

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH**

FRANKLIN, ss.

SUPERIOR COURT

**QUABBIN VALLEY CONVALESCENT CENTER,
INC. D/B/A QUABBIN VALLEY HEALTHCARE**

Plaintiff,

Civil Action No. 03-127

vs.

JULIE ANN BARCOMB

Defendant.

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Defendant moves the court, pursuant to Massachusetts Rules of Civil Procedure 37(a) to compel the Plaintiff to answer interrogatories. The Plaintiff failed to answer or to offer reasonable objections to the following interrogatories.

Interrogatory No. 2

Please identify all persons, of whom you are aware, with personal knowledge relative to the claims made in the Plaintiff's Complaint in this action and, with respect to each such person, please state:

- a. The person's full name, residential address and daytime telephone number;*
- b. The facts of which the person has personal knowledge; and*
- c. The manner in which the person acquired such personal knowledge.*

Answer

Plaintiff objects to this request as it seeks information which does not appear reasonably calculated to lead to discovery of admissible evidence. Plaintiff's further states that its claim is based on a business record accounting and not personal knowledge.

Reason

This interrogatory is clearly reasonably calculated to lead to the discovery of admissible evidence. The answer would identify those persons who may be deposed or called as witnesses at trial. The Defendant is not requesting business records, only a list of employees or other

workers that may have knowledge of the issues in question. Furthermore, the Plaintiff propounded the same question upon the Defendant which the Defendant answered in good faith.

Interrogatory No. 3

With respect to all discussions, communications, conversations and correspondence between you, your fellow employees or your subordinates, or, if available, your superiors, and MassHealth, its agents or employees, in any way concerning or relating to the instant action and/or Resident's application for MassHealth Coverage, please state:

- a. Each date during the period of January 1, 2008 to present that any such discussions, communications, conversations or correspondence took place;*
- b. The name, present address and office or position of each person who, on Plaintiffs or Defendants behalf, engaged or participated in, or was present at, the discussions, communications, conversations or correspondence that took place on each of the dates listed in your interrogatory No. 3(a);*
- c. The manner in which each of the communications occurred on each of the dates listed in your answer to No. 3(a); i.e., whether by letter, face to face conversation, telephone, telegraph, etc.;*
- d. The name and present address of any other person present at any of the communications which took place on the dates listed in your answer to No. 3(a);*
- e. In full and complete detail, a description of the entire contents of the communications which occurred or took place on each of the dates listed in your answer to No. 3(a), including in your answer all that was communicated or said by the person(s) listed in your answers to Nos. 3(b, d), and the order in which it was communicated or said. If any of such communications were in, or have been reduced to, written form, please attach a copy of each to your answers to these interrogatories.*

Answer

Plaintiff objects to Interrogatory No.3 as it does not appear reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further states that any and all communications surrounding said application were supplied either by Defendant or via carbon copy from MassHealth communications to Defendant.

Reason

This interrogatory is clearly reasonably calculated to lead to the discovery of admissible evidence. There could be information that the Defendant was not privy to that could

strengthen her defense against the Plaintiff's claims. The defendant is unable to recall every discussion between Plaintiff's employees and herself. Plaintiff, surely, must require employees to account for their time spent with people such as the Defendant. Furthermore, the Plaintiff propounded the same question upon the Defendant which the Defendant answered in good faith.

Interrogatory No. 4

Please identify any and all documents which relate to or concern Resident's MassHealth application and current location and custodian of said documents.

Answer

Plaintiff presumes MassHealth is the current custodian or Resident's MassHealth Application.

Reason

Plaintiff is clearly showing bad faith in this response. The interrogatory did not request the Residents Application, it requested any document which relate to or concern the application. The Defendant was assisted by Plaintiff's employees in completing the application and, therefore, it is reasonable to believe that the Plaintiff could be in possession of some supporting documents. Furthermore, the Plaintiff propounded the same question upon the Defendant which the Defendant answered in good faith.

Interrogatory No. 8

Please explain the process that was used to explain the legal ramifications of Defendant signing the documents she was required to sign to enable Resident to be admitted to Quabbin Valley.

Answer

Plaintiff states that this is a question of fact, to be decided at trial and that further information regarding the process and discussion specific to this case is best answered by the Defendant. Plaintiff further directs Defendant to the contract between the parties, which speaks for itself.

Reason

This Interrogatory simply asks what the process was that was used to explain the legal ramifications of the document the Defendant was signing. It does not ask for conclusions on whether or not the process that was used was correct or adequate, which will be decided at trial, the Defendant merely wishes to learn what occurred upon the execution of the agreement in question

Interrogatory No. 9

Please state whether the Defendant was given time to “seek independent legal advice” before signing the “RESIDENT ADMISSION AGREEMENT”.

Answer

Plaintiff states that this is a question of fact, to be determined at trial and that the Defendant is the best person to answer this question.

Reason

This Interrogatory simply asks if the Defendant was given time to seek independent legal advice before signing the agreement in question. It does not ask for conclusions on whether or not this process was correct or adequate, which will be decided at trial, the Defendant merely wishes to learn what occurred upon the execution of the agreement in question

Interrogatory No. 10

Please state how it was determined that Defendant should execute said agreement. Please state if there was any discussion concerning Defendants personal liability for Resident’s debts.

Answer

Plaintiff states that this is a question of fact, to be decided at trial and that further information regarding the process and discussion specific to this case is best answered by the Defendant. Plaintiff further directs Defendant to the contract between the parties, which speaks for itself.

Reason

This Interrogatory simply asks if there was any discussion of how the Defendant should sign the agreement in question. It does not ask for conclusions on whether or not this process was correct or adequate, which will be decided at trial, the Defendant merely wishes to learn what occurred upon the execution of the agreement in question.

WHEREFORE, the Defendant moves the Court for an order compelling the Plaintiff to answer the interrogatories propounded in such a manner as to allow for reasonable discovery, in the alternative, the defendant moves to dismiss the complaint based upon the Plaintiffs failure to permit reasonable discovery.

The Defendant further moves the court for an order awarding defendant reasonable expenses and attorney fees incurred connection with this motion

The Defendant, by her Attorney,

Thomas P Keenan, Esq.
BBO #673676
KEENAN LAW OFFICES
48 Elm St, Suite 3
Westfield, Massachusetts 01085

Dated: May 28th, 2010