

Florida Personal Representative Cannot Reach Assets of Decedent's Wholly-Owned Corporation

May 19, 2011 By Jeramie Fortenberry

[Bank Atlantic v. Glatzer, 36 Fla. L. Weekly \(Fla. 3d DCA May 18, 2011\)](#)

The Takeaway

A [Florida personal representative](#)'s right to administer the assets of the decedent's estate does not extend to the assets of a corporation owned by the decedent.

The Story

Dr. Richard Glatzer owned 100 percent of the stock in a professional association that managed his medical practice. The professional association had a deposit account with Bank Atlantic and a loan with Bank Atlantic that was secured by his deposit account. On default, the promissory note gave the bank a right of setoff to use the funds in the deposit account to pay the loan:

"RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account)... Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph."

Dr. Glatzer's death was an event of default under the promissory note.

When Dr. Glatzer died, his personal representative obtained a non-final order from the Miami-Dade Circuit Court directing Bank Atlantic to transfer the funds from the professional association's account to the estate banking account. This prevented Bank Atlantic from exercising its right of setoff under the promissory note. Bank Atlantic appealed.

The Opinion

On review, the 3d DCA noted that there was nothing to support veil piercing or any other theory that would allow the personal representative to disregard the corporation and treat the assets of the corporation as though they were owned outright by the doctor. While the stock of the professional association was an asset of the estate, the funds of the corporation a step removed. The estate did not have the authority to ignore the corporate existence of the corporation, including the corporation's debt to Bank Atlantic.

The case was remanded to the Miami-Dade County Circuit Court with directions to return the funds that had been transferred to the estate account back to Bank Atlantic.