

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D26501  
W/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 24, 2009

A. GAIL PRUDENTI, P.J.  
HOWARD MILLER  
CHERYL E. CHAMBERS  
SHERI S. ROMAN, JJ.

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2008-04632

DECISION & ORDER

In the Matter of Howard N. Thomas, a/k/a Howard  
Nolan Thomas, a/k/a Howard Thomas, deceased.  
Nidia E. Thomas, appellant; Christopher L. Campbell,  
respondent.

(File No. 236/01)

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Warren Wynshaw, P.C., Fishkill, N.Y., for appellant.

Christopher L. Campbell, Alameda, California, respondent pro se.

In a probate proceeding in which Nidia E. Thomas petitioned pursuant to SCPA 2205 to compel an accounting, the petitioner appeals from an order of the Surrogate's Court, Putnam County (Rooney, S.), dated May 1, 2008, which, in effect, denied the petition and deemed the right of election previously asserted by her to be a nullity.

ORDERED that the order is affirmed, with costs.

In a companion appeal from an order of the Supreme Court, this Court determined that the petitioner in the instant proceeding forfeited her right to an elective share of the decedent's estate, and that the Supreme Court, therefore, properly, in effect, directed the entry of a judgment declaring that the petitioner "shall have no legal rights and can claim no legal interest as a spouse of [the decedent]" (*see Campbell v Thomas*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]). In light of this determination, the Surrogate's Court, relying on the prior order of the Supreme Court, correctly concluded that the petitioner was not eligible to seek a compulsory accounting under SCPA 2205, since she was not "entitled to share as beneficiary in the estate" (SCPA 103[39]) and, thus, was not a "person interested" within the meaning of SCPA 2205(2)(b). Accordingly, the Surrogate's

March 16, 2010

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Court properly, in effect, denied the petition to compel an accounting and deemed the right of election previously asserted by the petitioner to be a nullity.

PRUDENTI, P.J., MILLER, CHAMBERS and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court