

Bitter legacy of a celebrity's estate plan

Jerry Orbach was best known as Detective Lenny Briscoe on TV's *Law and Order*, a role that he played for 12 years. A multifaceted actor, Orbach's extensive career dated back to 1955 and included several TV series and films. Less familiar to many than his TV and film career, however, was his remarkable—and award-winning—stage career, which included 13 Broadway and off-Broadway shows, many of which featured his talents as a musical comedy performer.

Yet, according to his second wife, Elaine Cancilla-Orbach, quoted in an article in the *New York Post* (8/10/08), when they married in 1979, "he was in dire straits," and she had to use her savings to pay his alimony and child support. *Law and Order*, of course, changed all that in a major way. When he died in 2004, Orbach reportedly left an estate of \$10 million.

A son's accusations and acrimony

Chris Orbach, one of the actor's sons from his first marriage, this year sent his stepmother a scathing (to put it mildly) letter, a copy of which was obtained by the *Post* for its article "from a source sympathetic to his story." Unfortunately, the story is all too common when stepparents and children both are beneficiaries of a substantial estate.

In the letter the stepson paints his stepmother as "a double-dealing, lying, scheming, miserable fool" who, with the help of "cut-rate, borscht-belt lawyers," can now "boast about 'never flying coach,' or 'never riding the subway.'" Orbach-Cancilla's manipulation, Chris charged, deprived Jerry Orbach's children of their inheritances. In another, gruesome accusation, Chris claimed that his stepmother had Jerry's eyes "shucked out" on his deathbed. (They were donated to the Eye Bank Association of America.) The sons did not challenge their father's will because "we'd be up to our necks in legal fees," Chris wrote.

Chris did admit, according to the *Post*, that there were trusts established for himself and his brother, but "they do not revert to us until Elaine passes away. In the meantime she can take the interest from the trust and raid the principle [sic] if she needs the money. We were told, basically, that it would be nice if there's something there for you, but don't count on it."

The widow's response

Cancilla-Orbach, of course, paints a very different picture. She told the *Post*: "[Jerry] set up his will to protect me. The money that we earned from 'Law & Order' was for our retirement ... His kids were in his will. And they are in my will, although I'm not sure Chris is going to stay there after this."

As to the organ donation, Orbach-Cancilla in the *Post* quoted Jerry Orbach as saying: "If I can give anything back, I want to give my eyes. I can't give my liver because I drank too much, and I can't give my lungs because I smoked too much. But I can give my eyes. Chris knew nothing of this. He knew nothing of what his father and I discussed for 25 years."

Reading into the Orbach estate plan

Although we only have the combatants' words to interpret, it is possible that Jerry Orbach established a **qualified terminable interest property trust** in his will. Such an arrangement is routine for couples in second marriages. It would allow the family to avoid paying federal estate taxes at Orbach's death and give Cancilla-Orbach the right to all of the income from the property in the trust for her lifetime. At her death taxes would be paid, and the trust's assets would pass as Jerry Orbach would have directed in the trust agreement, presumably to the sons. Worth mentioning: This arrangement fails to qualify for the marital deduction if anyone other than a spouse has access to the trust's assets or can receive distributions, explaining why the children's right to their inheritance had to be delayed until their stepmother's death.

“He knew nothing . . .”

Cancilla-Orbach’s statement about her stepson’s lack of knowledge of the couple’s discussions raises other questions. Presuming that the parents and children weren’t estranged, shouldn’t the Orbachs have been more proactive and advised the children about the estate plan and its implications? When Jerry Orbach died, did anyone take the time to explain the strategy behind what he and his advisors had created?

Open communication won’t solve every problem and may even bear, as perhaps here, bitter fruit. Still, in our roles as an executor or trustee, we understand the importance of a family meeting at the creation of an estate plan in order to avoid unpleasant surprises later. And during the difficult time following a loved one’s death, we know that guiding beneficiaries through the process of estate settlement will help manage expectations and clear up questions that, unanswered, may later lead to resentments and, even possibly, litigation.

May we be of assistance to you and your other advisors as you plan your legacies? Thanks to our years of experience, we may be able to help you spot potential problems and develop solutions that go a long way toward keeping peace and harmony among your loved ones. Call on us at any time.

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