

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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THE PEOPLE OF THE STATE OF NEW YORK,  
by ANDREW M. CUOMO, Attorney General  
of the State of New York,

Petitioners,

-against-

JOHN P. NICOLIA,

Respondent.

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**VERIFIED PETITION**

Index No. 2010-4527

Petitioners, the People of the State of New York, by their attorney, Andrew M Cuomo, Attorney General of the State of New York, allege upon information and belief:

**JURISDICTION AND PARTIES**

1. This special proceeding for injunctive relief, penalties and costs concerns respondent's fraudulent, deceptive and illegal business practices.
2. Petitioners bring this special proceeding pursuant to Executive Law § 63(12) and General Business Law ("GBL") Article 22-A (Consumer Protection from Deceptive Acts and Practices).
3. Executive Law § 63(12) empowers the Attorney General to seek restitution and injunctive relief when any person or business entity has engaged in repeated fraudulent or illegal acts, or has otherwise demonstrated persistent fraud or illegality in the carrying on, conducting, or transaction of business. GBL §349 prohibits deceptive business practices, and empowers the Attorney General to seek injunctive relief when violations occur. GBL § 350-d empowers the Attorney General to seek penalties of up to \$5,000 for each violation of GBL Article 22-A
4. Petitioners are the People of the State of New York by their attorney Andrew M. Cuomo, Attorney General of the State of New York.

5. Respondent John P. Nicolìa ("Nicolìa") is an attorney admitted to practice law before the courts of New York State with an office located at 300 International Drive, Williamsville, New York 14221. In 2008 and 2009, Nicolìa, in exchange for fees of \$141,000, allowed his name as a lawyer to be used by debt collectors, employed by Frank Santiago, who illegally threatened consumers. Nicolìa and/or Santiago's companies have been sued on at least 33 occasions in 16 states for violating state and federal debt collection law. In addition dozens of similar complaints have been filed against him with state law enforcement agencies, the Federal Trade Commission and the Better Business Bureau.

### **FACTS**

#### **Introduction**

6. Nicolìa, for a substantial fee, allowed debt collectors employed by an individual named Frank Santiago use his name as a lawyer to threaten consumers if they did not pay alleged consumer debts.

7. Frank Santiago owns, or has owned, various debt collection business including Ethical Asset Management, LLC, Eastern Asset Management, LLC and Northern Asset Management, LLC. To avoid detection, it is typical for debt collection businesses, like the Santiago companies, to close and open new companies as consumer complaints mount about the old company. The Santiago companies are referred to collectively as "Eastern Asset" or "Santiago companies."

8. For pennies on the dollar the Santiago companies buy consumer debt that the original creditors have "charged off" as uncollectible, and attempts to collect on that debt using tactics that violate both federal and New York State law. Unlike traditional debt collectors, who do not own debt but are paid a percentage of the debt they collect, the Santiago companies keeps every penny they collects.

9. On December 30, 2006, Santiago retained Nicolìa.

10. In 2008, Eastern Asset paid Nicolìa \$69,000.

11. In 2009, Eastern Asset paid \$72,000.

**Nicolia Has No Records To Show That He Provided Any Legal Services Of Note To Eastern Asset In Exchange For \$141,000 In Payment For 2008 And 2009**

12. Nicolia claims that he was paid to provide debt collection related legal services to Eastern Asset and, more specifically, to provide "on-site" debt collection legal services to Eastern Asset.

13. Nicolia claims that he was on site at Eastern Asset two days per week for about 4 hours each day.

14. Nicolia, however, does not have a single time record to document that he, in fact, actually provided on-site debt collection legal services to Eastern Asset.

15. Nor does Nicolia have any records that show he provided any other legal services of note to Eastern Asset in exchange for \$141,000 in payments in 2008 and 2009.

16. Nicolia never brought a lawsuit against a debtor on behalf of Eastern Asset.

17. Nicolia and/or Eastern Asset were sued on at least 33 occasions for violations of the FDCPA.

18. Nicolia did not answer a single complaint, or interpose a single responsive pleading.

19. Nicolia claims that he provided training to debt collectors on debt collections law, including the substantive provisions of the federal Fair Debt Collection Practices Act.

20. Nicolia has no records to show that he trained collectors.

21. Nicolia claims that when he was on site at Eastern Asset he would spend 30 minutes in each of three call center rooms from which collectors made telephone calls to monitor their activities.

22. Nicolia has no records that show he monitored collectors.

23. Nicolia claims that he regularly had contact with consumers from whom Eastern Asset was attempting to collect alleged debts.

24. Nicolia has no records that show he had regular contact with consumers from whom Eastern Asset was attempting to collect alleged debts.

25. Nicolia claims that he regularly had contact with attorneys for consumers from whom Eastern Asset was attempting to collect alleged debts.

26. Nicolia has no records that show he had regular contact with attorneys for consumers from whom Eastern Asset was attempting to collect alleged debts.

27. In short, Nicolia has no records to show he provided any legal services of note to Eastern Asset in exchange for \$141,000 in payments for 2008 and 2009.

#### **Eastern Asset Used Nicolia's Name To Threaten Consumers**

28. The service Nicolia provided to Eastern Asset was allowing it to use his name to threaten consumers if they did not pay an alleged debt.

29. Eastern Asset used Nicolia's name in two ways.

30. First, with Nicolia's knowledge, Eastern Asset sent form "settlement" letters to consumers in which it notified the consumer that it had purchased a debt allegedly owed by the consumer, and in which it offered to settle the debt for much less than what was allegedly owed, often a discount of 50% or more. The form letter stated:

Furthermore you will be released of any financial and legal obligations pertaining to the above referenced account and any remaining balance. If you do not adhere to the terms of the settlement agreement we will declare the entire balance due and pursue (sic) accordingly. If **judgment** has been rendered, that information will be updated with the proper **jurisdiction and county**. **Please note that our legal counsel, John Nicolia, Esq. may review the status of your particular case at anytime.** (emphasis added).

31. Thus, the letter refers to a judgment – which can only be a legal judgment after a lawsuit is filed – and associates Nicolia's name with the judgment. Further, it uses words

like "jurisdiction and county" which, when combined with "judgment," would lead the reasonable consumer to believe that a legal action is involved.

32. The implicit threat that Nicolía has pursued, or may pursue, a legal action against the consumer is unmistakable. The threat is, however, patently false. In fact, Nicolía has never filed a lawsuit against a consumer on behalf of Eastern Asset or anyone else for that matter.

33. Second, the threat implicit in the letter is made explicit by Eastern Asset debts collectors who, when telephoning consumers to collect on an alleged debt, represented themselves as calling from, or working with, the Law Office of John Nicolía. Thus, Nicolía allowed the debt collectors to create the impression that the communication was from a lawyer, or at the behest of a lawyer.

34. The debt collectors then compounded that deception by making false representations that the OAG has categorized into the following categories:

- Debt collectors falsely represented to consumers that a lawsuit was about to be, or had been filed against them;
- Debt collectors threatened to take actions that they could not take, or did not intend to take including, for example, the suspension of a driver's license;
- Debt collectors falsely represented or implied that the failure to pay a debt would result in imprisonment or seizure of property; and
- Debt collectors falsely represented or implied that the consumer had committed a crime.

35. This practice is shown in lawsuits filed against Nicolía and/or a Santiago .

36. This practice is shown in the consumer complaints received by the Office of the New York Attorney General, the Federal Trade Commission, the Better Business Bureau.

37. This practice is shown in the consumer affidavits submitted by the OAG.

**FIRST CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12):  
FRAUD**

38. By reason of the foregoing, respondent has repeatedly and persistently engaged in fraud.

39. Therefore, respondent's conduct constitutes repeated and persistent fraud in violation of Executive Law § 63(12).

**SECOND CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12) (ILLEGALITY)  
VIOLATIONS OF GBL § 349**

40. GBL Article 22-A, § 349 declares it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York.

41. By reason of the foregoing, respondent has engaged in repeated and persistent deceptive acts or practices in violation of GBL § 349.

42. Therefore, respondent has violated Executive Law §63(12) by engaging in repeated and persistent illegal conduct in the carrying on, conducting or transaction of business.

**THIRD CAUSE OF ACTION  
PURSUANT TO EXECUTIVE LAW § 63(12) (ILLEGALITY)  
VIOLATIONS OF 15 U.S.C.A. §§ 1692 et seq.**

43. 15 U.S.C.A. § 1692 et seq., the federal Fair Debt Collection Practices Act ("FDCPA"), regulates the collection practices of debt collectors.

44. Respondent is a debt collector for purposes of the FDCPA.

45. By reason of the foregoing, respondent has engaged repeated and persistent activities prohibited by the FDCPA.

46. Therefore, respondent has violated Executive Law §63(12) by engaging in repeated and persistent illegal conduct in the carrying on, conducting or transaction of business.

WHEREFORE, petitioner demands an order and judgment against respondent as follows:

(a) permanently enjoining respondent from engaging in the deceptive, fraudulent and illegal acts and practices alleged herein;

(b) pursuant to GBL §350-d, imposing a civil penalty of five thousand dollars for each deceptive act committed by respondent;

(c) pursuant to CPLR §8303(a)(6), granting costs to the State of New York of two thousand dollars against respondent; and

(d) for such other and further relief as the court deems just and proper.

Dated: Buffalo, New York  
May 4, 2010

ANDREW M. CUOMO  
Attorney General of the State of New York  
JAMES M. MORRISSEY, Assistant Attorney General  
350 Main Street, Suite 300A  
Buffalo, NY 14202  
(716) 853-8471

VERIFICATION

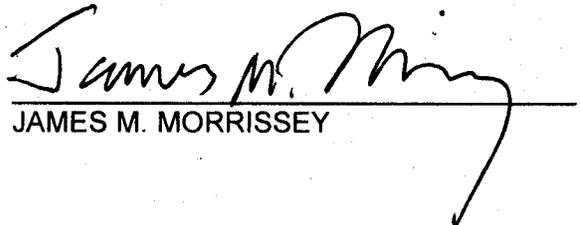
STATE OF NEW YORK )  
COUNTY OF ERIE     ) ss.:

JAMES M. MORRISSEY, being duly sworn, deposes and says: He is an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney General of the State of New York, and is duly authorized to make this verification.

He has read the foregoing petition and knows the contents thereof, and the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

The reason this verification is not made by petitioners is that petitioners are a body politic. The Attorney General is their statutory representative.

Dated: Buffalo, New York  
May 4, 2010

  
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JAMES M. MORRISSEY