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Judge says Beverly played 'shell game'

Company to face class-action lawsuit

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ARKANSAS DEMOCRAT-GAZETTE

Beverly Enterprises Inc. played hardball in court cases in Bradley and Saline counties, withholding patient records and other information, and lost. One judge has threatened jail time for the company's chief executive, and another judge granted a default judgment against the company for operating a "shell game."

Both lawsuits allege that Beverly executives maximized profits by failing to provide enough staff for proper care in the homes.

Now the Fort Smith-based nursing home operator of more than 346 facilities faces its first class-action lawsuit after Circuit Judge Robert Bynum Gibson granted the status along with the default judgment, according to the order filed last week in Bradley County Circuit Court.

"This court finds that the defendants have practiced an undisguised shell game throughout this discovery process, which has amounted to deliberate brinkmanship with the court — never mind the plaintiffs," Gibson said in the order.

The court had ordered Jan. 28 that Beverly provide plaintiffs' attorneys with a list of residents in the Warren nursing home from August 1999 to September 2003, when the facility closed. Beverly provided 171 names. At a March 7 hearing, plaintiffs' attorneys reported they found six more names just by researching local obituary announcements. Since then, the number has grown to more than 240.

The plaintiffs in the case are the residents of the Warren home during that period and their families.

Beverly

The court grants leeway to all litigants "to play hardball without fear of sanctions," Gibson said in the order, noting that a discovery sanction is a drastic step. "However, the defendants have pushed the envelope too far."

Plaintiffs are seeking the return of all Medicare/Medicaid payments over a four-year period, roughly about \$8 million, according to plaintiffs' attorneys Jack Wagoner and Gene Ludwig, both with Little Rock firms.

Beverly said it will appeal the order.

"We disagree with the ruling

and with the judge's characterization that Beverly Enterprises did not fully comply with the discovery process," the company said in a statement.

"We intend to appeal both the decision of the judge to certify the class in this matter, as well as the default judgment on liability."

Beverly also was found in contempt of court in a June 15 order in Saline County Circuit Court over failing to produce e-mails and other electronic data.

The company must pay a total of \$58,525 in attorney fees in both cases for failing to release information during the discovery period, in which the defendant and plaintiff exchange information relevant to the case.

Saline County Circuit Judge Grisham Phillips said in the order that the court will consider additional sanctions against Beverly, "including whether BEI Chief Executive Officer William Floyd, [executive] David Devereaux or others should be incarcerated as a result of the defendant's contempt of court, pending further research into the court's powers in this regard."

The court also is allowing plaintiffs' attorneys access to Beverly's computers to ensure compliance with releasing records.

Beverly said it's already turned over more than 1 million pages of documents, "and that represents only a fraction of what has been requested."