

# Lynch ♦ Martin

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Attorneys for Plaintiff(s)

MICHELLE PFUND, by her Guardians  
ELIZABETH PFUND, ELIZABETH  
AVANZATO and THERESE  
ASCOLESE; ELIZABETH PFUND  
Individually

Plaintiffs,

vs.

SPECTRUM FOR LIVING GROUP  
HOMES, INC.; SPECTRUM FOR  
LIVING DEVELOPMENT, INC.;  
SPECTRUMFORLIVINGMIDDLESEX,  
INC.; JOHN DOES 1-10; ABC  
BUSINESS ENTITIES 1-10, fictitious

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MIDDLESEX COUNTY

Docket No.

Civil Action

## **COMPLAINT AND JURY DEMAND**

Plaintiffs, MICHELLE PFUND, by her guardians ELIZABETH PFUND, ELIZABETH AVANZATO and THERESE ASCOLESE, residing at 350 Leonard Drive, New Milford, Bergen County New Jersey, complaining of the Defendants, by and through their attorneys, allege and say upon information and belief:

### **PARTIES**

1. Plaintiff Michelle Pfund was born a normal, healthy baby on June 13, 1961.

When she was 2 years old, she became seriously ill and suffered neurological impairment as a result of that illness. At age 12 she had her first grand mal seizure. She was diagnosed with seizure disorder, autism, and severe mental retardation.

2. Michelle Pfund's mental ability is equivalent to that of a five year old, and hence she requires total care. She can communicate only to a limited extent, can't handle money, or otherwise care for herself. Without constant supervision, she will wander away and is unable to find her way home. Michelle's individual Habilitation Program ("IHP") clearly indicates "michelle must be closely supervised due to potential for elopement." She must be told and helped brushing her teeth, taking daily showers, washing her hair, and using the bathroom. Her hygiene and diet must be closely monitored, and her meals must be prepared for her.

3. Michelle was cared for at home until her mother's failing health necessitated that Michelle be cared for professionally. To that end, Michelle was placed in the Spectrum for Living facility in Edison on January 24, 1998.

4. Defendant Spectrum for Living Group Homes, Inc. is a corporation with its principal place of business in the county of Bergen, State of New Jersey.

5. Defendant Spectrum for Living Development, Inc. is a corporation with its principal place of business in the county of Bergen, State of New Jersey.

6. Defendant Spectrum for Living Middlesex, Inc. is a corporation with its principal place of business in the county of Bergen, State of New Jersey.

7. Defendants JOHN DOES 1-10; ABC BUSINESS ENTITIES 1-10, are fictitious names representing one or more persons, partnerships, corporations or otherwise, whose identities are presently unknown to plaintiff, and who are liable to plaintiffs as fully and completely as set forth herein as to the other defendants. Despite diligent inquiry, the identities of these fictitious defendants are not known and will be more specifically named as the ongoing course of discovery reveals.

## **FIRST COUNT**

1. This case stems from the failure of defendant Spectrum for Living Group Homes, Inc.; Spectrum for Living Development, Inc.; and Spectrum for Living Middlesex, Inc. (hereinafter collectively referred to as “Spectrum”) to comply with both state and federal statutory and regulatory law in regard to the operation of the Spectrum for Living Edison Facility and the care provided to plaintiff Michelle Pfund.

2. The negligent actions and omissions of defendant Spectrum with regard to the care provided to their clients, and to plaintiff Michelle Pfund, is egregious and shocking. Examples of the negligence of defendant Spectrum includes, but is not limited to, the following:

3. On February 14, 1998, less than one month after entering the Spectrum facility, Michelle was hospitalized for five days for a seizure disorder, she had never been hospitalized this previously. She was not given her seizure medication.

4. On April 11, 1998, Michelle went home for the weekend and the family discovered that she had a severe rash. This was reported to Spectrum for treatment, yet due to lack of communication between staff members she was not treated for an additional three days, and then she was taken to the doctors twice on the same day, once for blood work and then again to have to rash evaluated.

5. On September 14, 1998, Michelle’s family returns with Michelle from a weekend at home to drop her off at Spectrum and discovers that there are only three people working instead of five. Spectrum is constantly short staffed.

6. On September 29, 1998, Elizabeth Avanzato (Michelle’s sister) arrived at Michelle’s apartment to find a stranger in the apartment, which is connected another patient’s apartment. The intruder, who leaves abruptly, was never identified.

7. On October 16, 1998, Michelle was slated to participate in the “Spectrum

Games,” an event not unlike the Special Olympics. On the day of the games, Spectrum is short staffed and Michelle is left behind while others go to the event, Michelle’s guardians were not notified.

8. On December 11, 1998, Michelle had a dental appointment that is cancelled by Spectrum, but the guardian who normally attends such appointments is not notified in dereliction of the orders in place for Michelle. Michelle’s guardian attended appointment, and eventually had to call Spectrum to determine what happened.

9. December 18, 1998, Michelle was to attend her rescheduled dental appointment. Michelle arrived with a male staff person almost an hour late. Instead of taking 45 minutes, the trip took 2 hours and 15 minutes. Upon arrival, Michelle appeared frantic, her eyes are glassy, and her hands were shaking. Guardians were told that staffer and Michelle were almost in an accident, and then got lost. A security guard then arrived and said that the staffer needed to come with him an move the van, the staffer and guard then left together. An investigation revealed that the hospital does not have a security guard working for them that matched the description of the man. Michelle’s Guardian calls Spectrum to discuss this matter but no one answers the phone. She leaves a message, but no one returns her call. A report of the incident written to the State Division of Developmental Disabilities written by the President of Spectrum for Living Development, Inc., Alex Gallione, states that Michelle’s sister (and guardian) reviewed the staffers directions and concurred that there was an error in them. This is simply not true, directions were never reviewed by Michelle’s guardian, who was outraged at the lie.

10. On January 2, 1999, upon returning from New Year’s vacation, Michelle’s family discovered that the alarms on facility still aren’t working.

11. On January 13, 1999, Michelle was given a tetanus shot by agents and/or

employees of Spectrum without checking Michelles' records. Her tetanus shots were up to date however, and she did not need the shot.

12. On May 7, 1999, chest bruises on Michelle were discovered by her mother, origin unknown. As of October 2000, no Special Response Unit report had been made available to Michelle's guardians despite numerous requests. When report was eventually received years later, it was incomplete and inaccurate.

13. On October 2, 2000, Michelle eloped from the facility and was found across a 4 lane highway alone. This incident was not reported to the Division of Developmental Disabilities or police.

14. On January 19, 2001, while attending Options, a day program, it was discovered that Michelle's lunch (prepared by defendant's agents and/or employees) consisted of a salad thrown in her lunch box, not in any container, just loose in the lunch box.

15. On April 15, 2001, Michelle's family discovered that Spectrum staff would spray cold water on Michelle in the bathtub to get her to stand for a shower instead of a bath.

16. On July 5, 2001, Michelle again eloped from the Spectrum facility, and again the incident was not reported. Guardians only learned of the elopement from the parent of another patient. They questioned the staff, who acknowledged the escape. The staff person later recanted the admission and denied that Michelle escaped when questioned by a supervisor. Spectrum denied the incident.

17. On August 2, 2001, Michelle's family visited her and discovered that several items had been stolen from Michelle's apartment including rubber bath mats, bath rugs and toilet cover, jeans, belts, and a raincoat. This has happened several times.

18. On September 22, 2001, bruises were discovered on Michelle's arm, and are

photographed. The origin of these marks is still unknown.

19. IHP: Individualized Habilitation Plan-meeting regarding same scheduled the guardians four separate times, 2/24/98, 3/16/98, 3/25/98, and 4/8/98. All cancelled because of Spectrum.

20. On November 3, 2001, family discovered VCR tape rewinder missing from Michelle's apartment.

21. On January 6, 2002, Michelle was taken by family to JFK emergency room when they find she was bleeding from her right ear. Ears hadn't been cleaned and both ears had cuts in them. Blood and scabs were found in ears.

22. On March 22, 2002, sour milk was found in Michelle's refrigerator as well as the refrigerator of other residents. When it was brought to the attention of the nurse, she stated that "they could boil it."

23. On April 5, 2002, while giving Michelle a shower, her sister noticed that she had a bruise and needle mark on her arm; she had been given an injection of some kind. In contradiction to guardians request, staff waits two days before taking Michelle to a doctor to be drug tested to see if the nature of the injection could be determined. Staff submits no incident report or historical account to the doctor, whom, based upon the lack of information, does not perform a drug screen. Guardians are told by a staff member that a drug test cannot be done unless they know exactly what drug to test for; Michelle's guardian's later learned that this simply is not true. To date, defendants have given no explanation as to the injection.

24. In general, plaintiff's have found that Michelle has not been given showers daily as she is supposed to, her hygiene has not been maintained, food shopping has not been completed. At one point guardians discovered that the staff was putting cooking oil in Michelle's hair. In

response to problems with Michelle using too much toilet paper, Spectrum staff stopped giving it to her altogether. Doors have been found unlocked when family has come to visit, increasing the opportunity for escape and generally posing a security risk.

25. As a direct and proximate result of the negligence of the defendants, jointly and/or severally, plaintiffs were caused to suffer one or more of the following: have suffered and continue to suffer great pain and anguish; have and continue to suffer the loss of enjoyment of life; have and continue to suffer severe emotional distress; and have incurred and continue to incur expenses for medical care and attention and other expenses to be revealed in discovery.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

### **SECOND COUNT**

1. Plaintiffs repeat and make a part hereof each and every allegation contained in the preceding Counts and parts of this Complaint and incorporate same by reference as though fully set forth herein.

2. Plaintiff Michelle Pfund entered the care of defendants in or about January 1998 and said care and custody continued through April 2002 and thereafter. Defendants specifically agreed to care for plaintiff Michelle Pfund in return for valuable monetary consideration.

Defendants specifically entered into actual or implied contractual undertakings in this regard.

Plaintiffs were direct parties to, or third party beneficiaries of, these contracts. Defendants breached these contracts in failing to properly care for Michelle Pfund as they had agreed to and as is otherwise set forth herein. As such they are liable to plaintiffs in breach of contract and/or unjust enrichment and are liable for all damages flowing therefrom.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

### **THIRD COUNT**

1. Plaintiffs repeat and make a part hereof each and every allegation contained in the preceding Counts and parts of this Complaint and incorporate same by reference as though fully set forth herein.

2. Defendants did willfully and with a wanton and reckless disregard for the safety of plaintiffs, commit the above described acts and omissions described in Count One. Defendant is in violation of numerous codes, statutes, regulations, and standards. Defendants further knowingly hired incompetent individuals to care for Michelle Pfund. Defendants further willfully and wantonly failed to properly train and supervise these individuals after hiring them. Defendants failed to properly adhere to their responsibilities and blatantly failed and refused to comply with the law regarding the care to be provided to their patients. Defendants conduct was particularly egregious and demonstrated a profound, systemic and willful difference towards their known legal responsibilities and undertakings to care for and provide a safe environment for plaintiff Michelle Pfund.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

### **FOURTH COUNT**

1. Plaintiffs repeat and make a part hereof each and every allegation contained in the preceding Counts and parts of this Complaint and incorporate same by reference as though fully set



forth herein.

2. Plaintiff Elizabeth Pfund is the parent and a legal guardian of plaintiff Michelle Pfund. As a result of the negligence and other acts of defendants set forth herein, Elizabeth Pfund, has lost services, society and/or companionship of Michelle Pfund. As a result of the negligent and/or intentional actions of the defendants, defendants have interfered with the relationship of Elizabeth Pfund and Michelle Pfund.

3. As a result of the acts of the defendants, plaintiff Elizabeth Pfund has been caused to suffer one, more or all of the following: emotional distress, pain and anguish, suffering, expenses and other damages and will be deprived of consortium and services of the said injured plaintiff.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

#### **FIFTH COUNT**

1. Plaintiffs repeat and make a part hereof each and every allegation contained in the preceding Counts and parts of this Complaint and incorporate same by reference as though fully set forth herein.

2. As a result of the negligent and/or intentional acts and omissions set forth herein, defendants violated N.J.S.A. 30:13-1, et seq., the New Jersey Nursing Home Responsibilities and Rights Act, and are liable thereunder.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

## SIXTH COUNT

1. Plaintiffs repeat and make a part hereof each and every allegation contained in the preceding Counts and parts of this Complaint and incorporate same by reference as though fully set forth herein.

2. As a result of the negligent and/or intentional acts and omissions set forth herein, defendants violated numerous, statutes, regulations and other standards and laws including but not limited to, the New Jersey Administrative Code, Standards promulgated by the Society for Automotive Engineers, ADA, International Standards Organization and numerous other standards and laws are liable thereunder.

**Wherefore**, plaintiffs request judgment against all defendants, both jointly and severally, for compensatory damages and punitive damages together with attorney's fees, interest and costs of suit, and such other and further relief as the court may deem just and proper.

## JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues herein presented.

## TRIAL COUNSEL DESIGNATION

**PLEASE TAKE NOTICE** that pursuant to R. 4:25-4, Gerald Clark has been designated trial counsel in the within action.

## CERTIFICATION PURSUANT TO R.4:5-1

GERALD CLARK, does hereby certify as follows:

1. I am an Attorney at Law of the State of New Jersey, and an associate of the law firm of Lynch Martin Kroll, attorneys for the plaintiffs, and am familiar with the above captioned matter.

2. To the best of my knowledge, information, and belief, there is no other action pending about the subject matter of this Complaint in any court or arbitration proceeding, nor are there any other persons known to me who should be added as parties to this matter, nor are there any other

actions contemplated, except for Griscti v. Spectrum, et al, Docket #MID-L-3759-02; and Gruskowski v. Spectrum, et al, Docket #MID-L-6646-01.

3. I do hereby certify that the foregoing statements made by me are true to the best of my knowledge, and if knowingly made false, I am subject to punishment.

LYNCH ♦ MARTIN  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
GERALD CLARK

Dated: May 23, 2002