

## Article Information

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Service: Estate & Succession Planning

Sector: Private Clients

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## Payment of super benefits on death of member

### **The Federal Court has dismissed an appeal from the Superannuation Complaints Tribunal (SCT) affirming a trustee's decision to pay certain benefits to the three adult children of a deceased member of the superannuation fund**

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*The Federal Court has dismissed an appeal from the Superannuation Complaints Tribunal (SCT) affirming a trustee's decision to pay certain benefits to the three adult children of a deceased member of the superannuation fund. Our Wills Watch team, **Rod Jones** and **Donna Benge** look at the decision.*

**Case:** *Stock (as Executor of the Will of Mandie, Deceased) & Ors v NM Superannuation Pty Ltd & Ors*

#### **Facts**

The appellants were the executors of the will of Mr David Mandie. Mr Mandie died in 2011 and was survived by three adult children – the second appellant, Ms Evelyn Danos, and her two brothers, the second and third respondents, Mr Stephen Mandie and Mr Ian Mandie.

At the time of his death Mr Mandie was a member of a superannuation fund. Although the trust deed of the fund provided for a member to make a binding death benefit nomination Mr Mandie had not done so.

Relevantly, rule 11.10 of the trust deed provided that the trustee must pay or apply a member's death benefit to or for the benefit of such one or more as the trustee may determine in its absolute discretion: (a) the dependants of the deceased member, and (b) the legal personal representative of the deceased member.

Mr Mandie held two policies in the fund which provided for the payment of substantial death benefits. Each of Mr Mandie's children were dependants within the meaning of the trust deed.

The trustee determined to pay each of the adult children a third of the death benefits payable from the fund. The appellants sought unsuccessfully to persuade the trustee to pay the death benefits to them as legal personal representatives of Mr Mandie's estate.

#### **SCT and Federal Court decisions**

On appeal, the SCT found that Mr Mandie had nominated his spouse as a beneficiary of one of his policies but that she had predeceased him and no other nominations had been made. The SCT also referred to the wishes of Mr Mandie and his wife relating to some aspects of the administration of their respective estates and assets and to a settlement agreement, made in December 1995, which had stated that neither of Mr Mandie's adult sons had any further rights against him or his wife or their respective estates.

The SCT restated some of the appellants' arguments relating to Mr Mandie's wishes which were said to have evinced the intention by him that his two sons be excluded from any interest in his or his wife's estates. This was said to have been reflected in the terms of the settlement agreement. While acknowledging that that agreement did not deal with the proceeds of superannuation funds, it was said to be implicit in the agreement that the two sons should derive no benefit from those funds. The appellants had argued that the sons were the only parties to receive assets under the settlement agreement and that this was consistent with an intention that Ms Danos should have the benefit of all remaining wealth held by her parents at the time of their deaths.

The SCT held that superannuation was not an asset of the estate and a trustee was not bound to follow the directions of a will. Even if superannuation was specifically mentioned in a will, it did not make it an asset subject to the terms of the will. The SCT concluded having identified dependants and with no binding nomination to pay to the LPR, it was not unreasonable for the trustee to follow its practice to pay to dependants. Further, the SCT concluded that since there was no evidence to support a greater claim on the benefit by any of the adult children it was fair for the trustee to decide to pay the benefit, in equal shares, to the adult children of the deceased member as non-financial dependants. For those reasons and having regard to evidence submitted, the SCT considers that the decision of the trustee to pay the benefit arising from the death of the deceased member to the adult children of the deceased member in equal shares was fair and reasonable in its operation in relation to the complainants in the circumstances.

On further appeal, the Federal Court rejected all the grounds of appeal and held that the appeal should be dismissed. The court said that the SCT was under no obligation to have regard to the processes of reasoning which had led to the trustee's decision or to form a judgment as to whether it had somehow acted improperly. Rather, its role was determine whether the trustee's decision was fair and reasonable and in this regard it had performed its function.

For further information, please contact [Donna Bengé](#) or [Rod Jones](#).

*Court ref: [2015] FCA 612, Tracey J, Melbourne, 23 June 2015*

*Source: CCH Superannuation Tracker*