

**SAINT REGIS MOHAWK TRIBAL COURT  
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

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ESTATE OF ██████████ SWAMP

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) **Case. No.: 16-CIV-00017**  
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) **ORDER TO REMOVE**  
) **ADMINISTRATOR AND**  
) **ORDER OF CONTEMPT**  
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**Statement of Facts and Procedure**

This case came before the Court with the filing of a probate petition by ██████████ Swamp on December 1, 2016. ██████████ Swamp withdrew his petition on December 7, 2016. On December 9, 2016, ██████████ Swamp completed documentation requesting to be named the Administrator of the Estate of ██████████ Swamp. The request completed by ██████████ Swamp states that ██████████ Swamp, ██████████ Swamp, and ██████████ Swamp are the children of ██████████ Swamp.

On March 30, 2017, the Court heard no objection raised by the heirs and appointed ██████████ Swamp as the Administrator of the Estate of ██████████ Swamp. On March 31, 2017, ██████████ Swamp signed the "Oath of Administrator."

As the Administrator, ██████████ Swamp completed and filed with the Court an inventory list of the known assets and interests of the Estate. The inventory list, filed by ██████████ Swamp, consisted of the following: a house, land, household contents, tractor, boat, personal belongings, pension, and insurance policy.

The Court held several status conferences in regards to the present matter to provide assistance with developing an agreement as to the division of the property. However, when the Court individually questioned the heirs, particularly ██████████ Swamp, there was a disagreement as to how the savings account would be divided. Moreover, there have been statements made that personal property of the decedent was sold by an heir. Further, the Saint Regis Mohawk Tribal Police Department brought to the Court's attention that ██████████ Swamp had erected a speed bump on the road leading to the home listed on the inventory.

On March 31, 2017, a status conference was scheduled and attended by ██████████ Swamp and ██████████ Swamp. The parties were made aware that because the decedent did not have a will the personal property would be divided equally and that all heirs known to the Court would have equal possessory interest in the decedent's assets. After the status conference, ██████████ Swamp appeared and presented the Court Clerk with a quitclaim deed that transferred the land and real property

from the Tribe to ██████ Swamp.<sup>1</sup> Based on the record before it and the testimony of the heirs, the Court issued an interim order on June 1, 2017 invalidating the quitclaim deed because it was not issued in accordance with tribal law.

Following the interim order, Retha M. Herne, Executive Director of the Akwesasne Housing Authority, contacted the Court asserting the Lot and home at issue are not part of the Estate of ██████ Swamp.

On July 12, 2017, the Akwesasne Housing Authority filed a motion requesting the Court “to reconsider its June 1, 2017 Interim Order and affirm the validity of the Akwesasne Housing Authority’s assignment of the ██████ Swamp Mutual Help and Occupancy Agreement to ██████ Swamp.” The Akwesasne Housing Authority based their argument on the terms of the Mutual Help and Occupancy Agreement between ██████ Swamp and the Housing Authority.

On July 14, 2017 the Court requested the Saint Regis Mohawk Tribe’s participation in a hearing on the motion to help navigate the Court in the present property issue.

On August 30, 2017, a hearing on the Akwesasne Housing Authority’s Motion to Reconsider was heard before the Court. Marsha Schmidt represented the Saint Regis Mohawk Tribe and Retha M. Herne appeared on behalf of the Akwesasne Housing Authority. ██████ Swamp, ██████ Swamp, and ██████ Swamp were all self-represented and in attendance.

On September 22, 2017, the Court found the home and lot listed in the filed inventory by ██████ Swamp was wrongfully included in the Estate. Further, the Court found disposal of the house and lot at issue are within the jurisdictional authority of the Akwesasne Housing Authority. The Court notes the Akwesasne Housing Authority had determined that ██████ Swamp met the eligibility requirements to be named a “successor” and, therefore, assumes the responsibilities as stated in Mutual Help and Occupancy Agreement. As the successor he will gain ownership of the lot and home once the agreement is paid in full. Further, the Court ordered the Administrator, ██████ Swamp, must provide the Court with an amended inventory consistent with the findings of the Court’s decision and he was granted an opportunity to amend the inventory list.<sup>2</sup>

On November 7, 2017, a status conference was held and attended by ██████ Swamp. ██████ Swamp received notice, but did not attend. The Court did not receive any further documentation at the hearing. At the status conference, ██████ Swamp testified under oath that the Administrator, ██████ Swamp, had withdrawn \$█████ from the decedent ██████ Swamp’s bank account at SeaComm Federal Credit Union located in Massena, New York and that ██████ Swamp gave him his share in the amount of \$█████. Moreover, ██████ Swamp testified that ██████ Swamp told him that he has spent the remaining portion, including ██████ Swamp’s share of the funds. ██████ Swamp also testified that ██████ Swamp is not the biological son of ██████ Swamp and, as

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<sup>1</sup> The Court notes that ██████ Swamp signed as the Grantor, for the quitclaim deed, however, he neglected to inform the Court of the transfer and the fact the home at issue was not owned by the decedent during the status conference. ██████ Swamp had notice that the Akwesasne Housing Authority had an ownership claim to the property as evidenced by Retha M. Herne’s signature on the quitclaim deed.

<sup>2</sup> *Estate of ██████ Swamp Final Decision on Akwesasne Housing Authority Motion to Reconsider*, 16-CIV-00017, 9-10 (Sept. 22, 2017).

a result, they are the only heirs of the Estate. The Court found the Administrator ██████ Swamp in contempt of Court for his actions of distributing the funds not in accordance with tribal law and absent a Court Order to do so. The Court will impose a financial sanction at a later time following a show cause hearing.

### Discussion

The present case involves the Estate of ██████ Swamp. The Court has appointed ██████ Swamp to serve as the Administrator of the Estate. As the Administrator he has completed and filed with the Court an inventory of the decedent's estate and attended court proceedings. In a review of the documentation provided by the Administrator and the case record, the ██████ Swamp Estate consists of household contents, tractor, boat, personal belongings, pension, and insurance policy.<sup>3</sup> The pension in the amount of \$ ██████ was stored in an account with the SeaComm Federal Credit Union.

At a status conference, held on November 7, 2017, ██████ Swamp testified under oath that ██████ Swamp had withdrawn the \$ ██████ funds from SeaComm Federal Credit Union and gave him his share of the decedent's pension in the amount of \$ ██████. Furthermore, ██████ Swamp stated that ██████ Swamp told him that he has spent all of the remaining portion, including ██████ Swamp's share of the funds. The allegations raised by ██████ Swamp, an heir of the decedent, raises a question as to whether the actions taken by ██████ Swamp are valid grounds to remove him as the Administrator.

There is currently no Saint Regis Mohawk Tribe written law with respect to the removal of a court appointed Administrator. Thus, there is no tribal law to guide the Court in determining what constitutes valid grounds to remove an administrator. Without a specific law in place, this Court would have the authority to look elsewhere, to look to customs and traditions of the Mohawk community and to look to the law of other jurisdictions as may be appropriate.<sup>4</sup> However, the "Oath of Administrator" signed by an individual that is appointed as the Administrator by the Court provides guidance to evaluate the conduct of a court appointed Administrator.

The Oath signed by the Administrator, states the Administrator swears to "truly administer all and singular the goods and chattels, rights and credits of the deceased and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in me, . . . according to law."<sup>5</sup>

Pursuant to the terms of the Oath, the Administrator is obligated to collect assets, resolve and pay the decedent's debts and obligations, satisfy the estate's administration expenses, provide an accounting of the estate, and distribute the estate pursuant to a Court Order. Along with the administrative duties, Administrators also have a fiduciary obligation to uphold the law, follow

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<sup>3</sup> The Court notes the estate inventory changed following a finding that the house and lot are non-probate assets. See *Estate of ██████ Swamp Final Decision on Akwesasne Housing Authority Motion to Reconsider*, 16-CIV-00017 (Sept. 22, 2017).

<sup>4</sup> SRMT Civil Code § V. A. 1 – 6.

<sup>5</sup> See *Oath of Administrator signed by ██████ Swamp* (signed by ██████ Swamp, signed and witnessed by Kristin Jock, SRMT Court Clerk) (dated March 31, 2017).

the orders of the Court, and to take actions that are in the best interest of the estate and beneficiaries.<sup>6</sup> Therefore, any action taken by an Administrator that is adverse to the heirs and the estate is considered a breach of their obligations may be taken into account in assessing whether there are sufficient grounds for removal.

In the instant case, ██████ Swamp testified that the Administrator ██████ Swamp had given him his share of the decedent's saving account in the amount of \$█████ and that ██████ Swamp told him that he had spent the remaining funds, including ██████ Swamp's share of the funds. At this time, the Court has not directed the distribution of the funds and pursuant to tribal law ██████ Swamp would be entitled to a share of the \$█████ as an heir of the decedent. As the Administrator of the Estate of ██████ Swamp, ██████ Swamp is obligated to take actions that are in the best interest of the estate and heirs. The testimony provided by ██████ Swamp indicates that ██████ Swamp has failed to manage the estate and distribute the funds in accordance with tribal law and, therefore, he has breached his fiduciary duties and obligations as defined in the "Oath of the Administrator." Thus, the Court finds that such conduct is grounds for his removal as the Administrator.<sup>7</sup> Based on this finding the Court, on its own motion, removes ██████ Swamp as the Administrator of the Estate of ██████ Swamp.

The Court notes this order and decision leaves the Estate of ██████ Swamp without an Administrator. In general, a person seeking to be appointed must file an application with the Court. The Court then hears any objections raised by the parties during its proceedings and makes the determination on the person's eligibility based upon a preponderance of the evidence and the Estate's best interest. It is important to understand that the Court must keep in mind the Estate's interest in appointing an Administrator.

During the proceeding, the heirs, ██████ Swamp and ██████ Swamp, indicated an interest in administering the estate. At this time, ██████ and/or ██████ Swamp may file an application to be named as the Administrator or Co-Administrators of the Estate of ██████ Swamp. However, in its review of the case record the Court finds instances of their failure to be forthcoming about critical information. For example, ██████ Swamp and/or ██████ Swamp have never notified the Court that ██████ Swamp may not be a biological child of the decedent, ██████ Swamp. It was not until he failed to distribute funds to ██████ Swamp that the possible critical fact became known to the Court. Furthermore, since the case has been initiated, an heir has taken actions that have made it difficult for the others to access the decedent's assets and there have been allegations raised that

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<sup>6</sup> The Court notes on August 16, 2017, the Tribal Council enacted the Saint Regis Mohawk Tribe Probate Law through TCR 2017-52. However, the SRMT Probate Law does not include a provision which allows for the law to apply retroactively and, therefore, the Probate Law does not apply to this case. The SRMT LL&LDO states written tribal laws will be considered first in resolving land disputes. Therefore, not as binding law, as it was not in effect at the time this action was initiated, but rather as persuasive authority, the Court may look to the SRMT Probate Law for guidance. Section 1.6 of the SRMT Probate Law states a person appointed as an Administrator has a fiduciary responsibility to uphold this law and follow the orders of the Court. As a fiduciary, the Administrator shall act honestly and in good faith, expeditiously and efficiently, and consistent with the best interests of the estate. SRMT Probate Law § 1.6 (a).

<sup>7</sup> The Court notes that each removal proceeding will be decided on a case by case basis and this decision is not to be taken as establishing the only factor(s) the Court will consider in assessing conduct that warrants the removal of an Administrator.

an heir has sold assets of the estate. Lastly, the issue presented to the Court involving the house and lot may have been resolved in an expeditious matter, if the heirs would have notified the Court as to the fact those particular assets are involved in a contract with the Akwesasne Housing Authority.

All of these matters stem from information that the Court can reasonably determine that the heirs had prior knowledge of, however, for unknown reasons this information was never conveyed to the Court by the heirs. Furthermore, the actions taken by the decedent's heirs during the course of this case raise questions as to whether the heirs will take actions as an Administrator or Co-Administrators that are in the best interest in the Estate of [REDACTED] Swamp. As previously stated, the Court must take into account the interest of the Estate when appointing an Administrator. Based on the preponderance of evidence, the Court holds [REDACTED] Swamp and [REDACTED] Swamp are also not appropriate to be appointed as an Administrator or Co-Administrators of the Estate of [REDACTED] Swamp.

### ORDER

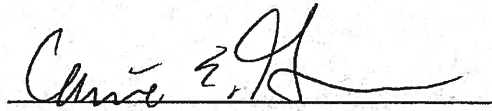
It is hereby **ADJUDGED, ORDERED, AND DECREED** that:

1. The Tribal Court shall revoke [REDACTED] Swamp's Letter of Appointment as the Administrator in the Estate of [REDACTED] Swamp.
2. [REDACTED] Swamp is hereby removed as the Administrator of the Estate of [REDACTED] Swamp.
3. [REDACTED] Swamp is ordered to appear on **November 28, 2017 at 11:00 a.m.** to show cause as to why he should not be held in contempt of court for the breach of his fiduciary responsibilities and obligations. Failure to appear may result in further sanctions by the Court.
4. [REDACTED] Swamp is ordered to file with the Tribal Court any and all documentation he has relating to the Estate of [REDACTED] Swamp.
5. The Tribal Court shall subpoena SeaComm Federal Credit Union, located in Massena, New York, to produce documentation and records of all bank accounts that are related to the Estate of [REDACTED] Swamp.
6. [REDACTED] Swamp are prohibited from distributing, selling, changing, destroying or giving away, any of the property in the [REDACTED] Swamp Estate.

7. The Court shall appoint a third party to serve as the Administrator at a later date.

8. The Court shall schedule a status conference for the heirs.

Signed by my hand this 9<sup>th</sup> day of November, 2017.

A handwritten signature in black ink, appearing to read "Carrie E. Garrow", written over a horizontal line.

Carrie E. Garrow, Chief Judge  
Saint Regis Mohawk Tribal Court