

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1323

CA 09-01969

PRESENT: MARTOCHE, J.P., SCONIERS, GREEN, AND PINE, JJ.

IN THE MATTER OF THE COMPULSORY ACCOUNTING OF
THE LIFETIME TRUST OF JOSEPH SROZENSKI,
DECEASED.

MEMORANDUM AND ORDER

SUSAN PORCELLI, PETITIONER-RESPONDENT;
BARBARA SROZENSKI, RESPONDENT-RESPONDENT;
ROBERT SROZENSKI, RESPONDENT-APPELLANT.

ROBERT SROZENSKI, RESPONDENT-APPELLANT PRO SE.

CHAMBERLAIN D'AMANDA OPPENHEIMER & GREENFIELD LLP, ROCHESTER (EUGENE
M. O'CONNOR OF COUNSEL), FOR PETITIONER-RESPONDENT AND RESPONDENT-
RESPONDENT.

Appeal from an order of the Surrogate's Court, Monroe County
(Edmund A. Calvaruso, S.), entered November 18, 2008. The order
settled the account of a lifetime trust.

It is hereby ORDERED that the order so appealed from is
unanimously modified on the law by vacating the surcharge against
respondent for attorney's fees and as modified the order is affirmed
without costs.

Memorandum: Surrogate's Court properly concluded that it has
subject matter jurisdiction in this proceeding seeking an accounting
of the lifetime trust created for the benefit of petitioner Barbara
Srozenski (beneficiary). Although the trust instrument provided that
"[t]his trust instrument and any trust created hereunder shall be
governed by the law of the State of New Jersey," the Surrogate has
jurisdiction over the lifetime trust by virtue of the fact that Robert
Srozenski (respondent), the "trustee then acting," resides in Monroe
County (SCPA 207 [1]; see generally *Matter of Jensen*, 39 AD3d 1136).
Contrary to respondent's contention, both the beneficiary and
petitioner Susan Porcelli, the successor trustee of the lifetime
trust, have standing to compel an accounting (see SCPA 2205 [2] [b],
[g]; *Matter of Hunter*, 4 NY3d 260, 267-268). Also contrary to the
contention of respondent, the New Jersey Prudent Investor Act applies
to his actions as trustee occurring after June 5, 1997, despite the
fact that the trust was created before its enactment (see NJSA 3B:20-
11.12). We agree with respondent, however, that New Jersey law does
not authorize the surcharge against him for attorney's fees (see
generally *Matter of Vayda*, 184 NJ 115, 120-124, 875 A2d 925, 928-931),
and we therefore modify the order accordingly. We have considered the
remaining issues raised by respondent and conclude that none warrants

further modification of the order, nor do the remaining issues warrant reversal.

Entered: November 12, 2010

Patricia L. Morgan
Clerk of the Court