IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA PROBATE /GUARDIANSHIP DIVISION "IY"

CASE NO. 502006CP003580XXXXSB

IN RE: **ESTATE OF WILSON C. LUCOM.**

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ORDER DENYING RICHARD S. LEHMAN AND RICHARD S. LEHMAN, P.A's AMENDED MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 1.540 (b), FLA.R. CIV. P.

THIS CAUSE came to be heard on Friday, June 4, 2010 on Richard S. Lehman and Richard S. Lehman, P.A's Amended Motion for Relief from Judgment Pursuant to Rule 1.540 (b), Fla.R. Civ. P. This Amended Motion was timely filed and seeks relief from this Court's March 5, 2009 Final Judgment Denying Discharge, etc., entered by Judge Phillips, primarily on the grounds of subsection (2) of Rule 1.540 (b), that is, newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing. Upon consideration, the Court makes the following findings of fact and conclusions of law:

1. At this hearing, very little "new evidence" was presented. (There were some deposition transcripts of Panamanian lawyers that were slightly helpful). Rather, the main thrust of the Amended Motion was that subsequent to the entry of the Final Judgment herein, there were new orders of the courts in Panama that overruled or overturned prior Panamanian court orders relied upon by Judge Phillips in rendering the Final Judgment, thus causing a legal error that would require that the Final Judgment be vacated.

2. The governing legal principles pertaining to Rule 1.540 (b) (2) are that (1) the evidence would probably change the result if the new trial is granted; (2) the evidence was discovered after the initial trial; (3) the evidence could not have been discovered before the trial by the exercise of due diligence, and (4) the evidence is not casual, cumulative or merely impeaching. Snook v. Firestone Tire and Rubber Co. 485 So. 2nd 496 (Fl. 4 DCA 1986) Further, Rule 1.540 (b) (5), which was also relied upon herein, provides for relief from judgment where a prior order which it is based has been severed or vacated.

3. Lehman argued at the hearing that Panamanian court order No. 952 which was entered August 29, 2008 was the Panamanian order that Judge Phillips primarily relied upon in determining that Lehman was improperly named as albacea in the domicilliary estate proceedings in Panama and thus his appointment as ancillary personal representative in Florida was improper as well. Lehman then asserted that subsequent to the entry of said Final Judgment, Order 952 was overturned by the Panamanian Superior Court in Entry No. 09AA. 201, which was set forth in Appendix 4 to Lehman's Amended Petition.

4. Some very brief facts are helpful to this discussion.

5. There is no dispute that on or about July 5, 2006, Lehman secured an order in Panama installing himself as albacea of the estate Wilson C. Lucom, who died a Panama resident on June 2, 2006. This was done even though the Will that Lehman presented to the Panamanian probate court named three persons as albaceas; himself, Lucom's surviving wife, Hilda, and Christopher Ruddy.

6. As a result, Hilda filed an appeal of that July 5, 2006 order in Panama.

7. While that appeal was pending, Lehman opened an ancillary estate in Florida by petition alleging his appointment as albacea in Panama and was designated herein as A.P.R. without informing the probate court of the appeal to his installation as P.R. in Panama and without any notice to Hilda or Mr. Ruddy. Thereafter, a series of orders were entered in the Panamanian courts directed to the propriety or lack thereof Lehman acting as albacea therein, leading ultimately to Order 952 on August 29, 2008 that declared null and void the installation of Lehman as P.R. in the Panamanian probate proceeding concerning Mr. Lucom.

8. The trial of the instant case took place before Judge Phillips on February 24 to 26, 2009, with its Final Judgment entered March 5, 2009.

9. In the meantime, appeals of Panamanian order 952 proceeded in Panama.

10. The parties dispute the status of those appeals with Lehman asserting that Order 952 has been overruled while Hilda arguing that Order 952 is at worse suspended pending Panama Supreme Court review. (Interesting though is that the appellate court opinion dated August 12, 2009 heavily relief upon by Lehman does not concern a direct appeal of Order 952, but pertains to a matter involving the appointment of an administrator ad litem for the Lucom estate). Thus, it appears that ground for relief asserted via Rule 1.540 (b) (5) may not be appropriate.

11. But notwithstanding, this Court having reviewed Judge Phillip's Final Judgment, all of the orders for which Judicial notice was taken, and having considered the argument of counsel and the law, it is clear that even if Judge Phillips was informed that the appeal in Panama of Lehman's appointment as albacea only suspended or stayed Lehman's status as P.R. (instead of rendering it automatically and immediately null and void), it has not been shown that Judge Phillip's would have reached a different result in this case, for many reasons, some of which are:

a. The finding that Lehman did not give proper notice to Hilda or Ruddy in the initial Panamanian probate proceeding.

b. The finding that Lehman failed to give proper notice per Rule 5.201 and Rule 5.470, Fla. Probate Rules to Hilda and Ruddy when he filed the Florida Probate Petition.

c. The finding that Lehman's petition to be appointed in Florida as A.P.R. did not reveal to the Court the challenge to his appointment in Panama as albacea.

d. The multiple findings in paragraphs 13, 14 and 15 of the Final Judgment indicating that even if Lehman was properly appointed as Lucom's A.P.R., Lehman's conduct was nonetheless improper.

12. As a result, this Court finds insufficient new evidence (if there is any new "evidence" at all) that would materially cause a change in the results of the Final Judgment herein. Mistretta v. Mistretta 31 So. 3rd 206 (Fl. 4 DCA 2010).

13. Therefore it is **ORDERED AND ADJUDGED** that Richard S. Lehman and Richard S. Lehman, P.A's Amended Motion for Relief from Judgment Pursuant to Rule 1.540 (b), Fla. R. Civ. P. be and the same is hereby **Denied.**

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 7th day of June, 2010.

SIGNED AND DATED
JUN 07 2010
JUDGE MARTIN H. COLIN

MARTIN H. COLIN
Circuit Court Judge

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