

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SOONIL NAM and ELIZABETH KIM,)
 Plaintiffs)
)
 v.)
)
 INDIANA CENTER FOR ADVANCED)
 MEDICINE and GABRIELLA PAOLINI,)
 Defendants)

C.A. No:

COMPLAINT

Plaintiffs Soonil Nam and Elizabeth Kim, by and through counsel, allege as follows:

PARTIES

1. Plaintiffs Soonil Nam and Elizabeth Kim are married individuals residing in Chestnut Hill, Massachusetts.
2. The Defendant Indiana Center for Advanced Medicine (“ICAM”) is a limited liability company organized under the laws of Indiana, having a usual place of business at 8330 Naab Road, Indianapolis, Indiana.
3. Upon information and belief, the Defendant Gabriella Paolini (“Paolini”) is an individual residing in Indianapolis, Indiana.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000.
5. This Court has personal jurisdiction over the Defendants pursuant to M.G.L. c. 223A, because Defendants transacted business in the Commonwealth, and Plaintiffs’ claim arises from the transaction of business by Defendants.

6. Venue is proper in this Court pursuant to 28 USCS § 1391(a), because the Defendant is subject to personal jurisdiction within this district.

FACTUAL ALLEGATIONS

7. Plaintiff Soonil Nam is a Stage 4 lung cancer patient. Due to the unpromising nature of conventional chemotherapy for advanced lung cancer, Mr. Nam and his wife, Plaintiff Elizabeth Kim, began to seek out alternative non-toxic therapies.
8. Through newsletters directed to cancer patients, Mr. Nam and Ms. Kim became aware of Sono-Photodynamic Treatment (SPDT), and became aware that ICAM is the only facility in the United States licensed to treat cancer patients using SPDT.
9. In October of 2010, Ms. Kim contacted Defendant Paolini, who was listed on ICAM's website as the "Patient Coordinator at ICAM" by phone to inquire about the treatment. Ms. Paolini informed Ms. Kim that ICAM only treats patients with cancers located closer to the skin and that Mr. Nam should go to a hospital in Guangzhou, China.
10. On November 3, 2010, Defendant Paolini sent an email to Ms. Kim with an attached document, which she referenced as "Patient Guide Document" (henceforth "Patient Guide"). This document appeared to be drafted by a Dr. Douglas Mitchell and was last updated that very same day, November 3, 2010.
11. The Patient Guide clearly states that the fee for the first cycle of SPDT at Guangzhou is \$30,000.
12. Specifically, under section 6 of the Patient Guide, titled "Costs," the document states "SPDT Treatment fee is \$US30,000 for 2 weeks treatment in China under the care of Dr. X Wang and his medical team."

13. Defendant Paolini's November 3, 2010 email stated that the fee must be paid directly to ICAM, and attached a document with ICAM USA Banking details for a direct deposit.
14. In that same email, Defendant Paolini instructed Ms. Kim to contact only herself "for any purpose" while Mr. Nam and Ms. Kim were in the United States before leaving for China.
15. This instruction was clearly meant to prevent Mr. Nam and Ms. Kim from contacting the Guangzhou clinic to corroborate the price quotes, or any other information before paying the \$30,000 to ICAM and leaving for China.
16. The Patient Guide also described the ICAM staff, specifically Defendant Paolini, as working closely and seamlessly with the staff at the facility in China, giving the impression that all these individuals are members of one organization or company.
17. The Guangzhou clinic has since disclaimed any official affiliation with ICAM.
18. Defendant Paolini urged Ms. Kim to make the payment to ICAM and send Mr. Nam to China for treatment right away, and said that without making the payment first, it would not be possible to reserve a spot at the facility in China for Mr. Nam, and that time was of the essence in order for the treatment to be successful.
19. Defendant Paolini then arranged for Ms. Kim a phone call with Dr. Mitchell, who also emphasized the importance of timely receiving the SPDT treatment.
20. On November 8, 2010, Ms. Kim made the direct deposit payment of \$30,000 to ICAM and Defendant Paolini confirmed this payment on November 9, 2010 through email.
21. Each of the communications alleged above took place while Mr. Nam and Ms. Kim were in Massachusetts, through emails or phone calls directed at them in Massachusetts or online information accessed by them in Massachusetts.

22. Mr. Nam arrived in China on November 20, 2010 and began treatment at the Guangzhou clinic.
23. Ms. Kim returned to Massachusetts from China at the end of November 2010, while Mr. Nam continued his treatment in China until his return on February 4, 2011.
24. In late January 2011, Mr. Nam became aware through contact with other patients at the facility that the price for the first cycle of SPDT was in fact *not* \$30,000 but rather, \$15,000, and that no other patient receiving the same treatment at the Guangzhou clinic, other than one other patient who also dealt with ICAM, paid \$30,000 for the first cycle of SPDT.
25. Mr. Nam also learned that the Guangzhou clinic only received \$15,000 of the \$30,000 that Mr. Nam and Ms. Kim paid to ICAM, and that there was no official affiliation between ICAM and the Guangzhou clinic.
26. Mr. Nam and Ms. Kim emailed Defendant Paolini to inquire about this difference in payments for the very same treatment, to which Defendant Paolini responded that ICAM retained the \$15,000 as a “one-off” payment, and that it covered “potential follow-up coordination in the USA should it be required” and that ICAM “coordinates the trip to China.”
27. There was no mention of any such “one-off” payment in Mr. Nam or Ms. Kim’s dealings with Defendant Paolini and ICAM prior to making the \$30,000 payment, either verbally or in any documentation. There was no mention of the extra \$15,000 going towards any sort of “follow-up coordination” or any other services.
28. Defendant Paolini represented that the full \$30,000 was to be paid to the Guangzhou clinic.

29. Defendant Paolini, and the documents she forwarded, specifically represented to Mr. Nam and Ms. Kim that the \$30,000 was the fee for the first cycle of SPDT at the Guangzhou clinic, the very same service for which other patients paid only \$15,000.
30. Through email correspondence, Dr. Mitchell has suggested that the Patient Guide was altered by Defendant Paolini without his knowledge or authorization.
31. When Mr. Nam and Ms. Kim addressed these issues in an email to Defendant Paolini, she gave no substantive response, and instead stated that “it seems from your correspondence that your health is not your own priority.”
32. A few days later, Defendant Paolini effectively blamed Mr. Nam for the lack of resolution of this dispute, describing his attempts at asserting his legal rights as “underlying terrorism and threats.”
33. In February 2010, Defendant Paolini indicated that the \$15,000 wrongfully taken by ICAM could be refunded if Mr. Nam executed a release of claims and an agreement to keep the incident confidential.
34. The release included issues and parties wholly unrelated to the matter. It referenced the services of Dr. Wang, and a release from claims against Dr. Wang, even though he was not a party to the dispute of ICAM’s fraudulent charging of \$15,000, and was not listed as a party to the execution of the release.
35. The release included a “90-day holding period” before Mr. Nam and Ms. Kim would be returned the extra \$15,000 they paid.
36. The release also contained an overbroad confidentiality agreement and further required Mr. Nam to waive any “future injuries, losses, or damages not now known or anticipated, but which may later develop or be discovered . . .”

37. Mr. Nam did not sign the overbroad release.
38. All of the communications from Ms. Paolini regarding the overcharge of \$15,000 were received by Ms. Kim and Mr. Nam while Mr. Nam and/or Ms. Kim were in the Commonwealth of Massachusetts.
39. On May 2, 2011, through counsel, Mr. Nam and Ms. Kim sent a M.G.L. ch. 93A demand letter, requesting a reasonable settlement offer.
40. To date, Plaintiffs have not received a response from Defendants ICAM or Gabriella Paolini.

COUNT ONE
Violation of M.G.L. ch. 93A by
The Indiana Center for Advanced Medicine

41. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 40 as if fully set forth herein.
42. Defendant ICAM, through numerous emails and phone calls by its agents to Plaintiffs while they were in the Commonwealth, transacted business in Massachusetts.
43. Defendant ICAM's unfair and deceptive acts include, but are not limited to (i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China facility; (ii) deceiving Plaintiffs about its lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs.
44. Defendant ICAM's unfair and deceptive acts, through phone calls and emails, took place primarily and substantially within the Commonwealth.
45. By all of the conduct alleged herein, Defendant ICAM violated M.G.L. ch. 93A, and those violations are ongoing as of the filing of this Complaint.
46. Defendant ICAM's conduct is willful and intentional, and has caused harm to Mr. Nam and Ms. Kim.

COUNT TWO
Violation of M.G.L. ch. 93A by Gabriella Paolini

47. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 46 as if fully set forth herein.
48. Defendant Paolini, through numerous emails and phone calls to Plaintiffs while they were in the Commonwealth, transacted business in Massachusetts.
49. Defendant Paolini's unfair and deceptive acts include, but are not limited to (i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China facility; (ii) deceiving Plaintiffs about ICAM's lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs.
50. Defendant Paolini's unfair and deceptive acts, through phone calls and emails, took place primarily and substantially within the Commonwealth.
51. By all of the conduct alleged herein, Defendant Paolini violated M.G.L. ch. 93A, and those violations are ongoing as of the filing of this Complaint.
52. Defendant Paolini's conduct is willful and intentional, and has caused harm to Mr. Nam and Ms. Kim.

COUNT THREE
Common Law Fraud
The Indiana Center for Advanced Medicine

53. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 52 as if fully set forth herein.
54. Defendant ICAM defrauded Plaintiffs, by and through the acts of its agents, including but not limited to: (i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China

facility; (ii) deceiving Plaintiffs about ICAM's lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs.

55. Plaintiffs Nam and Kim relied on Defendant ICAM's fraudulent representations and suffered loss because of them.

56. Defendant ICAM's conduct is willful and intentional and has caused harm to Mr. Nam and Ms. Kim.

COUNT FOUR
Common Law Fraud by
Gabriella Paolini

57. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 56 as if fully set forth herein.

58. Defendant Paolini defrauded Plaintiffs, by and through her acts, including but not limited to:

(i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China facility; (ii) deceiving Plaintiffs about ICAM's lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs.

59. Plaintiffs Nam and Kim relied on Defendant Paolini's fraudulent representations and suffered loss because of them.

60. Defendant Paolini's conduct is willful and intentional and has caused harm to Mr. Nam and Ms. Kim.

COUNT FIVE
Intentional Infliction of Emotional Distress by
The Indiana Center for Advanced Medicine

61. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 60 as if fully set forth herein.
62. Defendant ICAM, by and through the acts of its agents, including but not limited to: (i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China facility; (ii) deceiving Plaintiffs about ICAM's lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs; (v) when it knew the precarious mental and physical condition of Mr. Nam as a Stage 4 lung cancer patient; amounted to extreme and outrageous conduct.
63. Defendant ICAM's ruthless conduct caused Plaintiffs' distress, the nature of which no reasonable person should be expected to endure.

COUNT SIX
Intentional Infliction of Emotional Distress by
Gabriella Paolini

64. Plaintiffs re-allege and reassert the allegations Paragraphs 1 through 63 as if fully set forth herein.
65. Defendant Paolini, by and through her acts, including but not limited to: (i) lying to Plaintiffs regarding the cost of the SPDT treatment at the China facility; (ii) deceiving Plaintiffs about ICAM's lack of official affiliation with the China facility; (iii) misleading Plaintiffs regarding the services ICAM provides; and (iv) requiring an overbroad confidentiality agreement before agreeing to refund the \$15,000 it wrongfully obtained from Plaintiffs; (v) when she knew the precarious mental and physical condition of Mr. Nam as a Stage 4 lung cancer patient; amounted to extreme and outrageous conduct.
66. Defendant Paolini's ruthless conduct caused Plaintiffs' distress, the nature of which no reasonable person should be expected to endure.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs claims:

1. Monetary damages for Plaintiff's violation of the M.G.L. c. 93A;
2. Treble damages pursuant to M.G.L. c. 93A;
3. Costs and attorneys' fees pursuant to M.G.L. c. 93A; and
4. Such other legal or equitable relief as the Court may award.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,
SOONIL NAM and
ELIZABETH KIM
By their attorney:

/s/ Emily E. Smith-Lee
Emily E. Smith-Lee (BBO# 634223)
eslee@smithleelaw.com
Sana Abdullah (BBO# 669883)
sabdullah@smithleelaw.com
Smith Lee Nebenzahl LLP
One Post Office Square
Sharon, MA 02067
781-784-2322
781-793-0600 (facsimile)

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