



New Law Entitles Harassed Tenants To Compensatory Damages and Legal Fees

By: Rosemarie A. Klie, Esq.

A new law became effective November 28, 2017, effectively allowing tenants or lawful occupants of multi-unit dwellings in New York to obtain monetary compensation plus legal fees if their landlords are found guilty of harassment. This law was signed by Mayor Bill De Blasio as part of a package of bills that expands on the Tenant Harassment Law.



The Tenant Harassment Laws were originally signed by then-Mayor Michael R. Bloomberg (effective March 13, 2008). These laws allowed New York tenants or lawful occupants for the first time to file claims alleging harassment by their landlords in the NYC Housing Courts. The laws apply to all tenants and lawful occupants of multi-unit dwellings, except owners of cooperative or condominium apartments. See, NYC Administrative Code sections 27-2005(d) and 27-2004(n).

Harassment is defined in paragraph 48 of Section 27-2004 of the NYC Administrative Code. Harassment consists of any act

or omission by or on behalf of an owner that causes or is intended to cause the occupant to vacate or waive their rights in relation to such occupancy. Some examples cited in the law consist of bringing frivolous court actions, failing to provide essential services, failing to cure housing violations, removing the occupant's possessions, repeatedly contacting or visiting the occupant on weekends, holidays, or before 9 am or 5 pm on weekdays. The complete list of harassing acts/omissions are set forth in paragraph 48 subdivisions a-g. The penalties to be imposed on the landlord after a finding of harassment are set forth in

Sections 27-2115 and 27-2121 of the NYC Administrative Code.

Landlord groups throughout the city came out strongly against this legislation and filed the action known as Prometheus Realty Corp v. the City of New York, alleging that the law violated the New York State and U.S. constitutions and unlawfully expanded the jurisdiction of housing court judges. The Hon. Eileen Rakower of the New York State Supreme Court denied the plaintiff's motion for summary judgment and granted the city's motion to dismiss. The decision was appealed, but was upheld in the Appellate Division, First Department. The Appellate Court held that the law did not impermissibly expand the jurisdiction of the NYC Housing Court and did not violate landlords' substantive due process rights. See 80 AD 3d 206(11/16/10).

Interest in the subject was renewed, and on August 30, 2017, De Blasio signed a collection of new tenant harassment laws. The

Green Cards Through Investment

By: Allen E. Kaye and Joseph F. DeFelice



For foreign investors looking for freedom and flexibility to live and work in the United States in a way accommodating to their lifestyles, the EB-5 investor category can provide an excellent opportunity to accomplish this goal through the obtaining of Green Cards.



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3. Creation of employment for at least 10 full-time U.S. workers.

The investment may consist of the contribution of

Continued on page 6

Continued on page 21



New Law Entitles Harassed Tenants to Compensatory Damages & Legal Fees.....	1, 6
Green Cards Through Investment.....	1, 21, 23
Docket, QCBA Board, New Members & Necrology.....	2
President's Message.....	4
Editor's Note - Short Story - Not as Long as I am Alive.....	5,7,13,14,18,19
Holiday Party 12-7-17.....	10, 11
Application for Membership.....	22

The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

February 2018

Monday, February 12	Lincoln's Birthday - Office Closed
Friday, February 9	Night out with the Islanders at Barclay's Center
Monday, February 19	President's Day - Office Closed

March 2018

Monday, March 7	Human Rights Law Update
Monday, March 19	Judiciary, Past Presidents & Golden Jubilarian Night
Wednesday, March 21	Criminal Law Seminar
Wednesday, March 28	LGBT Seminar
Friday, March 30	Good Friday - Office Closed

April 2018

Wednesday, April 18	Equitable Distribution Update
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May 2018

Thursday, May 3	Annual Dinner & Installation of Officers
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CLE Dates to be Announced

Civil Court - Meet the New Supervising Judge - Date TBD
 CPLR & Evidence Update
 Deposition Lunchtime Seminars - Dates TBD
 Elder Law Seminar
 Ethics Seminar
 Lawyers Assistance Committee Seminar
 Surrogate's Court Seminar



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President's Message



"The diversity of Queens was on full display and I could not be any prouder."

December was a busy month with holiday celebrations and Judicial Induction ceremonies. The Queens County Bar Association held its annual holiday party at Floral Terrace on December 7, 2017. Perhaps I'm just getting older, but it seemed as though the crowd at this year's party was noticeably younger than in the past. The partygoers did not want to leave at the end of the evening, but finally took the cue from the hall's employees who started breaking down the tables!

As one of my goals for QCBA was to get more of the younger attorneys involved [in committees and at social events], I was very pleased with the crowd at the party and some of the pictures were uploaded immediately to our Facebook page. We also collected toys for a not-for-profit foster care agency. Thank you to the staff from QCBA and the other affinity bar associations who helped make the party a huge success.

Following the judicial elections in November, the Supreme Court and Civil Court Committees held Court Appreciation night on November 29. During this event, the court committees invited all the judges to a dinner held at QCBA. We heard from the Administrative Judge and welcomed the newly elected Judges and Justices. It was a great way to meet and greet other members of the bench and bar.

Finally, I attended five Judicial induction ceremonies in December, and two more in January. The diversity of Queens was on full display and I could not be any prouder. In December, we saw the induction of an Asian American, an Italian American and an African American judge to the Civil Court. In January, we saw the induction of a Greek American judge. The crowd at each ceremony included politicians and district leaders, but also members from each of the inductee's families and distinct Queens communities. While the inductions had similar congratulatory speeches, the ceremonies were unique to the ethnicity of each Judge. As I said in my speech in May, our diversity is our strength and it was great to see the various communities have representation on the bench. Congratulations to Justice Bernice Siegal on being named to the Appellate Term, Second Department and to Judge Donna-Marie Golia on her new position as Supervising Judge in Queens Civil.

I wish you all a healthy and a successful 2018.

Best regards,
Gregory J. Newman

Editor's Note

Short Story set in the Courts of New Scotland Not as Long as I am Alive

By Paul E. Kerson



State Senator Bob Madden ran for Governor of New Scotland promising to reinstate the death penalty. He whipped up the voters with tales of heinous crimes.

Madden was joined by most of the State's county prosecutors, anxious to satisfy the public's blood lust and desire for revenge.

Madden got himself elected by a thin margin. Much of the public was put off by his veiled appeals to racism.

The State Legislature was equal to the political, legal and moral task it faced. It had to give Madden and his majority their blood lust. But it had to make sure the State did not create a legal blood bath in its Court system.

So the Legislature created the State Capital Defender's Office, charged with the task of training, selecting and paying Court-appointed criminal defense lawyers for those accused of capital crimes.

Mike O'Shaughnessy was recruited for the brand new position of New Scotland Capital Defender. He had been serving as the Texas State Capital Defender, where upwards of 756 tortured souls were snuffed out by the State in the past 41 years.

O'Shaughnessy was deeply religious. He took the Church's position on abortion and applied it to capital punishment. "Every human life is sacred," O'Shaughnessy taught. "Only G-d takes human life, not man," he said, in the quiet tone of the priest he almost became.

Madden's new capital punishment law was due to come into effect Sept. 1. It had been passed on June 1. O'Shaughnessy had only three jam-packed months to assemble and train a Capital Defender Panel from New Scotland's 90,000 lawyers. He expected an onslaught of capital indictments from Madden-allied bloodthirsty county prosecutors.

O'Shaughnessy sent the word out to New Scotland's 47 county bar associations, including Megacity, by far the largest municipality in the State, and White Box County, its adjacent affluent suburb. He wanted experienced criminal defense attorneys who were used to defending those unfortunate individuals charged with serious crimes. New Scotland had abolished the death penalty 40 years before, so few in-state lawyers knew the special details of how to defend these cases.

O'Shaughnessy was heartened by who showed up at the hastily-organized three-day Capital Defender Training Course he called for June 10 at a budget hotel near the airport in Megacity: Cohen, Goldberg, Duberstein, Feldman, Shapiro, Schwartz, Abraham, Stein, and Dubno – all sons of Holocaust survivors, and precious few well-motivated others.

This was no time for "balance" in New Scotland State employment practices. This was no time for women's equality. The lives of young Black and Hispanic men hung in the balance. O'Shaughnessy knew that these would be among the most important three days of his life. "Black lives matter" weighed heavily on his mind and heart.

O'Shaughnessy had every executed Texan of the past few years haunting him every night. He would not let this happen in New Scotland, Madden or no Madden.

"You will be holding the lives of young Black and Hispanic men in your hands," O'Shaughnessy told his few dozen would-be members of the Capital Defender's Panel of Attorneys. "The morality of our New Scotland society will be up to you. If you run into trouble, you can call my office for guidance, but the creation on a viable defense will be largely up to you."

"With only three days of training and a brand new death penalty statute with no judicial interpretation attached to it yet, how

Continued on p.7...

most significant law codified in Section 27-2115(o) of the NYC Administrative Code gave lawful occupants or groups of lawful occupants who can prove harassment by their landlords the ability to obtain compensatory damages or \$1,000 plus reasonable attorneys' fees and costs. In addition, the new law gave the courts the discretion to impose additional punitive damages on the landlords. This is the law that took effect on November 28, 2017.

Previously, the only penalty for tenant harassment was a civil penalty payable to the city. The current law provides compensation to the harassed party and opens the door to the imposition of civil penalties.

New laws have also increased the penalties for tenant harassment. In the original 2008 legislation, the court

could impose a civil penalty of not less than \$1,000 and not more than \$5,000 and was payable to the city. The civil penalty was increased in 2014 so that the court could impose a civil penalty of not less than \$1,000 and not more than \$10,000 and \$2,000 to \$10,000 for a second offense within five years. The new civil penalties that went into effect Dec. 28 raised the amounts to \$2,000 to \$10,000 for the first offense and \$4,000 to \$10,000 for the second offense.

In addition to the foregoing, the legislation also bars culpable landlords from further engaging in the harassing conduct. A finding of harassment is posted, similar to a violation, on the city's Housing Preservation and Development (HPD) website.

De Blasio also signed into law another measure, which also took effect December 28, 2017, creating

a rebuttable presumption that the harassing acts or omissions of the landlord were done with the intent to force occupants to vacate their apartments or surrender or waive their rights in relation to their occupancies. Tenants are no longer required to prove that their landlords acted with this intent. The tenant merely needs to prove that the harassment took place. See, Section 27-2004 (48) of the NYC Administrative Code.

I expect this law to be subject to a court challenge on due process grounds. As for the other legislation, the fact that tenants/occupants can now obtain monetary compensation from their landlords will undoubtedly lead to a vast increase in tenant harassment actions filed and tried in the housing courts.

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Not as Long as I am alive | continued from p.5...

are we supposed to do that?" thought Saul Abraham, one of the first New Scotland lawyers to sign up.

Abraham had practiced civil and criminal litigation for 20 years at that point. He had been an assistant county prosecutor for two years and a judge for one year, but he hated those jobs. One had to seek jail or prison sentences for people knowing full well that a large number of them would be assaulted, raped or killed.

Abraham had practiced criminal defense for 17 years at that point. He had the New Scotland record for acquittals in homicide cases – five. No one could match him in investigative and trial skills. He had been to the combined Megacity-White Box County-New Scotland Prison and Jail many times to interview clients and potential clients.

He knew that assault, rape, drug-dealing, attempted murder and murder itself were all commonplace in that hell-hole. He knew that the New Scotland-Megacity-White Box County Correction Commissioner was a mere figurehead – that the true administrator of the Prison and Jail were the incarcerated and outside members of the notorious Veins street gang.

The New Scotland Attorney General, judges, county prosecutors and public defenders offices all turned a blind eye towards the Veins reign of terror in the Prison and Jail. "Not within our purview," they said. "We have limited government," they said. "This is Corrections' problem, not ours," they said.

And so they all did, day in and day out, year in and year out, send young Black and Hispanic men to face severe injury or death in the crime factory known as the combined Megacity, White Box County and New Scotland Correction Department.

Abraham had no doubt that there was far more violent crime in the Prison and Jail than there was in all the streets, cities and towns of New Scotland.

Abraham also knew from bitter experience that the vast majority of New Scotland prisoners are eventually released by the Parole Board, hardened and embittered by the violence and threats they lived through in the Veins-administered New Scotland prison system.

Abraham knew (because he had seen it with his own eyes) that the New Scotland Family Court was filled with family violence cases caused by recently released former prisoners treating their wives and children just as they had been treated in a Veins administered prison or jail.

And he knew that a large number of Family Court child support cases were against fathers who were former prisoners and barred from employment because of their past prison records.

Abraham knew that we all live in a vicious cycle of societal breakdown caused and manufactured by the State of New Scotland Itself because of the way it runs its prisons and jails – by letting the Veins do it, and doing nothing to stop them.

* * * *

Abraham was O'Shaughnessy's best student in their fateful three day class. Abraham asked the most questions and had the keenest observations.

And so it came to pass that O'Shaughnessy assigned Abraham to the first capital case the first day the new death penalty statute went into effect – the case of

Continued on p.13...

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18 year old Billy Williams.

Billy was going home to his mother in a nearby suburb of Megacity in adjacent White Box County from a late night of “partying” with his friends – sex, drugs and rock and roll, but especially fueled by alcohol – beer, wine and harder stuff.

Billy got in a “gypsy” (unlicensed) taxicab with Junior, an older man and Veins member. As they were approaching Billy’s house, Junior told the driver to hand over all his money. The driver refused. Junior took out a pistol and shot the driver. The driver later died at the hospital from his wounds.

That was it. Before the Madden-based hysteria, Billy would have been offered a two year sentence if he pled guilty. After all, how could the county prosecutor ever prove that Billy knew what Junior was up to, or that they had planned the robbery in advance? It looked like an impulsive act by Junior, something Billy would never have known about.

But in the Madden-fueled lunatic political environment in which they lived, the White Box County prosecutor, Phulmann, was emboldened. Now he could get rid of one more “predator” as he thought of each criminal defendant. “If he didn’t do this crime, he did something else” was Phulmann’s thinking about Megacity’s large population of Black and Hispanic young men, many of whom had moved to the older sections of White Box County as Megacity got more and more expensive. This social mobility infuriated Phulmann.

This was, is and remains a completely unconstitutional view. Our system is built on Due Process, which means an accused person only has to cope with the charges in the indictment, not with imagined crimes from racist state officials. Phulmann’s thinking was widely shared by the Megacity, White Box County and New Scotland Police Departments.

O’Shaughnessy’s Office called Abraham and told him to report to Billy’s arraignment in the White Box County Criminal Court. Abraham filed his Notice of Appearance and got the Criminal Court Complaint from the Clerk. Robbery in the first degree and Murder in the first degree, it read. The new death sentence, Abraham steeled himself, just as O’Shaughnessy had predicted. Abraham had tangled with Phulmann and his cloned Assistant County Prosecutors many times, and knew they were thorough racists.

In the hallway, outside the courtroom on a bench sat a 40 year old Black woman, very much alone, and looking shocked, lost and bewildered. Instinctively, Abraham knew it must be Mrs. Williams.

“Good morning, Mrs. Williams. My name is Saul Abraham, and I have been appointed by the State Capital Defender to represent Mr. Billy Williams.”

Her face was motionless. She sat in stillness, unable to talk. She moved ever so slowly. She started to talk, but words did not come out of her mouth. Abraham sat down next to her and took her limp, almost lifeless hand in his. He held her hand for a very long time, what seemed like hours, but was probably three minutes.

Mrs. Williams stumbled on her words, “...they say...they say...they want to kill my baby boy...” and no more words came out, despite her efforts.

Abraham had seen this before, in his own Grandmother, during the rare times she spoke of her brothers and sisters, nieces and nephews, killed in the Holocaust by the State.

“Mark my words, Mrs. Williams, no one is going to kill your baby boy, not as long as I am alive.” Abraham said quietly but firmly to Mrs. Williams.

Abraham said these words as firmly and quietly as he could, with as much strength as he could find, and he squeezed Mrs. Williams’ hand in his with as much gentle firmness as he could. As he did, he could feel her limp, seemingly lifeless hand come to life and squeeze his hand back.

“We are going to work together, Mrs. Williams, as hard as we can. The first thing we are going to do is this: You are going to get me the names (real names and street names), addresses and telephone numbers of everyone at the party Billy and Junior attended on the night in question, and then you are going to bring them into my office so I can prepare their affidavits, and if you can’t get them to come in, you and I are going to see them wherever they will meet us, your house, their house, McDonald’s wherever..., and we are going to do this before the next adjourned date, which is in three weeks’ time. We are going to prove that Billy had no idea what Junior was up to, despite the fact that they shared a gypsy cab that night.”

And so they did, working together, Mrs. Williams and Abraham. Lateisha said Billy hadn’t even met Junior before the night in question. Darren told them Billy was too drunk to plan anything, he just wanted to get home to sleep so he could practice with his high school basketball team the next day.

Ronnette said that Junior had done this type of thing before, but that the Veins had enough cops and correction guards on their payroll that he had never been arrested. Abraham wrote down this information, and prepared Ronnette’s affidavit. But he did not plan to use it, as one never knew who Judge DeVane knew, or did not know, and who he might want to protect.

Three weeks passed. It was time for a pre-motion conference in the case of People of the State of New Scotland v. Billy Williams in the White Box County Criminal Court. The Corrections Department “produced” Billy Williams from the combined Megacity/White Box County/New Scotland Prison and Jail.

Abraham showed his “Attorney Secure Pass” and was admitted to the locked “holding pens” behind the courtroom so he could meet with Billy Williams before the pre-motion conference. Abraham knew what few others in the system knew: A “holding pen” was for cattle. Its use with regard to Black and Hispanic men was emblematic of the racism of the whole system.

As he approached Billy Williams in the “holding pen,” Abraham could see that there was a large white bandage over his right eye. “What happened to you, Billy?” Abraham asked.

“A guard hit me upside my head...” Billy said. He had been born in Alabama, and taken to Megacity as a child, but he never lost his slow southern speech and mannerisms. Billy was the last person on earth who could have planned an armed robbery and homicide.

“Why, Billy, why? Why did a guard hit you on your head, taking out your right eye?” Abraham asked urgently. They were about to see Judge DeVane and one of Phulmann’s Assistants. Even they, with their racist attitudes, would not like this turn of events, and might even do something about it, thought Abraham.

Billy spoke slowly, “Well, I heard Junior wants me to take the rap for this, to say I put him up to it and made him do it, because I am 18 and may be spared the electric chair, but since he is 30 he is likely to be fried to a crisp, like a piece of chicken on a spit. The Veins say they’ll take out my other eye if I don’t”

Abraham steeled himself. This was as bad as it gets. Lunatic Madden had raised the stakes in the whole corrupt system with his new death penalty bill. As usual, the State created more crime by raising the penalties for the small true amount of crime that actually existed.

What to do? No law book or law school course or prior case experience prepared Abraham for this. He decided to be guided by something he always

taught himself: Tell the truth and the truth will set you free.

The case was called. They were on the record. Abraham asked to approach the bench off the record. "Judge DeVane, my client Billy Williams was brutally attacked in Corrections by Corrections. He lost the sight of one eye. There are threats on his other eye. Surely the County Prosecutor would like to investigate this new crime. I want to make a bail application. The State cannot protect Billy Williams, and he has the presumption of innocence, as all defendants do. He must be released on his own recognizance, to go back to his high school to finish his senior year where he belongs home with his mother, Mrs. Williams, who is sitting right here in the audience ready to take him home."

"On the record, counselor," Judge DeVane said.

Abraham repeated this on the record. He also told Judge DeVane he had sworn affidavits from Lateisha and Darren that Billy could not possibly have committed the crime, despite the fact that he was in the gypsy cab when Junior did the crime.

Abraham steeled himself. Truth, he told himself, truth. "And Your Honor, I have an affidavit from Ronnette that says that Corrections and the Police Department were in on the whole thing, and have given Junior a "free pass" before because the Veins put them up to it."

There, he said it. He used it. What if Ronnette was exaggerating? What if she was lying? Now he stuck his neck out, and maybe even hurt Billy Williams' defense in the process. Using witnesses who lie is never a good plan, particularly if their lies are exposed.

"This is preposterous," said Baalman, the Assistant County Prosecutor. "But I know Abraham for 20 years, Your Honor, so I will do him the courtesy of looking into it."

Abraham knew Baalman would do nothing of the kind.

"About your bail request, counselor," said Judge DeVane, "It has no merit and is denied. Defendant is charged with a capital crime. No bail under any circumstances. His injuries are most probably his own fault. Remand the defendant. Three week date for motions."

"So much for judicial compassion and prosecutorial fairness," thought Abraham. "What in G-d's name do I do now?"

He thought and thought and thought. What to do? Then an idea came to mind like a powerful light. The OJA (Office of Judicial Administration) had a Bail Review Part. He could get the assignment chart and find out when Judge Joannie Mancini was sitting in Bail Review.

He knew from prior cases that she had a heart of gold, and was willing to listen. Usually Bail Review was a waste of time, because even if the bail was reduced 10% or 20%, defendants could rarely afford it, and thus waited months and months in jail for crimes they did not commit.

Abraham drove back from White Box County to his office, down the block from the Megacity Criminal Court Building. He started dictating madly. He prepared his own affirmation telling the whole tragic story – Billy's drunken exit from the party into a gypsy cab with Junior, Billy's enrollment in high school and his membership on the basketball team, Abraham's efforts with Mrs. Williams to find Lateisha, Darren and Ronnette; Junior's and the Veins effort to blame the whole thing on Billy; Billy's loss of an eye from an assault by a Corrections guard because there was no bail, the likely involvement of Corrections and the Police in protecting Junior.

Abraham attached the affidavits of Lateisha, Darren and Ronnette. He also prepared an affidavit for Mrs. Williams, about how she loved her boy, had given birth to him and raised him since the day he was born without the help of his father, how he never got in trouble before, how he attended high school regularly, played on the basketball team, and was scheduled to graduate before he got in that awful gypsy cab with Junior.

Abraham sent the motion to Assistant County Prosecutor Baalman, as required. "Coincidence is G-d's way of remaining anonymous" is an old Talmudic teaching. Sure enough, the OJA had scheduled Judge Joannie Mancini in the Bail Review Part the week before Judge DeVane had scheduled People v. Billy Williams for a pre-motion conference.

By adroit scheduling, Abraham had managed to steer the case to Judge Mancini. Baalman called Abraham on the telephone. "You won't get away with this, you know. My Office is completely opposed to your motion. We do not allow bail for defendants charged with capital crimes. We do not admit for a minute that Corrections and/or the police are protecting Junior or the Veins, and you will only get so far with your wild accusations. Watch it, Abraham, or we may have to go after you."

Abraham did not scare easily. He had heard this kind of thing from Phulmann's office before. Anyone in the system for any length of time knew they were turning a blind eye to all sorts of Official Misconduct. And what was worse, they knew it too. That's why he knew it was an empty threat. Truth, Abraham reminded himself, has a way of winning out.

* * * *

The day came for Oral Argument in the Bail Review Part of the White Box County Criminal Court. As promised by OJA, Judge Joannie Mancini was presiding. Abraham and Baalman showed up. Corrections produced Billy Williams, with the large white bandage over his right eye. Mrs. Williams sat in the first row.

Abraham told Judge Mancini the whole story: the Corrections and police cover-up of the beating of Billy and the loss of his right eye, the failure of Phulmann and Baalman to do anything about it, the affidavits of Lateisha, Darren and Ronnette that Junior committed the robbery and murder and that Billy had nothing to do with it.

Baalman told Judge Mancini that this was a hyped up false story, that Junior and Billy planned the armed robbery of the gypsy cab driver and that they killed him together, and that society has no place for people like this and that they must be executed and that Governor Madden had the right idea, and New Scotland would be "safe" again if only Junior and Billy were forcibly eliminated.

Further, Baalman argued, Abraham should be heavily fined, in excess of any legal fee the Capital Defender's Office was paying him, for bringing a "frivolous" bail motion when he knew, or should have known, that the new capital punishment law provided for remand for anyone accused of a capital crime.

Abraham summoned all his strength. "No, Judge, it is Phulmann and Baalman who should be fined. They are obstructing justice by refusing to investigate a credible accusation of a Corrections and police cover-up. They are refusing to consider sworn affidavits that are contrary to their theory of the case. If Your Honor seriously wants to fine me, I will send for the State Capital Defender Himself, Michael O'Shaughnessy, to explain to the Court that I have done exactly what he wanted me to do under these circumstances.

"Step back, gentlemen," Judge Mancini said. And calm down. I am ordering a Hearing on Mr. Abraham's Motion. Mr. Baalman, you are directed to produce the Superintendent of the Megacity/White Box County/New Scotland Prison and Jail for



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questioning by both sides and the Court about the allegations in the Defendant's motion. This Hearing is set for one week from today, two days before this case is scheduled to go back to Judge DeVane. Dismissed for today.

Abraham went out into the hallway and wept uncontrollably. Now it was Mrs. Williams' turn to console him. He finally got someone in authority to listen to the cesspool of corruption, malevolence and pure racism he had been living in all these years.

"Mrs. Williams, be sure Lateisha, Darren and Ronnette show up next week. Their oral testimony is crucial. We may be able to get Billy out of jail. We may even be able to get this whole case dismissed.

* * * *

The day came for the Bail Review Hearing before Judge Mancini. Abraham ran into Baalman in the hallway of the courthouse.

Abraham looked Baalman right in his eyes and stared him down: "Don't you see, Baalman, you are requiring human sacrifice when you insist on capital punishment and the hideous conditions in our jails and prisons. You are going against the G-d of Abraham, Isaac, Jacob, Moses, Jesus and Mohammed. You are reinstating your namesake, Baal, the deity of the ancient world who required human sacrifice.

Abraham continued: "On my last vacation, I went to the Tunisian State Museum. I saw a sculpture of a Baalian priest, sacrificing a child. That's what you are doing, Baalman. You are trying to sacrifice Billy Williams. It might as well have been you personally who took his eye out."

Baalman stared back at Abraham with equal mental intensity: "Abraham, you have it all wrong. Billy Williams participated in an armed robbery that resulted in a homicide. He must be punished and kept locked up, or executed, so he does not do it again. That is the nature of civilization. Your attitude takes us back to the law of the jungle – kill or be killed."

Abraham was equal to the task before him: "Baalman, you have no understanding of the Mercy component of Justice Itself. You completely forgot "Honor your Father and Mother," a core value of Western Civilization and a key part of the Ten Commandments. Look in Mrs. Williams' eyes. Look at what you are doing to Billy Williams' mother. "Honor your Father and Mother" means honoring everybody's Father and Mother. That's what Social Security, Medicare, Medicaid and Obamacare mean. Your mistaken prosecution of Billy Williams is against everything our society stands for."

Abraham went on: "We are the children of our parents and the parents of our children. That is how our bodies are designed to pass human life forward and infinitely. "Thou shalt not kill" is another basic tenet of our civilization that you are violating with this prosecution. How dare you seek to interrupt the chain of human life that Mrs. Williams has accomplished with the birth and raising of Billy?"

Baalman was fuming: "You are a hopeless religious wingnut, Abraham. Evil people have to die for the rest of us to live. Some people are just born bad. They must be eliminated by organized society. That is why we have government, courts and prosecutors – to eliminate or imprison bad people."

"So tell me, Baalman, do you believe a person can come out of his mother's womb and be labeled "evil" on the first day of his life? Are people born good or bad, or is bad behavior something that is learned? And if it can be learned, can't it be unlearned? Doesn't the only civilized approach include a new effort at an effective high school and community college re-education for each and every prisoner, rather than the hellish conditions your office tolerates? After all, the vast

majority of the "bad" people you prosecute will eventually be released from prison. Do you want them to be so embittered that they will commit more crimes? Or rather, would you like to release an educated, repentant person capable of holding skilled employment and supporting his family? What kind of society do you want, Baalman – embittered former prisoners, or thoughtful, educated, wiser ones?

"You are a dreamer, Abraham," said Baalman.

"No, Baalman, in a computerized age ripe with stunning new inventions, it is you Baalman, who are stuck in a troubled, distant past where our knowledge was a fraction of what it is today."

So much for philosophy. The Court Officer was calling them both into the courtroom.

Judge Mancini wanted to hear from Corrections first. As directed, and over his own objection, Baalman produced Deputy Superintendent Helmut of the Megacity/White Box County/New Scotland Correction Department. She let Abraham question him first:

Q – "Deputy Superintendent, did you do an investigation as to how Billy Williams, a prisoner in your "care, custody and control" lost an eye while in your custody?

A – No, I did not. Prisoners beat on each other all the time. That's who they are.

Q – You're interested in stopping these extracurricular beatings, are you not?

A – I am absolutely interested in stopping this type of thing.

Q – Are you interested in gathering as much intelligence as possible as to who might be behind it?

A – Yes.

Q – Do you have an extortion problem at the Megacity/White Box County/New Scotland Correctional Facility?

A – They're criminals.

Q – That's your answer?

A – They're criminals. There is going to be extortion.

Q – What are you going to do about it?

A – Do you have any Veins in the Megacity/White Box County/New Scotland Correctional Facility?

Q – Yes.

A – Do you know who they are?

Q – I know some of them.

A – What about the rest?

Q – You know some of the Veins. Do you know who the rest of the Veins are?

A – Not if they are smart.

Q – What if they are not smart?

Not as Long as I am alive | continued from p.18...

A – Then I know them.

Q – Who knocked Billy Williams' eye out?

A – I am not sure.

Q – Was the weapon used to knock Billy Williams' eye out ever located by you or the correction officers under your command?

A – I don't believe it was.

Q – Do you think you could have one correction officer spend one hour a day calling the County Prosecutor's Office in Megacity and White Box County?

A – I don't believe that I would get a response from the County Prosecutor's Office, having one correction officer call every day out of the clear blue sky. I don't think it's appropriate."

Judge Mancini was furious. But her character did not let her fury show. Now it was her turn to ask questions. But she did not question Deputy Superintendent Helmut. She directed her questions at Mr. Baalman.

"Mr. Baalman, has your office conducted an independent investigation as to how Mr. Williams lost his eye while in the "care, custody and control" of the Corrections Department?

"No, Your Honor, we have not," said Mr. Baalman.

Well, then, I have read the affidavits of the defense witnesses, and I have read the County Prosecutor's reply affidavits of the police officers and correction officers assigned to this case. I am appalled at your inaction with reference to defendant's injuries," Judge Mancini ruled.

I make no decision on the indictment. However, Mr. Baalman, based on the testimony I have read and heard from Deputy Superintendent Helmut, I am directing you personally to conduct an investigation as to how Mr. Williams lost his eye. Until you do, I am directing that Mr. Williams be confined to house arrest at his mother's house, and I am directing you, Mr. Abraham, to have the State Capital Defender's Office provide round-the-clock security guards at Mrs. Williams' house until this case is completed. Mr. Williams will stay at home, with the sole exception of his high school classes, which he will attend with a security guard from the State Capital Defender's Office. The defendant is released to his Mother forthwith. That is all. You are dismissed for today.

Abraham waited by the locked door to the "holding pens" until Billy Williams came out about an hour later. With his one remaining eye, Billy gazed on his Mother and Abraham. He hugged them both, for what seemed like a very long time. A Special State Police Officer from the Capital Defender's Office showed up, and drove Mrs. Williams and Billy home.

Abraham went back to his office. This was his proudest day. For him, he felt as his distant ancestor Abraham must have felt when he declined to sacrifice his son, Isaac, leading the ancient world to reject Baal and all he stood for.

Note: Paul E. Kerson is a partner in the law firm, Leavitt & Kerson, a Past President of the QCBA and the Editor of the Queens Bar Bulletin.

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GREEN CARDS | continued from p.1...

various forms of capital, including cash, equipment, inventory, property or other tangible equivalents. An investment amount of one million dollars is generally the minimum. However, \$500,000 is acceptable if the business is in a "targeted" employment area where the rate of unemployment is 150% of the national average rate, or in a rural area.

The second program within the EB-5 category, the Regional Center program, is ideal for the retiree or inactive investor due in large part to the "indirect employment" feature of this program. The Regional Center program advantageously removes the 10 full-time employee requirement of the Regular program and substitutes the less restrictive "indirect employment creation" standard which allows the investor to qualify by proving that his investment has created a combination of 10 direct and/or indirect new jobs in the Regional Center. The indirect employees may be those employed as a result of the economic activity of the center and do not have to be on its own payroll.

The EB-5 program requires the investor be engaged in either direct management or policy making activities, or that he be a limited partner with the rights of the same under the Uniform Limited partnership Act. Thus, for those who are not interested in running an active business or being fully employed, Regional Center programs can offer a more acceptable inactive form of investment as compared to most regular program investments.

Another advantage of Regional Center programs that adds to the flexibility of this Green Card category is that the investor is not required to live at the place of

investment. He or she can live wherever he or she wishes in the United States. Under mandate by Congress, Regional Center EB-5 petitions (Form I-526) are given priority by USCIS. This results in a quicker path to approval and since the investment group usually has already prepared documentation of the investment, the investor does not need to assemble the extensive documentation to show the legitimacy of the investment. Each Regional center program must be pre-approved by USCIS in order to be eligible to qualify for EB-5 Green Cards.

The program frequently involves purchasing low-yielding industrial properties with invested funds and converting them into mortgage free higher-value commercial properties. Various programs may feature a hotel, office space, retail shops, farms, or storage space. Investors often participate as limited partners of a limited partnership, and can earn a monthly return from tenant rentals after property renovation, as well as a share of future appreciation, if any, from the project when sold. Investment periods may vary, but the return of any of the investor's funds before he has completed his 2 year conditional permanent resident period would be a ground for termination of his status.

The procedure for filing an EB-5 Investor Green Card petition is relatively straightforward when a Regional Center program is used. The investor must present evidence that traces the funds through bank transfers and other documentation, from the investor directly to the enterprise and any other evidence necessary to show that these funds were lawfully acquired. The money can be acquired through income as documented by tax returns or other records, or in the form of a loan or gift. A parent could make a gift to a son or daughter who could then invest the

continued on p.23...

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funds. Alternatively, the money can be acquired through a mortgage on one's home or through any other lawful means.

After the investor completes a thorough business and financial due diligence analysis of the viability of the Regional Center business opportunity, the investment is made and a petition is filed by the foreign investor with the USCIS. It typically takes 12-18 months for the USCIS to find the applicant and investment eligible for EB-5 status.

After approval of the petition (Form I-526). If the investor is already in the United States, he or she then applies for a Green Card by filing Form I-485 to Adjust Status to Permanent Residence. No interview is customarily required, and approval for most cases has been taking approximately 9 to 12 months. If the investor resides abroad, an application for Permanent Residence is made at the U.S. Embassy or Consulate in the investor's home country, where an interview for an immigrant visa is required. Approval in these overseas cases takes an average of about 12 months.

In either of the two scenarios, the entire process takes about 16-18 months in a Regional Center case. This is the situation for most applicants based on current USCIS and State Department processing times. However, times may vary from time to time and depending on the circumstances of each case.

Once USCIS approves the investor's Green Card, it is conditional for a period of two years. Conditional Green Card status confers the same rights as permanent Green Cards.

Between 21 and 24 months after the conditional green card has been approved, the investor must reconfirm that the investment has been made or is still in place and that the employment requirement has been fulfilled or maintained. A Form I-829 application to remove the conditional status is then filed with the USCIS allowing the two-year card to be extended. Once the Form I-829 is approved the investor becomes an unconditional permanent resident.

Once the condition has been removed, a full Green Card is valid as long as the investor resides in the United States (but subject to a routine renewal process every 10 years just as any Green Card is). In most cases from the time of application for the Conditional Green Card until approval of the removal of condition usually takes about 4 years. Thereafter, in approved Regional Center cases, depending on the terms of their agreement, the investor may recoup his investment, and the investor will still maintain the permanent Green Card.

In summary, freedom to live anywhere in the United States, a passive form of investment with no required direct management responsibilities, priority standing within the Immigration process, and an accelerated path to Green Card status are important factors which make the EB-5 Green Card Regional Center category an ideal investment vehicle for the inactive investor or retiree who wishes to live and work in the United States.

As with other U.S. Immigrant Visas, applicants need to take into account U.S. and foreign tax and other business and personal planning considerations.

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and

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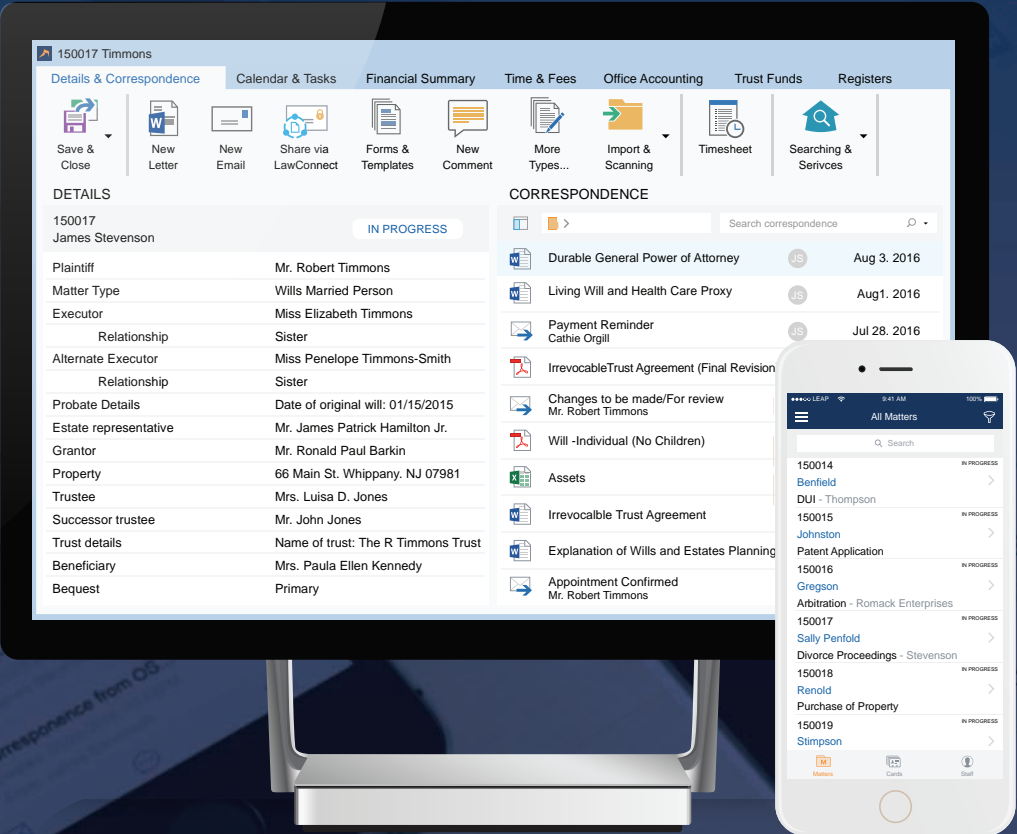
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