



# Cullen and Dykman Obtains Summary Judgment on Behalf of the Estate of an Elderly Brooklyn Woman

May 20, 2020

Cullen and Dykman recently obtained summary judgment on behalf of the Estate of an Elderly Brooklyn woman in a contested probate proceeding filed by her niece and nephew.

The decedent died on January 9, 2017, at the age of 98, with neither surviving children nor a surviving spouse. The propounded will, dated March 30, 2012, was prepared by, and its execution was supervised by a seasoned trusts and estates practitioner.

On March 2, 2017, designated executors – represented by Cullen and Dykman LLP – filed the will for probate in the King’s County Surrogate’s Court. On September 14, 2017, the decedent’s adult niece and nephew filed formal objections to the will claiming the will was not duly executed, that the decedent lacked testamentary capacity and that the propounded instrument was procured by the exercise of fraud or undue influence by either the attorney-drafter or the executors. The decedent’s niece and nephew took issue with the decedent’s decision to leave the majority of her approximately \$7,000,000 estate to Catholic charities while only providing them with \$50,000 each.

After sixteen months of discovery, including seven depositions (over 38 hours of testimony) and hundreds of pages of documentary evidence, the executors of the estate moved pursuant to CPLR §3212 for summary judgment to dismiss the objections filed by the decedent’s niece and nephew. Through their attorney, the decedent’s niece and nephew opposed dismissal claiming issues of fact existed as to the decedent’s testamentary capacity and undue influence by providing the court with medical evidence, deposition testimony and affidavits. Specifically, the niece and nephew alleged, among other things, that “it is inconceivable” that the decedent would have made bequests of so vast a fortune to the Catholic charities given the “close” familial relationships the decedent had with her nieces and nephews. In reply, the executors, represented by Cullen and Dykman, argued, among other things, that the opining physician did not examine or treat the decedent at all for the over one-year and three-month period encompassing the will execution (September 7, 2011 through January 14, 2013) and that the niece and nephew – whose affidavits were based upon “personal observations” – did not see or visit with the decedent during the last eight years of her life (over three years before the subject will was signed and for over four years after the subject will was signed).

On May 7, 2020, the Honorable Margarita López Torres, Kings County Surrogate issued a sixteen-page decision admitting the March 30, 2012 to probate and dismissing all of the objections filed by the decedent's niece and nephew.

Cullen and Dykman LLP Partner, Andrew P. Nitkewicz represented the estate executors during the entirety of this litigation.

## Practices

- Trusts and Estates

## Attorneys

- Andrew P. Nitkewicz