

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

**874**

**CA 16-01826**

PRESENT: CARNI, J.P., CURRAN, TROUTMAN, WINSLOW, AND SCUDDER, JJ.

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IN THE MATTER OF JEWISH HOME OF ROCHESTER,  
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID DWORKIN, RESPONDENT-APPELLANT.

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JASON S. DIPONZIO, ROCHESTER, FOR RESPONDENT-APPELLANT.

HINMAN STRAUB, P.C., ALBANY (DAVID T. LUNTZ OF COUNSEL), FOR  
PETITIONER-RESPONDENT.

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Appeal from an order of the Supreme Court, Monroe County (Renee Forgens Minarik, A.J.), entered January 7, 2016. The order denied the motion of respondent to dismiss the petition.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Pursuant to powers of attorney executed in New Jersey, respondent obtained admission for his parents to petitioner's facility. Thereafter, petitioner commenced this special proceeding pursuant to General Obligations Law § 5-1510 to compel respondent to provide an accounting and to remove respondent as the agent for his parents inasmuch as respondent had allegedly withheld available resources to pay for the care of his parents. Respondent moved to dismiss the petition on the ground that the General Obligations Law does not apply and that petitioner lacks standing to commence this special proceeding. Supreme Court denied the motion. We affirm.

Section 5-1510 (3) of the General Obligations Law provides that "[a] special proceeding may be commenced . . . [by] the agent, the spouse, child or parent of the principal, the principal's successor in interest, or any third party who may be required to accept a power of attorney" (emphasis added). Furthermore, General Obligations Law § 5-1512 provides, inter alia, that "a power of attorney executed in another state or jurisdiction in compliance with the law of that state or jurisdiction or the law of this state is valid in this state, regardless of whether the principal is a domiciliary of this state." Consequently, we conclude that the above two statutory provisions confer standing on petitioner to commence this special proceeding. Contrary to respondent's contention, General Obligations Law § 5-1501C (11) does not alter our conclusion.

Respondent's remaining contention is raised for the first time on appeal and thus is not properly before us (see *Ciesinski v Town of Aurora*, 202 AD2d 984, 985).

Entered: June 30, 2017

Frances E. Cafarell  
Clerk of the Court