January 28, 2010

T&E Litigation Update: *In the Matter of the Estate of Bartley J. King*

In the much-anticipated decision in *In the Matter of the Estate of Bartley J. King,* SJC-10404, 2010 Mass. LEXIS 16 (Jan. 27, 2010), the SJC answered three questions relating to an award of legal fees and costs to the prevailing petitioner in a will contest pursuant to G.L. c. 215, ? 45. In a nutshell, a number of family members challenged the changes to the decedent's estate plan on capacity and undue influence grounds. The value of the decedent's estate was roughly $1.2 million. The petitioner incurred fees and costs totaling more than $806,000, and the contestants were ordered to pay nearly $575,000 of these fees and costs.

First, the Court held that awards of fees and costs pursuant to G.L. c. 215, ? 45, unlike awards of fees and costs pursuant to G.L. c. 231,? 6F, are not limited to cases involving bad faith or wrongful litigation conduct. The Court noted that ? 45 is a special departure in matters involving wills, estates and trusts from the American rule that each party is responsible for his or her own fees and costs. The Court emphasized, however, that fees and costs are not to be awarded under ? 45 as a matter of course. Instead, although an award under ? 45 need not be based on a finding of bad faith, it must be grounded in equity and as such this broad standard is subject to the probate court's discretion.

Second, the Court held that a hearing on an award that shifts fees and costs pursuant to ? 45 is necessary. An "evidentiary" hearing may not be required, particularly where the award of fees and costs is being considered by the same judge who presided over the trial, but the judge who awarded the fees and costs in this case was not the trial judge. Therefore, the Court remanded the case for an evidentiary hearing on whether fees and costs should be awarded.

Third, the Court discussed whether the record supported the amount of the fees and costs that had been awarded. Without commenting specifically on what an appropriate award of fees and costs might have been, the Court suggested that the fees submitted by the petitioner were excessive and held that the probate court erred in its approach. As the Court explained, the judge must consider the well-settled factors outlined in the decision (e.g., the ability and reputation of the attorney; the demand for the attorney's services by others; the amount and importance of the matter involved; the time spent; the prices usually charged for similar services by other attorneys in the same neighborhood; the amount of money or the value of the property affected by the controversy; the results secured) and undertake a more specific and searching analysis of the actual requests for fees and costs than apparently took place, keeping in mind the need to examine the requests through a conservative lens. On this last point, the Court reiterated that "conservative principles" are to govern where the fees and costs being awarded are to be paid by the opposing party.