

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

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Administration Proceeding, Estate of

GABRIEL ANTONIO TORRES

Deceased.

DECISION AND ORDER

File No. 4017/A/2011

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JOHNSON, S.

**The following papers were considered in deciding this motion to
dismiss the verified objections of Adelaide Estevens:**

<u>Papers</u>	<u>Numbered</u>
Notice of Motion, Affirmation and Exhibits.1, 2
Verified Answer and Objections to Cross-Petition	3

**The portion of the motion seeking to dismiss the verified objections of
Adelaide Estevens is denied as moot, as the objections were not timely filed.
This contested administration proceeding was marked submitted for
decision on January 31, 2013.**

**The decedent died intestate on August 4, 2007 survived by three
children: Migdalia Estrada, Maritza Cruz, and Adelaide Estevens. Co-
petitioners, Migdalia Estrada and Maritza Cruz seek appointment as co-
administrators of the decedent's estate. A cross-petition for letters of
administration was filed by Adelaide Estevens (cross-petitioner).
Objections to the cross-petition were filed by Migdalia Estrada and Maritza**

Cruz.

It is well-settled that where the petitioning parties have equal priority for letters of administration, the Surrogate customarily utilizes her discretion to issue letters to the party holding waivers and consents from distributees representing a majority of the interested parties and a majority interest in the estate. Where there is an apparent hostility between persons in the same class of priority for appointment and they have been unable to agree to an appointment, the court in its discretion may appoint the one requested by a majority of the distributees who represent the largest share of the estate (*Matter of Samuels*, 204 Misc 842, [Sur Ct, Kings County 1953]; *Matter of Eggsware*, 123 Misc 548, [Sur Ct, Clinton County 1924]).

In the instant proceeding, Migdalia Estrada, Maritza Cruz and Adelaide Estevens as children of the decedent, share equal priority to serve as fiduciary. However, Migdalia Estrada and Maritza Cruz represent a two-third interest in the decedent's estate. Accordingly, the co-petitioners petition for letters of administration is granted and the cross-petition of Adelaide Estevens is denied.

Letters of administration shall issue to the co-petitioners, Migdalia Estrada and Maritza Cruz upon their duly qualifying according to law. The administrators are hereby restrained from selling, conveying or in any manner encumbering decedent's real property without further order of this

Court.

This constitutes the decision and order of the Court.


HON. DIANA A. JOHNSON
Surrogate

Dated: Brooklyn, New York
February 28, 2013