

SURROGATE’S COURT OF THE STATE OF NEW YORK
- ORANGE COUNTY

IN THE MATTER OF THE ESTATE OF

MARY LOUISE PERES,

DECEASED.

**PETITION TO
REMOVE ADMINISTRATOR
PURSUANT TO SCPA § 711 AND TO
RESERVE ASSETS PURSUANT TO
SCPA § 1804**

FILE NO. 2023-262

TO THE SURROGATE’S COURT OF ORANGE COUNTY, THE PETITIONER RESPECTFULLY ALLEGES:

1. The name, residence address and interest of the Petitioner are as follows:

Name: The Distributive Education Clubs of New York (“DECA NY”) Citizenship: Nonprofit corporation incorporated under the New York State Education Law

Residence 26 Gettysburg Avenue
Address: Buffalo, New York 14223

Interest: Holder of a Contingent Claim against the Estate

2. This proceeding seeks to remove Christopher Peres as Administrator of the Estate of Mary Louise Peres (“Estate”) under SCPA § 711; appoint the Orange County Public Administrator as Successor Administrator; and direct that the Estate hold all assets in reserve to meet any liability of the Estate following a determination of the validity of DECA NY’s Verified Claim under SCPA § 1804.

BACKGROUND

3. Mary Louise Peres (“Mary Peres” or the “decedent”) died a resident of Orange County, New York on November 27, 2022. The decedent was survived by her husband, Leslie Barton Peres, who post-deceased the decedent on December 17, 2022 (“Estate of Leslie”), her son Christopher, and her daughter Nicole Peres.

4. The decedent died intestate, and, on March 13, 2023, Christopher Peres filed a Petition for Letters of Administration of the Estate. In his Petition for Letters of Administration, Christopher Peres identified the following assets as belonging to the Estate:

- Real property located at 285 Hill Road, Goshen, New York 10924, including improvements of a house and barn and valued at less than \$1,500,000;

- Personal property valued at less than \$500,000.

5. On March 16, 2023, the Court issued a Decree Granting Letters of Administration to Christopher Peres.

6. On October 13, 2023, DECA NY presented a Verified Claim for at least \$1,717,503.90 (the “DECA NY Claim”) against the Estate.

CHRISTOPHER PERES SHOULD BE REMOVED AS ADMINISTRATOR PURSUANT TO SCPA § 711

7. SCPA § 711 provides that a court may revoke an administrator’s letters if the fiduciary is unfit for the execution of his office, including where the court finds “conflict, divided loyalty, self interest and hostility.” *In re Palma*, 40 A.D.3d 1157, 1158 (3d Dep’t 2007); *see also* SCPA § 711(2), (8).

Decedent’s Breach of Fiduciary Duty to DECA NY

8. As detailed in the Balsdon Affidavit (“Balsdon Aff.”), attached hereto as **Exhibit 1**, Mary Peres was a long-serving Trustee of DECA NY. Balsdon Aff. ¶ 8. She held positions of trust, including as Chairperson and Trustee. Balsdon Aff. ¶ 9. Between at least 2009 and her death, Mary Peres was a Trustee designated as either the Chartered Association Advisor or the State Advisor. *Id.*

9. In Mary Peres’s capacity as Chairperson and Chartered Association Advisor, she had access to DECA NY bank accounts, including the ability to write checks and to make ATM withdrawals. Balsdon Aff. ¶¶ 10–13, 64–66.

10. Unbeknownst to DECA NY, since at least December 2015, Mary Peres had been treating the DECA NY bank account as her own. Upon Mary Peres’s death, DECA NY discovered that Mary Peres had regularly been writing checks from DECA NY’s bank accounts for things that were not authorized by DECA NY and served no DECA NY business purpose. Balsdon Aff. ¶¶ 14–18.

11. For example, Mary Peres wrote checks to her family members, wrote checks related to her personal horse farm business, made retail purchases that had no relationship to DECA NY, paid medical and veterinary expenses, and withdrew money from DECA NY bank accounts at an ATM near her home. Balsdon Aff. ¶¶ 18–19, 21, 37–38, 45–46, 53, 59, 64–66.

12. Since December 2015, Mary Peres, while a fiduciary of DECA NY, improperly diverted at least \$1,717,503.90. Balsdon Aff. ¶ 2. The full extent of Mary Peres’s scheme is spelled out in detail in the Balsdon Affidavit.

*Administrator Christopher Peres's and Nicole Peres's Complacency
Require Appointment of an Independent Fiduciary*

13. Of particular importance for this motion, among the approximately \$1.73 million of diverted funds, Mary Peres gave nearly \$1 million directly to Christopher Peres and Nicole Peres. Balsdon Aff. ¶ 20. Since December 2015, Mary Peres wrote checks from the DECA NY bank account to Christopher Peres ranging from \$750 to \$30,000, totaling over \$390,000. Balsdon Aff. ¶ 20. During the same timeframe, Mary Peres wrote from the DECA NY bank account to Nicole ranging from \$2,000 to \$13,000 totaling over \$400,000. *Id.*

14. As far as DECA NY is aware, Christopher Peres performed only very limited services for DECA NY from 2015-2022. In connection with the annual conferences, he was responsible for loading a storage container with materials for conferences and coordinating delivery of such materials to a convention center. The checks that appear to have been for those limited services contain relevant text in the memo line. Otherwise, Christopher Peres did not purchase supplies or other items for DECA NY. Balsdon Aff. ¶ 21.

15. Upon inspection of the checks written by Mary Peres to Christopher and Nicole, four things are noteworthy:

- the checks are clearly from the DECA NY account as the Payer Name states in clear bold, capital letters: **NEW YORK DECA** at the top with its address;
- the memo lines are largely blank;
- very few of the check amounts exceed \$10,000, which would trigger a reporting to the U.S. Department of Treasury; and
- Mary Peres's signature remains consistent throughout the checks but the handwriting on the remainder of the check, including the Payee, date, amount box and amount line seem to have significant differences between them.

See Balsdon Aff. ¶¶ 20-43.

16. This is compelling evidence that both Christopher Peres and Nicole Peres were aware of Mary Peres's actions. It is unbelievable that Christopher or Nicole would receive checks from a non-profit institution at such high amounts, with such frequency, and which clearly state **NEW YORK DECA** in clear, bold, capital letters and be unaware that the sums—hundreds of thousands of dollars to each—represented illegal diversion.

17. Christopher Peres's awareness and probable knowing participation of Mary Peres's actions put him in the untenable position of owing a fiduciary duty to the Estate while also needing to protect his own interests, which may conflict. It is also evidence of dishonesty by Christopher Peres that renders him unfit as a fiduciary.

18. Nicole Peres would have the same conflict and lack of fitness if she were appointed as successor trustee.

19. DECA NY therefore seeks an order removing Christopher as Administrator of the Estate and appointing the Orange County Public Administrator as Successor Trustee.

AN AMOUNT SHOULD BE HELD IN RESERVE PENDING RESOLUTION OF THE DECA NY CLAIM

20. Under SCPA § 1804(1), courts have broad discretion to hold an amount of estate assets in reserve to ultimately pay a contingent claim.

21. Here, the amount of DECA NY's contingent claim may be higher than the assets claimed by the Estate. If the fiduciary is allowed to move the assets out of the Estate, including by paying any estate debts or making any distributions, there is significant risk that DECA NY will never be able to recover its lost funds.

22. The risk is acute especially given Christopher Peres's and Nicole Peres's potential involvement in Mary Peres's wrongful scheme.

23. As such, DECA NY seeks a reserve of all assets of the Estate until after determination of the validity of DECA NY's claim.

- (a) All persons and parties so interested are of full age and sound mind or which are corporations or associations:

<u>NAME</u>	<u>P. O. ADDRESS</u>	<u>NATURE OF INTEREST</u>
Christopher Peres	4 Peter's Path, Manorsville Hamlet, NY 11949	Administrator of the Estate of Mary Louise Peres; Distributee of Mary Louise Peres; Administrator of the Estate of Leslie Barton Peres
Nicole Peres	285 Hill Road Goshen, NY 10924	Distributee of Mary Louise Peres
Kerry Gallagher	255 Main Street Goshen, NY 10924	Finance Commissioner and Public Administrator of Orange County, New York

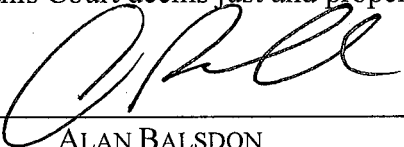
- (b) All persons so interested who are infants or incompetents or persons believed to be mentally incapable adequately to protect their rights, or whose existence, identity or whereabouts are unknown (including persons who are virtually represented under SCPA §315) are as follows: None.

24. No persons or organizations are interested in this proceeding other than those indicated above.

25. No prior application has been made to this or any other court for the relief requested herein.

WHEREFORE, Petitioner respectfully requests that this Court issue a Citation requiring Christopher Peres, as Administrator of the Estate of Mary Louise Peres, to show cause why the Court should not (i) remove Christopher Peres as Administrator of the Estate under SCPA § 711, (ii) appoint the Orange County Public Administrator as Successor Administrator, (iii) direct that the Estate hold all its assets in reserve to meet any liability of the Estate following a determination of the validity of DECA NY's Verified Claim under SCPA § 1804(a), and (iv) grant such other, further, and different relief as this Court deems just and proper.

Dated: October 12, 2023



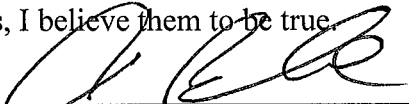
ALAN BALSDON

VERIFICATION OF PETITION

STATE OF NEW YORK)
COUNTY OF MONROE) SS.

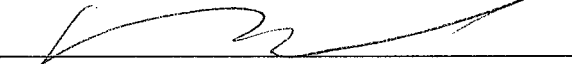
ALAN BALSDON, being duly sworn, deposes and says that: I am the Petitioner in this proceeding. I have read the foregoing Petition subscribed by me and know the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

Dated: October 12, 2023



ALAN BALSDON

Subscribed and sworn to before me this
12th day of October, 2023.



Notary Public

NICOLAS S. GATTO
Notary Public, State of New York
Qualified in Erie County
REG#02GA6391643
Commission Expires May 13, 2023

ATTORNEY

Sign: _____
BRIAN M. FELDMAN, ESQ.
MICHELE R. DI FRANCO, ESQ.

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