

October 6, 2011

T&E Litigation Update: *Harootian v. Douvadjian*

In *Harootian v. Douvadjian*, Case No. 10-P-1798 (Oct. 4, 2011), the Appeals Court addressed the question of whether certain distributions of principal from a trustee to herself, as the lifetime beneficiary of the trust, were in breach of her fiduciary duties to the remainder beneficiaries.

Beatrice Ansbikian, whose late husband was the settlor of the trust, was the trustee and lifetime beneficiary of the trust. The plaintiff claimed that Beatrice breached her fiduciary duties to him, as a remainder beneficiary, by distributing approximately \$214,000 in trust principal to herself to pay her expenses after the settlor's death. The plaintiff argued that Beatrice had assets of her own to pay her bills, and thus there was no need for her to invade the trust principal. The superior court rejected this argument, entering summary judgment against the plaintiff, and the Appeals Court affirmed.

The trust provided that Beatrice, as trustee, had the power to invade trust principal for her "support in reasonable comfort and maintenance." The Court held that this language did not require her to exhaust her own assets before invading principal, because her discretionary power to pay her expenses was not qualified by words such as "when in need" or "if necessary." The Court also noted that the plaintiff cited no authority for the proposition that the word "reasonable," which appeared before the words "comfort and maintenance," meant that Beatrice should have used her own assets first so as to preserve the trust principal for the remainder beneficiaries.