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Decisions

SURROGATE'S COURT DECISION

Queens County Surrogate's Court

Surrogate Nahman

ESTATE OF BRUNO FARES, deceased As part of her accounting proceeding, the Petitioner requested that the instrument purporting to be the decedent's Last Will and Testament dated June 8, 1999 be denied probate. This matter was set down for a hearing on the issue of the denial of probate.

After a hearing, the Court finds that the attorney-draftsman, who was also the decedent's Article 81 Guardian and the sole beneficiary named in the instrument purporting to be the decedent's Last Will and Testament, was in a confidential relationship with the decedent at the time the instrument was purportedly executed.

Where there is a confidential relationship between the decedent and the attorney-draftsman-beneficiary of the will, the mere fact of the bequest, standing alone, permits an inference of undue influence, and the attorney-draftsman-beneficiary then has the burden of offering an explanation, alternative to his influence, for the contested will ([In re Estate of Collins, 124 A.D.2d 48](#)). The law requires the lawyer who drafts himself a bequest to explain the circumstances and to show in the first instance that the gift was freely and willingly made. Such wills, when made to the exclusion of the natural objects of the testator's bounty, are viewed with great suspicion by the law, and some proof should be required beside the factum of the will before the will can be sustained ([In re Putnam's Will, 257 NY 140](#)).

In the instant matter, no proof was submitted at the hearing by the attorney-draftsman-beneficiary. Accordingly, the branch of the petition seeking the denial to probate of the instrument dated June 8, 1999 is granted.

A trial on the Objections relating to kinship matters is scheduled for April 19, 2004 at 10:00 A.M.

This is the Decision and Order of the Court.

The Clerk of the Court is directed to mail a copy of this Decision and Order to the attorneys for all parties who have appeared in this proceeding.

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