

**Hillside Manor Rehabilitation & Extended Care Ctr.,  
LLC v Williams**

2011 NY Slip Op 33319(U)

June 16, 2011

Civil Court of the City of New York, Queens County

Docket Number: CV-094849-09

Judge: Cheree A. Buggs

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**Civil Court of the City of New York  
County of Queens**

Part 34

**Index Number CV-094849-09**

**Motion Cal # 2 Motion Seq. # \_\_\_\_\_**

Papers Submitted to Special Term on: 4/26/2011

HILLSIDE MANOR REHABILITATION  
AND EXTENDED CARE CENTER, LLC.,  
d/b/a HILLSIDE MANOR NURSING CENTER,

Plaintiff,

against

BEVERLY WILLIAMS,

Defendant.

**DECISION/ORDER**

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

| Papers                                       | Numbered          |
|--|-------------------|
| Notice of Motion and Affidavits Annexed..... | <u>1</u>          |
| Answering Affidavits.....                    | <u>2</u>          |
| Replying Affidavits.....                     | <u>3</u>          |
| Exhibits.....                                | <u>          </u> |
| Other.....                                   | <u>          </u> |

Upon the foregoing cited papers the decision on the plaintiff's motion to compel responses to its discovery demands pursuant to CPLR § 3124 is as follows:

The plaintiff, Hillside Manor Rehabilitation and Extended Care Center, LLC. d/b/a Hillside Manor Nursing Center, ("Hillside"), initiated this action against defendant Beverly Williams ("Williams"), alleging that the defendant breached Hillside's Admission Agreement, which she allegedly entered into her mother, Bessie Williams, was admitted to the facility on October 28, 2003. Williams allegedly signed the agreement as her mother's designated representative. Hillside filed a Summons and Complaint on May 8, 2008, seeking \$19,815.81, together with interest, costs, and attorney's fees from September 21, 2006. Williams, then self-represented, filed an answer on August 18, 2009, alleging that she did not owe the debt. Williams is now represented by counsel. Based upon the evidence submitted, Bessie Williams, was admitted to Hillside on October 28, 2003 until her apparent death on September 21, 2006.

According to the record, Hillside originally filed a motion to compel Williams' responses to its discovery demands on February 4, 2010, which was on the Court calendar on February 25, 2010. Williams, then self-represented, failed to appear on that date. Honorable Jodi Orlow granted Hillside's motion, without opposition and directed that Hillside serve a copy of the order upon Williams within ten days of the date of the order with a copy of the notice of entry.

In the Court's decision which was rendered after a bench trial titled *Hillside Manor Rehabilitation and Extended Care Center, LLC, v Barnes* (27 Misc 3d 1229[A], 2010 NY Slip Op 50966[U] [Civ. Ct. Queens County 2010, Buggs, J.], this Court held that federal and state regulations specifically prohibit nursing homes from

requiring a third party personal guarantee of payment as a condition of the resident's admission. A person with legal access to the resident's assets to pay the nursing home from the resident's funds can sign a contract without incurring personal financial liability. In the aforementioned case, the defendant did not execute any written contract with the nursing home upon the admission of her mother. However, here, where Williams executed an agreement, she could be held liable if Hillside can prove that Williams acted as a representative or trustee to receive benefits on behalf of her mother to pay plaintiff and that she had access to her mother's assets and converted the assets or that she directly received any of her assets, which should have been used to pay Hillside (*Wedgewood Care Ctr., Inc., v McGloin*, 2002 NY Slip Op 40545[U] [App Term, 1<sup>st</sup> Dept 2002]; *Amsterdam Nursing Home Corp. v Lang*, 16 Misc 3d 1138[A], 2007 NY Slip Op 51727[U] [Sup. Ct. NY County 2007, Ling-Cohan, J.]).

Based upon the evidence presented, Bessie Williams's nursing home application was denied and she was found ineligible for Medicaid on June 11, 2004. According to the decision of the Human Resources Administration, ("HRA") Bessie Williams was denied due to the fact her resources exceeded her household size. The HRA denial letter indicated that Bessie Williams had an Emigrant Bank account, and based upon the amount in the account and in factoring in HRA's allowable asset level and funeral expenses, her assets were in excess of \$15,000.00. Williams assigned the right to appeal the denial of Medicaid benefits to Hillside and at this juncture, it is not clear whether the decision was appealed. HRA requested information related to the lease or co-op share for an apartment located in Manhattan. According to a document submitted in Hillside's papers, Williams gave Hillside a security interest in the account as of October 28, 2003.

In response to Hillside's discovery demands, Williams stated that she did not have a power of attorney for her mother, however, she shared a joint account at Emigrant Bank. Williams provided Hillside with copies of the Emigrant passbook beginning September 1, 2005, although Hillside requested information beginning in the year 2000. Based upon copies of the Emigrant Bank passbook provided by Williams, on February 22, 2006, a substantial deposit of \$10,912.00 was made to the joint account. A substantial withdrawal or transfer in the amount of \$6,000.00 was made from the account on March 16, 2006. Although Williams claimed that the money in the joint account was hers, deposits made into a joint account creates a joint tenancy, thus, there exists a presumption that the joint depositor is, at minimum, the owner of one half of the proceeds of the joint account (*see generally* Banking Law § 675). In one of her responses, Williams stated that she was not the only person with access to the account.

Addressing the merits of Hillside's motion to compel discovery, since Williams failed to timely respond or

move for a protective order, at this juncture, she must respond to Hillside's discovery demands, except to the extent that the Court finds that the disclosure is privileged or palpably improper. (CPLR§3103; *see also* CPLR 3122 [a], 3133 [a]; *Fausto v City of New York*, 17 AD3d 520 [2005]; *Radiology Today, P.C. v Geico Gen. Ins. Co.*, 2011 NY Slip Op 21161 [App Term, 2d, 11th & 13th Jud Dists 2011]; *Midborough Acupuncture, P.C. v State Farm Ins. Co.*, 21 Misc 3d 10, 2008 NY Slip Op 28291 [App Term, 2d & 11th Jud Dists 2008]). The party asserting privilege bears the burden of demonstrating that the material sought is immune from disclosure (*New York Mar. & Gen. Ins. Co. v Sirius Am. Ins. Co.*, 83 AD3d 1019 [2011]).

The use of the term "all" in Hillside's discovery requests has been held to be an improper request due to the lack of specificity, however, Williams failed to timely object and moreover, the lack of specificity should be overlooked in circumstances where the discovery demand is "directed at limited and specific subject matter" (*Seattle Pacific Indus. Inc., v Golden Valley Realty Assocs.*, 54 AD3d 930, 933 [2008]).

Here, Hillside alleged that defendant failed to completely comply with its discovery demand dated August 31, 2009, despite a previous Court Order of Honorable Jodi Orlow dated February 25, 2010, when Hillside's motion to compel discovery was granted without opposition. Williams, who is now represented by counsel, failed to move to vacate the default in opposing the motion. Williams responded to Hillside's discovery demands by objecting, and over objection, responded to many items which were requested, as to her decedent mother, but failed to respond to discovery requests directed to her.

Hillside is not entitled to unlimited and uncontrolled disclosure (*Geffner v Mercy Med. Ctr.*, 83 AD3d 998 [2011]). The Court has discretion to supervise the discovery process (*id.*). Ordinarily, a person cannot be compelled to produce documents belonging to a non-party which are not in the person's control or possession (*Corriel v Volkswagen of America, Inc.*, 127 AD2d 729 [1987]).

Since Williams mother, Bessie Williams passed on September 21, 2006, the Court is limiting the plaintiff's schedule for discovery, inspection and copying for documents in existence from January 1, 2000 until December 31, 2007, except, Williams must provide her passbook statements from January 1, 2000 up to an including the time when the account was closed in 2008, or state in her affidavit why the passbook statements cannot be provided.

The Court finds that Williams has adequately responded to Hillside's Notice for Discovery and Inspection as to item numbers 1, 4, 5, 8, 10, 11, 12 and 13. Williams is directed to respond to item numbers 2, 3, 6, 7 within sixty (60) days of the date of this Order with Notice of Entry.

As to item number 9, which is the "schedule of items to be produced for Discovery and Inspection", since

Williams mother, Bessie Williams passed on September 21, 2006, the Court is limiting the plaintiff's schedule for discovery, inspection and copying for documents in existence from January 1, 2000 until December 31, 2007. Williams recently submitted a response to item number 9 on April 1, 2011, a copy of which was annexed to her opposition papers. The majority of these demands were responded to as to Bessie Williams. The Court finds that Williams has adequately responded to item numbers v, vi, vii, x, xi, xii, xiii (duplicative request), xiv, xv, xvi, xvii. As to item number i, Hillside's demand for Bessie Williams and Williams' tax returns, income tax returns are not discoverable without a factual showing of special circumstances or that they are material to the case and the information sought is unavailable from another sources (*Banigan v Hill*, 57 AD3d 463 [2008]; *Midborough Acupuncture, P.C. v State Farm Ins. Co.*, 21 Misc 3d 10, 2008 NY Slip Op 28291 [App Term, 2d & 11th Jud Dists 2008]). Williams' tax returns can be directed to be produced under special circumstances, which do not exist here (*New Era Acupuncture, P.C. v State Farm Ins. Co.*, 24 Misc 3d 134[A], 2009 NY Slip Op 51396[U] [App Term, 9th & 10th Jud Dists 2009]). Hillside has not made a showing that any relevant information which could be contained in William's tax return could not be acquired from alternative sources (*see generally McKanic v Amigos Del Museo Del Barrio*, 74 AD3d 639 [2010]). However, since Judge Orlow has already directed that Williams produce a copy of her tax returns, Williams is directed to provide copies of her tax returns for the years 2000-2007, however, to the Court within 60 days of this Order for an in-camera inspection.

As to item number ii, the Court is limiting Williams responses, and she is directed to provide copies of her wage statements/paycheck stubs from 2000-2007. As to item number iii Williams is directed to respond as to herself; Williams is directed to respond as to item number iv and provide information as to any loans and life insurance to which she was her mother's beneficiary. As to item numbers viii, ix, xi, and xviii, Williams is directed to respond to these items as to herself as to the years 2000-2007.

As to Hillside's First Set of Interrogatories, Williams' response is limited, unless otherwise specified to the time period of 2000-2007. The Court finds that Williams adequately responded to item numbers 5, 10, 11, 12, 13, 14, 15, 16. Williams is directed to respond to item numbers 1, 3, 9 and 17. As to item numbers 4, 6 & 7, Williams is directed provide a more specific response to item number 6 and as to item numbers 4 & 6, to state whether anyone besides herself had access to the joint account. As to item number 2, Williams is directed to respond as to January 1, 2000 up to October 31, 2006. As to item number 8, Williams is directed to provide a more specific response (if Williams' mother died in September 2006, then she would ordinarily become the owner of the joint account thereafter).

Williams is directed to provide these responses within sixty (60) days of the date of this Order or provide a sworn affidavit attesting to a good faith search for the documents and an explanation as to why the documents cannot be provided. Hillside is directed to serve a copy of this Order with notice of entry within twenty (20) days of the date of this order. Williams' failure to comply with the Order may result in sanctions, including preclusion at the time of Trial.

Therefore, the plaintiff's motion is granted to the aforementioned extent.

The foregoing constitutes the Decision and Order of the Court.

6/16/11

**Date**

/s/

**HON. CHEREÉ A. BUGGS**

**Judge of the Civil Court of the City of New York  
County of Queens**