

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. _____ Wrcv

THE STATE OF VERMONT OFFICE OF)
THE ATTORNEY GENERAL,)
Plaintiff)
)
v.)
)
EMERGE FAMILY ADVOCATES, INC.,)
JOSEPH VERDINE, BOARD PRESIDENT,)
MURIEL FARRINGTON, BOARD)
SECRETARY, THOMAS TRUNZO, BOARD)
MEMBER, JOHANNA JASPERSOHN,)
BOARD MEMBER, and RAYMONA RUSSELL,)
EXECUTIVE DIRECTOR)
Defendants.)

THE ATTORNEY GENERAL'S PETITION TO REMOVE THE BOARD AND APPOINTMENT OF A SPECIAL TRUSTEE

The State of Vermont Office of the Attorney General, pursuant to 11B V.S.A. §§ 8.10, 8.30, 12 V.S.A. §§ 4711 - 4725, and its common law authority over charitable trusts, petitions this Court for the removal of the board of directors of Emerge Family Advocates, Inc. and the appointment of a special trustee for the organization. In support of this Petition, the Attorney General states as follows:

PARTIES

1. The Attorney General has regulatory authority over nonprofit corporations under various provisions of Title 11B of the Vermont Statutes, including § 8.10 permitting petition for the removal of a board member by judicial proceeding. The Attorney General also exercises common law and statutory rights, duties and powers in connection with the

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supervision, administration and enforcement of charitable trusts, 14A V.S.A. §§ 110, 405, 413, charitable solicitations, 9 V.S.A. §§ 2471 - 2479, and charitable sales promotions, 9 V.S.A. §§ 2481a - 2481d. The Attorney General also has the duty to see that the rights of the public in a charitable trust are protected and properly executed. *See Wilbur v. Univ. of Vermont*, 129 Vt. 33, 44 (1970); *Pres. & Fellows of Middlebury Coll. v. Cent. Power Corp. of Vt.*, 101 Vt. 325, 343 (1928). The address of the Attorney General's Office is 109 State St., Montpelier, Vermont 05609.

2. Defendant Emerge Family Advocates, Inc. ("Emerge"), is a Vermont nonprofit corporation currently registered with the Secretary of State and recognized by the Internal Revenue Service as a 501(c)(3) organization. Emerge is a public benefit corporation as defined by statute, 11B V.S.A. § 17.05, and under its bylaws is governed by a board of directors. Emerge was originally incorporated as Emerge-Family Advocates, Inc. in 1996. Its registered address is 95 Leslie Dr., White River Junction, Vermont 05001-1224.

3. Defendant Joseph Verdine is the current President of the Board of Directors of Emerge and, upon information and belief, has served on the board since 1997. His address is 9 Depot Street, Enfield, New Hampshire 03748.

4. Defendant Muriel Farrington is the current Secretary of the Board of Directors of Emerge and, upon information and belief, has served on the board since 2008. Her address is 166 Iris Way, White River Junction, Vermont 05001.

5. Defendant Thomas Trunzo is a current board member of the Board of Directors of Emerge and, upon information and belief, has served on the board since 2011. His address is 20 West Park Street, Lebanon, New Hampshire 03766.

6. Defendant Johanna Jaspersohn holds herself out before this Court as a current board member of the Board of Directors of Emerge, *see* Docket No. 512-9-14 Wrcv, and, upon information and belief, has served on the board since 2014. Her address is 32 High Street, Lyme, New Hampshire 03768.

7. Defendant Raymona Russell is the current executive director and only full-time staff member of Emerge, and, upon information and belief, has served in that capacity since 1996. Her address is 8 Woodhaven Drive, Apt. E, White River Junction, Vermont 05001.

8. Defendants Verdine, Farrington, Trunzo and Jaspersohn constitute Emerge's current Board of Directors ("the Board").

JURISDICTION AND VENUE

9. The Vermont Superior Court, Civil Division, Windsor Unit, has jurisdiction over this matter, pursuant to 11B V.S.A. § 8.10(a)(2), and is the proper venue under 12 V.S.A. § 402(a).

LEGAL STANDARDS AND BACKGROUND

10. Under 11B V.S.A. § 8.10(a), this Court "may remove any director of the [nonprofit] corporation from office in a proceeding commenced . . . by the attorney general in the case of a public benefit corporation if the court finds that: (A) the director engaged in . . . gross abuse of authority or discretion, with respect to the corporation, . . . or a final judgment has been entered finding that the director has violated a duty set forth in sections 8.30 through 8.33 of [Title 11B]; and (B) removal is in the best interest of the corporation."

11. Under 11B V.S.A. § 8.30, "A director shall discharge his or her duties as a director, . . . : (1) in good faith; (2) with the care an ordinarily prudent person in a like position would

exercise under similar circumstances; and (3) in a manner the director reasonably believes to be in the best interests of the corporation.”

12. Emerge’s most recently approved bylaws¹ (effective January 18, 2010) state its charitable mission as: “Emerge Family Advocates seeks to help families function in a healthy manner, primarily by providing the safe and neutral settings and services that help children exercise their right to the best possible relationship with each parent.”

13. Emerge operates several supervised visitation centers in Vermont and New Hampshire. Emerge is funded almost exclusively through grants from the New Hampshire Department of Justice and the Vermont Center for Crime Victim Services.

ARGUMENT

14. The members of the Board, through various actions and omissions, have violated their statutory duties to Emerge, namely their duty of good faith, their duty of care and their duty of loyalty. *See* 11B V.S.A. § 8.30(a).

15. Specifically, for the last several years, the Board has violated those duties by exercising virtually no oversight of the expenditure of charitable funds by the Executive Director, and permitting the Executive Director, without any specific Board approval and contrary to the organization’s bylaws, to take the following actions:

- a. For at least the last two years, the Executive Director has written and authorized her own paychecks, paying herself on an irregular and inconsistent basis, including: (1) paying herself several times during the same two-week pay period, (2)

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¹ While the Attorney General has obtained documents that suggest the Board has considered various amendments to these bylaws, it has apparently not formally approved any amendment since January 2010, and regardless, the proposed amendments make no change to the mission statement.

paying herself weeks or months in advance of a pay period, and (3) paying herself multiple times for the same pay period.

b. In the past three years the Executive Director has paid herself between \$5000 and \$10000 above her board-approved salary. In spite of the fact that the final pay figures were reported on Emerge's IRS Form 990 Informational Return – apparently reviewed by the Board prior to filing – the Board has taken no formal action to curb unauthorized salary expenditures for the Executive Director.

c. In 2011 and 2012, the Executive Director obtained two separate loans for \$2500 which Emerge reported in its IRS Form 990. When questioned about these loans, the Board had no record of either authorizing the loans or demonstrating repayment of either loan.

d. On several occasions the Executive Director has written herself a reimbursement check – at times in advance of incurring any expense – in excess of the amount listed on her expense reports, on at least one occasion paying herself more than \$1000 beyond the listed expenses. The Board has similarly failed to supervise the payment of reimbursements by the Executive Director.

16. Over the last several years, the Board has additionally violated its statutory duties of good faith, care, and loyalty to Emerge by acting as follows:

a. Since 2011, Emerge has not employed a bookkeeper or other individual to regularly and directly manage its accounts and has, instead, relied exclusively on the Executive Director to manage all financial affairs. Upon information and belief, the Board made this decision despite the fact that the Executive Director professed to

have no knowledge of bookkeeping or accounting, and regularly was unable to answer the Board's financial questions.

b. The Board has also approved of the Executive Director giving equipment, purchased and paid for by Emerge, to her family members for their exclusive use unrelated to Emerge's charitable mission.

c. Upon information and belief, the Board has not developed or approved an annual budget for at least the past two years.

d. Upon information and belief, despite receiving over 90% of its funding from public sources and having annual expenditures of over \$200,000, Emerge has not had a full and independent audit of its accounts since its incorporation eighteen years ago.

e. Upon information and belief, for at least the past two years, the Board has failed to require that the Executive Director provide the Board and the Board's elected Treasurer access to Emerge's financial records or bank statements.

f. The Board also has a practice of removing dissenting members. Although Emerge's bylaws limit removing a board member "for cause," upon information and belief, the Board ostensibly has removed two recent board members, including Defendant Jaspersohn, because of alleged technical violations of Emerge's bylaws. In one instance a former Board treasurer was removed because she had allegedly reached the limit of her term; however, the bylaws in effect did not include any term limits and both Defendants Verdine and Farrington remained on the Board despite having served longer terms. Similarly, Defendant Jaspersohn, though she been elected to the Board only a few months earlier, was removed because two of four

members of the Board, a majority of those present at that particular Board meeting, determined that the bylaw's requirement of "an uneven number of [board] members" necessitated her immediate removal rather than the election of an additional member or a temporary exception to the bylaw. Upon information and belief, both of those board members were removed after raising concerns about the lack of meaningful Board oversight of the Executive Director and of the financial management of Emerge.

g. Upon information and belief, the Board also has a practice of censuring dissenting members. After he made a public complaint about the Board's lack of financial oversight, two Board members, a majority of the then-three person Board, formally censured then-Treasurer Defendant Trunzo and removed him from the office of Treasurer, appointing Defendant Farrington to that role.

17. The foregoing facts contained in ¶¶ 15 and 16 demonstrate the Board's gross abuse of authority and/or discretion in violation of 11B V.S.A. § 8.10(a).

18. The Board's violation of its duties and abuse of its authority and/or discretion have directly endangered Emerge's charitable assets and Emerge's ability to continue to carry out its charitable mission. Removal of the Board is in the best interests of Emerge.

19. In the past three months, the Vermont Center for Crime Victim Services has indicated that it will not continue funding Emerge until the Vermont Attorney General's Office concludes its investigation into Emerge, Emerge obtains a thorough and independent audit of its accounts, and the Board increases its financial oversight.

20. The New Hampshire Department of Justice's Office on Violence Against Women will not continue funding Emerge until a full on-site programmatic and financial review is completed.

21. Upon information and belief, the United States Department of Justice is also considering investigating Emerge over the use of grant funds funneled through New Hampshire's Department of Justice to Emerge.

22. The Attorney General alleges and believes that the remaining assets of Emerge are in imminent jeopardy for the reasons stated above.

Count One – Declaratory Judgment

23. The preceding paragraphs are incorporated by reference as if fully stated herein.

24. By and through their acts and omissions, as detailed above, Defendant Verdine, Defendant Farrington, Defendant Trunzo and Defendant Jasperson has each breached his/her lawful duty required by 11B V.S.A. § 8.30.

Count Two – Gross Abuse of Authority or Discretion

25. The preceding paragraphs are incorporated by reference as if fully stated herein.

26. Defendant Verdine, Defendant Farrington, Defendant Trunzo and Defendant Jasperson, as members of the Emerge Board of Directors, have each engaged in a gross abuse of authority or discretion with respect to Emerge.

RELIEF REQUESTED

WHEREFORE the Attorney General respectfully requests that this honorable Court:

A. Pursuant to the Declaratory Judgments Act, 12 V.S.A. §§ 4711-4724, issue a final judgment on Count One finding and declaring that the named defendants have each breached his/her lawful duty required by 11B V.S.A. § 8.30.

B. Pursuant to 11B V.S.A. § 8.10(a), declare under Count Two that each of the named defendants has engaged in a gross abuse of authority or discretion with respect to Emerge.

C. Issue an Order removing the above-named defendants from the Emerge Board of Directors, as being in the best interests of Emerge.

D. Appoint Suzanne Lovell as a special trustee with all the necessary powers to: (1) preserve Emerge's charitable assets; (2) review Emerge finances and the likelihood of Emerge being able to continue its mission; and (3) recommend to the Court and Attorney General whether and how Emerge may continue operations, including, but not limited to, recruiting a new board of directors, instituting appropriate financial procedures and oversight, and filing all appropriate reports and forms with the IRS and the States of Vermont and New Hampshire. Payment of the special trustee's fees will be paid from Emerge funds.

E. Order that the Executive Director of Emerge, Raymona Russell, (a) provide access to all information regarding Emerge and its clients requested by the special trustee, including, but not limited to: all financial records; board minutes; by-laws and policies; grant applications; grant reports filed with Vermont Center for Crime Victims Services, Vermont Department of Children and Families, New Hampshire Department of Justice Office on Violence Against Women, and reports filed with any other grantor, together with the schedule book and other supporting documentation for those reports; and (b) be prohibited from taking any action on behalf of Emerge – including providing any services, expending any assets or incurring any debts – without authorization from the Court, the special trustee, or a properly constituted board of directors.

F. Appoint Sara Kobylenski, Executive Director of Upper Valley Haven, 713 Hartford Avenue, White River Junction, Vermont 05001, through coordination with a group of local non-profit organizations, to create an emergency interim resource for the provision of essential court-ordered supervised visitation and supervised exchanges of children between parents until Emerge can resume providing such services or an alternative permanent program can be put in place at another nonprofit.

G. After appointment of a special trustee, order the temporary closing of Emerge, only as is necessary, to accomplish the above.

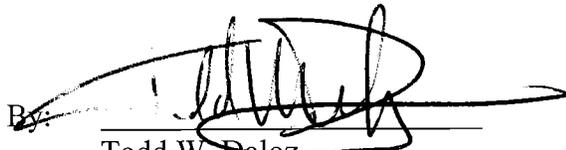
H. Any additional relief as the Court deems just and proper.

DATED at Montpelier, Vermont this 6th day of October, 2014.

Respectfully submitted,

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

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