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July 30, 2009

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' Motion to Compel Discovery. Thank you for your assistance.

Sincerely,

Eric Poehlmann

Enclosure

cc: Robert S. DiPalma, Esq.

3159632.1

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

CHITTENDEN SUPERIOR COURT
DOCKET NO. S1231-08 Cnc

MARJORIE HAZEL WOOD, 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,)
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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,)
Defendants.)

PLAINTIFFS' MOTION TO COMPEL DISCOVERY

COME NOW the Plaintiffs, pursuant to Rule 37(a) of the Vermont Rules of Civil Procedure, and move this Court to compel Defendants to respond to Plaintiffs' Requests to Produce Nos. 21, 23, 26, 29, and 30. In support of this motion, Plaintiffs state as follows:

Introduction

In this derivative action on behalf of the American Morgan Horse Association ("AMHA"), Plaintiffs seek to correct election irregularities, conflicts of interest, breaches of the duty of loyalty and violations of the New York Not-for-Profit Corporations law. Of particular significance to this Motion, Plaintiffs allege that certain members of the board have been singled out for special and more favorable treatment, while other board members have been marginalized, deprived of information necessary to properly fulfill their positions as board members, and eventually forced off the board.

Although Defendants have produced responses to other discovery requests, Defendants refuse to produce documents responsive to Requests Nos. 21, 23, 26, 29, and 30 unless the Plaintiffs sign a confidentiality agreement. Plaintiffs contend that such an agreement is unnecessary and will unreasonably limit their ability to analyze any documents produced. Moreover, one of the fundamental purposes of the present action is to increase the transparency of the organization and to eliminate the needless, and unlawful, cloak-and-dagger secrecy within which the organization's leadership shrouds itself. Defendants have not produced any log specifically identifying which of the documents requested are allegedly confidential, nor have they provided any justification as to why all of the documents requested by the five discovery requests should be kept confidential. Plaintiffs have therefore been forced to file this motion to compel.

Standard of Review

Discovery orders are within the Court's discretion. See, State v. Wesco, 2006 VT 93 ¶ 10, 180 Vt. 345; White Current Corp. v. Vermont Electric Coop., 158 Vt. 216, 222-23, 609 A.2d 222 (1992).

Argument

On November 14, 2008, Plaintiffs served their First Set of Interrogatories and Requests to Produce on Defendants Cindy Mugnier and Mike Goebig. Responses were due within 30 days. V.R.C.P. 34(b). In January of 2009, Defendants' attorney contacted Plaintiffs' attorney to seek an extension of time to respond, citing the allegedly expansive nature of the requests for production. Counsel discussed the request in the context of Defendants' demand for telephonic depositions of each of the Plaintiffs to determine whether they are, in fact, members of the AMHA. The parties never reached agreement on either issue. On January 22, 2009, undersigned counsel sent an e-mail to Defendants' counsel inquiring into the status of Defendants' overdue responses to written discovery. Undersigned counsel again wrote to Defendants' counsel inquiring into Defendants' outstanding discovery responses on February 3, 2009. On February 5, 2009, Plaintiffs received Defendants' unsigned responses to Interrogatories, but no responses to the long-outstanding requests to produce.

On March 24, 2009, more than three months after they were due, Defendants produced partial responses to Plaintiffs' requests to produce. In the time since receiving Defendants' document production, counsel have worked cooperatively in an effort to narrow the disputes over Defendants' production. These efforts have been largely successful, and it appears that the only remaining issue relates to Defendants' refusal to produce certain, seemingly unprivileged documents based on a vague claim of "confidentiality." Defendants have not further identified

how or why these documents are confidential, and have stated that they will only produce the “confidential” documents to Plaintiffs if Plaintiffs sign a confidentiality agreement. Defendants’ proposed confidentiality agreement is so restrictive in its terms as to essentially prohibit Defendants from using any documents subject to the agreement. What makes the Defendants’ demands all the more problematic is the fact that the information they seek to shield is information that relates to the operation and management of the AMHA, a not-for-profit corporation, and is supposed to be freely accessible to all members. Plaintiffs should not need to engage in legal discovery to obtain these documents, much less be forced to agree to draconian restrictions in an ongoing legal action before discovery is provided. Absent specific identification of the documents to be protected, and justification as to the purpose of such an agreement, Plaintiffs have been unwilling to enter into such an agreement. Indeed, this agreement exemplifies the sort of inappropriate secrecy that is a fundamental target of this derivative action.

Plaintiffs and Defendants have negotiated in good faith in an attempt to resolve these issues. (Poehlmann Affidavit attached as Exhibit 1). While the parties have resolved numerous other discovery issues, the confidentiality agreement remains in dispute. Because Plaintiffs have no ability to meaningfully review its necessity, court intervention appears necessary.

The information requested in Plaintiffs’ Requests to Produce 21, 23, and 26 aims particularly at addressing whether the AMHA Board was informed of certain conflicts of interest under which certain board members were operating. The information requested in Requests 29 and 30 aims at compelling information which Plaintiffs in this derivative action are entitled to so that they may evaluate whether the Board has grossly mismanaged the funds of the AMHA to the detriment of the organization.

Pursuant to Rule 26(h), Plaintiffs have reproduced verbatim, each request to produce for which a response is sought together with an explanation as to why it should be allowed. V.R.C.P. 26(h).

21. Please produce records and correspondence related to all transactions between Tony Lee and the AMHA or *The Morgan Horse* concerning consulting and advertising sales.

This request addresses the allegation that certain directors have or have had undisclosed conflicts of interest including receiving benefits from the organization for which they have not paid. Documents should be produced so that Plaintiffs can determine whether in fact such conflicts existed and were undisclosed.

23. Please produce records and correspondence related to all transactions between Defendant Mugnier and the AMHA for providing judging services, and in particular any itemization of “lost income” on Ms. Mugnier’s behalf.

This request addresses the allegation that certain directors have been inappropriately compensated by AMHA. It should be allowed so that Plaintiffs can determine whether such compensation was paid, and whether or not it was proper.

26. Please produce any documents indicating that Mr. Sebring sought and, the Board of Directors approved any payments to Mr. Sebring.

This request addresses the allegation that certain directors have been inappropriately compensated by AMHA. It should be allowed so that plaintiffs can determine whether such compensation was paid, and whether or not it was proper.

29. To the extent not already produced, please produce all documents reflecting revenue to the AMHA or a related organization during the last three (3) years.

This request relates to the allegations of breach of the directors' duty of care and fiduciary duties to the AMHA. In addition, this is information that was requested by Ms. Hazelwood while she was on the board and which she never received. Absent more specific descriptions as to why this information is confidential, it should be produced.

30. To the extent not already produced, please produce all documents reflecting expenditures made by, or on behalf of, the AMHA or a related organization during the last three (3) years.


This request relates to the allegations of breach of the directors' duty of care and fiduciary duties to the AMHA. In addition, this is information that was requested by Ms. Hazelwood while she was on the board and which she never received. Absent more specific descriptions as to why this information is confidential, it should be produced.

Defendants have never coherently articulated the need for a confidentiality order to protect the material requested by these requests. In addition, the order proposed by Defendants is so limiting that it would drastically inhibit Plaintiffs ability to usefully analyze any material produced under it.

WHEREFORE, Plaintiffs respectfully request that this Court issue an order compelling Defendants to produce complete responses to Requests to Produce numbered 21, 23, 26, 29, and 30, within 10 days of the Court's order.

Burlington, Vermont
July 30, 2009

DOWNS RACHLIN MARTIN PLLC

By 
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ATTORNEYS FOR PLAINTIFFS
MARJORIE HAZELWOOD ET AL.

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In her Individual Capacity as a Member of the)
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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,)
Defendants.)

**AFFIDAVIT OF ERIC A. POEHLMANN IN SUPPORT OF PLAINTIFFS' MOTION TO
COMPEL DISCOVERY**

1. My name is Eric A. Poehlmann and I am over the age of 18 years of age. I make this affidavit upon personal knowledge.
2. I am lead counsel for the Plaintiffs in this matter.
3. On November 14, 2008, I served Plaintiffs' First Set of Interrogatories and Requests to Produce to Defendants Cindy Mugnier and Plaintiffs' First Set of Interrogatories and Requests to Produce to Defendant Mike Goebig, upon the Defendants, by first class mail, postage prepaid, to Robert S. DiPalma, Esq., Paul Frank + Collins P.C.
4. Responses were due within 30 days. V.R.C.P. 34(b).
5. In February of 2009, Plaintiffs received Defendants' unsigned responses to Interrogatories, but no responses to the long-outstanding requests to produce.
6. On March 24, 2009, more than three months after they were due, Defendants produced documents in response to Plaintiffs' requests to produce.
7. Notably, Defendants refused to produce documents in response to certain requests. Defendants justification for withholding these documents was based on a claim of confidentiality and a continued request for a "confidentiality agreement."
8. In February 2009, Attorney DiPalma forwarded to me via e-mail a draft stipulated confidentiality order.
9. I reviewed the draft order and discussed it with my clients.
10. After careful review, I determined that the proposed confidentiality order was not acceptable in this case.
11. I relayed this information to Attorney DiPalma in an e-mail on February 27, 2009.
12. In addition, Mr. DiPalma and I have spoken over the telephone on a number of occasions regarding discovery requests in general and the confidentiality order in particular.

13. We have come to agreements on many other discovery issues.
14. Despite numerous good faith efforts, we have not been able to resolve this issue.
15. Further, the affiant saith not.

Burlington, Vermont
July 30, 2009

DOWNS RACHLIN MARTIN PLLC

By



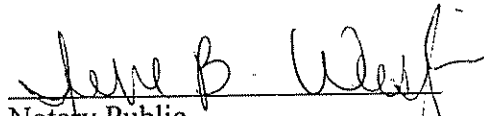
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At Burlington, Vermont, this ^{30th} day of July, 2009 Eric A. Poehlmann, personally appeared, gave oath to the truth of the foregoing, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed.

Before me



Notary Public

Commission Expires: 2-10-11

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