly. The petitioner commenced this proceeding to admit to probate the last will and testament of Shoshannah Chouake (hereinafter the decedent) dated December 28, 2017. The petitioner, who was not related to the decedent, was the executor named in the decedent's will and a primary beneficiary thereunder. The objectant, the decedent's brother, filed objections to probate on the ground, inter alia, that the will was the product of undue influence. The petitioner moved, among other things, for summary judgment dismissing the objection based on undue influence. In an order dated April 6, 2023, the Surrogate's Court, inter alia, granted that branch of the petitioner's motion. In a decree dated August 22, 2023, the court, among other things, admitted the will to probate. The objectant appeals. "On a motion for summary judgment dismissing an objection based upon undue influence, the movant bears the prima facie burden of demonstrating that the will was not the product of undue influence" (*Matter of Rozof* , 219 AD3d 1428, 1429 ; see *Matter of Michels* , 192 AD3d 1110, 1112). "Undue influence can be shown 'by all the facts and circumstances surrounding the testator, the nature of the will, his [or her] family relations, the condition of his [or her] health and mind, his [or her] dependency upon and subjection to the control of the person supposed to have [*2] wielded the influences, the opportunity and disposition of the person to wield it, and the acts and declarations of such person'" (*Matter of Bullock* , 172 AD3d 853 , 855, quoting *Matter of Henig* , 11 AD3d 614, 615 ; see *Matter of Gobes* , 189 AD3d 1402, 1404-1405). Moreover, "[w]here a confidential relationship is established between the decedent and the beneficiary, through evidence of circumstances that demonstrate inequality or a controlling influence, an inference of undue influence arises which requires the beneficiary to come forward with an explanation of the circumstances of the transaction" (*Matter of Rozof* , 219 AD3d at 1430 [alteration, citation, and internal quotation marks omitted]; see *Matter of DelGatto* , 98 AD3d 975 , 978). "The existence of a confidential relationship 'will ordinarily be a question of fact'" (*Matter of Rozof* , 219 AD3d at 1430 , quoting *Matter of Nealon* , 104 AD3d 1088 , 1089, affd 22 NY3d 1045). Here, the petitioner failed to eliminate all triable issues of fact as to whether the petitioner had a confidential relationship with the decedent and whether the execution of the will was the result of the petitioner's undue influence (see *id.*). The petitioner's submissions demonstrated that he was an attorney who previously assisted the decedent in litigation involving the estate of the decedent's mother and held a power of attorney for the decedent. Additionally, the record reflects that the petitioner communicated with the attorney draftsman regarding the preparation of the will, which occurred while the decedent was in the final stages of a terminal illness (see *Matter of Gobes* , 189 AD3d at 1405 ; *Matter of Bullock* , 172 AD3d at 855). Under the circumstances presented, the Surrogate's Court should have denied that branch of the petitioner's motion which was for summary judgment dismissing the objection based on undue influence. IANNACCI, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur. ENTER:

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