SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

In the Matter of Bankers Trust Company, as Trustee of Bankers Trust Company Capital Income Fund, Appellant-Respondent. Frederick Siegmund, as Guardian Ad Litem for Persons Interested in Income, Respondent-Appellant.

219 A.D.2d 266, 636 N.Y.S.2d 741 (1st Dep't 1995) · No. 55719-55719A

SUMMARY

The court held that a trustee of a common trust fund under Banking Law § 100-c is judged by its conduct, not investment performance, and a surcharge requires proof of negligence causing financial loss; the fact that other investments would have produced slightly more income does not establish a breach. It further ruled that a trustee bank's investment of fund assets in another common trust fund or in shares of other banks does not constitute self-dealing or violate Banking Law § 97, because those prohibitions apply only to investments on the bank's own account, not in a fiduciary capacity. Additionally, the management committee and minutes requirements of 3 NYCRR 22.2 do not mandate detailed records of deliberations, and routine approval of a fund manager's decisions does not show an improper delegation of committee authority.

CASE DETAILS

COURT	Supreme Court of New York, Appellate Division, First Department
WRITING FOR THE COURT	Asch; Murphy; Ellerin; Kupferman; Mazzarelli
JURISDICTION	New York
DOCKET	55719-55719A
DISPOSITION	modified
PROCEDURAL POSTURE	Cross appeals from orders of the Surrogate's Court, New York County, which denied in part the trustee's motions for summary judgment on the guardian ad litem's objections to the trustee's accounting, and granted in part reargument.
STANDARD OF REVIEW	De novo review of whether summary judgment was warranted; summary judgment should be granted where no genuine issues of material fact exist.
PRECEDENTIAL VALUE	Precedential

PARTIES	Bankers Trust Company, as Trustee of Bankers Trust Company Capital Income Fund v. Frederick Siegmund, as Guardian Ad Litem for Persons Interested in Income

TOPICS

probate procedure · probate · summary judgment · civil procedure

PRACTICE AREAS

Trusts and Estates · Banking Law · Fiduciary Duty

QUESTIONS PRESENTED

1. Whether the trustee improperly allocated fund assets between income and principal, sacrificing income for principal growth.
2. Whether the trustee's investment in the Bankers Trust International Fund violated its duty of loyalty or was otherwise improper.
3. Whether the trustee's purchase of shares in other banking corporations violated Banking Law § 97.
4. Whether the trustee failed to comply with the management committee and minute-keeping requirements of 3 NYCRR 22.2.

HOLDINGS

1. The trustee did not breach its fiduciary duty. The test for trustee negligence is one of conduct rather than performance, and the fact that slightly more income would have been earned with alternative investments does not establish a breach of duty.
2. No breach of duty of loyalty or impropriety occurred. The guardian's allegation of improper motive was speculative; the investment was authorized by the Master Plan approved by the State Banking Department; and federal regulations prohibiting investments in affiliates apply only to banks on their own account, not as fiduciaries.
3. The purchase did not violate Banking Law § 97. The statutory prohibition applies only when a bank invests on its own account, not in a fiduciary capacity. The Banking Department confirmed this interpretation.
4. The trustee did not violate the regulation. The regulation does not require detailed minutes of committee deliberations; only minutes of decisions and activities. The mere fact that committee members consistently approved the fund manager's decisions does not, without more, show an abdication of their duties.

KEY QUOTATIONS

> "*The test is one of conduct rather than performance (Matter of Morgan Guar. Trust Co., 89 Misc. 2d 1088, 1091, 396 N.Y.S.2d 781 [Sur Ct, NY County 1977]), and the trustee's conduct was not shown to be deficient.*"
> (219 A.D.2d at 272-73)

> *"While the fact that the portfolio showed over-all increase in total value during the accounting period does not insulate the trustee from responsibility for imprudence with respect to individual investments for which it would otherwise be surcharged, the fact that slightly more income would have been earned had the trust purchased Treasury bills or some other investment does not establish a breach of duty which would warrant a surcharge."* (219 A.D.2d at 272)

> *"A trustee not only has an absolute duty of loyalty but must also distance itself from situations where its interest may be in conflict with its duty."* (219 A.D.2d at 273)

> *"The statutory prohibition is limited to situations where the bank invests on its own account, rather than as a fiduciary."* (219 A.D.2d at 274)

> *"The fact that the other committee members never declined to sign off on the fund manager's decisions does not lead to the conclusion that they abdicated their duties and effectively allowed decisions to be made by only one person."* (219 A.D.2d at 276)

FACTUAL BACKGROUND

Bankers Trust Company, as trustee of the Capital Income Fund (a common trust fund), filed its eighth periodic accounting for the period May 1, 1984 through December 31, 1990. The guardian ad litem for income beneficiaries objected to several aspects: (1) that the trustee improperly allocated assets to benefit principal over income; (2) that the trustee invested in the bank's own International Fund allegedly to market a new product; (3) that purchasing shares of other banking corporations violated Banking Law § 97; (4) that the trustee failed to comply with management committee and minute-keeping requirements. The guardian asserted that these actions caused financial loss or demonstrated breaches of duty.

PROCEDURAL HISTORY

Trustee petitioned for settlement of the eighth periodic accounting for the common trust fund. The guardian ad litem for income beneficiaries raised five objections. Trustee moved for summary judgment. Surrogate's Court denied summary judgment on four objections, then granted reargument as to one objection (violation of Banking Law § 97) and granted summary judgment on that objection, otherwise denying reargument. The Appellate Division consolidated the appeals from both orders.

DISPOSITION

modified

CASES CITED

- Martin v. National Bank, 828 F. Supp. 1427 (D. Alaska 1992)
- Brooklyn Trust Co. v. Commissioner of Internal Revenue, 80 F.2d 865 (2d Cir. 1936), cert denied 298 U.S. 659
- Matter of City Bank Farmers Trust Co. v. Graves, 272 N.Y. 1, 3 N.E.2d 612 (1936)
- Matter of Donner, 82 N.Y.2d 574, 585, 606 N.Y.S.2d 137, 626 N.E.2d 922 (1993)

- Matter of Bank of N.Y. (Spitzer–Koenig), 35 N.Y.2d 512, 518-519 (1974)
- Matter of Bankers Trust Co. (Hahn Found.), 62 N.Y.2d 821, 824 (1984)
- Bauer v. Bauernschmidt, 187 A.D.2d 477, 478, 589 N.Y.S.2d 582 (2d Dep't 1992)
- Matter of Miller, 116 A.D.2d 580, 581, 497 N.Y.S.2d 438 (2d Dep't 1986), lv dismissed 67 N.Y.2d 609
- Matter of Morgan Guar. Trust Co., 89 Misc. 2d 1088, 1091, 396 N.Y.S.2d 781 (Sur. Ct. N.Y. County 1977)
- Matter of Lewisohn, 294 N.Y. 596, 608, 63 N.E.2d 589 (1945)
- Albright v. Jefferson County Nat'l Bank, 292 N.Y. 31, 39, 53 N.E.2d 753 (1944)

CITED IN

- In the Matter of Bankers Trust Company, as Trustee of Bankers Trust Company Capital Income Fund, Appellant-Respondent. Frederick Siegmund, as Guardian Ad Litem for Persons Interested in Income, Respondent-Appellant., Matter of Bankers Trust Co. (Siegmund), 219 AD2d 266, 272 (1st Dep't 1995), appeal dismissed sub nom. In re Bankers Trust Co., 87 NY2d 1055 (1996)