

**SURROGATE'S COURT : STATE OF NEW YORK
COUNTY OF WESTCHESTER**

Probate Proceeding, Estate of

DECISION AFTER TRIAL

File No. 2012-1154

CAROLE PALMIERI,

Deceased.

WALSH - ACTING SURROGATE.

Before the court is a contested probate proceeding in which petitioner Patricia Palmieri ("petitioner") seeks the admission to probate of an instrument of her mother Carole Palmieri ("decedent") dated October 29, 2009 ("propounded instrument"). Rosemary Bellinger ("objectant"), petitioner's sister, has filed objections to the propounded instrument upon the basis that the instrument was procured through fraud and undue influence perpetrated upon the decedent. A lengthy non-jury trial was conducted, and based upon the credible evidence adduced at the trial, and for the reasons set forth *infra*, the court hereby finds in favor of the objectant and denies probate to the propounded instrument.

BACKGROUND

Decedent died on May 5, 2012, at the age of 85, survived by: petitioner and objectant (Objectant's Exhibit A, hereinafter "Obj. Exh. ___"). By petition dated May 18, 2012, petitioner seeks admission to probate of the propounded instrument (Obj. Exh. K-4).

Pursuant to the propounded instrument, petitioner is the residuary beneficiary of

MATTER OF CAROLE PALMIERI
File No. 2012-1154

decedent's estate, and objectant is the legatee of a \$100,000.00 bequest. Petitioner's son Ryan Dadakis ("Ryan") is the beneficiary of a \$100,000.00 bequest; and objectant's children Richard Bellinger ("Ricky" or "Mr. Bellinger") and Kimberly Bellinger ("Kimberly") are each the beneficiaries of a \$50,000.00 bequest. The propounded instrument provides that, in the event the petitioner predeceases decedent, her residuary estate is left to Ryan.

Petitioner is the nominated fiduciary of decedent's estate, and petitioner's husband John Dadakis ("Dadakis") is the nominated trustee of any trust created for Ryan's benefit. The propounded instrument contains an *in terrorem* clause. The probate petition values decedent's estate at \$500,000.00, consisting of personal property. With the exception of some pre-residuary legacies, two prior instruments executed by decedent in 2007 and 1997 bequeathed her estate in equal shares to petitioner and objectant (Obj. Exhs. C, D).

Prior Procedural History

A prior motion *in limine* pertained to a series of tape recordings made by objectant, that Dadakis admits to having taken, copied several times, and returned to decedent's home where objectant was then living, without objectant's knowledge, authority, or consent. This occurred in the summer of 2009 just prior to decedent's execution of the propounded instrument.

On May 31, 2016, this court rendered a decision on that motion suppressing the tapes and all derivative materials based upon its finding that the tape recordings could not be authenticated in any manner due to Dadakis's having surreptitiously taken them and petitioner's counsel's failure to disclose discovery materials pursuant to objectant's

MATTER OF CAROLE PALMIERI
File No. 2012-1154

counsel's numerous requests. The court found that such failure to produce was not inadvertent on the part of petitioner's counsel (see *Matter of Carole Palmieri*, 51 Misc.3d 1227[A]; NYLJ July 15, 2016, p. 38, Vol. 256). Subsequent to this motion, the matter proceeded to trial without either party filing a dispositive motion.

Trial

A non-jury trial was held in this matter on August 8 -11, 2016; August 15 -17, 2016; August 22 -24, 2016; and August 30, 2016.

The following witnesses were called by objectant to testify: Magdalen Gaynor ("Ms. Gaynor"), the attorney drafstperson of decedent's 1997, 2007 and propounded instruments; Gaetano Spaziani ("Mr. Spaziani"), decedent's nephew; Kathy Carol Maniscalco ("Ms. Maniscalco"), decedent's niece, who was raised by decedent; Jerry Cotrone ("Mr. Cotrone"), a friend of decedent and objectant; objectant; Mr. Bellinger; Sergeant Hufnagle from the North Castle police department; and, Dadakis.

Petitioner called the following witnesses to testify: Rosa Vasquez ("Ms. Vasquez"), the Dadakis's housekeeper; and Paul Mako ("Mr. Mako"), a contractor who knew decedent for 10 years who met decedent through Dadakis.

The court has reviewed the entire record and the facts relevant to the petition and the objections are as follows:

Dadakis¹ testified that he "probably" acted as decedent's attorney during the course

¹ Dadakis is a partner at the law firm of Holland & Knight where he is chair of the trusts and estates department and practices law in the private client area, advises clients with regard to estate planning issues, including wills and personal tax matters,

MATTER OF CAROLE PALMIERI
File No. 2012-1154

of knowing his mother-in-law (335).² Dadakis testified that he represented decedent when her first husband died, and in a prenuptial agreement she signed when she married her second husband (337)³. Sometime prior to 1997, Dadakis was involved with the sale of decedent's house at 12 Reimer Road (461).⁴ Dadakis described his relationship with decedent as "very very close" (462), and petitioner's relationship with decedent as "very close" (462).

In 1997, decedent contacted Ms. Gaynor⁵ at Dadakis's suggestion, for the purposes of preparing a will and a power of attorney ("the 1997 instrument") (37). Dadakis asked Ms. Gaynor to take care of his mother-in-law, and then decedent called Ms. Gaynor to make an appointment (37). Ms. Gaynor recalled meeting decedent before the drafting of the 1997 instrument when decedent and petitioner operated a furniture store (10).

Ms. Gaynor testified that through the Westchester Country Club ("the Club") she knew Dadakis's parents, Dadakis knew Ms. Gaynor's father; and, Ms. Gaynor's father

and previously was a partner at the law firm of Schiff Hardin LLP (284 - 285).

²References to numbers in parentheses are to the pages of the trial transcript petitioner filed with the court on October 25, 2016.

³Decedent's second marriage took place sometime before 1997 inasmuch as in the 1997 will decedent left her husband Gary Kozek \$60,000.00 and her residuary estate to her children equally as more fully set forth herein.

⁴At the time of the execution of the 1997 and 2007 wills, decedent was living at 32 Rolling Ridge Road, White Plains, New York.

⁵Ms. Gaynor has been an attorney for 35 years concentrating in the estate planning, administration, and tax area (9).

MATTER OF CAROLE PALMIERI
File No. 2012-1154

knew Dadakis's father. In addition, Ms. Gaynor was part of the panel of the Admissions Committee of the Club that interviewed Dadakis and petitioner shortly after their marriage for petitioner's admission to the Club (31).

Ms. Gaynor testified that she knows Dadakis to be a trusts and estates attorney but did not know if he was head of the wealth planning group at a major law firm and did not know whether he was well-known or prominent (17). Ms. Gaynor testified that she and Dadakis attended the same law school, and he "showed her the ropes" in law school. She also testified as to Dadakis that she had "no personal or professional relationship with him, other than [she] know[s] him, and [she] took care of two clients that he sent to [her]" (30).

With regard to the 1997 instrument, Ms. Gaynor wrote a letter to decedent dated February 25, 1997, that summarized her assets, detailed a summary of the will provisions, including that petitioner would receive a specific gift of jewelry and furniture. In addition, the letter explained that the residue would be left to petitioner and objectant outright, and if a daughter predeceased decedent, then that daughter's share would go to that daughter's children. The letter specifically states: "[a]s a result of the gift of jewelry and furniture to [petitioner], she will receive \$250,000 more in value than will [objectant]. I wanted to bring this to your attention in case you had not given it thought" (Obj. Exh. Y). The 1997 instrument appoints petitioner as executor and in the event she cannot serve, appoints objectant in petitioner's stead. The 1997 instrument does not contain an *in terrorem* clause (Obj. Exh. Y). On July 2, 1997, the 1997 instrument was executed along with a durable power of attorney designating petitioner as decedent's attorney-in-fact (Obj.

MATTER OF CAROLE PALMIERI
File No. 2012-1154

Exh. G).

On January 31, 2005, Dadakis and Ms. Gaynor exchanged emails with regard to what would be decedent's 2007 instrument ("the 2007 instrument"). Ms. Gaynor conceded that Dadakis was involved in the drafting of the 2007 instrument as it pertained to Ryan, and that she had an exchange of emails with Dadakis at decedent's request (25). In that exchange, Dadakis directed Gaynor as follows: if Ryan "were to die before his trust were to terminate, provide him with a general power of appointment (his unified credit would cover all of the federal tax and most of the state tax) and in default of exercise, pay to Ricky and Kimberly" (Obj. Exh. K-7 January 31, 2005).

Thereafter, in a letter to decedent dated February 2, 2005, pertaining to the 2007 instrument, Gaynor revised the 2007 instrument based upon Dadakis's direction stating: "[p]er our conversation and a discussion with [Dadakis] I have revised the draft of your Will to include a trust for any funds that Ryan might receive . . ." (Obj. Exh. K-8).

Ms. Gaynor and Dadakis also had an email exchange regarding decedent's tardiness in signing the 2007 instrument (Obj. Exh. L), and Ms. Gaynor requested that Dadakis use his influence over decedent to get decedent to sign that instrument. According to Ms. Gaynor she had either written to decedent or called her and had not gotten a response regarding the 2007 instrument (27). She wrote to Dadakis because appointments had been canceled, and therefore, Ms. Gaynor "went to the next source, her son-in-law" (27). Specifically, on December 29, 2006, Gaynor wrote:

Should I close the matter and send a bill to your mother in law? [sic] This has been outstanding since January 2005. I have made appointments and they are cancelled

MATTER OF CAROLE PALMIERI
File No. 2012-1154

[.] sic. Can you use your influence so that I can close the file? Thanks and [b]est wishes for 2007 Meg Gaynor."

Dadakis responded on that date: "I will talk to her over the weekend"; to which Gaynor responded "[t]his has gone on too long and the document should be signed."

Dadakis apparently spoke to decedent about signing the 2007 instrument as he wrote to Ms. Gaynor on March 7, 2007:

I agree. And my mother-in-law agrees, but she is now house-bound in our house in Bedford. Anyway we could get it signed there, with you and a paralegal coming over? "(Obj. Exh. L).

Some days later, Ms. Gaynor reached out to Dadakis to find out if she should come to his house so that decedent could execute the 2007 instrument. She stated:

Per my last email do you want me to come? If so give me directions and telephone number so I can make a date Meg [sic] (Obj. Exh. L).

Ms. Gaynor and Dadakis exchanged additional emails regarding the execution of decedent's 2007 instrument, and Ms. Gaynor asked Dadakis questions regarding the appointment of agents for decedent.

On April 3, 2007, Dadakis wrote to Ms. Gaynor stating:

Hi Meg – I hear my mother-in-law is coming into [sic] sign her Will [sic] today. Patty will be driving her. They need directions to your office. They will be coming from Armonk. Please email them to me . . .

Ms. Gaynor wrote back on April 3, 2007 at 10:58 AM:

Is Katherine Reda alive? She is listed as alternate health care agent and somehow I think she may have passed away. I figured its easier to ask you in case she is still hale and hearty [sic] Meg [sic]

Documentary evidence introduced at trial contains time entries by Ms. Gaynor

MATTER OF CAROLE PALMIERI
File No. 2012-1154

pertaining to the 2007 instrument that reference Dadakis and indicate that she consulted with him regarding the 2007 instrument: "PC to JD re alt. benef.;" "send JD email" (Obj. Exh. K-9, K-5).

On April 3, 2007, decedent executed the 2007 instrument (Obj. Exh. D) and a durable power of attorney, which designated petitioner as decedent's attorney-in-fact (Obj. Exh. H). The 2007 instrument leaves all of decedent's tangible personal property to petitioner, and divides the residue equally between petitioner and objectant; and, if either daughter predeceases decedent then such share goes to that daughter's children. The 2007 instrument does not contain an in terrorem clause (Obj. Exh. D).

Ms. Maniscalco's testimony,⁶ derived from her conversations with decedent and her observations, revealed that in 2007 decedent visited objectant, for a two week period while objectant was living in Florida (121). Ms. Maniscalco's mother and stepfather were also present for the visit decedent made with objectant in Florida (121).

Thereafter, in 2007 objectant stayed with decedent in New York to take care of decedent, as decedent was not able to eat due to a feeding tube (123). According to Ms. Maniscalco, from 2007 to 2008, decedent needed a companion, someone to cook for her, and to stay with her, and Ms. Maniscalco testified that objectant was there for decedent (127). Objectant also helped decedent with online dating, and bathing; she watched her go up the stairs, grilled for her, cooked for her, dressed her, took her to doctor

⁶Ms. Maniscalco moved to California in 1977, but was in regular telephone contact with decedent every three days until she died, and would personally visit decedent when she came to New York (116 - 118)

MATTER OF CAROLE PALMIERI
File No. 2012-1154

appointments, out for lunch and shopping, and did everything decedent needed done. Ms. Maniscalco added that objectant took excellent care of decedent and was her companion (127 – 130).

For the tax period ending December 31, 2008, Dadakis and petitioner had a joint federal tax liability of approximately \$270,000.00 (Obj. Exh. T, X1, X2). Dadakis and petitioner also had a state tax liability for the tax year ending 2008 in the sum of \$33,301.82 (320; Obj. Exh. X-2). According to Dadakis, when the 2008 tax liability was due and owing on April 15 of 2009, the taxes were not paid because Dadakis did not have the money (324).

In Winter 2008 through the Summer of 2009, the objectant lived with decedent again. During that time, Ms. Maniscalco spoke to decedent every other day (130, 131). It was Ms. Maniscalco's understanding that objectant was living with decedent because she was looking for a job in New York. Ms. Maniscalco testified that decedent was close to both of her children (155). At some point the relationship between petitioner and objectant soured, and the basis of Ms. Maniscalco's knowledge is her conversations with objectant, who was concerned because she was not invited to holidays and parties after objectant's divorce, which hurt objectant (163). According to Ms. Maniscalco, objectant is a person who sometimes "flies off the handle", says hurtful things when she gets angry, and does most of the talking in any conversation (163, 164). Ms. Maniscalco also testified that there was always acrimony between petitioner and objectant (174).

On March 31, 2009, decedent had a stroke, and Ms. Maniscalco's assessment was

MATTER OF CAROLE PALMIERI
File No. 2012-1154

that decedent required intense care (131). Decedent told her in that period that objectant would bathe her everyday, fix her hair, insist that she eat, help her with her writing, dress her, take her out and, like she did on previous occasions, assist her with online dating. Objectant and petitioner took turns taking decedent to Burke rehabilitation (133 – 134).

According to Dadakis, following decedent's stroke on March 31, 2009, decedent could not drive and was not able to pass a driving test, but otherwise recovered and was fully functioning about a month after the stroke (289, 291).

During the time objectant was living with decedent, and in or around April 6, 2009, Mr. Cotrone⁷ testified that he received a telephone call from objectant to meet objectant at decedent's house in White Plains, New York. Objectant stated that she wanted to remove some of her personal belongings that were stored in decedent's garage, and objectant told Mr. Cotrone that if something happened to decedent, petitioner would not let objectant in the house to claim her personal belongings, and she was going to try to find a place to live (190). Mr. Cotrone testified that decedent pleaded with objectant not to go looking for another place to live, but to stay with decedent because there was plenty of room for her, objectant, and objectant's son, Ricky, who decedent believed was coming to live with them, and decedent thought it would be nice to have a man in the house (190).

According to Mr. Cotrone, objectant told decedent on that occasion that she thought it best that she find a place to live because they argued about her belief that decedent did

⁷Mr. Cotrone came to know decedent in the early 1990's because decedent operated a home furnishings store in Greenwich, Connecticut, and he met decedent through objectant (188).

MATTER OF CAROLE PALMIERI
File No. 2012-1154

not stick up for her to petitioner, and decedent allowed petitioner to manipulate her (191). Mr. Cotrone testified that decedent then apparently looked at objectant and said "no I do not, and you are in my will" (191). Decedent told objectant there was no reason for her to leave (191).

According to Mr. Cotrone, at the time he saw decedent in spring 2009, decedent told him that petitioner threatened decedent that she would divorce Dadakis, stating: "Jerry she threatens me. She threatens not to come and pick me up, and she threatens me with her marriage" (192). Mr. Cotrone also testified that objectant told decedent that she would visit her at petitioner's home, and decedent stated that petitioner would not allow that (192).⁸

Ms. Maniscalco testified that in or around May 2009, decedent told her that she was very excited because her grandson Ricky was moving in with her and objectant (139).

Ms. Maniscalco also testified that in May 2009 decedent told her that petitioner would call the house in the mornings to make sure decedent was making objectant vacate the house. Decedent, however told Ms. Maniscalco that she did not want objectant to leave as she was waiting for Ricky to come so they could all live together (176). Ms. Maniscalco stated that objectant was hurt and angry by petitioner's phone calls (177).

Ms. Maniscalco further testified that decedent was a very religious person and prayed for hours each day saying novenas, or extensive prayers, to various saints for

⁸Mr. Cotrone testified that from the mid to late 1990's until April 2009, he did not have contact with decedent but he and objectant had contact every eight or nine months by telephone. At the time he saw decedent at her home in April 2009, decedent was able to carry on a coherent conversation and walked by her own power (202).

MATTER OF CAROLE PALMIERI
File No. 2012-1154

petitioner to change her mind about requiring objectant to move out of decedent's home, and decedent believed everything was going to be fine (177, 184). Decedent "hoped [petitioner] would come around" (184). According to the witness, decedent told her:

Kathy, please tell [objectant] not to leave. Ricky's coming. He's going to move in here with [objectant]. [Objectant] is going to find a job. We're all going to be together. [Petitioner] will turn around. I'm saying novenas that everything will be fine (186).

According to Ms. Maniscalco, objectant was upset at petitioner for calling decedent and telling decedent that objectant should leave decedent's house. Objectant felt she was being used and abused, and she was not going to stay where she was not wanted, but decedent did not want her to leave her house (183). Dadakis testified that he had no recollection of petitioner ever asking decedent to have objectant leave her home (296-298).

Decedent told Ms. Maniscalco that she wanted to stay in her home, which she loved, and her home was her castle (149). According to Ms. Maniscalco, decedent told her she objected to cooking at petitioner's house because they expected and forced her to cook including standing at the sink and washing chicken for hours (151-152), whereas objectant neither expected her to cut carrots, nor wash or cook chicken. Decedent related to her that when she stayed in her own home she could sit in the family room and watch television. Decedent also did not want to go to the Dadakis's house because there was no one home all day (152).

On one occasion when Ms. Maniscalco was visiting decedent in 2009, Dadakis was very upset with decedent because she did not cook a certain chicken dish that his family loved. Decedent told Dadakis she did not want to cook the chicken, and Dadakis was very

MATTER OF CAROLE PALMIERI
File No. 2012-1154

upset with her, which upset decedent and Ms. Maniscalco (153). Dadakis's voice was stern during this conversation, and decedent's voice was exasperated (154).

Mr. Bellinger⁹ testified that in late spring, early summer 2009, he visited decedent's home at the time objectant was residing there and stayed for approximately one month (229). At that time, Mr. Bellinger also visited petitioner's home (229). When Mr. Bellinger visited, decedent had recently suffered a stroke, and her health was not as strong as it previously was, although he believed the effects were predominantly physical (230). While he was there, objectant would take care of decedent by washing her hair, bathing her, doing her make-up, driving her places, feeding her, cleaning, providing companionship, taking decedent to church, and spending time with decedent (230). According to Mr. Bellinger, both objectant and petitioner shared the responsibility of driving decedent to the doctor.

Mr. Bellinger's purpose in visiting was for him to find a job in New York, and decedent invited him to move into her house with objectant in the event he found a job. Mr. Bellinger was present for decedent's birthday party held at petitioner's home in May 2009. Mr. Bellinger testified regarding a poem objectant wrote for decedent on the occasion of Mother's Day 1989, updated May 4, 2009 for decedent's birthday. The poem was read by objectant at decedent's birthday party in May 2009 (243; Obj.Exh. J). At the party, objectant read the poem and decedent cried, hugged objectant, and thanked her,

⁹ Mr. Bellinger testified against his own interest, inasmuch as he receives a \$50,000.00 legacy under the propounded instrument

MATTER OF CAROLE PALMIERI
File No. 2012-1154

and they each said their "I love you's" (244). After the party, Mr. Bellinger testified that the relationship between petitioner and objectant took a downturn (248).

According to Mr. Bellinger, there was dissension between petitioner and objectant about objectant living with decedent (232). Decedent told Mr. Bellinger that petitioner did not want objectant living in the house with decedent (232). In addition, Mr. Bellinger testified that decedent told him that petitioner had "threatened [decedent] that if [objectant] was not kicked out of [decedent's] house, that there would be repercussions" in that petitioner told decedent that she would leave Dadakis (234). According to Mr. Bellinger, this threat made decedent fearful because she was deeply concerned about petitioner's son Ryan growing up in a household where petitioner and Dadakis were not married and not living together (235).

On the subject of the decedent's will, Mr. Bellinger testified that decedent repeatedly stated that her will would provide that her assets would be split evenly between petitioner and objectant and that objectant had nothing to worry about (236). Decedent also told Mr. Bellinger at the time he visited in 2009 that she did not like talking about her will because there was no question that her assets would be split evenly between petitioner and objectant (237).

During the time that he was staying in New York in 2009 and while visiting at petitioner's home, Mr. Bellinger testified that he spoke to decedent and she told him that she would leave him and Kimberly \$100,000.00 each in her will; but, that in the event that she did not do so, that they need not worry because objectant would take care of them

MATTER OF CAROLE PALMIERI
File No. 2012-1154

financially. Concerned about possible tax implications, Mr. Bellinger spoke to petitioner after that conversation telling petitioner that he did not want the money to pass through his mother first. According to Mr. Bellinger, petitioner assured him she was the “executrix for the will, and she could make [decedent] do whatever she wanted and that he need not worry” (239). Petitioner told Mr. Bellinger that he “could get half of the money if [petitioner] wanted, but don’t worry about it” (240).¹⁰

According to Mr. Bellinger, petitioner said on many occasions to him, Dadakis, and decedent that petitioner did not want objectant living in decedent’s house; and, petitioner, in a frustrated manner, stated that if decedent did not kick objectant out of her house, then petitioner was “done” with decedent (240). Mr. Bellinger testified that decedent pleaded with petitioner to not force her to kick objectant out of her home, that objectant had no where to live, and objectant should not be kicked out of her home because objectant was taking care of decedent (240).

Mr. Bellinger also testified that objectant repeatedly asked decedent to affirm that there would be an equal split of decedent’s assets between objectant and petitioner (249-256). He stated that while he was visiting decedent at her home, objectant and decedent argued primarily about petitioner and about objectant leaving the house because of the petitioner (257). Decedent was upset that objectant and petitioner did not get along (257).

¹⁰As detailed *infra*, however, the propounded instrument leaves them only \$50,000.00 each (Obj. Exh. K-4). In addition, objectant’s email to Mr. Bellinger dated July 27, 2009, discussed *infra*, coincides with this conversation Mr. Bellinger’s had with petitioner; and, in the email, objectant believed Mr. Bellinger was vying for a portion of decedent’s estate (Pet. Exh. 11).

MATTER OF CAROLE PALMIERI
File No. 2012-1154

In late July 2009, decedent moved in with Dadakis and petitioner (286). Dadakis testified that decedent came to live with them because he felt that decedent was more comfortable staying with them, knowing that he and petitioner would take care of her, had a room for her, and were there for her all the time (465). Petitioner, Dadakis, and others would drive decedent because she was unable to drive (465). According to Dadakis before she passed away, decedent was very healthy and could take care of herself irrespective of her COPD (286).

According to Dadakis, in late July 2009, decedent was extremely upset with objectant and decided that objectant's behavior, and objectant's failing to return decedent's car to her that objectant had been driving, resulted in decedent not wanting objectant to live with her. Dadakis testified that on July 24, 2009, decedent asked Dadakis to affix a letter written by decedent to objectant, on the front door and back door of the garage of decedent's home (468; Pet. Exh. 9). Dadakis stated that the document is all in decedent's handwriting (469). The document requests that objectant leave decedent's home inasmuch as decedent did not want her living there any longer (Pet. Exh. 9). The document dated July 24, 2009 also states: "Rosemary, I plan on putting my house on the market as soon as possible. . . ." (Pet. Exh. 9).¹¹

According to Ms. Maniscalco, decedent told her that she moved because petitioner and Dadakis thought it was time for her to sell her house (135). Ms. Maniscalco testified

¹¹As detailed *infra*, petitioner sold her home approximately two years later in July 2011.

MATTER OF CAROLE PALMIERI
File No. 2012-1154

that decedent became resigned to selling her house, because if she did not, petitioner threatened to leave Dadakis, and decedent did not want Ryan, who was then approximately 15 years old, living in a single parent household (136). Decedent was worried because she felt objectant's kids suffered with objectant getting a divorce, and decedent did not want Ryan to suffer in the same manner (138-139). Decedent was approximately 82 years of age in and around this time (Obj. Exh. A).

After decedent had moved in with Dadakis and petitioner, petitioner took decedent's vehicle and moved the car to the Dadakis home. Objectant, however, who had been driving decedent's car, had left some personal property in the car. On July 24, 2009, objectant contacted the North Castle Police Department to retrieve a mobile phone and other property that objectant had left in decedent's car after petitioner took the car to her home. Petitioner's Exhibit B in evidence is an incident report dated July 24, 2009 from the North Castle Police Department which states that the caller "Rose Mary" reports that she needs to get items out of her mother's car, which is currently at her sister's residence at 34 Smith Farm Rd., she requests police assistance due to ongoing problems with her sister" (Petr. Exh. B).

Sergeant Hufnagle testified with regard to the incident that objectant called him relating to the residence of petitioner and Dadakis in July 2009 (277). Hufnagle retrieved the property, which included a plastic bag containing a cell phone, and put it in a bag that was then given to objectant (280; Pet. Exh. 13).

Objectant too testified that the police retrieved her belongings from the car, and put

MATTER OF CAROLE PALMIERI
File No. 2012-1154

the belongings in a brown bag, and gave them to her. Inside the bag was a mobile phone from the car that objectant testified the police thought was hers (404). A theft of the mobile phone would later be alleged by petitioner in a family court proceeding discussed *infra* (Obj. Exh. E-1, 401).

On July 25, 2009, the day after the police went to the Dadakis home, Dadakis and Jennifer Esposito, petitioner's friend, went to decedent's house where objectant was staying, unaccompanied by the police, to retrieve petitioner's mobile phone asserting that they believed that objectant had stolen it from the Dadakis's home. Dadakis did not knock on the door but entered with Jennifer Esposito since he had a key (478). Objectant was sleeping on the couch when he walked in, she got up, walked around, ran to the garage, and at that point Dadakis noticed objectant had something in her pocket, so Dadakis physically touched objectant's lower leg with his hand where it appeared she had a mobile phone, and then objectant took the phone out and gave it to him (479).

On July 27, 2009, Mr. Bellinger received an email from objectant (Pet. Exh. 11; 262). Mr. Bellinger testified that he did not read the entirety of the email (262). Mr. Bellinger testified that he told objectant that decedent was considering writing Mr. Bellinger into the contents of her will. Objectant was angry at Mr. Bellinger thinking he was vying for a portion of decedent's estate (266; Petitioner's Exh. 11). At one part of the email, objectant wrote "I know [decedent] doesn't love me, and I accept that" (268). Mr. Bellinger testified that when he spoke to decedent about the will, her reaction was always that it would be an equal split, and decedent did not know why objectant was upset (270).

