

How to spot red flags at a surrogacy agency

By Stephanie Caballero, Esq.



Rudy Rupak, the founder of international surrogacy agency Planet Hollywood, crushed the dreams of parents-to-be who entrusted him as they embarked on their journey to having a baby. In August, U.S. District Court Judge Cynthia Bashant found Rupak guilty of defrauding clients, bribery, and interstate wire fraud and sentenced him to two years' imprisonment.

While Rupak waits for his hearing on the issue of restitution, this criminal case provides intended parents with a clear-cut example as to why they should do their due diligence when selecting a surrogacy agency.

WHAT EXACTLY DID RUPAK DO?

What did Rudy Rupak do? He stole money from his clients. He would tell intended parents that he had access to low-income surrogacy programs in countries such as India, Thailand, Mexico or Nepal and would request an initial lump sum payment. He'd later ask for more money, frustrating intended parents, but they would comply since they were already knee-deep in the surrogacy process.

Rupak would string intended parents along saying that a surrogate had been chosen for their journey, and that everything was moving along just fine.

But it wasn't.

When clients emailed Rupak for updates, he wouldn't respond to them. After several attempts, Rupak would emerge, apologizing for any delays. He would blame the clinics or doctors for any postponements or mishaps.

WHO WOULD FALL FOR SUCH A SCAM?

We can be quick to judge those who fall for a con artist's tricks. However, I can tell you that I knew some of the people who were robbed by Rudy. These were bright, educated, and professional people.

They just wanted a baby and that blinded them to Rudy's fraud.

FIRST THINGS FIRST

Once you've come to the decision that you want to have a surrogate carry your baby, there are some initial steps you can take to help ensure your surrogacy journey is as successful as possible.

The best place to start is by asking the right people for referrals and recommendations. For example:

- Talk to reputable attorneys specializing in assisted reproduction law
- Speak to your IVF physician
- Interview a few established and professional surrogacy agencies

Doing a Google search is also encouraged. However, note that if a surrogacy agency has been in business for a substantial period of time, there are probably going to be negative reviews. Read the reviews and try to decipher whether the complaints are outliers or if there seems to be some sort of systemic issue that many clients are experiencing. In the latter case, proceed with caution.

Also, check to see if the surrogacy agency responded to the complaint. Was the matter resolved? Was the agency's explanation sufficient?

It cannot be reiterated enough: before embarking on a surrogacy journey, you must do your research.

CONTRACTS, CONTRACTS, CONTRACTS

Contracts are more than just formalities. They are documents of utmost importance in protecting both the intended parents and surrogates. Be sure surrogacy agreements are thorough and comprehensive, addressing in depth issues such as a surrogate's responsibilities

and restrictions, her medical and psychological screenings, the financial responsibilities you are about to take on, and your right of parentage when the baby is born. Although intended parents may be well versed in the issues affecting surrogacy arrangements by the time they enter the contract stage, it is imperative that they, along with the surrogate, are represented by separate and independent legal counsel with experience in drafting and negotiating these contracts.

While the contract may seem daunting, it's important to remember that ideally a contract will address almost every conceivable situation that could arise during the surrogacy journey, including subjects like abortion and fetal reduction that may feel uncomfortable.

Ultimately, the contract between the intended parent and surrogate is the strongest safeguard in protecting everyone's rights.

OTHER POINTS TO REMEMBER

When clients tried reaching out to Rupak for updates, his communication was spotty. Intended parents want to look for an agency that is responsive and responds back to each of your queries in a reasonable amount of time.

Keep in mind that although Rupak claimed to offer a low-cost surrogacy program, he asked for a lot of money at different points in the process. He also promised the sky to his clients. If an agency is going to promise you results far beyond what others have, question them. There's a reason why and typically, it's not a good one.

Reputable, honest surrogacy agencies don't promise you a pregnancy on your first, second or third transfer. They don't promise you a perfect journey with the most amazing doctors and professionals involved. No one can promise you that and pregnancy and childbirth are never guaranteed.

Whenever third-party assisted reproduction is involved, you are dealing with complex scientific processes that need to be handled by experts to ultimately be rewarded with a baby. Success cannot be guaranteed, even with a repeat donor or surrogate. An agency should never make claims that a former surrogate or donor with successful cycles will have the same experience with future ones.



While reputable organizations may share the successes of former surrogates or egg donors, they won't make any promises.

WHEN THE WAITING GAME IS NOT A GAME

There have been cases where intended parents have supposedly been matched with a surrogate for a year, but there was no contact with the surrogate, the medical and psychological screenings hadn't occurred and the parents and surrogate hadn't met with their attorney. That's a problem and typically a sign that the agency you've selected is not one you should continue working with.

In Rupak's scheme, the hard truth of the matter is that the intended parents probably were never matched.

In cases where there are extreme time delays with little or no explanation, the agency may be stringing its clients along. It typically does not take a year for a surrogate to undergo an embryo transfer procedure. If there is a valid reason for a long wait from the time of matching until a pregnancy is attempted, the intended parents are informed every step of the way—and they've met with their surrogate and the contract has typically been drafted.

ESCROW ACCOUNT GATEKEEPER

Rupak was accused of combining client funds within his escrow accounts. Rupak should have never been hold-

ing client funds himself -- another red flag.

Rupak's business was a California corporation, and under California law, only attorneys and independent escrow holders can hold funds in surrogacy and egg donation arrangements.

By holding the money himself, rather than placing it in the control of a neutral third party, Rupak was easily able to manipulate the intended parents he deceived.

While Rupak would work with an egg donor agency in California, the embryos were typically sent to either India or Mexico. Intended parents who didn't speak the native language may have experienced a breakdown in communication. These future parents may have even expected spotty communication, assuming it was inherent in the process of pursuing a surrogacy arrangement abroad, masking the fact that the true reason for silence was that Rupak wasn't even paying the doctors.

Rupak touted flat-rate surrogacy programs whereby as the agent, he was supposed to directly pay all third parties involved in the process. But he wasn't cutting checks to anyone.

Another piece of advice is to never send all the money in full until you have a full understanding of how the funds will be handled—who will hold your payment, who will authorize payments, and how quickly the account will be reconciled at the end of your surrogacy journey. Intended Parents must have some level of involvement when it comes to finances, because lack of knowledge about the handling of money is at the core of what sub-par agencies like Rupak's might prey on.

Reputable, honest surrogacy agencies don't promise you a pregnancy on your first, second or third transfer.

LOOKING BACK, LOOKING AHEAD

While the Rupak case garnered substantial media attention, it's important to remember that at the end of the day, there are many more reputable agencies than there are dishonest ones. With that said, future parents still must do their due diligence.

Many will agree with me that Rupak's two-year sentence is inadequate. Whatever restitution he will have to pay, it's inevitable that some clients have not come forward with their stories of how he defrauded them and will not be included in calculating damages. Ultimately, Rupak will not fully pay for the heartaches he caused, as no level of reimbursement will fully console intended parents whose dream of having a child was so cruelly preyed upon.



About Stephanie Caballero, Esq.

Stephanie M. Caballero is the founder of the Surrogacy Law Center, PLC, headquartered in Carlsbad, California. Her firm has represented more than 3,000 clients, including intended parents, surrogates and egg donors from all over the world through surrogacy and egg, sperm, and embryo donation arrangements. Stephanie's expertise in family formation and reproductive law has made her a sought-after expert, and she has appeared on various programs and in print media including the Today Show, ABC News, Huff-Post, MarketWatch, The Daily Beast, Fox News, the Los Angeles Times, L.A. Daily Journal and more. Stephanie had her own eight year journey through infertility and finally realized her dream of having children when a surrogate carried her twins. www.Surrogacy-Lawyer.com

