

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

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PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, Attorney General of the State of
New York,

Petitioner,
-against-

VERIFIED PETITION

MIRIAM M. HERNANDEZ

Index No.

Respondent.

IAS Part _____
Assigned to Justice _____

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The People of the State of New York, by their attorney, ANDREW M. CUOMO,
Attorney General of the State of New York, respectfully allege, upon information and belief:

PARTIES AND JURISDICTION

1. Petitioner is the People of the State of New York, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York (“Attorney General”).
2. Petitioner brings this special proceeding pursuant to New York Executive Law § 63(12) and § 296 *et seq.*, New York General Business Law (“GBL”) Article 22-A § 349 and Article 28-C § 460-a *et seq.*, and Title 8 of the Administrative Code of the City of New York (“New York City Human Rights Law”) § 8-502, to enjoin Miriam M. Hernandez (“Hernandez or Respondent”) from continuing to engage in discriminatory, deceptive, fraudulent and illegal practices in connection with providing alleged immigration services to New York consumers.
3. Executive Law § 63(12) empowers the Attorney General to seek injunctive relief, restitution, damages and costs when any person or business entity has engaged in or otherwise

demonstrated repeated or persistent fraudulent or illegal acts in the transaction of business. GBL § 349 prohibits fraudulent and deceptive business practices and GBL § 460-a *et seq.* regulate any non-attorney person or entity who provides immigration services. The Attorney General is empowered to seek penalties when any person violates the aforementioned provisions. Further, New York State and New York City civil rights laws prohibit conduct that discriminates against persons based on national origin, alienage or citizenship status, and empower the Attorney General to seek an injunction, damages and penalties for violations.

4. Hernandez resides at 35-20 Leverich Street, Apartment B127, Jackson Heights, New York, and purports to maintain an immigration services business out of her home at that address.

FACTS

5. The Attorney General commenced this proceeding upon learning that Hernandez had defrauded and continues to defraud Latino immigrants residing in New York by taking their money for services not rendered or that cannot be delivered.

6. New York State residents seeking assistance in immigration matters may retain the services of a licensed attorney or, alternatively, retain the services of non-attorneys, also known as “immigrant assistance service providers.” Hernandez is not a licensed attorney admitted to practice law. As such, she can only provide particular immigration services as allowed under the law.

7. As a non-attorney, the law limits Hernandez’s services to clerical matters, such as completing immigration forms based on information provided by the immigrant consumer, translating documents, and, with their permission, mailing documents on behalf of consumers to

the required government agencies for processing. Further, state law requires providers to comply with certain advertising guidelines and signage and surety requirements, as well as provide consumers with written contracts.

8. “Immigrant assistance service providers” are also legally prohibited from providing legal services including, but not limited to, giving legal advice to consumers on what form of immigration relief they should be seeking or what immigration form to complete and file.

9. In addition, “immigrant assistance service providers” are prohibited from appearing in immigration court or before officials with the immigration authorities unless they are an accredited representative of an organization recognized by the United States Board of Immigration Appeals, the federal agency charged with certifying organizations that seek to represent individuals in immigration matters in the federal immigration agencies. Hernandez is not such an accredited representative.

10. Hernandez is not registered with any government agency to conduct any type of business, but has carried out the scheme described below by maintaining an immigration service provider business out of her home in Jackson Heights, New York.

Hernandez’s Scheme To Defraud Immigrants

11. Since at least June 1999, Hernandez has charged Latino immigrants large sums of money by falsely promising to obtain a “green card,” a United States passport and a social security card.

12. Hernandez approaches victims at their place of employment and/or by telephone and represents that she has successfully helped individuals obtain legal permanent residency

and/or citizenship in the United States, and will do the same for any customer. Hernandez demands fees of approximately \$15,000 and promises to obtain immigration papers for the victims in approximately eight months. In most instances, Hernandez demands that victims pay at least \$7,500 in cash as an initiation fee, with the understanding that the balance would be due at the time when the victim receives an appointment with immigration officials.

13. Hernandez lures victims by falsely claiming to have connections within immigration agencies that will expedite the application process for permanent residency and citizenship. Hernandez further convinces victims of her ability to obtain their legal immigration documents by asserting that she knows politicians and elected officials who can facilitate the process as well.

14. Once victims express interest in retaining the services promised, Hernandez demands that the victims pay the initiation fee and locate two or more additional clients before she will begin processing their immigration requests. Hernandez advises victims that it is best to present the immigration applications in groups of ten or more individuals. Consequently, victims are motivated to find others to retain Hernandez's fraudulent services who inevitably become victims themselves.

15. Hernandez demands that victims pay all fees in cash for which she provides a receipt. The receipt, however, does not mention or refer to the services being rendered. In providing these receipts, Hernandez sometimes labels them as a "promise to pay," falsely characterizing the transaction as a loan. Further, Hernandez purports to "authenticate" these by having them notarized. In addition, Hernandez guarantees her services by providing some victims with a post-dated check made payable to the victim in the amount they paid her in cash.

Hernandez's actions in providing notarized "promise to pay" documents, post-dated checks and receipts are all attempts to create an appearance of legitimacy for her fraudulent business.

16. Hernandez also demands that the victims produce either originals or copies of their tax returns, credit card statements, and identification documentation such as birth certificates, passports and country of origin national identification cards. In addition, she demands biographical data about the victims' parents and their whereabouts.

17. To further provide her fraudulent business with a veil of legality, Hernandez regularly inserts to her representations some truthful aspects of Federal immigration laws, such as those that require immigrants seeking legal permanent resident status to undergo certain medical tests and submit proof of such tests with their application to the immigration authorities.

18. After following all of Hernandez's instructions and waiting for eight months or more, victims receive none of the legal documentation Hernandez promised. When victims attempt to contact Hernandez, she does not return their calls. If victims persist in contacting Hernandez or demand a refund, Hernandez often threatens to report victims to immigration authorities and/or refuses to return the victims' identification documentation without additional payments.

Attorney General's Investigation

19. In December 2008, after receiving several complaints about Hernandez's conduct, the Attorney General initiated an investigation into Hernandez's business practices. The Attorney General interviewed victims and, pursuant to a subpoena, obtained documents from Hernandez related to her fraudulent immigration services business.

20. The Attorney General also conducted an investigatory hearing at which

Hernandez appeared with an attorney and refused to answer any questions, instead invoking the Fifth Amendment to every question. Hernandez's invocation of the Fifth Amendment throughout the entire investigatory hearing gives rise to an inference of liability. It is well established under New York case law, that when a party withholds evidence in a civil proceeding, the strongest inference may be drawn against her as permitted by the evidence in the record. This principle applies to a person who withholds testimony by invoking a constitutional privilege regardless of the forum in which the failure to testify occurred and supports the relief sought in this proceeding.

21. The evidence shows that Hernandez engaged in illegal, discriminatory, fraudulent and deceptive acts in violation of New York law. Based on witness statements and documentation, the Attorney General confirmed that Hernandez solicited Latino immigrants with false promises of filing legal documentation and securing permanent residency and citizenship for victims that never materialized. Further, the evidence shows that, per Hernandez's request, all victims paid fees in cash. The complaints filed with the Attorney General demonstrate that Hernandez's victims collectively paid at least \$82,500. Petitioner believes that there are many more victims in New York who also paid Hernandez substantial sums of money which would increase the amount stated above.

22. In addition to defrauding members of the public, the Attorney General's investigation revealed that Hernandez failed to comply with the provisions of the law regulating her purported business as an immigrant assistance service provider. Hernandez never provided the victims with a contract and did not post any required signage stating that she is not an attorney and has no special relationship with the immigration authorities.

23. Hernandez further made multiple false promises and misrepresentations to the victims about their immigration status and eligibility, if any, to adjust their immigration status to that of a United States legal permanent resident or citizen.

24. Ultimately, Hernandez's promises to obtain legal residency and United States citizenship for the victims never materialized. When victims inquired about their status or demanded a refund, Hernandez refused to return the thousands of dollars victims paid. Instead, Hernandez threatened victims with retaliatory action if they exposed her fraud.

Significant Injury to Victims

25. Hernandez reaped substantial profits from her fraudulent conduct, which resulted in substantial harm to more than a dozen of Latino immigrants who reside in New York and have an interest in adjusting their immigration status in the United States.

26. Contrary to the representations Hernandez made to induce Latino immigrants to participate in the scheme, many of these victims were not able to adjust their status in the United States.

27. As a result of Hernandez's fraudulent and discriminatory acts, individual victims lost between \$5,000 and \$7,500 and some families lost up to \$21,000.

28. Unless enjoined, Hernandez will continue to engage in this fraudulent scheme and will continue to cause substantial injury to New York residents.

FIRST CAUSE OF ACTION:
NEW YORK EXECUTIVE LAW § 63(12)
FRAUD

29. New York Executive Law § 63(12) prohibits fraud in the conduct of any business, trade or commerce.

30. In her capacity as an immigration service provider, Respondent carries on, conducts and transacts business in connection with these immigration service transactions.

31. By reason of the conduct alleged above, Respondent is repeatedly engaging in fraudulent acts and practices in connection with the transactions in violation of New York Executive Law § 63(12).

SECOND CAUSE OF ACTION:
NEW YORK GENERAL BUSINESS LAW § 349
DECEPTIVE ACTS AND PRACTICES

32. New York General Business Law § 349 prohibits “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service” in New York State.

33. By acting as an immigration service provider, Respondent conducts “business” or provides a “service” within the meaning of New York General Business Law § 349.

34. Respondent engages in one or more of the following deceptive acts or practices in connection with these immigration service transactions:

- a. misrepresenting to the public that Respondent has a special relationship with United States immigration officials that would place Respondent’s clients in an advantageous position when presenting applications for adjustment of status;

- b. misrepresenting to the public that Respondent's relationship with elected officials will secure or give Respondent special access to the immigration authorities; and
- c. misrepresenting to the public that Respondent can represent applications before the United States Citizenship and Immigration Services ("USCIS") and failing to disclose that Respondent is not an accredited organization or representative with the USCIS that would allow Respondent to file forms for immigration benefits on behalf of applicants.

35. By reason of the conduct alleged above, Respondent is engaging in deceptive business conduct in violation of New York General Business Law § 349.

THIRD CAUSE OF ACTION:
PURSUANT TO NEW YORK EXECUTIVE LAW § 63(12) – ILLEGALITY
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
DECEPTIVE ACTS AND PRACTICES

36. A violation of state law constitutes illegality within the meaning of Executive Law § 63(12) and is actionable thereunder when persistent or repeated.

37. Respondent's repeated and persistent violations of GBL Article 22-A, § 349 are thus violations of the Executive Law § 63(12).

38. By her actions in violation of GBL § 349, Respondent is engaging in repeated and persistent illegality in violation of New York Executive Law § 63(12).

FOURTH CAUSE OF ACTION:
NEW YORK GENERAL BUSINESS LAW §§ 460-a through 460-j
IMMIGRANT ASSISTANCE SERVICE PROVIDERS

39. New York General Business Law, Article 28-C (§§ 460-a through 460-j) regulates the conduct of immigration service providers defined as any person "providing assistance, for a

fee, or other compensation, to persons who have [...] come to the United States [...], in relation to any proceeding, filing or action affecting the non-immigrant, immigrant or citizenship status of a person which arises under the immigration and nationality law, executive order or presidential proclamation, or which arises under actions or regulations of the [USCIS, United States Department of Labor, or the United States Department of State].”

40. By failing to provide written contracts to her clients, Respondent repeatedly and persistently violates GBL § 460-b.

41. By failing to post signs where Respondent provides immigration services, indicating that she is not an attorney nor is she authorized to represent individuals before the USCIS, Respondent repeatedly and persistently violates GBL § 460-c.

42. Respondent repeatedly and persistently violates GBL § 460-e by:

- a. advising each victim on the process to follow and forms required to adjust their immigration status;
- b. stating and implying that she can obtain special treatment for individuals to adjust their immigration status due to her relationship with immigration officials and local elected officials;
- c. retaining fees for services that were not performed or costs not actually incurred;
- d. making false statements and misrepresentations about the process for immigrants to adjust their status in the U.S.; and
- e. guaranteeing and promising to adjust the victims’ immigration status in eight months.

43. By failing to retain client documents for three years, Respondent repeatedly and persistently violates GBL § 460-f.

44. Respondent fails to comply with the surety requirement provided by GBL § 460-g.

45. By reason of the conduct alleged above, Respondent is engaging in illegal conduct in violation of New York General Business Law §§ 460-a through 460-j.

FIFTH CAUSE OF ACTION:
PURSUANT TO NEW YORK EXECUTIVE LAW § 63(12) – ILLEGALITY
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW §§ 460-a through 460-j
IMMIGRANT ASSISTANCE SERVICE PROVIDERS

46. A violation of state law constitutes illegality within the meaning of Executive Law § 63(12) and is actionable thereunder when persistent or repeated.

47. Respondent’s repeated and persistent violations of GBL Article 28-C, §§ 460-a through 460-j are thus violations of the Executive Law § 63(12).

48. By her actions in violation of GBL §§ 460-a through 460-j, Respondent is engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SIXTH CAUSE OF ACTION:
PURSUANT TO NEW YORK EXECUTIVE LAW § 63(12)
VIOLATIONS OF NEW YORK CITY IMMIGRATION ASSISTANCE SERVICES LAW
§§ 20-770 through 20-780

49. Title 20 of the Administrative Code of the City of New York §§ 20-770 through 20-780 (“NYC Immigration Assistance Services Law”) regulates the conduct of immigration assistance service providers in New York City.

50. Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-771(a) by stating and implying that she can obtain special treatment for

individuals to adjust their immigration status due to her relationship with immigration officials and local elected officials.

51. Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-771(b) by retaining fees for services that were not performed or costs not actually incurred.

52. Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-771(e) by advising each immigrant on the process to follow and forms required to adjust their immigration status.

53. Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-771(f) by guaranteeing and promising to adjust the victims' immigration status in eight months.

54. By failing to provide written contracts to their clients in English and in a language they would understand, Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-772.

55. By failing to post signs where Respondent provides immigration services, indicating that they are not attorneys nor are they authorized to represent individuals before the USCIS, Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-773.

56. By failing to retain client documents for three years, Respondent repeatedly and persistently violates NYC Immigration Assistance Services Law § 20-775.

57. By reason of the conduct alleged above, Respondent is engaging in illegal conduct in violation of NYC Immigration Assistance Services Law §§ 20-770 through 20-780.

58. By her actions in violation of NYC Immigration Assistance Services Law §§ 20-770 through 20-780, Respondent is engaging in repeated and persistent illegality in violation of New York Executive Law § 63(12).

SEVENTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF NEW YORK STATE HUMAN RIGHTS LAW
DISCRIMINATION BASED ON NATIONAL ORIGIN

59. New York State Human Rights Law § 296(2)(a) prohibits discrimination in public accommodations based on national origin.

60. In her capacity as an immigration service provider, Respondent is a place of public accommodation and illegally seeks to defraud Latino immigrants based on their national origin.

61. By reason of the conduct alleged above, Respondent is repeatedly engaging in discrimination in connection with the transactions in violation of New York State Human Rights Law § 296(2)(a).

62. By her actions in violation of New York State Human Rights Law § 296(2)(a), Respondent is engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

EIGHTH CAUSE OF ACTION:
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF NEW YORK CITY HUMAN RIGHTS LAW
DISCRIMINATION BASED ON ALIENAGE,
CITIZENSHIP STATUS AND NATIONAL ORIGIN

63. Title 8 of the Administrative Code of the City of New York (“New York City Human Rights Law”) § 8-107(4) prohibits discrimination in public accommodations based on national origin, citizenship status and alienage.

64. In her capacity as an immigration service provider, Respondent is a place of public accommodation and illegally seeks to defraud Latino immigrants based on their national origin, citizenship status and alienage.

65. By reason of the conduct alleged above, Respondent is repeatedly engaging in discrimination in connection with the transactions in violation of New York City Human Rights Law § 8-107(4).

66. By her actions in violation of New York City Human Rights Law § 8-107(4), Respondent is engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that a judgment and order be issued:

1. Permanently enjoining Respondent, her employees, agents, successors, heirs and assigns, directly or indirectly, from engaging in the fraudulent and illegal practices alleged herein;
2. Permanently enjoining Respondent from engaging in the business of immigration services;
3. Permanently enjoining Respondent from engaging in discriminatory conduct in any business transaction;
4. Directing Respondent to provide an accounting of each immigration assistance service transaction;
5. Directing Respondent to pay restitution, compensatory and punitive damages to the victims harmed by her fraudulent conduct;

6. Directing Respondent to pay a civil penalty of \$7,500 to the State of New York for each violation of General Business Law Article 28-C pursuant to GBL § 460-h;

7. Directing Respondent to pay a civil penalty of \$5,000 to the State of New York for each violation of General Business Law Article 22-A pursuant to GBL § 350-d;

8. Awarding Petitioner the costs of this proceeding, including \$2,000 in additional costs against Respondent pursuant to CPLR § 8303(a)(6); and

9. Granting Petitioner such other and further relief as this Court finds appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

VERIFICATION

STATE OF NEW YORK)

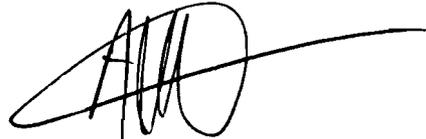
COUNTY OF NEW YORK) ss:

ALPHONSO B. DAVID, being duly sworn, deposes and says:

I am Acting Bureau Chief for Civil Rights in the office of Andrew M. Cuomo, Attorney General of the State of New York, and am duly authorized to make this verification.

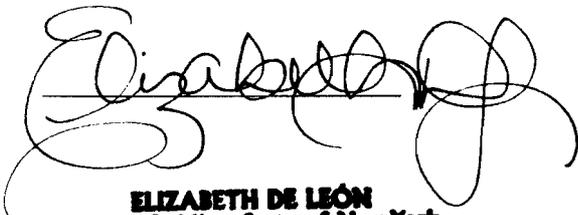
I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Petitioner is that Petitioner is a body politic and the Attorney General is its duly authorized representative.



ALPHONSO B. DAVID

Sworn to before me this
12 day of May, 2009



ELIZABETH DE LEÓN
Notary Public - State of New York
No. 02DE6146784
Qualified in New York County
Commission Expires May 22, 2010