

CJ-2000-4492-65

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IN THE DISTRICT COURT WITHIN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

JUN 19 2000

PATRICIA HESLET, CLERK
By Rosalyn O'Brien
Deputy

LYLE R. NELSON, U.S. Bankruptcy Trustee
on Behalf of Qualicare, Inc.,

Plaintiff,

v.

MARK A. PATZKOWSKI, and individual,
and PATZKOWSKI & ASSOCIATES, P.C.,
a suspended Oklahoma Professional
Corporation,

Defendants.

CJ2000-4492

CASE NO.

~~CJ2000-4492~~

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PETITION

COMES NOW Lyle R. Nelson, U.S. Bankruptcy Trustee for and on behalf of Qualicare, Inc., (herein "Qualicare"), Debtor in case number BK- 97 - 16891 BH pending in the United States Bankruptcy Court for the Western District of Oklahoma, and for his cause of action against the Defendants respectfully alleges and states as follows:

1. Qualicare filed a Petition for relief under Chapter 7 of the United States Bankruptcy Code on July 14, 1997 in said case number BK- 97 - 16891 BH.
2. At the time of Qualicare's bankruptcy filing, it was a provider of services to Medicare patients under agreement with the United States Department of Health and Human Services.
3. In or about April, 1996, Defendants, Mark A. Patzkowski, and Patzkowski & Associates, P.C., entered into a written contract to provide legal representation to Qualicare.
4. The scope of representation of Qualicare included, but was not limited to, provision of legal assistance and advice regarding Medicare rules, regulations and procedures and related issues of conflicts of interest, criminal and civil liability of related party transactions, and requirements relating to the filing of Medicare cost reimbursement reports.

5. Upon and according to the advice and lack of advice of Defendants, Qualicare engaged in a number of actions relating to the use and compensation of outside management firms and the manner of reporting and disclosure of the same in periodic expense reports required to be submitted to the United States Department of Health and Human Services and entities under contract with said agency (hereinafter collectively "HHS").

6. Defendants negligently and in breach of their contract provided incorrect, improper and/or imprudent legal advice to Qualicare and its officers and directors regarding matters within the scope of representation as discussed above.

7. Defendants negligently and in breach of their contract failed to provide appropriate legal advice to Qualicare and its officers and directors regarding matters within the scope of representation as discussed above.

8. Defendants knew or should have known that as part of the Medicare reimbursement process billing records of Defendants, for their representation of Qualicare, would ultimately be reviewed or subject to review by the various governmental agencies overseeing Medicare payments. Notwithstanding such knowledge, Defendants unnecessarily, negligently and in breach of their contract included detailed confidential information regarding their representation in time sheets submitted with billing statements to Qualicare.

9. Subsequent to Qualicare's bankruptcy filing, Plaintiff submitted charges to HHS for pre-bankruptcy Medicare patient services rendered by Qualicare.

10. On or about November 26, 1997, HHS determined that of such charges, \$1,668,598.39 was properly reimbursable, due and owing to Plaintiff.

11. After such determination of funds owing to Plaintiff as Bankruptcy Trustee of Qualicare, HHS conducted audits and reviews of the pre-bankruptcy records and practices of Qualicare and its officers.

12. In the course of such audits and reviews, HHS obtained and reviewed the billing records of Defendants which contained said confidential attorney / client information including references to "research of criminal and civil liability of related party transactions," research of "kickbacks," discussions regarding "possible related party transactions of client," and research of "fraud" issues.

13. Thereafter, Plaintiff sustained great damage and loss as a direct result of allegedly improper pre-bankruptcy charges for 'related party transactions' and alleged pre-bankruptcy failure to properly report the same, such acts being carried out, in whole or in part, pursuant to the legal advice and/or lack of legal advice of Defendants and which acts were further brought to light by Defendants' billing statements revealing attorney / client confidences.

14. Plaintiff's damages include: on December 2, 1998, HHS issued written notice to Plaintiff, as Trustee, of reopening the 1995 cost report of Qualicare for the purpose of adjusting the same to disallow and recover previously approved management fees of \$752,393.00 paid to "an undisclosed related party."

15. Plaintiff's damages include: on December 4, 1998, HHS issued written notice to Plaintiff, as Trustee, of its determination that Qualicare was indebted to HHS in the amount of \$957,034.00 for the 1996 fiscal year arising primarily from adjustment and disallowance of professional and management fees paid to a related party organization.

16. Plaintiff's damages include: HHS's refusal to remit \$1,089,167.20 of such approved and reimbursable charges described in paragraph 10 above.

17. In June and August of 1999, Federal criminal charges were brought against former offers of Qualicare for their alleged fraud and conspiracy in signing cost reports - prepared by and under the advice of Defendants - which failed to disclose the related party transactions between Qualicare and another entity.

18. Said criminal charges and ongoing criminal investigations have further caused Plaintiff damage by creating a chilling effect upon Plaintiff's efforts to recover Medicare funds owed and upon Plaintiff's efforts to retain professionals to assist in such recovery.

19. Plaintiff has further incurred damage or is otherwise entitled to recover the attorney fees paid to Defendants in the amount of \$108,631.76 for 1996 and a further undetermined amount for subsequent years.

20. Plaintiff has been further damaged in that it has been forced to incur significant attorney fees and professional expenses herein and in other actions to attempt to recover such Medicare funds.

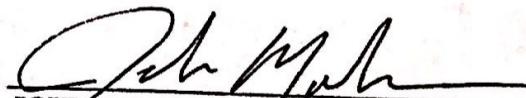
21. Defendants' actions were grossly negligent, were negligent per se, and were in breach of the contract between Defendants and Qualicare.

22. As the direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered the above damages and other damages in a total amount in excess of \$2,907,225.00

WHEREFORE, Plaintiff prays that he have and recover of and from the Defendants, MARK A. PATZKOWSKI, and PATZKOWSKI & ASSOCIATES, P.C., jointly and severally, actual damages in an amount in excess of \$10,000.00, punitive damages, a reasonable attorney's fee, interest and the costs of this action and such other and further relief to which Plaintiff may be entitled.

GARVIN, AGEE, CARLTON & MASHBURN, L.L.P.

BY:



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**ATTORNEY'S LIEN CLAIMED
JURY TRIAL DEMANDED**