

ORIGINAL

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District Eastern District
Name (under which you were convicted): Harry Dorvilier and Harry's Nursery Registry		Docket or Case No.: 170/2010-Queens County
Place of Confinement: N/A		Prisoner No.: 1765
Petitioner (include the name under which you were convicted) Harry Dorvilier		Respondent (authorized person having custody of petitioner) DONNELLY, J.
The Attorney General of the State of New York		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Criminal Court of the State of New York, County of Queens

(b) Criminal docket or case number (if you know): **1709/2010**

2. (a) Date of the judgment of conviction (if you know): _____
(b) Date of sentencing: _____
3. Length of sentence: **5 years probation and fines exceeding \$50,000**
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: **2 counts of Grand Larceny in the Third Degree and 11 counts of Grand larceny in the Fourth Degree (penal code 155.30)**

6. (a) What was your plea? (Check one)

(1) Not guilty ☒

(3) Nolo contendere (no contest) ☐

(2) Guilty ☐

(4) Insanity plea ☐

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at either a pretrial hearing, trial or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Appellate Division, Second Department of the State of New York

(b) Docket or case number (if you know): November 5, 2014

(c) Result: Defendant's conviction affirmed

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): People v Harry Dorvilier 122 A.D. 3rd 642 (2nd Dept. 2014)

(f) Grounds raised: Defendant claimed that the People failed to provide sufficient evidence to establish all of the element of the larceny crimes.

Defendant then claimed that he had ineffective counsel. Defendant's counsel failed to raise the sufficiency of the evidence during the trial in accordance with the court's precedence that would have resulted in a reversal.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: New York State Court of Appeals

(2) Docket or case number (if you know): _____

(3) Result: Defendant's application for leave of appeal was denied

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: Defendant claimed that the People failed to provide sufficient evidence to prove each element of the larcenies. The People failed to establish that defendant was stealing property, by taking it, obtaining it or withholding it from the owner thereof. Defendant had taken unsegregated money located in his own bank account. Counsel's failure deprived defendant of reversal thereof.

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: _____

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Defendant's Sixth Amendment Constitutional rights were violated

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Defendant's counsel was ineffective and failed to raise the sufficiency of the evidence that was claimed in accordance with the Court's precedent. The People failed to establish that defendant actually stole money from its owner, a key element of the alleged crime. Defendant's Counsel had failed to this issue with the court

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Appellant counsel failed to raise this issue on appeal.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: _____

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinions or orders, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Seeking an Order granting the Writ of Habeas Corpus and removing this matter from the State Court to the Federal Court and reversing the conviction.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____
(month, date, year).

Executed (signed) on 4/12/2016 (date).

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____



SWORN BEFORE ME
BY HARRY DORVILLE
ON THIS 12th DAY OF
April 2016

HARRY DORVILLE
88-251630A
Jamaica NY 11432
(718) 739 0045 office
(646) 773 1490 cell

I, the undersigned, being a duly qualified Notary Public for the State of New York, do hereby certify that the foregoing is a true and correct copy of the original as the same was presented to me for certification.

Notary Public for the State of New York

Notary Public for the State of New York

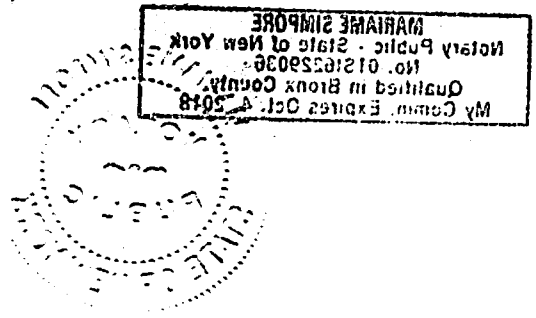
I, the undersigned, being a duly qualified Notary Public for the State of New York, do hereby certify that the foregoing is a true and correct copy of the original as the same was presented to me for certification.

[Handwritten signature and crossed-out text]

I, the undersigned, being a duly qualified Notary Public for the State of New York, do hereby certify that the foregoing is a true and correct copy of the original as the same was presented to me for certification.

[Handwritten text, possibly a date and name]

[Handwritten notes and signatures in the bottom left corner]



Irizarry & Associates, P.C.

260 Madison Avenue • Eighth Floor
New York, New York 10016
tel: 646 216 – 2127
fax: 646 216-2001

August 24, 2015

Clerk of the Court
Court of Appeals of
The State of New York
Att: Clerk of the Court
20 Eagle Street
Albany NY 12207

RE: Consideration of Application for Leave
to Appeal pursuant to CPL Sec. 460.20, People v. Harry
Dorvilier, Harry's Nurses Registry, Inc., Indictment Number:
1709/10, Queens County.

Dear Chief Judge Lippman:

The defendant-appellants, Harry Dorvilier, and Harry's Nurses Registry Inc., in this matter, seek leave to appeal an order of the Appellate Division, Second Department, dated July 29, 2015, denying defendant-appellants' application for a writ of error coram nobis to vacate, on the ground of ineffective assistance of appellate counsel, a decision and order of the Appellate Division, Second Department, dated November 5, 2015.

Defendants were convicted each of two counts of Grand Larceny in the Third Degree (Penal law 155.35) and eleven counts of Grand Larceny in the Fourth Degree (Penal Law 155.30), upon a jury verdict. On appeal, appellate counsel briefed four claims but did not address the sufficiency of the evidence before the petit jury to establish the elements of the larceny crimes charged. In a decision dated November 5, 2014, the Appellate Division affirmed defendant's conviction. *People v. Dorvilier*, 122 A.D.3d 642 (2nd Dept. 2014).

On January 23, 2015, defendant-appellants then filed an application for writ of error coram nobis because of appellate counsel's failure to raise the sufficiency of the evidence claim on direct appeal. Respondents defaulted and the Appellate Division denied their motion to enlarge the time within which they could file a response.

On July 29, 2015, the Appellate Division denied defendant-appellants' application for a writ of error coram nobis to vacate. Defendant-appellants now seek leave to appeal the denial of their application for a writ of coram nobis. No application for

the same relief has been addressed to a justice of the Appellate Division.

On defendant-appellant's original appeal, Appellate counsel failed to raise the dispositive sufficiency of the evidence claim in accordance with this Court's precedent, and thus rendered to defendant-appellants ineffective assistance of counsel under the Sixth Amendment to the United States Constitution and under the New York State Constitution.

Appellate counsel failed to present the preserved claim that the People did not establish that the accused committed the act of "stealing property by taking, obtaining or withholding it from an owner thereof" and counsel's failure deprived defendants of the reversal of their convictions. New York Penal law 155.05(1), 155.00[5]).

As an "owner" is defined by this Court and by statute as "any person who has a right to possession [of property] superior to that of the taker, obtainer, or withholder" (*People v. Hightower*, 18 N.Y.3d 249 (2011); *People v. Nappo*, 94 N.Y.2d 564 (2000); see also New York Penal law 155.05(1), 155.00[5]), and as the Prosecution failed to establish the alleged victims' superior possessory interest in unsegregated, fungible, monies existing in defendants' own bank account, appellate counsel's failure to raise this issue was ineffective assistance of counsel.

Defendant-appellants took unsegregated monies existing in their own bank account, without the People establishing the alleged victims' superior possessory interest in the monies taken. See *Criminal Law, Second Edition*, Lafave & Scott, pg. 732 n.26 citing *Commonwealth v. Mitchneck*, Superior Court of Pennsylvania, 198 A. 463 (Pa. Super. 1938).

As this claim was properly preserved, appellate counsel was ineffective for failing to raise the claim that would have, in accordance with this Court's precedent, resulted in the reversal of defendant-appellants' convictions. *People v. Rutter*, 202 Ad2d 123 (1st Dept. 1994), *op'n* adhered to on re-argument, 211 AD2d 605, *app dis'm*, 85 NY2d 866.

Defendant-appellants thus seek leave to appeal the denial of the application for a writ of error coram nobis by the Appellate Division and herein request a telephone conference.

Very truly yours,

Edward Irizarry

EI: ki

Cc: Assistant District Attorney

Enclosures

THE STATE INSURANCE FUND

199 CHURCH STREET, NEW YORK, N.Y. 10007-1100
(212) 587-5507

May 30, 2007

Policy No : Q 1446 664-3

HARRY'S NURSES REGISTRY INC
88-25 163RD STREET
JAMAICA NY 11432

Dear Policyholder :

We acknowledge receipt of a letter postmarked 05/29/2007 requesting cancellation of your policy.

In accordance with the provisions of Section 94a of the Workers' Compensation Law, requiring an employer to give written notice not less than 30 days before the effective date of cancellation, we are unable to cancel your policy before 06/19/2007.

May we urge you to give this further consideration before taking final action, as we sincerely believe you will be serving your own best interest by continuing your insurance in the State Fund.

May we point out in your interest that cancellation of your policy on any date, other than its normal anniversary date, will require an adjustment of premium for the final policy period in accordance with the Short Rate table approved by the Compensation Insurance Rating Board. This will result in increased cost to you.

We have appreciated your patronage and we hope that a frank discussion with our representative of the facilities available to you will lead to a continuance of our relations.

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

6336

PAY TO THE ORDER OF The State Insurance Fund DATE April 27, 2007 1-2 76
210

Forty Nine Thousand Six Hundred Forty Five + 02/100 \$ 49,645.02
DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR Policy # Q 1446 664-3

⑈006336⑈ ⑆021000021⑆ 778500430466⑈ ⑆0004964502⑆

04/13/2012 01:58

7184340805

F J MILFORT CPA

PAGE 18/21

6587	
HARRY'S NURSES REGISTRY, INC. OPERATING ACCOUNT 88 - 25 - 163RD ST. JAMAICA, NY 11432	
PAY TO THE ORDER OF	DATE <u>October 6, 2007</u>
American International Companies, Inc. \$20,244.00	
Twenty Thousand Two Hundred Forty Four Dollars & 00/100	
CHASE	
JPMorgan Chase Bank, N.A. New York, New York 10017 www.chase.com	
FOR	POLICY # <u>006587</u>
⑆006587⑆ ⑆02100002⑆ ⑆78500430466⑆ ⑆0002024400⑆	

HARRY'S NURSES REGISTRY, INC.	
OPERATING ACCOUNT 88 - 25 - 163RD ST. JAMAICA, NY 11432	
6376	
PAY TO THE ORDER OF	DATE
<i>American Interpretive Company</i>	<i>5/25/07</i>
<i>Forty Five Thousand Five Hundred Twenty Six</i>	<i>\$ 45,526</i>
CHASE	
Chase Bank, N.A. New York, New York 10017 www.chase.com	
FOR	
<i>WIC 5312638</i>	
⑆006376⑆ ⑆021000021⑆ 778500430466⑆	
	⑆0001552600⑆

HARRY'S NURSES REGISTRY, INC. OPERATING ACCOUNT 88 - 25 - 163RD ST. JAMAICA, NY 11432		5907
PAY TO THE ORDER OF	State Insurance Fund	DATE <u>Sept 14, 2006</u>
One Thousand One Hundred Forty + 78/100		\$ 1,140.78
CHASE JPMorgan Chase Bank, N.A. UN Plaza New York, NY 10017		DOLLARS
FOR <u>Pay # 3026919-0</u>		
⑆005907⑆ ⑆021000021⑆ 778500430466⑆		⑆0000111078⑆

01:58 7184340805

F J MILFORD CPA

PAGE 02/21

04/19/2012 01:58 7184348885

F J MILFORT CPA

PAGE 04/21

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 183RD ST.
JAMAICA, NY. 11432

6006

DATE Nov 8, 2006 ¹⁻²/₂₁₀

PAY TO THE ORDER OF State Insurance Fund

Thirty Thousand Only

CHASE
JP Morgan Chase Bank, N.A.
UN Plaza
New York, NY 10017

FOR W/c 2006-2007 (0144664.3)

\$ 30,000.00 DOLLARS

⑈006006⑈ ⑆02⑆00002⑆⑆778500⑆38⑆65⑈ ⑆000⑆00000⑆⑈

04/19/2012 01:58 7184340805

F J MILFORT CPA

PAGE 06/21

6041

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

PAY TO THE ORDER OF State Insurance Fund

DATE Nov 21, 2006 1-2-95 20

Thirty Thousand Only \$ 30,000.00

CHASE
JP Morgan Chase Bank, N.A.
New York, New York 10017
www.chase.com

FOR Policy Q 1446 bld-3

77850043848611

00000000000000000000

04/13/2012 01:58

7184340805

F J MILFORT CPA

PAGE 08/21

HARRY'S NURSES REGISTRY, INC. OPERATING ACCOUNT 68 - 25 - 163RD ST. JAMAICA, NY 11432		6130	
DATE <u>1/5/07</u>		1-270 210	
PAY TO THE ORDER OF <u>The State Insurance Fund</u>		1 \$ 57,000.00	
<u>Greg Johnson</u>		DOLLARS 57,000.00	
CHASE JP Morgan Chase Bank, N.A. New York, New York 10037 www.chase.com		FOR <u>1446 664-3</u>	
⑈006130⑈ ⑈021000021⑈ 778500430485⑈		⑈0005000000⑈	

04/19/2012 01:58

7184340895

F J MILFORT CPA

PAGE 10/21

HARRY'S NURSES REGISTRY, INC. OPERATING ACCOUNT 88 - 25 - 163RD ST. JAMAICA, NY 11432		6162
PAY TO THE ORDER OF	State Insurance Fund	DATE <u>Jan 17, 2007</u>
Thirity Thousand Only		\$ <u>50,000.00</u>
FOR Policy Q 1446664-3		DOLLARS
CHASE JPMorgan Chase Bank, N.A. New York, New York 10017 www.Chase.com		78500430466
000615210 0210000210		0003000000

04/19/2012 01:58 7184340805

F J MILFORD CPA

PAGE 12/21

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

6189

747491

PAY TO THE ORDER OF State Insurance Fund DATE February 01, 2007 ¹⁻²/₂₁₀

Fourteen Thousand Only \$ 14,000.00

CHASE
JP Morgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR Policy Q 1446 664-2

⑈006189⑈ ⑆021000024⑆ 728500430466⑈ ⑆0001890000⑆

031000040
06/14/2007
6417746994

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

000220648103
06/14/2007
000220648103

HARRY'S NURSES REGISTRY, INC. OPERATING ACCOUNT 68 - 25 - 13000 NY JAMAICA, NY 11432		6394
PAY TO THE ORDER OF	American International Companies	DATE June 6, 2007
Sixty Five Thousand Seven Hundred Fifty Eight + 00/100		\$ 65,758.00
CHASE		
FOR DEPOSIT ONLY		
⑆006394⑆	⑆021000021⑆	⑆778500430466⑆
		⑆0006575800⑆

⑆006394⑆

⑆021000021⑆

⑆778500430466⑆

⑆0006575800⑆

7184340805

F J MILFORT CPA

04/19/2012 01:58

7184360805

F J MILFORD CPA

PAGE 14/21

HARRY'S NURSES REGISTRY, INC.		6247
OPERATING ACCOUNT 88 - 25 - 163RD ST. JAMAICA, NY 11432		
DATE <u>03-12-2007</u>		1-2 210
PAY TO THE ORDER OF	<u>NEW YORK STATE Insurance Fund</u>	\$ <u>101,908.25</u>
<u>ONE HUNDRED ONE THOUSAND AND NINE HUNDRED EIGHT DOLLARS AND 25 CENTS</u>		
CHASE JP Morgan Chase Bank, N.A. New York, New York 10017 www.Chase.com		
FOR	<u>POLICY NO. Q 1446 664-3</u>	
⑈006247⑈ ⑆021000021⑆ 778500430466⑈		⑈000190835⑈

6041

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

PAY TO THE ORDER OF State Insurance Fund

DATE Nov 21, 2006 ¹⁻²⁷⁶/₂₁₀

Thirty Thousand Only \$ 30,000.00 DOLLARS

FOR Policy Q 446 bbt-3

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

⑈00604⑈ ⑈02⑈00002⑈ 778500438148⑈ ⑈000300000⑈

6006

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

PAY TO THE ORDER OF State Insurance Fund

DATE Nov 8, 2006

Thirty Thousand Only

\$30,000.00

DOLLARS

FOR W/C Dec - 2007 (814664.3)

CHASE
JPMorgan Chase Bank, N.A.
UN Plaza
New York, NY 10017

⑈006006⑈ ⑆021000021⑆7850043845⑈

⑈0003000000⑈

6094

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

DATE Dec 18, 2006

PAY TO THE ORDER OF New York State Insurance Fund \$ 30,000.00

Thirty Thousand Only

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR Policy # 1111111111

1-276
210

DOLLARS

1100609411 10210000211 77850043045611 11000300000011

6094

HARRY'S NURSES REGISTRY, INC.
OPERATING ACCOUNT
88 - 25 - 163RD ST.
JAMAICA, NY 11432

DATE Dec 18, 2006

PAY TO THE ORDER OF New York State Insurance Fund \$ 30,000.00

Thirty Thousand Only DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR Policy # 1446643

⑈006094⑈ ⑈021000024⑈ 778560430466⑈ ⑈0003000000⑈

1-276
210



RICHARD A. BROWN
DISTRICT ATTORNEY

**DISTRICT ATTORNEY
QUEENS COUNTY
125-01 QUEENS BOULEVARD
KEW GARDENS, NEW YORK 11415-1568
718-286-6000**

**Release # 29-2010
www.queensda.org**

**FOR IMMEDIATE RELEASE
FRIDAY, FEBRUARY 5, 2010**

**CONTACT: KEVIN RYAN
HELEN PETERSON
MERIS CAMPBELL
(718) 286-6315**

NURSING REGISTRY OWNER CHARGED WITH \$300,000 THEFT FROM EMPLOYEES

*Allegedly Fraudulently Deducted Money From Employee Paychecks
And Claimed It Was For Workers' Compensation Insurance*

____ Queens District Attorney Richard A. Brown, along with Workers' Compensation Board Chair Robert E. Beloten and Insurance Superintendent James Wrynn, today announced that the owner of a nursing agency in Jamaica, Queens, has been charged with third-degree grand larceny, among other charges, for illegally deducting \$1 per hour from the payroll checks of more than 200 employees and fraudulently telling them that the Workers' Compensation Board authorized the deductions for their workers' compensation insurance.

In fact, however, according to a criminal complaint, the defendant, Harry Dorvilier, owner of Harry Nurses Registry, Inc., did not purchase workers' compensation insurance for the employees – as is required by law – and instead pocketed the money. Furthermore, it is alleged, employers are required to pay for the insurance themselves and are prohibited from charging employees for it.

District Attorney Brown said, "The defendant is accused of stealing from hundreds of his own employees while at the same time putting them at risk by forcing them to work – unbeknownst to them – without workers' compensation insurance. This type of brazen theft will not be tolerated."

Chair Beloten said, "The law is clear here: Workers shall not be charged at all for the mandatory protection of workers' compensation insurance. Every legitimate business owner understands this. Anyone who is seeing wages deducted for workers' compensation insurance should contact the Board immediately."

Superintendent Wrynn said, "This case demonstrates that close collaboration among government and law enforcement agencies can yield positive results by helping to restore the rights of honest citizens and by bringing criminals to justice. I commend the Workers' Compensation Board Office of the Inspector General and the office of Queens District Attorney Brown, as well as the investigators from the Insurance Department's Frauds Bureau, who worked so diligently on this case."

The District Attorney identified the defendant as Harry Dorvilier, 50, of 88-25 163rd Street in Jamaica, Queens, owner of Harry Nurses Registry, Inc., located at the same address. Dorvilier and his company were arraigned last night in Queens Criminal Court in Kew Gardens on charges of third-degree grand larceny, fourth-degree grand larceny and violating workers' compensation law section 31. Dorvilier was released without bail and ordered to return to court on March 16, 2010. He faces up to seven years in prison if convicted. In the case of a corporation a felony is punishable by a fine of up to \$10,000 or double the amount of the illegal gain.

-more-

-2-

District Attorney Brown said that, according to the charges, between September 2006 and December 2007, the defendant, through his corporation, allegedly deducted \$1 an hour from the payroll checks of approximately 221 employees, indicating on the checks and telling the employees that the money was being withheld to pay for the cost of workers' compensation insurance. Employers are required by law to pay for the workers' compensation insurance of their employees and are not allowed to charge those employees for that insurance.

It is further alleged that the defendant purchased workers' compensation insurance for his office workers and failed to purchase workers' compensation insurance for the more than 200 home health care workers that he employed.

The defendant allegedly began charging his employees after being audited by his insurance carrier and advised that he was misclassifying his nurses and home health aides. The auditor allegedly told the defendant that his staff should be considered employees – not independent contractors – and covered under a workers' compensation policy. The workers' paychecks carried a line reading *W/C at 1.0 per hour*, along with the total amount deducted from each check.

The investigation was conducted by the Workers' Compensation Board, Office of the Fraud Inspector General, the New York City Police Department's Queens District Attorney's Squad and the Insurance Frauds Bureau of the New York State Insurance Department.

The case is being prosecuted by Assistant District Attorney Rosemary Buccheri, of the District Attorney's Economic Crimes Bureau, under the supervision of Gregory C. Pavlides, Bureau Chief, and Christina Hanophy, Deputy Bureau Chief, and under the overall supervision of Executive Assistant District Attorney for Investigations Peter A. Crusco and Deputy Executive Assistant District Attorney Linda M. Cantoni.

It should be noted that a criminal complaint is merely an accusation and that a defendant is presumed innocent until proven guilty.

#

Note to Editors: E-version of press release posted at www.queensda.org.

APRIL 12, 2016

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

IN RE: HARRY DORVILIER and Harry's Nursery Registry
88-25 163rd Street
Jamaica, NY 11432 (718) 739-0045 or (646) 773-1490

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

(Pro Se Petitioner: SEE ABOVE)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

ORIGINAL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation
- PTF DEF
- ☐ 4 ☐ 4
- ☐ 5 ☐ 5
- ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☒ 530 General ☐ 555 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 2254

Brief description of cause:
Petition for Writ of Habeas Corpus

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint.
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

RANDOM/RANDOM

DOCKET NUMBER

DATE
04/12/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAJ. JUDGE

1653100584

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☐ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☐ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☐ No

I certify the accuracy of all information provided above.

Signature: _____