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2018 FEB 14 PM 1:03

BY MM
DEPUTY

Attorney for: Personal Representative

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

In the Matter of the Estate of:)	No. PB 2013-00213
)	
Francisca Margarita Lopez-Ruiz,)	PETITION FOR JUDGMENTS FOR
)	SURCHARGES AND JUDGMENT ON
)	FIDUCIARY BOND
)	
)	Honorable Daniel A. Washburn

Marta Pospisil, personal representative of the Estate of Francisca Margarita Lopez-Ruiz, (hereinafter referred to as the "Estate"), petitions to surcharges the former personal representative of the Estate, Henry Ruizmeeden and Western Surety Company as follows:

1. On December 9, 2013 Henry Ruizmeeden (hereinafter "Henry"), was appointed the personal representative of the Estate of Francisca Margarita Lopez-Ruiz, (hereinafter "Estate"). He was represented by Thomas Larsen, Esq.
2. On July 19, 2013, Henry Ruizmeeden secured a bond in the amount of \$46,000.00 from Western Surety Company. Proof of this bond was filed with the Court on August 2, 2013.
3. Henry Ruizmeeden was removed as personal representative of the Estate on May

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1 22, 2016 for mismanagement of the Estate property and breach of his fiduciary duties as
2 personal representative. On that date, the Petitioner Marta Pospisil was appointed
3 temporary personal representative of the Estate.

4
5 4. On July 8, 2016, Petitioner was appointed permanent personal representative of
6 the Estate. The Petitioner filed a petition to compel Henry's attendance for an asset
7 examination, an accounting and for sanctions, requesting that Henry Ruizmeeden be
8 ordered to appear and provide an accounting for the management of the Estate for the
9 time he was the personal representative and to account for property and funds that he had
10 failed to transfer to the present personal representative.

11
12 5. An evidentiary hearing was set for April 7, 2017 to consider the Petitioner's
13 requests. At the evidentiary hearing, Thomas Larsen withdrew as the attorney of record for
14 Henry for his failure to cooperate with Mr. Larsen and provide him with the documents
15 necessary to present an adequate defense to the Petitioner's request for an asset
16 examination and sanctions.

17
18 6. At the evidentiary hearing conducted on April 7, 2017, the Court found that Henry
19 Ruizmeeden had mismanaged the Estate and failed to transfer assets that he had in his
20 possession to the Estate. The evidence presented established the following:

21 a. Henry Ruizmeeden retained Thomas Larsen and paid Mr. Larsen a flat fee
22 retainer of \$2,500.00 prior to his appointment of personal representative and failed to
23 utilize Mr. Larsen's services, except for a brief appearance at a hearing held on December
24 19, 2013 that lasted 35 minutes.

25 b. On February 18, 2014, Henry Ruizmeeden prepared an initial inventory and
26
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1 list of personal property that he provided to the heirs of the Estate, listing cash assets in
2 the amount of \$51,836.59, personal property assets in the amount of \$17,319.00 and debt
3 owed to the Estate from individuals in the amount of \$28,716.11. The cash assets
4 consisted of \$17,969.06 deposited in Ally bank and \$37,650.60 in Chase Bank. The cash
5 assets listed in the initial inventory did not include two checks written by Henry
6 Ruizmeeden on the Decedent's account before the funds were transferred into an Estate
7 account in the amount of \$3,372.93 on December 12, 2013 and \$2,500.00 on December
8 16, 2013. He did not provide copies of those checks or a legitimate Estate purpose for the
9 funds represented by those checks. The total cash assets of the Decedent at the time of
10 her death were \$61,219.95.
11

12 c. On December 10, 2013, Henry Ruizmeeden transferred \$33,618.13 from the
13 Decedent's Chase account into a Chase Estate account, and on January 27, 2014,
14 transferred \$18,220.46 from the Decedent's Ally bank account into an Ally Estate account.
15 He deposited an additional \$791.00 into the Chase Estate account on April 15, 2014 and
16 \$400.00 into the Chase account on June 10, 2014. By August 10, 2015, the balance in the
17 Chase Estate account was \$0.00. The Ally account was reduced to \$980.68 as of October
18 20, 2014. Henry Ruizmeeden failed to account for the remaining \$980.14 left in the Ally
19 account.
20

21 d. The tangible personal property listed in the initial inventory filed on February
22 Included a Ford 1993 F150 pickup valued at \$2,773.00, a Nissan Sentra valued at
23 \$3,874.00, and a Ford ½ ton pickup valued at \$500.00, seven horses each valued at
24 \$1,000.00 and a saddle valued at \$2,000.00. With the exception of the Nissan Sentra,
25 Henry gave away the vehicles, failed to account for the remaining tangible personal
26
27

1 property, failed to take any steps to collect the \$28,716.11 away and transferred the
2 majority of the cash assets into his personal account.

3 e. Henry provided cancelled checks written to payees other than himself in the
4 amount of \$11,846.55 including a check to Joe Ruiz in the amount of \$8,673.49 as a
5 reimbursement for funeral expenses. The remainder of the cash assets in the amount of
6 \$49,373.40 were deposited in Henry's personal bank accounts and co-mingled with his
7 separate assets or were paid to Henry directly. Henry failed to provide his private bank
8 account records to account for the cash assets he transferred to those private accounts.
9

10 7. As a result of the failure of Henry Ruizmeeden to faithfully perform his duties as
11 personal representative, the Estate incurred attorney's fees in the amount of \$13,904.00 in
12 attorney's fees and costs in the amount of \$31.60 in costs that have been previously
13 executed by the Court on August 16, 2017 approving the attorney's fees and costs
14 submitted by the Petitioner. The Estate has incurred additional attorney's fees and costs in
15 the amount of \$2,130.00 as of January 1, 2018.
16

17 8. The loss to the Estate incurred as a result of Henry Ruizmeeden's breach of
18 fiduciary duties total:

- 19 a. \$92,0875.10 in cash and personal property assets.
20 b. Attorney's fees of \$16,056.60.
21 c. TOTAL: \$108,144.11
22

23 9. Pursuant to A.R.S. §14-3808, Henry Ruizmeeden should be precluded from
24 receiving an intestate share of any proceeds recovered by the Estate from Western Surety
25 as permitting Henry Ruizmeeden to benefit from those proceeds would in effect be
26 rewarding Henry Ruizmeeden for his breach of fiduciary duty and mismanagement of the
27

1 Estate. In addition, Henry Ruizmeeden has misappropriated the assets of the Estate for his
2 own personal use and should not only be prohibited from participating in the benefits of any
3 proceeds from Western Surety, he should also be precluded from participating as an
4 intestate beneficiary to any assets of the Estate remaining after his mismanagement of the
5 Estate and breach of fiduciary duty.
6

7 10. As the surety that provided the bond for Henry Ruizmeeden, Western Surety is
8 obligated to reimburse the Estate for any and all damages suffered by it as a result of the
9 actions or inactions by Henry Ruizmeeden.
10

11 WHEREFORE, the Petitioner respectfully requests that this Court:

12 A. Order a judgment against Henry Ruizmeeden for \$108,144.11 with pre-judgment
13 and post-judgment interest at the legal rate.
14

15 B. Order a judgment against Henry Ruizmeeden for additional attorney's fees and
16 costs in bringing this surcharge action.
17

18 C. Order a surcharge against Western Surety Company for such liquidated amount as
19 may be determined by the Court, plus pre-judgment and post-judgment interest at the legal
20 rate and for actual and consequential damages, including attorney's fees and costs
21 incurred here not exceeding the face amount of the bond of \$46,000.00
22

23 D. For an order precluding Henry Ruizmeeden from participating or from receiving any
24 benefit that may inherit to the Estate as a result of the surcharge of the bond to Western
25 Surety, and that Henry Ruizmeeden be precluded from participating as an intestate
26 beneficiary of Francisca M. Lopez-Ruiz.
27

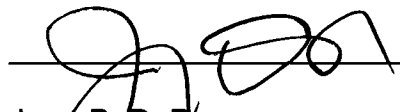
E. For such other relief as the Court deems necessary and appropriate.

1 D. For an order precluding Henry Ruizmeeden from participating or from receiving any
2 benefit that may inherit to the Estate as a result of the surcharge of the bond to
3 Western Surety, and that Henry Ruizmeeden be precluded from participating as an
4 intestate beneficiary of Francisca M. Lopez-Ruiz.

5
6 E. For such other relief as the Court deems necessary and appropriate.
7

8 RESPECTFULLY SUBMITTED this 12 day of February 2018.

9 LAW OFFICE OF JERRY B. DeROSE, P.C.

10 
11 _____
12 Jerry B. DeRose
13 Attorney at Law

14 Original of the foregoing

15 mailed this 12 day of February 2018 to:

16 Clerk of the Court
17 Pinal County Superior Court
18 P.O. Box 2730
19 Florence, AZ 85132

20 Copy mailed this 13 day of February 2018:

21 James J. Osborne Esq.
22 Jones, Skelton & Hochuli P.L.C
23 40 N. Central Suite 2700
24 Phoenix, AZ 85004
25 Attorney for Western Surety Company

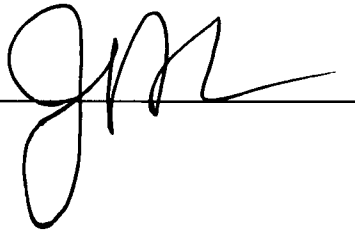
26 Henry Ruizmeeden
27 P.O. Box 231663
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Carlos Ruiz
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By: _____

A handwritten signature in black ink, appearing to be 'CR', written over a horizontal line.