

**CHARITY R. CLARK
ATTORNEY GENERAL**

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**STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001**

July 30, 2024

Jennifer Samuelson
P.O. Box 1091
Manchester Center, VT 05255
jennifer@samuelsonlaw.net

Via Email

Re: Vermont Public Records Request

Dear Attorney Samuelson,

I write in response to your recent public records request, received July 30, 2024. You requested documents relating to an Assurance of Discontinuance between Equinox Preservation Trust and our office filed on June 17, 2003.

Please find attached PDF copies of the Assurance of Discontinuance and the accompanying Press Release.

If you feel information or records have been withheld in error, you may appeal to the Deputy Attorney General in writing at:

Robert McDougall
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Thank you for contacting the Vermont Attorney General's Office.

Sincerely,

/s/ Justin Kolber
Justin Kolber
Chief
Environmental and Public Protection Division

**STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER 05609-1001**

FOR IMMEDIATE RELEASE
June 17, 2003

CONTACT: Elliot Burg
Ass't Attorney General

**EQUINOX HOTEL AGREES WITH ATTORNEY GENERAL TO REFUND
MONEY TO ENVIRONMENTAL GROUP**

Attorney General William Sorrell announced today that the current and former owners of the Equinox Hotel in Manchester, Vermont, have agreed to refund over \$62,000 to the Equinox Preservation Trust, a local environmental group. According to the Attorney General, the money was improperly transferred from the Trust to the Hotel in late 1999, when ownership of the Hotel changed.

Equinox Resort Associates, L.P. ("ERA"), with offices in Guilderland, New York, owned the Hotel from 1991 until June 2000; Oly Equinox Holdings, L.L.C. ("Oly"), with offices in Schenectady, New York, has owned the Hotel since June 2000. The Equinox Preservation Trust is a non-profit organization formed in 1993 to protect 955 acres of wild land on Mount Equinox in Manchester. The Hotel had donated conservation easements to the Vermont Land Trust and the Nature Conservancy.

Since 1993, the Trust has been funded primarily through \$5.00-per-person donations by persons who stay or attend functions at the Equinox Hotel. Donors have routinely been informed in writing that "all proceeds" would go to the Trust.

—MORE—

However, according to an Assurance of Discontinuance filed with the Washington Superior Court today, accounting for the Trust has historically been done by the Hotel; and in late 1999, as plans were being made to transfer Hotel ownership from ERA to Oly, ERA debited an end-of-year positive balance of \$71,787.86 from the Trust's subaccount in the Hotel's accounting system and credited that same amount to the Hotel for its own use. The transfer was itemized to include real estate taxes of over \$50,000 on the Mount Equinox land (which was owned by the Hotel), and varying amounts to reimburse the Hotel for the services of its managers, accounting department and lawyers, and for credit card company commissions on donations.

The Attorney General alleged that there was no legal justification for this transfer of funds, and that the only expense properly charged to the Trust was credit card company-imposed commissions on donations, which for 1993-99 totaled \$9,739.08. The Attorney General also alleged that because of the transfer of the Trust funds, the Hotel's statement to prospective donors—that all proceeds would go to the Trust—was deceptive and violated both Vermont's Charitable Solicitations Law and the Hotel owners' legal obligation to apply such funds to the purposes for which the donors intended them—namely, for the benefit of the Trust and its programs.

Although ERA and Oly deny that any Vermont law was violated, they were willing to enter into the settlement with the Attorney General, which provided for:

- Payment by ERA and Oly of \$62,048.78 to the Trust for its sole use, representing the \$71,787.86 transferred out of that subaccount in late 1999, minus \$9,739.08 in actual credit card commissions.

—MORE—

- An agreement by the Hotel that in the future, the Trust will not be charged for real estate taxes; hotel manager's, accounting or administration expense; legal fees, unless specifically incurred in connection with Trust business; office space; meeting room space, as available; copier and similar costs, beyond those actually incurred for Trust business; exhibit space for Trust and other environmental purposes; and similar expenses.
- A by-laws amendment or other formal change to ensure that a majority of the board of directors of the Trust are people who are not affiliated with the Hotel.
- An assurance that all express and implied statements made to prospective donors to the Trust in the future are accurate, including representations concerning the Trust and how donations to the Trust will be used.
- Payment of \$15,000 to the State of Vermont, including \$5,000 to reimburse the State for its fees and costs of investigating the matter.

Commenting on the settlement, Attorney General Sorrell commended the past and current owners of the Equinox Hotel for protecting Mount Equinox and for supporting the Equinox Preservation Trust. However, he noted that “this settlement should serve as a reminder of the importance of handling the assets of a nonprofit organization in a way that is consistent with the purposes of the charity and the intent of its donors.”

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FILED

STATE OF VERMONT JUN 17 P 3: 07
WASHINGTON COUNTY, SS.

SUPERIOR COURT
WASHINGTON COUNTY

IN RE EQUINOX RESORT)
ASSOCIATES, L.P., d/b/a)
EQUINOX HOTEL, and OLY)
EQUINOX HOLDINGS, L.L.C.,)
d/b/a EQUINOX HOTEL)

Washington Superior Court
Docket No. 341-6-03 Wncv

ASSURANCE OF DISCONTINUANCE

WHEREAS Equinox Resort Associates, L.P. (hereinafter "ERA"), a New York limited partnership with headquarters in Guilderland, New York, owned the Equinox Hotel in Manchester, Vermont, from 1991 until June 2000;

WHEREAS Oly Equinox Holdings, L.L.C. (hereinafter "Oly"), a Delaware limited liability corporation with headquarters in Schenectady, New York, has owned the Equinox Hotel in Manchester, Vermont, since June 2000;

WHEREAS the Equinox Preservation Trust (hereinafter "the Trust") is a non-profit organization based in Manchester, Vermont, that was formed in 1993 to protect and preserve 955 acres of wild land on the face of Mount Equinox in Manchester, on which land the owners of the Equinox Hotel donated conservation easements to the Vermont Land Trust and the Nature Conservancy;

WHEREAS the Trust has been funded primarily through \$5.00-per-person donations by persons who stay or attend functions at the Equinox Hotel;

WHEREAS these donations have typically been solicited by a "Dear Guest" or "Dear Meeting Planner" letter that states, in pertinent part,

Upon departure, your room account will be charged a \$5 voluntary donation per person. *All proceeds go to the Equinox Preservation Trust.* These funds are used to support the educational programs of the Vermont Institute of Natural Science to help the Trust continue its educational, research, recreational and stewardship efforts on these forested lands. [Emphasis added.]

WHEREAS for most of Trust's history, all of the members of its board of directors were persons employed by or otherwise closely affiliated with the Equinox Hotel;

WHEREAS accounting for the Trust has historically been done by staff at the Equinox Hotel, with a subaccount of the Hotel's accounting system devoted to income and expenses of the Trust;

WHEREAS in late 1999, as plans were being made to transfer ownership of the Equinox Hotel from ERA to Oly, ERA debited an end-of-year positive balance of \$71,787.86 from the Trust's subaccount in the Hotel's accounting system and credited that same amount to the Hotel for its own purposes;

WHEREAS, in a list of "proposed journal entries," this \$71,787.86 was itemized and justified as follows:

Real Estate Taxes	\$50,699.10
Managers [sic] Expense	10,500.00
Accounting	6,000.00
Legal Fees	3,000.00
Credit Card Commissions	1,588.76
Total	\$71,787.86

WHEREAS the "real estate taxes" referred to were six years' worth of taxes on a portion of land on Mount Equinox owned by the owners of the Equinox Hotel;

WHEREAS the “managers [sic] expense” referred to was to defray a portion of six years’ worth of the salary of the manager of the Equinox Hotel;

WHEREAS the “accounting” item referred to was to defray a portion of six years’ worth of the salary of an employee or employees in the accounting department of the Equinox Hotel;

WHEREAS the “legal fees” referred to were in addition to amounts already debited from the Trust’s income for specific legal services rendered for the Trust;

WHEREAS the “credit card commissions” referred to was apparently calculated as 2.21 percent of the transferred \$71,787.86;

WHEREAS the actual credit card company-imposed commissions on credit card donations to the Trust for the period 1993-99 totaled \$9,739.08;

WHEREAS the Vermont Attorney General alleges that there was no legal justification for the 1999 transfer of Trust funds to the Equinox Hotel for the latter’s use;

WHEREAS the Attorney General alleges that because of said transfer of Trust funds, the statement in the Equinox Hotel’s letter to prospective donors—that “[a]ll proceeds go to the Equinox Preservation Trust”—was deceptive and thus violated the Vermont Charitable Solicitations Law, 9 V.S.A. § 2475(b);

WHEREAS the Attorney General further alleges that said transfer of Trust funds violated the Hotel owners’ legal obligation to apply such funds to the purposes for which the donors intended them—namely, for the benefit of the Trust and its programs;

WHEREAS ERA and Oly deny that any Vermont law was violated;

WHEREAS ERA and Oly are nonetheless willing to enter into this Assurance of Discontinuance in order to resolve the concerns of the Attorney General;

AND WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. §2459;

THEREFORE, the parties agree as follows:

1. ERA and Oly shall pay to the Trust for its sole use, by crediting the Trust's subaccount at the Hotel or otherwise, the sum of \$62,048.78—representing the \$71,787.86 transferred out of that subaccount in late 1999, minus the \$9,739.08 in actual credit card commissions on credit card donations to the Trust during the period 1993-99.

2. In the future, the owners of the Equinox Hotel shall not charge to the Trust, or pay out of donations to the Trust, the following types of expenses:

- a. Real estate taxes.
- b. Hotel manager's expense.
- c. Accounting or administration expense (by hotel staff).
- d. Legal fees, unless specifically incurred in connection with Trust business.
- e. Office space.
- f. Meeting room space, as available.
- g. Copier and similar costs, beyond those actually incurred for Trust business.
- h. Temporary use of exhibit space for Trust and environmental information purposes.
- i. Expenses substantially similar to the above.

However, customary credit card processing fees associated with donations made by Hotel guests to the Trust shall, at the option of the Hotel's owners, be chargeable against such donations.

3. Oly shall promptly take all necessary steps, including a by-laws amendment or similar formal change, to ensure that a majority of the board of directors of the Trust are people who are not affiliated with the Hotel, whether by ownership, control or employment, or otherwise.

4. Oly shall ensure that all express and implied representations made to prospective donors to the Trust in the future are accurate, including representations concerning the Trust and how donations to the Trust will be used.

5. At the time of signing this Assurance of Discontinuance, ERA shall pay the sum of fifteen thousand dollars (\$15,000.00) to the State of Vermont. This sum includes five thousand dollars (\$5,000.00) to reimburse the State for its fees and costs of investigating this matter, of which four hundred seventy-eight dollars and seventy-six cents (\$478.76) shall be paid to Green Mountain Reporters & Captioners for its services.

6. Oly shall not reduce its financial and other support for the Trust in whole or in part as a result of this settlement or of any circumstances surrounding the settlement.

7. ERA and Oly hereby submit to the jurisdiction of the courts of the State of Vermont for the purpose of any action taken to enforce this Assurance of Discontinuance. However, after payment to the State of Vermont of the amounts specified in paragraphs 1 and 5, above, ERA's liability and duties under this Assurance of Discontinuance shall cease, it being understood and agreed that ERA has no legal duty or responsibility for the Equinox Hotel's dealings with the Trust, which are the sole responsibility of Oly and its successors, assigns, principals, and agents, who shall indemnify and defend ERA in connection therewith.


8. This Assurance of Discontinuance shall be binding on ERA and Oly and their respective successors, assigns, principals and agents, including any future owners of the Equinox Hotel.

9. This Assurance of Discontinuance finally resolves all claims the State of Vermont may have against ERA and/or Oly and/or their partners, officers, directors or employees under the Consumer Fraud Act and/or the Charitable Solicitations Law, 9 V.S.A. ch. 63, arising out of the facts described in this Assurance of Discontinuance. In addition, the Office of the Vermont Attorney General shall not bring any further legal action arising out of such facts against ERA or Oly, or their partners, officers, directors or employees, other than to enforce this Assurance of Discontinuance.

Date: 6/17/03

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

Date: 6/12/03

EQUINOX RESORT ASSOCIATES, L.P.

by: 
Its Authorized Agent


Date: 6/4/03

OLY EQUINOX HOLDINGS, LLC.
a Delaware limited liability company

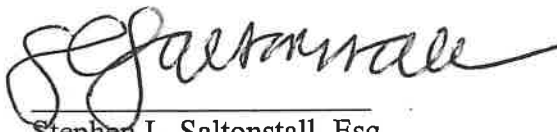
By: Oly Equinox, L.P., a limited partnership
Its managing member

By: 
Clark W. Hanrattie, Vice President


APPROVED AS TO FORM:



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For the State of Vermont



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