THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

PROBATE COURT

[redacted]

IN RE GUARDIANSHIP OVER NORMAN P. BOLDUC, JR.

2000-1299

ORDER

Before the court are motions to reconsider filed by Father Soberick and National Grange Mutual Insurance Company (hereafter "National Grange"), and a motion for clarification filed by the decedent's parents, Norman P. Bolduc, Sr. and Cecile Bolduc (hereafter "the Bolducs"). Each is addressed in turn.

Motions to Reconsider

In these motions to reconsider both Father Soberick and National Grange argue that the court erred as a matter of law in ruling that by November 27, 2000, at the latest, Father Soberick should have completely assessed the situation presented by the margin debt accumulated by the decedent and acted to dispose of the assets of the estate. National Grange further argues that by imposing such a short deadline, the court has created an unrealistic and unattainable standard for all executors of estates. Father Soberick contends that the court failed to recognize and apply the facts presented in finding that he acted more as a loyal friend than an executor. The Bolducs object to both motions.

National Grange and Father Soberick misinterpret the court's ruling. Because of the unique circumstances presented — namely, that margin calls for thousands of dollars (ultimately, totaling millions of dollars) were issuing with frequency — special or expedited administration should have been sought by the executor. But for Father Soberick's failure to timely collect and review the decedent's mail, his effort to conceal assets of the estate, his attorneys' failure to assess the urgency of the situation and more aggressively seek authority to administer the estate beyond the routine, the loss to the estate for which he has been surcharged would not have occurred. This court does not subscribe to the notion that its ruling imposes either an impossible or unreasonable burden on future executors of estates or their counsel.

Moreover, while this court did note that Father Soberick acted more as a friend than an executor, it did not call into question his loyalty *per se*. His actions however, were, in a nutshell, wholly inappropriate given the task his late friend had asked him to perform and he willingly assumed. He and the decedent were obviously very close friends — certainly an admirable relation. After such a person dies, an executor often must labor over hard decisions and work diligently toward resolution, despite natural and understandable feelings of loss and devotion to the deceased confidant and close friend.

Accordingly, because Father Soberick's and National Grange's motions to reconsider fail to set forth points of law or facts overlooked or misapprehended, see Prob. Ct. R. 59-A, or otherwise fail to provide corrected facts warranting relief, both are **denied**.

Motion for Clarification

In their motion for clarification, the Bolducs point out that the court's order fails to address their objection to compensation reported for Father Soberick and his attorneys in the first and final accounting. Father Soberick objects.

The Bolducs correctly call attention to the court's inadvertent failure to address their objection to the compensation reported under the executor's first and final account. The objection was timely filed and preserved. The executor's fee complained of is in the amount of $4,000. The legal fees total $55,074.50. The Bolducs objection does not quantify what amount of either fee is unreasonable or reasonable.

The propriety of fiduciary and attorney's compensation incident to the administration of the decedent's estate is not determined by application of a fixed rule or a categorical standard: It is grounded on the rule of reason. See In re Estate of Rolfe, 136 N.H. 294 (1992). It is the court's affirmative duty, independent of an interested party's objection, to assess and determine their reasonableness. Id. at 298. While such documentation as time records may

enlighten or enhance the assessment and determination, they are merely aids in assisting the court obtain "a clearer picture of the time and nature of the work involved .... " Id. at 299. They are not self-determinative. Among the considerations the court must take into account are the complexity of the estate and matters involved, the degree of sophistication or special skill needed to complete necessary tasks, the labor involved, the risks and responsibilities assumed and trouble experienced. The value and quality of the services are gauged not just from the resulting benefit, but also within the context of any detriment or losses to the estate. The deficient quality of the services afforded by the executor and his lawyers has been sufficiently described in the decree to which the Bolducs seek clarification, such that no further recitation or comment is considered necessary. The Bolducs, as the residuary legatees under the will, bear the ultimate cost of what fees are determined reasonable and allowable, as disbursement carries with it commensurate diminution of the distributable estate on settlement. The estate consisted predominantly of liquidable publicly traded stocks, albeit within a volatile market. It is acknowledged that margin debt secured by the stock presented a measure of complication. The original surcharge approximates 6 times the balance on hand and distributable under the account. The combined fees approximate 30% of the same balance, but only slightly more than 1% of the net and .09% of the gross asset values of the original estate. It cannot be said that no benefit was conferred, just that the

waste and loss to the estate far exceeded what was received. Unlike In re Estate of Ward, 129 N.H. 4, 10 (1986), here the services were not "worthless" but carried with them some value. Though there was no augmentation but, rather, loss experienced; yet, tasks were undertaken and accomplished for which there should be recompense.

Having carefully reviewed the billing invoices and taken into account the other considerations discussed, the executor is **awarded** fiduciary fees of $1,500 and attorney's fees under schedule 5 are **approved** in the sum of $35,000 only. Such are the reasonable value to the estate of the related services. The $3,500 of fiduciary compensation and the $20,074.50 of attorney's fees found excessive and unreasonable are added to the $1,256,000 surcharge entered on the original order of April 15, 2005, making the total surcharge $1,279,574.50. As with the original surcharge set forth in the April 15, 2005 order, the combined surcharge shall carry with it interest of the same rate but only from the date of payment.

SO ORDERED.

Dated: 11-8-05

Gary R. Cassavechia, Judge