

June 30, 2022

Hon. Christopher S. Ciaccio
Monroe County Surrogate's Court
541 Hall of Justice
Rochester, NY 14614

Re: Estate of Anthony J. Costello
File No: 2016-787/R/N

Dear Judge Ciaccio,

I have undertaken to review and have filed objections to several aspects of the accounting filed by Co-Executor Brett Costello, which I hope the Court will endeavor to consider further. I did not include now resigned Co-Executor Bonadio as he was not named and did not attest to the accounting, however, he did provide an asset inventory of his own in answer to your Order, which I have referenced in my objections. I also believe Mr. Bonadio may well be a source of knowledge and answers to several of the questions I have raised in my objections.

The point of my objections is to gain a complete and accurate picture of what has happened to the assets in my father's Estate, which I do not believe is provided in Co-Executor Costello's confusing and incomplete accounting. The vast majority of my father's assets was his business interests, which have not been accounted for since DOD. My father directed very clearly in his probated will that all of his assets were to be transferred to various trusts and managed accordingly for the benefit of his wife and family. This was never done. Instead of following my father's instructions, Mr. Costello has used the businesses as a haven for which he doesn't have to account. Most of the personal cash reported on hand at DOD was "loaned" to various companies, yet Mr. Costello doesn't account for its actual usage within the companies. Once highly valuable companies have been depleted of real, quantifiable value, yet the accounting doesn't reflect this. And millions in excess cash hoarded in the various companies is reflected nowhere in the accounting.

It is extremely sad and painful to experience what has happened since my father's death, and it is not without doubt and regret that I continue to advocate for what my father's intentions were for his family after he passed.

Respectfully,



Alicia M. Smith, *pro se*

SURROGATE'S COURT OF THE STATE OF NEW YORK,
COUNTY OF MONROE

_____)
In the Matter of the Estate of) **OBJECTIONS**
) **TO INTERMEDIATE**
Anthony J Costello,) **ACCOUNTING**
) **BY CO-EXECUTOR**
Deceased.)
_____) File No. 2016-787/L/M

ALICIA M. SMITH, being duly sworn, deposes and says:

- 1) I am a person interested in the Estate of Anthony J Costello, as a beneficiary of said estate, as 10% owner and voting member of the various assets & LLC's promised to Trusts according to terms of decedent's probated will, and as beneficiary of two separate trust agreements owning interests in at least two of these same assets, as such I am fully familiar with the facts and circumstances set forth herein. I hereby object to the intermediate accounting provided by Brett Costello as Co-Executor of the Estate of Anthony J. Costello for the period of March 16, 2016 to July 31, 2021, heretofore filed in this Court, as follows:
- 2) Objects to Schedule A, Principal Received in that the total amount listed of \$63,757,704.67 is inaccurate, including but not limited to whether or not amounts listed for cash and cash equivalents, loans receivable, and interest in partnerships are accurate and complete with respect to Anthony J. Costello, Costello Enterprises LLC and AJ Costello Group LLC.
 - a. Costello Enterprises, LLC was not included in the Estate, however, it had significant assets and liabilities, including bank account(s) and intercompany balances, and was functioning both prior to and post DOD in what appears, at least in part, as a cash/intercompany "clearinghouse". It has just recently been utilized to collect management fees and house corporate overhead expenses.
 - b. Costello Group, LLC, reports a general ledger account balance in *Cash-Operating* of \$6,864,830 at the end of 2015, prior to what appears to be an accounting entry to "write-off and restate" ending/opening balance sheet balances as of 1/1/16. It is unclear why and when this was done. The \$6.9m cash balance was not brought forward via an opening balance sheet adjustment on 1/1/16 and does not appear to be reflected in the cash balances reported on Schedule A. It should also be noted that Costello Group LLC had a general ledger account balance in *Due to Costello Enterprises* of \$6,697,788 at the end of 2015, which also appears to have been "written off" via accounting entry at the end of 2015, and which also does not appear to have been brought forward via opening balance sheet adjustment on 1/1/16.
- 3) Objects to Schedule E, Statement of Distributions Made in that the total amount listed of \$3,234,571.99 is inaccurate, including but not limited to whether or not amounts distributed to beneficiaries, legatees, trustees, and surviving spouse are accurate and complete as follows.

- a. *Anthony J Costello & Son Andrea LLC*: Estate share of ownership distributions made during 2017, in the amount of \$1,683,961 (primarily from the July 2017 refinance proceeds), is not accounted for under Schedule E or elsewhere in the accounting(s).
 - i. This amount appears to be intertwined with a \$3m deposit in July 2017 to AJ Costello Group, via Costello Enterprises, with monies from the Bldg D refinance proceeds. It is unclear how much \$ from the Bldg D refinance were paid to Costello Enterprises, and how those funds were ultimately distributed.
- b. *Shannon Sadik Mortgage*: Receipt of balloon payment of \$129,487.54, due 3/7/19, is not accounted for under Schedule E or elsewhere in the accounting(s).

4) Objects to Schedule D, Creditors' Claims, and Schedule F, Statement of New Investments, Exchanges & Stock Distributions, in that the amounts or activity listed are inaccurate, including but not limited to whether or not amounts or activity listed under *Creditors' Claims* (Schedule D) and *Loans Receivable* (Schedule F) are accurate and complete. Amounts listed do not agree with the asset inventory provided by Co-Executor Bonadio (Exhibit I to his supplemental affidavit of July 29, 2021), the AJ Costello Group 2019 tax return, company general ledgers, or Mengel, Metzger, Barr (MMB) prepared financial statements, with respect to previously reported post DOD due to/from AJC Estate transaction activity, as follows:

	Costello	Bonadio	
	Acctg	Acctg/MMB	
<u>Receivable from Co's (Schedule F)</u>	<u>Acctg</u>	<u>FS/TR/GL</u>	<u>Diff</u>
a. <i>AJ Costello Group LLC, net</i>	1,004,000	228,788*	775,212
b. <i>AJC & Son (Joseph) LLC</i>	9,376,736	9,839,667	(462,931)
c. <i>AJC & Son (Spencer) LLC</i>	722,034	561,034	161,000
 <u>Payable to Co's (Schedule D)</u>			
d. <i>USAirports Hangar ROC LLC</i>	1,668,481	1,902,636	(234,155)
e. <i>USAirports Dev/Costello Group</i>	540,771	0	540,771

*net of post DOD due from AJC Estate (\$631,715) and due to AJC Estate (\$860,503), recorded on AJ Costello Group ledger and reported on 2019 tax return, MMB prepared financial statements and Bonadio accounting.

- 5) Objects to Schedule F, Statement of New Investments, Exchanges & Stock Distributions, in that the activity listed is inaccurate, including but not limited to whether or not the amounts listed under *Loans Receivable: Anthony J Costello & Son (Max) Development LLC*, are accurate and complete. If said amount held in escrow will not be paid to M&T Bank, then 60% (approximately \$279k) is payable to the Estate of AJC and the remaining 40% is payable to the individual 10% owners. The Estate received its proportionate share of a distribution of sales proceeds totaling approximately \$310k in early 2020, which based upon knowledge and belief may have loaned a portion or all to the 10% owners.
- 6) Objects to Schedule F, Statement of New Investments, Exchanges & Stock Distributions, in that the activity listed is inaccurate, including but not limited to whether or not the amounts listed under *Loans Receivable: Elaine Costello* are accurate and complete. There is no

description provided for loans totaling \$162,654.48 and there is a “remaining amount to be reconciled (2016-2018)” of \$261,830.13.

- 7) Objects to Schedule G, Statement of Principal Remaining on Hand, in that the total amount listed of \$57,562,015.33 is inaccurate, including but not limited to whether or not the amounts listed for *Loans Receivable: AJ Costello Group LLC; Loans Receivable: Anthony J Costello & Son (Joseph) Development LLC; Loans Receivable: Anthony J Costello & Son (Spencer) Development LLC; Loans Receivable: Anthony J Costello & Son (Max) Development LLC; Loans Receivable: Elaine Costello* are accurate and complete as described in objections 4 thru 6.
- 8) Objects to Schedule G, Statement of Principal Remaining on Hand, in that the total amount listed of \$57,562,015.33 is inaccurate, including but not limited to whether or not the amounts listed for interest in partnerships are accurate and complete with respect to material transactions or events that have impacted the adjusted net book values reported as of DOD, such as follows and not intended to be all inclusive (Reserve not included):
 - a. Equity refinancings:
 - i. Building D (Andrea)-Clinton Crossings (July, 2017-approx. \$7.3m net proceeds),
 - ii. Building G (Alicia)-Clinton Crossings (July 2016-approx. \$2.7m net proceeds),
 - iii. Bldgs E (Tyler) & F (Development)-Clinton Crossings (Oct 2016-approx. \$400k net proceeds, and 2020-approx. \$2.1m net proceeds to pay delinquent property taxes, penalties & interest).
 - b. Loss of CityGate PILOT: valued at \$25.7m
 - c. Delinquent property taxes, penalties & interest at CityGate: \$1.5m
 - d. Delinquent property taxes, penalties & interest Bldgs A-C (Clinton Crossings): \$2.2m
- 9) Objects generally that there is no report of cash held in the various businesses. Significant cash has accumulated within the various businesses since DOD, much of it garnered from halting and diverting millions in property tax and mortgage payments, and owner distributions from Clinton Crossings properties (*the latter relied upon by Anthony's daughters as a primary source of income for nearly twenty years*). There was approximately \$8m reported in business cash accounts as of 7/31/21, the date of the Co-Executor's accounting.
- 10) Objects to Schedule G, Statement of Principal Remaining on Hand, in that the total amount listed of \$57,562,015.33 is inaccurate, including but not limited to whether or not the amounts listed for cash and cash equivalents are accurate and complete with respect to a reconciliation that is to be set forth in Schedule J, and with respect to any other accounts within or outside the various business entities where Estate related monies and transactions are have deemed to occur.
- 11) Objects to Schedule J, Other Pertinent Facts and Cash Reconciliation, in that a cash reconciliation has not been included. In accordance with the instructions provided for Schedule J, “a cash reconciliation must also be set forth in this schedule so that verification with bank statements and cash on hand may be readily made.”

WHEREFORE, the Objectant prays that:

- 1) The account not be judicially settled in accordance with the accounting filed by the Executor;
- 2) The Court sustain the objections set forth herein.
- 3) The Court direct an evidentiary review, including an order for a forensic accounting of all personal and business cash account activity from at least 6 months before DOD to the present, including Costello Enterprises and the trails of the \$6.9m Costello Group cash at the end of 2015 and the \$7.3m July 2017 Building D refinance proceeds.
- 4) The Court issue an order for a complete and accurate accounting through to the current.
- 5) The Court grant such further relief as may be proper.

Dated: June 30, 2022
Rochester, New York

By: Alicia M. Smith
Alicia M. Smith, *pro se*

State of New York }
County of Monroe } ss:

Subscribed and sworn to
before me this 1 day
of July, 2022
[Signature]
NOTARY PUBLIC

DAVID N LONG
Notary Public - State of New York
NO. 01106329724
Qualified in Monroe County.
My Commission Expires Aug 31, 2023