

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

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Probate Proceeding, Will of

KUOMING WU

Deceased.

**ATTORNEY AFFIRMATION
IN SUPPORT OF ORDER TO
PRECLUDE**

-----X File No. 2021-1855

TO THE SURROGATE'S COURT, COUNTY OF NEW YORK:

DAVID S. SHOR, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under penalties of perjury pursuant to CPLR §2106:

1. I am a Partner of the law firm of SALEM, SHOR & SAPERSTEIN, LLP, the attorneys for ERIC CHOU aka HSING CHU CHOU, as proposed executor of and under Decedent's Last Will and Testament executed April 9, 2019, in this proceeding, and maintain an office at 3000 Marcus Avenue, Suite 1W6, Lake Success, New York 11042. As such, I am fully familiar with the facts and circumstances of this proceeding.
2. This Affirmation is respectfully submitted in support of Petitioners' motion for an order precluding KUO-YING WU, from filing objections to probate of the decedent's last will and testament dated April 9, 2019 as the time period for filing objections has expired, and an Decree granting the Petition of Eri Chou aka Hsing Chu Chou, admitting the lost last will and testament of the Decedent dated April 9, 2019 to probate pursuant to SCPA 1407 and issuance Letters Testamentary to Eric Chou aka Hsing Chu Chou, and for such other and further relief as the Court may deem just and proper.

PROCEDURAL BACKGROUND

3. KUOMING WU (hereinafter referred to as the “Decedent”) died on March 1, 2021. The decedent was never married, never had children, his parents predeceased him, and therefore was survived by four (4) distributees, consisting of brothers and sisters, namely: (1) ALICE CHENG, sister; (2) ANNE C. JONES, sister; (3) KOA SJUN WU, brother; and (4) KUO-YING WU, brother.
4. At the time of decedent’s death, he left an attorney drafted and attorney executed last will and testament dated April 9, 2019 (hereinafter referred to as the “Will”). A copy provided by Lawrence Rosman was filed with the New York County Surrogates Court. (A copy of which is annexed hereto as **Exhibit A**).
5. Pursuant to the Affidavits by the attorney draftsman, Lawrence Rosman, Esq., he should have been in possession of said Will at the time of passing of the Decedent. Additionally, he attested that the Will was never revoked by the Decedent. (Attached see Affidavits as **Exhibit B**)
6. Pursuant to the Will of the Decedent, Eric Chou was nominated as the Executor of and under said Will.
7. Eric Chou aka Hsing Chi Chou filed a petition with the New York County Surrogates Court for probate of the Lost Will of the Decedent duly verified on April 29, 2021. Waivers of Process/Consent to Probate Lost Will were submitted by KOA SHUN WU, ANNE C. JONES and ALICE CHENG aka YING MEI CHENG, three of the four distributees of the Decedent. A probate citation dated November 29, 2022 was issued by the Court for service upon KUO-YING WU, as the sole distributee who failed to waive, along with the beneficiaries under the lost will, namely HENRY NELSON, CHIA YUANG WU, JIA

HUANG, STEVE SHIH PIN YU and KAREN CHANG WU, which set a return date of January 9, 2023. (Attached see documents as **Exhibit C**)

8. On January 3, 2023, KUO-YING WU submitted a “correspondence” to the court. (Attached see “correspondence” as **Exhibit D**)
9. None of the other cited parties filed any documents or appeared at court.
10. KUO-YING WU did not file a notice of appearance nor did he have an attorney file or appear on his behalf.
11. The “Correspondence” submitted by Mr. Wu failed to meet the requirements of duly verified objections as set forth in SCPA 302 and 303. Additionally, no filing fee was filed with the correspondence, however objections require a \$150.00 filing fee.
12. In response to the “correspondence” sent in by KUO-YING WU, on January 3, 2023, the court emailed the parties and directed Mr. Wu to comply with the requests therein, specifically to file a notice of appearance and to file *proper* Objections and prove that they are timely. (Attached see the email as **Exhibit E**).
13. To date, a notice of appearance has not been filed.
14. To date, there has been no request for 1404 examinations.
15. To date, proper objections have not been filed.
16. This office initially filed a similar motion with this court, but it was rejected as the court advised the opposing party was attempting to file proper objections.
17. It has now been over seventeen (17) months since that time, and it is clear to all that proper objections have not and can not be filed by any party.
18. Pursuant to SCPA 1410, the time for filing objections has passed.

19. SCPA 1410 states, in relevant portions, that “The objections must be filed on or before the return day of process or on such subsequent date as directed by court...”
20. There have been no subsequent dates directed by court. Therefore, objections were due to be filed by the return date of January 9, 2023.
21. The court, in their email to Mr. Wu, not only directed Mr. Wu on the proper procedure, but also provided him with sample documents to file same.
22. Despite this, Mr. Wu failed to file timely objections by January 9, 2023.
23. Even so, the court continued to provide Mr. Wu additional time by their rejection of the initial motion of this office. Nevertheless, nothing has been properly filed by Mr. Wu.
24. Additionally, to date we are now over twenty-two (22) months past the date provided by the court to timely file objections, nevertheless, Mr. Wu has still failed to file proper objections with the court.
25. While Petitioner and the undersigned are cognizant of the difficulties caused by the distance that Mr. Wu is dealing with, this is not a viable excuse for the failure to timely file objections to the Will.
26. Mr. Wu, who clearly has some legal background, could have used the court forms to file timely objections. Alternatively, he could have hired local counsel to do so. Nevertheless, Mr. Wu failed to do so and should not be afforded any deference or additional leeway from the court.
27. Due to the stated and continuing failure of KUO-MING WU to file timely objections to probate of the April 9, 2019 Lost Will by the deadline of January 9, 2023, and the failure to request 1404 examination, and the failure to file proper objections at any time in the

twenty-one-plus (21+) months following the due date, he should be precluded from filing objections to probate of the April 9, 2019 Lost Will.

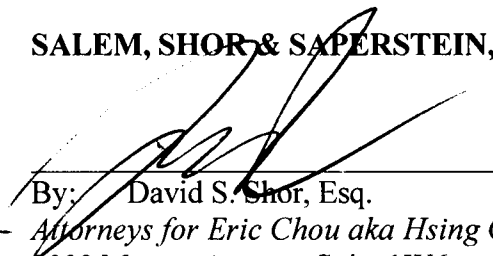
28. Additionally, due to the waivers filed by all other distributees and the failure of any other party to file opposition to the Petition of for Probate of the Lost Will of Decedent dated April 9, 2019, the court should grant the Petition of Eri Chou aka Hsing Chu Chou, admit the lost last will and testament of the Decedent dated April 9, 2019 to probate pursuant to SCPA 1407 and issue Letters Testamentary to Eric Chou aka Hsing Chu Chou.
29. No prior accepted request for the relief requested herein has been made to this or any other Court.

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WHEREFORE, it is respectfully requested that this Court enter (1) an order precluding KUO YING WU, from filing objections to probate of the decedent's lost last will and testament dated April 9, 2019 as the time period for filing objections has expired; and (2) a decree admitting the lost last will and testament of the Decedent dated April 9, 2019 to probate pursuant to SCPA 1407 and issue Letters Testamentary to Eric Chou aka Hsing Chu Chou; and (3) for such other and further relief as the Court may deem just and proper.

Dated: November 14, 2024
Lake Success, New York

SALEM, SHOR & SAPERSTEIN, LLP


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