

ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

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RE: GEORGE THE BARTENDER AND THE LAMENT OF LIEN CLAIMANTS OR *THE EVER INCREASING LIST OF REQUIREMENTS*¹

FROM THE LOBBY BAR AT THE HYATT:

After a hard day denying benefits, I arrived at the Lobby Bar looking forward to my cocktail of choice, a Beefeater's martini straight up with two olives, and hoping to catch a glimpse of Kim, the Hyatt's breathtakingly beautiful cocktail waitress.²

As luck would have it, she was approaching me with my cocktail in tow.

She was nearly trampled though by the Lien Brothers, Lenny and Larry, as they made their way toward me as well. They appeared to be extremely agitated and irate.

Before Larry and Lenny began to reveal the reason for their discontent, I extended my hand to them, palm forward, a silent indication to "pause" as Kim had arrived with my drink. Taking it from her and exchanging our usual pleasantries I motioned to the Lien Brothers to carry on. They advised that they were outraged by a recent panel decision of the Board in *Jose Cervantes v. Total Resources International Inc.* (ADJ7661375) filed on June 3, 2013.³

I was already familiar with this decision as I had read it on the previous night. I advised the Lien Brothers that the Commissioner in *Cervantes* was our newest Commissioner, Marguerite Sweeney, and her decision in *Cervantes* is both articulate and persuasive.⁴

Larry then wailed that the Board had no right to dismiss the Petition for Reconsideration filed by Tri-County Medical Group, nor to impose a Notice of Intention to Award Sanctions against the lien claim representative for up to \$2,000.

¹ For those new patrons to the Lobby Bar, George the Bartender's workers' compensation case involves an injury to his elbow, lateral epicondylitis (tennis elbow), sustained from the repetitive serving of martinis to me. If there ever was an admitted industrial injury, this is it!

² A Beefeater's martini, straight up, is best served at 38° Fahrenheit.

³ A copy of *Cervantes* is available upon email request.

⁴ Ms. Sweeney was nominated on February 13, 2012, by Governor Brown and approved by the legislature shortly thereafter.

I told a chagrined Larry and Lenny that the days in which lien claimants could allege that they did not have the same obligations to practice before the Appeals Board as an attorney had ended. Senate Bill 863 mandates that lien claimants appearing before the Board now have the same obligations and responsibilities as attorneys licensed by the State Bar.

In justification of his support of lien claimant Tri-County Medical Group in *Cervantes*, Larry told me that the Board had no right to dismiss the lien claim of Tri-County Medical Group simply because they did not appear at a conference hearing.

Larry and Lenny then pointed out that Tri-County Medical Group advised in their Petition that they did not receive notice of the conference.

The response “We did not receive notice” has been echoed by almost every lien claimant representative and/or lien claimant in the system.

The implied response by the Board is that they have no knowledge that the United States Post Office has been instructed not to deliver mail to lien claimants and that it is presumed under the Evidence Code that a Notice of Hearing sent to a lien claimant’s correct address raises a presumption that said Notice of Hearing was received.⁵

At this, Larry and Lenny retorted that the Tri-County Medical Group had stated under penalty of perjury in their Petition for Reconsideration that said Notice was not received.

With a smile, I pointed out that one of the egregious facts in *Cervantes* was that it turned out that Tri-County Medical Group had not filed a lien in the first place and therefore had no standing to appear at a Lien Conference – much less file a Petition for Reconsideration.

In *Cervantes*, the Board took this opportunity to restate several axioms of law that now bind lien claimant representative and/or lien claimants courtesy of Senate Bill 863. I enumerated the long list of transgressions committed by Tri- County Medical Group for the benefit of Larry and Lenny:

1. The Board pointed out that Labor Code §4907, as amended, “now provides that hearing representatives will be held to the same professional standards of conduct as attorneys, and that "the privilege of any person to appear in any proceeding as a representative of any party before the appeals board, or any of its workers' compensation administrative law judges, may, after a hearing, be removed, denied, or suspended by the appeals board.” ”
2. The Board went on to note that Rule 10205.12 of Article 1.3 of Chapter 4.5 (Division of Workers’ Compensation) of the California Code of

⁵ A conspiracy theory if I ever heard one.

Regulations, Title 8 provides that the text of the reconsideration “shall be double spaced or one and one half spaces[.]”

3. Although lien claimant Tri-County Medical Group filed a Petition for Reconsideration complaining that their lien should not be dismissed, the Board consulted EAMS and found that they had not filed a lien.
4. In light of the fact that this lien claimant did not file a lien, there was no standing to seek reconsideration.
5. The Board also noted that the Petition for Reconsideration filed by Tri-County Medical Group contained multiple misrepresentations and that the Petition is “indisputably without merit.”
6. The Board went on to point out that although lien claimant alleges they received a Notice of Hearing scheduled on March 7, 2013, in Los Angeles before Judge Bewick, the Lien Conference was actually scheduled for and occurred on March 6, 2013, in Pomona before Judge Bernal.

Larry and Lenny became very quiet and solemn during my reading. Upon the conclusion I knew that I would hear nothing more about the unjust decision in *Cervantes* from them for the rest of the night.

DISCLAIMER:

All characters at the Lobby Bar aside from George, Kim and I are fictional and the storyline is simply a product of my warped imagination.

However, the lien claim problem is not, and remains an ongoing issue.

The Board has done an exceptional job in *Cervantes* in analyzing the issues that it still faces in lien claimant cases.

Make mine a double, George.

-Joe Truce