

## Nursing Homes Defending NY Lawsuits Brought by an Estate Should Scrutinize Whether the Plaintiff has Legal Capacity to Assert Claims

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A New York appellate court recently addressed whether a voluntary or proposed administrator has standing to bring an action on behalf of a deceased individual. In *Rodriguez v. River Valley Care Center, Inc.*,<sup>1</sup> the court held that a voluntary or proposed administrator of a deceased's estate does not have legal standing to sue on behalf of the estate. However, the court further held that the voluntary or proposed administrator could remedy the defect in the pleading by amending the pleading or by filing a new suit after she obtains the letters of administration.

Renaldo Rodriguez is the son of the deceased and brought a suit claiming personal injury, wrongful death and medical malpractice against a nursing home and hospital on behalf of the deceased. At the time he filed suit, Rodriguez was the proposed administrator of the deceased's estate. When the nursing home initially moved to dismiss the case, the motion court granted the dismissal because Rodriguez did not have standing to bring the suit.

Almost immediately after the original suit was dismissed, Rodriguez brought a nearly identical suit as the voluntary administrator. The nursing home and hospital again moved to dismiss the complaint for lack of standing. While the new suit was pending, Rodriguez received the proper letters of administration and gained the legal capacity to sue on behalf of the deceased.

Once Rodriguez received the letters of administration, he moved to amend the complaint. The court held that while Rodriguez initially lacked the capacity to sue as a proposed administrator, he had the opportunity to remedy the situation under CPLR 205(a). Under CPLR 205(a), after the original suit was dismissed, the plaintiff had a six-month period to fix the defect for lack of standing and to either amend the complaint for the second action or bring a new suit as administrator. Because the complaint was within the six-month period after the dismissal of the original complaint, Rodriguez gained standing and acted properly under CPLR 205(a).

The *Rodriguez* case reinforces the notion that it is legitimate to question and examine the authority of the plaintiff bringing a suit on behalf of an estate. That a plaintiff lacks standing to bring or maintain the lawsuit could be an available defense if authority to sue is lacking.

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<sup>1</sup> A citation for the case is as follows: *Rodriguez v. River Valley Care Ctr., Inc.*, 2019 NY Slip Op 06370 (App. Div. 1st Dept. August 27, 2019)

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