

2016 WL 1449628 (N.Y.Sup.) (Trial Order)
Supreme Court, New York.
Kings County

Andrew FEINSTEIN and Linda Cohen as Co-Administrators of the Estate of
Frances Feinstein, and Andrew Feinstein and Linda Cohen, individually, Plaintiffs,

v.

NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC. and Olena Ksovreli, M.D., Defendants.

No. 157/2009.
February 4, 2016.

Amended Judgment

Chesney & Nicholas, LLP, Attorneys for Defendant, Olena Ksovreli, MD., 2305 Grand Avenue, Baldwin, NY 11510, T: (516) 378-7633, Mauro Lilling Naparty, LLP, Appellate Counsel to Chesney & Nichols, LLP, 100 Crossways Park Drive West, Suite 310.

Ann T. Pfau, Judge.

*1 The above-entitled action, having come on for trial before the Honorable Ann T. Pfau, at Trial Term Part 45 of the Supreme Court of the State of New York. County of Kings, commencing on October 9, 2012, and the plaintiffs, ANDREW FEINSTEIN and LINDA COHEN, as Co-Administrators of the Estate of FRANCES FEINSTEIN, and ANDREW FEINSTEIN and LINDA COHEN, individually, having been represented by THE JACOB D. FUCHSBERG LAW FIRM, with offices at 500 Fifth Avenue, 45th Floor, New York, New York 10110, the defendant, OLENA KSOVRELI, M.D., having *been* represented by CHESNEY & NICHOLAS, LLP, with offices at 2305 Grand Avenue, Baldwin, New York 11510, and the defendant NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC., having been represented by Catalano Gallardo & Petropoulos, LLP, with offices at 100 Jericho Quadrangle, Suite 326, Jericho, NY 11753;

AND, the Plaintiffs having reached a settlement with defendant NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC., on October 19, 2012, in the amount of \$200,000.00. for which Plaintiffs submitted a Wrongful Death Compromise Order;

AND, the Court having presented the case to the jury, and the jury having rendered a verdict on the 26th day of October, 2012, finding in favor of the plaintiffs, ANDREW FEINSTEIN and LINDA COHEN, as Co-Administrators of the Estate of FRANCES FEINSTEIN, and ANDREW FEINSTEIN and LINDA COHEN, individually, against the defendants OLENA KSOVRELI, M.D., and NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC., in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,500,000.00), for the personal injuries of FRANCES FEINSTEIN;

AND the jury having allocated 100% of the verdict to the cause of action for the personal injuries of FRANCES FEINSTEIN and 0% to the cause of action of the wrongful death of FRANCES FEINSTEIN;

AND the jury having apportioned liability among the defendants with 70% of the fault apportioned to defendant OLENA KSOVRELI, M.D. and 30% of fault apportioned to defendant NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC.;

AND defendant OLENA KSOVRELI, M.D, having moved for an Order pursuant to CPLR 4404(a) setting aside the verdict rendered for the plaintiffs on the 26th day of October, 2012 or alternatively, reducing the amount awarded to the plaintiffs excessive and without evidentiary basis or alternatively ordering a new trial on the action;

AND the Court having rendered a Decision and Order denying defendant's motion to set aside the verdict in its entirety, on the 4th Day of April 2013;

AND the Plaintiffs having entered Judgment with the Court on May 1st, 2013;

AND the defendant OLENA KSOVRELI having appealed to the Supreme Court of the State of New York Appellate Division: Second Judicial Department from: (1) the April 4, 2013 order denying defendant's motion to set aside the verdict in its entirety; and (2) the Judgment entered with the Court on May 1st, 2013;

AND the Supreme Court of the State of New York Appellate Division: Second Judicial Department having rendered a Decision and Order, dated January 13, 2016, modifying the April 4th, 2013 Order on the issue of damages, and remitting the matter to the Supreme Court, Kings County, for a new trial on the issue of damages, unless, within 30 days after service upon the plaintiffs of a copy of that January 13, 2016 Decision and Order, Plaintiffs serve and file in the Office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to reduce the award of damages for conscious pain and suffering and loss of enjoyment of life from the principle sum of \$1,500,000 to the principal sum of \$550,000, and the entry of an appropriate amended judgment accordingly;

*2 AND the Plaintiffs having served and filed with the office of the Clerk of the Supreme Court, Kings County, a written stipulation consenting to the reduction of the award of the damages for conscious pain and suffering and loss of enjoyment of life from the principal sum of \$1,500,000 to the principal sum of \$550,000, and to entry of the appropriate amended judgment accordingly;

AND the Supreme Court of the State of New York Appellate Division: Second Judicial Department having left undisturbed the apportioned liability among the defendants with 70% of the fault apportioned to defendant OLENA KSOVRELI, M.D. (\$385,000) and 30% of fault apportioned to defendant NORWEGIAN CHRISTIAN HOME & HEALTH CENTER, INC. (\$165,000);

NOW, on motion of JACOB D. FUCHSBERG LAW FIRM, attorneys for the Plaintiff, it is,

ADJUDGED, that the plaintiffs ANDREW FEINSTEIN and LINDA COHEN, as Co-Administrators of the Estate of FRANCES FEINSTEIN, and ANDREW FEINSTEIN and LINDA COHEN, individually, residing at 10 Hitchings Avenue, Brooklyn, NY 11235 and 556 Avenue Z, Apt # ID, Brooklyn, NY 112223, have Judgment on the verdict and recover of the defendant OLENA KSOVRELI, M.D., 6735 Ridge Road, Suite 1C, Brooklyn, NY, the sum of THREE HUNDRED AND EIGHTY FIVE THOUSAND DOLLARS AND NO CENTS (\$385,000.00), with interest at 9% per annum from October 26, 2012, the date of jury verdict in favor of the plaintiffs, in the amount of \$113,382.50, and disbursements and cost as taxed by the clerk in the amount of \$1200.00, for a total sum of \$499,582.50, and plaintiffs ANDREW FEINSTEIN and LINDA COHEN, as Co-Administrators of the Estate of FRANCES FEINSTEIN, and ANDREW FEINSTEIN and LINDA COHEN, individually shall have execution thereon.

Judgment entered this 4 day of Feb., 2016.

<<signature>>

CLERK, SUPREME COURT

TO:

Chesney & Nicholas, LLP

Attorneys for Defendant

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