

ALTER & BARBARO *Attorneys and Counselors at Law*

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Bernard Mitchell Alter, Member of the New York, New Jersey, Florida, Georgia, Pennsylvania, Colorado, and South Carolina Bars
Stephen V. Barbaro, Member of the New York Bar

June 29, 2011

Queens County District Attorney
Economic Crimes Bureau
80-02 Kew Gardens Road
Kew Gardens, New York 11415
Attn: Rosemary Buccheri, Esq.,
Assistant District Attorney
By: Federal Express

Re: ***People v. Harry Dorvilier and Harry's Nurses Registry, Supreme Court, Queens County, New York, Indictment No. 1709/2010***

Dear Ms. Buccheri:

As per my conversation with you and with a hope to resolve the above matter, I am enclosing for your review the following:

- 1) Records from Commerce and Industry Insurance Company, a subsidiary of AIG with respect to reports my client filed, the policy procured and payments to that company;
- 2) Litigation material that has come from my file in the case of Commissioners of State Insurance v. Harry's Nurses Registry, now pending in Supreme Court, New York County. Presently pending before Justice Milton Tingling is a motion for summary judgment submitted for decision on January 30, 2011.

My opposition counsel on the Supreme Court, New York County matter is Daniel Florio, Esq., of the law firm of Jasne and Florio, to whom I referred you. Hopefully, Mr. Florio will be able to help us obtain the subpoenaed State Insurance Fund records in order to satisfy my subpoena and satisfy you on the issues contained in this matter herein. You did advise me that you contacted Mr. Florio. I

ALTER & BARBARO, ESQS.

Letter to Rosemary Buccheri, Esq.

June 29, 2011

Page 2 of 2

also called Mr. Florio and asked him to assist us in obtaining the records. Indeed, I have been litigating with Mr. Florio for quite some time on the matter.

As per my conversation, in order for your office to be able to examine these documents thoroughly without being charged for time under the speedy trial (CPL 30.30) rules, I hereby waive that speedy trial time that your office could be charged from the date of this letter, which is June 29, 2011, to our next court date of July 12, 2011. At that time, we can always explore a further waiver.

Please review the documents and let's discuss them at your earliest convenience. Feel free to call if you have any questions. Thank you for your cooperation.

Very truly yours,

ALTER AND BARBARO, ESQS.

By: BERNARD MITCHELL ALTER

Cc: Harry Dorvilier

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September 19, 2011

Mr. Harry Dorvilier
Harry's Nurses Registry
88-25 163rd Street
Jamaica, N.Y. 11432

By: Fax at 718-739-0102; e-mail and first class mail

Re: **People v. Harry Dorvilier and Harry's Nurses Registry**

Dear Mr. Dorvilier:

As I advised you on September 1, 2011, I had to adjourn the meeting with the District Attorney scheduled for today. One of the reasons for the delay are the roadblocks you are placing in my way and that of our retained accountant, Fritz Milfort, CPA, in properly being able to represent you.

You have refused to give Mr. Milfort the 1099 forms and other financial information that he needs to prepare the material for today's meeting. In addition, you have refused to pay Mr. Milfort's bill. Mr. Milfort advises me that you also feel that this is a simple matter and you are capable of handling it on your own.

Mr. Milfort has handed you a bill for services and you have not settled it with him. As a result, I have not been able to secure his appearance at the Office of District Attorney and/or the trial.

I have advised you I strongly feel that this entire matter can be settled with the District Attorney's Office and could obviate the need for a long and expensive trial. Obviously, if the matter is not settled to your satisfaction, we are free to try the case.

On this type of legal matter, I am not in a position to meet with the District Attorney on a settlement meeting and/or try this matter competently without the

ALTER & BARBARO, ESQS.*Letter to Harry Dorvilier**September 19, 2011**Page 2 of 2*

services of a C.P.A. both in the investigative stage and at trial Both you and I agreed on that and made it our pre-trial and trial strategy.

As I stated in my previous letter, this is not a simple matter and it was necessary for us to retain professional accounting help in being able to properly prepare the matter and represent you in accordance with proper professional standards. Without that accounting help, you risk losing the case and possibly going to jail. To reiterate, I, for one, will not allow this situation to continue. I will not idly stand by when a client self destroys his case as you are presently doing.

Again, we must resolve this matter at once. Mr. Milfort is leaving on Friday, September 23, 2011 and will not return until October 9, 2011. We need to resolve this before Mr. Milfort leaves and move to have this matter concluded. Please be guided accordingly.

Very truly yours,

ALTER AND BARBARO, ESQS.


By: BERNARD MITCHELL ALTER

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November 1, 2011

Mr. Harry Dorvilier
Harry's Nurses Registry
88-25 163rd Street
Jamaica, N.Y. 11432
By: Fax at 718-739-0102 and e-mail

Re: People v. Harry Dorvilier and Harry's Nurses Registry

Dear Mr. Dorvilier:

Once again, I am compelled to write you a formal letter in addition to the multiple texts and e-mails that I have sent you.

At your request, Mr. Milfort made copies of all of your documents. You insisted on a return of the documents you gave him. In order to do that and with your specific consent, I had Mr. Milfort make up copies of the documents. The idea was to give you back your originals and Mr. Milfort would keep the copies.

The purpose of this was to have Mr. Milfort have the copies and his report with him to give a presentation to the District Attorney's office as agreed by all of us.

Because of your insistence on this, the meeting with the District Attorney's office had to be adjourned until November 3, 2011.

Now when Mr. Milfort followed your request and made the copies, you now insist Mr. Milfort give you his written report, which you have not paid for, and then come to your office with the original papers so that Mr. Milfort could get paid. Mr. Milfort has refused to do so.

As I advised you on yesterday, at 11:00 a.m. today, November 1, 2011, you must call Mr. Milfort's office or his cell number and go see Mr. Milfort. You can review his report and pick up your papers. Mr. Milfort is a professional CPA and

ALTER & BARBARO, ESQS.

*Letter to Harry Dorvilier
November 1, 2011
Page 2 of 2*

deserves to be treated as such. Make the time today to see Mr. Milfort. In addition, today you must pay him also for his services.

Without Mr. Milfort's services, I cannot go forward with the meeting on Thursday, November 3, 2011. If I cannot go forward with this meeting, again you are directly going against the strategy to which you and I had agreed.

Again, as I have stated time and time again, on this type of legal matter, I am not in a position to meet with the District Attorney on a settlement meeting and/or try this matter competently without the services of a C.P.A. both in the investigative stage and at trial. Both you and I agreed on that and made it our pre-trial and trial strategy.

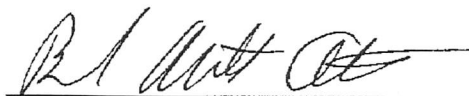
Without that accounting help, you risk losing the case and possibly going to jail. To reiterate, I, for one, will not allow this situation to continue any longer as I have stated in my many letters, e-mails and texts. I will not idly stand by when a client, such as you, self destroys his case. This is you are presently doing.

This must be resolved today. There will be no further delays by you.

Trial was adjourned to November 29, 2011. If you refuse to resolve the matter as indicated above, I may be constrained to ask that the Court relieve me as your attorney. I am not pleased nor do I desire to do this. However, I may have to do this given your behavior, which leaves me little choice. Thus, resolve this issue today. Be guided accordingly.

Very truly yours,

ALTER AND BARBARO, ESQS.



By: BERNARD MITCHELL ALTER

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Attorneys and Counselors at Law

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November 13, 2011

Mr. Harry Dorvilier
Harry's Nurses Registry
88-25 163rd Street
Jamaica, N.Y. 11432
By: Fax at 718-739-0102 and e-mail

Re: **People v. Harry Dorvilier and Harry's Nurses Registry**

Dear Mr. Dorvilier:

I came to the District Attorney's Office on November 3, 2011. I had Mr. Milfort's report.

Based upon that report and the records that we had subpoenaed, the prosecution (DA) has agreed that you did not "steal" the money. They are satisfied that you obtained coverage and remitted payments. Thus, that will not be an issue in the criminal case.

The issue that they pressed was your lack of authority to take monies for Worker's Compensation premiums of the pay of the nurses. To that end, they cited Section 31 of the Worker's Compensation Law. They indicated that it did not make any difference under that statute if you classified these people as independent contractors or workers. I clearly disagreed with that contention and that now becomes the key issue in this case if we go to trial.

The prosecution indicated that they would be willing to offer you a misdemeanor plea under Section 31 of the Worker's Compensation Law. However, I would have to have your approval on this issue before they could get supervisory office approval. They also wanted full restitution from you but there would be no jail time.

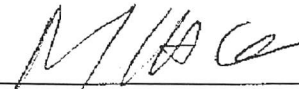
ALTER & BARBARO, ESQS.*Letter to Harry Dorvilier**November 13, 2011**Page 2 of 2*

That plea is less than the felony previously offered. Obviously, it is up to you to make that decision. My advice is that it would avoid a felony conviction and the effects of a felony conviction. A misdemeanor conviction would not automatically impact your operating license, but could result in proceedings against you concerning the license.

Again, this decision is entirely your call. Please advise me if you are going to accept this proposal. I need to know at once. We should discuss this at once. Be guided accordingly.

Very truly yours,

ALTER AND BARBARO, ESQS.



By: BERNARD MITCHELL ALTER

Cc: Thomas Bailey, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

NOTICE OF
MOTION

Indictment No.
1709/2010

HARRY DORVILIER and HARRY'S NURSES
REGISTRY, INC.

Defendants.

-----X

COUNSEL:

PLEASE TAKE NOTICE, that upon the annexed affirmation of
BERNARD MITCHELL ALTER, attorney for defendants, dated on the
26th day of July, 2012, and upon proceedings had heretofore and herein,
the undersigned shall move this court at Part K-23, located at the
courthouse at 125-01 Queens Boulevard, Kew Gardens, New York, on
the 10th day of August, 2012, at 9:30 in the forenoon of that day or as
soon thereafter as the respective counsel for the parties herein may be
heard for an order:

- 1) Pursuant to Criminal Procedure Law Section 400.30 determining that no gain hearing is warranted pursuant to Penal Law Sections 80.00 (2) and 80.10 (3) because defendants have already submitted full restitution to the victims of the crimes for which the defendants were convicted prior to sentencing as requested by the People of the State of New York (the “People”) and approved by the Court on May 11, 2012 in the form of a certified check submitted to the People in the amount of \$25,451.25; or
- 2) In the alternative, in the event that the Court determines a gain hearing is warranted, staying any gain hearing until it is determined that the People are in compliance with Criminal Procedure Law Section 400.30, which statutes sets forth the procedural requirements needed to have a gain hearing;
- 3) Additionally, if such a gain hearing is held, limiting any recovery to twice the amount of gain for the crimes proven; People v. Mature Enterprises, Inc., 35 N.Y. 2d 520 (1974); and

4) For such other and further relief as the court may deem to be
just and proper under the circumstances.

Dated: Brooklyn, New York
July 26, 2012

YOURS, ETC.

ALTER & BARBARO, ESQS.
Attorneys for Defendants
26 Court Street, Room 1812
Brooklyn, New York 11242
(718) 237-0880

By:  Bernard Mitchell Alter, Esq.

TO: Queens County District Attorney
80-02 Kew Gardens Rd., 4th floor
Kew Gardens, N.Y. 11415
Attorney for Plaintiff
Attn: Rosemary Buccheri, Esq.,
Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

AFFIRMATION

Indictment No.
1709/2010

HARRY DORVILIER and HARRY'S NURSES
REGISTRY, INC.

Defendants.

-----X

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

BERNARD MITCHELL ALTER, being an attorney duly
admitted to practice in the Courts of the State of New York, hereby
affirms the following under penalty of perjury pursuant to CPLR 2106:

- 1) I am the attorney for defendants, am fully familiar with the facts
herein, and make this affirmation in support of the relief requested in the
notice of motion.
- 2) Defendants HARRY DORVILIER and HARRY'S NURSES

REGISTRY, INC. were indicted on two (2) felony counts of grand larceny in the third degree, eleven felony (11) counts of grand larceny in the fourth degree, two felony counts of scheme to defraud in the first degree, twenty-one counts of misdemeanor counts of violating Worker's Compensation law, and eight (8) misdemeanor counts of petit larceny,

- 3) Defendants made, and the Court granted, a pre-trial motion dismissing the misdemeanor counts because the statute of limitations had expired for the misdemeanor counts. This included several misdemeanor counts for violations of Worker's Compensation law, Section 31, under which employers are prohibited from requiring their employees to make contributions from their pay for Worker's Compensation premiums.
- 4) The remaining counts were grand larceny and scheme to defraud. On May 10, 2012, the jury found the defendants guilty on thirteen (13) counts of grand larceny counts but acquitted the defendants on the scheme to defraud.
- 5) On May 10, 2012, defendant HARRY DORVILIER was remanded. The People stated that if Defendants HARRY DORIVILER and HARRY'S NURSES REGISTRY, INC. made full restitution to the victims of the crime, the People would consent to the release of

defendant HARRY DORVILIER upon his recognizance pending sentencing by the court.

- 6) The case was adjourned to May 11, 2012 for that purpose. On May 11, 2012, a certified check in the amount of \$25,451.25 was delivered to Assistant District Attorney Rosemary Buccheri by the defendants.
- 7) As a result, because defendants gave full restitution to the victims of the crime, defendant DORVILIER was released from jail.
- 8) On June 25, 2012, the matter came up for sentencing.
- 9) The probation report stated that defendants took \$300,000 from 200 victims for Worker's Compensation premiums. However, as I stated above, the defendants were convicted of thirteen (13) counts of grand larceny, not 200. At that time, ADA Bucchieri was arguing for restitution for twice the gain of the crime. However, it was unclear whether or not the People were arguing to include all 200 alleged victims in the calculation of amount of the defendants' gain.
- 10) Ms. Bucchieri said she would submit the evidence of gain by July 9, 2012 for evaluation.
- 11) The court asked me how much time I needed to look over after the new material once submitted to see what my position would be with respect to this new material, and I requested 30 days. The court then set a gain

hearing for August 10, 2012.

- 12) I have received the proffered material on July 9, 2012 It consists of numerous checks which were not submitted as evidence at trial, alleging gains which the jury did not consider at trial. It came in five large envelopes and weighed nearly 50 pounds.
- 13) The proffered materials consist of evidence of which defendants were never indicted. The People are attempting to sandbag my client for gains for which they have not been afforded due process and for which they were never convicted.
- 14) The fact that this evidence is being submitted by the People after trial, beyond the proper purview of a jury, and on such short notice clearly deprives the defendants of their constitutional right to have a fair opportunity to refute and/or defend themselves of the crimes charged.
- 15) Furthermore, many of the alleged gains contained in the materials submitted by ADA Buccheri are over five years old and are well past the applicable statute of limitations.
- 16) However, they now have been submitted for consideration. In the event a gain hearing is held, the arguments set forth in paragraphs 12 to 15 above will be made for inclusion in the record.
- 17) However, now that Ms. Bucchieri has submitted her documents for the

request for a gain hearing for twice the gain, it is my position that such a gain hearing is unwarranted. See CPL 80.10 (3).

18) That section sets forth a hearing to be held as mandated by Penal Law Section 80.00 (3), which sets forth the requirements of the court of how the court determines the amount of the gain.

19) Gain is defined in 80.00(2) as the value of the property derived from the commission of the crime *less the value of the money returned* to the victims of lawful authority prior to sentencing. CPL 80.00(2) (emphasis added).

20) Because the defendants made full restitution of the \$25,451.25 of gain for which they were convicted and nothing submitted by the People shows the contrary, there is no outstanding gain.

²¹⁾ Thus, pursuant to CPL 400.30, Penal Law 80.10, 80.00(3) and gain as defined by 80.00(2), based upon the submission of the people of the charges at trial, the full restitution made by defendants, upon which the charges for which were convicted, no gain should be held. ¹

22) If such a gain hearing is determined to be held by the court, such

¹ Although Penal Law 80.00 (4) states that this section is not applicable to corporations, the one exception to that prohibition is contained in Penal Law 80.10 (3), the statute dealing with corporations. That statute sets forth the mandates that the court hold a grain hearing in accordance with Penal Law 80.00 (3). That section requires the court to make a finding of defendant's actual gain. The definition of gain to be determined pursuant to Penal Law 80.00 (3) is defined and set forth by Penal Law 80.00 (2).

hearing cannot be held until an order is entered and notice of the subject matter and issues for the gain hearing must be given written notice from the court clerk pursuant to a filed order by the court.

23. Again, the issues for the gain hearing must be clearly defined by the court in order for defendants to have due process under that section.

24. Finally if a gain hearing is to be held, the limitation of recovery is twice the amount actually proven at trial, not uncharged or unproven offenses. People v. Mature Enterprises, 35 NY 2d 530 (1974).

25. Thus, at best, the limitation on the plaintiff is twice the value, \$25,451.25, of the crimes charged and proven. The defendants were acquitted of the scheme to defraud counts.

26. The People are appearing to attempt to recover restitution for crimes which they did not charge, submit at trial for consideration by the jury, or receive a conviction.

27. Allowing the People to collect restitution for crimes which they did not charge, try before a jury, or receive a conviction is a clear violation of the defendants' due process rights

WHEREFORE, the defendants' motion should be granted by the court in all respects and that the court grants such other and further relief to the defendants as the court determines is just, proper and equitable under the

circumstances herein.

Dated: Brooklyn, N.Y.
July 26, 2012

BERNARD MITCHELL ALTER