

**People v Abraham Operations Assoc. LLC**

2023 NY Slip Op 32592(U)

July 27, 2023

Supreme Court, New York County

Docket Number: Index No. 451549/2023

Judge: Melissa A. Crane

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MELISSA A. CRANE** PART **60M**

*Justice*

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  
YORK,

Plaintiff,

- v -

ABRAHAM OPERATIONS ASSOCIATES LLC DBA BETH  
ABRAHAM CENTER FOR REHABILITATION AND  
NURSING, DELAWARE OPERATIONS ASSOCIATES LLC  
DBA BUFFALO CENTER FOR REHABILITATION AND  
NURSING, HOLLIS OPERATING CO LLC DBA  
HOLLISWOOD CENTER FOR REHABILITATION AND  
HEALTHCARE, SCHNUR OPERATIONS ASSOCIATES  
LLC DBA MARTINE CENTER FOR REHABILITATION AND  
NURSING, LIGHT PROPERTY HOLDINGS ASSOCIATES  
LLC, DELAWARE REAL PROPERTY ASSOCIATES  
LLC, HOLLIS REAL ESTATE CO LLC, LIGHT  
OPERATIONAL HOLDINGS ASSOCIATES LLC, LIGHT  
PROPERTY HOLDINGS II ASSOCIATES LLC, CENTERS  
FOR CARE LLC DBA CENTERS HEALTH CARE, CFSC  
DOWNSTATE LLC, BIS FUNDING CAPITAL LLC, SKILLED  
STAFFING LLC, KENNETH ROZENBERG, DARYL  
HAGLER, BETH ROZENBERG, JEFFREY SICKLICK, LEO  
LERNER, REUVEN KAUFMAN, AMIR ABRAMCHIK, DAVID  
GREENBERG, ELLIOT KAHAN, SOL BLUMENFELD,  
ARON GITTLESON, AHARON LANTZITSKY, JONATHAN  
HAGLER, MORDECHAI MOTI HELLMAN

Defendant.

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INDEX NO. 451549/2023  
MOTION DATE N/A  
MOTION SEQ. NO. 001

**Decision and Order  
Imposing Independent  
Financial Monitor**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327,

328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 690, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 722, 724, 725, 726, 727, 728, 740

were read on this motion to/for

MISC. SPECIAL PROCEEDINGS

On July 21, 2023, this court granted that part of the Attorney General's application for the imposition of an independent health monitor [*see* EDOC 740]. Now, the court also grants that part of the Attorney General's motion for the appointment of an independent financial monitor. The Attorney General has demonstrated likelihood of success on the merits that respondents have engaged in repeated and persistent fraud in violation of Executive Law § 63(12). The balance of the equities also favors Petitioner because Petitioner has demonstrated that Respondents siphoned government funds that they could have used to give their nursing home patients adequate care. The Attorney General need not show irreparable harm (*see City of New York v Beam Bike Corp.*, 206 AD3d 447, 448 [1st Dept 2014]), but, in any event, it has done so. The fraudulent schemes the Attorney General has uncovered are so raveled together that there is no way of preventing further siphoning without the imposition of an independent financial monitor.

Under Executive Law § 63(12):

[w]hensoever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business activity or of any fraudulent or illegal acts, directing restitution and damages and, in an appropriate case, canceling any certificate filed under and by virtue of the provisions of section four hundred forty of the former penal law or section one hundred thirty of the general business law, and the court may award the relief applied for or so much thereof as it may deem proper.

Section 63(12) “broadly constru[es] the definition of fraud so as to include acts characterized as dishonest or misleading and eliminat[es] the necessity for proof of an intent to defraud.” (*State of New York v. Apple Health and Sports Clubs, Ltd.*, 206 AD2d 266, 267 [1st Dept 1994]). “Under section 63(12), the test for fraud is whether the targeted act has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.” (*State of New York v. General Electric, Co.*, 302 AD2d 314, 314 [1st Dept 2003]).

Initially, the court was quite concerned about how granting the relief the Attorney General requested, at this early stage, could comport with due process where there has not yet been a hearing with witnesses, or even discovery. However, the Court of Appeals has apparently put this concern to bed in its *Apple Health* decision. In that case, the court held that the process was constitutionally sufficient where: (1) respondents had known for some time about the investigation so that litigation came as no surprise; (2) prior negotiations had apprized respondents of the underlying facts; and (3) respondents had an opportunity to and did oppose the motion (*State of New York v Apple Health and Sports Clubs, Ltd.*, 80 NY2d 803, 807 [1992]).

Here, Respondents have had similar opportunities. The investigation has been lengthy, some respondents have given testimony during the investigation, and the Petition is long, detailed and backed up with copious evidence from investigators. Respondents interposed opposing papers and participated in oral argument that took place over two days. Even though there was no opportunity to cross-examine Petitioner’s witnesses, under *Apple Health*, this is apparently sufficient due process for Executive Law § 63(12).

Getting to the merits of this application, Public Health Law § 2808(5) limits the withdrawal of funds from nursing homes in excess of 3% of its most recent annual revenue without approval from the Department of Health (DOH). Nor were Respondents supposed to take any profit while leaving the nursing homes so understaffed that residents’ lives became imperiled.

The Attorney General has demonstrated what amounts to a massive fraud whereby Respondents, through myriad financial machinations, managed to siphon Medicaid and Medicare funds for themselves without permission. Although Respondents have promised to cease payments to related entities and that principals will take no further draws, the sheer magnitude and variety in the fraud that has allegedly persisted warrants the imposition of an independent financial monitor. In all likelihood, the massive self-dealing will continue without a monitor.

The nursing homes at issue in this special proceeding are (1) Beth Abraham Center for Rehabilitation and Nursing, a 448-bed facility in the Bronx, (2) Buffalo Center for Rehabilitation and Nursing, a 200-bed facility in Buffalo, (3) Holliswood Center for Rehabilitation and Healthcare, a 314-bed facility in Queens, and (4) Martine Center for Rehabilitation and Nursing, a 200-bed facility in White Plains.

Centers For Care LLC d/b/a Centers Health Care (“Centers”) manages and appears to be the parent company for these and other nursing homes. Centers’ 50% owner and CEO, Kenneth Rozenberg, owns a majority interest in the four nursing homes (Petition EDOC 1 [Pet.] ¶¶ 55, 93). Meanwhile, Daryl Hagler, the other 50% owner of Centers and its CFO, owns a majority interest in the real estate companies from which each of the Centers-affiliated nursing homes leases its land and building, including Beth Abraham, Buffalo Center, Holliswood and Martine Center (Pet. ¶¶ 66, 94). Thus, between the two of them, Rozenberg and Hagler control the nursing homes and the real estate upon which they sit (*see* Pet. ¶ 411).

A favorite ruse of Respondents was to borrow money from a regular commercial bank and then re-loan that money to one of the nursing homes at a much higher rate and take the spread, when the nursing home could have simply borrowed the money directly at a lower rate.

For example, Schnur Associates is majority owned by Light Operational Holdings of which Rozenberg is the 95% owner (Pet. ¶¶ 41, 460). Rozenberg purchased Beth Abraham’s operations through Abraham Operations (Waldropt Aff. ¶ 11). The 98% owner of Abraham Operations is Light Operational Holdings (Waldropt Aff. ¶ 11). Hagler purchased Beth Abraham’s real property through Light Property Holdings Associates LLC (Light Property), a company owned 99% by Daryl Hagler and 1% by Jonathan Hagler (Budimir Aff. ¶ 29; Hagler Tr. at 131).

On February 19, 2016, Abraham Operations and Light Property entered into agreements with Beth Abraham’s former owner and landlord to purchase Beth Abraham’s operations for \$30,305,600 (reduced to \$22,850,000 at closing) and the real property for \$25 million (Waldropt Aff. ¶¶ 12, 21). Abraham Operations put in an application with DOH to fund the purchase, in part, with equity from members of Abraham Operations and a loan from Greystone Funding Corp at a 5% interest rate (Waldropt Aff. ¶ 13). However, instead, on March 15, 2017, Light Property took out a loan of \$45,918,976 from TD Bank at an interest rate of LIBOR plus 2.9% (the “TD Bank-Light Property Loan”) and an \$11,497,744 loan from Rozenberg (the “Rozenberg-Light Property Loan”) (Pet. ¶ 503; Waldropt Aff. ¶¶ 16-17). Light Property “used \$26,647,262 of the proceeds

from these loans to acquire Beth Abraham's real property, including paying closing costs" (Waldropt Aff. ¶ 18).

Light Property also used the loan proceeds it received to lend \$22,850,000 to Abraham Operations (the "Light Property-Abraham Operations Note") (Waldropt Aff. ¶ 19). This promissory note initially had a 5-year term with a 12% interest rate and resulted in approximately \$229,630 in monthly interest charges (Waldropt Aff. ¶ 20). Consequently, all the interest payments went to Rozenberg and Hagler-controlled entities. Moreover, this arrangement was far more expensive than had Rozenberg loaned the \$11,497,744 directly in Beth Abraham's acquisition. Had he done so, Beth Abraham could have borrowed less under the Light Property-Abraham Operations Note, and Beth Abraham would have had a lower interest expense by approximately \$2,755,566 (*see* Waldropt Aff. ¶ 23), interest that ended up in Respondents' pockets. Further, it would have been far cheaper to fund this acquisition directly through a commercial lender rather than through the Light Property-Abraham Operations Note. Thus, especially considering the interrelationship between the parties and in whose hand the money from the interest payments ended up, the Light Property-Abraham Operations Note served no legitimate business purpose. Rather, the only apparent real purpose was to hide that Hagler and Rozenberg were taking more than the permitted 3% and leaving the nursing homes bereft of sufficient funds to operate properly. Rozenberg and Hagler also financed their purchase of Martine Center and Beth Abraham through similar self-dealing loans with inflated interest rates that were not disclosed to or approved by DOH (Waldropt Aff. ¶¶ 13-18, 24; Winslow Aff. ¶¶ 80-93).

The record contains strong evidence that Respondents were constantly devising similar situations whereby the four nursing homes would owe them money thereby covertly extracting up-front profit. For example, Rozenberg on behalf of Holliswood and Hagler on behalf of Hollis Real Estate Co. entered into a triple net lease agreement, dated April 23, 2012, that set the rent for the Holliswood nursing home at \$2,522,312 per year. (Budimir Aff. ¶¶ 85, 87).

There is also evidence that Respondents siphoned money by repeatedly causing Holliswood and Buffalo Center to make interest-free loans totaling over \$14.8 million to other Centers-affiliated nursing homes (Pet. § VIII[B][1]; Budimir Aff. ¶ 125 [identifying payments to "other Centers-affiliated nursing homes owned by Kenneth Rozenberg, totaling \$10,034,510"]; Giacoia Aff. ¶ 20 [identifying transfers from Buffalo Center to other Centers-affiliated facilities,

totaling \$4,840,000]). Respondents also caused the nursing homes to borrow more money than they needed, either at an initial loan or on a refinance, and would use that additional money for side investments having nothing to do with the nursing homes (*see e.g.*, Pet. ¶¶ 529-533; O’Leary Aff. ¶¶ 15-17).

The Attorney General will also likely succeed in showing Respondents repeatedly and persistently engaged in fraud by taking money from the nursing homes, at the expense of resident care, by causing the nursing homes to pay vendors for goods and services that never materialized—vendors that Rozenberg, Hagler, or their family members owned. For example, Respondents had the nursing homes pay an entity Hagler owned, BIS Funding, for technology services while they were paying another company for the same services. BIS Funding charged the nursing homes management fees even though BIS Funding had no employees and the nursing homes were already paying a different entity to manage them. (*see* Pet. ¶¶ 575-595 and Waldropt Aff. ¶¶ 66 [showing \$1,308,216.25 transferred from Beth Abraham to BIS Funding between January 2019 and April 2022]; Waldropt Aff. ¶ 77 [“The records also show that, between October 11, 2019 and July 31, 2021, BIS Funding received approximately \$17.2 million from 57 nursing homes, including 48 Centers-controlled nursing homes.”]; Waldropt Aff. ¶ 80 [“From 2019 through the end of March 2022, during which period Beth Abraham was paying BIS for invoices marked as information technology and related services, Beth Abraham also paid HOCS Consulting, an information technology services company, \$78,376.”]).

All this was money that could have gone towards patient care. The record also reflects that Respondents Rozenberg, Sicklick, Kaufman, and Lerner committed fraud by repeatedly and persistently paying themselves “salaries” for no show jobs and by making other unreported cash payments to themselves that were not, but should have been, reported as equity withdrawals to DOH (Pet. §§ VIII(C)-(E); *see also* Budimir Aff. ¶¶ 114-23 [providing details of owner salaries between 2016 and 2017 based on cost reports, including, for example, cost report data showing that Rozenberg was working between 16 and 18.5 hours a day, 7 days a week, across multiple facilities]). Respondents would further cover up the fraud through fake cost reports and false Medicaid certifications. (Pet. § VIII[D]; XI; *see also* Budimir Aff. ¶ 113 [describing the failure of cost reports to disclose related parties]).

The Attorney General’s request is for the appointment of an independent financial monitor to oversee all transactions between a Nursing Home and a related party. “Related Party” is

generally defined in the Petition as a party with whom the operator has non-arm's length arrangements and/or in which the operator has ownership and/or a direct financial interest (*see* Pet. ¶ 409, n. 79). Given the persistent and varied ways Respondents have managed to hide their equity withdrawals, an independent financial monitor is necessary to ensure there is no further fraud or illegality that violates section 63(12) pending final disposition of this case.

Accordingly, it is

**ORDERED** that the court grants that part of the motion seeking an independent financial monitor in accordance with the particulars in a separate order of today; and it is further

**ORDERED** that Respondents shall select the IFM from one of potential candidates the Attorney General has proposed by 9:00 AM the next business day or the court will choose for them; and it is further

**ORDERED** that the parties are to attend a conference to discuss next steps, including scheduling a hearing, on August 1, 2023 over Microsoft Teams at noon.

7/27/2023

DATE

CHECK ONE:  CASE

  
MELISSA A. CRANE, J.S.C.

NON-FINAL