

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ANASTASIA DOULAMIS, individually and)	
on behalf of all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. _____
)	
THE BOSTON INSTITUTE FOR)	
PSYCHOTHERAPY, INC., ADAM ROSEN,)	
RAMON ALONSO, and ELAINE STARK,)	
)	
Defendants.)	
_____)	

CLASS ACTION COMPLAINT

I. NATURE OF THE CASE

1. Plaintiff, Anastasia Doulamis (“Plaintiff”), by and through her undersigned counsel, on behalf of herself and all others similarly situated, submits the following class action complaint against The Boston Institute for Psychotherapy, Inc. (“The BIP,”) and its president Adam Rosen, its treasurer Ramon Alonso, and its Executive Director having the management of the corporation, Elaine Stark (collectively, the “Defendants”), and based upon personal knowledge as to her own acts and circumstances and based upon information and belief as to all other matters, alleges as follows.

2. In a misguided effort to cut labor costs and increase profitability, Defendant, The BIP, engages in an unlawful practice: employee misclassification.

3. By treating certain employees as “independent contractors,” The BIP avoids expenses commonly associated with having employees. These costs, to name a few, include employment tax, health insurance, unemployment insurance, workers’ compensation and other

employee benefits.

4. The social utility of prosecuting actions related to misclassification is undeniable.

The Massachusetts Attorney General's Office makes clear its position¹ on misclassification of workers:

The need for proper classification of individuals in the workplace is of paramount importance to the Commonwealth. Entities that misclassify individuals are in many cases committing insurance fraud and deprive individuals of the many protections and benefits, both public and private, that employees enjoy. Misclassified individuals are often left without unemployment insurance and workers' compensation benefits. In addition, misclassified individuals do not have access to employer-provided health care and may be paid reduced wages or cash as wage payments.

Similarly, entities that misclassify individuals deprive the Commonwealth of tax revenue that the state would otherwise receive from payroll taxes. In addition, as a result of misclassification, the Commonwealth often incurs additional costs, such as providing health care coverage for uninsured workers. Other potential costs for the Commonwealth include providing workers' compensation benefits paid by the Workers' Compensation Trust Fund, and unemployment assistance without employer contribution into the Division of Unemployment Assistance fund, among other indirect costs.

Finally, businesses that properly classify employees and follow all of the relevant statutes regarding employment are likely to be at a distinct competitive disadvantage when vying for the same work, customers or contracts as those businesses that do not play by the rules.

5. The BIP's workforce of clinicians are supervised, assigned a workstation, told how to do their jobs, and are central to the business of, and the services provided by The BIP. However, many are forced to live with the fiction of being "independent contractors," even though these are the very employees who would be unable to practice their trade or offer their services in any context other than under the close monitoring, training, and control of The BIP, because many are still working toward licensure.

¹ Attorney Generals' Fair Labor Division, An Advisory from the Attorney General's Fair Labor Division on G. L. c. 149, s. 148B 2008/11, at <http://www.mass.gov/ago/docs/workplace/independent-contractor-advisory.pdf>, last accessed 3/26/14.

6. The BIP has failed to correctly and promptly obtain payments on behalf of the “independent contractors” it employs. As a result, payments from The BIP to its “independent contractors” come late, or never. When The BIP is not paid, its clinician “independent contractors” are not paid either.

7. As conceded by The BIP at recent staff meetings on the subject, The BIP routinely fails to carry out its internal and external billing and payroll functions promptly, correctly, or at all. When private insurers and governmental entities such Blue Cross, Medicaid, and MassHealth are not invoiced, or plan deadlines elapse, wages earned by “independent contractor” clinicians for work performed either arrives late or not at all.

8. These flawed internal and external billing procedures run afoul of employment laws. Payments made from The BIP to its “independent contractor” employees never come within the statutorily required weekly or bi-weekly timeframe required under G. L. c. 149, § 148, “The Massachusetts Wage Act,” also known as “The Prompt Payment of Wages Statute.”

9. The BIP, by misclassifying its employees, has imposed numerous hidden costs upon its workers. One such cost is having to supply unpaid labor. “Independent contractors” must spend hours upon hours filling out paperwork just to make sure The BIP is paid (because if BIP is not paid they are not paid). The time independent contractor clinicians spend on these billing tasks is not compensated, in violation of the Massachusetts Wage Act.

10. The stress, inconvenience and uncertainty related to late payments and missing funds has caused many clinicians employed under the “independent contractor” fiction to eventually quit, after long months, or even years of fruitlessly hoping for the situation to improve.

11. Those who do remain and put up with the situation, may do so because of a lack

of mobility faced by clinicians who lack licensure.

12. Plaintiff, on behalf of herself and a class of similarly situated individuals, brings this action under, G. L. c. 149, § 148B, the “Independent Contractor Statute,” and G. L. c. 149, § 148, the “Massachusetts Wage Act,” as well as common law breach of contract and quantum meruit causes of action.

13. On behalf of the class, Plaintiff seeks an injunction requiring Defendant to cease all misclassification of employees, as well as treble damages, attorney’s fees and costs.

II. THE PARTIES

14. Plaintiff Anastasia Doulamis is an individual domiciled in Nashua, Hillsborough County, New Hampshire.

15. Plaintiff is an employee of The BIP and presently a clinician in the school-based program.

16. Defendant is organized as a corporation under the laws of Massachusetts, with a principal place of business at 1415 Beacon Street, Brookline, Norfolk County, Massachusetts.

17. Defendant Adam Rosen is an individual residing in Cambridge, Middlesex County, Massachusetts.

18. Rosen is the president of The BIP.

19. Defendant Ramon Alonso is an individual residing in Cambridge, Middlesex County, Massachusetts.

20. Alonso is the treasurer of The BIP.

21. Defendant Elaine Stark is an individual residing in Melrose, Middlesex County, Massachusetts.

22. Stark is the Executive Director, and an officer, director and agent having the

management of The BIP.

III. JURISDICTION AND VENUE

23. This Court has jurisdiction over this matter pursuant to 28 U.S.C., § 1332, diversity of jurisdiction. The plaintiff is a citizen of the State of New Hampshire and the defendants are all citizens of the Commonwealth of Massachusetts.

24. The amount-in-controversy in this class action far exceeds \$75,000.00.

25. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claim occurred in this District including the employment of all parties within the Commonwealth of Massachusetts.

IV. FACTUAL ALLEGATIONS

A. MISCLASSIFICATION OF EMPLOYEES

26. Massachusetts law forbids employers from misclassifying employees.

27. There is a three prong test for determining whether a worker is deemed an employee or can be lawfully designated an independent contractor:

G. L. c. 150, § 148B:

(a) For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless:—

(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and

(2) the service is performed outside the usual course of the business of the employer; and,

(3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

a. NO FREEDOM FROM CONTROL

28. Plaintiff, like all other clinicians who are classified as “independent contractors” by The BIP, operate under the control and management of The BIP. In the course of their employment as clinicians, Plaintiff and other clinicians are under control regarding the what, when, where, and how of their job functions.

29. Plaintiff is a “school based clinician.” She is required to report to the same office furnished and occupied by The BIP at the schools at which she operates. She is assigned a caseload of clients. It is compulsory that she follow written procedures established for every detail of the job. Plaintiff and other clinicians are supervised, and their work and performance is evaluated and controlled by The BIP’s managers.

30. The BIP has formal written procedures and expectations for all of its employees. The Plaintiff, and those like her, must follow the dictates contained in a 22-page handbook, and an employment contract that says, “[c]linicians agree to abide by all [school-based program] Procedures.”

31. This contract is signed by the Plaintiff as a condition of her employment and states:

Conditions of Employment: The Clinician relationship with the Boston Institute for Psychotherapy Inc. is that of a self-employed independent contractor, and no contract of employment is created. Thus as an independent contractor, the Clinician is responsible for payment of one's own federal and state taxes related to these fees . . . The Clinician shall not be entitled to any of the following benefits: contributions for Social Security, Unemployment Insurance, Health Insurance, Vacation, Sick, Holiday Pay, or Pension Benefits. (emphasis added)

32. This contract does not reflect a legitimate independent contractor business-to-business relationship. Instead, it is a contract of adhesion intended to deprive the Plaintiff and other members of the class the protections and benefits enjoyed by employees under

Massachusetts employment laws.

33. Plaintiff, like all of The BIP's independent contract clinicians, must attend regular supervision sessions with a superior. The purpose of these meetings is to discuss how the clinician is performing his or her work, and whether it is being done according to The BIP's standards.

34. The BIP holds regular staff meetings. These events are mandatory gatherings where management gives out orders, makes announcements, presents paperwork, explains policies, enunciates procedures, and, in general, keeps control over its operation and its workers.

35. As a virtual, ongoing staff meeting, The BIP requires all of its clinicians to be part of a private, password-protected Internet-Based Group. The group is used for disseminating general information, how-to documents, and to issue general and specificity directives to the clinicians, such as instructions to show up for a staff meeting, or how to fill out insurance paperwork.

36. Participation in this Internet-Based Group is just one part of an overall structure of control over the clinicians, which is exerted uniformly throughout the organization.

37. One reason for this ongoing supervision is to comply with state licensing regulations and insurance company mandated rules.

b. NO PERFORMANCE OF SERVICES OUTSIDE THE USUAL COURSE OF BUSINESS

38. The work performed by the Plaintiff and other "independent contractors" is identical to the core work of The BIP (i.e., psychological services).

39. The BIP resells the labor of its clinicians. The BIP is supposed to pay the clinicians 47% of the income generated by each patient through insurance, government payors or private pay customers, keeping 53% for themselves. This arrangement is consistent with the

classic employer/employee relationship in any service-based company, where the proprietor marks up labor costs, controls the accounts, and has a staff of fungible workers furnishing the service that the operation sells.

40. Here, The BIP sells psychological services, such as couples counseling, individual therapy, group therapy, and school-based therapy to children.

c. NO CUSTOMARY ENGAGEMENT IN AN INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION OR BUSINESS

41. Psychotherapist clinicians, working for an employer and under the supervision of an employer like The BIP, are not customarily engaged in an independently established trade, occupation, profession or business.

42. It would be impossible for The BIP's unlicensed clinicians to be "individual[s] . . . customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." This is due to the simple reason that their services cannot be lawfully offered or sold in any context other than through The BIP (or a similar entity able to resell the clinical work of unlicensed clinicians).

B. WAGE AND HOUR VIOLATIONS

a. UNPAID WAGES

43. There are three common scenarios under which The BIP does not pay clinicians at all. They are: (1) unpaid staff meetings; (2) unpaid paperwork time; (3) lost wages stemming from The BIP's failure to collect funds.

44. Employees are required to attend periodic staff meetings without any compensation whatsoever.

45. The BIP forces their employees to complete paperwork and medical charts on their own time, and without compensation.

46. To the extent The BIP is unable to collect payment from a client, the treating clinicians do not receive any pay whatsoever.

47. In all instances, The BIP's failure to pay wages is proscribed by the Massachusetts Wage Act.

b. LATE PAYMENT OF WAGES

48. The Massachusetts Wage Act, also known as the Prompt Payment of Wages Act, is unambiguous regarding the promptness with which employees shall be paid.

49. G. L. c. 149, § 148 states: “[e]very person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six days of the termination of the pay period during which the wages were earned if employed for five or six days in a calendar week.”

50. The BIP's misclassification of employees does not take those employees outside the protections afforded them under G. L. c. 150, § 148B or the “Prompt Payment of Wages Statute.” Page 12 of The BIP Clinician Handbook states: “Payroll takes place on the 12th of every month.” This manner of paying employees, because it occurs only once per month, violates the Massachusetts Wage Act.

51. Moreover, the payment of wages by The BIP is contingent upon receipt of income from insurers, government payors and private pay customers. Employees are paid on the 12th of the month, only after the funds are first collected from these third parties. Thus each employee's pay is contingent on the timeliness by which The BIP's clients (or third-party payors) remit payment to The BIP.

V. CLASS ACTION ALLEGATIONS

52. Pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure and

G. L. c. 149, § 150, the Plaintiff brings this action on behalf of herself and on behalf of others similarly situated, in the class defined as: “all persons employed by The BIP from March 27, 2008 through the present who were misclassified by The BIP as ‘independent contractors.’”

53. Certification of Plaintiff’s claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

54. Numerosity. The Class is so numerous that individual joinder of all Class members is impracticable. Plaintiff is informed and believes that there are as many as 80 current employees, plus several other former employees affected by The BIP’s unlawful conduct, including those who quit because of The BIP’s payroll practices. The precise number of Class members and their addresses are unknown to Plaintiff, but may be ascertained from The BIP’s books and payroll records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

55. Commonality and Predominance. This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members. All Class members were subject to the same wage/hour or misclassification claims complained of by the Plaintiff.

56. Furthermore, common questions of law and fact, include, but are not limited to:

- a. Whether Defendant’s conduct as alleged herein violates Massachusetts law, including the provisions of G. L. c. 149, § 148;
- b. Whether Defendant’s conduct as alleged herein violates Massachusetts law, including the provisions of G. L. c. 149, § 148B;
- c. Whether Defendant’s conduct as alleged herein constituted breach of contract;

- d. Whether Plaintiffs should be compensated in quantum meruit; and
- e. Whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to injunctive or declaratory relief.

57. **Typicality.** Plaintiff's claims are typical of the claims of the other members of the Class because, among other things, all Class members were similarly injured through the uniform misconduct described herein and all Class members have the same claim, i.e., that Defendant's manner of misclassifying and paying (or not paying) employees violates employment laws.

58. **Adequacy of Representation.** Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other members of the Class she seeks to represent; she has retained counsel competent and experienced in class action litigation and employment litigation; and Plaintiff intends to prosecute this action vigorously. The Class' interests will be fairly and adequately protected by Plaintiff and her counsel.

59. **Similarly Situated and Injured Persons.** The proposed Class consists of persons who have suffered the same injury as the Plaintiff and who, for the reasons stated above, are similarly situated to each other and to the Plaintiff.

60. **Superiority.** A class action is superior to any other available methods for fairly and efficiently adjudicating this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Defendant's wrongful conduct. Even if the Class members could afford individual litigation, the

court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CAUSES OF ACTION

COUNT ONE

MISCLASSIFICATION OF EMPLOYEES – G. L. c. 149, § 148B AGAINST THE BOSTON INSTITUTE FOR PSYCHOTHERAPY, INC.

61. The Plaintiff readopts and realleges the preceding paragraphs, and incorporates them into this count.

62. The BIP violated G. L. c. 149, § 148B by misclassifying its employees as independent contractors.

63. As a direct and proximate cause of The BIP's conduct, the Plaintiff and the Class have incurred significant financial damages.

64. Pursuant to G. L. c. 149, § 150, The BIP is liable to the Plaintiff and the Class for three times the amount of any damages, plus costs and reasonable attorneys' fees.

COUNT TWO

VIOLATIONS OF THE MASSACHUSETTS WAGE ACT – G. L. c. 149, § 148 AGAINST ALL DEFENDANTS

65. The Plaintiff readopts and realleges the preceding paragraphs, and incorporates them into this count.

66. The Defendants violated G. L. c. 149, § 148 by not paying wages owed to the Plaintiff and the Class for work performed in the course of their employment at The BIP.

67. The Defendants further violated the Massachusetts Wage Act by failing to pay

wages timely at the conclusion of each pay period.

68. As a direct and proximate cause of the Defendants' conduct, the Plaintiff and the Class have incurred significant financial damages.

69. Pursuant to G. L. c. 149, § 150, the Defendants are liable to Plaintiff and the Class for three times the amount of any unpaid wages, plus costs and reasonable attorneys' fees.

COUNT THREE
BREACH OF CONTRACT
AGAINST THE BOSTON INSTITUTE FOR PSYCHOTHERAPY, INC.

70. The Plaintiff readopts and realleges the preceding paragraphs, and incorporates them into this count.

71. The parties had an agreement concerning the Plaintiff and members of the Class's wages – specifically, there was an agreement that each employee/independent contractor would be paid for the work performed for The BIP.

72. The Plaintiff and the Class have fully performed all covenants, conditions and obligations required to be performed by reason of this agreement, except to the extent made impossible by The BIP's breach of the agreement.

73. The BIP breached the contract by failing to pay Plaintiff and the Class their wages and by failing to pay their wages on time.

74. As a direct and proximate cause of The BIP's breach, Plaintiff and the Class have incurred significant financial damages.

COUNT FOUR
QUANTUM MERUIT
AGAINST THE BOSTON INSTITUTE FOR PSYCHOTHERAPY, INC.

75. The Plaintiff readopts and realleges the preceding paragraphs, and incorporates them into this count.

76. Plaintiff and other class members conferred a benefit on The BIP by working diligently on its behalf.

77. The BIP received a benefit as a result of Plaintiff's and other class member's work.

78. The BIP was aware of the benefits received, and it would be unjust to allow the retention of these services without compensating Plaintiff and other members of the class.

VII. PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Anastasia Doulamis, individually and on behalf of the other members of the Class, respectfully requests that the Court order the following relief:

- A. An Order certifying the Class as requested herein;
- B. Actual and statutory damages;
- C. Treble damages as required by law;
- D. An Order enjoining Defendant from continuing to engage in the unlawful conduct alleged herein;
- E. Attorneys' fees and costs to Plaintiff and the Class; and
- F. Such other and further relief as may be just and proper.

VIII. JURY DEMAND

Plaintiff and the Class demand a trial by jury of all claims in this Complaint so triable.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

/s/ Joshua N. Garick

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