

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF **HERKIMER**

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In the Matter of the Application of
John Executor, as Executor of the Will
of

RECENT DECEDENT,

**PETITION FOR ADVANCE
PAYMENT OF EXECUTOR'S
COMMISSIONS**

Deceased

File No: 2006-153

for Advance Payment of Executors'
Commissions pursuant to Section 2311
of the Surrogate's Court Procedure Act
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TO THE SURROGATE'S COURT, COUNTY OF HERKIMER:

The petition of JOHN EXECUTOR ("Petitioner"), residing at 2
Main Street, Herkimer, New York, respectfully alleges:

1. Petitioner is Executor of the Will dated October 25, 2006
(the "decedent's Will") of the late Recent Decedent (the
"decedent"), who died a resident of the Town of Herkimer, Herkimer
County, New York on December 2, 2006. On February 21, 2007 this
Court admitted the decedent's Will to probate and issued Letters
Testamentary to Petitioner. (A copy of the decedent's Will is
attached as Exhibit A.)

2. Petitioner has acted and continues to act as Executor,
and has performed executorial functions, including but not limited
to the marshaling of the estate's assets and management of the
decedent's investment holdings and personal and business assets
including the disposition of the tangible personal property

pursuant to Article FIRST, the subdivision and sale of two parcels of decedent's unimproved real property for a consideration of \$1.2 million, and as more fully described in paragraph 6.A. Petitioner is fully familiar with the nature and extent of the assets comprising the decedent's estate.

3. On September 2, 2007 Petitioner applied for extensions to file the United States Estate Tax (and Generation Skipping Transfer) Tax Return, Form 706, and the New York Estate Tax Return, Form ET-706 (the "estate tax returns") for decedent's estate which are due to be filed by March 2, 2008. At that time, Petitioner paid estimated estate tax payments in the amount of \$18,000 and \$110,000.00, respectively. The Executor has a close estimate of the value of all property in which decedent had an interest. By reason of the sale of the aforementioned subdivided two parcels, the Executor set aside a reserve from this liquid asset which is paying the cash legacies, charitable legacies and any additional creditors. Petitioner is in the process of making these payments at this time.

4. Petitioner filed the List of Assets/Inventory (as required under Section 207.20 of the Uniform Rules for the Surrogate's Court) on June 16, 2008 (copy attached as Exhibit B).

5. Petitioner seeks this Court's permission to receive advance payment on account of Executors' commissions. Petitioner respectfully submits that, unless he is allowed an advance payment

of commissions, he will be deprived of substantial advantages under the income tax laws of the United States and the State of New York.

6. Annexed to this Petition as Exhibit C is a list of assets of the estate against which the Executor is now claiming commissions. All assets listed are commissionable were Petitioner to file his account and judicially settle it today.

A. The list of commissionable assets shows real estate (with a total value of \$2,800,500, for which Petitioner has received a formal, written appraisal). The real estate was subdivided. One parcel was sold on October 30, 2008 for \$1,200,000. In determining the commissionable portion of the sales price, the \$1,200,000 sales price was reduced by the payment of a reverse mortgage (\$783,493), recording fees (\$76) and legal fees paid in connection with the sale (\$8,208), which nets \$408,223 as commissionable. Pursuant to Article FIFTH D.2. of the will, the Petitioner shall receive commissions on the full value of the property even if unsold (value of unsold real property is \$1,600,500). Additionally, commissionable assets include receipts for stocks and bonds (\$310,932), cash (\$32,424), and principal collections on mortgage receivable dated June 13, 2001 (\$10,872) for a total commissionable amount of \$2,363,051.

Additionally, Petitioner obtained a release of lien for the whole property from the taxing authorities of the state of New York and a Certificate Discharging Real Property Subject to

Estate Tax Lien from the Internal Revenue Service as relates to the two parcels that were subdivided and sold on October 30, 2008.

Petitioner continues and will continue to market the remaining undeveloped real property so that the residuary trust (Article FIFTH) may eventually be funded.

B. The total value of commissionable assets is \$2,363,051. None of these assets include (i) any property specifically bequeathed; (ii) the value of property pledged as security at the decedent's death; (ii) any uncollected notes or claims; or (iv) any income collected.

7. Based on the rates under Section 2307 of the Surrogate's Court Procedure Act, Petitioner would be entitled to a total Executor's commission on these assets of Sixty-Eight Thousand Seventy-Six Dollars (\$68,076) were his account to be settled at this time based on the assets listed on Exhibit B. Petitioner is requesting Thirty-Four Thousand, Thirty-Eight Dollars (\$34,038, which is equal to a principal receiving commissions).

8. The beneficiary of decedent's estate whose rights or interests would be affected by this payment is:

<u>Name and Relationship</u>	<u>Domicile Address and Mailing Address</u>	<u>Description of Legacy, Devise or Other Interest, or Nature of Fiduciary Status</u>
Richard Decedent Son	2 Main Street Herkimer, NY	Distributee; Legatee of tangible personal property; beneficiary of residuary Trust under Will.

The above person is of full age and sound mind and under no legal disability.

9. Article FIFTH G. of the decedent's Will expressly provides that the Executor shall be relieved of the necessity of filing a bond.

10. No previous application for the relief requested herein has been made by Petitioner in this or any other court.

WHEREFORE, Petitioner prays:

1. That this Court make an order permitting Petitioner to receive the sum of Thirty-Four Thousand, Thirty-Eight Dollars (\$34,038.00) out of the assets of the decedent's estate in the Executor's hands, as and for a payment on account of the principal receiving commissions to which he would be entitled for his services rendered as Executor if his accounts were now judicially settled, without bond; and

2. That this Court grant such other and further relief as it may seem just and proper.

Dated: December _____, 2007
Herkimer, New York

JOHN EXECUTOR

STATE OF NEW YORK)
) : ss.:
COUNTY OF)

I, the undersigned, JOHN EXECUTOR, the petitioner named in the foregoing petition, being duly sworn, say that I have read the foregoing petition subscribed by me and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

JOHN EXECUTOR

Sworn to before me this
_____ day of December, 2007

Notary Public
Commissions Expires: _____
Affix Seal or Stamp:

Name of Attorney: **Vincent L. Teahan, Esq.**
 Teahan & Constantino LLP Tel. No.: **(845)-677-2101**
Address of Attorney: **41 Front Street, Suite A**
 P.O. Box 1181
 Millbrook, New York 12545

CERTIFICATION

The undersigned certifies that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the papers or the contentions therein are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator of the Courts (22NYCRR). I hereby certify that the content of all forms filed with the Court is the same as that of the official forms for this proceeding.

Recital of Accompanying Papers:

- *Petition for Advance Payment of Executor's Commissions, with exhibits*
- *Proposed Order*

Vincent L. Teahan, Esq.
Teahan & Constantino LLP
41 Front Street, Suite A
P.O. Box 1181
Millbrook, New York 12545
(845) 677-2101

ESTATE OF
 Commissionable Assets
 To be reported on Form 706

I. For Receiving:

Schedule A - Real Property		
Unsold Real Property		\$ 1,600,500
Real Property Sold		
Gross Proceeds	\$ 1,200,000	
Reduced by:		
Reverse mortgage payoff including accrued interest of \$60,250.72	783,493	
Recording fees - County Clerk	76	
Legal fee paid in connection with sale	8,208	
Net proceeds from sale of real property		408,223
Schedule B - Stocks & Bonds		310,932
Schedule C - Mortgages, Notes, & Cash		
Cash	\$ 32,424	
Principal collections on mortgage receivable dated June 13, 2001	10,972	
		43,396
Commissionable		\$ 2,363,051

Receiving Commissions

5% x \$100,000 = \$5,000 x .50 =	\$ 2,500	
4% x \$200,000 = \$8,000 x .50 =	4,000	
3% x \$700,000 = \$21,000 x .50 =	10,500	
2.5% x \$1,363,051 = \$34,076 x .50 =	17,038	
TOTAL RECEIVING COMMISSIONS		\$ <u>34,038</u>

At a Surrogate's Court held in and for the County of Herkimer at the Court House, in Herkimer, New York in said County, on the _____ day of _____, 2007.

PRESENT: HON. _____,
Surrogate.

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF **HERKIMER**

-----X
In the Matter of the Application of John
Executor, as Executor of the Will of

RECENT DECEDENT,

Deceased

**ORDER AUTHORIZING ADVANCE
PAYMENT OF EXECUTOR'S
COMMISSIONS**

File No: 2006-153

for Advance Payment of Executors'
Commissions pursuant to Section 2311 of
the Surrogate's Court Procedure Act
-----X

Upon reading and filing the verified Petition dated December 15, 2007 of John Executor, as Executor of the Last Will and Testament dated October 25, 2006 of Recent Decedent, deceased, for an Order authorizing an advance payment to John Executor, on account of Executor's commissions, from which it appears to the satisfaction of the Surrogate that: (i) said John Executor would be entitled to a receiving commission if the account of the Executor were now judicially settled; (ii) the amount of Executor's receiving commission is at least THIRTY-FOUR THOUSAND, THIRTY-EIGHT DOLLARS (\$34,038.00) due at this time, and (iii) unless the advance payment on account of Executor's commissions prayed for in said

petition is allowed, Petitioner John Executor will be deprived of substantial advantages under the income tax laws of the United States and the State of New York;

***NOW**, on motion of Teahan & Constantino LLP, attorneys for the Petitioner, it is*

***ORDERED**, that John Executor, as Executor of the Last Will and Testament of Recent Decedent, deceased, be and he hereby is authorized to pay to himself the sum of THIRTY-FOUR THOUSAND, THIRTY-EIGHT DOLLARS (\$34,038.00) out of the assets of the decedent's estate in his hands, as and for an advance payment on account of commissions to which he would be entitled as Executor if his account were now judicially settled; and it is further*

***ORDERED**, that as the Will of the late Recent Decedent dispenses with the necessity of a bond, any bond shall be dispensed with; and it is further*

***ORDERED**, that the expenses of this application shall be borne by the petitioner, in his individual capacity.*

ENTER

Judge of the Surrogate's Court