Creditor's Rights Against Estates and Estate Beneficiaries

Although this discussion may not be popular at cocktail parties or social events with friends, creditor's rights exist. As a practitioner in the field of Elder Law and or Trusts and Estates Litigation you will find that opportunities will arise to represent creditors. Creditors are professionals seeking reimbursement for goods and or services. Creditors can be a single mother, struggling middle class father, brother, sister, successful corporation providing services to the elderly, and or businessperson. Practitioners should strive to focus on what rights these individuals have to payment for his or her time, effort, and expertise. Avoid the stigma, the optics, and dive in.

Michael Puma

The most important questions a practitioner should ask when taking on a creditors claim against an estate are: When were letters of administration or testamentary issued; and do you want to file the claim in Surrogate's court or in civil court (*i.e.,* Supreme Court)?

First, when meeting with the client, determine whether they have taken any steps to try and collect on and how much time has passed without payment. If the client is a small business, time may be a significant factor. If the debt is large enough, it can have a substantial impact on the lives of the small business owner and his or her family. Furthermore, the estate may have already been distributed. This leaves the client with no remedy against the fiduciary under circumstances described below.

If a creditor does not present a claim within seven months from the time that letters have been issued to a fiduciary,[1] and the fiduciary has no knowledge of the claim, the fiduciary will not be responsible for assets distributed to legatees (beneficiaries under a will) or distributees (beneficiaries of a decedent dying without a will) prior to the claim being presented.[2] This includes letters issued to the Preliminary Executors and or Temporary Administrators. Therefore, practitioners should move very quickly to provide the estate fiduciary with notice of the claim to ensure that the fiduciary will be held responsible for any distributions made prior to paying the creditor.[3] Although a creditor and/or practitioner sitting on their hands may prevent a cause of action against the fiduciary if the distribution is made in good faith, it does not prevent a creditor from tracing the assets to a beneficiary and bringing a cause of action against the beneficiary for payment of the debt.[4]

After determining when and whether a fiduciary (i.e. Executor and or Administrator of the estate) has been appointed, the practitioner must provide notice to that fiduciary. Providing proper notice to a fiduciary is outlined in detail under The Surrogates Court and Procedure Act.[5] Any notice must strictly comply with the statute.[6] The notice must be in writing, contain a statement of the facts upon which the claim is based, and the amount of the claim. Although not initially necessary, it is good practice to have the client prepare an affidavit describing the amount owed and whether payments have been made to offset the claim. This will prevent an additional step later in the process whereby a fiduciary demands such an affidavit as of right pursuant to statute.[7] After the notice has been prepared the fiduciary must be served personally and or by certified mail (return receipt). If the fiduciary is not served, the notice will not be sufficient.

Once proper notice has been given to the fiduciary, the fiduciary can choose to allow the claim or reject the claim. To illustrate this further, it requires a deeper understanding of §1806. This section specifically discusses the allowance and or rejection of claims made by creditors. This article will focus exclusively on deemed rejection. Once a claim has been made, the fiduciary can reject the claim in whole or in part and give the reasons for such rejection to the creditor. More likely, the fiduciary will not respond to the claim at all. In this case, the claim is deemed rejected after the expiration of 90 days from the time that proper notice had been served on the fiduciary.[8] After 90 days have elapsed, the claimant (creditor) has sixty days from that time to file a claim in any court with subject matter jurisdiction. The next logical question becomes what happens after the expiration of time. ? Does the expiration of sixty days prevent a creditor from moving forward on the claim?

According to SCPA § 1810 "Nothing . . . shall prevent a claimant from commencing an action . . . at law or in equity provided that where a claim has been presented and rejected or deemed rejected pursuant to 1806 in whole or in part the action must be commenced within 60 days after such rejection." In the very next sentence, the statute reads, "Failure to bring such action within 60 days shall not, however, be deemed a waiver of claimant's right to a jury trial."

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The statute can leave a practitioner scratching his or her head. In fact, when read, the statute appears to bar any claim if it is not filed 60 days after the claim is rejected and or *deemed* rejected. Then, in the very next sentence, the statute does not forfeit the creditor's right to a jury trial. Thankfully for the client, nothing could be further from the truth; in fact, the client can still bring an action against the estate's fiduciary, but only in Surrogate's Court.[9].

As alluded to earlier, be aware of the client's needs. If the client needs the debt satisfied immediately, then the sixty (60) day time frame becomes extremely important. If the claim is not filed in a civil court within sixty days from the deemed rejection (90 days after notice of the claim has been given to the estate fiduciary without affirmative rejection) the client's right to do so is entirely extinguished. If the time frame passes without initiating a cause of action against the fiduciary in a civil court, the client is left with bringing the action in Surrogates Court. It is important to note that no other unique statute of limitations category exists for creditors' claims. Beyond what has been referenced, the claims are subject to traditional statute of limitations restrictions and exceptions listed in Article Two of the N.Y. C.P.L.R.[10] If the notice of claim is not filed, the statute of limitations does not begin to run under §1806. Therefore, depending on the type of claim and action, the practitioner may never want to serve the notice and simply file the claim in a civil court when they are prepared. In the alternative, the practitioner can wait to serve the notice (within seven months of the fiduciaries appointment) after being prepared to file the action in a civil court.

Although the creditor may have given up his or her right to file a civil claim, the prospects of receiving payment quickly are not much rosier in the civil realm. First, the client will have to undergo litigation costs that may end up cutting substantially into the claim. Secondly, even with a judgment the estate fiduciary may not pay the claim and or wait until the judicial settlement of the estate which could take several more months. In that case, if payment still has not been made, the client would have to go through the process of executing the judgment. Again, the client would see additional costs and no immediate relief.

If the claim is relegated to the Surrogate's Court, a creditor waiting for payment may petition the court for a compulsory accounting and or to allow the claim.[11] In doing so, the court can compel the fiduciary to procure judicial settlement of the account. If the fiduciary does not provide a final accounting, the creditor may petition the court to suspend and or remove the fiduciary who does not provide the accounting.[12] If the fiduciary fails to appear and or fails to comply with the order to account, the court may grant several different remedies.[13] One such remedy is to revoke the fiduciary's letters, then a new fiduciary will be appointed and the court can order the newly appointed fiduciary to take and state the account of the disqualified fiduciary. This process will not happen overnight because of the delays in court proceedings and the opportunities the fiduciary may have to purge any contempt for failure to comply with a court order. However, this appears to be one of the best vehicles for obtaining a judicial settlement of the account and obtaining payment from the estate.

The most important questions a practitioner should ask when taking on a creditors claim against an estate are: When were letters of administration or testamentary issued; and do you want to file the claim in Surrogate's Court or in Civil Court.

In short, creditors may experience significant time and cost in collecting a debt from an estate. However, that should not discourage the creditor from seeking payment, unless the cost to acquire the payment would exceed the debt. Practitioners need to make smart decisions based upon client's needs when deciding where to file a claim. If the practitioner is not prepared, he or she can severely hamper their clients' interests. Finally, practitioners should give the creditor realistic expectations. Prepare the client for a process that will make the debt difficult to collect from fiduciaries that do not wish to pay or simply are not attentive to the estate's obligations. By staying on top of the claim, employing smart litigation strategies, and being attentive and realistic with the client, the practitioner can take significant steps to ensure a positive outcome and experience for both the client and the practitioner.

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1. SCPA §103(21).
2. SCPA §1802.
3. SCPA §1811.
4. EPTL § 12-1.1. *See In re Swaab*, 40 Misc. 2d 767 (Surr. Ct. N.Y. Co. 1963).
5. SCPA § 1803.
6. *See U.S. Bank N.A. v. Lax*, 26 Misc.3d 1230(A) (Sup. Ct., Kings Co. 2010) (stating, that 'certainty in the administration of estates' requires that 'the statutes on the presentation of claims' be 'strictly construed.') citing *Ulster Co. Savings Inst. V. Young*, 161 N.Y.2d 23, 33 (1899)).
7. SCPA §1803(1).
8. SCPA §1802.
9. See *In re Headlee*, 25 Misc3d 1227A (Surr. Ct., Dutchess Co. 2009) *citing Homemakers, Inc. v. Williams*, 131 A.D.2d 636 (App Div. 2d 1987) and *Lazan v. City of New York*, 213 A.D.2d 381 (2d Dept. 1995).
10. *See In re Friedgood*, 524 NYS2d 777 (2d Dept. 1988).
11. SCPA §§ 2205,1809.
12. SCPA §§ 711, 719.
13. SCPA § 2206.