



By Order of the Court, Judge Joseph N. Camacho

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ESTATE OF) **CIVIL ACTION NO. 16-0122**
BERNARD VILLAGOMEZ)
HOFSCHEIDER)
) **ORDER DENYING CREDITOR CLAIMS**
) **PURSUANT TO 8 CMC § 2924(a) AND**
) **NMI R. PROB. 11 AS THE SETTLEMENT**
) **FUND DID NOT INFORM DECEDENT**
) **OF PENSION OVERPAYMENT BEFORE**
) **HIS DEATH, AND FAILED TO SUBMIT**
) **CLAIMS BEFORE THE 60-DAYS**
) **DEADLINE**
)
)
)

I. INTRODUCTION

This matter came before the Court on July 5, 2018 on Administratrix’s Motion to Dismiss Claim of the NMI Settlement Fund. Attorney Rene Holmes¹ appeared for the Administratrix, Guadalupe R. Hofschneider. Attorney Nicole Torres-Ripple appeared for the NMI Settlement Fund (“the Fund”).

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following decisions.

II. BACKGROUND

Decedent, Bernard Villagomez Hofschneider, died on October 27, 2013. Guadalupe Hofschneider, Decedent’s surviving spouse, delivered a copy of Decedent’s death certificate to the Fund on October 31, 2013. On June 28, 2016, the Notice of Hearing/Notice to Creditors was published in the Marianas Variety. Guadalupe Hofschneider was appointed Administratrix on July

¹ Attorney Vicente Salas represented Administratrix at the time the motion was filed.

1 21, 2016. On August 10, 2016, counsel for Administratrix submitted a letter to the Fund, “to
2 inquire as to whether your office possess an account receivable/payable belonging to the deceased.”
3 Administratrix’s Exh. D.

4 On November 28, 2016, a Notice of Adverse Action from the Fund was served on
5 Administratrix. The Notice of Adverse Action stated that the Fund had conducted an audit of
6 Decedent’s account and found that Decedent owed the Fund a sum of \$1,458.74. Fund’s Exh. A.
7 Administratrix filed an appeal before the NMI Settlement Fund Hearing Office on December 15,
8 2016. The Estate’s appeal remains pending as of the date of this order.²

9 On March 29, 2018, Administratrix filed her Motion to Dismiss Claim of the NMI
10 Settlement Fund. The Fund filed its opposition on May 11, 2018. Administratrix filed her reply on
11 June 25, 2018.

12 III. DISCUSSION

13 Administratrix argues that the Fund’s claim on the Estate must be dismissed since the Fund
14 failed to timely file a claim. The Fund argues that it is a known creditor of the Estate, and that the
15 Estate failed to provide proper notice. The key issue, then, is whether the Estate properly notified
16 the Fund of the 60-day deadline to file its claim in the probate action pursuant to Rule 11 of the
17 Commonwealth Rules of Probate Procedure.

18 Title 8, Section 2924(a) of the Commonwealth Code states in relevant part:

19 (a) All claims against a decedent’s estate which arose before the death of the
20 decedent, including claims of the Commonwealth of the Northern Mariana Islands
21 and any of its subdivisions, whether due or to become due, absolute or contingent,
22 liquidated or unliquidated, founded on contract, tort, or other legal basis, if not
barred earlier by other statute of limitations, are barred against the estate, the
personal representative, and the heirs and devisees of the decedent, unless presented
as follows:

23
24 ² Neither party raised the issue of exhausting administrative remedies. As the issue was not raised, briefed or argued by
the parties, the Court will not sua sponte raise the issue and how it may or may not affect the procedural posture of the
matter currently before the Court.

1 (1) Within 60 days after the date of the first publication of notice to creditors if
2 notice is given in compliance with the Commonwealth Trial Court Rules of Probate
3 Procedure; provided, claims barred by the nonclaim statute at the decedent's
4 domicile before the first publication for claims in the Commonwealth of the
5 Northern Mariana Islands are also barred in the Commonwealth.

6 8 CMC § 2924(a).

7 Pursuant to NMI R. Prob. 6(3), the notice of the hearing on the probate petition must be
8 “published in a newspaper published in the Commonwealth at least once, said publication to be at
9 least five days before the hearing.” Rule 11 then provides further requirements for known creditor
10 claims, requiring that “[t]he personally delivered or mailed notice shall advise the creditor that
11 claims must be filed no later than 60 days after the date of first publication . . . and that any claims
12 not presented within such times shall be forever barred.” NMI R. Prob. 11. Under Rule 11, notice
13 must be given to “each creditor for whom the whereabouts or last known address is known . . . as
14 well as any other creditor of the deceased whose identity, whereabouts, and address is known or
15 reasonably ascertainable by the executor at that time.” *Id.*

16 Under *In re Estate of Roberto*, actual notice must contain language to:

17 (1) inform interested parties that there is a deadline for filing claims against the
18 estate, (2) specify the date of that deadline, (3) explicitly warn interested parties that
19 failure to meet the deadline will result in claims being permanently barred, and (4)
20 announce the court in which the estate is pending.

21 2002 MP 23 ¶ 24 n.16. Actual notice is required for *known* creditors of the estate. NMI R. Prob. 11.
22 The key issue is whether the Fund was a *known* creditor of the estate at the time that notice was
23 published in Marianas Variety, and thus whether actual notice was required to be provided to the
24 Fund, and whether the Fund's claim on the estate is valid.

25 The “State undeniably has a legitimate interest in the expeditious resolution of probate
26 proceedings.” *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489, 108 S.Ct.
27 1340, 1347 (1988). Although actual notice must be afforded to “known or reasonably ascertainable

1 creditors,” the United States Supreme Court has “disavowed any intent to require ‘impracticable
2 and extended searches . . . in the name of due process.’” *Id.* at 490 (*quoting Mullane v. Central*
3 *Hanover Bank & Trust Co.*, 339 U.S. 306, 319, 317-18, 70 S.Ct. 652, 658-59 (1950). The Supreme
4 Court, in *Tulsa*, held that the fact that an executrix was aware that her husband had “endured a long
5 stay at” a hospital did not mean that the executrix was aware of the hospital’s claim against the
6 estate. 485 U.S. at 491. “Whether or not a creditor is ‘reasonably ascertainable’ depends in turn
7 upon whether that creditor’s identity would be uncovered with ‘reasonably diligent efforts’ on the
8 administrator’s part.” *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1145 (Cal. App.
9 4th 1995) (*quoting Tulsa*, 485 U.S. at 491). The question of whether a creditor is “reasonably
10 ascertainable” is a question of fact dependent upon the circumstances of each individual case. *See*
11 *Singer Asset Fin. Co. v. Estate of Rutherford*, 34 So.3d 1253, 1259 (Ala. Civ. App. 2007) (stating
12 that the question of “whether a creditor is ‘reasonably ascertainable’ and whether a personal
13 representative has exercised ‘reasonably diligent efforts’ to uncover a potential creditor are
14 questions of fact dependent upon the circumstances of each individual case”).

15 The Court will thus turn to whether the Fund is a reasonably ascertainable creditor of the
16 estate. In the present case, Administratrix sent a letter to the Fund on August 10, 2016, “to inquire
17 as to whether your office possess an account receivable/payable belonging to the deceased.”
18 Administratrix’s Exh. D. At this point in time, there was nothing to indicate that Decedent owed
19 any amount to the Fund. The first time the Administratrix knew of an alleged claim of overpayment
20 to the Decedent was when the Fund served a Notice of Adverse Action on the Administratrix on
21 November 28, 2016. Furthermore, the Fund admittedly did not consider itself a creditor of
22 Decedent until it conducted an audit, as the Fund referenced in the Notice of Adverse Action.

23 Since the Fund could not have been known as a creditor to Decedent nor the Administratrix
24 until the Fund itself conducted an audit of its own records, the Fund was not a “known” or

1 “reasonably ascertainable” creditor for purposes of the requirement of direct mail notice. No
2 reasonably diligent efforts would have made the Fund a creditor until the Fund had itself
3 established its own purported identity as a creditor—after it conducted an audit. This is not a
4 situation where the Administratrix reviewed Decedent’s bank records to determine if Decedent
5 made regular payments to the Fund, and thus could identify the Fund as a creditor.

6 In addition, the Fund did not inform the Decedent, before his death, that Decedent owed
7 money to the Fund, nor did the Fund treat Decedent as a debtor. If the Fund did not know that the
8 Decedent received pension overpayments, then how could the Decedent know.³ There is also no
9 indication that the Administratrix or the Decedent were aware that the Decedent owed pension
10 overpayments to the Fund prior to his death. In addition, the Fund was unaware of an alleged
11 pension overpayment to Decedent at the time of publication to unknown creditors.

12 Although Administratrix sent a letter to the Fund inquiring as to the status of Decedent’s
13 account, that letter was a letter of general inquiry to ensure the inventory was complete, such as if
14 there was any pension check for the Decedent. The Fund argues that the letter of general inquiry
15 was a faulty attempt at direct mail notice; faulty, according to the Fund, because the letter did not
16 include the notice that any claim would be barred if not filed within 60 days. A general inquiry of
17 unknown debts or assets is not equivalent to the required direct mail notice letter to a known
18 creditor. Since the Fund was not a known creditor, direct mail notice letter was not required and
19 publication was sufficient.

20 Since the Fund was not known nor reasonably ascertainable as a creditor until the Fund
21 conducted an audit, which occurred after the publication was done, publication notice was proper.
22 That publication occurred on June 28, 2016. Unknown creditors had 60 days from publication in
23 which to file a claim: specifically, August 27, 2016. At some point in time, the Fund conducted the
24 audit of Decedent’s account. The first notice the Fund provided the Administratrix that the Fund
considered itself a creditor was when the Fund served the Notice of Adverse Action on the

³ Typically, when a government employee desires to retire, he or she submits his or her application and documents to the Fund. Then, the Fund then calculates all the time of service and numerous payroll deductions to arrive at the employee’s pension amount.

1 Administratrix on November 28, 2016, after the deadline to file a claim had passed. The Fund filed
2 its formal claim in the probate in May 2018, long after all deadlines had passed.

3 “If a creditor’s identity is unknown or cannot be ascertained with reasonable diligence,
4 publication can suffice.” *Flores v. Kmart Corp.*, 202 Cal.App.4th 1316, 1330 (Cal. App. 2d 2012)
5 (*citing Tulsa*, 485 U.S. at 490). Furthermore, “publication can comply with the Fourteenth
6 Amendment due process notice requirement if a claim is merely conjectural.” *Id.* The Fund was
7 not a known or reasonably ascertainable creditor. The Administratrix properly published notice to
8 unknown creditors pursuant to the Rules of Probate in June 2016 and the Fund missed the 60-day
9 deadline. The Fund’s attempt at making a claim by serving the Administratrix outside of the
10 probate proceeding with a “Notice of Adverse Action” was untimely and insufficient. Accordingly,
11 the Fund’s claim must be dismissed.

12 In sum, the Settlement Fund miscalculated Decedent’s pension. This miscalculation was
13 never brought to Decedent’s attention while he was alive. Therefore, the Settlement Fund was not a
14 known creditor. After Decedent’s death, the probate case was initiated. As required by law and the
15 Rules of Probate, a newspaper announcement was published. The 60-day deadline for creditors to
16 file their claims passed. The Settlement Fund did not submit any notice of claims within the 60-day
17 period. Therefore, both as a known or unknown creditor, the Settlement Fund missed the deadline
18 to submit claims. Pursuant to NMI R. Prob. 11, “any claims not presented within such times shall
19 be forever barred.”

20 V. CONCLUSION

21 Accordingly, Administratrix’s Motion to Dismiss is **GRANTED**.

22 **IT IS SO ORDERED** this 28th day of November, 2018.

23 _____
24 /s/
JOSEPH N. CAMACHO
Associate Judge