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Article Tying Nursing Home Magnate to Human Trafficking, Medicaid Fraud & Elder Abuse Protected As Fair Report, True, and Opinion

By Alia Smith

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Last month, the Eastern District of New York granted The American Prospect’s Motion to Dismiss a defamation claim brought by Benjamin Landa, a well-known owner and operator of numerous nursing homes in New York and throughout the country, based on an [article](#) entitled “The Nursing Home Slumlord Manifesto” (the “Article”). [Landa v. American Prospect, Inc.](#), No. 22-CV-1825, 2023 U.S. Dist. LEXIS 143326 (E.D.N.Y. Aug. 16, 2023).

Judge Joan Azrack held that the challenged statements – concerning the poor quality of some of Landa’s nursing homes and alleged financial and other improprieties – were fair reports under N.Y. Civil Rights Law § 74, were substantially true, or were non-actionable opinions.

Background

“The Nursing Home Slumlord Manifesto” concerned a lawsuit challenging New York’s so-called “Safe Staffing Law,” a law which was designed to impose certain requirements on nursing homes and to allow state authorities to recover the homes’ profits in excess of a 5% margin. The Article discussed some of the owners of facilities involved in that case, individuals and groups who often run both high-performing properties (filled “with short-term Medicare patients recovering from surgeries”) and “notorious death traps.”

The poor quality of some of Landa’s nursing homes and alleged financial and other improprieties were fair reports under N.Y. Civil Rights Law § 74, were substantially true, or were non-actionable opinions.

One such owner mentioned in the Article was Benjamin Landa, whose family took in “\$13.1 million in revenues that would have been ‘confiscated’ under the safe staffing law.” But Landa also, according to the Article, had been involved in

documented crimes rang[ing] from [human trafficking](#) to flagrant [Medicare and Medicaid fraud](#) to staffing his homes so minimally that patients regularly [die from literally rotting in their own filth](#) – or in the case of one more ambulatory resident, attempting to escape his misery by [climbing out of a third-story window](#).

(The underlined words contained hyperlinks to outside sources.) In addition, the Article reported, some homes owned by “members or associates of the Landa nursing home gang” had been designated by the Centers for Medicare & Medicaid Services as “Special Focus Facilities’ or SFF candidates,” i.e., facilities with “a history of serious quality problems.” The Article then went on to discuss other nursing home owners, many of whom are “connected to the Landa elder abuse keiretsu.”

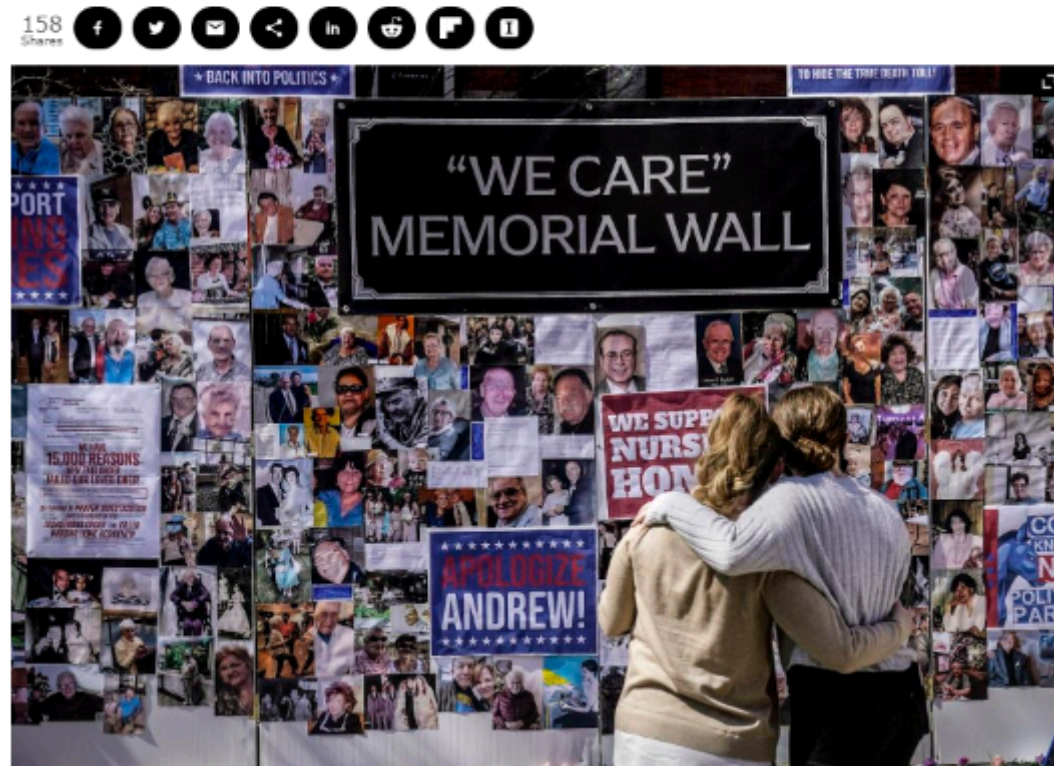
Landa filed suit in New York state court against The American Prospect and the Article’s author, Maureen Tkacik, calling the article an “unhinged diatribe” and a “hit piece.” He specifically took issue with the statements regarding (1) human trafficking, (2) Medicare and Medicaid fraud, (3) staffing deficiencies (e.g., patients “rotting in their own filth”), (4) income confiscation, (5) special focus facilities, (6) “elder abuse,” and (7) “notorious death traps.” Defendants removed to federal district court for the Eastern District of New York.

Per the local rules of the E.D.N.Y., Defendants submitted a pre-motion letter indicating their intention to file a motion to dismiss on grounds of the fair report privilege (most of the statements were supported by court documents or other public records), opinion (for subjective statements like “elder abuse”), truth, and no plausible allegations of actual malice. At the pre-motion conference, the court discouraged the filing of such a preliminary motion. Nevertheless, Defendants proceeded with it.

The Nursing Home Slumlord Manifesto

In a surreal new lawsuit, New York nursing home owners say they make nearly a billion dollars a year understaffing homes and shortchanging patients.

BY MAUREEN TKACIK JANUARY 26, 2022



Despite her initial view that a motion to dismiss was unwarranted, Judge Azrack granted Defendants’ motion after full briefing, which included numerous exhibits (news articles and public records) supporting Defendants’ assertion of the fair report privilege under N.Y. Civil Rights Law Section 74. After explaining that these exhibits could properly be considered on a motion to dismiss, the Court addressed each of the challenged statements.

Human Trafficking, Medicare/Medicaid Fraud, Staffing Deficiencies: The Article’s references to each of these statements hyperlinked to news stories about underlying lawsuits or official actions against Landa and/or his facilities. “[Human trafficking](#)” linked to a news story about a lawsuit in which Landa and others had been found liable for violation of the Trafficking Victims Protection Act, and a review of the underlying lawsuit confirmed the hyperlinked article’s statements.

“[Medicare and Medicaid fraud](#)” linked to a *Village Voice* story about a \$3.7 million payment by one of Landa’s nursing homes to settle allegations brought by the New York Attorney General that the company had presented false claims to Medicaid, and a review of public records underlying the settlement confirmed this. And, likewise, the statements concerning understaffing at Landa’s nursing homes (“patients regularly [die from literally rotting in their own filth](#)” and one attempted “to escape his misery by [climbing out of a third-story window](#)”) linked to articles about lawsuits involving those incidents, which, again were confirmed by review of the court records. Accordingly, the Court held that each of these statements was substantially true and immune from liability under New York’s fair report privilege.

The Court's Ruling

SFF Facilities or Candidates: The Court easily found that the Article's reference to homes owned by Landa's "gang" being on this governmental list of troubled facilities was also protected by the fair report privilege, as records publicly available online readily showed. It also rejected Landa's objection to use of the term "gang," finding that "the definition of gang in this context is Defendants' non-actionable opinion."

Income Confiscation: The Court questioned why Landa would even challenge the "statement that a nursing home 'owned by Landa's family took in some \$13.1 million in revenues that would have been confiscated under the safe staffing law," because such a statement is not defamatory in the first place. The notion that Landa's business is profitable enough to be subject to the safe staffing law is not "injurious to his reputation" nor does it "expose[] him to any kind of disgrace." In any event, the Court held, this statement too was protected by the fair report privilege, given that it is simply a restatement of the allegations in the safe staffing law lawsuit.

Elder Abuse: In their Motion, Defendants posited that these terms, as used in context, were non-actionable opinions. In analyzing this question, the Court refused to consider the challenged terms "in a vacuum, as opposed to within the context of the Article." In so doing, it found that "the Article clearly represents the author's point of view," as made clear by the colorful language used generally (*e.g.*, the headline "Slumlord Manifesto" and the description of the challenged safe staffing law as a "refreshingly bullshit-free blueprint for fixing one of the most pointlessly horrifying features of 21st century American healthcare"). "Given this context," it held, "the Article's use of the term 'elder abuse,' while certainly hyperbolic and inflammatory, reflects Tkacik's subjective assessment of the purported maltreatment of the nursing home residents referenced in the Article, whose accounts are based upon Section 74-protected facts."

Notorious Death Traps: Finally, the Court rejected Landa's claim based on "notorious death traps" on the grounds that (a) it was not specifically directed at Landa's nursing homes, (b) Landa failed "to allege how this statement has financially or reputationally harmed him," and (c) it, like the phrase "elder abuse," was supported in the Article by "Section 74-protected fact."

Accordingly, the Court dismissed Landa's Complaint, in its entirety, with prejudice. The Court did not reach the question of whether Landa was a public figure or had plausibly alleged actual malice.

Tom Sullivan and Alia Smith of Ballard Spahr LLP represented defendants. Plaintiff was represented by John David Morrissy of Zeichner Ellman & Krause LLP.

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