

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

In re Adelson

84 A.D.3d 952 (N.Y. App. Div. 2d Dep't 2011) · Decided May 10, 2011

SUMMARY

The Appellate Division affirmed an order vacating portions of 20 estate-accounting decrees that had approved and awarded attorney’s fees to former counsel for the Kings County Public Administrator. The court held that the Surrogate’s Court properly relied on misconduct under CPLR 5015(a)(3) and, alternatively, its inherent authority to vacate decrees in the interest of substantial justice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Dickerson, J.; Hall, J.; Cohen, J.
JURISDICTION	New York
DECIDED	May 10, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Louis R. Rosenthal, former counsel to the Public Administrator of Kings County, appealed from portions of an order of the Surrogate's Court, Kings County, that vacated portions of 20 decrees approving and awarding him attorney's fees.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Surrogate's Court properly vacated the fee awards under CPLR 5015(a)(3) and its inherent authority to vacate decrees in the interest of substantial justice.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Louis R. Rosenthal v. Attorney General of the State of New York

TOPICS

- probate procedure
- estate administration
- attorney fees
- remedies
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Surrogate's Court properly vacated portions of 20 decrees approving and awarding attorney's fees to Rosenthal based on misconduct under CPLR 5015(a)(3).
2. Whether the Surrogate's Court could rely on its inherent authority to vacate the decrees in the interest of substantial justice.

HOLDINGS

1. The Surrogate's Court properly vacated the portions of the decrees that approved and awarded attorney's fees to Rosenthal because the Attorney General demonstrated misconduct consisting of charging and collecting excessive fees in violation of SCPA 1108(2)(c), providing a basis for relief under CPLR 5015(a)(3).
2. The Surrogate's Court properly relied on its inherent authority to vacate the decrees for sufficient reason and in the interests of substantial justice; the statutory grounds for vacatur under CPLR 5015(a) are subsumed within that broader inherent authority.

KEY QUOTATIONS

“Additionally, a court may exercise its inherent powers to “vacate its own [decree] for sufficient reason and in the interests of substantial justice”” (84 A.D.3d at 953)

“the statutory grounds are subsumed by the court’s broader inherent authority” (84 A.D.3d at 953)

FACTUAL BACKGROUND

Louis R. Rosenthal served as counsel to the Public Administrator of Kings County in 20 estate-accounting proceedings. The decrees in those proceedings approved and awarded attorney's fees to Rosenthal. The Attorney General demonstrated that Rosenthal had charged and collected excessive fees in violation of SCPA 1108(2)(c), and the Surrogate's Court vacated the fee-award portions of the decrees on the ground of misconduct.

PROCEDURAL HISTORY

The Surrogate's Court, Kings County, granted the Attorney General's separate motions to vacate portions of 20 estate-accounting decrees that approved and awarded attorney's fees to Rosenthal. Rosenthal appealed, as limited by his brief, and the Appellate Division affirmed the order insofar as appealed from, with costs.

DISPOSITION

affirmed

CASES CITED

- Woodson v. Mendon Leasing Corp., 100 N.Y.2d 62, 68 (2003)

- Ladd v. Stevenson, 112 N.Y. 325, 332 (1889)
- Aiderman v. Alderman, 78 A.D.3d 621 (2010)
- Matter of Rosenthal, 57 A.D.3d 1085, 1085 (2008)
- Katz v. Marra, 74 A.D.3d 888, 890 (2010)

OPINION

PER CURIAM.

In 20 estate accounting proceedings, Louis R. Rosenthal, former counsel to the Public Administrator of Kings County, appeals, as limited by his brief, from so much of an order of the Surrogate's Court, Kings County (Johnson, S.), dated October 21, 2009, as granted those branches of the separate motions of the Attorney General of the State of New York which were to vacate those portions of 20 decrees of the same court which ap*953proved, and awarded attorney's fees to him as counsel for the Public Administrator of Kings County in the subject proceedings.

Ordered that the order is affirmed insofar as appealed from, with costs. Pursuant to CPLR 5015 (a), a court may vacate a decree upon the grounds of excusable default, newly discovered evidence, fraud, misrepresentation or other misconduct, lack of jurisdiction to render the decree, or reversal of a prior order or decree upon the which the decree being vacated is based.

Additionally, a court may exercise its inherent powers to "vacate its own [decree] for sufficient reason and in the interests of substantial justice" (Woodson v Mendon Leasing Corp., 100 NY2d 62, 68 [2003]; see Ladd v Stevenson, 112 NY 325, 332 [1889]; Aiderman v Alderman, 78 AD3d 621 [2010]).

Under the unique facts of these cases, the Surrogate's Court properly vacated those portions of the decrees in the subject proceedings which approved and awarded attorney's fees to Louis R. Rosenthal as counsel for the Public Administrator of Kings County on the ground of misconduct (see CPLR 5015 [a] [3]).

In support of the various motions, the Attorney General demonstrated that Rosenthal "charged and collected excessive fees, in contravention of SCPA 1108 (2) (c)" in his capacity as a counsel to the Public Administrator of Kings County (Matter of Rosenthal, 57 AD3d 1085, 1085 [2008]).

Moreover, to the extent that the Surrogate's Court relied on its inherent authority to vacate decrees in the interest of substantial justice, rather than its statutory authority under CPLR 5015 (a) (3), such reliance was proper, as the statutory grounds are subsumed by the court's broader inherent authority (see Woodson v Mendon Leasing Corp., 100 NY2d at 68; Ladd v Stevenson, 112 NY at 332; Katz v Marra, 74 AD3d 888, 890 [2010]).

Rivera, J.P, Dickerson, Hall and Cohen, JJ., concur.

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