

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-09-

(Injunctive Relief Requested)

3. Defendant Kathryn R. Levesque is the Executive Director, Clerk/Registered Agent and a current or former member of the board of directors of Freedom Reins Inc., formerly known as Flying Changes Center for Therapeutic

Riding ("Flying Changes"), a Maine charitable nonprofit ("public benefit") corporation. Her address is 273 Marsh Road, Sabattus, Maine 04280.

4. Defendant Flying Changes is a Maine public benefit corporation with its principal office at 334 Augusta Road, Topsham, Maine 04086.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 4 M.R.S. § 105, 5 M.R.S. § 194-K(1), and 13-B M.R.S. §§ 1105

STATUTORY BACKGROUND

6. Pursuant to 13-B M.R.S. § 715 nonprofit corporations shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, board of directors and committees.

7. Pursuant to 13-B M.R.S. §§ 717(1) and 720(1), directors and officers of a public benefit corporation shall discharge their duties:

- A. In good faith;
- B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- C. In a manner the director or officer reasonably believes to be in the best interests of the corporation.

8. Pursuant to 13-B M.R.S. § 721(1):

The funds or assets of a public benefit corporation may not be transferred or applied and a director or officer of a public benefit corporation may not authorize the transfer or application of funds or assets of the public benefit corporation if:

- A. The transfer constitutes a conflict-of-interest transaction that is neither fair nor properly approved as determined under section 718;
- B. The transfer misapplies the funds or assets in violation of statute . . . ;

- C. The transfer is to a director or officer of the public benefit corporation or to another person in a position to exercise substantial influence over the affairs of the corporation and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return . . .

9. Pursuant to 5 M.R.S. § 194-K(1)(C), the Attorney General may initiate an action in Superior Court to “[o]btain on behalf of the public charity the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Title 13-B standards.”

10. Pursuant to 5 M.R.S. § 194-K(3), the Attorney General may initiate an action to seek a civil penalty against “an individual officer, director, trustee or manager in a position to exercise substantial influence over the affairs of a public charity . . . if that person:

- A. Receives property or consideration from the public charity that constitutes private inurement; or
- B. Receives excess benefits that exceed the fair market value of anything provided in return.”

11. Pursuant to 5 M.R.S. § 194-J(2), “[t]he penalties and remedies provided in section 194-K are in addition to and are not a replacement for any other civil or criminal action the Attorney General may take under common law or statute, including an action . . . to obtain injunctive relief or a combination of injunctive relief and other remedies available under common law or statute.”

12. Pursuant to 13-B M.R.S. § 1105 (2-A), the Attorney General may bring an action to dissolve a public benefit corporation if it is established that:

- A. The corporation obtained its articles of incorporation through fraud;
- B. The corporation has exceeded or abused the authority conferred upon it by law;

C. The assets of the corporation are being misapplied or wasted;
or

D. The corporation is no longer able to carry out its purposes.

13. Section 1106 of Title 13-B sets forth the procedure for liquidation of a public benefit corporation by the court and authorizes the court to issue injunctions as necessary and to appoint a liquidating receiver.

FACTS

14. Flying Changes was incorporated as a Maine nonprofit corporation in 1992. Its charitable mission is to affiliate with the North American Riding for the Handicapped Association and to provide developmentally challenged individuals with educational, recreational and therapeutic services through an alliance of people and horses.

15. According to the 2008 Annual Report of the corporation, as of July 31, 2008, the officers and directors of Flying Changes were Suzanne Pratt, Brian Perkins, Jeanne Rice, Kathryn Levesque, Mary Molello and Dwaine Waltrip. The 2008 Annual Report is attached hereto as Exhibit A.

16. Defendant Kathryn R. Levesque was hired as the Executive Director of Flying Changes in December 2007.

17. Kathryn R. Levesque has had custody and control over Flying Changes' corporate accounts since she began as Executive Director.

18. Since Kathryn R. Levesque took over as Executive Director, she has expended more than \$206,000 collectively from corporate securities and investment accounts, the corporate savings and checking accounts, and a corporate certificate of deposit. Presently, these accounts collectively contain less than \$200.

19. Among the funds expended from corporate accounts during the period Kathryn R. Levesque has been Executive Director were restricted funds earmarked for specific charitable purposes, such as scholarships for lessons, which have not been properly unaccounted for.

20. In August of 2008 Kathryn R. Levesque opened on behalf of the corporation a \$20,000 line of credit which was fully tapped by October 2008.

21. Beginning in 2008, Kathryn R. Levesque made numerous cash withdrawals from corporate accounts, including numerous ATM transactions, and has failed to properly account for those withdrawals.

22. Beginning in 2008, Kathryn R. Levesque made numerous payments from a Flying Changes' corporate checking account as salary to herself and to other employees without proper authorization.

23. Beginning in 2008, Kathryn R. Levesque failed to withhold and remit required payroll taxes as to numerous payments from a Flying Changes' corporate checking account as salary to herself and to other employees.

24. In October of 2008, Flying Changes ceased its operations and closed its doors.

25. Flying Changes presently owes over \$43,000 to various creditors such as the Internal Revenue Service, the State of Maine, utilities providers and insurance companies.

26. On March 11, 2009, the Board changed the name of the nonprofit from Flying Changes Center for Therapeutic Riding to Freedom Reins Inc. See attached Exhibit B.

27. According to correspondence from Jean Rice in March 2009, the officers and directors of Flying Changes at that point in time were Jean Rice, Monica McNeil and Dwaine Waltrip. See attached Exhibit C.

28. On or about June 2, 2009, Kathryn R. Levesque informed the Attorney General's office of her intent to liquidate the remaining assets of Flying Changes, consisting primarily of real estate located in Topsham, Maine.

29. The land and buildings located in Topsham, Maine are currently listed for sale with a realtor.

30. Beginning at some time in 2009 and continuing through June 2009 Flying Changes had an active website soliciting donations, including restricted scholarship donations, which donations were made to a noncorporate, personal PayPal account in the name of Kathryn R. Levesque. Kathryn R. Levesque has failed to properly account for any donations made through the website.

COUNT I

(Violation of fiduciary duty)

31. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

32. From the time she became Executive Director of Flying Changes to the present, Kathryn R. Levesque withdrew substantially all of the contents of the corporate accounts. Kathryn R. Levesque was a director of the corporation for some or all of that time period.

33. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT II

(Violation of fiduciary duty)

34. From the time she became Executive Director of Flying Changes to the present, Kathryn R. Levesque failed to provide receipts or otherwise properly account for numerous cash withdrawals she made from Flying Changes' corporate checking account. Kathryn R. Levesque was a director of the corporation for some or all of that time period.

35. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT III

(Violation of fiduciary duty)

36. From the time she became Executive Director of Flying Changes to the present, Kathryn R. Levesque failed to pay the debts of Flying Changes, allowing it to fall behind on its payments. Kathryn R. Levesque was a director of the corporation for some or all of that time period.

37. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT IV

(Violation of fiduciary duty)

38. From the time she became Executive Director of Flying Changes to the present, Kathryn R. Levesque failed to withhold and remit payroll taxes to the Internal Revenue Service and to the State of Maine for compensation she paid to employees of Flying Changes. Kathryn R. Levesque was a director of the corporation for some or all of that time period.

39. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT V

(Violation of fiduciary duty)

40. Kathryn R. Levesque has failed to account for the expenditure of restricted funds. Kathryn R. Levesque was a director of the corporation for some or all of the time period during which restricted funds were expended.

41. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT VI

(Violation of fiduciary duty)

42. Kathryn R. Levesque has failed to account for donations made to the corporation through Flying Changes' website. Kathryn R. Levesque was a director of the corporation for some or all of the time period during which donations were made through Flying Changes' website.

43. Kathryn R. Levesque's conduct as described in this count violates 13-B M.R.S. § 717(1).

COUNT VII

(Excess benefit and private inurement to person with substantial influence)

44. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

45. Kathryn R. Levesque as a board member and in her capacity as executive director of Flying Changes is and has been in a position to exercise substantial influence over the affairs of Flying Changes.

46. Kathryn R. Levesque's payments to herself and cash withdrawals from Flying Changes accounts without proper authorization or accounting constitute private inurement or excess benefits to an officer and director of a public benefit corporation, in violation of 13-B M.R.S. § 721(1)(C) and 5 M.R.S. § 194-K.

COUNT VIII

(Dissolution of Public Benefit Corporation)

47. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

48. Beginning in 2007 and continuing to the present, members of the Board of Directors of Flying Changes including, but not limited to, Suzanne Pratt, Brian Perkins, Jean Rice, Kathryn Levesque, Mary Molello, Monica McNeil and Dwaine Waltrip have been unable or unwilling to fulfill their fiduciary obligations to Flying Changes. They have failed to take necessary actions to protect Flying Changes assets or further its mission since at least 2008.

49. Flying Changes is no longer able to carry out its corporate mission.

50. Dissolution of Flying Changes is appropriate under 13-B M.R.S. § 1105 and 1106.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court grant the following relief;

1. Declare that Kathryn R. Levesque breached her fiduciary duties as a board member of Flying Changes in violation of 13-B M.R.S.A. § 717.
2. Determine that amounts transferred from Flying Changes' corporate accounts to Kathryn R. Levesque without proper authorization or

accounting constitute private inurement or excess benefits to her, in violation of 13-B M.R.S. § 721(1)(C).

3. Pursuant to 5 M.R.S. § 194-K(1)(C), order Kathryn R. Levesque to repay amounts received by her from Flying Changes which were not properly authorized or accounted for.
4. Pursuant to 5 M.R.S. § 194-K(3), order Kathryn R. Levesque to pay a civil penalty in an amount that is up to 100% of the excess benefit or private inurement that she received from Flying Changes.
5. Pursuant to 13-B M.R.S. §§ 1105 and 1106 issue an order dissolving Flying Changes and appointing a liquidating receiver.
6. Order such other and further relief as the Court may deem necessary.

Dated: July 9, 2009

JANET T. MILLS
Attorney General



LINDA J. CONTI
Maine Bar No. 3638
CHRISTINA M. MOYLAN
Maine Bar No. 7095
Assistant Attorneys General
Consumer Protection Division
6 State House Station
Augusta, ME 04333-0006
Tel. (207) 626-8800

Attorneys for Plaintiff

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-09-33

CONSENT JUDGMENT

The Court having considered the pleadings and the Consent Judgment executed by the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Members of Flying Changes' Board of Directors, Dwaine Waltrip, Beverly Caron and Shannon Lawton (the Board), shall prepare and file with the Court, within 30 days of the effective date of this Judgment, an inventory of all property that is in its possession.
2. Within 45 days of the effective date of this Judgment, the Board shall file a Plan of Liquidation for this Court's approval. The Plan of Liquidation shall include the following:
 - a. a proposal for the sale of all remaining non-cash assets;
 - b. a list of all creditors' claims and the Board's determination whether to accept and pay, in whole or in part, or to reject, in whole or in part, such creditors' claims;
 - c. a list of all fees and expenses (other than those listed as creditors' claims) related to the winding up of corporate affairs;
 - d. a proposal for the distribution of the remaining assets to a Maine nonprofit corporation dedicated to children's mental health services after all approved creditors' claims and fees and expenses have been paid.

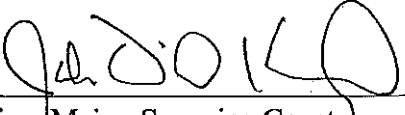
No creditors' claims or fees or expenses related to winding up corporate affairs may be paid from Flying Changes' assets unless pre-authorized by the Board and supported by original receipts.

3. The Board shall provide a copy of the Plan of Liquidation to creditors and the Attorney General upon filing the Plan with the Court.

4. The Board is authorized to hire such agents, employees, attorneys or consultants as is reasonably necessary to liquidate Flying Changes and to assist in carrying out the terms of this Judgment.
5. The Board shall cooperate with any local, state or federal enforcement or regulatory agency having jurisdiction over matters relating to Flying Changes' business, and allow such agency to review, without exception, all reports, books, records and files of Flying Changes at any time during normal business hours, and to copy any documents.
6. The Board shall prepare and provide to the Attorney General monthly statements reflecting income of any kind, as well as all fees and expenses incurred, for each monthly period beginning in January 2009 and continuing until the date of final liquidation in accordance with a Court-approved Plan of Liquidation. No fees, expenses or claims of any kind shall be paid from the effective date of this Judgment other than through the Court-approved Plan of Liquidation.
7. The Board shall ensure that income in any form, such as cash, checks or donations to the corporation's PayPal account shall be deposited into the corporate checking account at Bath Savings Institution and shall instruct each financial institution where it maintains accounts to require the signature of two specified board members in order to cash any check or make a withdrawal of any kind.
8. The Board shall not authorize any board member or employee to use an ATM card in connection with Board bank accounts and the Board shall collect and destroy any ATM card currently in the possession of any employee or Board member.

9. The Board shall ensure that all necessary tax returns for Flying Changes are filed with state and federal taxing authorities.
10. Within 30 days of the liquidation of the last remaining asset of the corporation in accordance with a Court- approved Plan of Liquidation, the Board shall submit a final accounting to the Court for approval.
11. Jurisdiction is retained by this Court in order to implement and carry out the terms of all orders and decrees that may be entered herein, including a Decree of Dissolution to be filed with the Secretary of State, or to entertain any suitable application or motion by a party for additional relief or modification of an order made herein within the jurisdiction of this Court.
12. Pursuant to M.R. Civ. P. 79(a), the Court specifically directs the Clerk to incorporate this Order on the civil docket by reference.

August 7,
Dated: ~~July~~ 2009



Justice, Maine Superior Court
Hon. John D. Kennedy

WE CONSENT:

JANET T. MILLS
MAINE ATTORNEY GENERAL

BY: 

LINDA CONTI

ASSISTANT ATTORNEY GENERAL

FREEDOM REINS F/K/A FLYING CHANGES CENTER FOR THERAPEUTIC
RIDING

BY: Dwaine Waltrip
DWAINE WALTRIP,
BOARD PRESIDENT

BY: Beverly Caron
BEVERLY CARON
BOARD MEMBER

BY: Shannon Lawton
SHANNON LAWTON
BOARD MEMBER

BY: Alice Knapp
ALICE KNAPP, ESQ.
ATTORNEY FOR THE CORPORATION