LEGAL

Injudicious Justice? *Part 2*

By ABBY LUBY

Last week's story was about two New York State Supreme Court judges allegedly favoring a New Rochelle condo board where the Chief Clerk of the 9th Judicial District, Nancy Mangold, is a resident. (Mangold lives with her partner Jerry Cohen, who is one of the plaintiffs). The two embattled Greencroft Condominium boards, Greencroft 1 (Mangold's board) and Greencroft 2, have appeared in the courtrooms of Judge William Giacomo and Judge Joan Lefkowtiz. Initially, the case was heard by Judge William Giacomo, who, in July, 2011, had to recuse himself for an inappropriate, private conversation with one of the condo owners. After July, the cases were transferred to Judge Lefkowitz.

(Of note, last week when this newspaper came out with the first installment of this story, sources reported that all of The Westchester Guardian boxes in New Rochelle had been emptied early in the day).

The arguments on either side are about arbitration, dues owed to Greencroft Homeowner's Association (HOA), questionable capital expenditures by the HOA and the alleged fraudulent Board elections by Greencroft 1.

Judge Lefkowitz has consistently denied arbitration, a ruling that would keep the case in the courts where the outcome is usually controlled. Arbitration is usually recommended because it's a transparent process that cuts legal costs and, according to the American Arbitration Association that oversees the process, each side can choose their own arbitrators.

In her February 14, 2012 order, Judge Lefkowitz ruled against arbitration citing a fictitious order of January 23, 2012 – an order that was never issued. (The court's on-line docket (https://iapps.courts.state.ny.us/nyscef/ verifies that no such order exists). Also, records show that the request for arbitration wasn't made until February 17, after the February 14 order. Not only did Lefkowitz pre-rule on something that wasn't asked for, but she based her rule on a non-existent order she never made.

Five days after *The Westchester Guardian* tried to contact Judge Lefkowitz regarding the Greencroft case, Greencroft 2 attorney Saul Fellus, received a letter from Judge Lefkowitz's law secretary, James Fine, stating that the February 14 order was "vacated" and said, citing the January 23 ruling, was an error. Lefkowitz apparently "reissued" a new order dated February 24, 2012.

Re-adjusting dates seems to be a repeated occurrence by Judge Lefkowitz and her staff. When Greencroft 2 resident Robin Pastorana sued her own board, the board hired Robert Corini, an attorney based in New Rochelle. Corini, who would hand off the case in part to an attorney whose fee would be covered by Greencroft 2 insurance, noticed a discrepancy in new materials filed with Judge Lefkowtiz after the case had been adjourned. Administrative court rules state that if a case is adjourned, no new matters could be raised or filed.

Not only was the petition accepted by Judge Lefkowitz after the case had been adjourned to February 10, 2012, but the petition was filed January 23, the same day Corini received an email from Lefkowitz's part clerk Robert Arena, confirming the February 10 adjournment date. The January 23 filing date was recorded on the e-court on line system.

"Judge Lefkowitz doesn't follow that [administrative] rule," said Lefkowitz's law clerk James Fine to Corini when asked about the state rule. Fine was responding to a letter Corini wrote the judge: "My client and I are incapable of understanding what occurred here," Corini wrote, requesting an explanation. When Corini asked Fine if he could to reply to the new information by the plaintiff, known as a sur-reply, Fine told him Judge Lefkowitz "never allows sur-replies." Two days after Fine's call, the e-court filing date for the plaintiff was changed again from January 23 to January 27, 2012.

Westchester law prohibits altering a petition once it is submitted to the court. "Names on those petitions were gathered under false pretenses," said Howard Mandelbaum, Treasurer of Greencroft 2. "Some people were strong-armed to sign, other people asked to have their names removed and then, for some reason, asked to have their names added back. Judge Lefkowitz allowed this. She approved and back dated the original order to make it look clean."

When part clerk Arena was asked by *The Westchester Guardian* about the backdating, his brief email reply affirmed that motions were decided upon even though there was an adjournment. "The dates you see reflect past motion dates. Motions are decided on the submission of papers only."

The Greencroft 1 board was dogged in their attempts to get Greencroft 2 disqualified for not paying what they considered back dues to the HOA. Greencroft 2 attorney Fellus got a decision from the Appellate Division after Judge Giacomo failed to specify how much members should pay. An August 3, 2011 order of Appellate Division ordered the sum to be $35,000.00, which was subsequently paid. But Greencroft 1 board upped their demand and wanted $80,800 as an outstanding amount due. Judge Lefkowitz refused to recognize the Appellate Division's

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decision and in a November 7, 2011 order, she agreed to the higher sum of $80,800.

Although Greencroft 2 paid the $35,000, the ired board of Greencroft 1 sued to disqualify Greencroft 2 from the HOA board, made up of five members from each building. According to Mandelbaum, Greencroft 1 held an HOA election in September, 2011, without notifying Greencroft 2 members; Greencroft 1 "voted themselves into office." A motion was made to declare the election invalid but Judge Lefkowitz, in a February 14, 2012 ruling, declared that the election was valid and that Greencroft 2 was disqualified which, she stated in her ruling, was why they weren't notified. Greencroft 1 then demanded that back dues be paid directly to the HOA. Attorney for HOA, Jack Malley of Smith Buss & Jacobs in Yonkers, handed in a motion personally to Judge Lefkowitz to rule on collection of dues. The judge, who decided to immediately hear arguments from both sides, called Fellus on the phone foregoing the required 24-hour notice. According to Fellus, three of his requests for a court reporter to be present were denied by the judge who then told Fellus she was ready to proceed "with or without him."

So far, Mandelbaum said he perceives the judicial decisions as unfair and biased.

"They [Greencroft 1 and Judge Lefkowitz] are in lock-step with each other and it bothers me tremendously. We offered Greencroft 1 three dates where we could look at the books; and what did they do? They got a lawyer and sued us. In all honesty, it's all so cartoonish."

Correction: "The Law Office of Saul Fellus is a solo practice which rents offices from but is not otherwise affiliated with Bisogno & Meyerson, LLP"

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MEDICINE

What Your Doctor Won't (or Can't) Tell You—Emergency Rooms

By Dr. EVAN LEVINE

Walk into an Emergency Room on a busy day. The doctors are generally very good, but they are overwhelmed, and there are patients perched in every nook and cranny. Patients are stuffed into hallways and corners (sometimes while they are lying on gurneys.) Three or four patients may be placed in a space with room for one; curtains obscure monitors that should be carefully attended. Patients, some of whom haven't taken, or brought with them, their accustomed medications, and who came in hours ago, may sit or lie there, and not be seen for many hours. A terrified woman in the throes of a heart attack is placed next to a demented and screaming patient, with feces dripping from her stretcher.

More doctors and nurses could be called in, but why do that? It is not as though an Emergency Room is a restaurant, where people can get up and leave. But even in an Emergency Room patients sometimes do decide to get up and leave, despite it possibly being decidedly dangerous to do so. The morale of the staff deteriorates; good and caring doctors become zombies simply hoping to make it home and somehow put what they've experienced and seen out of their minds.

Hospital administrators sometimes show up for a moment to do what administrators do. They instruct harried physicians to admit anyone they can. Other administrators run to hospital floors to press other doctors and nurses to discharge anyone they can -- so the ER can admit more new patients to -- *keep the money machine rolling.*

Beyond the, penny-wise, pound-foolish, tactic of hospitals not adding doctors or nurses to an ER that may be being besieged by twice or even three times the normal amount of patients, administrators often decline to interest themselves in listening to complaints or to concerns from their own personnel.

Interviews with a variety of doctors and nurses reveals the same thing: Nurses, because they have a union, are able to present grievances to administrations, but too often, they just get turned down; doctors who have no union, and knowing that if they complain they will be smeared by bottom-line-obsessed administrators, just swallow-it and try, sometimes against all odds, to do their jobs.

In a malpractice suit, a doctor was sued for allegedly harming a patient through lack of attention. The malpractice attorney asked why the patient hadn't been seen often enough. Apparently the doctor's response, explaining that the ER was dangerously overcrowded and understaffed, was met by the inevitable question from the plaintiff's attorney; "Did you *document* in your note that the ER was overcrowded and understaffed, or did you *complain* that the ER was overcrowded or understaffed." And again, because doctors are instructed never to document anything that may make a hospital look liable, the answer had to be, "No."

While it is the doctors and nurses who seem to be on the receiving end of much of the blame for poor Emergency Room care, it is not at all uncommon that it is the administrators, the ones who sit in their glamorous offices and count the beans, who are responsible.

Imagine any other business, like a restaurant, for example, being run the way most emergency rooms are run. Imagine twice the usual numbers of patrons showing up, and some being forced to wait outside for hours, while others are escorted to tables occupied by complete strangers. In order to try to maximize profits, the size of the staff is not modified to adapt to the need – time after time.

My guess is that the restaurant would go broke, unless they were the only one in town -- and in that case, I'd bet a lot of people would just stay home and make their own dinners. But in the real world, as with any rational business, the owners would hire more staff, build a bigger space, and prosper.

In the world of Emergency Rooms, however, reality is turned on its head. Here, because there are times when the ER is not full, and times when it is exploding with three times the normal load of patients, no extra staff are hired, no more space is provided, and because patrons have little alternative, they wait, and wait, and wait, inside and outside the ER. Having interviewed and observed many patients and doctors over the years, I've seen first hand what goes on when too many patients encounter too few doctors; it becomes the most chaotic and among the most dangerous parts of our healthcare system.

One way to fix this mess is to create the only incentive a hospital and its administrators will appreciate; make it very costly for hospitals who leave patients in their ER for a prolonged period of time and create guidelines that require all ERs to have a minimum ratio of doctors to patients (much like child care centers have).

If it costs the hospital money, when they leave patients in the ER for long periods of time, then they will find a way to fix this mess. Hospitals could open up clinics or urgent care centers (or cooperate with urgent care centers in

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