



FILED
LOS ANGELES SUPERIOR COURT

JUN - 7 2007

DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In Re: The Uzyel Irrevocable
Trust No. 1, established
February 26, 1988,

and

) Case No.: BP 058 899

In Re: The Uzyel Irrevocable
Trust No. 2, established
February 26, 1998,

) Case No.: BP 058 898

**THE COURT'S STATEMENT OF
DECISION RE: THE COURT'S
AWARDING OF COSTS AND
ATTORNEY FEES TO THE
PETITIONERS**

The Court upon the request of the Respondent for a Statement of Decision respecting the awarding of costs and attorney fees to the Petitioners renders its Statement of Decision as follows:

The Court is faced with the situation where the Respondent, Neil Kadisha, has intentionally omitted to file a proper accounting with the Petitioners or the Probate Court in an effort to conceal his breaches of trust and how his failure to do so impacts on Petitioners' right to recover attorney fees under Section 17211(b) of the Probate Code.

The Court has concluded it has no reservations in finding the Petitioners are entitled to recover their attorney fees and costs.

1 The applicable portion of the subject Probate Code Section 17211(b) reads as
2 follows:

3 “If the beneficiary contests the trustees’ account and the Court determines that the
4 trustees’ opposition to the contest was without reasonable cause and in bad faith, the
5 Court may award the contestant the costs of the contestant and other expenses and costs
6 of litigation, including attorney fees, incurred to contest the account.”

7 The first part of Section 17211(b) refers to “the trustees’ account”. The
8 assumption must be made that the referenced “trustees’ account” is an honest and
9 accurate accounting; and, it may also be assumed that honest errors in the accounting
10 may be made requiring appropriate amendment.

11 In this case, no assumption may be made that Kadisha ever even tendered to the
12 petitioners nor the Probate Court an honest accounting. To the contrary, he submitted to
13 the Petitioners only a statement, not an accounting, which is a masterwork of one bent on
14 deception and cover-up.

15 Kadisha’s failure at any time to render a “Trustees’ Account” pursuant to any of
16 Sections 1061, 1062, 1063 or 1064 does not eliminate the Petitioners’ right to recover
17 attorney fees under Section 17211(b) of the Probate Code. Such a ruling would be
18 absurd. The inescapable rule must be that when a trustee does not render an accounting
19 complying with the applicable afore-referenced Probate Code sections, the inference of
20 the Trustees’ intent to avoid compliance may be drawn and he shall be deemed the
21 proximate cause of the beneficiaries’ right to take any and all reasonable steps, including
22 employment of attorneys, to ascertain that which should have been accounted for by the
23 errant Trustee, and what damages the beneficiaries have been caused, if any, by the
24 trustees derelictions of his duties. In searching for the truth as to what Kadisha did with
25 the trusts money and/or other assets, the Petitioners were compelled to spend an
26 enormous amount of time in discovery and come up with claims that should have been
27 revealed by a proper accounting by Kadisha.

1 In doing so Kadisha's self-dealing, fraud, perjury, lies and backdating of
2 documents, among other things came to light. It must be noted that even wrongful acts of
3 a trustee must be revealed in a proper accounting. Of course, none were.

4 The discovery work done by Petitioners' counsel before trial was alone enormous,
5 revealing as it did Kadisha's penchant for outright lying under oath. (Detailed in the
6 Court's Statement of Decision). There is no way the Court can segregate discovery
7 questions and answers to any particular claims arising out of Petitioners' dogged attempt
8 to ascertain the truth of Kadisha's management of the subject trusts. In this case,
9 discovery continued throughout the trial which consumed the better part of four years due
10 to the premature delivery of the case into the trial court by the Master Probate
11 Department Judge. But the character and direction of discovery did not change. The
12 Petitioners were forced to go down many dead-end streets in an effort to elicit the truth
13 from Kadisha and his witnesses. The idea the Court could keep a score card on what
14 questions and what answers related to any one claim, as the claims were eventually
15 designated, is ridiculous. Trying to focus on relevance of offered evidence questions and
16 argument by counsel fully occupied the Court's attention, leaving no room for
17 scorekeeping.

18 It became abundantly clear as the trial moved on through Kadisha's testimony that
19 Kadisha's truth-telling capacity was a minus 10. The Court arrived at the opinion that
20 Kadisha's witnesses were aware of the "litigation privilege" as they gave testimony
21 favoring Kadisha which the Court has found to be false. Kadisha's testimony and that of
22 his witnesses so impacted the totality of Kadisha's defenses as to render allocation of
23 testimony to any one claim an impossible task for the Court. Again, Kadisha is the
24 proximate cause of his trial problems by his intentional failure to furnish Petitioners, at
25 any time, with qualified accountings as provided and referenced above in the Probate
26 Code.

27 It also again must be noted that some of the claims of Petitioners did not surface
28 until well into the trial when evidence was revealed justifying pursuit of same as bits of

1 previously disjointed evidence came together like a jigsaw puzzle. Obviously, no score
2 card could be kept on claims from the beginning when they were not known and when
3 ascertained by adding pieces to the puzzle, no retroactive score card could be created as
4 to the subject claim.

5 Hence, it is that the Petitioners are entitled to attorney fees for all the work they did
6 whether or not the results of some of the claims made failed and no money judgment was
7 awarded thereon. The only thing the Respondent suffers is what he has brought down on
8 his own head by failing to comply with his duty to furnish appropriate accountings under
9 the Probate Code forcing the Petitioners to undertake the colossal task of discovering his
10 derelictions of duty including, but not limited to, his embezzlements and stealing giving
11 rise to Petitioners' successful claims.

12 The bottom line is that it is grossly inequitable to permit Kadisha to take money
13 away from the Petitioners which he is doing and not entitled to do by forcing them to pay
14 their attorneys for investigating all of this conduct. The Court is awarding its award for
15 attorney fees on many factors and the appropriate expenditure of Petitioners' lawyers
16 time to investigate is, but one. If after such investigation the Petitioners with disregard of
17 evidence revealing the claim had no merit, nevertheless, preceded no award for attorney
18 fees can be awarded once the fatal defect of defects were inescapable. The Court has not
19 awarded any attorney fees arising out of such a circumstances because none is known to
20 the Court. The Court must make it abundantly clear that Kadisha is the sole proximate
21 cause compelling the Petitioners' right to investigate all of Kadisha's activities as trustee
22 and to bring claims against Kadisha which Petitioners' excellent lawyers felt fully
23 justified. Petitioners are entitled to have Kadisha pay their attorneys for the work done in
24 this regard. The mere fact some of the claims proved unsuccessful after trial is not
25 relevant. The causation of Kadisha's conduct in compelling the investigation is the key,
26 not the result. It must also be noted that the Respondent's assertions there was no
27 intertwining of the claims is not exactly the correct spin on the intertwining. There is a
28 distinction between the intertwining of the "claims" and the "intertwining" of facts

1 involving Petitioners' claims. Kadisha's failure to render any required accounting, but
2 instead to submit a fraudulent misleading statements designed to cover-up his breaches of
3 trust, is a fact intertwining many claims. His lying and perjury is a fact intertwining
4 many claims. His inconsistent testimony is an intertwining of many claims as to facts
5 involved.

6 While the Court has made its own evaluation of the legal services of Petitioners'
7 counsel it has considered the "Declaration of Samuel Krane" filed January 16, 2007 in
8 regard thereto.

9 The Court finds that Krane is an outstanding lawyer of excellent reputation. His
10 work on this case can be described as monumental, almost beyond belief.

11 In determining the reasonableness of any attorney's fee the factors are:

- 12 (1) The amount of the fee in proportion to the value of services
13 performed.
- 14 (2) The lawyer and client's relative sophistication.
- 15 (3) The novelty and difficulty of the questions involved and the required
16 skill.
- 17 (4) The likelihood, if apparent to the client, that acceptance of the
18 employment will preclude other employment by the attorney.
- 19 (5) The amount involved and the results obtained.
- 20 (6) The time limitations imposed by the client or by the circumstances.
- 21 (7) The nature and length of the professional relationship with the client.
- 22 (8) The attorney's experience, reputation and ability.
- 23 (9) Whether the fee is fixed or contingent.
- 24 (10) The time and labor required.
- 25 (11) The client's informed consent to the fee.

26 The amount of the fees the Court determines in this case is in the mid-range. It
27 could be higher, not lower. The relative sophistication between Samuel Krane and Dafna
28 Uzyell is Grand Canyon depth and width. Krane is a very bright, articulate person. Mrs.

1 Uzyel, who is a nice person, can most favorably be described a dull, normal, lacking in
2 ability to comprehend anything requiring analytical thought. The novelty and difficulty
3 of the questions involved required the excellent thought skills of Krane. There is no
4 doubt that Krane's acceptance of the responsibility to pursue the beneficiaries' claims in
5 this case prevented Krane from taking on other cases. For Respondents to think
6 otherwise is a very bad judgment call. Krane's time spent in preparation and pretrial
7 work alone is overwhelmingly great, not to mention the days in trial which a low estimate
8 would be around 200 days. The amount of the recovery made mostly by Krane's efforts
9 in more than large by any standard, particularly in light of the apparently at first blush
10 simple case of a not-too-bright widow lady with two children trying to recover what
11 appeared to be an amount due under a trust agreement. There is no limitations imposed
12 upon Krane by Mrs. Uzyel. Obviously, she was hard pressed to believe she had money
13 due under the trust agreement without looking further. While the case starting out on the
14 simple basis referenced above the relationship between Mrs. Uzyel and Krane developed
15 into a very long relationship. Krane's experience, reputation and ability is well-known to
16 the Court. Smith & Krane undertook that which by hind sight, they might have been well
17 advised to seek other employment. The time and labor spent by Krane on this case is
18 next to ten years of hard time in a Mississippi or Alabama State prison. It is hard time in
19 the law when counsel is faced with a hostile witness who is unschooled in telling the truth
20 forcing multiple depositions over grounds previously covered. Kadisha was that kind of
21 witness both in deposition and trial testimony. There is no issue of question that Mrs.
22 Uzyel accepted the fee arrangement with Krane & Smith in this case.

23 The Court can not over emphasize the tremendous consumption of energy and time
24 Krane put into this case. It is difficult for the Court to imagine many lawyers who would
25 suffer through the work required to bring justice to Mrs. Uzyel and her children against
26 Kadisha as has Krane. It must be noted Krane's opposition didn't fall off any turnip
27 truck. Nussbaum and Walker were as excellent as Krane in defense of Kadisha. The
28 legal combat was of the highest caliber.

1 Going beyond the foregoing findings, the Court accepts the following facts
2 concerning Krane & Smith's representation of Mrs. Uzyel and her children as set forth in
3 Krane's "Second Supplemental Declaration" filed on or about May 30, 2007. (But also
4 referenced elsewhere and in argument): (1) Krane & Smith's attorneys spent 4,509.55
5 hours in pretrial discovery, if billed at the reasonable rate as set forth in Trial Exhibit
6 1932, totaled \$1,762,861; (2) On or about January 15, 2007, Petitioners filed their Motion
7 for Attorney Fees. Submitted with their Motion, Petitioners filed a Declaration of
8 Samuel Krane which contained monthly invoices totaling \$7,035,329. On April 16,
9 2007, Petitioners submitted a Supplemental Declaration of Samuel Krane submitting
10 Attorneys' invoices for the period December 15, 2006 through March 30, 2007. These
11 invoices totaled \$292,886.35. The total of said sum is \$7,327,215.35, which sum the
12 Court accepts as true, no credible evidence by Respondent having been offered to the
13 contrary. Over 23 witnesses testified, taking approximately 200 court days; (3)
14 Deposition took 57 days; (4) Written discovery by Petitioners had to be taken including
15 interrogatories, responses to special interrogatories, preparation and response to request
16 for production of documents, preparation of motions and opposition to motion to compel
17 further responses to interrogatories and production of documents; (5) Petitioners' counsel
18 had to review thousands of documents (over 4,000 Exhibits) including but not limited to
19 the Trust instruments and amendments, statements, checks, bank statements, financial
20 statements, brokerage account statements as well as voluminous other written documents,
21 Kadisha's bank statements, checks, correspondence and Qaulcomm documents, to name
22 some; (4) Petitioners' attorneys spent 7,115.30 hours during trial, which billed at a
23 reasonable rate as set forth in Trial Exhibit 1932, totaled \$2,888,504.90. The Court finds
24 the \$2,888,504.90 to be reasonable and is considered in the Court total award of
25 Petitioners' attorney fees; (5) after completion of testimony, the Petitioners' attorneys
26 claim to have expended 5,625.15 hours, which billed at the reasonable rate as set forth in
27 Exhibit 1932 totaled \$2,391,973.50. The Court finds said amount to be fair and proper
28 and is included in the courts final fixing of Petitioners' attorney fees.

1 The Court finds the total amount billed of \$7,035,329 through December 15, 2006
2 to be a fair and reasonable charge to be considered by the Court in fixing the total amount
3 of attorney fees to the Petitioners. There must be added to the foregoing amount the sum
4 of \$292,886.35 due for the period of December 15, 2006 through March 20, 2007 for a
5 total of \$7,327,215.50. Due to all of the factors set forth hereinabove, the Petitioners are
6 clearly due a reasonable lodestar, and the Court fixes same as two making the total award
7 of attorney fees payable by Kadisha to Petitioners of \$15,054,436.

8 Judgment in favor of Petitioners for attorney fees, against the Respondent in the
9 sum of \$15,054.436, plus costs.

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11 DATED: June 7, 2007

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15 Honorable Henry Shatford
16 Judge of the Los Angeles Superior Court
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