

STATE OF VERMONT
CHITTENDEN COUNTY, SS:

MARJORIE HAZELWOOD, LOUISE)
BOYD, SHERMAN BRONSON, THOMAS)
B. BRUCE, ANGELINA BRUMMETT,)
JESSICA CAMPMANS, ANNE CANAVAN,) CHITTENDEN SUPERIOR COURT
SUSAN U. CHRISTIANSEN, TOODIE)
CONNOR, CAROL COTTRILL, JUDITH)
SPURLING DEIST, CAROL DOMBROWSKY,)
LINDA DUFFY, LINDA FINK, CAROLYN) DOCKET NO. S1231-08 CnC
FIRCH, BRYAN FOX, MEL FRANDSEN,)
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, and)
MIKE GOEBIG, Past President of the Board of)
The American Morgan Horse Association, and the)
AMERICAN MORGAN HORSE ASSOCIATION)
Defendants.)

STATEMENT OF UNDISPUTED MATERIAL FACTS

The defendants, by and through their attorneys Paul Frank + Collins P.C., hereby submit this
Statement of Undisputed Material Facts in connection with their Motion for Summary Judgment:

I. Facts Related to Count I

1. Plaintiff Marjorie Hazelwood, at a time when she was a director of the defendant American Morgan Horse Association (AMHA), requested documents and information in a letter dated January 31, 2008. Plaintiffs' Complaint, ¶ 19 and Exhibit E thereto.

2. Ms. Hazelwood was defeated in her bid for re-election as a Director at the February 20, 2009 annual meeting of the Association. Her service as a Director terminated on February 20, 2009 and she no longer serves as a Director of the Association. Affidavit of Julie Broadway ("Broadway Affidavit"), ¶ 2.

3. Mr. Goebig, at the time the President of the Board of Directors, responded to Ms. Hazelwood's January 31, 2008 letter by letter dated February 4, 2008. This letter reaffirmed that Ms. Hazelwood, as a Director, had the right to review documents of the Association to perform her duties as Director. The letter documented that Ms. Hazelwood had previously been provided, as a part of ongoing and regular Board functions, most of the information she requested in her January 31 letter. To the extent a document had not been previously provided, it was so provided or made available for her review. The only limitation placed on her review was a requirement that a confidentiality agreement be signed to ensure that sensitive information be treated as such. Plaintiffs' Complaint, Exhibit F.

4. Cindy Mugnier succeeded Mr. Goebig as Board President on February 17, 2008. Broadway Affidavit, ¶ 3. Shortly after assuming that position, Ms. Mugnier also wrote to Ms. Hazelwood. Plaintiffs' Complaint, Exhibit I. That letter also affirmed that "each director must be personally satisfied that he/she has the information needed to function as a director." The letter suggested a meeting in conjunction with the May 2008 Board meeting to review and discuss the documents Ms. Hazelwood had requested. *Id.*

5. Julie Broadway, the Executive Director of AMHA, also wrote to Ms. Hazelwood in response to a March 13, 2008 letter from Ms. Hazelwood. Ms. Broadway's letter made provision for the production of the limited number of documents not previously provided or made available for review, but also explained the importance of the confidential treatment of the information sought to be reviewed. Broadway Affidavit, ¶ 4 and Exhibit 1 thereto.

6. Ms. Broadway and Ms. Hazelwood met on July 31, 2008 and discussed the document requests. Broadway Affidavit, ¶ 5. Ms. Broadway confirmed the conversation in an August 4, 2008 email to Ms. Hazelwood. Id., Exhibit 2. In the email, Ms. Broadway stated, "As I shared, it has always been my sincere wish to provide you with as much of the information you requested as I possibly can. Many of the items outlined in your requests are and have been available to you on the board extranet, have been provided to you at board meetings or have been discussed during working budget sessions."

7. The August 4 email provided a matrix showing the status of the documents requested by Ms. Hazelwood. The matrix shows that all documents were either previously provided, or available for Ms. Hazelwood's review. Id.

8. Ms. Hazelwood has confirmed that nowhere in Mr. Goebig's February 4, 2008 letter is there a refusal to provide any documents to her. In her deposition Ms. Hazelwood gave this testimony:

A. Nowhere in this letter does he say I refuse to provide you information. Is that the answer you're looking for here?

Q. I'm not looking for any answer; I'm just looking for your testimony, okay?

A. You just got it.

Marjorie Hazelwood May 21, 2009 deposition (“Hazelwood Deposition”), p. 44 line 22—p. 45, line 2 (the various excerpts from Ms. Hazelwood’s deposition are combined and attached hereto as the Deposition Appendix).

9. In the course of a long colloquy concerning what information was provided to her, Ms. Hazelwood averred generally that no one on behalf of the Association has refused to provide information to her:

A. As I’ve told you repeatedly, no one has used the word refused in any of this.

Q. Or any word like it?

A. No.

Hazelwood Deposition, p. 57, line 23—p. 58, line 1.

10. The Association provides to its Board members a plethora of information in connection with Board activities. Board of Directors meeting agendas and backup information have been provided in hardcopy or, more recently, posted to an extranet to which all Board members have access. Board members are expected to review (and now download) the posted information for use at Board meetings. Attached as Exhibit 3 to the Broadway Affidavit is a copy of the Board agenda and supporting documents posted to the extranet for the August 28, 2008 meeting of the Board of Directors. Each Board member is provided with extensive financial and other information they are expected to review in connection with Board meetings. Broadway Affidavit, ¶ 6.

11. The Association website (www.morganhorse.com) also contains voluminous information, some of it available to the public, and some available to members only. The website contains four to five years’ worth of Board and Committee meeting minutes; the last four years’ audited financial statements of the Association; copies of recent informational returns (Form 990) the Association files with the IRS; recent copies of “The Network”, the Association’s bi-monthly magazine (which is also provided in hard copy to members); copies of the current and recent

strategic plans of the Association; information about upcoming elections; and copies of the Board's Standard Operating Procedures. This list is representative only, and does not reference every resource available to members on the website. Broadway Affidavit, ¶ 7.

II Facts Relating to Count II

12. The Association has approximately 9,000 members located throughout the United States. Annual meetings (where elections are conducted) are held in various places around the country (examples: 2009 in Sacramento; 2008 in Minneapolis; 2007 in Atlanta) to accommodate members from the different regions of the country. However, generally no more than 200-250 members physically attend the meetings in any one year. Broadway Affidavit, ¶ 8.

13. Prior to the February, 2008 annual meeting and election, the Association conducted elections through a proxy ballot process (of course, members who attended the meetings were entitled to vote in person). That is, members were provided ballots that permitted them to identify a proxy holder who would either carry their ballot to the annual meeting or would present the ballot at the meeting. In some cases, the member would grant to the proxy holder the discretion to vote the ballot as the proxy holder desired. Broadway Affidavit, ¶ 9.

14. Because of dissatisfaction with this process expressed by many members, the Board of Directors adopted a direct ballot process at the August 4, 2007 Board meeting. In this process, each member entitled to vote is mailed a ballot with instructions to fill out the ballot with their choices and return the ballot directly to a certified public accounting firm for tabulation. The CPA firm is selected each year by the Board, and has been a firm that does not provide other auditing or financial services to the Association—it is truly an independent organization with no stake in the Association. The process is set up so that no Board member or Association employee has access to the ballot between the time it is filled out and the time it is delivered to the tabulator for counting. Broadway Affidavit, ¶ 10.

15. The AMHA Board consists of at least one regional director in each region, as well as three directors-at-large (DAL). Directors serve on staggered three-year terms. As a result, there is one DAL position up for election each year. However, for a particular region, a regional director may not end in any one year, and therefore no election is conducted for a regional directorship in that region. In 2008, elections for regional directorships were conducted only in Regions 3, 4, 5, and 10. For those four regions, two different vote totals are shown below. In the 2008 election, the number of votes cast, represented by members present in person or by ballot delivered in advance, and the number of votes entitled to be cast, for each region, was as follows:

REGION	VOTES CAST	VOTES ENTITLED TO BE CAST	QUORUM REQUIREMENT
Region 1	212 DAL	1,354	
Region 2	164 DAL	1,131	
Region 3	650 regional director 325 DAL	1,167	100
Region 4	86 regional director 86 DAL	565	57
Region 5	294 regional director 147 DAL	1,016	100
Region 6	60 DAL	496	
Region 7	122 DAL	995	
Region 8	78 DAL	890	
Region 9	59 DAL	505	
Region 10	87 regional director 87 DAL	484	49

The total votes entitled to be cast were 8,603. Therefore, the quorum for the DAL was 100 (the lesser of 1/10th of 8,603 or 100). The total votes cast for DAL was 1,340, thus meeting the quorum requirement. The quorum requirement for the regional directors is shown in the chart, and was met in all regions. Of the 1,340 votes cast for the DAL only 12 were cast in person. The other 1,328 ballots were cast in advance. Broadway Affidavit, ¶ 11.

16. The Association publishes, approximately six times per year, The Network. This magazine provides news of the organization to the membership. It is mailed to each member, and is also posted to the Association website. Broadway Affidavit, ¶ 12.

17. The July/August 2007 edition of The Network, on page 1, contained a description of the proposed bylaw changes, and the reasons for those changes. The September/October 2007 edition contained a section on the bylaw changes that had been adopted by the Board of Directors at the August 4, 2007 Board meeting. The November/December 2007 edition of The Network contained a notice of the February 15, 2008 meeting. All of these editions were delivered to members well in advance of the February 15, 2008 annual meeting. Broadway Affidavit, ¶ 13. Copies of the referenced editions are attached to the Broadway Affidavit as Exhibit 4.

III. Facts Relating to Count V

18. Over the years that Tony Lee assisted the Association by selling advertisements for the AMHA publication *Morgan Horse*, he earned commissions that totaled approximately \$40,001.95. The revenues that he generated for the Association by virtue of those advertisement sales totaled \$569,336.67. Broadway Affidavit, ¶ 14.

19. Since at least 2005, and continuing through 2007, the audited financial statements of the Association have contained a note disclosing related party transactions. That note included a

statement that a Board member had received payments for advertising sales and consulting services.

Broadway Affidavit, ¶ 15.

IV. Facts Relating to Count VIII

20. In the 2009 election, regional director elections were conducted only in regions 6, 7, and 8. In that election, the number of votes cast, represented by members present in person or by ballot delivered in advance, and the number of votes entitled to be cast, for each region, was as follows:

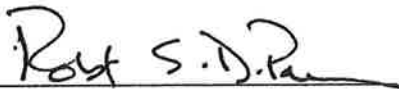
REGION	VOTES CAST	VOTES ENTITLED TO BE CAST	QUORUM REQUIREMENT
Region 1	168 DAL	1256	
Region 2	124 DAL	1041	
Region 3	114 DAL	1148	
Region 4	47 DAL	555	
Region 5	95 DAL	888	
Region 6	81 regional director 81 DAL	454	45
Region 7	210 regional director 210 DAL	905	100
Region 8	97 regional director 97 DAL	811	81
Region 9	58 DAL	455	
Region 10	49 DAL	470	

The total votes entitled to be cast were 7,983. Therefore, the quorum for the DAL was 100 (the lesser of 1/10th of 7,983 or 100). The total votes cast for DAL was 1,043, thus meeting the quorum requirement. The quorum requirement for the regional directors is shown in the chart, and was met in all regions. Of the 1,043 votes cast for the DAL only 14 were cast in person. The other 1,029 ballots were cast in advance. Broadway Affidavit, ¶ 16.

DATED at Burlington, Vermont this 26th day of October, 2009.

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

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