

## ***Estate of Bikman***

OATH Index No. 2199/13, mem. dec. (Sept. 24, 2013)  
[Loft Bd. Dkt. No. 0132]

ALJ denied respondent's motion to disqualify Administratrix from appearing *pro se* and to require her to obtain counsel, finding that she may appear *pro se* in this administrative proceeding.

---

### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**ESTATE OF BIKMAN**  
*Applicant*

---

### **MEMORANDUM DECISION**

**TYNIA D. RICHARD**, *Administrative Law Judge*

This case concerns an application filed with the Loft Board on March 1, 2013, by Charla Bikman, Administratrix of the Estate of Minda Bikman ("petitioner" or "Estate"). The Estate seeks an order from the Loft Board directing respondent 595 Broadway Associates, owner of premises located at 595 Broadway, New York, New York, to turn over possession of the loft at third floor east of the premises to the Estate so that the Estate can obtain the value of fixtures installed and improvements made to the property by the decedent. Charla Bikman was issued a Letter of Administration for the estate of Minda Bikman by the Surrogates Court of the County of New York on January 12, 1998 (Pet. Br. Ex. A). Under the New York Estates, Powers and Trusts Law ("EPTL"), "a person who has received letters to administer the estate of a decedent" is a "personal representative." EPTL § 1-2.13 (Lexis 2013).

Respondent moves to disqualify the Administratrix from appearing *pro se*<sup>1</sup> in this proceeding on the basis that she is not the sole beneficiary of the decedent's estate. Respondent therefore seeks to require the Administratrix to retain counsel to appear for the Estate, in order to preserve the rights of the other beneficiaries (Resp. Br. at 1).

In support of its motion, respondent relied primarily on federal case law. First, respondent cites *Pridgen v. Andresen*, 113 F.3d 391 (2d Cir. 1997), where the Second Circuit

---

<sup>1</sup> *Pro se* denotes one who appears for oneself in court, in lieu of the retention of counsel. *Black's Law Dictionary* at 1341 (9th ed. 2009).

Court of Appeals held that a wife who was executrix of her husband's estate may not appear *pro se* on behalf of the estate when there were creditors of the estate, because "the representation . . . entails interests other than [those] of Mrs. Andresen alone. . . ." *Id.* at 393. At the time of its ruling, the only other federal court of appeals that had addressed the issue had twice considered it, once in banc in *Reshard v. Britt*, 839 F.2d 1499 (11th Cir. 1988). In *Reshard*, the equally divided in banc Eleventh Circuit Court of Appeals affirmed the district court's decision to disqualify co-representatives of an estate from proceeding *pro se* on behalf of the estate. But the *Pridgen* court was more persuaded -- by the Eleventh Circuit chief judge's dissent to the earlier panel decision that had reversed the district court -- that "when an estate has beneficiaries or creditors other than the administratrix or executrix, the action cannot be described as the litigant's own, because 'the personal interests of the estate, other survivors, and possible creditors will be affected by the outcome' of the proceedings." *Pridgen*, 113 F.3d at 393 (quoting *Reshard*, 819 F.2d 1573, 1583 (11th Cir. 1987) (Roney, J., dissenting)).

Respondent also relied on *Malone v. Nielson*, 474 F.3d 934 (7th Cir. 2007), where, like the Second Circuit in *Pridgen*, the Seventh Circuit Court of Appeals held that an administrator who is not the sole beneficiary of the estate may not represent an estate in court. In *Malone*, the court cited the Second Circuit's decision in *Iannaccone v. Law*, 142 F.3d 553 (2d Cir. 1998), which followed *Pridgen* in holding that a non-lawyer representative could not commence a civil court action where there were creditors to the estate because the representative would be litigating claims that were not personal to him. In *Malone*, the Seventh Circuit stated that "administrators do not act on behalf of themselves, but on behalf of all of the beneficiaries of an estate. Consequently, if the administrator is not the sole beneficiary of the estate, then he or she may not represent the estate in court." 474 F.3d at 937.

The only New York case cited by respondent is *Matter of Walsh*, 17 Misc. 3d 407 (Surr. Ct. Bronx Co. 2007), a wrongful death action. In *Walsh*, the Bronx Surrogates Court applied the advocate-witness rule<sup>2</sup> in New York's Code of Professional Responsibility to disqualify an attorney from representing the estate of which he was also the executor. *Id.* at 413. The court noted that there were no New York cases that specifically addressed "whether fiduciaries of estates have the same right to represent themselves in their fiduciary capacities as they do

---

<sup>2</sup> The existing Code of Professional Responsibility required an attorney to withdraw from representation when it was clear that the attorney would be required to testify in the very matter that s/he was representing. N.Y. Code of Prof. Resp. DR 5-102.

individually.” *Id.* at 411. The court found it “inconceivable that a personal representative who is neither an attorney nor sole distributee would be permitted to prosecute the wrongful death action *pro se*,” noting that to do so “would not only violate the proscription against practicing law without a license, but would also jeopardize the rights of the widow and orphans seeking to recover for the pecuniary loss they incurred as a result of the decedent’s wrongful death.” *Id.* at 411.

Notwithstanding the factors weighing against such representation in federal and state court actions, there is no prohibition against a personal representative representing the interests of an estate in administrative proceedings generally, or at OATH specifically.

The EPTL provides that “[a]ny action, other than an action for injury to person or property, may be maintained by and against a personal representative in all cases and in such manner as such action might have been maintained by or against his decedent.” EPTL § 11-3.1 (Lexis 2013). Thus, the personal representative is not precluded from bringing an action on behalf of the estate and must defend against an action involving the same.

With respect to administrative proceedings such as those held before this tribunal, there is no rule or court holding that prohibits an Administratrix from appearing *pro se*. Section 1-11(a) of this tribunal’s Rules of Practice provides that “[a] party may appear in person, by an attorney, or by a duly authorized representative.” 48 RCNY § 1-11(a) (Lexis 2013). But the rules do not specifically address whether an estate that is a party to a proceeding must be represented by counsel, or may be represented by a non-attorney Administratrix.

Respondent alleges there are additional beneficiaries of the Estate of Minda Bikman, including at least Minda Bikman’s brother and his three children, which is not disputed. But while some federal courts have precluded administrators from appearing *pro se* in judicial proceedings where there are multiple beneficiaries of the estate, respondent points to no particular conflict among the beneficiaries here, nor does respondent make any allegation that they might be adversely affected. In fact, the interests of the additional beneficiaries appear to be in line with the interests of the Administratrix in this matter. Additionally, the beneficiaries may assert a claim against the Administratrix if they believe that she has improperly handled the Estate. EPTL § 11-3.1 (Lexis 2013).

Thus, in the absence of a rule requiring the tribunal to disqualify the Administratrix from appearing *pro se* or a showing that a conflict exists among the beneficiaries, the Administratrix may proceed *pro se*.

Accordingly, respondent's motion to disqualify Charla Bikman, the Administratrix of the Estate of Minda Bikman, from representing the Estate in this proceeding is denied.

Tynia D. Richard  
Administrative Law Judge

September 24, 2013

APPEARANCES:

**CHARLA BIKMAN**  
*Petitioner Pro Se*

**BELKIN BURDEN WENIG & GOLDMAN, LLP**  
*Attorneys for Respondent/Owner*  
**BY: JOSEPH BURDEN, ESQ.**