

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF ANNA LOEFFLER

CASE NO. 985577

**ENTRY GRANTING APPLICATION OF HAROLD SCUDDER TO
ADMINISTER ESTATE and DENYING APPLICATION
OF ROSA LINDA NEWMAN**

This matter came before Judge Wayne F. Wilke on June 15, 1999, regarding competing applications to administer the Estate of Anna Loeffler. Present were Cynthia P. Summers on behalf of applicant Harold Scudder, and J. Stuart Newberry on behalf of applicant Rosa Linda Newman.

The decedent herein, Anna Loeffler, died on May 23, 1998, survived by two adult children, to wit: Rosa Linda Newman and Helmuth Loeffler. Harold Scudder applied to be appointed administrator of the estate on October 9, 1998. Rosa Linda Newman was served notice of that application but did not contest Mr. Scudder's application, while Helmuth Loeffler filed a waiver of his right to administer the estate.¹ Accordingly, Mr. Scudder was appointed administrator of this estate on December 2, 1998.

As a result of Mr. Scudder's attempts to gain information in order to file an inventory, Rosa Linda Newman, through counsel, produced the decedent's last will and testament from 1995. That will nominated Rosa Linda Newman to serve as executor of the estate without bond. Both Rosa Linda Newman and Harold Scudder filed

¹ His waiver notwithstanding, Mr. Loeffler's Alabama residency precluded him from being appointed fiduciary of this estate.

applications to administer this estate on May 5, 1999. For the reasons that follow, the Court grants Harold Scudder's application to serve as Administrator W.W.A. and denies Rosa Linda Newman's application.

When faced with competing applications to administer an estate, R.C. §2113.05 requires a court to inquire into an applicant's suitability. In order to give full effect to a testator's wishes, an individual nominated to serve as an executor under a will that has been admitted to probate has priority over other applicants who are not so named. Nomination in such an instrument, however, does not guarantee one's appointment. Revised Code §2113.05 provides that letter testamentary shall issue to an executor named in a will if that person is suitable and competent. Applicant Rosa Linda Newman's actions in relation to this estate indicate that she is unsuitable to serve as executor. Consequently, her application is hereby be denied.

The evidence indicates Rosa Linda Newman failed to produce her mother's will despite her knowledge of the document's existence. The administrator has produced enough evidence that raise substantial questions as to how Mrs. Newman used a financial power of attorney granted to her by the decedent. Under those circumstances, the Court finds Rosa Linda Newman is unsuitable to serve as fiduciary of this estate and that Harold Scudder is suitable for such appointment.

Accordingly, the Court hereby denies Rosa Linda Newman's application to administer this estate and grants Harold Scudder's application to be appointed Administrator W.W.A. As Harold Scudder filed a \$200,000 bond, he is authorized to reduce that bond to a minimum bond of \$20,000 until such time as the inventory is

amended to reflect the anticipated increase in estate assets. Further, costs paid by Rosa Linda Newman shall remain on deposit and credited to the Estate for future filing costs.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: J. Stuart Newberry / 15029
Cynthia Summers / 23472