

Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA May 12, 2011

NO. 71

**Wells Fargo Bank, N.A. d/b/a Americas Servicing Company, Plaintiff v.
Patricia L. Fiorilli, Defendant**

**James F. Fisher, Jr., Petitioner v. Commonwealth of Pennsylvania, Department of
Transportation, Bureau of Driver Licensing, Respondent**

Law Offices of Alan R. Mege, Plaintiff v. Mark A. Brandstetter, Defendant

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INSERT: Pink: 1. "Elder Law Traps: Guide for the General Practitioner"
2. 2011 Calendar
3. Quarterly Association Meeting
4. "Dealing with the Internal Revenue Service"

NOTICE TO THE BAR...

Quarterly Association Meeting & Malpractice Avoidance Seminar—
Thursday, May 19, 2011. Registration form inside.

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Northampton County Reporter

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

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Edward P. Shaughnessy, Esquire

Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

New Photo Directory

It's time for that ever popular project—the Photo Directory!

The photographer is scheduled to be here on Thursday, June 16, Friday, June 17 and Monday, June 20.

Please make EVERY EFFORT to come to the Bar Association Office to have your photo taken for the new directory. *We are requesting 100% participation.*

Call the Bar Association to schedule your time—610-258-6333.

Mark Your Calendars

Quarterly Association Meeting—Thursday, May 19, 2011.

Malpractice Avoidance Seminar @ Best Western.

Registration form inside.

Summer Outing—Thursday, July 21, 2011.

Walk for a Healthy Community

The YLD will be participating in the Walk for a Healthy Community. If you are interested in helping one of 23 local community organizations and, if you like to take a nice walk on a Saturday morning in downtown Bethlehem, consider joining the young lawyers in support of this event. Contact Karley Biggs if you need more information. karleybiggs@gmail.com

Register online: www.walkforahealthycommunity.org

Friends, family, strollers, dogs—all are welcome!

The right of a nation to kill a tyrant in case of necessity can no more be doubted than to hang a robber, or kill a flea.. ~ John Adams

ESTATE NOTICES

Notice is hereby given that in the estate of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**BEERS, JULIA**, dec'd.

Late of the City of Easton, Northampton County, PA
Executrix: Mary Horvath c/o Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042
Attorney: Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042

BISCHOFF, JEAN B., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
Executor: Philip Carpenter, 2830 Linden Street, Apt. 7D, Bethlehem, PA 18017
Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

FAVA, HELEN M. a/k/a HELEN FAVA, dec'd.

Late of the Township of East Allen, Northampton County, PA
Executrix: Donna Schoeneberger, 5496 Nor-Bath Blvd., Northampton, PA 18067
Attorney: Daniel G. Spengler, Esquire, 110 East Main Street, Bath, PA 18014

FOGEL, EDNA A., dec'd.

Late of the Township of Upper Nazareth, Northampton County, PA
Executors: Norma L. Faust and David W. Faust, 510 W. St. Elmo Street, Nazareth, PA 18064
Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

FREITAS, WILBUR I., dec'd.

Late of the Township of Bethlehem, Northampton County, PA
Executor: Bret W. Frantz c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726
Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

HALL, MARIE A., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Robert S. Bukvics c/o Edward L. Redding, Esquire, 548 N. New Street, Bethlehem, PA 18018
Attorney: Edward L. Redding, Esquire, 548 N. New Street, Bethlehem, PA 18018

HECKMAN, MARIE E., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executrix: Deborah Ann Wykosky c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726
Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

MATYAS, ROSE H. a/k/a ROSE S. H. MATYAS, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executors: James G. Matyas, 3590 Old Philadelphia Pike, Bethlehem, PA 18015 and Rita L. O'Brien, 152 N. Main Street, Nazareth, PA 18064
Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

RUSH, JOSEPHINE B., dec'd.

Late of Easton, Northampton County, PA
Executrix: Barbara R. Renkert c/o Dennis P. Ortwein, Esquire, 5201 William Penn Highway, Easton, PA 18045
Attorney: Dennis P. Ortwein, Esquire, 5201 William Penn Highway, Easton, PA 18045

SECOND PUBLICATION

COFFIN, WILLIAM P., dec'd.

Late of the Township of Williams, Northampton County, PA
Executrix: Margaret J. Coffin, 35 Riverview Drive, Easton, PA 18042
Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, LLC, 3101 Emrick Boulevard, Suite 205, Bethlehem, PA 18020

HEIN, JAMES R., dec'd.

Late of the Township of Lower Saucon, Northampton County, PA
Executor: Douglas James Hein c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726
Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

HRITZ, LAURA M., dec'd.

Late of the Borough of Freemansburg, Northampton County, PA

Executor: Michael G. Hritz c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

KALE, DOROTHY M. a/k/a DOROTHY MARY KALE, dec'd.

Late of Bethlehem Township, Northampton County, PA
Executor: Alan L. Kale c/o Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkaspie, PA 18944
Attorneys: Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkaspie, PA 18944

McCARTHY, ROBERT P., dec'd.

Late of the Township of Hanover, Northampton County, PA
Executrix: Cynthia S. McCarthy c/o Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017
Attorneys: Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017

RONNEBERG, ELIZABETH a/k/a ELIZABETH ANN RONNEBERG a/k/a ELIZABETH A. RONNEBERG, dec'd.

Late of the Township of Bethlehem, Northampton County, PA
Administratrix C.T.A.: Jane R. Ronneberg c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018
Attorneys: Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

SEAROCK, JANE L., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Betty J. Reczek c/o Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

Attorney: Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

SMITH, RUTH E. a/k/a RUTH SMITH, dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executrix: Ruth D. Smith c/o John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

Attorney: John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

TOMBLER, MARGARET A. a/k/a MARGARET TOMBLER, dec'd.

Late of Williams Township, Northampton County, PA

Executrix: Karen L. Drake c/o Joel M. Scheer, Esquire, Fishbone and Scheer, 940 West Lafayette Street, Easton, PA 18042

Attorneys: Joel M. Scheer, Esquire, Fishbone and Scheer, 940 West Lafayette Street, Easton, PA 18042

WEAVER, RUTH M. a/k/a RUTH WEAVER, dec'd.

Late of Wilson Borough, Northampton County, PA

Executor: Edwin Weaver, III c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

THIRD PUBLICATION**BURLEY, MARY E.,** dec'd.

Late of the Borough of Wilson, Northampton County, PA

Co-Executrices: Barbara Walters, 2804 Jefferson Street, Bethlehem, PA 18020 and Edith Knauss, 46 Country Club Road West, Northampton, PA 18067
Attorney: Louis S. Minotti, Jr., Esquire, 44 North Second Street, P.O. Box 468, Easton, PA 18044

FULCINITI, JACK a/k/a JACK JOHN FULCINITI a/k/a JACK J. FULCINITI, JR. a/k/a JOHN FULCINITI, dec'd.

Late of the Township of Forks, Northampton County, PA

Administratrix: Mary Jane Piersa c/o Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042
Attorney: Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042

KUNTZ, FAY E., dec'd.

Late of Walnutport, Northampton County, PA

Executor: Ronald Kuntz, 824 Williams Avenue, Walnutport, PA 18088

Attorneys: David B. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

LASH, FREDERICK W., dec'd.

Late of Northampton County, PA
Executor: Frederick Lash, Jr., 1921 Alexander Road, Macungie, PA 18062

Attorney: Karl J. Maehrer, Esquire, P.O. Box 264, Trexlertown, PA 18087

MARKS, JOSEPH, dec'd.

Late of the City of Easton, Northampton County, PA

Executor: Matthew J. Marks c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717

Washington Street, Easton, PA 18042

Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042

McGOULDRICK, MILDRED ANNIE a/k/a MILDRED A. McGOULDRICK, dec'd.

Late of Bethlehem Township, Northampton County, PA

Executrix: Denise Ferlino c/o Samuel R. Kasick, Esquire, 523 W. Linden St., Allentown, PA 18101-1415

Attorney: Samuel R. Kasick, Esquire, 523 W. Linden St., Allentown, PA 18101-1415

McNEAL, EDGAR C., JR., dec'd.

Late of Bethlehem, Northampton County, PA

Personal Representative: Brian McNeal c/o Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

Attorneys: Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

NAGEL, MARY R., dec'd.

Late of Nazareth, Northampton County, PA

Administrator: Lewis P. Nagel, Nazareth, PA 18064

Attorneys: James G. Murphy, Esquire, Murphy & Murphy, P.C., 106 N. Franklin St., Suite 2, P.O. Box 97, Pen Argyl, PA 18072

NOONAN, RICHARD J., dec'd.

Late of Easton, Northampton County, PA

Executrix: Yvonne T. Noonan c/o Warren J. Kauffman, Esquire, White and Williams, LLP, One Liberty Pl., 1650 Market St., Ste. 1800, Philadelphia, PA 19103

Attorneys: Warren J. Kauffman, Esquire, White and Williams LLP, One Liberty Pl., 1650 Market St., Ste. 1800, Philadelphia, PA 19103

PARR, GLADYS K., dec'd.

Late of the City of Easton, Northampton County, PA

Administratrix: Sharron K. Parr c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

PROPAWICH, WILLIAM, JR., dec'd.

Late of Nazareth, Northampton County, PA

Administrator: Thomas J. Calnan, III, 7811 Sweetwood Dr., Macungie, PA 18062

Attorney: Robert Pandaleon, Esquire, 821 East 4th St., Bethlehem, PA 18015

SAWCHUK, HELEN, dec'd.

Late of the City of Easton, Northampton County, PA

Executor: Daniel J. Magocs, 249 E. Macada Road, Bethlehem, PA 18017

SMITH, LILLIAN E., dec'd.

Late of Palmer Township, Northampton County, PA

Executrix: Lisa Vanbuskirk, 6230 Sullivan Trail, Nazareth, PA 18064-9395

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

SYSKO, JANINA A. a/k/a JENNIE A. SYSKO a/k/a JENNY A. SYSKO, dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executrix: Rita J. Jones c/o Joseph J. Piperato, III, Esquire, Benner & Piperato, 2005 City Line Road, Suite 106, Bethlehem, PA 18017

Attorneys: Joseph J. Piperato, III, Esquire, Benner & Piperato, 2005 City Line Road, Suite 106, Bethlehem, PA 18017

WETZEL, DOROTHY H., dec'd.

Late of Freemansburg, Northampton County, PA

Executor: Frank A. Wetzel, 743 East Fairview Street, Bethlehem, PA 18018

Attorney: Daniel P. Sabetti, Esquire, 224 West Broad Street, Bethlehem, PA 18018

TRUST NOTICE

NOTICE IS HEREBY GIVEN of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said trusts are requested to make known the same, and all persons indebted to said trusts are requested to make payment, without delay, to the trustees or to their attorneys named below.

MATTHEWS, JAMES, dec'd.

Late of Palmer Township, Northampton County, PA

Trustee: Marilyn Matthews, 2643 Woodlawn Avenue, Easton, PA 18045

Attorney: Brett B. Weinstein, Esquire, 705 W. DeKalb Pike, King of Prussia, PA 19406

May 5, 12, 19

NOTICES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the Corporation is:

ASHTONS LAWN CARE, INC.

The Articles of Incorporation were filed on December 22, 2010.

JAMES G. MURPHY, ESQUIRE

MURPHY & MURPHY, P.C.

106 N. Franklin St.

Suite 2

P.O. Box 97

Pen Argyl, PA 18072

May 12

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177), for the purpose of incorporating the following corporation.

The name of the corporation is:

BER INNOVATIONS, INC.

The articles of incorporation were filed on: March 25, 2011.

The purposes for which it is organized are: To have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of

Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177).

DANIEL K. MCCARTHY, ESQUIRE
DAVISON & MCCARTHY, P.C.
1146 S. Cedar Crest Blvd.
Suite 200
Allentown, PA 18103
(610) 435-0450

May 12

**NOTICE OF NONPROFIT
CORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation—Nonprofit were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on April 1, 2011, for the purpose of incorporating a nonprofit corporation pursuant to the provisions of the Nonprofit Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The corporation is incorporated exclusively for tax-exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any future United States Internal Revenue Law, specifically to produce and distribute original documentaries and narrative movies promoting Christian values and to distribute proceeds to local charities. The name of the corporation is:

**378 PICTURES AND
CHRISTIAN OUTREACH**

Mark Tortorici
115 South Schanck Avenue
Pen Argyl, PA 18072.

May 12

**IN THE NORTHAMPTON COUNTY
COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION**

The following Executors, Administrators, Guardians & Trustees have filed Accounts in the Office of the Orphans' Court:

ESTATE; Accountant
MICHAEL A. BETZ, JR.; Donna Lalonde, Executrix
RONALD J. BINN; Donna S. Binn, Administratrix
STEPHEN A. CHROUST; Richard A. Chroust and Elizabeth Ann Chroust, Co-Executors
JOSEPH SHATTUCK DE RAYMOND a/k/a JOSEPH S. DE RAYMOND; Raymond J. De Raymond, Administrator

MICHAELA A. GILIO; Mary Lee Garr and Patricia A. Arndt a/k/a Patricia Arndt Hartzell, Co-Executrices

LISA HUFF; Wilmington Trust Company, FSB, Guardian

RICHARD JUDE LEARY SR.; Kathleen E. O'Neill-Leary, Executrix
HELEN E. NICHOLAS; Cleo M. Eck, Executor

MARJORIE SHIMER PETERS a/k/a MARJORIE S. PETERS; Robert H. Peters, Jr., Executor

AUDIT NOTICE

All Parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: MAY 27, 2011 AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court
May 12, 19

NOTICE FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on April 12, 2011 the Petition of Nickcole DeHart was filed in the Northampton County Court of Common Pleas, at Docket No. C-48cv2011-3283, seeking to change the name of her minor child from Alivia Markovitz to Alivia DeHart. The court has fixed June 17, 2011 at 9 a.m. in Court Rm. (4) of the Northampton County Courthouse, as the date for hearing the Petition. All persons interested in the

proposed change of name may appear and show cause, if any, why the Petition should not be granted.

May 12

**IN THE COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW**

Wilson Quintana, a Minor, by and
through His Parent and Natural
Guardian, Liza Pimble,
Plaintiffs

vs.

Charles E. Mest, Jose Luis Perez,
Sasha Perez,
Defendants

NO. C48-CV-2009-7435

CIVIL ACTION

JURY TRIAL DEMANDED

Nature of Action: The above action arises out of an incident wherein, the Minor Plaintiff Wilson Quintana was chased out into traffic by individuals including the Defendants, Jose Luis Perez and Sasha Perez. Attempting an escape, the minor Plaintiff crossed the street when he was struck by a motor vehicle owned and operated by Defendant, Charles E. Mest. The above occurred on August 13, 2008 on Summit Street, between Boyce Street and Carlton Avenue, in Bethlehem, Northampton County, Pennsylvania. The Minor Plaintiff Wilson Quintana sustained severe personal injuries for which he makes claims for money damages for both economic losses and non-economic losses. Claims asserted against Defendants, Jose Luis Perez and Sasha Perez, include negligence, gross negligence, recklessness and intentional conduct.

NOTICE TO JOSE LUIS PEREZ and
SASHA PEREZ

If you wish to defend, you must enter a written appearance personally or by attorney and file your de-

fenses or objections in writing with the Court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THE OFFICE SET FORTH BELOW MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Northampton County
Bar Association
155 S. Ninth Street
Easton, PA 18042
(610) 258-6333

MICHAEL A. SNOVER, ESQUIRE
Attorney for Plaintiffs

2571 Baglyos Circle
Suite B25
Bethlehem, PA 18020
(484) 821-1005

May 12

**IN THE COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW**

Wilson Area School District

vs.

Eugene J. Abromitis and
Sayuri Abromitis

NO. C-48-CV-2010-8664

NOTICE IS HEREBY GIVEN that
the above were named as Defendants

in a civil action instituted by plaintiff. This is an action to recover delinquent real estate taxes for the year 2009, for the property located at 40 Connard Drive, Williams Township, Pennsylvania, Tax Parcel P9 12 16-9. A tax claim in the amount of \$6,303.20 was filed on or about August 10, 2010 for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Northampton County
Lawyer Referral Service
155 S. Ninth Street
Easton, PA 18042
(610) 258-6333

PORTNOFF LAW
ASSOCIATES, LTD.

P.O. Box 391
Norristown, PA 19404-0391
(866) 211-9466

May 12, 19, 26

**IN THE COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW**

City of Easton

vs.

Building Your Way, Inc.

NO. C-48-CV-2009-10107

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff. This is an action to recover delinquent real estate taxes for the year 2008, for the property located at 624 Lehigh Drive, Easton, Pennsylvania, Tax Parcel L9SE4B 2 5. A tax claim in the amount of \$3,547.07 was filed on or about September 17, 2009 for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Northampton County
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PORTNOFF LAW
ASSOCIATES, LTD.

P.O. Box 391
Norristown, PA 19404-0391
(866) 211-9466

May 12, 19, 26

***The Pennsylvania Bar Association
announces a great new member benefit:***



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**WELLS FARGO BANK, N.A. d/b/a AMERICAS SERVICING
COMPANY, Plaintiff v. PATRICIA L. FIORILLI, Defendant**

Summary Judgment—Mortgage Foreclosure—General Denial—Deemed Admission.

Court grants Plaintiff's Motion for Summary Judgment and enters order of mortgage foreclosure against Defendant. Defendant generally denied Plaintiff's averments regarding the status of Defendant's mortgage. These averments are considered deemed admissions because the averment's truth or falsity is within the knowledge of Defendant as mortgagor. Because Defendant failed to adequately deny the averments in the Complaint, Plaintiff's motion was granted.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—No. C-48-CV-2008-12977.

FRANCIS S. HALLINAN, ESQUIRE, for the Plaintiff.

DEAN C. BERG, ESQUIRE, for the Defendant.

Order of the Court entered on September 22, 2010 by BARATTA, J.

OPINION

FACTUAL AND PROCEDURAL HISTORY

Plaintiff, Wells Fargo Bank, owns the mortgage and note Defendant, Patricia Fiorilli, executed November 18, 2004, for 108 Michael Court, Northampton, PA 18067. Defendant defaulted on the mortgage when she failed to pay the principal and interest due on July 1, 2008. After Defendant failed to cure the default, Plaintiff filed a Complaint against Defendant on December 11, 2008, seeking to foreclose on Defendant's mortgage. Defendant filed an Answer through her attorney on December 22, 2008.

In her Answer, Defendant admitted to Plaintiff's allegation in ¶5 of the Complaint that the mortgage is in default because payments due July 1, 2008, and each month subsequent are due and unpaid, and the entire principal balance and all interest due can be collected. Defendant denied several of Plaintiff's other allegations based on insufficient knowledge: that Defendant executed the mortgage on November 18, 2004; the amount due on the mortgage; the amount of the attorney's fees; and that Defendant received the notices required in a mortgage foreclosure action. Compl. ¶¶3, 6, 7, 9. Defendant also made several allegations in New Matter concerning conversations she had with Plaintiff trying to restructure her loan and that she had established a payment plan. Answer ¶¶10-20. Plaintiff admitted to having conversations with Defendant regarding her mortgage, but Plaintiff denied Defendant's remaining allegations. *See* Plaintiff Reply to New Matter ¶¶10-20. Defendant provided no evidence to support the denials in her answer on the claims in her New Matter.

Plaintiff filed a Motion for Summary Judgment and a supporting Brief on May 28, 2010. Defendant filed an Answer to the Motion for Summary Judgment and Memorandum of Law on September 7, 2010. The matter was set for the September 7, 2010, Argument List and submitted on brief.

LEGAL STANDARD

Pennsylvania Rule of Civil Procedure 1035.2 states:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury.

Pa. R.C.P. No. 1035.2. Further, under Pa. R.C.P. No. 1035.3(a), the non-moving party may not rest upon mere allegations or denials of the pleadings but must file a response within thirty (30) days after service of the motion. Rule 1035.2(a)(2). In other words, the non-moving party has a clear and affirmative duty to respond to a motion for summary judgment. *Harber Philadelphia Center City Office Limited. v. LPCI Limited Partnership*, 764 A.2d 1100, 1104 (Pa. Super. 2000). Also, Pa. R.C.P. No. 1035.3(d) specifically provides that “[s]ummary judgment may be entered against a party who does not respond.” The non-moving party bears a responsibility to raise its defenses and grounds for relief in a response to a motion for summary judgment, and a trial court cannot be expected to “scour the record for every conceivable ground on which to deny summary judgment.” *Harber*, supra, 764 A.2d at 1105.

Summary judgment may be granted only in the clearest of cases where the record shows that there are no genuine issues of material fact and also demonstrates that the moving party is entitled to judgment as a matter of law. *Trowbridge v. Scranton Artificial Limb Company*, 560 Pa. 640, 747 A.2d 862 (2000); *P.J.S. v. Pennsylvania State Ethics Commission*, 555 Pa. 149, 723 A.2d 174, 176 (1999). The moving party has the burden of proving the nonexistence of any genuine issue of material fact. *O’Rourke v. Pennsylvania Department of Corrections*, 730 A.2d 1039, 1041 (Pa. Cmwlth. 1999) (citing *Kee v. Turnpike Commission*, 722 A.2d 1123 (Pa. Cmwlth. 1998)). The record must be viewed in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue

of material fact must be resolved against the moving party. *Ertel v. Patriot-News Company*, 544 Pa. 93, 98-99, 674 A.2d 1038, 1041 (1996).

DISCUSSION

While an averment in a pleading requires a responsive pleading, the averment will be admitted if not denied specifically or by necessary implication; a general denial or demand for proof will also constitute an admission. Pa. R.C.P. No. 1929(b). An exception to Rule 1929(b) considers an averment denied if a party states she is without knowledge or information sufficient to form a belief as to the truth of an averment after a reasonable investigation. Pa. R.C.P. No. 1929(c). In an action for mortgage foreclosure, “general denials by mortgagors that they are without information sufficient to form a belief as to the truth of averments as to the principal and interest owing must be considered an admission of those facts.” *First Wisconsin Trust Co. v. Strausser*, 439 Pa. Super. 192, 199, 653 A.2d 688, 692 (1995). A party cannot rely on Rule 1929(c) to fail to admit or deny a factual allegation when the pleader clearly must know whether a particular allegation is true or false. *See Cercone v. Cercone*, 254 Pa. Super. 381, 386 A.2d 1 (1978). Summary judgment is proper in an action for mortgage foreclosure if the mortgagor admits that the mortgage is in default, that she failed to pay interest on the obligation, and the recorded mortgage is in the specified amount. *Cunningham v. McWilliams*, 714 A.2d 1054, 1057 (Pa. Super. 1998). Even if the mortgagors have not admitted the total amount of the indebtedness in their pleadings, summary judgment is proper. *Id.*

After reviewing the pleadings and records submitted to this Court, we find summary judgment is proper in favor of the Plaintiff.

In Paragraphs 3, 6, 7, and 9 of the Defendant’s answer, she has alleged a general denial which states “[a]fter reasonable investigation, the defendant is without knowledge or information sufficient to form a belief as to the truth of said averment.” In those paragraphs, the Defendant has asserted that she is without knowledge or information as to whether she made the mortgage on her home, the amount due on the mortgage, the amount of attorney’s fees due Plaintiff, and that she received several notices of foreclosure. However, in Paragraphs 4 and 5 the Defendant admits that her home is subject to the Wells Fargo Mortgage and that the mortgage is in default because of a failure to make payments on the principal and interest.

Given the Defendant’s admissions as to the existence of the mortgage, case law does not permit contradictory general denials on the basis of insufficient knowledge. *See Strausser; Cercone; Cunningham*, *supra*. Accordingly, averments in Paragraphs 3, 6, 7, and 9 of Plaintiff’s Complaint are deemed admitted.

Further, the Defendant raises no cognizable claim in her New Matter.

While we are sympathetic to Defendant’s circumstances and her frustrations with the foreclosure process, we cannot deny the motion for

summary judgment when there is no genuine issue of material fact raised. Because there is no legal dispute, foreclosure is proper in this case. Therefore, summary judgment is granted in favor of Plaintiff.¹

Wherefore we enter the following Order:

ORDER

AND NOW, this 22nd day of September, 2010 upon consideration of Plaintiff's Motion for Summary Judgment and Brief in Support thereof, and upon consideration of the Response, if any, filed by Defendant, the Court determines that Plaintiff is entitled to Summary Judgment as a matter of law, and it is hereby:

ORDERED and DECREED that an in rem judgment is entered in favor of Plaintiff and against Defendant, Patricia L. Fiorilli, for \$132,585.11 plus interest from May 28, 2010 at the rate of \$22.27 per diem and other costs and charges collectible under the mortgage, for foreclosure and sale of the mortgaged property.

¹ We note that Defendant did not respond to Plaintiff's Motion for Summary Judgment until 102 days after Plaintiff's Motion was filed. Pursuant to Rule 1035.2(a)(2), it is also proper to enter summary judgment in favor of Plaintiff due to Defendant's failure to file a timely response.

**JAMES F. FISHER, JR., Petitioner v. COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING, Respondent**

*Driver's License Suspension—Section 1547 of the Vehicle Code—Refusal
to Submit to a Blood Test.*

Petitioner was arrested and was taken to the DUI Center for processing. The processing, which was recorded, revealed that Petitioner verbally agreed to the test. The phlebotomist attempted to draw blood from Petitioner's right hand but was unsuccessful. On a second attempt, she was unable to draw a sufficient amount of blood to complete the test. When Petitioner was told that he would have to be taken to the hospital for the test, he responded, "I'm not going to the hospital ... there's no way." Petitioner's response was recorded as a refusal.

Petitioner appealed from Respondent's notices suspending both his driver's license and commercial driver's license, arguing that he consented to the test. The only issue before the Court was whether Petitioner refused to submit to the test because Petitioner stipulated that the police officer had reasonable grounds to arrest him, that he was asked to complete the test, and that he was warned that his refusal would result in a license suspension.

Established law provides that "anything less than unqualified, unequivocal assent to chemical testing constitutes a refusal." *Winebarger v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 655 A.2d 1093, 1095 (Pa. Commw. 1995). The Court determined that Petitioner did not give his "unqualified, unequivocal assent" to the test because he would not go to the hospital to complete his test. In addition, not only did Petitioner fail "to submit any medical evidence that he was physically unable to take the test, he actually admitted that he had given blood samples in the past." *Id.* The Court therefore denied Petitioner's appeals.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—Nos. C-48-CV-2010-5390, C-48-CV-2010-9379.

GLENNIS L. CLARK, ESQUIRE, for Petitioner.

ROBERT J. KOPACZ, ESQUIRE, for Respondent.

Order of the Court entered on March 4, 2011 by BELTRAMI, J.

OPINION

These cases are before the Court on Petitioner's appeals from Respondent's official notices, dated April 30, 2010, suspending both his driver's license and his commercial driver's license. A hearing on the appeals was held on December 2, 2010, briefs have been submitted, and the matters are now ready for disposition.

On April 4, 2010, Petitioner was arrested on suspicion of driving under the influence and was taken to the Northampton County DUI Center ("DUI Center") for processing. N.T., 12/2/2010, at 12:8-13; Resp't's Ex. A. Sergeant Kevin Spano processed Petitioner at the DUI Center. N.T., 12/2/2010, at 12:8-10. The DUI Center has video cameras that recorded Petitioner's processing. *Id.* at 12:11-15; Resp't's Exs. A, B. The videos of the processing reveal that Petitioner arrived at the DUI Center at 9:51 p.m.

on April 4, 2010. Resp't's Ex. A. When his processing began, Petitioner asked if he could use a telephone to call an attorney. *Id.* Sergeant Spano advised Petitioner that telephone calls are not permitted during processing at the DUI Center. *Id.* Sergeant Spano informed Petitioner that the processing would be recorded and then allowed Petitioner to use the restroom. *Id.*

When Petitioner returned from the restroom, he gave Sergeant Spano his address, telephone number, social security number, height, weight, eye color, marital status, the names of his parents, his employment status, and his educational background. *Id.* Sergeant Spano asked Petitioner if he had any significant scars or tattoos. *Id.* Petitioner replied that he had a burn on his arm. *Id.* Sergeant Spano next read chemical test warnings to Petitioner as follows:

Please be advised you are under arrest for driving under the influence of alcohol or controlled substance in violation of Section 3802 of the Vehicle Code. I'm requesting that you submit to a chemical test of blood.

It is my duty as a police officer to inform you that if you refuse to submit to a chemical test, your operating privilege will be suspended for at least twelve months and up to eighteen months if you have prior refusals or have been previously sentenced for driving under the influence. In addition, if you refuse to submit to a chemical test and you are convicted of or plead to violating Section 3802(a)(1), related to impaired driving of the Vehicle Code, because of your refusal, you will be subject to more severe penalties set forth in Section 3804(c), related to penalties of the Vehicle Code, the same as if you'd been convicted of driving under the highest rate of alcohol, which include a minimum of seventy-two consecutive hours in jail and a minimum fine of \$1,000.00 up to a maximum of five years in jail and a maximum fine of \$10,000.00.

It is also my duty as a police officer to inform you that you have no right to speak with an attorney or anyone else before deciding whether to submit to testing, and any request to speak with an attorney or anyone else after being provided these warnings or remaining silent when asked to submit to chemical testing will constitute a refusal and result in a suspension of your operating privilege and other enhanced criminal sanctions if you are convicted of violating Section 3802(a) of the Vehicle Code.

Id. When Sergeant Spano completed the warnings, Petitioner asked if he had the right to speak to an attorney. *Id.* Sergeant Spano reiterated that Petitioner did not have the right to consult with an attorney before deciding whether to submit to testing. *Id.* Sergeant Spano then asked Petitioner if he would submit to chemical testing. *Id.* Petitioner verbally agreed to submit

to chemical testing, but he refused to sign a written consent form because he did not have an attorney present. *Id.* Sergeant Spano used Petitioner's verbal consent to request that a phlebotomist draw blood. *Id.*

The phlebotomist examined Petitioner's left arm and determined that she did not have a vein from which she could draw blood. *Id.* When the phlebotomist asked Petitioner if she could draw blood from his right arm, Petitioner explained that he could not remove a bandage that he had wrapped around his right elbow because he had a burn and a "bad elbow." *Id.* The phlebotomist attempted to draw blood from Petitioner's right hand but was unsuccessful. *Id.* She next examined Petitioner's left hand but was unable to locate a vein. *Id.* When the phlebotomist once again attempted to draw blood from Petitioner's right hand, she was unable to draw a sufficient amount of blood to complete the chemical testing. *Id.*

The phlebotomist and Sergeant Spano explained to Petitioner that he would have to be taken to the hospital to have his blood drawn. *Id.* Petitioner responded, "I'm not going to the hospital ... there's no way." *Id.* Thereafter, Sergeant Spano gave Petitioner the following warning:

According to the provisions of Section 1547 of the Motor Vehicle Code of the Commonwealth of Pennsylvania, which deals with the law of implied consent, any person who drives, operates, or is in actual physical control of [the] movement of a motor vehicle in the Commonwealth, and is placed under arrest for driving under the influence, is deemed to have given consent to submit to one or more chemical tests of their blood, breath, and/or urine for the purposes of determining their blood alcohol concentration, if requested to do so by a police officer.

As a duly licensed police officer of the Commonwealth of Pennsylvania, I have requested that you submit to a chemical test of your blood. You have refused to submit to a chemical test. Your refusal has been recorded by audio and visual equipment. ... As a result of your refusal to submit to a chemical test, your operating privilege will now be suspended by the Pennsylvania Department of Transportation for a minimum of twelve months up to a maximum of eighteen months. Despite your refusal to submit to chemical testing, you are going to be prosecuted for the offense of driving under the influence of alcohol or controlled substance/drugs. Your refusal will be admissible against you at a trial. If you are convicted of, or enter a [plea] of guilty to, driving under the influence of alcohol or controlled substance/drugs, your operating privilege will be suspended for an additional twelve months up to eighteen months. In addition, because [of] your refusal to submit to a chemical test, you will be subjected to the increased criminal penalties of Section 3804(c) of the Motor Vehicle Code, mean-

ing that you'll be sentenced as if your blood alcohol concentration was in excess of .16%.

Resp't's Ex. B. After advising Petitioner of the increased mandatory and maximum penalties for first, second, and third or subsequent offenses, Sergeant Spano once again asked Petitioner if he would consent to a chemical test of his blood at the hospital. *See id.* Petitioner responded, "No. I'll take my chances with a lawyer." *Id.* Sergeant Spano then gave Petitioner "one last chance," advising him:

It is my duty as a police officer to inform you of the following. You are under arrest for driving under the influence of alcohol or controlled substance in violation of Section 3802 of the Vehicle Code. I'm requesting that you submit to a chemical test of blood. If you refuse to submit to a chemical test, your operating privilege will be suspended for at least twelve months. If you have previously refused to submit to a test, or have been previously convicted of driving under the influence, you will be suspended for up to eighteen months. In addition, if you refuse to submit to a chemical test and you are convicted of violating Section 3802(a)(1), related to impaired driving ... , because of your refusal, you'll be subject to more severe penalties set forth in Section 3804(c) These are the same penalties that will be imposed if you are convicted of driving with the highest rate of alcohol. ...

You have no right to speak with an attorney, or anyone else, before deciding whether to submit to testing. ... If you request to speak with an attorney, or anyone else, after being provided these warnings, or [remain] silent when asked to submit to chemical testing, you will have refused the test, resulting in the suspension of your operating privilege and other enhanced criminal sanctions if you are convicted of violating Section 3802(a) of the Vehicle Code.

Okay, one last chance, Mr. Fisher, ... will you submit to chemical testing and provide a blood sample at St. Luke's Hospital?

Id. Petitioner responded, "Uh, I gave you a test here in Bethlehem. I will not submit no other further—nothing further." *Id.*

At the instant hearing, Petitioner testified that he is currently employed at H & S Enterprises as a tractor-trailer driver. N.T., 12/2/2010, at 15:18-22. He also testified that the video was an accurate depiction of what occurred at the DUI Center on April 4, 2010. *Id.* at 16:2-8. Petitioner was unaware of any medical reason why the phlebotomist was unable to get a full blood sample from his right hand and testified that he had a blood test for a surgery two weeks before the hearing. *Id.* at 16:9-20, 17:22-25. He also explained that his right arm was wrapped in a bandage on the date of his arrest because of a burn. *Id.* at 17:5-18.

On April 30, 2010, Respondent sent Petitioner notices that his driving privilege and his commercial driving privilege would be suspended for one year, effective June 4, 2010, because of his refusal to submit to a blood test on April 4, 2010. Resp't's Exs. C, D.

Section 1547 of the Vehicle Code states:

(a) *General rule.*—Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to *one or more* chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance ...

...

(b) *Suspension for refusal.*—

(1) If any person placed under arrest for a violation of section 3802 is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person. ...

75 Pa. C.S.A. §1547(a)-(b) (emphasis added). In applying Section 1547, the Commonwealth Court has held:

To sustain a license suspension under Section 1547(b) of the Vehicle Code, DOT has the burden of establishing that (1) the licensee was arrested for drunken driving by a police officer having reasonable grounds to believe that the licensee was driving while under the influence, (2) the licensee was requested to submit to a chemical test, (3) the licensee refused to do so and (4) the licensee was warned that refusal would result in a license suspension. *Lemon v. Department of Transportation, Bureau of Driver Licensing*, 763 A.2d 534 (Pa.Cmwlt.2000). Once DOT meets this burden, the burden shifts to the licensee to establish that he ... either was not capable of making a knowing and conscious refusal or was physically unable to take the test. *Id.* Where a licensee suffers from a medical condition that affects his ... ability to perform a test and that condition is not obvious, a finding that a licensee was unable to take the test for medical reasons must be supported by competent medical evidence. *Id.*

Wright v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, 788 A.2d 443, 445 (Pa. Commw. 2001).

In the instant case, we need not address whether a police officer had reasonable grounds to believe that Petitioner was driving while under the influence, whether Petitioner was asked to submit to a chemical test, or whether Petitioner was warned that his refusal would result in a license suspension, as Petitioner has stipulated to these facts. N.T., 12/2/2010, at

9:20-22. Therefore, the only issue before the Court is whether Petitioner refused to submit to the chemical testing.

Petitioner argues that he consented to have his blood drawn at the DUI Center and cannot be sanctioned for the phlebotomist's inability to draw his blood. *Id.* at 18:17-18. He also asserts that the warnings given to him by Sergeant Spano did not advise him that he would be required to give more than one sample. *Id.* at 18:18-22.¹

Established law provides that “‘anything less than unqualified, unequivocal assent to chemical testing constitutes a refusal.’” *Winebarger v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 655 A.2d 1093, 1095 (Pa. Commw. 1995) (quoting *Colgan v. Department of Transportation, Bureau of Driver Licensing*, 561 A.2d 1341, 1342 (Pa. Commw. 1989)). The law also requires a court “to analyze the facts of each case independently.” *Id.*

In *Winebarger*, the petitioner, Thomas D. Winebarger, was arrested after an officer encountered his truck lying on its roof in a ditch and observed him staggering and swaying. *Id.* at 1094. At the hospital, Winebarger agreed to submit to a chemical blood test, but he stated that he had recessed or small veins and would only give medical personnel two chances to draw his blood. *Id.* After two attempts to draw his blood were unsuccessful, Winebarger resisted further attempts. *Id.* The officer considered Winebarger's conduct to be a refusal, and his license was suspended. *Id.*

After the trial court affirmed Winebarger's suspension, he appealed to the Commonwealth Court and argued that “consent to one ‘stick’ into each arm should be sufficient, rendering any subsequent refusal meaningless for compliance purposes.” *Id.* at 1095. The court disagreed and explained, “We will not quantify how many attempts at drawing blood will be deemed proper consent. ...” *Id.* The court also stated:

Section 1547 permits more than one attempt at testing, including more than one attempt using the same type of test. Indeed, a failure to complete a second breathalyzer attempt, even after the first one proved successful, will be deemed a refusal. *Department of Transportation, Bureau of Driver Licensing v. Kilrain*, 140 Pa. Commonwealth Ct. 484, 593 A.2d 932, *petition for allowance of appeal denied*, 529 Pa. 625, 600 A.2d 541 (1991).

Id. at 1096. The court found that “Winebarger refused to allow further attempts at drawing blood from his arms following the second unsuccessful attempt.” *Id.*

¹ We will not address the second issue raised by Petitioner other than to state that Sergeant Spano clearly advised Petitioner that he was required to submit to one *or more* chemical tests. Further, we note that Petitioner was given the opportunity to submit a brief but chose not to. *Id.* at 21:7-12.

In the instant case, the phlebotomist unsuccessfully attempted to draw Petitioner's blood twice. When Petitioner was informed that he would have to go to the hospital, he stated, "I'm not going to the hospital ... there's no way." Resp't's Ex. A. The term "unequivocal" is defined as "[u]nambiguous; clear; free from uncertainty." *Black's Law Dictionary* (9th ed. 2009). The term "assent" is defined as "[a]greement, approval, or permission." *Id.* The facts demonstrate that Petitioner did not give his "unqualified, unequivocal assent" to the chemical blood test requested by Sergeant Spano. *Winebarger*, supra, 655 A.2d at 1095. In addition, it is undisputed that Petitioner "refused to allow further attempts at drawing blood ... following the second unsuccessful attempt." *Id.* at 1096.

"Once DOT has shown that a motorist has refused to submit to chemical testing, as it has here, the burden shifts to the motorist to prove by competent medical evidence that he was physically unable to take the test." *Id.* In *Winebarger*, the court explained that there may be some circumstances in which medical evidence will justify a refusal to submit to a chemical blood test. *Id.* The court cited as an example a case in which an individual was physically unable to take a chemical blood test because he had new skin grafts on his arm that could not be punctured. *Id.* (citing *Department of Transportation, Bureau of Driver Licensing v. Fleming*, 547 A.2d 488 (Pa. Commw. 1988)). However, the court found *Winebarger's* reliance on *Fleming* to be inapposite because "not only ha[d] *Winebarger* failed to submit any medical evidence that he was physically unable to take the test, he actually admitted that he had given blood samples in the past." *Id.* The court therefore affirmed the trial court's holding that there was insufficient evidence to demonstrate that *Winebarger* was physically unable to take the chemical blood test. *Id.*

In the instant case, Petitioner testified that, on April 4, 2010, his right arm was wrapped in a bandage because he had been burned. N.T., 12/2/2010, at 17:5-18. However, as in *Winebarger*, Petitioner failed to submit any medical evidence to demonstrate that he was physically unable to take the chemical blood test at St. Luke's Hospital as requested. When asked if he knew of any reason why the phlebotomist was unable to obtain a full blood sample from his right hand, Petitioner said, "No." N.T., 12/2/2010, at 16:9-12. Furthermore, Petitioner, who still had his arm wrapped at the instant hearing, admitted that he had successfully given blood two weeks prior to the hearing. *Id.* at 16:12-19. Thus, as in *Winebarger*, not only did Petitioner fail "to submit any medical evidence that he was physically unable to take the test, he actually admitted that he had given blood samples in the past." *Winebarger*, supra, 655 A.2d at 1095. Therefore, in accordance with *Winebarger*, we must conclude that there is insufficient evidence to demonstrate that Petitioner was physically unable to take the chemical blood test he had refused.

WHEREFORE, we enter the following:

ORDER

AND NOW, this 4th day of March, 2011, Petitioner's appeals from Respondent's official notices, dated April 30, 2010, suspending both his driver's license and his commercial driver's license, are hereby DENIED. Any previously-issued stay of said suspensions is hereby vacated.

**LAW OFFICES OF ALAN R. MEGE, Plaintiff v.
MARK A. BRANDSTETTER, Defendant**

Preliminary Objections—Fictitious Name Act—Real Party In Interest.

Court dismissed Defendant's preliminary objections and dismissed Plaintiff's preliminary objections to preliminary objections as moot. Defendant argued that Plaintiff could not maintain its lawsuit because Plaintiff did not register its fictitious name with the Pennsylvania Department of State and that Plaintiff was not the real party in interest. Plaintiff argued that Defendant's preliminary objections were not properly verified and did not have a notice to plead attached. The Court took judicial notice of the fact that Plaintiff registered its name with the Department of State prior to the date of oral argument in this case, allowing it to maintain this action. Further, the Court found no prohibition against a sole proprietorship maintaining a lawsuit if the fictitious name is properly registered. Therefore, Plaintiff was the real party in interest.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—Law, No. C-48-CV-2010-6614.

ALAN R. MEGE, ESQUIRE, for Plaintiff.

DOUGLAS G. KUNKLE, ESQUIRE, for Defendant.

Order of the Court entered on December 9, 2010 by BARATTA, J.

ORDER

AND NOW, this 9th day of December, 2010, upon consideration of Defendant's Preliminary Objections and Plaintiff's response thereto, it is hereby ORDERED that Defendant's Preliminary Objections are DISMISSED.

Plaintiff's Preliminary Objections to Defendant's Preliminary Objections are rendered moot by the dismissal of Defendant's Preliminary Objections. It is further ORDERED that Plaintiff's Preliminary Objections to Defendant's Preliminary Objections are DISMISSED.

STATEMENT OF REASONS

Defendant, Mark Brandstetter, filed Preliminary Objections on October 26, 2010, to the Complaint filed by Plaintiff, Law Offices of Alan R. Mege. Plaintiff responded by filing Preliminary Objections to Defendant's Preliminary Objections on October 29, 2010. Defendant objects on the basis that Plaintiff cannot maintain this suit because it did not register the fictitious name "Law Offices of Alan R. Mege" with the Department of State. Defendant's second objection contends that the Law Offices of Alan R. Mege is not the real party in interest. Plaintiff objects to Defendant's preliminary objections on the ground that Defendant's preliminary objections were not properly verified by a party and that a notice to plead was not attached to Defendant's preliminary objections.

The matter was set for the December 7, 2010, Argument List, and both parties submitted briefs and presented oral argument.

After reviewing the record, we hold that both of Defendant's preliminary objections are dismissed.

Defendant's first preliminary objection is dismissed because Plaintiff registered its name with the Pennsylvania Department of State subsequent to the filing of Defendant's preliminary objections. An entity must register a fictitious name before filing an action using that fictitious name. 54 Pa. C.S.A. §331(a). The definition of "an entity" as used in §331(a) includes an individual. 54 Pa. C.S.A. §302. A plaintiff can maintain its lawsuit, even if the name is not registered, as long as it substantially complies with the provisions of §331(a) and (b). *See* 54 Pa. C.S.A. §331(c). An entity may continue a lawsuit it initiated if the entity registers the fictitious name during the pendency of the action. *International Investors Inc., East v. Berger*, 242 Pa. Super. 265, 268, 363 A.2d 1262, 1264 (1976).

The Law Offices of Alan R. Mege is a fictitious name and it must be registered in order to maintain the present suit against Defendant. Pursuant to Pa. R.E., Rule 201, this Court takes judicial notice of the fact that "Law Offices of Alan R. Mege" is registered as a fictitious name with the Pennsylvania Department of State as of November 1, 2010, and the name is owned by Alan Mege of 70 E. Broad St., Bethlehem, PA. The Department of State's fictitious name database is a public record. Defendant used information from this database to support the factual averment in its preliminary objection. By registering its name, Plaintiff has complied with the requirements of §331(a) during the pendency of these proceedings and may proceed with the lawsuit. *See Berger*, *supra*. Therefore, Defendant's preliminary objection on the ground that Plaintiff's name was not registered is dismissed.

Defendant's second objection is dismissed because Plaintiff is clearly the real party in interest. The twin purposes of the Fictitious Name Act are: 1) to protect people giving credit in reliance on the fictitious name, and 2) to definitely establish the identities of those owning the business for the information of those who deal with the entity. *George Stash & Sons v. New Holland Credit Company, LLC*, 905 A.2d 541, 543 (Pa. Super. 2006). An individual may be an entity and conduct business under a fictitious name. *See* 54 Pa. C.S.A. §302.

The Complaint avers that all interests in Defendant's credit card account were assigned to Plaintiff. Attached to the Complaint are four separate Bills of Sale supporting Plaintiff's averment that it owns all interests in Defendant's account. The fourth Bill of Sale/Assignment names "Alan R. Mege Law Offices" as the recipient of the interest in Defendant's account. The name Alan R. Mege Law Offices is registered to Alan Mege. Because a sole proprietorship has no existence separate and apart from its owner, Alan Mege and Law Offices of Alan R. Mege are legally the same

entity. *The Glidden Company, Inc. v. Department of Labor and Industry*, 700 A.2d 555, 558 (Pa. Commw. 1997). However, §331(a) allows an entity to maintain an action in its fictitious name as long as it is properly registered. Law Offices of Alan R. Mege entered into the contract with the previous owner of Defendant's credit card account, and Plaintiff is bringing this lawsuit to enforce the rights it acquired against Defendant. We can find no prohibition to an entity maintaining a lawsuit using only its fictitious name in the caption. Plaintiff is the real party in interest to this action, therefore this preliminary objection is also dismissed.

Because we dismiss Defendant's preliminary objections on the merits, Plaintiff's preliminary objections to Defendant's preliminary objections are rendered moot and therefore are dismissed.



PERIODICAL PUBLICATION

*** Dated Material. Do Not Delay. Please Deliver Before Monday, May 16, 2011**