

Figueroa v Dry Harbor HRF, Inc.
2026 NY Slip Op 30596(U)
February 17, 2026
Supreme Court, Kings County
Docket Number: Index No. 510211/17
Judge: Steven Z. Mostofsky
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At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17 day of February, 2026.

P R E S E N T:

HON. STEVEN Z. MOSTOFSKY,
Justice.

-----X
LUIS FIGUEROA, as the Administrator of the Estate of
JENNY RIVERA,

Plaintiff,

-against-

DRY HARBOR HRF, INC. and
JONATHAN STRASSER,
Defendants.

-----X

DECISION AND ORDER

Index No. 510211/17

Mot. Seq. No. 3

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits Annexed _____
Affirmations (Affidavits) in Opposition and Exhibits Annexed _____
Reply Affirmation _____

68-82
84-88
90

In this action to recover damages for personal injuries, the joint motion by defendants Dry Harbor HRF, Inc. (“Dry Harbor”) and Jonathan Strasser (“Strasser” and collectively with Dry Harbor, “defendants”) for summary judgment dismissing all claims against them by plaintiff Luis Figueroa (“plaintiff”), as the administrator of the estate of his late mother Jenny Rivera (the “patient”),¹ is *granted solely to the extent* that: (1) plaintiff’s claims sounding in negligence *per se* (a portion of his first cause of action) is dismissed as abandoned, and (2) plaintiff’s demand for punitive damages is stricken; and *the remainder of their joint motion is denied.*

¹ The patient commenced this action on May 23, 2017. Following her death from unrelated causes on November 13, 2019 at the age of 81, her son continued this action on her behalf (*see* So-Ordered Stipulation to Amend the Caption and [to] Lift [the] Stay, dated December 19, 2022 (Silber, J.) (NYSCEF Doc No. 52).

(1)

Plaintiff does not address the negligence *per se* portion of his first cause of action in his opposition, and therefore, the part of defendants' motion seeking to dismiss such claim is granted without opposition (*see Spears v Boro Park Senior Living Community, LLC*, 88 Misc 3d 1201[A], 2026 NY Slip Op 50002[U], *2 [Sup Ct, Kings County 2026]; *Clark v New York Community Hosp. of Brooklyn, Inc.*, 2023 NY Slip Op 32831[U],*8 [Sup Ct, Kings County 2023]).

(2)

Construing the evidence in a light most favorable to the nonmoving plaintiff, defendants established their prima facie entitlement to judgment as a matter of law dismissing his request for punitive damages under the Public Health Law ("PHL") in the first cause of action (as set forth in ¶ 21 of the verified complaint), by demonstrating that their conduct was not in willful or reckless disregard of the patient's rights (*see Vissichelli v Glen-Haven Residential Health Care Facility, Inc.*, 136 AD3d 1021, 1023 [2d Dept 2016]; *Rey v Park View Nursing Home*, 262 AD2d 624, 627 [2d Dept 1999]). In opposition, plaintiff failed to raise a triable issue of fact (*see Valensi v Park Ave. Operating Co., LLC*, 169 AD3d 960, 962 [2d Dept 2019]).

(3)

The affirmation of defendants' expert established, inter alia, that all appropriate fall-prevention measures were implemented at the time of the patient's fall from her bed, and, in any event, that the absence of certain additional fall prevention measures, which

were not indicated, were not a proximate cause of the patient's injuries (a "minimally comminuted nondisplaced fracture through the left inferior pubic ramus"²) (*see Van DeVeerdonk v North Westchester Restorative Therapy & Nursing Ctr.*, 223 AD3d 702, 704-705 [2d Dept 2024]; *see also Rodriguez v Isabella Geriatric Ctr. Inc.*, 227 AD3d 485 [1st Dept 2024]). In opposition, however, plaintiff's expert established triable issues of material fact as to whether: (1) the alleged substandard conduct (including the repeated misclassifications of the patient as a low-fall risk), and the alleged inactions (including a failure to have her bed rails raised on the night preceding her fall from her bed, and further including the continued failure to appreciate the adverse effect of her pain-relieving medication, initially Percocet which, by the time of her fall, was replaced by Ultram) constituted a substantial basis for the portions of the first cause of action sounding in negligence and alleging violations of PHL §§ 2801-d and 2803-c;³ (2) the alleged substandard conduct and the alleged inactions proximately caused the patient's fall and her resulting pelvic fracture; and (3) Dry Harbor failed to "exercise[] all care

² NYU Langone records, page 2300, CT Left Hip Without IV Contrast, Relevant Findings: "There is new minimally comminuted nondisplaced fracture through the left inferior pubic ramus. No other fractures are identified. The left femur is intact. There are mild to moderate degenerative changes at the left hip joint" (NYSCEF Doc No. 82). "Inferior pubic ramus" is the "inferior extension from body of pubic bone that meets with the ramus of the ischium to form the ischiopubic ramus"; "ramus" is defined, in relevant part, as "[a] part of an irregularly shaped bone . . . that forms an angle with the main body"; and "ischium" is "[t]he lower and posterior part of the hip bone . . . ; it consists of a body, where it joins the ilium and superior ramus of the pubis to form the acetabulum, and a ramus joining the inferior ramus of the pubis" (Stedman's Medical Dictionary, Entry Nos. 753880, 751360, and 458010, respectively).

³ At the time of her fall in September 2016, the patient was residing at Dry Harbor for short-term rehabilitation following colon- and bowel-resection surgeries in March 2016 and July 2016, respectively (NYU Langone records, page 2256). The patient was "[f]orgetful at times that she's unable to stand/walk" (NYU Langone records, page 2274). Before and after her return home from Dry Harbor, she had 24/7, one-on-one home-health aide care because (among other activities) she was unable "to get in and out of bed on her own" (Plaintiff's EBT transcript, page 24, line 4 to page 26, line 2; page 72, line 22 to page 73, line 11) (NYSCEF Doc No. 76). In contrast, Dry Harbor was staffed with only two CNAs per every 40-patient floor during the nighttime shift when the patient fell while trying to get out of bed on her own to go to the bathroom (Strasser's EBT transcript, page 24, lines 19-22; page 27, lines 5-15) (NYSCEF Doc No. 78).

reasonably necessary to prevent and limit the deprivation and injury” to the patient (*see Deitch v Sands Point Ctr. for Health & Rehabilitation*, 237 AD3d 1043, 1046 [2d Dept 2025]; *Petralia v Glenhaven Health Care Org.*, 143 AD3d 962, 963-964 [2d Dept 2016]; *Spears*, 2026 NY Slip Op 50002[U], *4; *Garcia v Dignity Home Care, Inc.*, 84 Misc 3d 1210[A], 2024 NY Slip Op 51408[U], *4 [Sup Ct, Suffolk County 2024]; *Maloney v Meadowbrook Care Ctr., Inc.*, 2009 NY Slip Op 31176[U], *14 [Sup Ct, Nassau County 2009]; *see also Giordano v Silver*, Sup Ct, Kings County, dated August 2, 2024, Genine Edwards, J., index No. 519413/17, NYSCEF Doc No. 227)).

(4)

Contrary to defendants’ contention, Strasser, as a “controlling person” of Dry Harbor, is potentially liable in accordance with PHL § 2808-a for any alleged violations of PHL §§ 2801-d and 2803-c by (and jointly with) Dry Harbor (*see Ocean Side Institutional Indus., Inc. v United Presbyt. Residence*, 254 AD2d 337, 338 [2d Dept 1998]). PHL § 2808-a (1) provides, in relevant part, that “[e]very person who is a *controlling person* of any residential health care facility liable under any provision of this article to any person . . . for any . . . damages, shall also be liable, *jointly and severally, with and to the same extent as such residential health care facility*, to such person . . . for damages. . .” (emphasis added). Further, PHL § 2808-a (2) defines a “controlling person” of a residential health care facility as “any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause

the direction of the management or policies of said facility.” As one court noted, PHL § 2808-a “does not . . . create a separate or new cause of action. [Instead, it] makes the controlling person personally liable for damages sustained by a person asserting a claim under one of the substantive provisions of” PHL article 28 (*Sunrest Props., LLC v Sunrest Nursing Home*, 8 Misc 3d 1028[A], 2005 NY Slip Op 51324[U], *5 [Sup Ct, Nassau County 2005]).

Plaintiff’s second cause of action, which is against Strasser under PHL § 2808-a, does not require a showing that he participated in the alleged wrongful conduct or omissions. Rather, Strasser as a “controlling person” needed only possess the “ability . . . to direct or cause the direction of the management or policies of [Dry Harbor]” (PHL § 2808-a [2]), and defendants have proffered no evidence showing that the statute is inapplicable (*see Peters v Nesconset Ctr. for Nursing & Rehabilitation*, 47 Misc 3d 1211[A], 2015 NY Slip Op 50555[U], *3 [Sup Ct, Queens County 2015]; *see also Allen v Yertle Operations LLC*, 2024 NY Slip Op 30716[U], *5 [Sup Ct, Westchester County 2024] [“By the plain language of the statute, it is the ability to control the management or policies of the facility that subjects the individual defendants to liability, and their election not to exercise that ability is of no moment.”]; *see further Chow v Shorefront Operating LLC*, 2021 WL 2646329, *2 [ED NY 2021] [“New York courts have allowed plaintiffs to pursue claims against (controlling) individuals simultaneously with claims against facilities.”] [collecting authorities]).

* * *

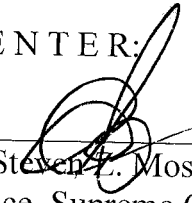
The court has considered the parties' remaining contentions and found them unavailing considering its determination.

Plaintiff's counsel shall electronically serve a copy of this Decision and Order with notice of entry on defendants' counsel and shall electronically file an affidavit of service thereof with the Kings County Clerk.

The parties are reminded of their next scheduled, in-person appearance in JCP-1 on June 22, 2026 at 10:00 a.m.

The above is the court's Decision and Order.

ENTER:



Hon. Steven Z. Mostofsky
Justice, Supreme Court

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Justice, Supreme Court