

Charities lose court fight for \$8m estate

Late stockbroker's
will bequeathed his
fortune to couple

By Sacha Pfeiffer
GLOBE STAFF

Five weeks before his death, after a yearlong battle with cancer that left him deeply depressed, 85-year-old Leonard R. Brener made a startling decision.

Instead of bequeathing his \$8 million estate to four local charities, he changed his will to give the entire amount to his niece and her husband. It was this couple, he explained, who had cared for him in his dying days. Brener, a former Boston police lieutenant who later became a wealthy stockbroker, left no heirs. He said the money was his thanks to the Rosens for their love and assistance.

The change of heart stunned the four nonprofits that had previously been the stated beneficiaries of Brener's estate, spurring them to try to have his will overturned. And this week, after a legal fight lasting more than five years, the state Appeals Court rejected their effort, concluding Brener had been mentally competent and his decision to leave his money to Lois and Herbert Rosen, who are in their late 60s, should stand.

"In the final stage they functioned as his closest family," Judge Mitchell J. Sikora Jr. wrote of the Rosens. "They comforted him through the bleakness of terminal illness. His gratitude would be natural."

The Perkins School for the Blind in Watertown. Beth Israel Deaconess Med-

ical Center in Boston, and Carroll Center for the Blind in Newton said they do not yet know whether they will request further appellate review by the Supreme Judicial Court.

The fourth plaintiff, the Maimonides School in Brookline, a Jewish day school, did not return a call.

Beth Israel spokeswoman Judy Glasser said the hospital joined the lawsuit "because we felt at the time that we were acting on the intentions of the gentleman."

Perkins president Steven M. Rothstein said the school's board had not yet reviewed the decision. But, he added, "We felt it was clear that [Brener] has expressed support for Perkins and the other nonprofit organizations and that he wanted to make a lasting impact by supporting our work."

And Rachel Rosenbaum, the president of Carroll, said she was

"very disappointed" in the decision and described Brener's changed will as "contrary to everything he had done in his lifetime while he was alert and healthy."

She reiterated the plaintiffs' argument that Brener's revised will was "unnatural" because it would trigger significant estate taxes, which he had previously said he wanted to avoid. She also said Brener visited the school unexpectedly several years ago to make a \$5,000 gift and told her then that, "My relatives are very opposed to me giving away my money to charity, but I made the money and I'll do what I want with it."

"In view of what he said to me," she added, "it seemed like a case we should appeal."

The Rosens, who live in Sudbury and were present when Brener died on Dec. 8, 2001, did not return a call. But their Boston

lawyer, C. Peter R. Gossels, described them as "wonderful people, both of whom work, and people who are modest and generous and public-spirited."

"They are very, very nice people and this has been an enormous strain on them," Gossels said. "They had no idea how much money he had, and they knew nothing about his private finances."

Gossels also noted that the case, which began in November 2002, has cost "an enormous amount of money" for all the parties involved.

Rosenbaum said litigation costs for Carroll were under \$100,000 but "well over that" for the other plaintiffs, because their legal bills were calculated based on the percentage of the estate they would have received. Maimonides, Perkins, and Beth Israel

each had been designated to receive 30 percent of Brener's estate before he changed his will, and Carroll had been designated to receive 10 percent.

Judge Edward F. Donnelly Jr. of Middlesex Probate and Family Court, where the lawsuit originally was filed, also ruled against the plaintiffs, prompting them to appeal.

Brener, who lived in Newton, never married or had children. In early 2001, he was diagnosed with cancer and began to feel hopeless and suicidal.

Following his diagnosis, the Rosens — with whom Brener had maintained a close relationship for many years — began to drive him to doctor appointments, to restaurants, to visits with his friends and former clients, and to their home on Cape Cod. Lois Rosen had known Brener her entire

life, her husband had used him as his stockbroker since 1969, and Brener frequently spent holidays at their home.

As his health declined, they began to monitor his care, once driving him to the emergency room in the middle of the night when he was having trouble swallowing.

In October 2001, about a week after Brener suffered what seemed to be a stroke, he told an executor of his estate that he had given Maimonides "enough" and wanted the rest of his estate to go to the Rosens "in appreciation of all of the attention and assistance that they had given him during his illness." At the same time, Brener added to his will a \$10,000 gift to one of his nephews and a gift to an office friend.

In their lawsuit, the plaintiffs presented medical opinions by two doctors who said Brener had

lacked the mental capacity to change his will.

But one of the doctors never met Brener. The other, Bernard Kosowsky, chief of cardiology at St. Elizabeth's Hospital, had been chairman of the Maimonides board of trustees for the previous 15 years.

Another one of Brener's executors, David Shaw, later testified that Brener knew "what he was doing" and "didn't show any confusion" when he made the change.

The court also noted the Rosens were not present when Brener changed his will, and that Brener had instructed Lois Rosen to leave him alone for a business discussion with one of his executors the day before he made the final change.

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Appeals Court favors couple in \$8m estate lawsuit