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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 7

HON. B. SCOTT SILVERMAN, JUDGE

IN RE THE MATTER OF )  
LEONARD NORMAN COHEN, )  
PETITIONER, )  
VS. )  
KELLEY ANN LYNCH, )  
RESPONDENT. )

NO. BQ033717

**CERTIFIED  
COPY**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION TO SET ASIDE DV ORDER

SEPTEMBER 1, 2015

APPEARANCES:

FOR PETITIONER: KORY & RICE  
BY: ROBERT B. KORY, ESQ.  
MICHELLE L. RICE, ESQ.  
9300 WILSHIRE BOULEVARD  
SUITE 200  
BEVERLY HILLS, CALIFORNIA 90212

FOR RESPONDENT: IN PROPRIA PERSONA

LISA K. RAU, CSR NO. 10782  
OFFICIAL REPORTER

1           CASE NUMBER:                    BQ033717  
2           CASE NAME:                     COHEN VS. LYNCH  
3           LOS ANGELES, CALIFORNIA    SEPTEMBER 1, 2015  
4           DEPARTMENT 7                 HON. B. SCOTT SILVERMAN, JUDGE  
5           APPEARANCES:                 (AS NOTED ON TITLE PAGE.)  
6           REPORTER:                     LISA K. RAU, CSR NO. 10782  
7           TIME:                         A.M. SESSION

8  
9   (THE FOLLOWING PROCEEDINGS WERE HELD IN  
10                                        OPEN COURT:)

11  
12                                        THE COURT:   NUMBER 20, COHEN VERSUS LYNCH.  
13           APPEARANCES, PLEASE.

14                                        MS. RICE:   GOOD MORNING, YOUR HONOR.   MICHELLE RICE  
15           FOR THE PLAINTIFF.   AND THIS IS MY LAW PARTNER, ROBERT  
16           KORY.

17                                        THE COURT:   YOUR NAME PLEASE?

18                                        THE RESPONDENT:   KELLEY LYNCH.

19                                        THE COURT:   HAVE A SEAT, PLEASE.   THIS IS A MOTION  
20           BY THE RESPONDENT TO SET ASIDE THE REGISTRATION OF THE  
21           DOMESTIC VIOLENCE RESTRAINING ORDER -- TO SET ASIDE A  
22           RESTRAINING ORDER THAT'S BEEN REGISTERED IN CALIFORNIA,  
23           ORIGINALLY ISSUED IN COLORADO.

24                                        I'VE READ ALL THE PAPERS THAT ALL THE PARTIES  
25           HAVE SUBMITTED AND EXHIBITS AND LOOKED AT IT QUITE  
26           CAREFULLY.   THE TENTATIVE IS TO DENY THE MOTION FOR A  
27           NUMBER OF REASONS.

28                                        FIRST, THAT UNDER CCP 473(B) IT IS UNTIMELY.

1 IT WAS NOT BROUGHT WITHIN SIX MONTHS OF ENTRY OF THE ORDER  
2 OR THE RESPONDENT'S KNOWLEDGE OF ENTRY OF THE ORDER.

3 SECOND, THE MOTION IS BASED ON GROUNDS THAT  
4 WERE OR COULD HAVE BEEN RAISED DURING THE CRIMINAL  
5 PROCEEDINGS THAT OCCURRED IN CALIFORNIA IN WHICH THE ORDER  
6 WAS ACTUALLY ENFORCED AND BOTH THE APPEAL AND THE HABEAS  
7 CORPUS PETITION.

8 AND, THEREFORE, THE GROUNDS ASSERTED HAVE  
9 EITHER BEEN ADJUDICATED AND THE RESPONDENT IS COLLATERALLY  
10 ESTOPPED, OR THEY'VE BEEN WAIVED AS A RESULT OF THE  
11 FAILURE TO BRING THEM.

12 AND THEN, FINALLY, WITH RESPECT TO MANY OF THE  
13 ARGUMENTS, INCLUDING THAT IT IS NOT A DOMESTIC RELATIONS  
14 ORDER, THE EVIDENCE ESTABLISHES THAT IT IS UNDER  
15 CALIFORNIA LAW.

16 SO THAT'S MY TENTATIVE. THE COURT NOTES FOR  
17 THE RECORD THAT THE RESPONDENT WAS PROSECUTED FOR  
18 VIOLATING THIS ORDER IN CALIFORNIA AFTER THE REGISTRATION  
19 OF THE ORDER; THAT SHE WAS FOUND GUILTY OF FIVE COUNTS OF  
20 VIOLATION; AND, IN FACT, A SENTENCE WAS IMPOSED UPON HER;  
21 THAT SUBSEQUENTLY THAT MATTER WAS APPEALED, AND THE APPEAL  
22 LED TO THE AFFIRMANCE OF THE CONVICTIONS; AND A HABEAS  
23 CORPUS PETITION WAS FILED AND THAT THAT HABEAS CORPUS  
24 PETITION WAS DENIED.

25 SO THE VARIOUS GROUNDS ASSERTED, FOR THE  
26 REASONS EXPRESSED, I DON'T THINK ENTITLE THIS COURT TO  
27 OVERTURN THE ORDER AT THIS POINT.

28 MS. LYNCH, YOU WANT TO SAY ANYTHING TO ME?

1           **THE RESPONDENT:** WELL, I DO THINK THERE IS A STATUTE  
2 THAT REQUIRES A DATING OR ENGAGEMENT RELATIONSHIP. AND  
3 THE BOULDER ORDER IS NOT DOMESTIC VIOLENCE, SIR.

4           AND I HAVE HEARD WHAT YOU SAID, AND I DID NOT  
5 DISCOVER THAT THIS WAS REGISTERED AS A DOMESTIC VIOLENCE  
6 ORDER UNTIL -- EXCUSE ME -- UNTIL THE SPRING OF 2013.

7           I THEN HAD TO INVESTIGATE THE MATTER WITH  
8 BOULDER. I DIDN'T HEAR FROM THEM IN WRITING UNTIL APRIL  
9 OF 2014.

10           AND THE JUDICIAL COUNCIL, WHO CREATES THESE  
11 FORMS, TOLD ME IN NO UNCERTAIN TERMS THAT THIS CANNOT BE  
12 REGISTERED IN CALIFORNIA'S DOMESTIC VIOLENCE ORDER IF IT  
13 IS NOT A DOMESTIC VIOLENCE ORDER IN COLORADO.

14           I MEAN, I DON'T UNDERSTAND THE REASON FOR THE  
15 STATUTE CALLING FOR A DATING OR ENGAGEMENT RELATIONSHIP.  
16 AND I DON'T MEAN ANY OFFENSE TO YOU, SIR, BUT I TAKE GREAT  
17 OFFENSE AT BEING ASSIGNED A DATING RELATIONSHIP WITH A MAN  
18 THAT SEXUALLY HARASSED ME, EXPOSED HIMSELF TO ME, HAS  
19 WITHHELD TAX INFORMATION.

20           AND I DON'T UNDERSTAND HOW THIS HAPPENS  
21 WITHOUT ANY TYPE OF DATING OR ENGAGEMENT RELATIONSHIP.

22           **THE COURT:** ALL RIGHT. THANK YOU.

23           **THE RESPONDENT:** YOU'RE WELCOME.

24           **THE COURT:** DO YOU WISH TO RESPOND, MS. RICE?

25           **MS. RICE:** WELL, I MEAN, YOUR HONOR, MS. LYNCH IS  
26 TRYING TO MISCHARACTERIZE THE COLORADO ORDER AS A CIVIL  
27 HARASSMENT ORDER IN HER PAPERS. IT WAS ISSUED UNDER THE  
28 ANTI-STALKING LAWS OF COLORADO.

1                   AND SO THE CLEAR -- IN MS. LYNCH'S MOVING  
2 PAPERS, SHE IGNORES THE MANDATORY RECOGNITION OF THE  
3 OUT-OF-STATE ORDER UNDER FAMILY CODE SIXTY-FOUR OH ONE  
4 FIVE, WHICH ACTUALLY INCLUDES ANTI-STALKING LAWS OF THE  
5 ISSUING STATE.

6                   AND MS. LYNCH IN HER MOVING PAPERS ACTUALLY  
7 ACKNOWLEDGES AND QUOTES FROM MR. COHEN'S VERIFIED CIVIL  
8 PETITION THAT IT WAS SOUGHT IN COLORADO IN 2008 ON THE  
9 BASIS OF STALKING AND ANTI-STALKING LAWS.

10                   YOU KNOW, WITH REGARD TO HER ARGUMENT ABOUT  
11 THE ASSIGNMENT OF A DATING RELATIONSHIP, THAT ISSUE, AS  
12 YOUR HONOR HAS RECOGNIZED, HAS BEEN LITIGATED AND  
13 ADJUDICATED IN THE PRIOR CRIMINAL PROCEEDING.

14                   THERE WAS TESTIMONY. MS. LYNCH HAD A CHANCE  
15 TO TESTIFY IN HER OWN DEFENSE IN THAT PROCEEDING, AND SHE  
16 WAS SENTENCED UNDER THE ANTI -- THE ANTI -- I'M SORRY --  
17 DOMESTIC VIOLENCE LAWS OF CALIFORNIA. AND IT'S BEEN  
18 APPEALED AND IT'S A FINAL CRIMINAL JUDGMENT.

19                   I WOULD ALSO NOTE THAT SHE IS, YOU KNOW,  
20 WANTING TO VACATE THE CRIMINAL PROTECTIVE ORDERS THAT WERE  
21 ISSUED THROUGH HER SENTENCING, AND SHE DIDN'T PROVIDE THE  
22 COURT WITH THOSE ORDERS.

23                   BUT I DO HAVE COPIES OF THOSE, BUT IT'S THE  
24 INCORRECT PROCEDURAL DEVICE TO TRY TO VACATE CRIMINAL  
25 PROTECTIVE ORDERS UNDER PENAL CODE 136.2.

26                   SO, YOU KNOW, I SUBMIT ON OUR PAPERS. I THINK  
27 IT'S PRETTY CLEAR THAT THE -- HER ARGUMENTS HAVE ALREADY  
28 BEEN ADJUDICATED.

1           **THE COURT:** AS TO YOUR CLAIM, MS. LYNCH, THAT YOU  
2 WEREN'T AWARE, THE FACT OF THE MATTER IS YOU BECAME AWARE  
3 THAT A PROTECTIVE ORDER WAS BEING ENFORCED AGAINST YOU AT  
4 LEAST AT THE TIME IN 2012 WHEN YOU WERE PROSECUTED FOR  
5 VIOLATING THE ORDER.

6           WHETHER YOU UNDERSTOOD POSSIBLE ARGUMENTS THAT  
7 YOU MIGHT HAVE AS TO THE VALIDITY OF THAT ORDER IS NOT A  
8 BASIS FOR A BELATED MOTION UNDER 473(B) TO SET IT ASIDE  
9 AND DOESN'T EXCUSE THE FAILURE TO HAVE RAISED THESE ISSUES  
10 IN A CRIMINAL PROCEEDING WHEN YOU HAD AN OPPORTUNITY TO DO  
11 SO.

12           SO THE ARGUMENTS THAT YOU MADE, AS I SAID, ARE  
13 NOT GROUNDS, I THINK, FOR SETTING IT ASIDE. AT THIS  
14 POINT, THERE IS AN ORDER. IT'S BEEN UPHELD BY AN  
15 APPROPRIATE COURT AFTER ELABORATE AND FULL DUE PROCESS  
16 PROCEEDINGS AND --

17           **MS. RICE:** AND THE COLORADO ORDER IS STILL VALID AND  
18 SUBSISTING, YOUR HONOR, DESPITE MS. LYNCH'S CORRESPONDENCE  
19 WITH THE COLORADO BOULDER COURT. I THINK IT'S PRETTY  
20 CLEAR THAT IT'S A LIFETIME ORDER OF PROTECTION. IT SAYS  
21 VERY CLEARLY ON THE FACE OF THE ORDER IN COLORADO THAT  
22 IT'S VALID AND SUBSISTING. SO...

23           **THE RESPONDENT:** I NEVER SAID IT WASN'T.

24           **THE COURT:** YOUR REFERENCE TO THE JUDICIAL COUNCIL'S  
25 COMMENTS, IT'S NEITHER EVIDENCE NOR AUTHORITY THAT BINDS  
26 THIS COURT. SO IT'S, FRANKLY, NOT SIGNIFICANT TO ME. THE  
27 JUDICIAL COUNCIL, FRANKLY, DOES NOT RENDER OPINIONS AS  
28 MATTERS OF LAW. THEY JUST -- WELL, AND SO FOR THAT

1 REASON --

2 THE RESPONDENT: COULD I ASK A QUESTION?

3 THE COURT: LET ME MAKE ONE OTHER COMMENT.

4 THE RESPONDENT: OKAY.

5 THE COURT: MS. RICE DID APPROPRIATELY POINT OUT  
6 THAT YOU DID ARGUE THAT SOMEHOW CERTAIN OF THE SENTENCING  
7 ORDERS THAT WERE MADE I SHOULD SET ASIDE.

8 I'M THE WRONG COURT TO SPEAK TO ABOUT THAT  
9 EVEN IF THE RIGHT TO MAKE THOSE -- THAT COLLATERAL ATTACK  
10 WERE TIMELY. THAT'S A MATTER FOR THE CRIMINAL COURT THAT  
11 SENTENCED YOU. AND, FRANKLY, IT WAS A MATTER FOR THE  
12 APPELLATE COURT TO DEAL WITH HAD YOU WANTED TO RAISE IT AT  
13 THAT POINT. SO, FOR THAT REASON TOO, IT'S NOT SOMETHING I  
14 CAN DO.

15 NOW, YOU HAVE A QUESTION?

16 THE RESPONDENT: I DO HAVE A QUESTION. LEONARD  
17 COHEN IN 2005 HAD OBTAINED A CIVIL HARASSMENT ORDER  
18 AGAINST ME THAT WAS NOT DOMESTIC VIOLENCE. AND, I MEAN,  
19 IS THERE A REASON THAT WE HAVE DOMESTIC VIOLENCE LAWS  
20 VERSUS A CIVIL HARASSMENT RESTRAINING ORDER? I MEAN, I  
21 DON'T UNDERSTAND THIS AT ALL.

22 AND THE COLORADO COURT HAS BEEN VERY CLEAR  
23 THAT THIS IS NOT A DOMESTIC VIOLENCE ORDER. FURTHERMORE,  
24 YOUR HONOR, THERE WERE NO FINDINGS WHATSOEVER AT THAT  
25 HEARING.

26 THE COURT: AGAIN, MA'AM, YOU HAD FULL AND FAIR  
27 OPPORTUNITY TO LITIGATE THIS QUESTION HAD YOU CHOSEN TO DO  
28 SO.

1 THE RESPONDENT: WELL, I WAS UNAWARE OF IT.

2 THE COURT: WELL, THAT MAY BE THE FAULT OF YOURS OR  
3 YOUR LAWYERS.

4 THE RESPONDENT: THEY WERE UNAWARE OF IT. I JUST  
5 TALKED TO THEM THE OTHER DAY.

6 THE COURT: THEN HE MAY BE AT FAULT FOR NOT HAVING  
7 RAISED IT. BUT YOU HAD THE OPPORTUNITY AND BECAUSE OF  
8 THAT, YOU CAN'T COLLATERALLY ATTACK IT NOW. MOTION IS  
9 DENIED.

10 THE RESPONDENT: SO PERJURY IS ACCEPTABLE.

11 THE COURT: MOTION IS DENIED, MA'AM.

12 I WANT A NOTICE OF RULING, IF YOU WOULD --

13 MS. RICE: SURE. ABSOLUTELY.

14 THE COURT: -- SERVE ONE.

15 MS. RICE: WE DID SUBMIT A PROPOSED ORDER, BUT YOU  
16 STILL WANT A NOTICE OF RULING?

17 THE COURT: YEAH, JUST A NOTICE OF RULING.

18 MS. RICE: THANK YOU, YOUR HONOR.

19 THE COURT: THANK YOU.

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21 (PROCEEDINGS CONCLUDED.)

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NO. BQ033717

REPORTER'S  
CERTIFICATE

I, LISA K. RAU, CSR NO. 10782, OFFICIAL REPORTER  
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE  
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE  
FOREGOING PAGES COMPRISE A FULL, TRUE AND CORRECT  
TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE  
MATTER OF THE ABOVE-ENTITLED CAUSE ON SEPTEMBER 1, 2015.

DATED THIS 4 DAY OF September 2015.

Lisa K Rau, CSR NO. 10782  
LISA K. RAU, OFFICIAL REPORTER