

Mann v Memorial Hosp. for Cancer & Allied Diseases
2011 NY Slip Op 32937(U)
November 4, 2011
Sup Ct, NY County
Docket Number: 112877/07
Judge: Alice Schlesinger
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

IA PART 16
PART _____

PRESENT: ALICE SCHLESINGER

Justice

Index Number : 110225/2005
MANN, TERRANCE L.
vs
MEMORIAL HOSPITAL FOR CANCER
Sequence Number : 008
OTHER

FILED

NOV 07 2011

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **NEW YORK COUNTY CLERK'S OFFICE** | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted and the settlement is approved in accordance with the accompanying long-form order. Plaintiff has established his entitlement to the requested relief, and defendant has no opposition.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

NOV 04 2011

NOV 07 2011

Dated: November 4, 2011



ALICE SCHLESINGER, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

At a Trial/IAS Part ¹⁶ of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on this 4th day of November 2011

P R E S E N T :

Hon. ALICE SCHLESINGER
, J.S.C.

X Index No.: 112877/07

TERRANCE L. MANN, as Executor of the Estate
of ANNA MANN, deceased, and TERRANCE L. MANN,
as Executor of the Estate of BRUCE MANN,

Plaintiffs,

- against -

MEMORIAL HOSPITAL FOR CANCER AND
ALLIED DISEASES, MEMORIAL SLOAN-KETTERING
CANCER CENTER, PHYLISS HUVOS, as Executrix
of the Estate of ANDREW HUVOS, M.D., deceased,
and JOHN DOE, M.D., the true name of this physician
being currently unknown to Plaintiff at this time

Defendants.

ORDER

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NEW YORK
COUNTY CLERK'S OFFICE

UPON the Motion of Gersowitz, Libo & Korek, P.C., attorneys for Plaintiff, and the Affirmation of MICHAEL A. FRUHLING, ESQ., of Gersowitz, Libo & Korek, P.C., attorneys for Plaintiff, duly affirmed on 12th day of September, 2011 for an Order: (1) approving the settlement in the amount of Four Hundred Ninety-Nine Thousand Five Hundred (\$499,500.00) Dollars; (2) approving refundable disbursements in the total amount of Twenty-One Thousand, Two Hundred Thirty-Five Dollars and Six Cents (\$21,235.06); (3) approving attorney's fees in the total amount of One Hundred Thirty-Two Thousand, Sixty-Six Dollars and Twenty-Four Cents (\$132,066.24); (4) discontinuing the cause of action for loss of consortium with prejudice and without any payment being made for said cause of action; (5) permitting the Executor,

Terrance Mann, to execute general releases and other documents necessary to effectuate the settlement of the above entitled action; (6) permitting and allowing Gersowitz, Libo & Korek, P.C., to collect their fees and legal disbursements; (7) directing the Defendant, Estate of Andrew Huvos, to tender payment of the settlement funds within 30 days of receipt of the general releases; (8) directing that Gersowitz, Libo & Korek, P.C., hold the remaining cash portion of the settlement in escrow, until such time that the Pennsylvania Surrogate's Court, Lehigh County, directs the allocation and distribution thereof; (9) permitting Gersowitz, Libo & Korek, P.C., to pay any associated expenses of the Surrogate's Court, Lehigh County, related to the Estate of Anna Mann out of the net settlement proceeds due and owing to the Estate of Anna Mann; (10) remanding the remainder of the Estate proceedings to the Pennsylvania Surrogate's Court, Lehigh County.

AND, upon the Affidavit of Plaintiff, TERRANCE MANN, duly sworn to on the 9th day of September, 2011,

AND, the cause of action asserted against Defendants, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES and MEMORIAL SLOAN KETTERING CANCER CENTER, has been discontinued with prejudice, and

The Court having reviewed the motion papers and exhibits thereto and for good cause shown, it is

ORDERED that the application for leave to compromise and settle the above entitled action in the present value amount of FOUR HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED (\$499,500.00) DOLLARS is granted; it is further

ORDERED that the settlement provided herein is in the best interests of the estate; it is further

ORDERED that TERRANCE MANN, as Executor of the Estate of ANNA MANN, be and is hereby authorized and permitted to settle and compromise the above entitled action for the conscious pain and suffering of the decedent and it is further

ORDERED that cause of action for brought by Plaintiff, BRUCE MANN, for the loss of consortium and services of his wife, ANNA MANN, is hereby dismissed with prejudiced without any payment being made by the Defendant, PHYLISS HUVOS, as Executrix of the Estate of ANDREW HUVOS, M.D., deceased; and it is further

ORDERED that TERRANCE MANN, as Executor of the Estate of ANNA MANN, is hereby authorized to execute and deliver a General Releases, together with any other papers necessary to effectuate the settlement to the Defendant, PHYLISS HUVOS, as Executrix of the Estate of ANDREW HUVOS, M.D., and / or her counsel, and it is further,

ORDERED that within 21 days of receipt of the executed closing documents, Defendant, PHYLISS HUVOS, as Executrix of the Estate of ANDREW HUVOS, M.D., shall pay the sum of FOUR HUNDRED NINETY-NINE THOUSAND FIVE HUNDRED (\$499,500.00) DOLLARS, and it is further

ORDERED that the settlement drafts shall be made payable to Gersowitz, Libo & Korek, P.C., as Attorneys for the Estate of ANNA MANN, it is further

ORDERED that upon receipt of the cash portion of the aforesated settlement sums, Gersowitz, Libo & Korek, P.C., shall deposit said sum into an interest bearing escrow account, in the name of the Estate of ANNA MANN; it is further

ORDERED that Gersowitz, Libo & Korek, P.C., is awarded the sum of Twenty-One Thousand, Two Hundred Thirty-Five Dollars and Six Cents (\$21,235.06) as and for reimbursement of their refundable disbursements; it is further

ORDERED that Gersowitz, Libo & Korek, P.C., is awarded the sum of One Hundred Thirty-Two Thousand, Sixty-Six Dollars and Twenty-Four Cents (\$132,066.24) as and for their attorney's fees in this matter; it is further

ORDERED that the Law Firm of Gersowitz, Libo & Korek, P.C., be reimbursed the sum or \$1,157.25 related to the expenses and attorney's fees they paid arising out of the probate of Anna Mann's will; and it is further

ORDERED that upon submission of this matter to the attorneys in Pennsylvania who will complete the probate of the Estate of Anna Mann, Gersowitz, Libo & Korek, P.C., is permitted to collect their refundable disbursements and attorney's fees; it is further

ORDERED that the remaining settlement proceeds shall be set apart for the Plaintiff and the distributees, in an interest bearing escrow account, so that they may be drawn upon until such order of the Orphan's Court for the County of Lehigh Pennsylvania; it is further

ORDERED that no other funds may be transferred to this escrow account, other than in the payments made by said Defendant, PHYLISS HUVOS, as Executrix of the Estate of ANDREW HUVOS, M.D., to fully satisfy the claims of the within action, and the Plaintiff and / or distributees shall not have any right to demand or receive any portion of the account funds or to mortgage, pledge, or encumber same in any manner; it is further

ORDERED that Gersowitz, Libo & Korek, P.C., is permitted to pay any associated expenses of the Orphan's Court for the County of Lehigh Pennsylvania related to the Estate of Anna Mann, out of the net settlement proceeds of the Estate of Anna Mann; and it is further

ORDERED that at this stage the giving of a bond or other security in connection therewith be dispensed with; and it is further

ORDERED that upon payment of the aforestated settlement proceeds, the Defendant, PHYLISS HUVOS, as Executrix of the Estate of ANDREW HUVOS, M.D., her, agents, servants and / or employees, her counsel, Kopff, Nardelli & Dopf, LLP., and / or her insurance carrier, shall be completely released and discharged from any further liability or obligation to the Plaintiff, and / or the distributees of the Estate of ANNA MANN, with respect to any and all present and future claims arising out of the occurrence by brought by Terrance Mann, as Executor of the Estate of Anna Mann, as a result of the personal injuries, and /or physical sickness alleged in the lawsuit, and any individual claims brought on behalf of the deceased Plaintiff, Bruce Mann, or the lawful distributees of Anna Mann and Bruce Mann; it is further

ORDERED that the all other matters regarding the Estate of Anna Mann are hereby remanded to the Orphan's Court for the County of Lehigh Pennsylvania.

FILED

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ENTER:



J. S. C.

ALICE SCHLESINGER

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