



ERIC A. POEHLMANN
epochmann@drm.com
Direct: (802) 863-2375

June 16, 2009

VIA HAND DELIVERY

Ms. Diane A. Lavallee
Court Manager
Chittenden Superior Court
175 Main Street
P. O. Box 187
Burlington, VT 05402-0187

Re: Marjorie Hazelwood, et al v. Cindy Mugnier and Mike Goebig and the American Morgan Horse Association
Docket No. S1231-08 Cnc

Dear Ms. Lavallee:

Enclosed for filing in the above-referenced matter please find Plaintiffs' Amended and Supplemental Complaint. We will file Ms. Hazelwood's verification as soon as we receive it from her. A copy of this complaint has been served upon Attorney DiPalma.

Thank you for your assistance.

Sincerely,

Eric Poehlmann

Enclosure

cc: Robert S. DiPalma, Esq.

3112804 I

STATE OF VERMONT
COUNTY OF CHITTENDEN

CHITTENDEN SUPERIOR COURT
DOCKET NO. S1231-08 CnC

MARJORIE HAZELWOOD, LOUISE)
BOYD, SHERMAN BRONSON, THOMAS)
B. BRUCE, ANGELINA BRUMMETT,)
JESSICA CAMPMANS, ANNE)
CANAVAN, SUSAN U. CHRISTIANSEN,)
TOODIE CONNOR, CAROL COTTRILL,)
JUDITH SPURLING DEIST, CAROL)
DOMBROWSKY, LINDA DUFFY,)
LINDA FINK, CAROLYN FIRCH,)
BRYAN FOX, MEL FRANDBSEN,)
ROBERT FRIEDMAN, MARGARET)
GARDINER, JUDY GIANINO, CLAIRE)
GLENN, GARY GRAY, MARY)
HAZELWOOD, ANNE HOBBS,)
MARJORIE HODGE, RICHARD)
JORGENSEN, LESLIE KENNARD,)
DIANE M. KUBIS, WENDY LeGATE,)
JOHN LONGWELL, MICHAEL MARTIN,)
MICHELE McENTEE, VICKY McKANE,)
JAN NELSON, MARK OSBORNE,)
NATHAN PAINTER, SHERRY)
PATTILLO, GAIL PERLEE, CARL)
RAMSOUR, JULIA ROSE, ANNE C.)
SNYDER, SUZANNE STEWART, KEN)
THOMAS, JUDY VanTASSEL, JACK)
WARNER, DANIE C. WEAVER,)
CHARLES WEISER, BILL WILLIAMS,)
and DAVID WILLIAMS, derivatively on)
behalf of the AMERICAN MORGAN)
HORSE ASSOCIATION, and MARJORIE)
HAZELWOOD in her Individual Capacity)
as a Member of the Board of Directors,)
Plaintiffs,)

v.)

CINDY MUGNIER, President of the Board)
of the American Morgan Horse Association,)
MIKE GOEBIG, Past President of the Board)
of the American Morgan Horse Association,)
and the AMERICAN MORGAN HORSE)
ASSOCIATION,)
Defendants.)

AMENDED AND SUPPLEMENTAL VERIFIED COMPLAINT

Pursuant to this Court's Order of May 14, 2009, and Rule 15(d) of the Vermont Rules of Civil Procedure, Plaintiff Marjorie Hazelwood, derivatively on behalf of the Life General Members (hereinafter "the Life General Members") of the American Morgan Horse Association, by and through her attorneys Downs Rachlin Martin PLLC, files this Amended and Supplemental Complaint.

NATURE OF ACTION

The present lawsuit was originally brought on September 15, 2008, by Plaintiff Marjorie Hazelwood in her capacity as representative of more than 5% of the Life General Members of the American Morgan Horse Association ("AMHA"), a corporation organized and existing under the New York Not-for-Profit Corporation Law ("NPCL"). Ms. Hazelwood also brought this suit in her capacity at the time as a current Director of the AMHA, pursuant to the NPCL and the AMHA's own bylaws ("Bylaws"). This suit is occasioned by the AMHA's failure to abide by its own Bylaws, its refusal to allow Ms. Hazelwood unfettered access to the AMHA's books and records, its unlawful election practices, its continued refusal to allow members to exercise their rights under the Bylaws and the NPCL, and its continued mismanagement of the finances of organization.

Since the filing of the Amended Complaint, new occurrences, transactions and events have taken place of which Plaintiffs now complain.

PARTIES

The parties remain the same as alleged in the Amended Complaint.

COUNT VIII CONTINUED VIOLATIONS OF ELECTION LAWS AND BYLAWS

167. Plaintiffs hereby withdraw paragraph 52 of the Amended Complaint.

168. The Plaintiffs amend paragraph 131 to read “Upon information and belief, few if any “outside” directors have served on the Executive Committee.”

169. The Plaintiffs reassert and reallege against all Defendants the remaining allegations set forth in the Amended Complaint. In addition, they allege as follows:

A. The 2009 Election Must Be Invalidated

170. As previously alleged, at a meeting held on August 3, 2007, prior to the elections held on February 15, 2008 in Minneapolis, Section 2.14 of the Bylaws was amended to eliminate the members’ right to vote by proxy, in favor of absentee ballots.

171. NPCL § 609(a)(1) states that “[e]very member entitled to vote at a meeting of members . . . may authorize another person or persons to act for him by proxy.

172. NPCL § 613(a) provides that “directors shall be elected by a plurality of the votes cast at a meeting of members by the members entitled to vote in the election.” (emphasis added).

173. There are only two ways for a member to be present at a meeting: either by personal attendance or by sending someone as a proxy. By definition, a person casting an absentee ballot is absent, and not present, at the meeting.

174. This bylaw change is therefore contrary to New York Not-For-Profit law and should be invalidated.

175. In addition to the substantive flaws in the proposed change to Bylaw Section 2.14, the procedure used to purportedly adopt this change violated NPCL § 602(e) which provides: “If any by-law regulating an impending election of directors is adopted, amended or repealed by the board, there shall be set forth in the notice of the next meeting of the members for the election of directors the by-law so adopted, amended or repealed together with a concise statement of the changes made.”

176. Elections for Regions 6, 7 and 8 and for one Director-at-Large were noticed for February 20, 2009. As in 2008, the AMHA's Notice of Meeting sent to all voting members prior to that election made no mention of the amendment to Bylaw Section 2.14. The purported change to that Bylaw was therefore invalid. A copy of the Notice of meeting is attached as Exhibit P.

177. The February 20, 2009, election held in Sacramento, California was also invalid because there was not a quorum present at that meeting.

178. NPCL § 608(a) states: "Members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at a meeting of members for the transaction of any business."

179. An AMHA resolution, adopted on May 23, 1998, made *Robert's Rules of Order* applicable to the running of AMHA meetings.

180. The Directors Guide also states, "Meetings are conducted formally and follow Robert's Rules of Order. (See Exhibit C, page 7 of 75).

181. According to *Robert's Rules*, "a quorum in an assembly is the number of voting members who must be present in order that business can be legally transacted. The quorum refers to the number of such members *present*, not to the number actually voting on a particular question." *Robert's Rules of Order*, § 40 (10th ed. 2000) (emphasis in original).

182. Section 3.1 of the Bylaws states, "The record date for the Annual Meeting of members shall be December 31 of the year preceding the meeting ("Record Date"), and only those members in good standing on such record date shall be entitled to receive notice of the meeting and to vote thereat." (See Exhibit A).

183. Pursuant to Bylaw Section 4.2, AMHA membership is divided into 10 geographical regions, each of which is entitled to elect one director for each 6 percent of the total voting membership residing in that region as of the Record Date, provided however each region is entitled to elect a minimum of one director.

184. Bylaw Section 2.13 states that members holding the lesser of one hundred or one-tenth of the votes entitled to be cast shall constitute a quorum.

185. In accordance with AMHA's membership computation governing the 2009 annual meeting, the following minimum numbers of voting members were required to constitute a quorum in each of regions 6, 7, and 8.

186. Region 6 had a total membership of 496 (quorum = 50), Region 7 had a total membership of 995 (quorum = 100), and Region 8 had a total membership of 890 (quorum = 89).

187. Thus, in order to elect regional directors, a majority of the members of that region would have had to be present in order to have a quorum.

188. Upon information and belief, fewer than 300 members attended the annual meeting of members.

189. Any election for a region which did not have enough members in attendance to constitute a quorum was null and void.

190. By email dated January 31, 2008, AMHA member Jay Rappaport notified the AMHA of these problems. A copy of Mr. Rappaport's January 31, 2008 email is attached to the Amended Complaint as Exhibit L.

191. By email from Julie Broadway, Executive Director of the AMHA, received on February 2, 2008, the AMHA rejected his objections to improper notice and stated that the

meeting would be held as scheduled. A copy of Ms. Broadway's February 2, 2008 response is attached to the Amended Complaint as Exhibit M.

192. By letter emailed to Ms. Broadway and to each board member on July 25, 2008, Ms. Hazelwood also objected to these invalid elections. A copy of Ms. Hazelwood's letter is attached to the Amended Complaint as Exhibit N.

193. Despite these numerous objections, the AMHA and its leadership refused to correct its flawed election practices. As a result, the February 20, 2009 election results must be invalidated.

B. The AMHA Must Correct Its Flawed Election Practices

194. NPCL § 611(e) states, "In any case in which a member is entitled to vote, he shall have no more than, nor less than, one vote."

195. As set forth in paragraph 6 herein, AMHA Bylaw Section 2.1 sets forth six classes of members, including "Entity Members." AMHA Bylaw Section 2.4(f) grants Entity Members one vote, to be cast by a "voting representative."

196. AMHA practice is to permit a person who is an Entity Member's voting representative to also hold an individual membership and to vote in both capacities in an election.

197. Thus, the AMHA permits an individual to vote more than once in violation of § 611(e) under the guise of voting in two capacities, as an individual and a corporate member.

198. An election evaluation of the 2005 Board of Directors election, performed by Gallagher, Flynn & Company at the request of then-Board member Robert Painter, showed that several individuals were able to vote more than once because of this AMHA practice to permit a person who is an Entity Member's voting representative to also vote as an eligible individual

member. Having been informed of this violation of § 611(e), Defendants did nothing to come into compliance.

199. A subsequent election evaluation of the 2007 Board of Directors election, also performed by Gallagher Flynn & Company, once again showed that several individuals cast ballots both as individual members and as voting representatives of Entity Members.

200. Having once again been informed of this violation of § 611(e), Defendants have still done nothing to come into compliance.

201. In addition to its practice of allowing multiple votes from one individual, the AMHA's elections are fraught with other substantive and procedural flaws. For example, recent elections have seen votes by dead members, improper campaigning on official-looking letterhead, confusing proxy procedures, (in at least one instance) the unexplained loss of hundreds of ballots and permitting blank ballots to be printed and distributed by individual members.

202. Upon information and belief, certain "inside" directors have repeatedly failed to correct the AMHA's flawed election procedures in order to perpetuate the status quo and maintain their control of the corporation in violation of New York law.

WHEREFORE, Plaintiffs, Life General Members and Marjorie Hazelwood requests that the Court, in addition to the relief requested in the Amended Complaint, provide the following relief:

K. An Order invalidating the 2009 AMHA Board election for violating NPCL §§ 602(e), 609(a)(1), and 613(a) and the AMHA Bylaws.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Burlington, Vermont
June 16, 2009

DOWNS RACHLIN MARTIN, PLLC

By: Eric Poehlmann *CBA*

Eric A. Poehlmann
199 Main Street
P.O. Box 190
Burlington, VT 05402-0190
Telephone: 802-863-2375
Fax: 802-862-7512

ATTORNEYS FOR PLAINTIFFS LIFE
GENERAL MEMBERS AND MARJORIE
HAZELWOOD

VERIFICATION

I, Marjorie Hazelwood, Plaintiff in the above-captioned action, hereby state on my oath that the factual allegations set forth in the foregoing Verified Complaint are true based upon my own personal knowledge, except as to those matters stated upon information and belief, which I believe to be true.

Dated at _____, _____ this _____ day of June, 2009

Marjorie Hazelwood

Sworn and subscribed to before me
this _____ day of June, 2009

Notary Public
My Commission Expires On:

2988844 1