

**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.

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 approved, 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]; Alderman 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.