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11 Petitioner Med-Legal Associates, Inc.

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JUDICIAL ARBITRATION AND MEDIATION SERVICES

11 MED-LEGAL ASSOCIATES, INC., a) **JAMS Ref. No.: 1220050164**

12 California corporation,)

13 Petitioner,)

14 and)

PETITION FOR ARBITRATION

15)
16)
17 BRUCE E. FISHMAN, M.D., FICS,)
18 INC., a California medical)
19 professional corporation; and)
20 BRUCE E. FISHMAN, M.D., an)
21 individual,)

22 Respondents.)
23)
24)
25)
26)
27)
28)

25 Comes now, Petitioner Med-Legal Associates, Inc., and for causes of
26 action complains against the Respondents as follows:

27 ///

1 **FIRST CAUSE OF ACTION AS AGAINST ALL RESPONDENTS**
2 **(BREACH OF CONTRACT)**

3 Petitioner alleges for a First Cause of Action:

4 1. Petitioner Med-Legal Associates, Inc. is a corporation organized
5 and existing under and by virtue of the laws of the State of California.
6 Petitioner has special expertise in the management of medical/legal
7 evaluators with regard to the evaluation and treatment of workers
8 compensation claimants.

9 2. Petitioner is informed and believes and based thereon alleges
10 that:

11 A. Respondent Bruce E. Fishman, M.D., FICS, Inc., is a
12 California medical professional corporation ("Respondent Corporation"), the
13 shares of which are solely owned by Respondent Bruce E. Fishman, M.D.

14 B. Respondent Bruce E. Fishman, M.D. ("Respondent Bruce")
15 in addition to practicing medicine, operates a medical/legal evaluation
16 business specializing in Agreed Medical Evaluations ("AME") and Qualified
17 Medical Evaluations ("QME"), examining and evaluating workers
18 compensation claimants and other persons who are seen at the medical
19 offices of Family Urgent Care & Industrial Medical Clinic, Inc. ("Urgent
20 Care"), an entity that is owned by Respondent Bruce. Collectively,
21 Respondents Corporation and Bruce are hereinafter referred to simply as
22 "Respondents".

23 3. Petitioner is informed and believes and based thereon alleges
24 that each of the Respondents herein named are the agents and/or
25 employees of the other Respondents, and at all times relevant herein, each
26 defendant acted within the scope and authority of such agency and/or
27 employment, and with the permission, consent, and/or ratification of their co-
28 Respondents.

1 4. Whenever reference is made herein to the corporate
2 Respondents named herein, or to Respondents herein which shall include
3 said corporate Respondents in performing or failing to perform any act shall
4 be construed to mean that the officers, directors, control persons,
5 supervisors, managers, employees, and agents of said corporate
6 Respondents performed, failed to perform, authorized, ratified, or permitted
7 such acts or failures to act while engaged in the furtherance of the business
8 or operations of said corporate Respondents and while acting within the
9 course and scope of their corporate authority and employment.

10 5. On or about November 1, 2012, Petitioner, on the one hand, and
11 Respondents, on the other hand, entered into an agreement wherein and
12 whereby the Petitioner agreed to perform exclusive management services of
13 the day-to-day functions for the Respondents for consideration of various
14 sorts, all of which is set forth with particularity in the written agreement
15 attached hereto as Exhibit "1" (the "agreement").

16 6. The agreement provides, among other things, for the following:

17 A. Paragraph 6. of the agreement provides in pertinent part:

18 a. Term. The initial term of this Agreement shall be for one (1)
19 year commencing as of the date first written above; thereafter,
20 this Agreement shall renew automatically for successive terms of
21 one (1) year each, unless it is terminated in accordance
22 with this Section 6.

23 b. Termination without Cause. Either party may terminate this
24 Agreement with or without cause at any time during any renewal
25 term of this Agreement, on sixty (60) days written notice.

26 ...

27 d. Effect of Termination. Upon termination or expiration of this
28 Agreement, for any reason, by either party or by operation of
law. each party's respective obligations hereunder shall
terminate in full, except for those obligations which either
explicitly, as set forth in this Agreement or by their nature survive
the termination or expiration of this Agreement including but not
limited to Company's right to manage the billing, collections, and

1 disbursements of the Collections, to receive the Management
2 Fee and the Billing, Collection, and Litigation Fees, whether
3 based on Collections during or after the term of this Agreement,
4 and to be reimbursed all Deducted Expenses or Excluded
5 Expenses it has advanced and its administrative fees thereon, as
6 set forth in Sections 2-4. Client shall return all documents, data
7 and other materials or information that constitute "Confidential
8 Information" as defined in Section 12.a. below.

9 B. Paragraph 7.2 of the agreement provides:

10 Non-Solicitation of Company Staff and Recruits. Client and
11 Owner each agrees [sic] that during the term of this Agreement
12 and for twenty-four (24) months thereafter, they shall not solicit
13 or attempt to hire, or advise or assist any other person in
14 soliciting or hiring or attempting to hire, any employees or other
15 staff of Company, or any of the Support Personnel. Client and
16 Owner further agree that they shall never, during the term of this
17 Agreement or at any time thereafter, suggest, or attempt to
18 persuade, any employee or independent contractor of Company,
19 or of any of its clients or affiliates Company [sic] or for the
20 Company client or affiliate, nor shall either of them hire any such
21 individual or company on terms that effectively preclude his, her,
22 or its working for Company.

23 C. Paragraph 12. of the agreement provides in pertinent part:

24 Non-Disclosure of Company's Professional and Business
25 Practices. Trade Secrets. or Privileged Information; Non-
26 Solicitation and Non-Interference.

27 a. Confidential Information. Client agrees to keep confidential
28 and to not use or disclose the professional and business
practices, trade secrets or privileged information of Company
and to keep such knowledge confidential in Client's dealings with
any medical group, hospital, health care facility, health care
company, or other person or entity. Further, Client agrees that it
shall not disclose to any person or use (except for the benefit of
Company) information obtained by Client during the period of
Client's relationship with Company as to customer lists, names of
customers or customers addresses or telephone numbers,
business plans, business methods. marketing or strategic plans,
financial statements, financial information, any and all computer
programs (whether or not completed or in use), any and all
operating manuals or similar materials that constitute the

1 systems, policies and procedures of Company, including but not
2 limited to the forms provided by Company for Client's use, or any
3 other trade secrets, confidential or proprietary information
respecting Company (collectively, "Confidential Information")...

4 b. Non-Interference; Non-Disparagement. During the term of this
5 Agreement and for a period of one (1) year thereafter, Client
6 agrees not to disrupt, damage, impair or interfere with the
7 business of Company, whether by way of interfering with, raiding
8 or soliciting Company's employees, disrupting its relationship
9 with or soliciting its agents, representatives, customers, vendors
or otherwise, nor shall Client undertake organization of any
competitive organization or other business activity materially
competitive with Company's business, or combine with others for
the purpose of organizing any such competitive organization...

11 7. Any conditions precedent to the duties of the Respondents, and
12 each or any of them, of timely and full performance, were performed by
13 Petitioner or have occurred or have been excused or have been waived.

14 8. The Respondents have breached the agreement with Petitioner
15 in the following particulars:

16 A. The Respondents have purported to orally terminate the
17 agreement without compliance with the terms thereof, and later, proffered a
18 false document that the said Respondents claim was served to comply with
19 the terms of the agreement regarding written notice of termination;

20 B. The Respondents have refused to return to Petitioner its
21 Confidential Information and have continued to use and misappropriate the
22 same in the operation of Respondent Corporation;

23 C. The Respondents have attempted to solicit employees and
24 affiliates of Petitioner and have in fact hired some of them;

25 D. The Respondents have disparaged Petitioner and Patrick
26 in an effort to dissuade the prosecution by Petitioner of this Arbitration
27 proceeding;
28

1 E. The Respondents have conspired with others to create
2 additional harm to Petitioner and to Patrick; and

3 F. The Respondents have converted monies collected
4 through the efforts of Petitioner to their own use.

5 9. As a direct and proximate result of the foregoing acts, conduct
6 and/or omissions of the Respondents, Petitioner has been damaged in the
7 nature of lost revenue under the terms of the agreement, in the
8 misappropriation of Petitioner's Confidential Information, from the lost
9 employees poached by the Respondents, from the disparagement of
10 Petitioner, and in the value of the converted collections, all in a sum believed
11 to be in excess of \$3,000,000 together with interest thereon at the legal rate
12 according to proof.

13 10. Exhibit "1" hereto provides for the payment of reasonable
14 attorney's fees in connection with enforcement of the terms of said
15 agreement.

16 11. It has been necessary for Petitioner to retain the professional
17 services of Darryl J. Paul, an attorney duly licensed to practice law in the
18 State of California, to maintain the within action and otherwise enforce the
19 terms of the agreement.

20 12. As a further proximate result of the acts of the Respondents, and
21 each of them, as aforesaid, Petitioner have become obligated for and has
22 paid or will pay attorney's fees in an amount as yet not fully ascertained.
23 Petitioner will request leave of Court to amend this Petition upon full
24 ascertainment of such fees.

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26 **SECOND CAUSE OF ACTION AS AGAINST ALL RESPONDENTS**
27 **(FRAUD AND DECEIT)**

28 Petitioner alleges for a Second Cause of Action:

1 13. Petitioner realleges and incorporates herein by reference as
2 though here fully set forth each and every allegation contained in the First
3 Cause of Action, and the whole thereof; where any such allegations in the
4 First and/or this Second Cause of Action conflict, Petitioner realleges such
5 conflicting allegations in the alternative.

6 14. Respondent Bruce had, prior to any relationship alleged herein,
7 been involved in the defense of workers compensation cases and was
8 desirous of generating new business with applicants' attorneys, with whom
9 Patrick was closely associated through his business contacts.

10 15. The Respondents had contracted for certain billing, collection,
11 and enforcement services for a period of years beginning in 2008 with a
12 company hereinafter identified as "GLC" that is affiliated with Petitioner and
13 with which Petitioner's principal, referred to hereafter as "Patrick".
14 Inasmuch as the services needed to expand the business of the
15 Respondents had enlarged and become more sophisticated, Petitioner was
16 formed to provide to the Respondents this next evolution of services that
17 had been provided for more than four years by GLC.

18 16. Proximate to entering into an agreement with GLC and
19 continuously throughout the relationship with GLC and Patrick, and also
20 throughout the executory phase of the agreement (Exhibit "1" hereto) with
21 Petitioner, Respondent Bruce represented himself to be an honest medical
22 doctor with a record devoid of blemish and that he is a board-certified
23 Orthopedic Surgeon.

24 17. The representations of Respondent Bruce as alleged in
25 Paragraph 16., above, were and are false and fraudulent and were known
26 by the said Respondent to be false when the same were made and uttered.
27 These representations were made by Respondent Bruce with the intent to
28 induce Petitioner, GLC, and Patrick to assist the Respondents in building up

1 their med-legal practice and to induce them to introduce the Respondents to
2 the many business contacts that are possessed by the Petitioner, GLC, and
3 Patrick.

4 18. Petitioner in fact relied upon the representations of the
5 Respondents, which reliance was justifiable in that Respondent Bruce
6 appeared to be a knowledgeable, honest and forthright medical doctor and
7 he comported himself as such, and he actually dressed for surgery on
8 multiple occasions (although Petitioner later learned that the dress was for
9 show only and that other surgeons actually performed the various surgeries
10 for which Respondent Bruce took credit).

11 19. In truth and in fact, Respondent Bruce Fishman is a convicted
12 felon drug dealer and is not a board-certified Orthopedic Surgeon.

13 20. At the time of the drafting of the agreement (Exhibit "1" hereto),
14 Petitioner included the customary five-year term. Respondent Bruce balked
15 at that term promising to be a customer of Petitioner "til the day I retire", and
16 suggested a one-year term instead, telling Patrick that he (Respondent
17 Bruce) should be trusted. Up to the time of the purported termination of the
18 agreement as above alleged, Respondent Bruce had become a close
19 personal friend of Patrick and there was no reason to doubt the sincerity of
20 Respondent Bruce.

21 21. Shortly after execution of the agreement, Respondent Bruce
22 asked that he be given his own key to a controlled post office box dedicated
23 to the Respondents to enable him to control the mail. Oblivious to the true
24 intentions of the Respondents, Patrick gave him control of the post office
25 box, which he had never before done but which act he went along with out of
26 his trust of Respondent Bruce.

27 22. Also shortly after execution of the agreement, Respondent Bruce
28 asked that instead of advertising the services of Respondent Corporation

1 under Petitioner's phone numbers as was customary for this type of
2 management, that instead, Patrick should have all calls route directly to
3 Respondent Bruce's two medical care offices at Urgent Care where they
4 would thereafter be forwarded to Petitioner. Patrick acceded to these
5 requests.

6 23. Based on the false representations of Respondent Bruce and the
7 advantage of the friendship with Patrick taken by Respondent Bruce,
8 Petitioner introduced the Respondents to numerous business contacts with
9 whom the Respondents were able to sell millions of dollars of med-legal
10 services and to thereby profit handsomely, to include significant medical
11 care referrals to Urgent Care for which Respondent Bruce additionally profit.

12 24. The Respondents employed the above alleged series of acts
13 fitted to and which did deceive in concert with misrepresentation and
14 concealment of material facts in such a fashion that after the Respondents
15 were introduced to the many business contacts and had secured business
16 arrangements with them, learned Petitioner's way of managing med-legal
17 evaluation businesses in the workers compensation field, and had
18 possession of Petitioner's Confidential Information, that the Respondents
19 purported to terminate the agreement. This enabled the Respondents to
20 take from Petitioner and avoid having to pay for the services.

21 25. During the executory period of the agreement and prior to the
22 purported termination thereof by the Respondents, Petitioner spent some
23 additional \$250,000 in promotional activities for and on behalf of the
24 Respondents to promote their med-legal evaluator business.

25 26. As a direct result of the actions of the Petitioner, the
26 Respondents enjoyed annual revenue of some \$2,400,000 for med-legal
27 evaluations at the time of the purported termination of the agreement, a
28 substantial increase over any amount previously received by them.

1 27. The acts and conduct of the Respondents, were and are
2 malicious, fraudulent, oppressive, despicable, and in conscious disregard of
3 the rights of Petitioner herein, and Petitioner demands punitive and
4 exemplary damages for the sake of punishing the Respondents and by way
5 of example in a sum according to proof.

6
7 WHEREFORE, PETITIONER prays for judgment against the
8 Respondents, and in favor of Petitioner as follows:

9 A. For general damages on all causes of action above alleged in a
10 sum in excess of \$3,000,000 together with interest thereon at the legal rate,
11 according to proof.

12 B. For punitive and exemplary damages on the Second Cause of
13 Action above alleged according to proof.

14 C. For costs of suit incurred herein to include attorney's fees as
15 may be allowed by law.

16 D. For such other and further relief as this Court deems just and
17 proper.

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21 Dated: July 20, 2015



Darryl J. Paul
Attorney for Plaintiff Med-Legal
Associates, Inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 30011 Ivy Glenn Dr., Laguna Niguel, CA 92677

On July 20, 2015 I served the documents described below on the parties in this action by placing copies thereof in sealed envelopes addressed as follows:

DOCUMENT(S)	PETITION FOR ARBITRATION
SERVED:	
SERVED UPON:	Law Offices of Howard A. Kapp 3731 Wilshire Blvd. Suite 514 Los Angeles, CA 90010 hkapp@kapplaw.com

[X] (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Laguna Niguel, California. I am readily familiar with the practice of my office for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after deposit for mailing in affidavit.

[X] (BY E-MAIL) I caused each party to this action, through respective counsel of record, to receive this document by electronic transmission (E-mail) at the e-mail address set forth above. The report from the E-mail service provider showed transmission to each was complete by close of business this date.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 20, 2015 at Laguna Niguel, California.



DARRYL J. PAUL