

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

JANET L. ASHLEY

ENDORSED
FILED IN MY OFFICE THIS

JAN 09 2007

Janita M. Duran
CLERK DISTRICT COURT

FRED LUTHY and
PHYLLIS LUTHY,

Plaintiffs,

v.

No. CV 2007 0 0228

NARCONON STONE HAWK REHABILITATION CENTER, INC.,

Defendant.

**VERIFIED COMPLAINT FOR FRAUD IN THE INDUCEMENT, UNFAIR OR
DECEPTIVE TRADE PRACTICES BREACH OF CONTRACT AND UNJUST
ENRICHMENT**

1. Fred Luthy and Phyllis Luthy are residents of Bernalillo County, New Mexico.
2. Defendant Narconon Stone Hawk Rehabilitation Center, Inc. ("Narconon") is a Michigan corporation with its principal place of business in Battle Creek, Michigan.
3. The acts and events giving rise to this complaint occurred in Bernalillo County, and the harm resulting occurred in Bernalillo County.
4. This court has jurisdictions over the subject matter and the parties, and venue is proper in this forum.

General Allegations

5. In early July, 2006, Fred Luthy contacted Narconon about the possibility of Narconon providing treatment for Mr. Luthy's son, John Luthy.
6. Fred Luthy spoke with Doug McGarry ("McGarry"), who represented himself as an intake counselor for Narconon. McGarry gave Mr. Luthy some general information and took Mr. Luthy's phone number.

7. In the weeks that followed, Fred Luthy and Phyllis Luthy ("the Luthys") received no less than six (6) phone calls at their home in Albuquerque, New Mexico, from McGarry.

8. During these conversations with McGarry, he told the Luthys that he was a former student of Narconon and represented it as an appropriate treatment option for their son, John.

9. The Luthys informed McGarry that John has a serious drug dependency issue and was not a willing participant for the Narconon program. Phyllis Luthy informed McGarry on several occasions that John would not want to remain at Narconon and would be very difficult to control.

10. McGarry assured the Luthys that Narconon could adequately address their concerns and that if they could get John to the program in Michigan that Narconon "knew exactly how to deal with" someone like John.

11. On more than 5 occasions Phyllis Luthy reminded McGarry that John was very difficult and would likely not want to remain at the Narconon center. Each time McGarry assured Mrs. Luthy that once John was there the Narconon staff could assure that John would stay and be treated.

12. Also, the Luthys received no less than six (6) phone calls at their home in Albuquerque, New Mexico, from a woman who identified herself as Desiree, represented herself as former student of the Narconon center and assured the Luthys that the Narconon program would be able to effectively treat their difficult, drug addicted, son.

13. Upon information and belief, Desiree received the Luthys' contact information from, and was encouraged to call them by, a representative of Narconon.

14. The Luthys were repeatedly assured by representatives of Narconon that, once John was received at the Narconon Center, it was a guarantee that they would be able to treat

him.

15. McGarry informed the Luthys that the "tuition" for the Narconon program was \$23,500.00 and that an account would be opened for John in which the Luthys could deposit money for his incidentals while at the center.

16. On, or about, August 25, 2006, Fred Luthy's bank wired \$25,000.00 to Narconon for the cost of the tuition and \$1,500.00 for John's account.

17. On, or about, August 25, 2006, John Luthy arrived at the Narconon center to begin treatment.

18. Upon information and belief from August 25, 2006 until August 30, 2006, John Luthy received no treatment and was merely housed at the center as he became increasingly uncomfortable, irritated and impatient while undergoing the symptoms of drug withdrawal and craving.

19. Upon information and belief on, or about, August 30, 2006, John demanded that he be released from the center and Narconon had him driven to a nearby motel and left him there.

20. The Luthys were informed that John was terminated from the program for "violating the rules contained in the student handbook" and that, despite the fact that they provided him no treatment and merely housed him for four days, Narconon would be retaining the entire \$23,500.00 tuition.

21. Despite several demands Narconon has refused and failed to return any portion of the tuition and has further refused to return the \$1,500.00 deposited into John's account.

COUNT I
(Fraud in the Inducement)

22. The Plaintiffs reallege paragraphs 1-21 of their complaint.

23. Plaintiffs entered into an agreement with Defendant to provide drug treatment services for their son.

24. Plaintiffs' willingness to assent to the terms of the agreement, and the agreement itself, was caused by the material fraudulent misrepresentations of Defendant and its agents.

25. Plaintiffs have been damaged by the Defendant's actions.

26. Defendant's conduct was malicious, fraudulent, oppressive and/or recklessly committed, with wanton disregard of Plaintiffs' rights.

COUNT II
(Breach of Contract)

27. Plaintiffs reallege paragraphs 1-26 of their complaint.

28. The agreements and representations made by the parties formed a valid contract between the Plaintiffs and Defendant.

29. Plaintiffs performed all of their obligations under the contract.

30. Defendant breached the contract.

31. Plaintiffs have been damaged by the Defendant's breach.

32. Defendant's conduct was malicious, fraudulent, oppressive and/or recklessly committed, with wanton disregard of Plaintiffs' rights.

COUNT III
(Unjust Enrichment)

33. Plaintiffs reallege paragraphs 1-32 of their complaint.

34. Defendant has been knowingly benefited at Plaintiffs' expense.

35. Allowance of Defendant to retain the benefit would be unjust under the circumstances.

36. Defendant's conduct was malicious, fraudulent, oppressive and/or recklessly

committed, with wanton disregard of Plaintiffs' rights.

COUNT IV
(Unfair or Deceptive Trade Practices)

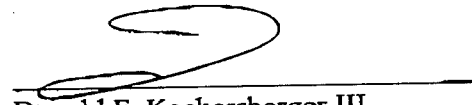
37. Plaintiffs reallege paragraphs 1-36 of their complaint.
38. Defendant offers drug treatment services in the regular course of its business.
39. Defendant offered drug treatment services to the Plaintiffs, in the State of New Mexico, in the regular course of its business.
40. Defendant's actions are governed by the Unfair Trade Practices Act, §57-12-1 NMSA, *et seq.*
41. Defendant's actions violated the provisions of the Unfair Trade Practices Act including, but not limited to: §57-12-2(D)(7) NMSA, §57-12-2(D)(14) NMSA, §57-12-2(D)(17) NMSA, §57-12-2(E)(1) NMSA, and §57-12-2(E)(2) NMSA.
42. Defendant willfully engaged in these violations of the Unfair Trade Practices Act.
43. Defendant's conduct was malicious, fraudulent, oppressive and/or recklessly committed, with wanton disregard of Plaintiffs' rights.
44. Plaintiffs are entitled to recover actual or statutory damages, trebled.

WHEREFORE, Plaintiffs Fred Luthy and Phyllis Luthy request that this court enter judgment in their favor and against the defendant Narconon Stone Hawk Rehabilitation Center Inc, and award Plaintiffs:

- (a) Actual or statutory damages, trebled, for violations of the Unfair Trade Practices Act, §57-12-1 NMSA, *et seq.*,
- (b) Actual damages and punitive damages in an amount to be proven at trial for the malicious, fraudulent, oppressive and/or recklessly committed breach of the contract.

- (c) Damages sufficient to alleviate any unjust enrichment of Defendant.
- (d) Reasonable attorney fees and costs, and
- (e) Such other relief the Court deems just and proper.

Kelley-Streubel LLC



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Attorneys for Plaintiffs

VERIFICATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Fred Luthy, state that I have read the Verified Complaint for Fraud in the Inducement, Unfair or Deceptive Trade Practices, Breach of Contract and Unjust Enrichment, and that the same is true and correct to the best of my knowledge, information and belief.

By *Fred Luthy*
Fred Luthy

SUBSCRIBED AND SWORN to before me this 3rd day of January, 2007, by Fred Luthy.



OFFICIAL SEAL
ALICIA M. LAPADO
NOTARY PUBLIC STATE OF NEW MEXICO
5-9-05

Alicia M. Lapado
Notary Public