

12/2/98 N.Y.L.J. 31, (col. 3)

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Court Decisions
First Judicial Department
Queens County
Surrogate's Court

ESTATE OF MARGARET DUFF, DECEASED QDS:54502087

Surrogate Nahman

In this discovery proceeding, Petitioner seeks, inter alia, an order directing Respondent Robert M. Kelly to return or otherwise refund to the estate any funds which may have been distributed or otherwise taken by Robert M. Kelly from the decedent's estate, an order directing Robert M. Kelly to account, and an order finding Robert M. Kelly in contempt of Court for his failure to account and failure to restore the sum of \$131,000.00.

The default of the Respondent, Robert M. Kelly, was noted in this Court's Decision and Order dated April 11, 1997, and the matter was set down for an inquest as to the property which Robert M. Kelly should be directed to return to the estate.

After an inquest, the Court finds that Robert M. Kelly wrongfully took the sum of \$107,320.00 from the decedent during her lifetime and wrongfully took the sum of \$178,601.05 from the decedent's estate. Accordingly, Robert M. Kelly is directed to return to the decedent's estate within ten days of the date of the decree to be submitted hereon the sum of \$107,320.00, plus interest thereon at the rate of 9 percent from the date of each check as set forth in the Summary Statement admitted into evidence as Petitioner's 2; and the sum of \$178,601.05, plus interest thereon at the rate of 9 percent from the date of each distribution set forth in Schedule E of the Account of Proceedings of Geoffrey P. Young, admitted in evidence as Petitioner's 1.

The branch of the Petition seeking an order directing Robert M. Kelly to account is granted on default. Robert M. Kelly is directed to render and judicially settle his account as Executor within thirty days of the date of service upon him of a copy of the Decree to be submitted herein.

The branch of the Petition seeking an order finding Robert M. Kelly in contempt of Court for his failure to account and failure to restore the sum of \$131,000.00 is granted on default.

Submit Decree.

The Clerk of the Court is directed to mail a copy of this Decision to the parties who have appeared herein.

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