

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 50 2006CP003580XXXXSBIY

IN RE: ESTATE OF
WILSON C. LUCOM

ADVERSARY PROCEEDING

**FINAL JUDGMENT DENYING DISCHARGE, DENYING PERSONAL
REPRESENTATIVE'S FEE, GRANTING SURCHARGE, VOIDING
TRANSACTIONS, AND GRANTING OBJECTIONS TO THE FINAL
ACCOUNTING**

This case was tried before the Court from February 24, 2009 to February 26, 2009. The matters before this Court are former Ancillary Personal Representative Richard S. Lehman's Petition to be discharged as the Ancillary Personal Representative; Hilda Piza Lucom's Response to the Petition for Discharge / Objections to the Petition for Discharge and Final Accounting / Counter Petition for Surcharge and Petition to Void Transaction; Objections to Final Accounting filed by beneficiaries Madelaine Arias, Margarita Allinson, Melinda Morrice and Gilberto Arias; Objections to the Final Accounting filed by Isabel Maria Clark, Robert Clark, Alexander Clark, Delanda Clark and Cassandra Clark; Objections to the Final Accounting by the Curator, Larry Miller; and Objections to the Final Accounting by Valores Globales, S.A.

The Court received testimony from Richard Lehman (Lehman) and other witnesses, received and reviewed numerous exhibits from the parties, reviewed numerous demonstrative aids (some more technologically ambitious than others), and listened closely to opening and closing statements, and argument from counsel for each of the parties. The Court being fully advised finds as follows:

Findings of Facts and Conclusions of Law

1. The decedent, Wilson Charles Lucom, died on June 2, 2006. Mr. Lucom died as an expatriate American having renounced his United States citizenship. He was domiciled in the Republic of Panama at the time of his death. Lehman was the decedent's lawyer for more than 30 years, until decedent's death. Lehman has a master's degree in tax law, has been a Florida attorney for 40 years, and claims to specialize in tax-oriented international law, and estate and gift planning issues. Lehman opened Mr. Lucom's Panama domiciliary estate with assets between \$25 and \$50 million on July 5, 2006. The Order opening the Panama estate, dated July 5, 2006, appointed Lehman as sole Executor ("Albacea") of the Panama Domiciliary Estate, despite the fact that the Decedent's Last Will and Testament names Hilda Piza Lucom, Christopher Ruddy, and Lehman as co-Albaceas. Lehman failed to give notice to these interested parties of the Panama proceedings, resulting in the July 5, 2006 Order appointing him the sole Albacea. On July 18, 2006, Hilda Piza Lucom appealed the July 5, 2006 Order. Unequivocal evidence received at trial proved the July 5, 2006 Panama Order appointing Lehman "Executor" of the domiciliary estate (from the English translation of the Order) was automatically and immediately null and void when Hilda P. Lucom filed her appeal of that Order on July 18, 2006. At all times material to the action before this court, Lehman was not installed or properly serving as the Albacea of the Panama Estate.

2. The Decedent owned real property and a Wachovia bank account containing \$655,241.25, in Florida. Lehman was wrongly appointed as the sole Florida Ancillary Personal Representative (APR) and was granted Letters of Administration by this Court on July 19, 2006, at an ex parte Hearing. Lehman failed to furnish formal notice

of the Petition for Administration to Hilda Piza Lucom, Christopher Ruddy, or any other interested persons qualified to act. Because Lehman was not Albacea in Panama as of July 19, 2006, Hilda Piza Lucom had preference of appointment equal to or greater than Lehman. Hilda Piza Lucom was entitled to receive formal notice of the Florida Petition for Administration before Letters of Administration could be issued, see Florida Probate Rule 5.201. The appointment as APR and Letters of Administration were issued by the Florida Court based on false information in Lehman's Petition.

3. On July 19, 2006, Lehman was not qualified to act as APR of the Florida ancillary estate under the requirements of Fla.Stat. 734.102. On July 19, 2006, he was not the foreign personal representative of the Panama domiciliary estate of Decedent. Lehman testified he had no knowledge of Hilda P. Lucom's Panama appeal being filed, or its effect upon his authority in the domiciliary estate, at the time he petitioned for appointment as APR in Florida. That testimony is not credible. However, Lehman's good faith, or lack thereof, is irrelevant: as of the date he requested and received Letters of Administration to act as APR, he was not entitled to have those Letters issued. His appointment as APR in Florida is void ab initio. Thus, all actions taken by Lehman in the Florida ancillary estate were those of an intermeddling volunteer. His actions were not protected by Florida law, or excused by the Exculpatory Clause in Decedent's will. Lehman is liable to the Estate for all monies received by him improperly and for all damages to the Estate caused by Mr. Lehman under Fla. Stat. 733.309.

4. Lehman used his wrongly-issued Letters of Administration to withdraw and spend most of the cash assets from the ancillary estate, after immediately transferring \$655,241.25 of the Decedent's Wachovia account into a Wachovia Estate account. Thus he came into possession of all of the Florida liquid assets using his wrongfully-obtained authority as APR, and is required to account for such assets.

5. Panama Court Orders denied Lehman access to the money in the Panama Estate, and directed that Lehman was not entitled to execute any acts of administration in connection with Domiciliary Estate assets. Despite the Panama Court's Orders, Lehman began using the money he obtained from the ancillary estate to fund ongoing litigation in the Panama Domiciliary Estate, and to pay other administration expenses specific to the Panama Domiciliary Estate and probate proceedings in other countries.

6. Lehman transferred \$423,261.15 of Florida Ancillary Estate money to his law firm, Richard S. Lehman, P.A. (RLPA), and commingled said funds in his law firm's General Account. Lehman did not segregate estate money from RLPA's general checking account, did not put it in a trust account, kept no specific estate accounting records, and explained his behavior in a most unconvincing and non-credible manner at trial. Lehman admits removing the money from the Ancillary Estate and using almost all of it pursuing litigation in the Panama domiciliary estate and other jurisdictions. Despite the fact that his law firm had the use of large sums of Estate money for a significant period of time, Richard S. Lehman failed to pay any interest to the Estate. The total disbursements from the Ancillary Estate made by Lehman were \$628,822.05.

7. This Court appointed Larry Miller, Esq. as administrator pendente lite to investigate and report on potential improprieties with respect to Lehman's activities while he acted as personal representative of the Florida ancillary estate. Due to Lehman's commingling of money, the breadth of Lehman's improper activities with that money and poor record keeping, Mr. Miller's report took thirteen (13) months to prepare. On March 6, 2008, this Court entered an Agreed Order on Lehman's Petition for Resignation as Ancillary Personal Representative and Appointment of Curator allowing him to resign, ordering that he file a Final Accounting, and appointing Larry Miller, Esq. as Curator. Lehman filed a Final Accounting with this Court on April 22, 2008. The interested persons then filed timely objections. Mr. Miller incurred fees of over \$390,000 in his services to the Estate. Mr. Miller's fees are reasonable and were the direct result of Lehman's improper appointment as APR, his actions as an intermeddler in the estate and his breaches of fiduciary duty once wrongfully appointed as APR.

8. Using his invalid APR Letters, Lehman improperly took, converted, and intermeddled in the decedent's property, improperly spending \$608,665.58 of the \$655,241.25 that was left in Decedent's Florida account at Wachovia. \$28,538.72 of the \$655,241.25 remained in the Panama Global bank account and was not spent by Lehman. \$6,804.93 was transferred to the Curator on February 20, 2007.

9. Lehman spent the \$608,665.58 on, among other things, attorneys' fees to RLPA and attorneys in Panama, Nevis, and British Virgin Islands, plus litigation costs, and expenses which did not benefit the ancillary or overall estate. Although Lehman attempted to portray himself at trial as a protector of the assets of the overall estate, the credible evidence showed him to be a covetous opportunist using the ancillary estate

assets to thwart the Orders of the Panama Court in the domiciliary estate, seeking personal advantage and control of assets in the \$25-\$50 million domiciliary estate. Objections to these ancillary funds being spent as set forth in the Final Accounting are justified and proper. Pursuant to Fla. Stat. 733.309, Lehman is liable to return this money to the ancillary estate, through the curator, and for other damages to the ancillary estate, including attorney fees and costs caused by his wrongful actions. Lehman argues this statute does not apply to these proceedings because it was not specifically pled. That argument is rejected and given no weight. Lehman and RLPA were intermeddlers in the affairs of the ancillary estate and are entitled to no recovery.

10. Lehman and RLPA claim they are entitled to recover \$1,141,668.20 from the ancillary estate, for monies advanced by Lehman and RLPA to the estate under Fla. Stat. 733.612(14). This amount includes \$993,598.25 set forth in three promissory notes, \$67,603.00 interest on the notes and \$80,467.06 advanced after the notes. The notes are signed by Lehman as personal representative of the Florida estate, are made out to Lehman's law firm, are invalid, and are not enforceable.

11. Lehman is not entitled to a Personal Representative Fee for his services to the Estate. Lehman is not entitled to have any of his attorney's fees paid from the Estate.

12. Lehman has properly paid \$1,575 in Appraisal fees for appraising the real property in the United States. Further, this Court determines that \$3,700 is a reasonable fee for the preparation of the U.S. Estate Tax Return under Fla. Stat. 733.6171(4)(e).

13. Should another Court hold that Lehman was properly appointed APR, his actions were still improper, objectionable, and not excused by the terms of the Exculpatory clause in Decedent's will. Lehman exhausted the liquid assets of the ancillary estate for illegitimate purposes, to the detriment of the ancillary and entire estate. He sought to avoid or circumvent legitimate Orders of the Panama Court in the domiciliary estate with actions financed by converting hundreds of thousands of dollars in cash assets from the Florida ancillary estate. He was unable to pay Class 1 administration expenses related to the Florida Estate and Class 3 United States Estate Taxes when they became due. By the time Lehman resigned, his Final Accounting reflected that the outstanding, overdue U.S. Estate Taxes were \$255,255 and that the Estate was insolvent. The Estate also had over \$50,000 in potential claims (Class 8 obligations) made against the Estate which were the subject of ongoing independent actions. Lehman's failure to preserve sufficient assets in the Florida Ancillary Estate to pay (i) costs and expenses of ancillary administration, (ii) U.S. Estate Taxes, and (iii) local creditors was a breach of Lehman's fiduciary duty. In re Wilson's Estate, 197 So.557, 562 (Fla. 1940). The failure to maintain sufficient local assets to pay the foregoing obligations represents a reckless disregard of the interests of interested persons in the Ancillary Estate.

14. Commingling \$423,261.15 of estate money with the assets of RLPA without any formal loan documentation or any interest paid to the Estate is the equivalent of an interest free loan and is a conflict of interest transaction within the meaning of Fla. Stat. 733.610. The Decedent's Last Will and Testament does not allow for such self dealing transactions and this Court does not approve the transactions. As such, even assuming validity of Lehman's appointment as APR, all estate transfers to RLPA were

in bad faith and are void under Fla. Stat. 733.610. Further, this Court finds that RLPA is an improper payee under Section Fla. Stat. 733.812.

15. Assuming Lehman was properly appointed as Florida APR, Lehman's actions described above constitute breaches of fiduciary duty made in bad faith, with reckless indifference to the rights or interests of interested parties. As such, Lehman is liable for damages to the Estate under Fla. Stat. 733.609 and under the terms of the Exculpatory Clause as modified by this Court's January 15, 2009 Order.

Accordingly it is **ORDERED AND ADJUDGED** as follows:

1. Richard S. Lehman's Appointment as Florida Ancillary Personal Representative is declared void ab initio;
2. All objections to the Accounting are sustained;
3. Judgment is hereby entered against Richard S. Lehman for damages to the Estate in the amount of \$1,013,547.05 plus interest at the statutory rate of 8%, effective this date, for which let execution issue. This amount represents the return of \$623,547.05 of Estate money improperly spent by Mr. Lehman (\$628,822.05 less the payment of \$1,575 in Appraisal fees for real property in the United States and less \$3,700 in payments for preparation of the U.S. Estate Tax Return) plus surcharge damages in the amount of Mr. Miller's fees of \$390,000.
4. All transfers by Richard S. Lehman to Richard S. Lehman, P.A. are hereby declared void under Fla. Stat. 733.610. Judgment is hereby entered against Richard S. Lehman, P.A., jointly and severally liable with Richard S. Lehman, for \$423,261.15 damages to the Estate, plus interest at the statutory rate of 8%, effective this date, for which let execution issue. Any amounts paid by Richard S. Lehman, P.A.

back to the Estate shall reduce the amount due under Paragraph 3, dollar for dollar.

5. Richard S. Lehman's Petition for Discharge is hereby DENIED.

6. Richard S. Lehman's claim for \$130,676.90 as compensation as Ancillary Personal Representative is DENIED.

7. Richard S. Lehman and Richard S. Lehman P.A.'s claims for \$1,141,668.20 for monies they claim to have advanced to the ancillary estate are DENIED.

8. Hilda Piza Lucom, Valores Globales, and the other beneficiaries and interested parties designated in the first paragraph of this Judgment are entitled to recover their reasonable attorney fees and costs from Richard S. Lehman and Richard S. Lehman P.A. for pursuing their claims and objections. The wrongful actions of Lehman and RLPA caused those fees and costs to be expended, in order to recover the assets of the Florida ancillary estate. The amount of such fees and costs shall be agreed by the parties, or resolved by mediation no later than 60 days from this Final Judgment. Should no agreement be reached, any party may move for a one hour evidentiary hearing before the Court on fees and costs within 90 days of this Final Judgment.

9. The Court reserves jurisdiction to enter such further orders as may be necessary, to enforce this and all previous Orders and Judgments of the Court, and to resolve attorney fee and cost issues via an the procedures set forth above.

DONE AND ORDERED in chambers at Delray Beach, Palm Beach County, Florida this 5 day of MARCH, 2009.


JOHN L. PHILLIPS, CIRCUIT JUDGE

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