

Partner Jane A. Grinch and Associate Thomas R. Lahey Succeed in Dismissing the Plaintiff's Complaint Against the Firm's Trusts and Estates Client

January 5, 2024

Jane A. Grinch, a partner in the firm's Trusts and Estates Department, based in Hackensack, New Jersey, together with Thomas R. Lahey, an associate in the firm's Trusts and Estates Department, successfully moved to dismiss a Complaint filed in the New Jersey Superior Court, Chancery Division, Bergen County, Probate Part against the firm's client, who is the executor of a decedent's estate. The Complaint sought to set aside a Last Will and Testament which was admitted to probate in August of 2019 and remove the firm's client as executor. In addition, the Complaint sought to admit an unsigned, undated, unwitnessed, and incomplete document to probate as a writing intended as a Will in place of the probated Will.

Before the return date of the Order to Show Cause, Cullen and Dykman moved to dismiss the Complaint based on the pleading being untimely under the applicable Statute of Limitations, which requires actions for setting aside a probated Will to be filed within four (4) months from the date of probate, and for the Complaint's failure to state a claim upon which relief could be granted.

The Court, in accepting Cullen and Dykman's arguments, found that the plaintiff's Complaint was untimely and that no basis exists for the Statute of Limitations to be enlarged on equitable grounds. The Court agreed with Cullen and Dykman that the plaintiff had both actual and constructive notice of probate and failed to act within the prescribed time period. Furthermore, the Court ruled that the Complaint failed to state a claim upon which relief can be granted because the allegations of undue influence failed to be plead with the required specificity, and that amendment of the pleading would be futile because the filing was untimely. The Court dismissed the Complaint against the firm's client with prejudice.

About Cullen and Dykman's Trusts and Estates Department

Located in our New York City, Garden City and Hackensack offices, our trusts and estates attorneys prepare wills and other wealth transfer documents for clients with varying family circumstances and levels of wealth. We assist clients with the selection and preparation of documents ranging from generation-skipping trusts for grandchildren to special needs trusts designed to ensure continued access to Medicaid, always giving due

consideration to the frequently-changing laws that govern wealth transfers and taxation. Our firm's long history is a testament to our dedication to practicality and cost-effectively meeting our clients' estate planning needs.

About Cullen and Dykman

Cullen and Dykman (www.cullenllp.com) has been providing legal services to institutional clients since 1850. The firm represents a wide range of clients, including banks and other financial institutions, energy, telecommunications and water companies, construction companies, insurers, educational institutions, religious organizations, and not-for-profits. With over 190 attorneys in seven offices located throughout the Northeast and MidAtlantic regions, Cullen and Dykman is strategically positioned to meet the changing needs and demands of our clients.

Practices

- Trusts and Estates

Attorneys

- Jane A. Grinch
- Thomas R. Lahey