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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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HARRY DORVILIER and HARRY’S NURSERY  
REGISTRY INC.,

Plaintiff,

Index No. 9119/16

-against-

MEISSNER KLEINBERG & FINKEL, L.L.P.,  
RICHARD FINKEL, ESQ., and DOES 1 to 5,

**AMENDED COMPLAINT**

Defendants.

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Plaintiffs, Harry Dorvilier (“Mr. Dorvilier”) and Harry’s Nursery Registry (“HNS”) (collectively “Plaintiffs”), by and through their attorneys, Ballon Stoll Bader and Nadler, P.C., as their complaint against Defendants, allege as follows:

1. That at all times hereinafter mentioned, HARRY DORVILIER ("Mr. Dorvilier") was and still is a resident of the County of Queens, City and State of New York.
2. Harry’s Nursery Registry is a corporation existing under the laws of the State of New York with a principal place of business at 88-25 163<sup>rd</sup> Street, Jamaica, New York.
3. Mr. Dorvilier is the sole owner, president and Chief Executive Officer of Harry’s Nursery Registry.
4. At all times hereinafter mentioned, Mr. Dorvilier was the owner of Harry’s Nursery Registry (“HNS”).
5. HNS is a duly licensed home health care agency as defined in Article 36 of the New York State Public Health Law.
6. HNS is engaged in the business of referring temporary healthcare professionals to individual patients within the patients’ residences.

7. That upon information and belief the defendant, MEISSNER, KLEINBERG & FINKEL, L.L. P. ("defendant MKF") is a domestic corporation created and existing in the State of New York under the laws of the State of New York.
8. That upon information and belief, the defendant MEISSNER, KLEINBERG & FINKEL, L.L. P., is a registered domestic limited liability partnership existing in the State of New York under the laws of the State of New York.
9. That upon information and belief the defendant MEISSNER, KLEINBERG & FINKEL, L.L.P, had and still has a principal place of business in the County of New York City and the State of New York.
10. At all times relevant to this action. Defendant MKF lawyers engaged in the practice of law in the state of New York and elsewhere.
11. That at all times hereinafter mentioned, Defendant Richard Finkel, Esq., was and still is a partner of Defendant MKF and conducts business within the County of New York and State of New York.
12. That at all times hereinafter mentioned, Defendant Finkel, was and still is an attorney duly licensed within the State of New York.
13. Doe Defendants are individual lawyers affiliated with MKF who may have participated in the conduct, occurrences, and omissions alleged in this Complaint. Plaintiff hereby reserves its right to name one or more such Doe Defendants as a named party Defendant should discovery establish the need for such procedural action.

### **FACTS**

14. On or about March 5, 2013, Mr. Dorvilier as president and CEO of HNS, had retained Defendant MKF to represent HNS in the matter of Commissioners of the New York State Insurance Fund v. Harry's Nursery Registry, Inc., Index No. 40655/2007.
15. Upon information and belief, this was an extremely complicated insurance and tax issue that Defendants claimed to understand.
16. Upon information and belief, Defendants held themselves out to be experts in this field and led HNS and Mr. Dorvilier to believe that they can confidently handle this case in a competent manner.
17. Defendants failed to properly represent the interests of HNS or Mr. Dorvilier.
18. Throughout discovery, Defendants failed to properly obtain the necessary documents from the State Insurance Fund and consistently failed to properly conduct discovery during their representation of HNS.
19. Furthermore, no expert witnesses were consulted with, despite the fact that the issue at hand was an extremely complex matter that would have required the assistance of an insurance and/or tax expert.
20. Finally, when trial finally came, Defendant Finkel made a motion to remove himself as counsel for HNS. The judge denied this request as trial was imminent and there would be no time for HNS or Mr. Dorvilier to find new counsel.
21. A few days later, Defendant Finkel came to an agreement with the State Insurance Fund, without notifying or consulting with Mr. Dorvilier.
22. On or about August 12, 2014, HNS was required to pay money as part of a settlement agreement that he could not have fully understood as the information was withheld from him until the very last moment.

**FIRST CAUSE OF ACTION**

**Legal malpractice**

23. Plaintiffs re-allege and reiterate paragraphs 1-21 as though fully set forth herein.
24. Defendants held themselves out as attorneys with knowledge and expertise of the issue that HNS was dealing with at the time.
25. A reasonable practitioner in this area of law would have taken the necessary steps to ensure that proper discovery demands, and requests were served in order to best serve HNS.
26. Defendants were negligent in their representation of HNS, causing it and Mr. Dorvilier to incur expenses, including but not limited to additional attorneys' fees and payment of a settlement agreement that he would not have paid.
27. The conduct of Defendants fell below that of reasonable practitioners and has resulted and continued to result in damages to HNS and Mr. Dorvilier.

**SECOND CAUSE OF ACTION**

**Breach of fiduciary duty**

28. Plaintiffs re-allege and reiterate paragraphs 1-27 as though fully set forth herein.
29. Defendants were hired to represent Plaintiff in his action against the State Insurance Fund.
30. At all relevant times, Defendants owed a fiduciary duty to HNS and Mr. Dorvilier to act in the best interest and be loyal to HNS and Mr. Dorvilier.
31. Upon information and belief, breached their fiduciary duty by failing to request and serve may discovery documents, by failing to hire an expert witness in a complicated tax matter, and by failing to fully disclose the terms of the settlement agreement.

32. Defendants breached their fiduciary duty, causing Plaintiffs to incur expenses, including but not limited to additional attorneys' fees and payment of a settlement agreement that he would not have paid.

33. The conduct of Defendants fell below that of reasonable practitioners and has resulted and continued to result in damages to HNS and Mr. Dorvilier.

**THIRD CAUSE OF ACTION**

**Breach of contract**

34. Plaintiffs re-allege and reiterate paragraphs 1-24 as though fully set forth herein.

35. Defendants received approximately \$50,000.00 from Plaintiffs in legal fees and expenses.

36. Defendants have not performed their duties in accordance with the retainer agreement.

37. Defendants have failed to properly handle Plaintiffs' matter.

38. Plaintiff seeks to be reimbursed for any and all attorney fees and expenses paid to Defendants.

**WHEREFORE**, HNS and Mr. Dorvilier respectfully request that this Court enter judgment against the Defendants:

1. On the First Cause of Action, in an amount to be determined at trial, but no less than, \$500,000.00;
2. On the Second Cause of Action, in an amount to be determined at trial, but no less than, \$500,000.00;
3. On the Third Cause of Action, in an amount to be determined at trial, but no less than, \$50,000.00;

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4. Awarding punitive damages in favor of HNS and Mr. Dorvilier against Defendants in an amount to be determined at trial;
5. Awarding costs and attorneys' fees to HNS and Mr. Dorvilier.; and
6. Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York

November 27, 2019

BALLON STOLL BADER & NADLER, P.C.

By: \_\_\_\_\_

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