

# LK Alert

March 28, 2003

## Littman Krooks LLP

Elder Law and Medicaid

### RECENT CASES PRECLUDING RECOVERY BY NURSING HOME / HOSPITAL DUE TO ACTIONS OF NURSING HOME / HOSPITAL STAFF

Mandell v. Finkel (298 A.D.2d 365) (New York, October 7, 2002).

Anna, at the suggestion of an employee of the hospital where she was being treated, conveyed real property to her daughter, Beatrice. Anna was concerned that Medicaid would take away her house and leave her daughter with no place to live. The employee of the Hospital was employed by the Hospital as a Medicaid specialist and credit collection manager. Anna's son is deceased and his children brought an action against Beatrice for imposing undue influence over Anna in the real property conveyance. The lower court found that although Anna was of sound mind at the time she executed the deed, she was subject to undue influence by her daughter. *The Appellate Division reversed and found that the transfer was not the result of undue influence. The employee of the Hospital who suggested that Anna transfer the property to Beatrice was a disinterested party and only suggested the conveyance after Anna expressed concern about where her daughter Beatrice would live if Medicaid took her home.*

In re the Estate of Spencer (Ct. App. M2001-02187-COA-R3-CV) (Tennessee, November 26, 2002). Martha was admitted to the NHC Health Care of Lewisburg, a skilled nursing home on October 19, 1999. Martha and her niece requested on several occasions for the NHC to verify Martha's Medicare coverage. NHC represented on many occasions that Martha had Medicare coverage, even up through the time of her death on February 23, 2000. It turned out that Martha was only eligible for Medicare coverage for three days (since she was previously confined to a different nursing home). NHC initiated an action against Martha's estate to recover \$25,934.54 for nursing home services not being honored by Medicare. *The Court of Appeals in Tennessee held that NHC was estopped from collecting from Martha's estate and further found NHC to be "egregiously negligent". The Court's rationale was that NHC had dealings with Medicare on a daily basis and expected to know the rules and regulations much more than Martha or her niece.*

## Littman Krooks LLP

655 Third Avenue  
New York, New York 10017

Phone: 212-490-2020  
Fax: 212-490-2990

81 Main Street  
White Plains, New York 10601

Phone: 914-684-2100  
Fax: 914-684-9865

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New York, New York 10017 Fax: 212-490-2990

81 Main Street Phone: 914-684-2100  
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81 Main Street  
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Fax: 914-684-9865