IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

(In the Jurisdiction of the Register of Wills - NCC)

IN THE MATTER OF	)	
THE ESTATE OF	)	Folio No. 117898
BARBARA A. BANDURSKI, deceased.	)	

MASTER'S REPORT

Date Submitted: June 25, 2008
Final Report: June 25, 2008

Amy Evans, Esquire, of Cross & Simon, LLC, Wilmington, Delaware; Attorney for Exceptant, Michael J. Bandurski.

David J. Ferry, Esquire, of Ferry, Joseph & Pearce, P.A., Wilmington, Delaware; Attorney for Respondent, Cheryl A. Murphy, Executrix.

GLASSCOCK, Master

This matter involves the administration of the estate and trust (the "Estate") of Barbara A. Bandurski ("Barbara")[1]. Barbara created a will and a trust by documents executed on January 29, 1998. Barbara died on August 7 of the same year. The terms of the will were relatively simple, although the administration of the Estate would prove much less so. By the terms of the will, tangible personalty was to be distributed and the residue poured over into the trust, from which a number of individual gifts were specified, with the remainder to be distributed to Barbara's two sons, Walter Bandurski, Jr. ("Walter, Jr.") and the Exceptant here, Michael Bandurski ("Michael").

At the time of her death, Ms. Bandurski was divorced from her husband, Walter Bandurski, Sr. ("Walter, Sr."). Walter, Sr. had similar assets, and also died in 1998.

Under the terms of the will and the trust, Barbara's niece, Cheryl Murphy ("the Executrix") was named Executrix and co-trustee of Barbara's trust.[2] Upon Barbara's death, the Executrix became the sole trustee of the trust. Barbara was in poor health toward the end of her life, and received significant assistance from the Executrix during that period. The Executrix helped Barbara pay bills, ran errands for her and helped maintain her physically. The relationship between Barbara and the Executrix, according to the latter, was that of a mother to a daughter.

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[1]I use first names to identify a number of the individuals in this matter, not out of disrespect, but because the superabundance of Bandurskis involved would make any other form of address stilted or confusing.

[2]During her lifetime, Barbara was co-trustee with Ms. Murphy.

Pursuant to the terms of the will and the trust, the Executrix was entitled to be compensated for her work as a fiduciary for the Estate and the trust at a rate of $100.00 per hour, with the hourly rate to be increased by 3% each year. Upon Barbara's death, the Executrix undertook to administer the Estate and trust as called for in the will and trust documents. An experienced and well-respected Delaware estate attorney, Beverly Wik, Esquire, assisted Barbara with her estate planning. After Barbara's death, the Executrix retained Ms. Wik and her firm[3] as attorney for the Estate and the trust.

The Estate remains open nearly ten years after Barbara's death. The assets of the Estate had a value of between $2 and $2.5 million. The total fees and commissions charged through the filing of the second account exceed $500,000.00, or around one-fourth of the value of the Estate.[4] One of the beneficiaries, Michael, has taken exception to the first and second account filed by the Executrix, on the ground that the fees and commissions charged are unreasonably high. The matter has been tried and briefed. This is my Report after trial. For the reasons that follow, I find the attorney's fees paid by the Executrix to Ms. Wik and her firm to be reasonable. I find the commissions taken by the Executrix reasonable in some particulars and unreasonable in others.

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[3]The Bayard Firm.

[4]At the time of the first account, July 31, 2003, the Executrix had paid $156,676 in legal fees to the Bayard Firm, and taken $119,927.48 in commission. By the time of the second account, July 31, 2007, the Executrix had paid out an additional $228,884.72 in legal fees and $27,530.56 in commission. Through the second account, the total paid in legal fees was $385,560.72 and the total commission was $147,458.04. The grand total of fees and commission paid through the time of the second account: $533,018.76.

FACTS

The Bandurski family and its corporation, Bandurski Inc., were prominent for many years in the trash-removal business in Delaware. The liquidation of this business interest in the 1990s resulted in Barbara owning around 35,000 shares of stock in a successor corporation, Waste Management. Her other assets included, in addition to liquid assets, a one-fourth ownership in a family partnership holding contaminated real property in Wilmington (the "Four B's property"). Michael owns the remaining 75% of the Four B's property.

Barbara died in 1998. Michael and Walter, Jr. were the beneficiaries of the lion's share of Barbara's Estate. In addition to some other small bequests, Barbara left $75,000.00 to the Executrix. The Executrix also owned an automobile and some bank accounts jointly with Barbara, which became her sole property upon Barbara's death.

The Executrix is an articulate and intelligent woman. Her education, however, is limited to a high school diploma, and although she has some clerical and bookkeeping experience, she brought no particular expertise to her role as Trustee and Executrix. Nevertheless, she was Barbara's close confidante and assisted her with financial dealings before Barbara's death. She was a natural choice to administer the Estate, given her close relationship with the decedent. It is also obvious that Barbara wished that the Executrix be well-compensated for her fiduciary duties. In Barbara's will and trust, she provided

for a rate of $100.00 per hour for services rendered to the Estate and trust in the year following her death, with that amount to be increased 3% with each passing year.

A number of factors made the administration of this Estate more complex than average. First, the Estate included a large amount of stock in a single company. This stock was volatile in its value. Prudently, the Executrix closely monitored the stock prices, and disposed of the stock early in the Estate for a price that proved to be quite favorable given the stock's subsequent performance. Barbara incurred large medical bills in her final illness, which the executrix addressed and, ultimately, had reduced. Also, the size of the Estate required the filing of a federal estate tax return. Surprisingly, given its rather modest size, Barbara's Estate was audited by the IRS, as was the trust of Walter, Sr. Next, the Estate was a part owner of a piece of real estate that, according to the Delaware Department of Natural Resources and Environmental Control, was contaminated. The property required an appraisal which allowed for the potential liability arising from the contamination. Although the Estate attempted to secure the cooperation of the majority owner of the property, Michael, in a clean-up of the site, he has refused. Fearing potential liability should this property be sold, the Estate retains an interest in the property, with a value of zero. This, together with the tax litigation discussed below, has prevented the Estate from being closed.

In addition, the Estate possessed another asset that it did not learn about until two years after Barbara's death. Bandurski, Inc. had hauled trash for disposal at sites operated

by the Delaware Solid Waste Authority (the "DSWA"). The defunct Bandurski corporation was entitled to participate in a class action brought against the DSWA alleging that trash haulers (including Bandurski, Inc.) had been overcharged. Michael, the sole living member of the defunct corporation, took the necessary steps for Bandurski, Inc. to be included in that lawsuit. According to counsel, pursuant to the divorce decree between Barbara and Walter, Sr., any assets recovered in favor of Bandurski, Inc. were to be divided 20% to Michael, 40% to Walter's estate, and 40% to Barbara's Estate. Michael, for reasons never adequately explained, failed to inform Barbara's Estate of this potential recovery against the DSWA. The attorney for the Estate was thus surprised when $360,000.00 was received by the Estate some two years after Barbara's death.[5] By this time, of course, the federal estate tax return had been filed.

This led to significant complications for the Estate. The IRS determined that the class action claim against DSWA was an asset of both Barbara's and Walter, Sr.'s estates, with significant value at the time of those deaths. Both estates, on the other hand, considered the value as of the time of death to be nil, or nearly so. After a meeting attended in person or by telephone by Walter, Jr. and his counsel, Michael, Ms. Wik, the Executrix, and representatives of Walter, Sr.'s estate, a decision was made to pay the additional tax demanded by the IRS and then seek a refund through litigation. That

[5]Michael demanded a "finder's fee" of 10% of the amounts received by the Estates of both Barbara and Walter, Sr. Ultimately, a smaller but still substantial "finder's fee" was paid to Michael from Barbara's Estate, as an Estate expense. No exception has been taken to this payment, which nevertheless is of questionable validity.

litigation, on the part of Barbara's Estate, proved to be extensive in cost and duration; the matter was pursued in the District Court up to the eve of a jury trial, and was submitted to the trial court on stipulation, which resulted in a decision in favor of Barbara's Estate. The IRS then took an appeal to the Third Circuit and the matter proceeded to mediation, at which point the IRS withdrew its appeal. The end result was a recovery, refund and interest, of about $215,000.00. The legal fees expended on behalf of the Estate were approximately $300,000.00, of which about one-half will be recovered as a deduction from the taxable value of the Estate.

THE LAW

Fiduciaries of an estate or trust are entitled to reasonable commissions for their services on behalf of those entities. *See* Court of Chancery Rules, Rules 132, 192. They are also entitled to expend funds from the estate or trust for reasonable legal fees to advance the interests of those entities. *E.g.*, Estate of Pusey, Del. Ch., No. 106784, Allen, Ch. (May 23, 1997)(Mem. Op.) at 3. Here, Michael contends that the legal fees paid to Ms. Wik's firm and the commissions taken by the Executrix/Trustee are excessive and unreasonable.

Under Rule 192, commissions and fees in estates[6] are subject to the review of this Court for reasonableness. Court of Chancery Rules, Rule 192(a).

> In determining what constitutes reasonable commissions and fees, consideration may be given to the time spent, the risk and responsibility involved, the novelty and difficulty of the questions presented, the skill and experience of the personal representative and the attorney, any provisions of the Will regarding compensation, comparable rates for similar services in the locality, the character and value of the estate assets, the character and value of assets which are not part of the probate estate but which must be valued and reported on any Federal, State, local or foreign death tax return, the time constraints imposed upon the personal representative and the attorney, the loss of other business necessitated by acceptance of the administration, and the benefits obtained for the estate by the administration. Commissions and fees shall not be considered unreasonable merely because they are based exclusively on hourly rates, exclusively on the value of the probate estate, or exclusively on the value of the assets includable on the estate for purposes of any tax.

Court of Chancery Rules, Rule 192(b).

ANALYSIS

A. Attorneys' Fees.

At first blush, the attorneys' fees charged to the Estate seem unreasonably high as a function of the size of the Estate. The gross taxable value of the Estate was under $2,200,000.00. The attorneys' fees incurred in the administration of this Estate through

[6]Because the commissions and fees incurred relate fundamentally to the administration of Barbara's Estate, and only secondarily to the Trust, and because the parties agree that Rule 192 applies, I have analyzed the exceptions under that rule, rather than Rule 132.

the second account approach $386,000.00. Of that $386,000.00 in attorneys' fees, however, more than $235,000.00 were incurred in the litigation with the IRS concerning the valuation of the inchoate claim held by the Estate in the class action litigation against the DSWA (the "tax litigation"). Conceptually, I find it helpful to look at the attorneys' fees expended in the tax litigation, and the attorneys' fees otherwise expended in the administration of the Estate, separately.

(1) *Estate Administration.*

The Executrix hired Beverly Wik, Esquire, and her law firm to assist her in the administration of the Estate. The Executrix, as a fiduciary, is permitted to engage professionals as reasonably necessary to the administration of the estate, and the fees so incurred are a proper estate expense. *See, e.g.,* Pusey, at 5. Ms. Wik represented Barbara on several matters in the years just prior to her death. Because Ms. Wik had been involved in the estate planning on behalf of Barbara, it is both appropriate and unremarkable that she would be hired to help administer the Estate. Ms. Wik is a practitioner in the area of trusts and estates with an excellent reputation in the legal community. Her time involved in the administration of this Estate over the past ten years has been documented and I have no doubt that the hours claimed were actually spent in working for the Estate and that they were necessary in Ms. Wik's professional judgment. The Estate incurred fees for estate administration through the time of the second account of $159,234.37.

This Estate was unusually complex, particularly in light of its modest size. In addition to the tax litigation discussed separately below, these complexities include an IRS audit and the valuation and administration of the Estate's 25% ownership in the contaminated Four B's property. The latter issue (together with the recently-concluded tax litigation) has kept this Estate open for many years beyond what is usual.

Rule 192(b) prescribes the factors that I must employ in determining whether the fee is reasonable. It provides that fees may be based exclusively on hourly rates. Here, the evidence indicates that the hourly rate charged by Ms. Wik and her firm was within the usual range for attorneys and firms providing similar services, particularly given the skill and experience of the attorney involved. Ms. Wik testified that in her experience the Estate was remarkably complex for its size, and that the time expended was that required for proper administration. The Estate presented an expert witness[7] who supported this analysis. Michael's expert, Miguel Pena, Esquire, opined that the total fees seemed high to him, based on his experience with decedents's estates, and were therefore unreasonable; Mr. Pena, however, was unable to point to any specific matters performed by the attorney for the Estate that were unnecessary or unreasonable. The Exceptant relies primarily on the fact that the attorney for the Walter, Sr. estate, James Dalle Pazze, Esquire, incurred only a fraction of the fees incurred by the attorney for Barbara's Estate in his assistance to the administration of Walter, Sr.'s estate. The Exceptant points out

[7]Jerome K. Grossman, Esquire.

that the assets of the two estates were similar. Because the record indicates that the hourly rate charged by Ms. Wik was reasonable, because the time claimed was documented, because the testimony indicated that the time incurred was necessary for the proper administration of the Estate, and because the record demonstrates an unusually complex nine-year estate administration, I am unable to find the fees in Barbara's Estate unreasonable based solely on the fact that Mr. Dalle Pazze was able to assist the administration of a similar estate while incurring a smaller legal fee.

2. *The Tax Litigation.*

After having filed estate taxes and undergone an audit, Barbara's Estate received an unexpected windfall; its share of a one-million-dollar recovery by the defunct Bandurski, Inc. from a class action lawsuit brought on behalf of waste removal companies overcharged by the DSWA. Because the estate tax must be computed based on the value of the Estate at the time of the decedent's death, and because the inchoate claim against DSWA existed as an asset (albeit one unknown to the Executrix) at the time of death, the Estate was forced to determine a value for that asset. The Estate, through its Executrix and attorney, valued the asset at zero dollars. The IRS placed a value on the asset, as of the time of death, of around $315,000.00, resulting in a substantial tax liability to the Estate. A similar tax charge was laid against the estate of Walter, Sr.

At a meeting including representatives of both estates, together with the estate beneficiaries, representatives of the estates determined that it was in the best interests of

the estates to pay the additional taxes demanded by the IRS and then pursue refund litigation in the District Court. Ms. Wik and other members of the Bayard Firm pursued this litigation. The matter proceeded to the brink of a jury trial in United States District Court, and was decided by a judge of that court based on a stipulated set of facts, resulting in a valuation of zero for the asset at the time of Barbara's death. The IRS appealed this decision to the Third Circuit Court of Appeals. The matter was directed to mandatory mediation. During the mediation process, the IRS abandoned its appeal.

As a result of the litigation, the Estate received a refund, including interest, of approximately $215,000.00. While litigation fees and expenses through the time of the second account were $235,248.74[8], that expense is deductible against the estate tax at a rate of around 50%. Therefore, the litigation expense to the Estate will be about half the fee paid to the Bayard Firm. The Exceptant's own expert testified that the litigation worked a benefit for the Estate. As with the fees examined in the preceding section regarding the administration of the Estate, I have examined the fees involving the tax litigation pursuant to the factors set forth in Rule 192(b). Once again, the hourly rate is consistent with that charged in the legal community and reasonable given the skill and experience of the attorneys involved. The time charged is documented. The tax litigation was difficult and hard-fought. The litigation worked a benefit for the Estate. Therefore, I

[8]According to Ms. Wik, additional fees not reflected in the first and second accounts may bring the total tax litigation expense to around $300,000.00, resulting in a litigation cost to the estate of approximately $150,000.00.

find that it was reasonable for the Executrix to engage attorneys to pursue this litigation, and that the fees involved with the litigation are reasonable and a proper expense of the Estate.

Again, the Exceptant points to Walter, Sr.'s estate and the results and costs of litigation by attorneys for that estate. The attorney for the estate of Walter, Sr., Mr. Dalle Pazze, retained Mason E. Turner, Jr., Esquire as the litigation attorney for the tax litigation. As with Ms. Wik and her firm, Messrs. Dalle Pazze and Turner enjoy an excellent reputation in the Delaware Bar. Mr. Turner's litigation fees and costs were substantially less than those incurred by Barbara's Estate. The litigation in the two estates unfolded differently, however. Messrs. Turner and Dalle Pazze were able to achieve a settlement in Walter, Sr.'s estate while Barbara's went, as described, to the brink of trial, through a decision by the District Court and into an appeal to the Third Circuit. While the settlement achieved by Messrs. Turner and Dalle Pazze was a compromise (as opposed to the absolute victory achieved by the Bayard Firm in Barbara's Estate) the return net of attorney's fees may have been greater in Walter, Sr.'s case than in Barbara's. The record is devoid of any demonstration that the settlement opportunity extended in Walter, Sr.'s case was available to Barbara's Estate. In any event, litigation strategy is based on the judgment properly brought to bear on a given set of facts by an attorney, relying on her judgment and expertise. Its formulation is art, not science. The fact that Mr. Turner may have obtained a result conferring a greater benefit to Walter's estate than that obtained in

Barbara's Estate does not demonstrate that the strategy employed by the attorneys for Barbara's Estate was improper or unreasonable.

B. Commissions Paid to the Executrix/Trustee.

Michael takes exception to the commissions allowed to the Executrix/Trustee in the first and second accounts. If there is an ongoing narrative in probate cases involving exceptions to estate accounts, it is that the testators are wise to designate professional administrators for their estates. This not because family members are unusually incompetent or larcenous in their pursuit of fiduciary duties; instead, it is because the complexities of pre-existing family relationships so often lead to distrust, anger and litigation.

In this matter, it is clear that the Executrix and the Decedent, niece and aunt, had a relationship more like that of a mother and a daughter. Toward the end of her life, Barbara relied on the Executrix for personal care and help in the administration of her financial affairs. It is quite natural that, in addition to providing a specific bequest for her via the trust, Barbara wished the Executrix to continue her financial role as trustee and Executrix after Barbara passed away. Barbara also provided for the Executrix by titling bank accounts and an automobile jointly with her.

Barbara provided specific guidelines for the compensation of the Executrix. In serving both the Estate and the trust, the Executrix was to be compensated at a rate of $100.00 per hour in the first year, with a 3% increase each year. Testimony at trial

demonstrates that this is not an unusual rate for paralegals performing estate administration tasks. This Court has specifically approved paralegal rates as a metric for estate administrations. Estate of McNatt, Del.Ch., No 110805, Jacobs, V.C. (February 25, 1999)(Mem.Op.), *abrogated on other grounds in* DiGiaccobe v. Sestak, Del. Supr., 743 A.2d 180, 184 (1998). Based on both these factors, I find $100.00 per hour a reasonable basis for the calculation of the commission.[9]

Finding that the compensation rate used in the computation of the commission is itself reasonable does not end the analysis, however. The other factors referred to in Rule 192(b) (in addition to rates for similar services and provisions in the will regarding compensation) favor a close reading of the Executrix's computation of her commission. Rule 192 requires consideration of the time spent, which is obviously of primary importance in scrutinizing a commission based on an hourly rate. The other factors of Rule 192 are largely neutral here. The risk and responsibility involved were not demonstrated to be unusual. There were novel and difficult questions presented in the administration of the Estate and trust, made more problematic by the character and value

[9]In approving fiduciary commissions, Rule 192 directs that a number of factors be considered. Those include "any provisions of the will regarding compensation." While this is only one of a number of factors under this rule, I suspect strongly that this Court would approve an otherwise-unreasonable commission if that commission were called out specifically in the will. That is because the intent of the testator is the touchstone for matters testamentary, and there is no reason that a commission, otherwise excessive, cannot be upheld as a type of bequest. In any event, because the testimony demonstrated that $100.00 per hour is not an unreasonable rate for paralegal services (that is, comparable to "rates for similar services in the locality," another factor under Rule 192), I need not reach this issue here.

of the assets of those entities, but these questions were dealt with primarily by the Estate's attorneys as described above. The Executrix brought no particular relevant skills or experiences to her tasks, other than some work experience in the clerical and accounting arena. There is no indication that the Executrix lost other business or opportunities or suffered from time constraints during the period of administration, nor (apart from engaging attorneys) did the efforts of the Executrix result in any extraordinary benefits to the Estate.[10] In other words, beyond the fact that the administration consumed an unusual amount of time, there was nothing extraordinary about the efforts or expertise brought to bear by the Executrix/trustee here.

The use of an hourly rate to calculate commissions, as called for here in the will and trust documents, is specifically allowed in Rule 192(b). When a fiduciary is hiring herself at an hourly rate, however, she is involved in a type of self-dealing. Although this self-dealing is unavoidable, that fact does not relieve the fiduciary from demonstrating that such dealing is fair to the Estate and trust. *See generally* Estate of Howell, Del. Ch., No. 117657, Noble, V.C. (December 20, 2002)(Letter Op.) at 2. Particularly where, as here, the hourly compensation is greater than the fiduciary could reasonably expect to

[10]The Estate and trust property was heavily skewed toward ownership of a single stock, which the Executrix prudently sold at the beginning of the administration. She points out that that stock later declined in value, so that her prudent sale worked a benefit to the Estate. She also testified that she was able to reduce the Estate's liability for the Decedent's medical expenses.

receive for some alternative pursuit,[11] the fiduciary must be careful to limit her activities to those reasonably necessary for the administration of the estate.

Both the Estate and the Exceptant produced experts to testify concerning the nearly $150,000.00 in commissions paid to the Executrix through the time of the second account. Predictably, the Estate's expert testified that the commissions were reasonable, and Michael's expert testified that the commission seemed excessive, compared with commissions in other estates. Unfortunately, neither experts's testimony was particularly helpful here, because the experts failed to focus on the specific tasks for which the Executrix received commissions in a way that demonstrated whether the time devoted by the Executrix was in fact reasonably necessary to estate administration.

Relying on his expert, Mr. Pena, Michael suggests that reasonable compensation for the administration of this Estate might be around $40,000.00. This is based on Mr. Pena's experience that commissions for administration of estates of similar size have been in this range. I do not find this opinion helpful, because this Estate has been open for an extraordinary period, in part because of Michael's unwillingness to cooperate in the clean-up of the Four B's property, which would relieve the Estate of potential liability. In addition, the documents upon which the Estate and trust were created provided for a specific hourly rate, and the Executrix/trustee has used that rate in computing her

[11]The Executrix produced no evidence that she could have achieved $100-plus per hour from alternative activities. I note that while firms may bill paralegal services at similar rates, by no means does the paralegal himself take home $100 per hour.

commissions based on a detailed record of time actually spent. I find that the time which the Executrix claims she spent in connection with certain activities was actually so spent. The only question in my mind is whether this time was employed for the reasonable benefit of the Estate.

Michael has clarified his exceptions in the post-trial briefing. I examine his specific exceptions below:

(1) Michael points out that the Executrix charged a commission for several hours of time spent by others on behalf of the Estate or trust. There is no justification for the Executrix to receive a commission for time spent by others. Therefore, this amount must be deducted from the hours spent for the benefit of the Estate by the Executrix upon which she based her commission, and she must reimburse the Estate for that amount of commission taken.

(2) The Executrix charged over $1,800.00 for arranging the funeral and burial and writing "thank you" notes on behalf of herself and her cousins to those who had sent flowers and sympathy cards to Barbara's family. These are not activities for which family members typically charge an estate; more importantly, they do not represent an exercise of fiduciary duty on behalf of the beneficiaries of the estate. The Executrix was not justified in hiring herself at $100.00 per hour to perform these actions for an aunt for whom she expressed the feelings of a daughter. *See* Pusey, (Mem.Op., adopting Master's

Report) at 7. This is an example of over-reaching and this commission must be reimbursed to the Estate.

(3) The Executrix took a commission of $10,600.00 for activities prior to Barbara's death. She purportedly expended this time as a "trustee" under the trust during the period after her appointment to the trust but before Barbara passed away. At trial, the Executrix admitted candidly that this time she billed to the Estate was actually time she spent comforting her aunt in the nursing home and providing extra physical care for her there. I am sure these acts were performed by the Executrix out of love for her aunt. In any event, they were not related to the interests of the trust or the Estate and this $10,600.00 commission must be returned to the Estate.

(4) The Executrix charged a commission of $6,817.40 in calculating her commissions. This was not time spent on behalf of the Estate but time spent on behalf of her personal interest as Executrix. Therefore, this amount of the commission must be returned to the Estate.

(5) The Executrix charged for many hours of travel time back and forth to a distant post office box to retrieve Barbara's mail. For a period of many months after her aunt's death, the Executrix failed to have the mail forwarded to her home. She claims that this was because her mailbox was not sufficiently large to accommodate the volume of mail involved. Each trip to the post office took fifty minutes to one hour and this activity was

repeated every few days. The total mail-retrieval commission (by Michael's calculation) amounted to $20,002.95.

This is a clear instance of over-reaching. Rather than making some other arrangement, the Executrix hired herself, at $100.00 an hour, to retrieve mail from a distant post office box on a repeat basis. Assuming that the Executrix is correct that her own mailbox was too small to accommodate the volume of mail that Barbara received, there were other alternatives than spending hours in transit to a remote post office box. An inquiry with a local hardware store[12] reveals that its price for a "jumbo" mailbox is $30.99. In lieu of a commission on mail retrieval, then, I will allow the Executrix the cost of having replaced her inadequate mailbox with a larger one. The commission charged for retrieval of mail in excess of $31.00 must be returned to the Estate.

(6) Michael objects to the 12 hours and 8 minutes upon which the Executrix computed a commission for "listening to voicemail messages" and 17 hours for "paying attorney's fees." The evidence demonstrates that counsel for the Estate left numerous messages, some lengthy, for the Executrix. Nothing in the record-keeping by the Executrix[13] indicates to me inaccuracy in the number of hours recorded. It appears to me, therefore, that the time spent in communication with the Estate's attorney, via voicemail

[12]Thos. Best and Sons.

[13]The Executrix kept longhand records of time spent, which were admitted into evidence.

messages, and the time spent considering and paying attorneys' fees for nearly a decade, fulfilled a reasonably necessary function for the Estate. That exception is denied.

(7) The Executrix took a commission for thirty-nine hours spent over nearly ten years sorting and filing mail and other documents. Once again, I accept the accuracy of the time expended. This averages about four hours per year, although it is obvious that the bulk of this work was done early in the administration of the Estate. In any event, I do not find the amount of time expended here unreasonable. Though $100.00 per hour is a high rate for what are essentially simple clerical tasks, the commission per hour was stated explicitly in the will and trust documents, and it was the intent of the testator that this be the rate of compensation for time. This exception is denied.

Finally, because the Executrix overreached in some respects in calculating her commission, equity dictates that her time spent in connection with this litigation not be borne by the Estate. Consequently, commissions taken based on time expended in connection with this exception litigation shall be reimbursed to the Estate.

CONCLUSION

The attorneys's fees paid by the Estate as reflected in the first and second accounts are approved, except that the amounts spent in this exception litigation must be approved separately. The attorneys for the Estate should therefore submit a statement of such fees, including those previously charged in the first and second account, to the extent they

contend that these fees are a legitimate expense of the Estate. The exceptions to the Executrix's commission are affirmed in part and denied in part. The accounts shall be amended in compliance with this Report, and the Executrix shall remit to the Estate those commissions disallowed.

/s/ *Sam Glasscock, III*
Master in Chancery