

**TRUSTS & ESTATES**

## Ajemian v. Yahoo: One Small Step For The Family, One Giant Step For Fiduciaries

By Suzanne Brown Walsh | October 17, 2017

Yahoo! On October 16, 2017, the Massachusetts Supreme Judicial Court issued its long-awaited decision in *Ajemian v. Yahoo!, Inc.* (“Yahoo”), <http://bit.ly/2zuW1T9>, interpreting the federal Stored Communications Act (the “SCA”) to allow Yahoo to divulge the contents of a decedent’s e-mail account based solely on the personal representative’s consent. Although the decision does not order Yahoo to immediately disclose the emails to the personal representatives, it firmly repudiates the position of the industry that the SCA completely bars such disclosure. As such, it represents a huge victory for fiduciaries and families seeking access to protected communications.

The SJC’s decision does not *mandate* that Yahoo disclose a decedent’s email account contents to the fiduciaries; it merely holds that the SCA *permits* the disclosure. Presumably, the Massachusetts probate court, on remand, will simply issue an order mandating disclosure, now that the SJC has confirmed that Marianne and Robert Ajemian, as Co-Administrators, may provide Yahoo with their late brother’s lawful consent under the SCA.

However, what if the probate court, on remand, does *not* order the disclosure, instead agreeing with Yahoo that its terms of service are binding and allow it to destroy or withhold the emails? Chief Justice Gants, writing separately, indicates that if the trial court were to hold that Yahoo’s terms of service agreement were binding and permitted it to destroy the decedent’s email messages, the SJC “would surely reverse that ruling.” Hopefully that strong signal reaches Yahoo and convinces it to finally give Marianne and Robert Ajemian their late brother’s email messages, as they requested more than 10 years ago.

To conclude, although the decision is a clear victory for the Ajemians, it still leaves important issues unresolved and important questions unanswered. For example, the Ajemians are still subject to the probate court’s future ruling on whether Yahoo’s terms of service agreement prevents disclosure. Also, service providers typically interpret the SCA as merely permissive and insist that they are not required to disclose emails, even with the account holder’s lawful consent. It therefore will remain critically important to our clients to monitor case law throughout the States as it continues to develop in these areas.

For questions or more information, please contact [Suzanne Brown Walsh](mailto:Suzanne.Brown.Walsh@murthallaw.com) at 860.240.6041 or [swalsh@murthallaw.com](mailto:swalsh@murthallaw.com).

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