

ETHEL'S ESTATE

BAD FAITH AND INSTITUTIONALIZED INDIFFERENCE

This was supposed to be a legal brief, written for submission to the Attorney General as criminal activity because the acts involve lawyers, the court and regulators. The lawyer and me (Marlee-Jo) developed this document. If the Attorney General did nothing, then it goes to the FBI. I am one of the people ignored by the grievance committee (see <http://www.legal-disclosure.com/reform.html>), along with a host of other regulators doing nothing.

The lawyer wanted \$25,000 to write a brief to turn in criminal activity. He promised a finished brief on or before January 23, 2008. He never finished. He was paid \$10,000 for what you see. If he ever decides to finish a real brief, I will cheerfully pay him our agreed to fee. I am submitting this to the Attorney General in September 2008. All supporting documentation is with the attorney.

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I received my inheritance in October 2007. It took over six years after my mother died (Jan 2001) to stop efforts at estate theft, facilitated by legal professionals, ignored by regulators and the court. My financial damages are about \$1,100,000 (see page 23). Most of the "set-up" for stealing was before death using a forged POA, witnessed by a lawyer. We have no regulators to help people prevent estate theft. If lawyers were regulated using the federal model applied to commodity professionals, much of the inherent abuse in our legal system can be dramatically reduced and sometimes eliminated.

PURPOSE

Our intention is to expose this system's failings, using this document as an instrument for personal restitution, public change and justice. This brief reports criminal activity. We disclose failed efforts at estate theft by

two sisters, using estate money, facilitated by their respective lawyers and the Surrogate's Court. Since early 2002 the crimes were reported to the New York County District Attorney's office, the US Attorney's Office, the FBI, and the Grievance Committee of the New York Supreme Court. (See <http://www.legal-disclosure.com/reform.html>) No regulatory agency did anything. The US Attorney said this case should go to the FBI. The FBI said that they could not find a federal crime, but that if I could find a federal crime, they would revisit the case. Since Spitzer is gone, we believe this should first be reported to the Attorney General.

If I did not have \$170,000 to hire lawyers, my inheritance would have been "legally stolen." If I did not have \$10,000 to pay for this document, this story would not be reported in a way where a regulator would listen to me. The ongoing crime took over six years to stop. My personal damages are over \$1,100,000, and the IRS was defrauded.

Many people suffer needless financial and emotional damage caused by inherent weaknesses in our legal system. We pray that someone takes time to listen. For details related to regulatory reform please see <http://www.legal-disclosure.com/superior.html>

People Involved

1. Shelby Greene Zarlin – Oldest sister
Leslye Schlesinger Esq. Witnesses Forged POA
Legal Counsel for Zarlin -- Joseph Gaffney Esq.
2. Diane Mota – Middle sister and Executor – Marlee-Jo forgives incidents described in this document that include the executor, Diane Mota. They are included to detail the role played by the executor's lawyers and the Surrogate's Court.

Legal Counsel for the Executor – Blank Rome Tenzer Greenblatt Leonard Steinman Esq – Litigation Attorney
Barbara McGrady Esq. – Estates and Tax Attorney
Herb Bockstein Esq - Estates Attorney

3. Marlee Jo Jacobson – youngest Sister
4. Manhattan Surrogate Eve Preminger (retired) **Page 15**
5. Manhattan Surrogate Kristen Booth Glen - **Pages18-21**
6. Claudia Silbert Esq. Principal Court Attorney in the Surrogate's Court
Silbert was removed from this case when Judge Preminger retired and Judge Glen was given the case. Documents submitted to the court by Joseph Gaffney Esq. were removed from the court and estate minutes. These documents are with the attorney who basically wrote this document.

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INTRODUCTION AND SUMMARY

Ethel Jacobson died January 3, 2001, at 87 years of age. At the time of her death Ethel was suffering from advanced dementia, diagnosed over 11 years earlier, and it is certain that she was no longer aware of the nature and extent of her estate. It is also nearly certain that the last time Ethel was mentally aware, she believed that her assets were in good hands and in good order, and that upon her passing, her assets would be simply divided as directed by her Will, with minimal cost or trouble.

Ethel's assets –personal effects – consisted of money in cash accounts, CD's and investment accounts, a coop apartment at 11 Fifth Avenue in New York City, and three New York Mercantile Exchange (NYMEX) memberships. Ethel leased her memberships to traders creating consistent income with minimal trouble or expense. Her coop apartment was debt free.

Ethel's asset distribution plan was elegantly simple. She provided in her Will for cash gifts of \$37,500 to each of her four grandchildren. She left the coop and all contents to Marlee-Jo Jacobson, the youngest of three children. The balance of her estate was to be divided equally among her three children. Assuming there was enough cash to pay estate taxes and legal fees, each of Ethel's three children would receive one of the three NYMEX memberships and some amount of cash.

As simple as Ethel's estate plan was, it should have been easy and relatively cheap to execute. This was not to be. Before Ethel's death, under a forged Power of Attorney, Ethel's eldest daughter Shelby Zarin moved all of Ethel's cash, investment accounts and NYMEX seats out of Ethel's name into the names of Ethel's two elder daughters (Shelby Zarin and Diane Mota). Multiple bank accounts were opened under different combinations of names and the income from the NYMEX seats was diverted into these accounts.

It took over six years, over four hundred thousand dollars (\$400,000) in wasted legal fees, and unnecessary taxes before Ethel's wishes for the distribution of her assets could be accomplished. Ethel's debt free coop apartment, that she gave to her youngest daughter Marlee Jo in her Will, did not go to Marlee Jo. The executor forced Marlee Jo to sell the coop in order to avoid foreclosure of a \$203,000 mortgage that Shelby Zarin had placed on the apartment under a forged power of attorney while Ethel was deep in senile dementia. After the coop was sold and the mortgage paid off, Marlee Jo had to petition the probate court every six months for small increments of the remaining sale proceeds. She did not receive the balance until years later. At one point, Judge Eve Preminger, now retired, refused to entertain a petition for renewed living expenses.

Financial damages were caused by the failed attempts at estate theft by Shelby Greene Zarlín, Ethel's oldest daughter, and Diane Mota the executor. These damages were intensified by their lawyers engaging in years of "legal wrangling" that cost hundreds of thousands of dollars. Having financially depleted the Estate for years, the lawyers created a settlement agreement that swept under the rug Shelby's theft and breach of fiduciary duty and Diane's participation and breach of fiduciary duty, and that created a fictional "gift" in order to cheat on Estate taxes. When Marlee Jo objected to the settlement agreement and asked the Surrogate's Court to reject it, rather than accepting the unpleasant task of dealing with the issues of fraud, theft, and breach of fiduciary duty that Marlee Jo raised, the Court exerted economic pressure on Marlee Jo to force a settlement.

In spite of the efforts of Shelby, Diane, their lawyers, and the Surrogate's Court to keep the wrongdoing from being exposed, the dirt is still there, the system that refused to deal with it justly and truthfully is still there, and so is the risk that other people –decedents and their heirs – will become victims of the system.

THE POWERS OF ATTORNEY –
SHELBY GREENE ZARLIN GETS CONTROL

For a period of 12 years before Ethel's death in 2001, Ethel's eldest daughter Shelby had total control over Ethel's financial affairs. She used this control to move Ethel's money out of her name and to put a mortgage on Ethel's coop apartment and remove \$203,000 in equity. Shelby gave Ethel's money away to family members. Ethel's money was used to help pay for a coop apartment for Shelby's daughter Allyson. Shelby took Ethel's three NYMEX seats out of Ethel's name and put two seats into Shelby's name and one seat into Diane's name. Shelby allowed her son David to use one of the NYMEX seats rent-free. Shelby took money to pay herself for taking care of Ethel's affairs, but kept no records of the amount she took.

While Shelby was doing all this, Ethel was suffering from ever-worsening dementia. And, the power of attorney which Shelby relied on for the legal authority to take Ethel's assets and give them away, was a forgery. Even if the power of attorney was genuine, it did not give Shelby the legal right to give away any of Ethel's assets.

Shelby Obtains a Limited Power of Attorney From Ethel

Shelby first obtained a power of attorney from Ethel in 1988. The powers that Ethel gave Shelby under the 1988 power of attorney were limited and specifically did not include real estate transactions. Additionally, under New York law the 1988 power of attorney did not give Shelby the power to make gifts.

While Ethel's signature on the 1988 power of attorney appears to be genuine, the circumstances in which Shelby got the 1988 power of attorney are suspicious. Shelby claims that she wanted to obtain records from Ethel's bank to show Ethel that Ethel had given \$50,000 to Marlee Jo which had ended up in Marlee Jo's business. Ethel's bank, which was located in the same building as Ethel's coop apartment, required Shelby to have a power of attorney in order to get these records. So Shelby and Ethel went to the bank and a bank officer prepared a power of attorney that allowed Shelby to take care of Ethel's banking business. Ethel signed this power of attorney in the bank and it was notarized.

Shelby admits that Ethel's only intent in signing the power of attorney was to allow Shelby to obtain bank records regarding the \$50,000. In fact, Shelby claims that Ethel was determined to get the answer to the \$50,000 issue, that Ethel was "just like a honey badger" in her determination, and that the sole reason for the 1988 power of attorney was to get bank records about the \$50,000.

Shelby's explanation for the 1988 power of attorney doesn't make sense. Since Ethel actually came downstairs from her apartment to the bank in order to sign the 1988 power of attorney, Ethel could have obtained her bank records herself, including records about the \$50,000. If Ethel was so determined about the \$50,000, and if Ethel was able to and did go to the bank in person, why use a power of attorney at all?

Ethel Loses Her Mental Capacity

The answer as to why Ethel went to the bank to sign a power of attorney so that Shelby could obtain banking records may be that in 1988 Ethel was suffering from dementia that was getting progressively worse, and Ethel's judgment was impaired by her dementia. Ethel had begun to show signs of dementia as early as 1988. Medical records show that this disease got progressively worse. A mental health examination from September 1989 records a diagnosis of senile dementia.

Shelby Gets a Forged Power of Attorney

Shelby claims that she only used the 1988 power of attorney to get bank records that would clear up the questions about the \$50,000 transaction between Ethel and Marlee Jo. A year later, in October 1989, Shelby obtained a second power of attorney that gave Shelby far broader powers, including the power to engage in real estate transactions. Nevertheless, under New York law this second power of attorney did not give Shelby the power to make gifts of Ethel's property.

The circumstances of the 1989 power of attorney evidence criminal conduct. In the fall of 1989 Ethel was recovering from surgery for an aneurism and living in Shelby's house in Rockland County. Ethel's medical

records show that by this time, her dementia was advanced and in all likelihood Ethel did not have the mental capacity to sign a power of attorney. On the spur of the moment, according to Shelby, she took her frail and mentally impaired mother to the law office of a friend, Leslye Schlesinger Esq., to execute a new power of attorney.

Shelby claims that the reason a new power of attorney was needed is that she had lost the 1988 power of attorney. This claim is bogus, since Shelby was able to produce the 1988 power of attorney after Ethel passed away. Shelby claims that she remembered that the 1988 power of attorney "had stuff that was scribbled out." However Shelby did not make any effort to limit the terms of the 1989 power of attorney, and the 1989 power of attorney gave Shelby broad powers to deal with Ethel's affairs – though not the power to make gifts. Shelby admits that her attorney-friend, Ms. Schlesinger, did not speak privately with Ethel before preparing the power of attorney. **Ethel's forged signature on the 1989 power of attorney was notarized by Leslye Schlesinger Esq.**

When, after Ethel's death, Marlee Jo found out about the 1989 power of attorney, she noticed that her mother's signature on the 1989 power of attorney looked bogus. So Marlee Jo had the 1989 power of attorney examined by a professional hand-writing examiner, Judith A. Housley. Ms. Housley gave an unqualified opinion that Ethel's signature on the 1989 power of attorney was a forgery.

Shelby Transfers Ethel's Assets

With the forged 1989 Power of Attorney in hand, Shelby set about taking away Ethel's assets. Diane and Shelby met with an accountant about creating an estate plan for Ethel that would make the actual transfer of Ethel's wealth upon her death easier and would also reduce estate taxes. **However, as events after Ethel's death would prove that Shelby intended to take for herself, what she thought she deserved, give enough to Diane to keep Diane satisfied, and leave Marlee-Jo with nothing.**

Shelby transferred Ethel's bank and brokerage accounts into multiple accounts in the name of Shelby and her daughter, Allyson. Shelby put Ethel's money into two accounts in the name of Shelby and her daughter Allyson, one account in the name of Ethel and Shelby as joint tenants, and one account in the name of Ethel Jacobson/Shelby Greene POA. After Ethel's death, during proceedings to learn the truth of Shelby's transfers, Shelby never provided a convincing reason for setting up multiple banking accounts for Ethel's money, and never provided a convincing reason for moving all of Ethel's money out of Ethel's name. There was no excuse for Shelby to set up multiple bank accounts.

An alternative explanation, other than Shelby just taking what she wanted for herself, could be that Shelby wanted to make pre-death gifts of

Ethel's cash and investment assets so that this money would not be in Ethel's estate upon her death and no estate taxes would have to be paid on the money. There are at least three problems with this explanation.

One problem is that there would have to be enough money set aside to sustain Ethel, including paying for home attendants, medications, and other health-related expenses that were not covered by Medicare. That could be a substantial and unpredictable amount. The second problem is that, if Shelby truly transferred Ethel's money so that when Ethel died the money was out of her estate and not subject to estate tax, then Shelby would have made a taxable gift. She would have been required to file a gift tax return with the IRS at the time of the transfer. Shelby never filed a gift tax return on any of the transfers she made of Ethel's assets (with the exception of a gift tax return filed long after Ethel died to legitimize an unlawful "gift" of one of Ethel's NYMEX seats). The third problem with this explanation is that Shelby did not have the power to transfer ownership of Ethel's property, except by means of a sale for full value. Anything short of a sale for full value would be a gift, and neither the 1988 genuine but limited Power of Attorney, nor the 1989 forged Power of Attorney, gave Shelby the power to make gifts of Ethel's property.

Shelby also transferred all three of Ethel's NYMEX memberships. She transferred one to her own name in 1993, some four years after Ethel was diagnosed with senile dementia. Even Diane admitted that by 1993 Ethel's dementia had reached the point that she no longer had mental capacity. **(CITE)** In her greatly diminished mental state, Ethel could not have legally approved Shelby transferring a NYMEX seat into Shelby's name. Then in 1995 Shelby transferred a membership into Diane's name. Diane accepted this membership. Finally, in about 1996, Shelby transferred the remaining membership into her own name, leaving Marlee-Jo with nothing. .

Like the transfers of Ethel's cash and investment accounts, Shelby's transfers of the three NYMEX memberships do not have a truthful and honest explanation. Shelby did not need to transfer title to the memberships in order to manage them for Ethel. The 1988 Power of Attorney gave her the power to collect the income from the seats and deposit it, and she could also renegotiate the membership leases. Shelby could have done all this while still leaving the memberships in Ethel's name.

Nor can the transfers be justified as estate planning. In the first place, Ethel's Will was clear that, other than her coop, her estate was to be equally divided among her daughters. Yet Shelby did not transfer a membership to Marlee Jo, **nor did Shelby volunteer to transfer a membership to Marlee-Jo after Ethel passed.** By taking two memberships for herself, Shelby violated the spirit and the clear terms of Ethel's Will. Transferring the seats also cost Ethel income. The loss of income resulted from NYMEX rules, which stated that a membership could not be leased out for the first year after it was transferred. Shelby admitted that she knew about these

rules, yet she transferred the memberships anyway. If this was “estate planning,” it was very wasteful.

Shelby’s “estate planning” explanation does not wash for other reasons. As is the case with the cash and investment account transfers, Shelby should have filed gift tax returns on Ethel’s behalf at the time memberships were transferred, if they were true estate planning transfers. Shelby did not file a gift tax return when she transferred any of the NYMEX memberships. Finally, the Powers of Attorney did not give Shelby the power to make gifts of the NYMEX memberships any more than they gave her the power to make gifts of Ethel’s cash.

Shelby received the income for two memberships for some six years until Ethel’s death. Even allowing for the loss of income during the one year that each membership could not be leased after they were transferred, Shelby probably took in from \$72,000 to \$180,000 annually in income for the two memberships during these six years. **Shelby’s actions after Ethel died clearly prove her intentions where to keep what ever cash she stole plus the two NYMEX memberships.**

Shelby Mortgages Ethel’s Coop

In 1994, under the excuse of obtaining a tax write-off for Ethel, Shelby put a \$203,000 mortgage on Ethel’s coop. Shelby then gave the proceeds of the mortgage to herself, to Diane, and according to Shelby \$20,000 to Marlee Jo. Shelby used the 1989 forged Power of Attorney as her authority to mortgage the coop.

The coop mortgage cannot be justified under any legitimate theory. Shelby’s claim that it was done to provide a tax write-off falls apart when one compares the costs of paying for the mortgage against the reduction in taxes. Even if Ethel was paying income taxes at a 45% marginal tax rate (remember that they NYMEX memberships were now being taxed on the personal returns of someone other than Ethel.) she would only get back 45 cents on every dollar of mortgage interest that she paid. If there was a 6% interest rate on the mortgage, Ethel was losing approximately \$6,700 annually on this mortgage.¹ Shelby had Ethel paying the mortgage from Ethel’s income while the money from the mortgage was distributed as gifts to her daughters.

Like Shelby taking two NYMEX seats for herself, the coop mortgage directly undermined Ethel’s own estate plan, set forth in her Will. When Ethel made her Will and bequeathed the coop to Marlee Jo, the coop was free and clear of any mortgage. Ethel herself never put a mortgage on the coop. Clearly, she intended Marlee Jo to have a coop that was not burdened

¹ At 6% interest, the mortgage would require interest payments of \$12,180 per year, all of which could be an itemized deduction on Ethel’s income taxes. With a 45% marginal tax rate, 45% of the interest payments would be returned to Ethel in tax savings -- \$5,480 per year. The balance of the interest payments – approximately \$6,700, would simply be lost.

by a \$203,000 mortgage. (Marlee Jo would later have to pay this mortgage herself.) When Shelby put the mortgage on the coop and took the \$203,000, Ethel's dementia had advanced so far that she did not have the mental competence either to mortgage her coop or to change her Will. By putting a mortgage on the coop under a forged power of attorney, Shelby did something that Ethel herself never intended and did not have the capacity to do, and made a drastic change in Ethel's estate plan.

Shelby used the proceeds of the coop mortgage to make gifts to herself and her children, to Diane and her children, and, she claims, to Marlee Jo. As to Marlee Jo, Shelby and Diane were providing money to Marlee Jo at this time, which Marlee Jo understood were loans to her from Ethel. Marlee Jo even wrote up and signed papers acknowledging these loans and agreeing to pay them back. Shelby did not tell Marlee Jo about the mortgage, and Marlee Jo did not know, and had no reason to know, that the money she was borrowing from Ethel came from anywhere other than Ethel's regular funds. Other than whatever mortgage money Shelby or Diane gave to Marlee Jo as loans, Shelby made gifts out of the rest of the mortgage money. Shelby did not have the right or power to make any gifts of Ethel's money.

Shelby Pays Herself to "Manage" Ethel's Assets

Shelby was not content to take two NYMEX memberships and the income they produced, cash from the mortgage of Ethel's coop, and the vast majority of Ethel's cash and investment accounts into her name. Approximately three years before Ethel died, Shelby decided to pay herself for "managing" Ethel's assets. In a deposition in a Surrogate's Court proceeding Shelby admitted that she did not keep any records of how much she paid herself out of Ethel's money. However, she also admitted that by her best estimate, she paid herself \$70,000 per year for three years.

Shelby had a rationale for taking \$210,000 of Ethel's money – that she had earned it by taking care of Ethel's affairs. Like Shelby's rationales for her other acts, this one falls apart when held up to the light. In the first place, Shelby's "taking care" of Ethel's affairs included taking Ethel's three NYMEX memberships away from her under a forged POA and phony "estate plan," all the while Shelby actually undermined Ethel's estate plan and cost Ethel money in lost seat lease income. Shelby's act of mortgaging the coop both undermined Ethel's estate plan and cost Ethel money. Shelby's act of moving Ethel's cash and investment assets into multiple accounts under different names was not only unnecessary to "manage" Ethel's affairs, her actions made it much more complicated to sort through the transactions and figure out how much money Ethel had, what money had come in, and where it had gone.

Rather than acting as a prudent caretaker of her mother's affairs, Shelby engaged in repeated acts of a criminal nature under a forged power of attorney and breached her fiduciary duty to Ethel numerous times.

Neither a thief nor a faithless fiduciary is entitled to be compensated for her actions, and Shelby certainly was not entitled to be compensated for what she did to Ethel and to Ethel's estate.

In addition, there is no reason, at a cost of \$70,000 per year, that Shelby could not have hired a professional geriatric care manager who could both manage Ethel's assets and arrange for home care when Ethel needed it. In all likelihood, the cost would have been much less than \$70,000 per year, and there would have been much better accountability than Shelby provided. Shelby's taking \$210,000 for "managing" Ethel's affairs is just another example of Shelby's theft of Ethel's assets coupled with a rationale that cannot hide the theft.

Shelby Allows her Son David Greene Free Use of a NYMEX Seat

In another act of dishonesty before Ethel passed away, Shelby leased one of the NYMEX seats to her son, David Greene, completely rent free. Starting in April 2000, Shelby allowed David to use a NYMEX seat as a floor trader without paying any rent. David should have paid approximately \$200,000 for the use of this seat. This is money taken directly from Ethel and her estate.

Shelby had a rationale for allowing David free use of the NYMEX seat – that Ethel had always wanted David to have a seat and that Marlee Jo had deprived David of the seat that was supposed to be his several years earlier. While the story Shelby tells is murky, the fact remains that all three seats were Ethel's and that Ethel could have given a seat to David, but never did. Shelby simply took it upon herself to favor her son over Ethel's wishes and Ethel's financial interests.

Shelby Cashes a \$250,000 Bond of Ethel's

Finally, it was discovered after Ethel passed away that Shelby had cashed a \$250,000 bond in Ethel's name and kept the money. Shelby's explanation for this bond was bizarre. Shelby claimed that the bond was purchased with money that Shelby asked her father (Ethel's husband) to hide when Shelby was in the midst of a divorce. In other words, Shelby claimed that the \$250,000 bond was hers because she had committed fraud in her divorce case. The explanation is even more unbelievable, considering that Shelby's father (Ethel's husband) passed away in 1978, Shelby did not separate from her own husband until 1979, and their divorce did not become final until 1982.

ETHEL DIES AND

SHELBY REFUSES TO COOPERATE

Ethel passed away January 3, 2001. Even after Shelby had moved most of Ethel's assets around, it would not have been unduly complicated for Ethel's estate to be administered simply and easily, without undue delay and without large legal fees – if Shelby cooperated. Shelby refused to cooperate.

Soon after Ethel's death, all three sisters met to discuss Ethel's estate. Shelby immediately began to cause trouble and expense. At the meeting, Diane asked Shelby if she would transfer one of the two NYMEX seats that were in Shelby's name to Marlee Jo, thereby giving each daughter one NYMEX seat and taking a substantial step toward putting Ethel's own estate plan into effect. Shelby's response was clear, unequivocal, and a signal of what Shelby had in mind for Ethel's assets. Shelby said she would transfer a seat to Marlee Jo: "Over my dead body."

Shelby refused to transfer a NYMEX seat to Marlee Jo and refused to transfer either of the two NYMEX seats from her name to the estate. Shelby also refused to transfer the multiple cash and investment accounts to the estate.

Early in the estate proceedings Shelby's attorney acknowledged that Shelby refused to transfer the cash accounts because Shelby did not want to provide a fund that Diane, the executor, could use to sue Shelby. (Diane Dep. 1 at p. 226.) A short time later at a conference in the Surrogate's Court, Shelby's then-attorney agreed to turn over the cash accounts to the estate. (Diane Dep. 1 at pp. 214-215; Exhibit G.) A few days later Shelby fired her lawyer, hired a new lawyer, and dug in her heels, refusing to turn over the cash and brokerage accounts to Diane, the estate executor. (Exhibit H.)

Faced with Shelby's pigheadedness, Diane brought a "discovery proceeding" in the Surrogate's Court to compel Shelby to provide information about all Ethel's assets that Shelby had taken control of. Shelby's obstinacy continued, with Shelby claiming that she had no records of her transactions in Ethel's money prior to 1995, as they had been lost in a flood at Shelby's home. Diane's lawyers took Shelby's deposition over two days and obtained documents from Shelby, some of which Shelby's lawyer "redacted" (blacked out) because he did not want Marlee Jo to see their full contents. Shelby's lawyer in turn took Diane's deposition and obtained documents from Diane. Then Diane's lawyers brought a motion in the Surrogate's Court to convert the discovery proceeding to a "turnover proceeding" to compel Shelby to turn over Ethel's assets to the executor.

Diane also brought a proceeding in the Surrogate's Court to compel Shelby to account for her actions as attorney-in-fact – that is, Shelby's actions under the powers of attorney during Ethel's lifetime. Despite the fact that the Surrogate's Court ordered Shelby to provide a formal account of her actions as Ethel's attorney-in-fact, Shelby refused to account. Diane had to present a petition for the Court to hold Shelby in contempt for her refusal to

provide an account. It was not until the date that the contempt motion was to be heard by the Surrogate that Shelby filed an accounting.

Needless to say, all this legal fighting cost hundreds of thousands of dollars in legal fees for Diane's lawyers.

The accounting that Shelby finally did provide simply continued Shelby's intractable refusal to acknowledge that the cash, investment accounts, and NYMEX memberships belonged to Ethel's Estate. Although Shelby controlled cash and cash equivalents of several hundreds of thousands of dollars, and two NYMEX memberships with date-of-death values of \$700,000 each, Shelby's accounting only listed \$147,690.22 in assets, consisting of pension and social security income. The accounting was a sham.

DIANE FORCES THE SALE OF THE COOP

This section is included with an understanding that Marlee-Jo forgives and releases Diane Mota from any restitution due her. This section is included to reveal the role played by the executor's lawyers.

Ethel's Will gave her coop and its contents to Marlee Jo. On more than one occasion Diane admitted that she was not happy that the coop was bequeathed to Marlee Jo. Not long after Ethel's death, Diane began to say that she wanted the coop apartment. For a few months after Ethel's death, Diane had the estate make the mortgage payments on the coop. At the time, Diane was receiving regular income of \$8,500 a month from the lease of the one NYMEX seat that was in Diane's name but belonged to the estate. Then in or around May 2001 Diane stopped paying the mortgage and stopped paying the coop maintenance, putting the coop at risk of foreclosure by the bank and by the coop building. In late April 2001, Blank Rome attorney Herb Bockstein wrote to Marlee Jo's attorney Arthur Gold, stating that Diane "as Executor" would no longer pay the mortgage or other carrying costs of the coop, and would not assume control of the coop.

Diane refused to have the estate pay the mortgage or the maintenance on the coop, because the coop was given to Marlee Jo by Ethel's Will. In fact, Diane's application to the New York State Department of Taxation for an extension of time to pay the New York State estate tax, **prepared by her lawyers at Blank Rome, states that, since the Will gave the coop to Marlee Jo, the coop "devolves to the beneficiary by virtue of the Will and does not come into the hands of the Executor."** However, in direct contradiction of her statement to the NYS Department of Taxation, and in direct contradiction to her lawyer's statement to Marlee Jo's lawyer that she (Diane) would not assume control of the coop, Diane refused to simply turn the coop over to Marlee Jo so that Marlee Jo could deal with the coop's mortgage and maintenance.

Instead of just turning the coop over to Marlee Jo, Diane sent a written proposal to Marlee Jo that Diane would personally loan money “to the estate” to redeem the coop from default, if Marlee Jo would agree to sell the coop and put the proceeds in escrow. **This proposal, like the tax extension document, was prepared by Diane’s lawyers at Blank Rome.** By stating that she would loan money “to the estate” to make the back mortgage payments, rather than loaning the money to Marlee Jo, Diane was continuing to treat the coop as if it were an asset of the estate and as if the mortgage payments were an estate obligation.

Diane presented Marlee Jo with a second written proposal in which Diane proposed that Marlee Jo agree that Diane could sell the coop, and that proceeds of the sale **could be escrowed and used by Diane in her sole discretion to pay estate obligations, including any legal fees.** This proposal, also by Diane’s lawyers, would have Marlee Jo acknowledge indebtedness to the estate of \$227,000 and also agree to remain responsible for the mortgage on the coop. **All this was going on while Shelby was withholding over \$700,000 in estate cash and had monthly income from two NYMEX memberships.**

There was no justification for Diane and her lawyers to ask Marlee Jo to repay the money that Marlee Jo had borrowed from Ethel, and to also pay the coop mortgage. Marlee Jo freely and repeatedly acknowledged that she owed Ethel’s estate the money she had borrowed. Marlee Jo acknowledged her debt to Ethel’s estate both while Ethel was alive and after Ethel died. However, after Ethel’s death, Shelby and Diane claimed that the source of the money Marlee Jo borrowed was the coop mortgage. This meant that if Marlee Jo repaid the money she borrowed and also the coop mortgage, she would be paying the same money twice.

Marlee Jo refused to give in to Diane’s demands that would have given Diane control over the coop and its sale proceeds, yet leave the burden of the mortgage on Marlee Jo. So, Diane petitioned the Surrogate’s Court for permission to sell the coop, stating that the sale was necessary because the estate did not have sufficient cash to pay its debts. When Diane made this Petition, Shelby was sitting on hundreds of thousands of dollars of Ethel’s money and refusing to turn it over to the estate. Even so, Diane’s claim that the estate did not have enough cash to meet its obligations unless the coop was sold was false. The Court granted permission to sell, and the coop – the only non-cash specifically bequeathed property of Ethel’s estate – was sold in the summer of 2002.

When the coop was sold the mortgage was paid out of the sale proceeds. Marlee Jo, as the beneficiary of the coop under Ethel’s Will, therefore bore the burden of paying the coop mortgage. Yet Diane’s lawyers insisted for years that Marlee Jo also repay the money she had borrowed from Ethel even though Marlee Jo had paid the mortgage, even though it was the same money, and even though Ethel intended that Marlee Jo would get the coop free and clear of any mortgage.

In Diane's petition to sell the coop, written by her lawyers, Diane predicted that the estate would be short \$185,000 if the coop was not sold. In predicting a \$185,000 shortfall Diane and her lawyers understated the estate's assets by at least \$250,000 to \$275,000. They did this by undervaluing the NYMEX membership that was in Diane's name and by not disclosing the \$102,000 that Diane had collected in seat lease income in the 12 months between Ethel's death and Diane's petition to sell the coop.

Diane and her lawyers valued the NYMEX membership at \$700,000 in her petition to sell the coop. This \$700,000 was an accurate value for the NYMEX membership as of Ethel's death in January 2001. However, NYMEX records – which were publicly available -- show that seat sale prices had been steadily rising. A year after Ethel's death, when Diane petitioned to sell the coop, NYMEX membership were selling for \$850,000 to \$875,000. Combining this \$150,000 to \$175,000 deliberate undervaluing of the NYMEX membership with the \$102,000 seat lease income that Diane did not disclose, amounts to \$252,000 to \$277,000. This is well more than enough to cover the "shortfall" predicted by Diane and her lawyers.

The "illusory" cash shortfall would also have rapidly disappeared if Shelby had turned over to the estate the cash she was holding. Shelby's bitter feelings toward Marlee Jo were highlighted by her "over my dead body" response when Diane asked Shelby about transferring a NYMEX membership to Marlee Jo. Shelby's response to Diane's petition to sell the coop included another dig at Marlee Jo. Diane asked the Court to order proceeds of the coop sale to be put in escrow to cover estate expenses, but only enough to cover the shortfall that Diane wrongly predicted. The balance of the coop money would go to Marlee Jo. Shelby, who was sitting on over five-hundred thousand dollars of the estate's money, responded by asking the Court to order all of the coop proceeds put in escrow, depriving Marlee Jo of this money until the estate was finally settled. And Shelby also made it clear that she would not turn over the cash she held.

Diane and her lawyers changed position after the Petition was submitted to the judge, and asked that all the sale proceeds be put in escrow. Surrogate Preminger ordered the coop sold and the entire proceeds put in escrow until the estate's obligations were resolved. So the coop was sold, the mortgage, back maintenance, brokerage commissions, legal fees, and closing costs paid from coop proceeds, and the balance was put into the escrow account of a lawyer named Mark Jacobs, who handled the coop sale.

The net coop sale proceeds were Marlee Jo's money. Marlee Jo certainly could have used the money, but since the money from the coop was in escrow under a court order, Marlee Jo had to submit petitions every six months for living expenses.

Over the next few years, Marlee Jo went back to the Surrogate's Court every six months asking Surrogate Preminger to approve the release of \$3,000 per month for living expenses. The judge granted each request but

soon began to express irritation, stating in December, 2003 that she would not entertain another petition for living expenses. The court's action threatened to leave Marlee Jo with no access to her own money.

In addition to denying Marlee Jo the use of her money, the escrow arrangement actually cost the estate money. Attorney Jacobs monitored the account and sent money to Marlee Jo when the Surrogate's Court ordered him to do so. When the Court finally ordered the release of the remaining funds in escrow, Attorney Jacobs submitted a bill for \$34,417 for his time and trouble handling the escrow account. After more legal wrangling, the judge reduced the bill from attorney Jacobs to \$20,505 and ordered the estate to bear this cost.

The coop proceeds remained in escrow far longer than was necessary. Any need to keep the escrow account so that the estate would have access to cash vanished by March 2005. That was the month in which the IRS issued its "closing letter" approving the final settlement of the estate's Federal Estate Taxes. Over a year earlier, in February 2004, Diane and Shelby had signed a Settlement Agreement under which Shelby agreed to turn over to Diane all funds in three accounts that Shelby had set up during Ethel's lifetime, amounting to some \$555,000. This gave Diane more than enough cash to pay the estate taxes and other obligations of the estate.

Even though the estate's tax obligations were settled by March, 2005, Shelby had turned over cash from three accounts, and Diane had enough cash to pay the other estate obligations, Diane took no action to release the escrow for the coop proceeds. Marlee Jo had to petition the Court in 2006 to have the escrow released.

DIANE SETTLES WITH SHELBY

The Diane/Shelby Settlement Agreement

In February 2004, after the estate paid hundreds of thousands of dollars in legal fees to Diane's lawyers, Diane and Shelby signed a settlement agreement that let Shelby off the hook for any of the harm that she had caused to the estate or to Marlee Jo. Under the settlement agreement, Shelby agreed to turn over to the estate money that she had on deposit in three accounts – without having to render any accounting of how much money came into her hands and how much money she disbursed. Shelby was allowed to walk away from the damage she did to the estate by:

- causing hundreds of thousands of dollars in legal fees to be expended (the bill for Diane's attorneys was well over \$500,000);
- Causing Marlee Jo legal fees of over \$190,000

- allowing Shelby's son David free use of a NYMEX seat thereby depriving the estate of some \$200,000 in income;
- paying herself \$210,000 for "managing" Ethel's assets;
- mortgaging the coop under a forged power of attorney, eventually causing the coop to be sold under forced conditions and unnecessary legal fees to be incurred;
- forcing the escrow of the proceeds of the coop (by not turning over Ethel's cash to the estate); and
- depriving Marlee Jo of the use of her NYMEX membership for several years.

Despite all this, Diane even agreed to have the estate pay \$15,588 of Shelby's legal fees.

As to the three NYMEX memberships, Diane and Shelby agreed that Diane would keep one, Shelby would keep one seat, and Shelby would turn the third membership over to Diane who could, "**in her sole and absolute discretion,**" transfer the membership to Marlee Jo.

To reduce estate taxes and based on advice from their lawyers, Diane and Shelby agreed that the NYMEX membership remaining in Shelby's name would be deemed a gift from Ethel to Shelby as of November 19, 1993. "Deeming" this membership to have been a gift to Shelby in 1993 was highly suspect, because Ethel did not have the mental capacity to make such a gift in 1993, the power of attorney which Shelby used to transfer the seat was a forgery, and the power of attorney did not give Shelby the power to make gifts.

Diane and Shelby also agreed that the membership Shelby was keeping was worth only \$300,000 as of the date of the fictional gift, which is much less than the \$700,000 it was worth on the date of Ethel's death. So unpaid gift taxes were imposed on a \$300,000 asset rather than a \$700,000 asset, resulting in a substantial reduction in taxes even after interest was figured in. For some reason, the IRS bought this fictional gift concept, and included only two NYMEX memberships – not three – in Ethel's estate for estate tax purposes in the estate tax closing letter. Still, even after the IRS signed off on this "gift", Diane's lawyers were worried that Marlee Jo's challenge to the settlement agreement might expose the shaky basis of the "gift."

Marlee Jo Objects to the Diane/Shelby Settlement Agreement

The Diane/Shelby settlement agreement was presented to the Surrogate's Court for approval as part of an intermediate accounting that Diane submitted in July 2005. Marlee Jo vehemently objected to Diane's

accounting, and in particular to the settlement agreement between Diane and Shelby.

Marlee Jo pointed out that Diane was allowing Shelby to get away with not accounting for all Ethel's money that passed through her hands before and after Ethel died, with forging the 1989 power of attorney, with allowing her son free use of a NYMEX seat, and with other damage she caused the estate. Even though Diane's lawyers racked up over \$500,000 in legal fees, they never hired a forensic accountant to go over Shelby's records to determine if money was missing. Instead, Diane's lawyers performed their own analysis of Shelby's accounts, not using people trained and experienced in forensic accounting and still managing to run up additional legal fees.

Nor did Diane hire a handwriting analyst to get her own opinion as to whether the 1989 power of attorney was a forgery. She simply rejected the opinion of the expert that Marlee Jo hired. Diane believed that Ethel had lost the capacity to make gifts by 1993 (when Shelby transferred the first NYMEX membership). Diane also had copies of Ethel's medical records and, as executor, could have subpoenaed all of Ethel's existing medical records. Diane never hired a geriatric medical expert to provide a professional opinion as to Ethel's capacity.

Why did Diane not pursue these obvious measures? A case could be made – and was – that Diane herself had a conflict of interest. She had one of Ethel's NYMEX memberships in her own name for years before Ethel died. Even though Diane claims that she paid all the after-tax seat lease income to the estate, she was never closely questioned about this. Diane also received some of the coop mortgage money. Diane used income from the NYMEX seat and/or mortgage money to make large payments toward her children's private college tuition (over \$45,000) and \$10,000 gifts to each of her children. One could certainly say that Diane benefited by calling off the battle with Shelby.

Marlee Jo also objected to Diane holding Marlee Jo responsible for repaying the money that Marlee Jo borrowed from Ethel, after Marlee Jo had paid off the coop mortgage and related damages caused by the executor's actions related to the coop. Marlee Jo pointed out that the coop mortgage and the money she borrowed appeared to be the same money, and she should not have to pay the same money twice.

REMEMBER AN IMPORTANT ISSUE -

The Summary Judgment Motion and the Court's Non-Decision

Eventually, after Marlee Jo's lawyers had questioned Diane under oath, Diane's lawyers had questioned Marlee Jo under oath, and boxes of documents were exchanged, Diane asked the Surrogate's Court to dismiss Marlee Jo's objections to Diane's accounting. This "summary judgment"

motion submitted was to be decided by Surrogate Kristin Booth Glen (who took over the case after Surrogate Preminger retired) in the fall of 2006. Normally, courts in New York State are to decide motions within 60 days. That rule apparently does not apply to the Surrogate's Court. Throughout the fall and winter of 2006 – 07, no decision came from the Court.

MARLEE JO IS FORCED TO SETTLE

Marlee Jo Petitions for Her NYMEX Membership

In April 2007, months after the summary judgment motion was fully briefed and under consideration by Surrogate Glen, and no decision was coming, Marlee Jo petitioned Surrogate Glen to direct Diane to transfer the third NYMEX membership to Marlee Jo. In her petition, Marlee Jo pointed out that there was no reason for Diane to hold the NYMEX seat. The estate's taxes and all other debts of the estate were paid with the exception of some legal fees, and there was ample cash to pay those. The \$37,500 specific bequests to Ethel's grandchildren were also paid. The estate did not have any claim against Marlee Jo that would justify withholding her NYMEX membership. And, if Marlee Jo's objections to the settlement agreement were upheld, they would not cause the estate to pay any money. Instead, it was Shelby and Diane personally who stood to pay money to the estate if Marlee Jo's objections stood up. There was thus no reason at all that Marlee Jo should not receive her NYMEX seat.

There were, on the other hand, compelling reasons to distribute the third seat to Marlee Jo. In November 2006 the NYMEX went through a recapitalization and an initial public offering (IPO). Each seat was converted to 90,000 shares of NYMEX common stock, plus a "membership" which represented the right to trade on the NYMEX floor. As a result of the NYMEX's change to a public company, the value of a single seat on the NYMEX, which was \$700,000 in January 2001, was approximately \$11 to \$12 million by early 2007. And, there were decisions that each seatholder had to make with regard to her 90,000 shares of common stock.

When Marlee Jo's motion came before the Surrogate's Court on June 19, 2007, the judge called for a conference among the lawyers and a court attorney. During that conference, which took place in the courtroom after the call of the calendar, the lawyers for Marlee Jo, Diane, and Shelby agreed that the third NYEMX membership could be transferred by Diane to Marlee Jo. **The lawyers left the courtroom with the understanding that Marlee Jo's lawyer would prepare the papers needed to put their agreement into writing.**

The Court Forces A Settlement

A week later, the same court attorney who had presided over the conference asked Marlee Jo's lawyer to set up a conference call with the other lawyers. In that conference call, the court attorney stated that Surrogate Glen had disapproved the agreement to transfer a seat to Marlee Jo. The reason the court attorney gave for the judge nixing the settlement was that the seat was only in Diane's control to transfer pursuant to the settlement agreement between Diane and Shelby. Marlee Jo had objected to the settlement agreement, and the judge had not yet issued a decision on Diane's motion for summary judgment dismissing Marlee Jo's objections. Since the settlement agreement was still up in the air because of Marlee Jo's objections and Surrogate Glen's failure for months to rule on the summary judgment motion, Diane did not have control of the seat to transfer it.

This explanation for the Surrogate not allowing Marlee Jo, Diane, and Shelby to agree to transfer a seat to Marlee Jo is preposterous. There is nothing about the settlement agreement between Diane and Shelby that would have prevented Diane and Shelby from agreeing to amend that agreement, so that a seat could be transferred to Marlee Jo. The message that the judge was sending to Marlee Jo was that if Marlee Jo wanted to have her NYMEX seat, worth over \$11 million, Marlee Jo would have to withdraw her objections to the settlement agreement and go along with it.

Marlee Jo's motion for distribution of a seat had explained to Surrogate Glen that the seat was now worth well over \$11 million. It was, therefore, obvious to the judge that there was considerable leverage that could be used to force Marlee Jo to withdraw her objections to, and go along with, the Diane/Shelby settlement agreement. This in turn would relieve the judge of doing her job to decide the months-old summary judgment motion, with its many complicated and unpleasant issues.

Marlee Jo, who was now squeezed by the judge's failure to decide the summary judgment motion (no estimated date for a decision was even given), and by the judge's refusal to allow a seat to be transferred to Marlee Jo, saw that she had no choice and withdrew her objections to the Diane/Shelby settlement agreement and to Diane's accounting. All that she received in return, in addition to one NYMEX seat and her one-third of the estate's cash, was Diane's agreement not to claim that Marlee Jo should repay the money she borrowed from Ethel, money that Marlee Jo had already repaid when she paid off the coop mortgage.

"HARDBALL LITIGATION" IN AN ESTATE ADMINISTRATION

Clearly, Marlee Jo was badly squeezed in several different ways:

- She had to agree to sell the coop and to pay off a mortgage that her mother Ethel never knew about;

- She had to see the coop sale proceeds placed beyond her reach in an escrow account because of Diane's false portrayal of a cash shortfall and because of Shelby's refusal to let go of Ethel's money;
- She had to come begging to the Court every six months for small amounts of her own money, and to endure the judge's threats that the judge would not allow release of any further funds;
- Months after it was clear that there was no longer any need for an escrow of the coop funds, she had to pay lawyers to petition the court to have the funds released;
- She could only stand by helplessly while Blank Rome ran up over \$500,000 in legal fees engaging in legal battles that should not have been needed, fees that were paid for by the Estate;
- She saw her sisters engage in a sham tax transaction, deeming the seat that Shelby kept to be a gift;
- She saw Shelby thumb her nose at the Surrogate Court's order that Shelby provide an account of her actions as Ethel's fiduciary, and then saw Shelby's ultimate refusal to honestly account swept under the rug;
- She realized that the Surrogate's Court was completely ineffective at putting a stop to blatant theft and breach of fiduciary duty in any timely manner; and
- She herself was then pressured by the Surrogate's Court to "go along" and thereby relieve the court of the burden of having to make a decision about an unpleasant situation.

Were there ethical violations by the lawyers or the court? Looking first at the Surrogate's Court, judges have an ethical obligation to decide cases "promptly, efficiently and fairly." (Code of Judicial Conduct, Canon 3(B)(7)) Commentary to this section states that "[A] judge should not take any action or make any comment that might reasonably be interpreted by any party or its counsel as (a) coercion to settle" (Commentary [3.13][3B(7)]) After finally reaching an agreement with her sisters that she could have her NYMEX seat, having the Surrogate yank the rug out from under that agreement, because she was still objecting to the settlement agreement between Shelby and Diane, certainly felt to Marlee Jo like "coercion to settle" the entire case.

This coercive impact was exacerbated by the failure of the Surrogate for over 8 months to decide the summary judgment motion. With no decision in sight, and the Surrogate denying Marlee Jo her seat, Marlee Jo felt like the handwriting was on the wall and she had no choice except to settle. While the coercion exerted on Marlee Jo to settle may have been clothed in legal rationalization, it was coercion nonetheless.

Turning to the attorneys, they too exerted pressure on Marlee Jo particularly at the time the coop was facing foreclosure. However, unlike judges, attorneys are not ethically bound to be impartial; nor are they ethically bound to advocate for the truth. Instead, they are ethically bound to be zealous advocates for their clients **and to avoid lying and committing or facilitating fraud.** (Judiciary Law § 487) - **Who were the executor's lawyers zealous for? Diane as executor, or Diane as beneficiary? Who did they actually represent?**

Misrepresentation to the IRS

The provision of the Diane/Shelby settlement agreement that "deemed" Shelby's NYMEX seat to have been a gift made in 1993 was created, or at least facilitated, by the lawyers for Diane and Shelby. Deeming the NYMEX seat to have been a gift, under a forged power of attorney, which did not in any event convey the power to make gifts, at a time that Ethel was deep in dementia, was a fraud on the IRS. **Yet, it was a fraud that saved the Estate a significant amount of estate taxes. Significant estate taxes that were only caused by failed efforts at estate theft.**

Another misrepresentation to the taxing authorities was Diane's petition for an extension of time to the State of New York to pay the New York State estate tax. That petition, prepared by Diane's lawyers at Blank Rome, states that Diane has a NYMEX seat in her possession that could be sold. However, the petition states, Diane has not put the seat on the market because she has not been able to obtain sufficient information from NYMEX as to the sale price of seats. This statement is contradicted by NYMEX's own records, which include publicly available records of seat sales. It is clear that the reason Diane and her lawyers put to the New York State taxing authorities for not selling a NYMEX seat is false. However, that misrepresentation resulted in additional time for the estate to pay its estate taxes and likely saved the estate from having to pay penalties for late tax payment. **Late payment probably caused by failed efforts at estate theft.**

Illegal Billing by the Executors Attorneys

Blank Rome, it has been stated, ran up over \$500,000 in legal fees. The propriety of those legal fees was never decided, although Marlee Jo raised a strong objection to them in her Objections to the Intermediate Account of the executor. Among Marlee Jo's objections to Blank Rome's fees were:

- 24 different attorneys or paralegals worked on the case, which would have resulted in a substantial loss of efficiency as different lawyers and paralegals have to get up to speed or inevitably duplicate some tasks.

- Many of Blank Rome's time entries were vague and did not show what benefit or services were provided to the Estate.
- Three of the Blank Rome attorneys with substantial roles in the case engaged in frequent "block billing" – billing in increments of ½ hour even though the firm records attorney time in tenth-of-an-hour increments.
- In over 300 instances in Blank Rome's bill, an attorney listed meetings or conversations with another attorney, yet the corresponding attorney did not list any record of having taken part in the meeting or conversation.
- In many instances, attorneys billed substantially different time amounts for the same meeting.

Blank Rome's billing records are highly suspicious, and indicate a firm that was taking advantage of a client (Diane Mota) who lacked the sophistication in matters of legal fees that a corporate in-house legal department or an insurance company must have, and who was in any event only paying 1/3 of the bills (since the other 2/3 were being paid, in effect, by Shelby and Marlee Jo). Yet, as part of the settlement that was forced on Marlee Jo, she withdrew her objections to Blank Rome's bills and there was never a court finding as to whether the bills were appropriate, sloppy, or fraudulent.

If the lawyers' actions (except the ones just described) are "legally" excusable because they took place in an "adversarial" system where lawyers are to advocate zealously for their individual clients, and in that advocacy, are not bound to actively promote the truth, but only to not blatantly lie, then the adversarial system for estate administration is wrong. For clearly, the Estate of Ethel Jacobson, and Marlee Jo Jacobson, were both damaged substantially in this process. There was no person whose only job was to look out for the estate and who could advocate, without conflict of interest, for the estate. And in the end, the Court, which Marlee Jo believed at the beginning would be the guardian of truth and of fair and honest estate administration, allowed all the wrongdoing to be covered up by a settlement agreement and pressured Marlee Jo to go along.

DAMAGES TO THE ESTATE AND TO MARLEE JO

The outline and chart that follows show how the Estate of Ethel Jacobson and Marlee Jo Jacobson were financially damaged by the actions of the various players in this story. Damages to Marlee Jo, either directly or as a 1/3 (plus coop) beneficiary of the estate, are over \$1.1 million.

This Outline consists of three sections. The first section sets forth how Ethel Jacobson's assets would have been distributed had her affairs been handled with an honest intent starting before Ethel died. The second section

sets forth the damages to the Estate and to Marlee Jo Jacobson caused by the manner in which Ethel Jacobson's affairs were managed. The third section sets forth assumptions that underlie the first two sections.

IF AFFAIRS HANDLED WITH HONEST INTENT

1. Each daughter receives a NYMEX seat by April 30, 2001 and from the date of death forward collects all the income generated by her seat. Marlee Jo Jacobson's seat generated \$1,633,179 income during the period 2002 through 2007.

2. Estate tax would be approximately \$532,539.

3. Each daughter pays income tax on NYMEX seat-related income (lease and dividend) at her own marginal tax rate -- for Marlee Jo Jacobson this would average 27% factoring in the additional income from her NYMEX seat.

4. Legal fees for the Estate would be approximately \$75,000; Marlee Jo Jacobson who had legal fees of over \$215,000 would have no legal fees.

5. The coop apartment:

(a) Marlee Jo Jacobson would have title to and control of the coop by April 30, 2001;

(b) Legal fees incurred by Marlee Jo Jacobson for selling the coop would be approximately \$2,500 (assuming sold in 2001); and

(c) Shelby Greene Zarin and Diane Mota would reimburse Marlee Jo Jacobson for the proceeds of a mortgage (total \$208,843) that Ms. Zarin placed on the coop (Ms. Zarin distributed the proceeds to herself and Ms. Mota).

6. Ethel Jacobson's jewelry, which was among the contents of the coop, would be delivered to Marlee Jo Jacobson. Jewelry included three diamond rings, one was a yellow canary diamond.

7. David Greene (Shelby Greene Zarin's son) would pay the Estate the sum of \$195,000 representing the market value of a NYMEX seat that he was using to trade on the NYMEX.

8. By arranging Ethel Jacobson's affairs so as to minimize probate costs and estate taxes, Shelby Greene Zarin would have earned, and be justified in retaining, a salary of \$210,000 that she paid herself from Ethel Jacobson's assets.

9. Diane Mota would receive an executor's commission of approximately \$30,700 for a relatively small amount of work.

10. Cash:

(a) The Estate would pay debts, taxes, specific bequests, legal fees, and executor's commission;

(b) Ms. Mota and Ms. Zarin would reimburse the Estate for any cash (exclusive of the mortgage – see 5(c) above) that they used during Ethel Jacobson's lifetime and that they did not already reimburse;

(c) Marlee Jo Jacobson would pay \$75,667 to each of Ms. Mota and Ms. Zarin, representing their share of \$227,000 that Marlee Jo Jacobson had borrowed from Ethel Jacobson during her lifetime; and

(d) Remaining cash would be distributed equally among the three daughters following closing letters from the taxing authorities.

(e) Pending an audit and closing letter from the taxing authorities, some cash could have been distributed during 2001, and the remainder distributed once a closing letter was issued.

DAMAGES TO THE ESTATE AND
TO MARLEE JO JACOBSON

Action or Result	Damage to Estate	Damage to Marlee Jo Jacobson
1) Each Daughter is to receive a NYMEX seat – though Ms. Zarin and Ms. Mota have had control of their seats from prior to Ethel Jacobson’s death and Marlee Jo Jacobson has yet to receive her seat and has been deprived of the income generated by her seat in the amount of \$1,633,179. Damages are 9% interest on this income over six years (calculated as if the income received at a steady rate)		\$440,958
2) Estate tax of \$861,027 resulting from two NYMEX seats, the proceeds of the mortgage, and additional cash (from one NYMEX seat) being deemed to be subject to Estate tax	\$328,488	1/3, or \$109,496
3) Seat income taxed at 33% marginal rate on estate’s federal income tax return – v. 27% marginal rate on Marlee Jo Jacobson’s return (\$995,000 gross income through 2006 on MJJ’s seat)		\$59,700
4a) Legal Fees to Blank Rome of over \$500,000	> \$425,000	1/3, or \$141,667
4b) Legal Fees paid (\$2,919) or agreed to be paid (\$12,669) to Zarin’s lawyer	\$15,588	1/3, or \$5,196
4c) Legal fees paid or incurred by Marlee Jo Jacobson		>\$210,000
5a) Coop sale: \$12,000 legal fee paid v. \$2,500 est. legal fee if MJJ given control of coop at the outset		\$9,500

5b) Coop sale: \$31,376 in mortgage and maintenance arrears paid at closing, while MJJ not have use, benefit, or control of coop while such arrears accumulating		\$31,376
5c) Coop sale: \$21,540 legal fee for escrowing proceeds of coop sale unnecessarily	\$21,540	1/3, or 7,180
5d) Coop sale: MJJ paid \$208,843 mortgage at time of sale		\$208,843
6) Shelby Greene Zarlin or Diane Mota holding jewelry		amount ?
7) David Greene not pay for his use of NYMEX seat	\$195,500	1/3, or 65,167
8) Shelby Greene Zarlin not entitled to "salary"	\$210,000	1/3, or 70,000
9) Diane Mota taking executor commission of \$125,000v. 30,700	\$94,300	1/3, or 31,433
10a) Cash: debts, taxes, and specific bequests paid	-0-	
10b) Cash: DM and SGZ reimbursing cash they used during Ethel Jacobson's lifetime?	?	
10c) Cash: MJJ not repaying \$227,000 loan (not paying \$75,667 each to DM and SGZ)		(\$151,334)
10d) Cash: all remaining cash to be distributed equally among MJJ, DM, and SGZ in 2007 – unknown what this would be		
Total of quantified damages (not exact as some are estimates and some are continuing to accrue)		\$1,129,182

ASSUMPTIONS

- 1) SGZ and DM account for all income in respect of NYMEX seats – both lease income and dividends.
- 2) SGZ accounts for all income from cash and investment accounts.
- 3) DM accounts for all income from cash accounts held during Ethel Jacobson's lifetime.
- 4) Appears that there has not been double income taxation of income received from the NYMEX seats.
- 5) NYMEX seats could have been distributed by April 30, 2001 together with all income post-death, such that each daughter would show all post-death seat income on her individual tax return.
- 6) Estate's marginal federal income tax rate is 33% and MJJ's would be 27% after attributing income from MJJ's seat to MJJ.
- 7) Estate tax would have been \$532,539 (see "706 Recalculation")

706 (FEDERAL ESTATE TAX) RECALCULATION

Taxable Estate	\$2,142,637
less 2 NYMEX seats	<1,400,000>
less coop mortgage (deem a loan)	< 173,000 > ??
plus 2 NYMEX seats as gifts in 1995 (350,000 each, less 10,000 allowance each)	680,000
plus difference in legal fees (\$357,660 v. 75,000)	282,660
less Seat 610 income	<u><26,119></u>
Adjusted Taxable Estate	1,506,178
Tax (50%)	753,089
less Unified Credit	<u><220,550></u>
Net Estate Tax	532,539