

**READ THIS AND JUDGE.**

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***COUNSEL'S CORNER***

On August 10, 2000, Samuel N. Zagaria, Jr. disappeared from all contact with his family and friends. On July 6, 2009, an Illinois probate court declared that he was “*presumed dead*” and appointed his sister, Joanne Corlett, to administer his estate.

Sam’s estate consisted primarily of a stock account worth \$518,000.

Joanne hired attorneys John Lesch and Thomas McCauley to assist her with her brother’s affairs. The lawyers filed a petition for letters of administration. The probate court, believing that Sam died without a Will, appointed Joanne as independent administrator. Joanne was Sam’s only heir at law.

The attorneys then prepared personal tax returns and recovered unclaimed assets from the State of Illinois. By contacting governmental officials, the attorneys learned that someone using Sam’s name or social security number had filed an application for food stamps at a homeless shelter near Sam’s last known address. And then through researching a state database, the attorneys were convinced that Sam’s death pronouncement was, to borrow a line from Mark Twain, greatly exaggerated.

On June 8, 2010, the lawyers met Sam face-to-face at the shelter for the first time, along with Sam’s counselor, representatives of the shelter, and Sam’s lawyer. Evidently Sam was unwilling to meet with his sister Joanne.

On August 4, 2010, Sam’s lawyer interceded in the probate case to end Joanne’s authority as administrator. The court revoked the presumption of death and Joanne’s authority.

After the estate was closed, Lesch and McCauley filed a petition against Sam for attorneys fees and costs totaling \$30,859. Sam’s lawyer opposed the petition, claiming that the attorneys had breached their fiduciary duty to Sam.

The trial court entered an Order for Lesch and McCauley and imposed a Judgment for \$27,359.

Lesch and McCauley detected that Sam had a new Merrill Lynch account with a balance of \$366,096, so they attempted to recover their fees from the new fund. Presumably Sam's sister had depleted the old brokerage account by some \$150,000, which explains the large difference in value in the two brokerage accounts.

The trial court allowed Lesch and McCauley to recover from the new account. Sam appealed, again claiming (among other matters) that Lesch and McCauley breached their fiduciary duty owing to him.

The appellate court looked to the most recent case it could find where one legally presumed to be dead later returned to claim his property. That case was in 1922, but the theory was the same in 2013, which is that state laws allow one to petition the Court after an unexplained absence for seven years to declare that the individual has died and the estate should be settled. And, dead or alive, the estate is responsible for legal fees and related costs.

Judgment affirmed for lawyers Lesch and McCauley. See *In re Estate of Samuel N. Zagaria, Jr.*; 2013 IL App (1<sup>st</sup>) 122879, September 30, 2013. The attorneys won; Sam lost.

#### Lessons learned:

1. Illinois may not be a great place for wealthy people who are presumed dead but are actually alive. It can be tricky in India too where His Holiness Shri Ashutosh Maharaj was declared clinically dead in January 2014, but his followers believe he has achieved a transcendent state where he is at one with the universe: <http://cir.ca/news/indian-guru-dead-or-meditating>. So his followers are keeping him “*alive*” in a freezer in his ashram. Meanwhile the Punjab High Court has dismissed the police report certifying to his death, ruling instead that his alleged death is a “*spiritual matter*.”
2. Tell your family and friends where you are going. A seven-year absence, at least in Illinois, might have the effect of depleting your financial statement. I don't know if the same rule is true in Texas but I fear it may be. Conversely, I suspect a seven-year absence in India might only allow one to transcend a bit further into the universe. This is presently unclear.
3. Keep your annual vacations to two weeks, tops. Well maybe three. But for sure not more than four. Although, again in India, . . .

Stuart A. Lautin, Esq.\*

\* Board Certified, Commercial (1989) and Residential (1988) Real Estate Law,  
Texas Board of Legal Specialization

Licensed in the States of Texas and New York

Higier Allen & Lautin, PC  
5057 Keller Springs Road, Suite 600  
Addison Texas 75001  
P: 972.716.1888  
E: [slautin@higierallen.com](mailto:slautin@higierallen.com)  
W: [www.higierallen.com](http://www.higierallen.com)



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