

FILE COPY

Supreme Court of the State of New York
COUNTY OF NEW YORK: PART 46

**NEW YORK
COUNTY CLERK'S OFFICE**

PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER, Attorney General of the
State of New York,

DEC - 7 2006

**NOT COMPARED
WITH COPY FILED**

Petitioner,

-- against --

NOTICE OF ENTRY

PARK AVENUE PLASTIC SURGERY, P.C.;
PARK AVENUE PLASTIC SURGERY, P.L.L.C.;
and DAVID HAIM OSTAD, Individually and as
Owner and Operator of Park Avenue Plastic
Surgery, P.C. and Park Avenue Plastic Surgery, P.L.L.C.,

Index No.: 401980/06

Hon. Nicholas Figueroa

Respondents

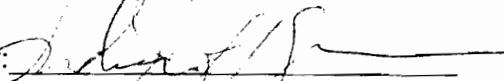
COUNSEL:

PLEASE TAKE NOTICE that the within is a copy of an Amended Decision, Order and Judgment entered in this action on the 17th day of November, 2006, in the office of the Clerk of the County of New York.

DATED: November 20, 2006
New York, New York

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Petitioners

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Assistant Attorney General-in-Charge
Health Care Bureau

By: 

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To: David Haim Ostad
Pro Se
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Old Westbury, New York 11568
516-606-3319

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

PRESENT: HON. NICHOLAS FIGUEROA
Justice

PART 46

PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER,

v

PARK AVENUE PLASTIC SURGERY, PC, et al

INDEX NO. 401980/06
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

UPON the foregoing papers, it is ordered that this motion is

SEE AMENDED DECISION, ORDER & JUDGMENT ATTACHED.

FILED
NOV 17 2006
COUNTY CLERK'S OFFICE
NEW YORK

Handwritten signature/initials

Dated: November 3, 2006

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

*Plow
11/14/06
x*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER,
Attorney General of the State of New York

Index No. 401980/06

Petitioner,

**AMENDED
DECISION, ORDER
AND JUDGMENT**

- against -

PARK AVENUE PLASTIC SURGERY, P.C.;
PARK AVENUE PLASTIC SURGERY, P.L.L.C.; and
DAVID HAIM OSTAD, Individually and as Owners of
Park Avenue Plastic Surgery,

Respondents.

Nicholas Figueroa, J.:

The court's September 25, 2006 Decision, Order and Judgment is, on petitioner's letter application and on the court's own motion, vacated and recalled and the following Amended Decision, Order and Judgment substituted for it correcting an error in the fifth decretal paragraph by substituting the amount of \$56,187.50 for the \$18,647.50 erroneously recited.

Petitioner brings this proceeding pursuant to Executive Law §63(12) and General Business Law Article 22-A seeking injunctive relief, an accounting, restitution, fines and a \$200,000 performance bond from respondent Ostad. Petitioner alleges that respondents, a former physician and his professional corporations, intentionally failed to refund fees to patients who paid fees to respondents for medical treatment they did not receive. Additionally, respondents failed to refund unearned fees, failed to inform patients that respondent David Ostad surrendered his medical license, and failed to refer patients to other physicians for continuation of treatment. Ostad was required to

relinquish his license and refer patients to licensed physicians under a License Surrender Order issued by the New York State Department of Health on August 31, 2005.

Ostad had been a sole practitioner who had owned and operated both corporate medical respondents. His corporations had provided plastic and cosmetic surgery, as well as other medical services.

Petitioner received nine complaints from Ostad's former patients. These patients complained that they paid for medical services they never received and did not receive refunds. Each of the patients submits an affidavit in support of this proceeding. The nine persons are entitled to confidentiality as a matter of law (42 USC §1320, *et seq.*) Therefore, they will duly be identified by their first initials in this decision. However, Ostad received copies of each affidavit with the patient's name included.

The Department of Health, after investigating complaints against Ostad, charged him with professional misconduct. The charges include multiple instances of negligence, incompetence, gross negligence, and failure to maintain and provide records. The investigation culminated in the License Surrender Order.

The Surrender Order incorporated the State Guidelines For Closing A Medical Practice After Revocation, Surrender Or Suspension Of A Medical License. The Guidelines included the directives that, "within fifteen (15) of the Surrender Order's effective date, respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed physician for their continued care, as appropriate." The Guidelines also contained the warning that "Failure to comply with the...directives may result in civil or criminal penalties."

Petitioner alleges that respondents committed fraudulent and deceptive business practices by failing to perform promised services, making affirmative misrepresentations to avoid paying refunds, and violating the Surrender Order and Guidelines directives.

Affidavits from nine of Ostad's patients recite the services he failed to render and the amounts of money paid by each.

Affiant "A" retained Ostad for an abdominoplasty and gender reassignment surgery. Ostad told her there would be a one year gap between the two procedures. When A telephoned Ostad's office on July 13, 2005, an employee told her that her appointment had been cancelled because of "over-booking", and rescheduled the appointment for September 8, 2005. On August 8, 2005, an employee informed A that the September 8th appointment was cancelled, but gave no reason; however, the employee told her to call the following week for more information. When A called on August 15, 2005, she learned that the telephone had been disconnected. A called a physician sharing respondents' office space and learned that Ostad left the premises without leaving a forwarding address or telephone number.

A paid Ostad \$41,605 for services she did not receive. She has not received a refund. Respondents never informed her that Ostad had lost his license and she never received a referral to another physician.

Affiant "B" paid a \$200 deposit to "lock in" a \$5,000 fee for an otoplasty procedure. Ostad did not perform the procedure and did not disclose the loss of his license and did not refer B to another physician. B has not received a refund of the \$200.

In January, 2005, affiant "C" retained Ostad to perform a series of laser hair removal treatments at his Great Neck office and paid \$2100 in installments. The treatments were scheduled

to be performed on six visits.

C's last treatment was on July 21, 2005; however, when C contacted the office for the next appointment, an employee said the computers were not functioning and told C to call at another time. C called the office again in August, 2005 and received a recorded message that the telephones were disconnected.

C was never informed that Ostad lost his license and has not received a refund of \$200 for the remaining treatments.

Affiant "D" retained Ostad to perform six laser hair removal treatments. D paid \$395 for the six treatments, but received only three. On August 8, 2005, Ostad's secretary informed D and cancelled the fourth appointment, and told D to call for a new appointment.

When D called, during the third week in August, a recording said the telephone had been disconnected. D called Ostad's Manhattan office and received the same message.

Respondents never informed D that Ostad had lost his license or referred D to another physician. D has not received a \$197.50 refund for the remaining treatments.

On April 4, 2005 affiant "E" agreed to pay Ostad \$2,830 for sixteen hair removal treatments, but received only eight treatments as of June, 2005; however, Ostad's office phoned to notify E that the scheduled August treatment was cancelled because the laser equipment was in disrepair.

E's subsequent attempts to contact Ostad were futile. E learned that Ostad had lost his license from a physician in a neighboring office; however, Ostad never informed E of the loss of his license or referred E to another physician for continuation of treatment. Nor has E received a \$2125 refund for scheduled treatments.

On February 8, 2005, affiant "F" retained Ostad to perform buttock implant surgery and lower back liposuction. F left a \$500 deposit, and the surgery was scheduled for February 16th.

A week before the surgery, Ostad told F that the surgery would be rescheduled because he recently fired a physician in his practice and that he was remodeling a new building.

Ostad never rescheduled the surgery. When F called the office in March, 2005, he was informed by a secretary that the new building was still being remodeled and a new physician was being hired. F received basically the same information on subsequent calls in March.

In August, 2005, F left messages at Ostad's New York City and Great Neck offices which went unanswered. F later learned that Ostad lost his license through the Department of Health website. F has not received a \$500 refund.

Affiant "G" gave Ostad a check for \$10,000, which was cashed, and a \$2800 American Express payment for cosmetic surgery to be performed on April 15, 2005.

When G called Ostad's New York City office to reschedule, he received a new appointment for September 9, 2005. On September 5, 2005, G learned, from a local newscast, that Ostad had lost his license.

Sometime in mid-September, a woman from Ostad's office called G and stated that the September 9th procedure had been cancelled but that the office would contact him with further information. There was no further contact information or anything about the \$12,800 fee.

G was not referred to another physician. Although American Express cancelled the \$2800 charge, Ostad has never refunded the original \$10,000 payment.

Affiant "H" gave Ostad an \$860 deposit for a chemical peel, on August 24, 2004. The procedure was scheduled for September 14, 2004.

On September 7, 2004, H learned, for the first time, that the recovery time for the peel procedure was two to three weeks. H asked for a refund because of the unanticipated long recovery period. Ostad's employee told H that deposits were not refundable, but that the procedure would be rescheduled at H's convenience.

In December, 2004 H called Ostad's office to reschedule the procedure for January, 2005; however, he was told that the office was completely booked. H's request for a refund was again denied, and he told to reschedule the appointment.

When H telephoned both of Ostad's offices in August, 2005, there was no answer. In September, 2005 H learned, from a newspaper and the internet, that New York State had revoked Ostad's license.

Ostad did not refund H's \$860 deposit or refer him to another physician.

Affiant "T" gave Ostad a \$500 deposit on July 7, 2003 for surgery to be performed in the future. When contacted on April 28, 2005, Ostad told him that he could schedule the surgery before the end of the year. However, "T" called Ostad in September and October, and learned that the telephone had been disconnected.

No referral to another physician or a \$500 refund was made.

Ostad submits a purported "affidavit/affirmation" in opposition to this petition. He answers both on his own behalf and on behalf of his corporate entities. Because Ostad is not an attorney, he may not appear on behalf of the corporations. The corporations may only appear by an attorney (Judiciary Law §495; *130 Cedar St. Corp v. Court Press*, 267 App. Div 194). Therefore, the corporations are in default. Moreover, Ostad's purported affirmation is defective. The document is not notarized. As Ostad is no longer a licensed physician, he may not execute an affirmation.

These discrepancies notwithstanding, the court will consider Ostad's affirmation as it relates to him as an individual.

Ostad alleges that he will not collect any fees in the future; therefore, he asserts that there is no need for an injunction against future illegal and deceptive practices, and asserts that there is no reason to require posting a \$200,000 bond.

Ostad invokes his Fifth Amendment right against self-incrimination in response to petitioner's request for restitution to defrauded patients and for an accounting of all money received from those patients.

Ostad agrees not to destroy or dispose of any business records; however, he opposes petitioner's demand that he notify it if he changes his address.

Petitioner has established entitlement to the requested relief under Executive Law §63(12) and General Business Law Article 22A (§349 *et seq.*). The affidavits demonstrate that Ostad and his professional corporations took fees from patients without providing services. Respondents continued to act illegally even after Ostad agreed to surrender his license. The Surrender Order was violated on at least nine different occasions, as demonstrated in the former patients' affidavits, by respondents' concealing the fact that Ostad was unlicensed and by failing to refer patients to physicians who could complete their treatments.

Ostad's conclusory denials of wrongdoing are insufficient to disprove petitioner's allegations. Ostad's assertion of his Fifth Amendment rights permits the court to draw an adverse inference against him (see *Marine Midland Bank v. John E. Russo Produce Co.*, 50 NY2d 31, 42).

Petitioner has provided the court with legally and factually sufficient proof that Ostad and his corporation have engaged in repeated fraudulent acts entitling petitioner to injunctive relief and

restitution (Executive Law §63(12); see also General Business Law §349). Pursuant to CPLR §8303(a)(6), petitioner is entitled to costs of \$2000 against each respondent (Executive Law §63(12), *supra*). Further, pursuant to General Business Law §350-d, petitioner is entitled to a civil penalty of \$500 for each deceptive practice under General Business Law §349.

Moreover, petitioner has demonstrated a sufficient basis for requiring respondents to file a \$200,000 performance bond as a condition against conducting any further consumer business. Ostad's failure to comply with the Surrender Order shows that he will not abide by lawful orders without compulsion.

Moreover, Ostad demonstrated his unwillingness to comply with this court's repeated directives to him to refrain from post-argument communications to chambers. Subsequent to oral argument chambers received several telephone calls, faxes, and letters from Ostad, despite repeated directives to cease those communications.

Accordingly, it is

ADJUDGED that the petition is granted, and it is further

ORDERED that pursuant to Executive Law §63(12) and General Business Law Article 22, respondents are permanently enjoined from engaging in the practice of medicine, charging and accepting a fee for any medical service, and maintaining an office or other facility for the practice of medicine, and it is further

ORDERED that respondents are enjoined from converting, transferring, selling or otherwise disposing of any funds paid to them by consumers for any medical services, including plastic surgery and any cosmetic procedures, that respondents failed to provide to such consumers in whole or part, and any funds in any account in the name of David Ostad, Park Avenue Plastic Surgery, P.C. or Park

Avenue Plastic Surgery, PLLC, or any other assets, wherever located, until such time as respondents have satisfied all financial obligations pursuant to this court's order and have furnished proof of such compliance to petitioner in a form satisfactory to petitioner, and it is further

ORDERED that in addition to being enjoined from the practice of medicine as prohibited by this order's first decretal paragraph, respondent Ostad is enjoined from engaging in any business that involves transactions with consumers in the State of New York until he files a \$200,000 performance bond with petitioner, further provided that the bond be issued by a surety or bonding company licensed by the New York State Insurance Department, and that the bond be renewed each year for three years, and that the bond guarantees respondent Ostad's compliance with the terms and conditions of this judgment and order, and that the proceeds of the bond provide a fund for restitution and damages to consumers defrauded by all of the respondents, and that the bond guarantees the payment of any penalties and costs imposed by this judgment and order, and it is further

ORDERED that within twenty days of service of a copy of this judgment and order with notice of entry, respondents shall make full payment to petitioner in the amount of \$56,187.50 representing the amount owed to the nine persons whose affidavits have been submitted to the court, and it is further

ORDERED that petitioner shall disburse the money received pursuant to the preceding paragraph to the nine persons submitting the affidavits according to each person's established loss, and it is further

ORDERED that respondents, within twenty days of service of a copy of this judgment and order with notice of entry, shall render an accounting to petitioner that includes the name, address,

and the amount of money received by respondents from each and every consumer for any medical service that respondent failed to provide to such consumers, and it is further

ORDERED that respondents are permanently enjoined from, directly or indirectly, from destroying or disposing of any records pertaining to their business, and it is further

ORDERED that respondent Ostad shall notify petitioner of any change of address within five days of such change, and it is further

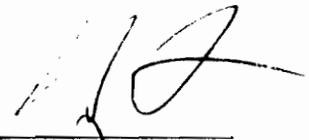
ORDERED that pursuant to General Business Law §350-d, respondents shall pay a civil penalty of \$500 to the State of New York for each of the nine violations of General Business Law Article 22-A, as stated in the affidavits of the consumers submitted to the court, for a total of \$4,500, and it is further

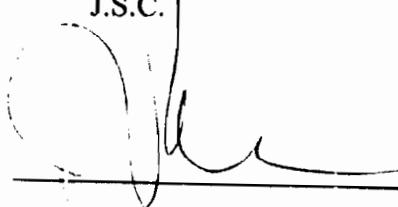
ORDERED that this judgment and order is without prejudice to petitioner seeking further relief against respondents for any subsequently discovered violations of law.

This constitutes the decision, order, and judgment of the court.

Dated: November 3, 2006

ENTER



J.S.C.


FILE
NOV 27 2006
COUNTY CLERK
NEW YORK

FILE NO. 06/2401980

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

PEOPLE OF THE STATE OF NEW YORK, by
ELIOT SPITZER, Attorney General of the State of
New York.

Petitioner.

--against--

PARK AVENUE PLASTIC SURGERY, P.C.;
PARK AVENUE PLASTIC SURGERY, P.L.L.C.;
and DAVID HAIM OSTAD, Individually and as
Owner and Operator of Park Avenue Plastic
Surgery, P.C. and Park Avenue Plastic Surgery,
P.L.L.C.,

Respondents.

**AMENDED DECISION, ORDER
AND JUDGMENT**

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Tel. (212) 416-8920

FILED

NOV 17 2006

1 11 PM

AT
N.Y., CO. CLERK OFFICE

AFFIDAVIT OF SERVICE
OF

ENTIRE
AMENDED DECISION, ORDER
AND JUDGEMENT

Bureau HEALTH CARE

STATE OF NEW YORK:
COUNTY OF NEW YORK:

I, JOSEPH GOAMAN, being duly sworn, deposes and says:

That on NOVEMBER 24, 20 06, at 7 COACMAN'S COURT

City of OLD WESTBURY, State of New York, deponent served the above

on DAVID HAIM OSTRAD at 9:30 AM by:

1. INDIVIDUAL

(a) Delivering a true copy thereof to _____ personally. Deponent knew the person so served to be the person described in said document(s).

(b) Delivering a true copy to SARAH OSTRAD (WIFE) a person of suitable age and discretion at person's actual place of business, dwelling place, or usual place of abode.

Deponent also enclosed a copy of same in a postpaid, sealed wrapper properly addressed to person's last known business, dwelling place or place of abode at 7 COACMAN'S CT. OLD WESTBURY N.Y. 11568 and deposited said wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service.

(c) Affixing a true copy to the door of person's actual place of business, dwelling place, or usual place of abode. Deponent was unable, with due diligence, to find the person named therein or a person of suitable age and discretion having called there:

On NOVEMBER 21, 20 06, at 10:10 AM
On NOVEMBER 24, 20 06, at 9:30 AM (SERVED)
On _____, 20 _____, at _____

Deponent also enclosed a copy of same in a postpaid, sealed wrapper properly addressed to person's last known business, dwelling place or place of abode at 7 COACMAN'S CT OLD WESTBURY NY and deposited said wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service. 11/26/06

2. CORPORATION: Serving the above on _____ Corporation, personally, whom deponent knew to be the said corporation by delivering a true copy thereof with _____ an officer of said corporation or other agent authorized to receive service for said corporation.

DESCRIPTION: Deponent describes the individual served as follows:

Sex: FEMALE, Hair: BLACK,
Skin: WHITE, Approx. Age: 35-40,
Approx. Ht.: 5'2", Approx. Wt.: 110-120

Signature Joseph Goaman

Sworn to before me this 24th day of November, 20 06

Notary Public Karon Richardson

KARON RICHARDSON
NOTARY PUBLIC, State of New York
No. 01RI6123488
Qualified in Kings County
Commission Expires March 7, 20 09