

# LK Alert

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## COURT DISMISSES NURSING HOME COLLECTION CASE

On May 28, 2010, the Queens County Civil Court decided the case of *Hillside Manor Rehabilitation and Extended Care Center, LLC. v. Barnes*, 27 Misc.3d 1229(A) (N.Y.City Civ. Ct. 2010), in which the facility alleged that a resident's daughter was liable for her mother's nursing home bill (particularly the Net Available Monthly Income or "NAMI" budgeted towards the resident's cost of care by the local department of social services), based upon an intent to defraud, hinder or delay nursing home payment. The facility further alleged that the daughter used funds held in an account titled jointly with mother and daughter to pay household bills and expenses other than the NAMI. In dismissing the action, the Court held that there was insufficient evidence of intent to defraud, hinder or delay payment to the nursing home. However, the Court also noted that it deemed the "plaintiff's allegation of intent to defraud or hinder payment to presume defendant's responsibility to pay." However, there wasn't any evidence that defendant signed any contract or agreement to pay the nursing home from the joint account or any other resident assets. The Court further noted that "based upon DOH and CMS regulations, there could be no personal financial liability to defendant, even if such a contract or agreement existed."

If the Court's conclusion (i.e., that there could be no personal financial responsibility to a defendant even where he or she signed a contract or agreement to pay the nursing home from resident assets) were to be adopted by other Courts, it could affect the ability of nursing homes to recover from individuals who fail to turn over resident funds such as NAMI, even where such individuals (e.g., family member or POA) sign an Admission Agreement. However, it is unclear whether other Courts will take this position, particularly since the other cases cited by the *Barnes* Court in support of its position (i.e., *Prospect Park v. Goutier*, 12 Misc.3d 1192(A), 824 N.Y.S.2d 770 (N.Y.City Civ.Ct. 2006) and *Amsterdam Nursing Home v. Lang*, 16 Misc.3d 1138(a), 851 N.Y.S.2d 56 (N.Y.Sup. 2007)) seem to clearly support the position that a third party who signs a proper Admission Agreement can be held liable for a resident's nursing home bill, but only where the third party has legal access to, or control over, the resident's income or assets. In *Goutier* and *Lang*, the Court found that the third party in question lacked sufficient access and control over the resident's funds to be held liable under the Admission Agreement for the resident's cost of care; not upon the broader proposition that third parties could not incur any personal liability in any event. This position is consistent with the out-of-state cases cited in the *Lang* decision, including *Sunrise Healthcare Corp. v. Azargian*, 76 Conn App 800, 821 A.2d 835 (2003), where the Connecticut appellate court "concluded that a nursing home could hold a daughter liable for breach of contract, where the daughter had signed her mother's contract as the 'legal representative' and had power of attorney over her mother's financial assets."

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