

## New Jersey Assisted Living Facilities Are Not Subject To Liability Under The State's Nursing Home Law

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### February 5, 2014

A federal court in New Jersey determined the state's nursing home law cannot be used to impose liability for alleged violations of the rights of assisted living residents. Unlike nursing home residents who may bring lawsuits seeking compensatory and punitive damages, plus attorney's fees, for rights violations under New Jersey's Nursing Home Responsibilities & Rights of Residents Act (NHRRA), specifically N.J.S.A. § 30:13-8, assisted living residents were held not to have the same statutory remedy available to them. The distinction recognized by the court is an important first step because often civil complaints involving residents of assisted living facilities contain causes of action seeking statutory relief under the NHRRA. As a result of this case, however, complaints making NHRRA claims are subject to potential dismissal.

The legal determination about the inapplicability of the liability-creating provision of the NHRRA was made in the case of *Andreyko v. Sunrise Senior Living, Inc.*, No. 12-7240(KM), 2014 WL 282762 (D.N.J. Jan. 24, 2014) (Debevoise, Senior District Judge). The complaint alleged that the staff beat, mistreated, and/or neglected the assisted living facility resident. The plaintiff urged the court to find that such acts and neglect could qualify as violations of the resident's rights under the NHRRA, and that plaintiff was entitled to recovery under that statute.

The assisted living facility, which was represented by White and Williams, argued and convinced the court that the NHRRA could not be used to impose liability for alleged rights violations of assisted living residents. The court noted that a separate statute directly dealing with the rights of residents at assisted living facilities, N.J.S.A. § 26:2H-128, did not have a liability-creating scheme like that found in the NHRRA. Applying cannons of statutory construction, the court ultimately determined that "if the Legislature aims to establish a liability-creating scheme to enforce the rights of assisted living residents, it will need to do so expressly." Therefore, except for a provision within the NHRRA dealing with arbitration, the NHRRA is inapplicable to assisted living residents and does not provide assisted living residents with a cause of action.

The court's decision resulted in a complete dismissal of the complaint against the facility represented by Kevin Cottone, Robert Wright and Rafael Vergara.

Prior to this decision there had never been a published judicial opinion determining the issue of the applicability—or non-applicability, as the court held—of the NHRRA's liability-creating scheme for New Jersey assisted living residents.

### Attorneys

Kevin C. Cottone

Rafael Vergara

Robert Wright

### Practice Areas

Healthcare