
**ESTATE OF JACK WYNN
TRATCHENBERG BY AND THROUGH
ETHEL O'DEA AS ADMINISTRATOR AD
PROSEQUENDUM,**

Plaintiffs,

vs.

**SHADY OAKS REST HOME, A.E.
DIZA, INC., RACHEL DIZA, ARIEL
DIZA, SHARON MASLANKA**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
GLOUCESTER COUNTY
DOCKET NO.: L-2193-08**

ORDER ASSESSING DAMAGES

FILED
FEB 07 2013
Jean B. McMaster, J.S.C.

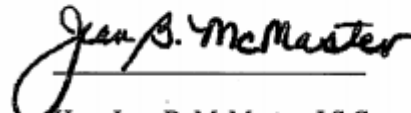
This matter having been opened to the Court by Sheridan & Murray, LLC, attorneys for the plaintiffs, the Estate of Jack Wynn Trachtenberg by and through Ethel O'Dea as Administrator Ad Prosequendum, for an Order assessing damages against defendants Shady Oaks Rest Home, A.E. Diza, Inc., and Sharon Maslanka, on notice to all parties, and the Court having considered the exhibits submitted and testimony offered, and good cause appearing:

IT IS ORDERED on this 7th day of February 2013, as follows:

1. Compensatory damages for loss of enjoyment of life, fear of impending death, pain, and suffering are assessed against defendants Shady Oaks Rest Home and A.E. Diza, Inc., jointly and severally, and against defendant Sharon Maslanka, in the total amount of \$1,000,000, with Shady Oaks Rest Home and A.E. Diza, Inc. comparatively negligent fifty percent, jointly and severally, and Sharon Maslanka comparatively negligent fifty percent.

2. Plaintiffs established by clear and convincing evidence that Shady Oaks Rest Home and A.E. Diza, Inc., demonstrated wanton and willful disregard towards people who could be foreseeably harmed, including Jack Trachtenberg, and punitive damages are assessed against Shady Oaks Rest Home and A.E. Diza, Inc., jointly and severally, in the amount of \$1,000,000.

3. A copy of this Order shall be served upon all counsel and unrepresented parties within seven days hereof.


Hon. Jean B. McMaster, J.S.C.

See Attached written decision

FILED
FEB 07 2013
Jean B. McMaster, J.S.C.

**ESTATE OF JACK WYNN
TRATCHENBERG, by and through
ETHEL O'DEA as
ADMINISTRATOR AD
PROSEQUENDUM**

Plaintiffs,

vs.

**SHADY OAKS REST HOME, A.E.
DIZA, INC., and SHARON
MASLANKA**

Defendants.

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CIVIL PART
GLOUCESTER COUNTY**

DOCKET NO.: L-2193-08

PROOF HEARING

DECISION

RELIEF REQUESTED

PLAINTIFF, represented by Thomas Sheridan, Esq., moves for damages at the Proof Hearing of February 1, 2013 based on Default Judgments entered as to all Defendants.

DEFENDANTS received notice and did not appear.

PARTIES' POSITIONS & FACTUAL BASIS

Summary of Facts

1. This matter arises out of the homicide of Jack Trachtenberg on December 27, 2006 by Defendant, Sharon Maslanka.
2. Mr. Trachtenberg was a 49-year—old man residing in Room 7 at the Shady Oaks Rest Home (“Shady Oaks”).
3. Mr. Trachtenberg had been a resident at Shady Oaks located at 1005 Wesley Ave., National Park, Gloucester County, N.J., for approximately 2 years and had no history of difficulty with any residents or staff.

4. Shady Oaks Rest Home was a licensed residential health care facility operated by AE Diza, Inc., under the authority of New Jersey Department of Community Affairs, Bureau of Rooming and Boarding House Standards. The license capacity was 22 and was issued November 17, 2005.
5. Ms. Maslanka was a 37-year-old woman admitted to Shady Oaks on December 20, 2006 following her discharge from the Ancora Psychiatric Hospital a few days earlier.
6. Upon her admittance to Shady Oaks, it was noted that Ms. Maslanka had a history of substance abuse/dependence and had demonstrated bizarre, agitated and destructive behavior, including kicking walls, jumping on the bed, wandering around the house naked and urinating on family members.
7. Ms. Maslanka's provisional diagnosis upon admission was substance induced psychosis; polysubstance dependence; noncompliance with medications; and having been a previous victim of physical and sexual abuse.
8. Ancora records also indicated that Ms. Maslanka showed significant inappropriate sexual behavior towards others.
9. At the time of her discharge from Ancora, Ms. Maslanka's final diagnosis was bipolar disorder manic with psychotic features; polysubstance dependence on opioids, cocaine, and alcohol; hepatitis C., past relationship problems and drug dependence.
10. Ms. Maslanka was discharged from Ancora on Depakote 250mgs in the morning and 500mgs at night, and Thorazine 50mgs twice a day.
11. Records indicate that no nursing assessment was performed by Shady Oaks prior to placement of Ms. Maslanka as a patient at the defendant rest home to determine whether she was a suitable cohabitate with other residents based on her past history and current condition.
12. Police reports indicate that Ms. Maslanka was unsupervised during her 6day stay at Shady Oaks, that she was seen spitting out her medicine, and that she wandered about in an irrational manner.
13. Ms. Maslanka was placed in Room 12 of Shady Oaks with a roommate with whom she had a fight on December 26, 2006. Ms. Maslanka reportedly went to Mr. Trachtenberg's room to spend the night following that argument.
14. On the afternoon of December 27, 2006, Ms. Maslanka attacked Mr. Trachtenberg by striking him in the head with a lamp, causing a significant laceration to his forehead. She then choked him around the neck with the lamp cord and bound his hands behind his back. She then placed another belt around his neck and strangled him to death.
15. Eugene Seaman, a 73-year-old resident of Room 8 at Shady Oaks reported that he heard yelling and screaming coming from Mr. Trachtenberg's room, as well as the sound of moving furniture. Mr. Seaman knocked on the door to tell

whoever was making the noise to “knock it off.” When there was no answer, Mr. Seaman opened the door and witnessed Ms. Maslanka standing over Mr. Trachtenberg. Mr. Trachtenberg screamed and pleaded to Mr. Seaman to “get her off me, get her off me.” Mr. Seaman the room, reportedly believing that Ms. Maslanka and Mr. Trachtenberg were merely “horsing around.” The noise ceased soon thereafter.

16. Interviews of two Shady Oaks staff members working that day indicate that they never heard any noise or disturbance from Mr. Trachtenberg’s room, nor were they aware that Ms. Maslanka had spent the previous night in Mr. Trachtenberg’s room.
17. The postmortem report indicates that Mr. Trachtenberg suffered blunt impact trauma to the head, torso, and both his upper and lower extremities. Mr. Trachtenberg had abrasions, contusions, and lacerations of his face, as well as his lips with aspirated blood. He suffered a subscapular hemorrhage and abrasions and contusions to his anterior and posterior torso. The report also indicated that Mr. Trachtenberg suffered linear abrasions on the top of the right shoulder, several brown contusions of the anterior aspect of the left hip, hemorrhages in the muscles of the anterior aspect of the right side of the upper chest, right and left sides of the scapular region of the back, and the right and left side of the middle of the back.
18. Toxicology studies performed upon Mr. Trachtenberg indicated that he had no alcohol or drugs in his system.
19. It was determined that the cause of death was strangulation and the manner of death was homicide.
20. Maslanka pled guilty to aggravated manslaughter on November 15, 2008 and was sentenced to twelve years in prison for the death of Jack Trachtenberg.
21. Default Judgments have been entered against all defendants, Maslanka, Shady Oaks Rest Home, AE Diza, Inc., the company who operated the home, and Ariel Diza and Rachel Diza, individually. Claims against the Diza individuals were discharged by bankruptcy.

ANALYSIS

In this matter, Plaintiff is seeking compensatory and punitive damages under the Survivor’s Act, *N.J.S.A. 2A:15-3*.

COMPENSATORY DAMAGES

Actions under the Survivor’s Act preserve to the decedent’s estate any personal cause of action that the decedent would have had if he had survived. The primary

damages recoverable in such an action sounding in tort are for the decedent's pain and suffering between the time of injury and death. Damages for pain and suffering are permitted only for pain and suffering that is conscious. Many states, including New Jersey, do allow recovery for conscious pain and suffering whenever it can be shown that the injured person survived his injuries, however briefly. *Smith v. Whitaker*, 160 N.J. 221(1999)

Plaintiff has offered an expert opinion on the issue of the pain and suffering sustained by this decedent at the time of his murder by strangulation. Dr. Peter Salgo, MD of the College of Physicians and Surgeons of Columbia University, Department of Anesthesiology, New York, New York is a clinical professor of Medicine and Anesthesiology who reviewed this matter. Per his report of January 31, 2013, he indicated that Jack Trachtenberg suffered a horrific death reviewing records from the Gloucester County Prosecutor's Office, Postmortem Report, Autopsy, Crime Scene Photographs and the Death Certificate.

It is his opinion to a reasonable degree of medical probability that the decedent suffered "terrible and unremitting pain as he was violently beaten and strangled by Defendant Maslanka. His pain was immediate, excruciating and lasted a considerable period of time." (Salgo Report , pg. 4). He further opined that when a person is strangled, he experiences severe head pain but the brain is still functional, therefore, horrific fear and premonitory terror ensue. Death by asphyxia is not instantaneous, the process can be prolonged and unconsciousness does not result immediately.

Adding to the decedent's terror was the fact that no assistance was forthcoming within the Home, despite his calls for help, which increased his realization that his death was eminent. From a common sense standard, one can easily understand how the inability to breathe during an assault would cause panic and terror. This Court is convinced that Jack Trachtenberg endured pain and suffering during this assault and therefore finds that Plaintiff has met his burden of proof. Plaintiff has established compensable pain and suffering due to this tragic circumstance. Therefore, the Court awards compensatory damages under this Survivor action in the amount of \$1,000,000. The Court finds that the defendants in this matter are equally negligent, each with the opportunity to prevent the tragic result, and therefore 50% liability is assessed against each party as follows, 50% to Shady Oaks Rest Home operated by AE Diza, Inc., and 50% to Sharon Maslanka.

PUNITIVE DAMAGES

Punitive damages ordinarily must be premised on a valid judgment. To warrant the imposition of punitive damages, the defendant's conduct must have been wantonly reckless or malicious. There must be an intentional wrongdoing in the sense of an evil minded act or an act accompanied by a wanton and willful disregard of the rights of another. This is a requirement of more than mere negligence.

In this instance, this Court is not awarding the plaintiff any punitive damages as to the defendant Maslanka, due to various factors including her present incarceration, questions as to her current mental health situation and at the time of the incident, and having no knowledge whatsoever of her financial ability to pay now or in the future. However, as to Defendants Shady Oaks Rest Home and AE Diza, Inc., Plaintiff must prove by clear and convincing evidence a deliberate act or omission of the Defendant with knowledge of a high degree of probability of harm and reckless indifference to the consequences. Generally, the defendant does not have to recognize that his or her conduct is extremely dangerous, but a reasonable person standard must be employed.

Punitive damages are awarded upon a theory of punishment to the offender for aggravated misconduct and to deter such conduct in the future from the particular defendant. Therefore, it is not dependent on the extent of the injury sustained, but should be determined on the sufficiency to deter future misconduct by the defendant.

In this matter, the Court finds that Shady Oaks Rest Home and AE Diza, Inc., committed willful and wanton disregard of the rights of another and failed to abide by their numerous statutory obligations under *N.J.A.C. 8:43-12*, noting that the foremost purpose is to "assist residents to maintain personal interests and dignity as well as to protect their health and safety". Plaintiff must prove by clear and convincing evidence that Defendants' conduct amounted to a deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to the consequences. *Berg v. Reaction Motors Div.*, 37 NJ. 396 (1962). This Court finds that Plaintiffs have sustained their burden of proof through their numerous submissions and the credible testimony offered at the Proof Hearing of investigating detective Bryn Wilden of the Gloucester County Prosecutor's Office and the decedent's brother and sister.

These defendants' financial condition is a relative factor when deciding the punitive damages award. *Herman v. Sunshine Chem. Specialties*, 133 NJ. 329 (1993). However, this is only one factor in the determination. The court must also consider all relevant evidence including the duration of the misconduct, and whether these defendants were aware that serious harm would arise from their misconduct. The Court does find that

this home is still in business, continues to operate a residential home, and has been subject to numerous citations in its history.

The Court finds that Defendant home failed to perform an initial nursing assessment of Maslanka upon her entry into the home, failed to determine whether she posed a safety risk to herself or others, failed to assess her medication needs and monitor her intake, failed to maintain sufficient staff with proper training, failed to supply mental health services to Maslanka, and failed to designate a consultant pharmacist for supervision of pharmaceutical services all in violation of the Administrative Code pertaining to Residential Health Care Facilities in New Jersey. The Defendants knew of their legal responsibilities as a licensed facility yet willfully disregarded those obligations to the detriment of their resident Jack Trachtenberg. It was certainly foreseeable that others would be harmed by their acts and/or omissions and their inactions evidenced a conscious and deliberate disregard of the interests of others. As previously stated, Shady Oaks Rest Home was subject to repeated citations from the Department of Community Affairs.

Therefore, this Court is awarding the sum of \$1,000,000 in punitive damages against Shady Oaks Rest Home and AE Diza, Inc., jointly and severally. This sum is reasonable in its amount and justified under the circumstances of this case with the limited knowledge that the Court has as to the financial condition. Punitive damages serve two purposes: first, to punish the Defendants' egregious misconduct which is found in this instance and second, to deter this offender from repeating such actions and/or misconduct. The decedent's family urged this Court to "send a message to others" with this decision, however this would be inappropriate. If the Court were to increase this award in an attempt to enhance a general deterrence, it could quite possibly serve to unjustly punish others who are completely unconnected to these Defendants and could be viewed as a windfall for the Plaintiff. The amount of the award must be reasonable when one considers the reprehensibility of this conduct under the totality of the circumstances. In this instance, this amount is reasonable and justified.

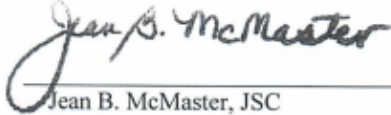
This Court recognizes that Jack Trachtenberg was a beloved member of his family who had lived outside of the home in various mental health facilities since the age of 17 due to his mental health issues. He required assistance in his daily living and was unable to financially maintain himself. He was described by his family as being a kind soul with a personality disorder, vulnerable, meek, reserved and timid, suffering possibly from a form of autism and/or schizophrenia. He represents a portion of our society that demands protection and serves to exemplify why specific requirements are in place and essential for the proper operation of licensed health care facilities. He was visited by

his brother most frequently, on at least a monthly basis, and was involved with his family at all holiday celebrations.

This Court is charged to exercise its judgment as to what is fair, just and reasonable under all of these circumstances. This duty is not taken lightly, and must be exercised based on all of the evidence presented without sympathy or bias for any party. This decision has not been easily made, but has required impartial judgment and experience. No amount of money can bring Jack Trachtenberg back to live the remaining years of his life or return him to his family. When faced with such difficult circumstances, the law can only attempt to compensate such loss through financial avenues as recognized by our society, yet with the realization of the insufficiency of the redress.

So Ordered.

Dated: February 7, 2013



Jean B. McMaster, JSC