

STATE OF NEW YORK
COURT OF CLAIMS

In the Matter of the Claim of NORMAN J. MICHAELS, JR.,

Claimant,

**NOTICE OF INTENTION
TO FILE CLAIM**

- against -

THE STATE OF NEW YORK,

Respondent.

TO: The Attorney General of the State of New York

PLEASE TAKE NOTICE, that the undersigned claimant, Norman J. Michaels, Jr., intends to file a claim and demand against the State of New York pursuant to Sections 10 and 11 of the Court of Claims Act.

1. Claimant, Norman J. Michaels, Jr., resides and receives his mail at 147 Main Street, South Salem, New York (10590).
2. The name and post office address of claimant's attorney is Terence L. Kindlon, Esq., Kindlon Shanks & Associates, 74 Chapel Street, Albany, New York (12207).
3. Claimant makes a claim and demand against the State of New York by reason of the customs, policies and/or regulations of the State of the New York and the intentional and negligent acts and omissions of its agents, servants, and/or employees during the incident described below, together with any other cause of action that may be supported by the facts, for monetary damages sustained and other items of damages suffered by the claimant.

4. The time when, the place where and the manner in which the claim arose are as follows:

On January 1, 2008, MVP Health Care ("MVP") renewed their contract with the Otsego Chamber of Commerce ("the Chamber") to allow the Chamber to continue to sell MVP health

insurance policies to Chamber members. At some point after that, Rob Robinson of the Otsego Chamber of Commerce created an associate membership category for people who did not live in Otsego County but who wanted to take advantage of some of the benefits of Chamber membership, including health insurance. These members were accepted monthly by the Chamber board and membership committee.

On July 1, 2008, MVP and Norman J. Michaels, Jr. and Associates (in which the Claimant was President for over 25 years) entered into an independent broker agreement. On or about October 24, 2008, MVP, CDPHP and Excellus received letters from the Chamber naming Norman J. Michaels, Jr. and Associates as their sole broker. Commencing in April 2009 and continuing monthly to October 2010, Norman J. Michaels, Jr. and Associates processed MVP Chamber medical insurance applications to MVP and other carriers.

At the end of September 2010 and the beginning of October 2010, James Pescetti, Jr. an MVP Investigator noticed that a large number of insurance applications were submitted for people outside of Otsego County and reportedly began his investigation. Mr. Pescetti was invited by Claimant to meet with Rob Robinson, Dave Feinstein and himself at the Otsego Chamber offices in Oneonta, New York the first week of October. Mr. Pescetti insisted to Mr. Robinson that all chamber members had to live and work in the county. Mr. Robinson showed Mr. Pescetti the membership guidelines indicating otherwise. Despite the evidence presented, Mr. Pescetti continued the investigation internally at MVP and assisted the investigation by the New York State Department of Financial Services ("DFS").

Mr. Pescetti had been in regular contact with DFS and on November 4, 2011, Mr. Pescetti signed a supporting deposition/affidavit for DFS. In it, Mr. Pescetti claimed that it was a violation of MVP's agreement with the Chamber for the Chamber to enroll people in MVP who

were not “active” members. The gist of his affidavit was that the enrollment of downstate residents in MVP’s policy through the Chamber violated the Chamber’s contract with MVP. He swore to this affidavit even though the agreement is absolutely silent on this. He also misrepresented the terms of the agreement several times in his affidavit, swearing that the agreement required members to live/work in Otsego County, that Norman J. Michaels, Jr. and Associates was responsible for verifying eligibility requirements, and that the enrolled members he saw were not actually Chamber members. He also swore that MVP’s policies were sold to these ‘non-members’ without the knowledge or permission of MVP, even though (*as he had to know*) MVP drafted the MVP-Chambers and MVP-Michaels agreements, did the underwriting on the applications upon submission, where by contract only MVP could bind coverage on any applicant. MVP was responsible for final approvals of all applications, and the Chamber MVP group medical contract had been reviewed by underwriting, for the 2010 policy year where it was rated up by the MVP Underwriting Department. The MVP Underwriting Department had the case on their desk a year before Mr. Pescetti started his investigation.

In addition, on many unknown dates, the Claimant and Mr. Robinson confirmed with their MVP sales representatives, Jillian McBrian-Perry and Jose Negron, multiple times that any Chamber member was eligible for MVP coverage as long as they lived in the “MVP service area”, which included downstate counties and included other states due to their agreement, which was put into place to expand their service area.

In late 2010, DFS became involved and began an investigation. The DFS investigation was conducted by several investigators, including Assistant Deputy Chief of the Criminal Investigations Unit Sean Ralph, Investigator Philip D’Angelo, Investigator Gordon Saggese, and Investigators Ruffo, Burke, and Fedrau. In December 2010, Saggese and Ralph interviewed

Jillian McBrian-Perry. Ms. McBrian-Perry told Saggese and Ralph that any Chamber member was eligible as long as they met the employee guidelines and lived in the MVP service area, which was Westchester, Rockland, Vermont, and New Hampshire. Saggese also learned that Ms. McBrian-Perry and Mr. Negron told Mr. Robinson that any Chamber member was eligible to apply and that this information was shared this with Mr. Pescetti. DFS investigators interviewed Ms. McBrian-Perry again in June 2011. According to Saggese's notes, Ms. McBrian-Perry told them that she advised the Claimant that he could sell MVP insurance out of the service area. DFS knew that MVP representatives made assurances to the Claimant and Mr. Robinson and other agents including Michele Gasparre (interviewed by Ralph) about geographical eligibility requirements, and they also read the MVP-Chamber and MVP-Michaels agreements, neither of which included geographical restrictions.

By September 2011, DFS investigators met with Otsego County District Attorney John Muehl to bring him up to date on the investigation. By November 2011, Saggese was in the process of copying the case file for District Attorney Muehl. On March 27, 2013, D'Angelo signed a felony complaint against the Claimant falsely charging Grand Larceny in the second degree. D'Angelo unlawfully handcuffed the Claimant in his office in White Plains, New York. The Claimant was unlawfully confined and transported to NYSP Oneonta and they requested the NYSP process him for arrest. With actual malice and without probable cause DFS investigators commenced a criminal proceeding against Claimant. The Claimant was falsely charged by indictment with Grand Larceny in the second degree, Grand Larceny in the third degree, Scheme to Defraud in the first degree, and Insurance Fraud in the second degree, which was dismissed prior to trial. With actual malice and without probable cause DFS investigators continued the

criminal prosecution against Claimant by providing the District Attorney's Office and jury members false information and/or making material omissions.

The Claimant was convicted in Otsego County Court upon a verdict of Grand Larceny in the second degree and Scheme to Defraud in the first degree. The Claimant was acquitted of Grand Larceny in the third degree. Defendant appealed on the ground that his convictions were not supported by legally sufficient evidence. By Memorandum and Order decided and entered on October 22, 2015, the Appellate Division, Third Department reversed the judgment, on the law, and dismissed the indictment.

6. Upon information and belief, the claimant's damages was caused by the negligence and/or a custom, policy, regulation, and/or the deliberate indifference of the State of New York, the New York State Department of Financial Services, and its officers, agents, servants and/or employees.


7. Upon information and belief, the claimant's damages was caused by the intentional torts, including but not limited to false arrest, false imprisonment and malicious prosecution, of the officers, agents, servants and/or employees of the State of New York and the New York State Department of Financial Services.

8. Upon information and belief, the occurrence described herein was occasioned without any negligence on the part of the claimant contributing thereto.

DATED: January 6, 2016
Albany, New York

KINDLON SHANKS & ASSOCIATES

By:



Terence L. Kindlon, Esq.
Attorneys for Claimant

74 Chapel Street
Albany, New York 12207
(518) 434-1493

VERIFICATION

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

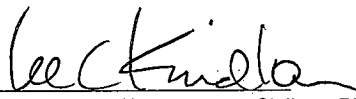
The undersigned, an attorney admitted to practice in the Courts of the State of New York, says that he is an attorney with Kindlon Shanks & Associates, attorneys for the claimant herein; that he has read the foregoing Notice of Intention to File a Claim, and knows the contents thereof; that the same is true to his knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes same to be true.

This verification is made by affirmant, and not by the claimant because the claimant is not located within the County of Albany where affirmant maintains his law office. The sources of affirmant's information and the grounds for his belief are conversations with the claimant and documents received by Kindlon Shanks & Associates.

The undersigned affirms that the foregoing is true under the penalties of perjury.


TERENCE L. KINDLON, ESQ

Sworn to before me this
6th day of January, 2016


Notary Public, State of New York

LEE C. KINDLON
Notary Public, State of New York
No. 02K16084706
Qualified in Albany County
Commission Expires Dec. 16, 2018