

ATTACHMENTS

E.D.N.Y. - Bklyn
99-cv-2047
Donnelly, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 31st day of March, two thousand twenty-three.

Present:

Debra Ann Livingston,
Chief Judge,
Rosemary S. Pooler,
Robert D. Sack,
Circuit Judges.

Leonard W. Houston, o/b/o Louis Houston, Sr.,

Plaintiff-Appellant,

v.

22-2672

Highland Care Center, Inc.,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of May, two thousand twenty-three.

Leonard W. Houston, o/b/o Louis Houston, Sr.,

Plaintiff - Appellant,

v.

Highland Care Center, Inc.,

Defendant - Appellee.

ORDER

Docket No: 22-2672

Appellant, Leonard W. Houston, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEONARD W. HOUSTON *o/b/o Louis Houston,*
Sr.,

Plaintiff, : MEMORANDUM AND ORDER
: 99-CV-2047 (AMD) (RLM)
- against -

HIGHLAND CARE CENTER, INC.,

Defendant.

----- X

ANN M. DONNELLY, United States District Judge:

On October 12, 2022, the plaintiff filed a motion for leave to proceed *in forma pauperis* ("IFP") in his appeal of the Court's October 4, 2022 order denying his motion for reconsideration of an order issued in 2000. For the reasons that follow, the plaintiff's motion is denied.

BACKGROUND

The plaintiff filed a complaint on behalf of his father against the defendant on April 13, 1999. In a June 8, 1999 order, Magistrate Judge Roanne L. Mann ruled that the plaintiff could not prosecute his father's claims without counsel, and gave the plaintiff until July 19, 1999 to retain counsel or to apply for the appointment of counsel. Judge Eugene H. Nickerson denied the plaintiff's application to appoint counsel, and the Second Circuit dismissed the plaintiff's appeal of that order. The plaintiff moved to vacate Judge Nickerson's order but did not appear on the date set for the hearing, or otherwise communicate with the court. Accordingly, on October 27, 2000, Judge Nickerson dismissed the case.

Almost twenty-two years later, on September 19, 2022, the plaintiff filed a Rule 60(b)(6) motion to set aside Judge Nickerson's order. (ECF No. 27.) I deplored the motion as untimely on October 4, 2022. On October 12, 2022, the plaintiff appealed that decision to the Second Circuit,

and filed a motion in this Court for leave to proceed IFP. On October 21, 2022, the Second Circuit advised that the plaintiff's appeal could not proceed while the IFP motion was pending in this Court. (ECF No. 32.)

LEGAL STANDARD

A litigant's right to proceed IFP on appeal is governed by 28 U.S.C. § 1915 and Fed. R. App. P. 24 and is generally addressed in the first instance by the district court. *See* Fed. R. App. P. 24(a)(1). "An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3); *United States v. Farley*, 238 F.2d 575, 576 (1956) ("[I]f on consideration the trial judge is conscientiously convinced that there is no substantial question for review and that an appeal will be futile, or if he is convinced that there is no reasonable basis for the claims of alleged error, it is the duty of the trial judge, albeit not a pleasant duty, to certify that the appeal is not taken in good faith."). Whether an appeal is taken in good faith "requires 'an inquiry into the merits of the appeal rather than the subjective good faith of the plaintiff.'" *Robinson v. Buffalo*, 16-CV-00432, 2017 WL 7731906, at *1 (W.D.N.Y. Oct. 25, 2017) (quoting *Clay v. New York National Bank*, 99-CV-9857, 2001 WL 277299, at *1 (S.D.N.Y. Mar. 21, 2001)).

DISCUSSION

The plaintiff seeks IFP status on his appeal of this Court's October 4, 2022 denial of his Rule 60(b)(6) motion for relief from the judgment and order dismissing his complaint. Parties seeking relief pursuant to Rule 60(b)(6) must show "extraordinary circumstances" justifying relief. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (citing *Ackermann v. United States*, 340 U.S. 193, 199 (1950)); *see also Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986) (Rule 60(b)(6) is "properly invoked only when there are extraordinary circumstances justifying relief"). Moreover, Rule 60(b)(b) motions must be made "within a reasonable time." Fed. R. Civ. P.

60(c)(1). The Court “must scrutinize the particular circumstances of the case, and balance the interest in finality with the reasons for delay” when determining whether the motion was made within a “reasonable time.” *Carbone v. Cunningham*, 857 F. Supp. 2d 486, 488 (S.D.N.Y. 2012) (quoting *PRC Harris, Inc. v. Boeing Co.*, 700 F.2d 894, 897 (2d Cir. 1983)).

Judge Nickerson dismissed the plaintiff’s complaint on October 27, 2000, because the plaintiff failed to appear for a hearing and stopped communicating with the Court. The Clerk of Court issued a final judgment on November 22, 2000. The plaintiff waited almost twenty-two years to seek reconsideration, which is not a “reasonable time.” *See, e.g., Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (finding that 26 months “constitutes a patently unreasonable delay absent mitigating circumstances”); *Rodriguez v. Mitchell*, 252 F.3d 191, 201 (2d Cir. 2001) (“We do not think that three and one-half years from the date judgment was entered is a reasonable time [for purposes of Rule 60(b)(6)].”); *Grace v. Bank Leumi Tr. Co. of N.Y.*, 443 F.3d 180, 191 (2d Cir. 2006) (“In a typical case, five years from the judgment to a Rule 60(b) motion would be considered too long.”).

Moreover, “relief [under Rule 60(b)(6)] should only be granted where the moving party has demonstrated ‘extraordinary circumstances’ or ‘extreme hardship.’” *PRC Harris*, 700 F.2d at 897. The plaintiff cites as “exceptional circumstances” the fact that he had to “attend Bankruptcy proceedings . . . Mortgage Foreclosure proceedings . . . and New York Condominium Act (Article 9-B) Lien proceedings” in various locations, which “caused said Plaintiff from seeking more timely relief during the pendency of proceeding before this Court.” (ECF No. 27 ¶ 4.) These facts do not constitute “exceptional circumstances” or “extreme hardship” that would excuse a twenty-two-year delay.

CONCLUSION

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the October 4, 2022 order would not be taken in good faith, and the IFP application for purposes of appeal is denied. *See Coppededge v. United States*, 369 U.S. 438, 444-45 (1962).

Pursuant to Rule 24(a)(5) of the Federal Rules of Appellate Procedure, the plaintiff may file a motion for leave to proceed on appeal *in forma pauperis* in the United States Court of Appeals for the Second Circuit within 30 days after the Clerk of this Court serves notice of entry of this order upon him.

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
November 1, 2022

RESIDENTS'

BILL OF RIGHTS

NURSING HOMES AND HEALTH RELATED FACILITIES

RESIDENT'S RIGHTS

State Hospital Code Sections 730.17 and 740.14

730.17 Patients' rights: (a) The operator of a nursing home or health related facility shall, in consultation with patients/residents, establish written policies regarding the rights and responsibilities of patients/residents and shall be responsible for development of and adherence to procedures implementing such policies. These policies and procedures shall be given to patients/residents or their guardian, next of kin, sponsoring agency or agencies or lawful representative and each member of the facility's staff. They shall also be posted conspicuously in a public place in the facility and made available to the public. The staff of the facility shall be trained and involved in the implementation of these policies and procedures. The patients'/residents' rights, policies and procedures shall ensure that, at least, each patient/resident admitted to the facility:

- (1) is fully informed, as evidenced by the patient's/resident's written acknowledgment, prior to or at the time of admission and during stay, of these rights, and is given a statement of the facility's rules and regulations, and an explanation of the patient's/resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other patients;
- (2) is fully informed, and is given a written statement, prior to or at the time of admission and during stay, of services available in the facility, and of related charges including any charges for services not covered by sources of third-party payments or not covered by the facility's basic per diem rate;
- (3) is informed verbally and in writing, at the time of admission, and again at the time of transfer for any reason, of the facility's bed retention or reservation policy;
- (4) is assured of adequate and appropriate medical care, is fully informed, by a physician, of his medical condition unless medically contraindicated (as documented by a physician in his medical record), is given the name, address and telephone number of the physician in charge of the case and is afforded the opportunity to participate in the care plan and proposed treatment, to refuse to participate in experimental research, and to refuse medication and treatment after being fully informed of and understanding the consequences of such actions;
- (5) is transferred or discharged only for medical reasons, or for his welfare or that of other patients/residents, or for nonpayment for his stay (except as prohibited by sources of third-party payment), is given reasonable advance notice to ensure orderly transfer or discharge, and is (as is his representative) provided an interpretation of the content of his medical records by a physician of his choosing in instances where adverse utilization review continued stay decisions are pending, and such actions are documented in his medical record;
- (6) is encouraged and assisted, throughout his period of stay, to exercise his rights as a patient/resident and as a citizen, and to this end may voice grievances, has a right of action for damages or other relief for deprivations or infringements of his right to adequate and proper treatment and care established by any applicable statute, rule, regulation or contract, and to recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination or reprisal;
- (7) may participate in the established patients'/residents' council, as described in Section 414.9 of this Part;
- (8) is instructed in both the facility's and the department's complaint procedures verbally and in writing, and is provided with the name, address and telephone number of the office established by the department to receive complaints and of the State Office for the Aging Ombudsman Program;
- (9) may manage his personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law;
- (10) is free from mental and physical abuse, and free from chemical and physical restraints except those restraints authorized in writing by a physician for specified and limited period of time or when necessary to protect the patient from injury to himself or to others; or as are necessitated by an emergency, in which case the restraint may only be applied by a licensed nurse who shall set forth in writing the circumstances requiring the use of restraint and, in the case of use of a chemical restraint, a physician shall be consulted within 24 hours;
- (11) is assured security in storing personal possessions and confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in the case of his transfer to another health care institution, or as required by law or third-party payment contract;
- (12) is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;
- (13) is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;
- (14) may associate and communicate privately with persons of his choice, may join with other patients/residents or individuals within or outside of the facility to work for improvements in patient care, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician in his medical record);

(15) may meet with, and participate in activities of, social, religious and community groups at his discretion, unless medically contraindicated (as documented by his physician in his medical record);
(16) is informed of the facility's visiting hours policies and the rights and responsibilities of the visitors;
(17) may retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients/residents, unless medically contraindicated (as documented by his physician in his medical record);
(18) if married, is assured privacy for visits by his/her spouse; if both are inpatients/residents in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record);
(19) is assured of exercising his civil and religious liberties, including the right to independent personal decisions and knowledge of available choices shall not be infringed and the facility shall encourage and assist in the fullest possible exercise of these rights; and
(20) is assured of the right to receive, upon request, kosher food or food products prepared in accordance with the Hebrew orthodox religious requirements when the patient or resident, as a matter of religious belief desires to observe Jewish dietary laws.

21. Is, upon request by the patient/resident and/or the patient's/resident's designated representative, informed of his/her specific assignment to a patient classification category as contained in the "Patient Categories and Case Mix Indices Under Resource Utilization Group (RUG II) Classification System."

(b) All rights and responsibilities as specified in (a) of this section as they pertain to (1) a patient or resident adjudicated incompetent in accordance with State law, (2) a patient or resident who is found, by his physician, to be medically incapable of understanding these rights, or (3) a patient or resident who exhibits a communication barrier, devolve to and shall be exercised by the appointed committee in a representative capacity.

*Signature of resident or employee _____

Witness _____

Facility _____

Date April 23, 1997

*If the resident is unable to sign:

Name of appointed representative _____

LEONARD W. HOUSTON, Son

Relationship to resident _____

A copy of this document should be given to each employee and resident/appointed personal representative.

In addition, a signed copy of this document should be made a part of the resident's medical chart and employee's personnel file.

N.Y.C.
Foundation for Senior Citizens
Ombudsman Program
150 Nassau St.
Suite 2019
New York, New York 10038

212-962-7817

Patient Service Hotline
Office of Health Systems Management
5 Penn Plaza
5th Floor
New York, New York 10001
212-613-2500

**HIGHLAND CARE CENTER
91-31 175th Street
Jamaica, N.Y. 11432**

Long Term Care Facilities and Home Health Agencies

42 C.F.R. Parts 483 & 484

PART 483 — CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

Subpart A — [Reserved.]

Subpart B — Requirements for Long Term Care Facilities

- § 483.1 Basis and scope.
- § 483.5 Definitions.
- § 483.10 Resident rights.
- § 483.12 Admission, transfer and discharge rights.
- § 483.13 Resident behavior and facility practices.
- § 483.15 Quality of life.
- § 483.20 Resident assessment.
- § 483.25 Quality of care.
- § 483.30 Nursing services.
- § 483.35 Dietary services.
- § 483.40 Physician services.
- § 483.45 Specialized rehabilitative services.
- § 483.55 Dental services.
- § 483.60 Pharmacy services.
- § 483.65 Infection control.
- § 483.70 Physical environment.
- § 483.75 Administration.
- § 483.80 Special requirements for skilled nursing facility agreements with swing-bed hospitals.

Subpart C — [Reserved.]

Subpart D — Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

- § 483.150 Deemed meeting of requirements, waiver of requirements.
- § 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.
- § 483.152 Requirements for approval of a nurse aide training and competency evaluation program.
- § 483.154 Nurse aide competency evaluation.
- § 483.156 Registry of nurse aides.
- § 483.158 FFP for nurse aide training and competency evaluation.

Subparts E-H — [Reserved.]

Subpart I — Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded

- § 483.400 Basis and purpose.
- § 483.405 Relationship to other HHS regulations.
- § 483.410 Condition of participation: Governing body and management.
- § 483.420 Condition of participation: Client protections.
- § 483.430 Condition of participation: Facility staffing.
- § 483.440 Condition of participation: Active treatment services.
- § 483.450 Condition of participation: Client behavior and facility practices.
- § 483.460 Condition of participation: Health care services.
- § 483.470 Condition of participation: Physical environment.
- § 483.480 Condition of participation: Dietetic services.

Subpart A — [Reserved.]**Subpart B — Requirements for Long Term Care Facilities****§ 483.1 Basis and scope.**

(a) *Basis in legislation.* (1) Sections of the Act 1819 (a), (b), (c), and (d) provide that —

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements (see section 1819(d)(4)(B)) if they are necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Sections 1919 (a), (b), (c), and (d) of the Act provide that nursing facilities participating in Medicaid must meet certain specific requirements.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart —

Facility means, a skilled nursing facility (SNF) or a nursing facility (NF) which meets the requirements of sections 1819 and 1919 (a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c) of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of a larger institution. For Medicare, a SNF (see section 1819(a)(1)), and for Medicaid, a NF (see section 1919(a)(1)) may not be an institution for mental diseases as defined in § 435.1009.

§ 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) *Notice of rights and services.* (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident or his or her legal representative has the right —

(i) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within 24 hours; and

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days' advance notice to the facility.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and

(5) The facility must —

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of —

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i) (A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes —

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(8) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(9) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) **Notification of changes.** (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is —

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is —

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Protection of Resident Funds.* (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) **Management of personal funds.** Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)-(8) of this section.

(3) **Deposit of funds.** (i) Funds in excess of \$50. The facility must deposit any residents' personal funds in excess of \$50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) Funds less than \$50. The facility must maintain a resident's personal funds that do not exceed \$50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) Accounting and records. The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements on request to the resident or his or her legal representative.

(5) Notice of certain balances. The facility must notify each resident that receives Medicaid benefits —

(i) When the amount in the resident's account reaches \$200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(7) Assurance of financial security. The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(8) Limitation on charges to personal funds. The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(d) *Free choice*. The resident has the right to —

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Privacy and confidentiality*. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when —

- (i) The resident is transferred to another health care institution; or
- (ii) Record release is required by law.

(f) *Grievances*. A resident has the right to —

(1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Examination of survey results*. A resident has the right to —

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contract these agencies.

(h) *Work*. The resident has the right to —

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when —

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Mail*. The resident has the right to privacy in written communications, including the right to —

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) *Access and visitation rights*. (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State;

(iii) The resident's individual physician;

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(k) *Telephone.* The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) *Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(n) *Self-Administration of Drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined that this practice is safe.

(o) *Refusal of certain transfers.* (1) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate —

(i) A resident of a SNF from the distinct part of the facility that is a SNF to a part of the facility that is not a SNF, or

(ii) If a resident of a NF from the distinct part of the facility that is a NF to a distinct part of the facility that is a SNF.

(2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicaid benefits.

§ 483.12 Admission, transfer and discharge rights.

LETTERS OF ADMINISTRATION

File No. 55-2000

THE PEOPLE OF THE STATE OF NEW YORK

SEND GREETINGS: TO THE FIDUCIARY(S) AND OTHERS CONCERNED:

Letters are on this date granted by the Surrogate's Court of Orange County, New York, as follows:

Name of Decedent: Louis Houston
a/k/a Louis Houston, Sr.

Domicile of Decedent: City Of Middletown

Date of Death: January 19, 2000

Name of Each Fiduciary: Leonard W. Houston

Type of Letters Issued: Letters of Administration

Limitations on Letters: THE FIDUCIARY IS HEREBY RESTRAINED FROM COMPROMISING ANY CAUSE OF ACTION AND FROM COLLECTING ANY PROCEEDS THEREOF UNTIL THE FURTHER ORDER OF THIS COURT.

THESE LETTERS, granted pursuant to a decree entered by the Court, authorize and empower the above named fiduciary to perform all acts requisite to the proper administration and disposition of the estate of the decedent in accordance with the decree and the laws of the State of New York, but subject to the limitations, if any, as set forth above.

IN TESTIMONY WHEREOF, the seal of the Surrogate's Court of Orange County has been affixed.

WITNESS: Hon. Elaine Slobod, Surrogate of the County of Orange.

Dated: July 25, 2000

Deputy

Chief Clerk of the Surrogate's Court

THESE LETTERS ARE NOT VALID WITHOUT THE RAISED SEAL OF THE COURT

ORANGE COUNTY

CERTIFICATE OF APPOINTMENT OF FIDUCIARY

File No. 55/2000

IT IS HEREBY CERTIFIED that Letters in the Estate of the decedent named below have been granted by this Court as follows:

NAME OF DECEDENT: Louis Houston
a/k/a Louis Houston, Sr.

DOMICILE OF DECEDENT: City Of Middletown

DATE OF DEATH: January 19, 2000

FIDUCIARY(S) TO WHOM
LETTERS ARE ISSUED: Leonard W. Houston

TYPE OF LETTERS ISSUED: LETTERS OF ADMINISTRATION

DATE LETTERS ISSUED: July 25, 2000

LIMITATIONS ON LETTERS: THE FIDUCIARY IS HEREBY RESTRAINED FROM COMPROMISING ANY CAUSE OF ACTION AND FROM COLLECTING ANY PROCEEDS THEREOF UNTIL THE FURTHER ORDER OF THIS COURT.

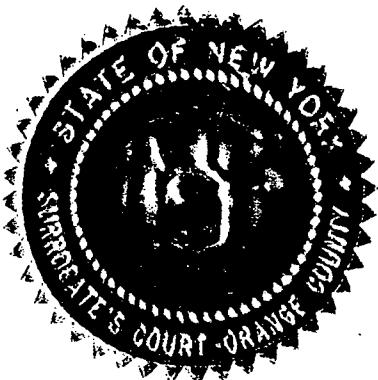
and such letters are unrevoked and in full force as of this date.

Dated: July 25, 2000

IN TESTIMONY WHEREOF, the seal of the Surrogate's Court of Orange County has been affixed.

WITNESS: Hon. Elaine Slobod, Surrogate of the County of Orange.

Joy V. Morse
Chief Clerk of the Surrogate's Court



THIS CERTIFICATE IS NOT VALID WITHOUT THE RAISED SEAL OF THE COURT

(Note: SCPA 710 PROVIDES IN PART: "4. No fiduciary shall remove property of the estate without the state without the prior approval of the Court and upon filing a bond if required by the Court.")

CERTIFICATE OF DEATH

156-00-004325

DATE FILED
NEW YORK CITY
DEPARTMENT OF HEALTH
JAN 24 A 9:30

Certificate No.

1. NAME OF
DECEASED LOUIS Houston
(Type or Print) (First Name) (Middle Name) (Last Name)

MEDICAL CERTIFICATE OF DEATH (To be filled in by the Physician)

2. PLACE OF DEATH	2. NEW YORK CITY 2a. BOROUGH <u>QUEENS</u>	2b. Name of hospital or other facility (if not facility, street address) <u>THE Parkway Hospital</u>	2c. If in hospital or other facility 1 <input type="checkbox"/> DOA 3 <input type="checkbox"/> Outpatient 2 <input type="checkbox"/> Emerg. 4 <input type="checkbox"/> Inpatient	2d. If inpatient, date of current admission mm dd yyyy 01 15 2000
3a. Date and Hour of Death	(Month) (Day) <u>JANUARY 19</u>	(Year - yyyy) <u>2000</u>	3b. HOUR 7:35 AM	4. SEX MALE
			5. APPROXIMATE AGE 79	

6. I HEREBY CERTIFY THAT: (Check One)

 I attended the deceased A staff physician of this institution attended the deceasedDr. Zenaida E. Santos

attended the deceased

from (mm/dd/yyyy) 01/15/2000 to (mm/dd/yyyy) 01/19/2000 and last saw him alive at 8 A.M.
on (mm/dd/yyyy) 01/18/2000. I further certify that traumatic injury or poisoning DID NOT play any part in causing death, and
that death did not occur in any unusual manner and was due entirely to NATURAL CAUSES. See first instruction on reverse of certificate.

Witness my hand this 19 day of JANUARY (yyyy) 2000 Signature John Leahy Baile
Name of Physician John Baile M.D. Address 70-35 113th Street Forest Hills N.Y.
(Type or Print) License No. # 126137

D.O.
M.D.

11395

PERSONAL PARTICULARS (To be filled in by Funeral Director or, in case of City Burial, by Physician)

7a. Name of Survivor of Decedent	7b. Name of Survivor of Decedent	7c. City, Town, or Location <u>MIDDLETOWN</u>	7d. Street & House No. <u>148 DEER COURT 10940</u>	7e. Inside City Limits of 7c Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
8. Served in U.S. Armed Forces No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> Specify years 0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> From <input type="checkbox"/> To	9. Marital Status (Check One) 1 <input type="checkbox"/> Never Married 2 <input type="checkbox"/> Widowed 3 <input type="checkbox"/> Married or separated 4 <input type="checkbox"/> Divorced	10. Name of Surviving Spouse (If wife, give maiden name)		
11. Date of birth (Month) (Day) (Year - yyyy) of Decedent: <u>FEBRUARY 2, 1920</u>	12. Age at last birthday <u>79</u>	13. Social Security No. <u>116-03-6989</u>	14a. Usual Occupation (Kind of work done during most of working lifetime. Do not enter retired) <u>CHEF</u>	
15. Birthplace (City & State or Foreign Country) <u>PHILADELPHIA, PA</u>	16. Education (Specify only highest grade completed) Elementary/Secondary (0-12) College (1-4 or 5+) <u>14</u>	17. Other name(s) by which decedent was known <u>LOUIS HOUSTON SR.</u>	14b. Kind of business or industry	
18. NAME OF FATHER OF DECEDENT <u>J. H. HOUSTON</u>	19. MAIDEN NAME OF MOTHER OF DECEDENT <u>LAURA DIXON</u>			
20a. NAME OF INFORMANT <u>LEONARD W. HOUSTON</u>	20b. RELATIONSHIP TO DECEASED <u>SON</u>	20c. ADDRESS <u>148 DEER CT. MIDDLETOWN, NY 10940</u>	(CITY)	(STATE) (ZIP)
21a. NAME OF CEMETERY OR CREMATORIAL <u>ROSEMOUNT CEMETERY</u>	21b. LOCATION (City, Town, State and Country) <u>NEWARK, NEW JERSEY</u>	21c. DATE OF BURIAL OR CREMATION <u>JANUARY 24, 2000</u>		
22a. FUNERAL ESTABLISHMENT <u>WOODSIDE FUNERAL HOME</u>	22b. ADDRESS <u>918 GATES AVE. BROOKLYN, NY 11221</u>			

VR15 (Rev. 8/99) VITAL RECORDS

DEPARTMENT OF HEALTH

THE CITY OF NEW YORK

This is to certify, that the foregoing is a true copy of a record on file in the Department of Health. The Department of Health does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided by law.

Stephen P. Schwartz
STEPHEN P. SCHWARTZ
CITY REGISTRAR

Do not accept this transcript unless it bears the raised seal of the Department of Health. The reproduction or alteration of this transcript is prohibited by Section 3.21 of the New York City Health Code if the purpose is the evasion or violation of any provision of the Health Code or any other law.

VITAL RECORDS

DEPARTMENT OF HEALTH

THE CITY OF NEW YORK



DATE ISSUED

DOCUMENT NO. D 703170