

To: AMHA Members and former Members

From: Marjorie Hazelwood

Re: Derivative Action Update

Date: May 19, 2009

Good news! The Court denied Defendants' Motion to Dismiss the derivative action. A copy of the May 15, 2009 Decision and Order of the Superior Court, Chittenden County, is posted on this website. Please take a look.

The Court also ordered that the AMHA be added to the lawsuit as a party defendant. Although we had asked that the AMHA be added as a plaintiff, this would have required the Board's consent, which they did not give. We have known for a long time that the AMHA board does not agree with us on many points, so I was not surprised. Rest assured that adding the AMHA as a defendant in no way changes our firm belief that the lawsuit is in the best interests of the AMHA and its members. Nor does it change the fact that it is brought *on behalf of* the AMHA, which it most certainly is. The important thing is that the derivative action will go forward.

The Court did dismiss one of the seven counts (Count III) of the Complaint, leaving all the other six intact. Count III asked the court to remove those directors who we contend were not properly elected. Defendants argued that New York law requires 10% of the entire membership to remove directors, not just 5% of the members of one class. The Court agreed with that argument; however, the Decision also points out that dismissing Count III does not leave us without recourse since we have also alleged that the elections were conducted in violation of the Bylaws and that the Bylaws were improperly amended.

Discovery is proceeding. Ten of the plaintiffs were deposed by telephone on March 6th and 10th. I am scheduled for a face-to-face deposition in Burlington on May 21st. We have not yet deposed any of the defendants but we intend to exercise our right to do so.

On November 14, 2008, we served interrogatories and requested certain documents we are entitled to as plaintiffs. Responses were due on December 15th. Defendants answered some, but not all, the interrogatories on February 5, 2009 (nearly two months late) and did not produce any documents until March 24th (over three months late). Of the 32 separate requests for documents, no documents were produced in response to 16 of the requests and other responses were incomplete.

I am well acquainted with the AMHA board's delays in providing information so this

foot-dragging also does not surprise me. The difference is, this time I am not standing alone—I have 48 like-minded Life Members with the courage and tenacity to stand with me—and we have the Court to enforce our discovery requests. Unfortunately, further court intervention may be required before the documents we requested will be produced, but they cannot hide them forever. I will keep you posted as things continue to develop.