

# **Chicago Trustee Collaboratory**

**Case Study: beneficiaries get so frustrated with their trustee they sue! Consideration of the court decision, and the trust administration issues, in the case of *Spencer v. Di Cola*, 2014 Ill. App. (1<sup>st</sup>) 121173, 2014 Ill app LEXIS 289 (1<sup>st</sup> Dist. 5/1/14), *rehearing denied*, August 18, 2014, *modified on denial of rehearing*, 2014 Ill. App. (1<sup>st</sup>) 121585, 16 N.E.3d 1 (August 21, 2014).**

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## **Part Two: Administration and The Family**

### **Executive Summary:**

- 1) The litigation was expensive, and could have been out of proportion to the size of the trust.
- 2) To what extent could the lawsuits have been avoided through:
  - a. the development of a distribution policy statement for the limited funds in the trust?
  - b. better communication through the down market?
  - c. mediation as the family became increasingly alienated from the trustee?

We're taking a look at both the legal and practical lessons from a trust relationship that degenerated to the point of court hearing, appeal, and re-appeal. Part One detailed the facts, legal arguments and the courts' decisions. Here we will look more closely at what we can learn about trust administration.

### **Family Considerations:**

The court's comments opens the door to consideration of what was going on with this well-litigated trust from [Lyle Spencer, Sr.](#) and his descendants.

Given its narrow legal focus, the court's decision necessarily gives bare attention to the larger human and family issues. Further, the court acknowledges its legal prerogative to state only those facts necessary for it to make a legal decision, which explains the simple background statement we started with.

Hidden are other facts:

First, the size of the trust. If our math is correct in following the court's decision, the trust had some \$900,000 in assets in 1984. There's no indication how much was spent or earned in the 24 years to 2008, other than the court acknowledged the trustee's request for it to take notice that the 2008-9 slump reduced the size of many investments. So, it may be well to consider a 20% loss from that downturn, and perhaps a further reduced amount given the probability of some payouts over those 24 years.

Second, is the identity of the beneficiaries, which included not just Lyle, but his minor children as well. So this is the trust for a nuclear family, though not including Lyle's current wife.

Third, is the list of facts *not* stated.

- There's no indication the trustee adopted any distribution plan or budget.
- There's also no indication that the trustee adopted any particular system for communications around financials or otherwise.
- There's no indication of the other financial resources available to Lyle and family. Apparently this was not a trust that required the trustee to take such resources into account.
- The cost of the litigation and appeal. The trust likely paid for the fees of the trustee's defense, and the beneficiaries probably paid their own. The fees together easily totaled to many thousands of dollars, and may have been in deep five figures or more.
- Di Cola died shortly before or after the trial court published its initial decision in May 2014. Di Cola's death is mentioned by the Court in its modified opinion in August, 2014.

Finally, the court did offer a better peek into what prompted the dissatisfaction with the trustee that at least one of the beneficiaries had chosen:

Some years later, Lyle's current wife (notably, a non-beneficiary) requested funds from Di Cola for day care and "pre-kindergarten tuition," which Di Cola denied [based] on the trust's language and the fact that several beneficiaries were covered by the trust, which required the trustee to be careful about how the funds were distributed over time. Other conflicts developed over claims that the beneficiaries were inadequately informed of the performance of investments. These several disagreements apparently prompted Lyle to file this suit against Di Cola.

[quote marks and parenthetical from the court, bracket from these authors]

**COMMENTS:**

From the above, which is not without the benefits of hindsight, we observe:

Day care and pre-kindergarten classes do not seem frivolous on their own. In deciding to be careful and not to be pay for those, what instead was the trustee planning on paying for? To what extent was the trustee's interpretation of the grantor's vision of distributions shared and communicated with the family?

Keeping the beneficiaries well-informed about the trust's investments may not be required under the document, but it was unlikely forbidden. More to the point, such communications are reasonably calculated to keep adults more comfortable, if not confident, especially during a rocky financial period.

One can easily imagine possible fact patterns. A wife disgruntled from the denial of the trust's payment of her child-rearing expenses. Economic pressure growing accordingly from this out-of-pocket, especially during the economic downturn, fueling frustration over the trustee's denials and apparent silence over how money will be given to the family. The situation deteriorates to their request for the trustee to resign.

Though the court's decision ruled there was no legal basis to remove Di Cola, her death resulted in a new trustee all the same.

Bottom line: Could this lawsuit have been avoided? Could this trustee and family enjoy a less conflicted relationship?

In hindsight, it's easier to identify the patterns and problems, though we really don't know enough to meaningfully weigh-in on this family. All the same, in the hopes of thinking we can learn – and avoid the trip to the court-house the next time, the case is worthy of our study for the evolution of our better practices and better selves.