

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
ROSEMARIE DURANTE, as Administrator of the Estate of
ANTOINETTE AWAIID, Deceased,

Plaintiff,

-against-

STATEN ISLAND UNIVERSITY HOSPITAL,

Defendant.
-----X

**ORDER OF
COMPROMISE
PURSUANT TO
EPTL 5-4.6**

Index No.: 150348/12

Upon the annexed Affidavit of Rosemarie Durante, Administrator of the Estate of Antoinette Awaid, deceased, duly sworn to on the 12th day of March, 2014, the Affirmation of Damien Cortese, Esq., duly affirmed on the 19th day of March, 2014, and upon all the pleadings and proceedings heretofore had herein, and after due deliberation thereon,

NOW, upon motion of Bonina & Bonina, P.C., attorneys for plaintiffs, it is hereby

ORDERED, that the settlement provided for herein is deemed adequate and in the best interest of the Estate; and it is further

ORDERED, that Rosemarie Durante, as Administrator of the Estate of Antoinette Awaid, deceased, be and is hereby authorized and permitted to settle and compromise the above entitled action against Staten Island University Hospital for the total sum of \$90,000.00; and it is further

ORDERED, that the cause of action for conscious pain and suffering is discontinued with prejudice and without payment; and it is further

ORDERED, that all causes of action for medical malpractice are discontinued with prejudice and without payment; and it is further

ORDERED, that the Administrator, Rosemarie Durante, be and is hereby authorized and permitted to execute and deliver a General Release, Stipulation of Discontinuance and Hold Harmless Agreement to defendant Staten Island University Hospital, together with any and all papers necessary to effectuate the settlement herein; and it is further

ORDERED, that the defendant, Staten Island University Hospital and/or its representatives shall within the time frame set forth in the CPLR 5003(a) pay the sum of \$90,000.00 as follows:

- a) a check in the amount of \$ _____ payable to Rosemarie Durante, as Administrator of the Estate of Antoinette Awaid, deceased and Bonina & Bonina, P.C., as attorneys; and
- b) a check in the amount of \$20,000.00 payable to New York City Department of Social Services, and stating “full and final satisfaction of lien – E/O Awaid on the face of the check. Said check must be sent via Certified Mail – Return Receipt Requested; and

ORDERED, that defendant Staten Island University Hospital and/or its representatives will provide plaintiff’s attorneys with a copy of the cover letter, certification and canceled checks payable to Medicaid regarding payment and full satisfaction of their liens; and it is further

ORDERED, that upon making such payments to Medicaid and providing plaintiff’s attorneys with a copy of the cover letter, certification and canceled check, defendant Eger Health Care and Rehabilitation Center and/or its representatives shall be relieved of any further responsibility relating to said liens; and it is further

ORDERED, that upon receipt of the settlement monies, plaintiff’s attorneys shall deposit said funds into an interest bearing escrow account; and it is further

ORDERED, that having submitted to this Court proof of filing of a petition for allocation and distribution in the Surrogate's Court of Richmond County on behalf of the decedent's estate, plaintiff's attorneys may draw a check in the sum of \$_____, as and for their expenses and disbursements, and \$_____, as and for their attorney's fees herein; and it is further

ORDERED, that after payment of attorney's fees and disbursements and the Medicaid lien, the balance of the settlement monies in the sum of \$_____ shall be held in said interest bearing escrow account pending a further Order or Decree from the Surrogate's Court regarding the allocation and distribution of said funds; and it is further

ORDERED, that Bonina & Bonina, P.C. shall continue to serve as attorneys for the Estate until the entry of a final Decree in Surrogate's Court; and it is further

ORDERED, that the filing of a bond is dispensed with.

ENTER,

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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AFFIDAVIT

Index No.: 150348/12

STATE OF NEW YORK)
 ss.:
COUNTY OF RICHMOND)

Rosemarie Durante, having first been duly sworn deposes and says as follows:

1. I reside at 416 Doane Avenue, Staten Island, NY 10308. Letters of Administration were issued to me by the Surrogate's Court of Richmond County on June 21, 2012 and said appointment is still in full force and effect (Annexed as Exhibit "A" is a copy of said Letters of Administration). No bond was required to be filed at the time of my appointment to cover any probable amounts to be realized from this action.

2. The decedent, Antoinette Awaid, was my Aunt. She was born on August 22, 1911 and died on October 18, 2011 at the age of 100. After her death, I was appointed Administrator of her Estate. The decedent was single and never had any children, marital, non-marital or adopted. She is survived by me and my sister, Joyce Masella.

3. At the time of her passing, the decedent resided at 382 Ionia Avenue, Staten Island, NY 10312.

4. On October 10, 2011 my Aunt was admitted to Staten Island University Hospital because she had persistent stomach pain. On October 11, 2011 she was taken for a HIDA scan

and was dropped from the table during the procedure. She broke her nose, her upper arm, a couple ribs, her dentures, and had multiple bruises on her face and body. My Aunt passed away seven days later on October 18, 2011 (A copy of Ms. Awaid's Death Certificate is annexed hereto as Exhibit "B").

5. I was extremely close with my Aunt and had been designated to be her Health Proxy while she was alive. In December of 2011 I decided to consult with Daniella Levi and Associates, P.C. to pursue a negligence and medical malpractice action on my Aunt's behalf. My request was that they look into the circumstances surrounding the fall, and more generally her care and treatment at Staten Island University Hospital and see if legal grounds could be found to bring an action against the Hospital (A copy of the Retainer Agreement is annexed hereto as Exhibit "C"). The contractual agreement of retainer provided their law firm was to receive a percentage of the recovery as its fee, after first deducting all legal expenses incurred during the investigation and prosecution of this claim as follows:

Thirty three and one third percent (33%) percent, of the sum recovered, whether recovered by suit, settlement or otherwise.

However, our attorneys have agreed to take a reduced compensation fee at thirty percent (30%).

6. In January of 2012 I was told by Daniella Levi and Associates, P.C. that they had partnered with a firm that specialized in medical malpractice cases. Thereafter, I was contacted by the law firm of Bonina & Bonina, P.C. The firm explained that as a result of my Aunt's death, her Estate had to be formed immediately. Bonina & Bonina, P.C. filed all the necessary papers with the Surrogate's Court of Richmond County in order for me to be appointed Administrator of my late Aunt's Estate. As a result of my appointment, I have kept in close contact with my attorneys and provided them with any information that became necessary during the investigation and prosecution of this claim.

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