

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

FILED LAW DIVISION
2013 JUN 21 PM 4:27
DEBORAH E. EPPERT
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ALPHA KAPPA ALPHA)
SORORITY, INC.,)
)
Plaintiff,)
)
v.)
)
BARBARA MCKINZIE,)
)
Defendant.)

No.

2013L007210
CALENDAR/ADONIS
TIME 00:00
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, ALPHA KAPPA ALPHA SORORITY, INC. (“AKA”), by and through its undersigned attorneys, HENDERSON ADAM, LLC, for its complaint against Defendant, BARBARA MCKINZIE, alleges as follows:

INTRODUCTION

This is an action for breach of fiduciary duties, conversion, and unjust enrichment. Over the course of her term as chairman of the board of directors of AKA, Defendant embezzled in excess of \$1 million from AKA by deceiving AKA into paying her well in excess of the amount actually budgeted and approved for her by the board. This action seeks restitution for the amounts Defendant wrongfully took from AKA and money damages to compensate AKA for Defendant’s breach of various duties owed it by Defendant and to punish Defendant for her egregious and willful conduct.

THE PARTIES

1. Plaintiff AKA is a not-for-profit corporation organized under the laws of the District of Columbia.

2. AKA has its principal place of business at 5656 South Stony Island Avenue, Chicago, Illinois, 60637.

3. Upon information and belief, Defendant, Barbara McKinzie, is an individual residing in Olympia Fields, Illinois.

4. Upon information and belief, Defendant is a licensed certified public accountant.

5. From July 2006 until July 2010, Defendant occupied the position of President (Supreme Basileus) of AKA.

6. The Supreme Basileus is the chairman of the board of directors of AKA, such board being known to members of AKA as the Directorate.

7. The position of Supreme Basileus is a position of trust and authority in AKA.

JURISDICTION AND VENUE

8. This court has jurisdiction of this justiciable controversy between residents of the State of Illinois under Section 9 of Article VI of the State of Illinois Constitution.

9. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 because the parties reside in Cook County.

ALLEGATIONS OF FACT

Defendant's Illegal Acts Come To Light

10. In or around the fall of 2010, while embroiled in litigation concerning the failure to disclose financial records, AKA received a copy of a report from Edward R. Kirby & Associates, Inc. ("Kirby").

11. The report summarized Kirby's preliminary and incomplete findings reached after investigating certain financial records of AKA accumulated between 2006 and 2010.

12. The Kirby report documented several transactions undertaken by Defendant that Kirby deemed questionable.

13. The Kirby report recommended further investigation.

14. The Kirby report was limited to only two of AKA's several bank accounts, yet showed that Defendant received compensation from AKA in excess of \$2.2 million dollars.

15. Defendant was only authorized by AKA to receive a fraction of that amount.

16. Defendant received the compensation in excess of \$2.2 million dollars with full knowledge that she was only authorized by AKA to receive much less.

17. The Kirby report also showed that Defendant caused AKA to reimburse her for personal expenses having no relation to her duties as Supreme Basileus, for duplicate expenses and for expenses unaccompanied with sufficient receipts or other reconciling documentation.

18. As a result of the Kirby report, AKA sought to further examine the compensation paid to Defendant.

19. Consistent with the organization's practice of conducting routine annual external audits, AKA commissioned an independent auditor, Ragland and Associates, LLC ("Ragland"), to audit the consolidated financial statement of AKA for 2010.

20. The Ragland audit uncovered a *second set* of books (accounting records) created at the direction of or with full knowledge of Defendant.

21. Ragland determined that the purpose of this second set of books was to conceal diverted funds from the internal accounting controls established by AKA.

22. AKA found itself the subject of state and federal government investigations, under which AKA was required to produce documents.

23. In producing documents for these government investigations, AKA found Defendant had paid or caused others to pay her personal income taxes. Further, Defendant wrote checks to herself without a second signature – in violation of AKA financial controls.

24. In total, Defendant, either directly, or through the manipulation of others, caused AKA to pay her well over \$1 million in excess of what AKA had budgeted.

25. On June 2, 2012, AKA sent Defendant a letter demanding that Defendant return the specific amounts determined to have been paid to Defendant in excess of the amounts budgeted and approved by AKA.

26. Defendant has yet to pay back any money she wrongfully took from AKA.

How Defendant Stole AKA Funds

27. In or around July 2007, Defendant solicited members of the Directorate to pay her.

28. Defendant asserted she was entitled to compensation because she claimed to have created substantial savings for AKA by virtue of her financial expertise and hard work over the past year.

29. Later in July 2007, the Directorate approved a one-time stipend of \$250,000 for Defendant to be paid from AKA's general fund.

30. Thereafter, the Directorate approved a \$4,000 per month retirement benefit for Defendant for her four year term as Supreme Basileus. This total amounted to \$192,000.

31. The Directorate was told the \$4,000 per month benefit for the Supreme Basileus equaled what AKA was paying into the retirement fund of its Executive Director.

32. However, the Executive Director was actually receiving a monthly retirement funding payment for *less than* \$4,000 per month.

33. Defendant was aware she was receiving a greater monthly retirement funding payment than the Executive Director, yet Defendant remained silent.

34. The Directorate approved a total of \$440,000 (\$250,000 plus \$192,000) in compensation/retirement trust funding to be paid by AKA to Defendant.

35. However, Defendant actually caused AKA to pay Defendant well in excess of \$440,000.

36. Defendant facilitated her embezzlement of AKA funds by directing the creation of the second set of accounting records.

37. This second set of accounting records was designed to circumvent AKA's internal accounting policies and procedures.

38. This second set of accounting records was actually a set of transactions that were recorded in the AKA general ledger, but could only be accessed by restricted personnel and were not disclosed in financial statements.

39. Defendant was knowledgeable of accounting principles (because she was and is a CPA) and directed corporate staff on how to record certain transactions and pay bills.

40. Defendant directed the creation of the restricted files of these transactions, referred to as a second set of books by Ragland.

41. Defendant directed the creation of these restricted files in response to growing concerns voiced by rank and file AKA members of financial improprieties undertaken by Defendant.

42. Robert ("Bob") Brooks is an outside Certified Public Accountant who prepared AKA audits, financial reports and tax returns since the 1990s.

43. Brooks also prepared Defendant's personal tax returns during her tenure as Supreme Basileus.

44. Brooks provided the AKA Director of Finance with the compensations amounts to pay Defendant.

45. The Directorate also approved AKA taking out a life insurance policy on Defendant for which it was the beneficiary.

46. AKA paid premiums on the life insurance policy to Ohio National.

47. Despite AKA's premium payments made to Ohio National, records also demonstrate AKA paid about \$169,804 directly to Defendant for the same insurance.

48. These direct payments to Defendant were authorized by AKA staff at the direction of Brooks.

49. Defendant never alerted anyone that she was being overcompensated.

Compensation and Retirement Funding Amount Discrepancies

50. Brooks informed Defendant as early as October 2007 that she was to receive \$345,000 in compensation and retirement trust funding for 2007 alone.

51. At most, Defendant should have only received \$250,000 plus \$1,400 for the twelve months of the years 2007 and 2006 for a total of \$283,600 in 2007.

52. Defendant received at least \$345,000 in 2007.

53. Yet, Defendant never alerted anyone that she was being overcompensated.

54. In March 2008, Brooks sent a direct payment to Defendant for \$175,000 at Defendant's direction and instruction.

55. Defendant never communicated to the Directorate what her compensation and retirement trust funding amounts totaled. Furthermore, Defendant never communicated that her compensation was in excess of the amounts budgeted and approved by the Directorate.

Defendant's Personal Taxes

56. Similarly, there is no record of the Directorate ever considering or approving payment of Defendant's personal taxes.

57. Nevertheless, AKA records show Defendant was paid or caused to be paid \$273,000 by AKA in years 2007, 2008 and 2009 for the payment of Defendant's personal federal and state income taxes.

58. Defendant knew she was not entitled to collect money from AKA for her personal tax liability.

59. Defendant knew that she was not an employee of AKA.

60. When confronted about her misappropriation of money for her personal taxes, Defendant asserted that since her compensation was a gift her tax liability for such compensation was deemed a gift to Defendant as well.

Defendant's Expenses

61. Defendant incurred expenses in her role as President for which AKA would reimburse her.

62. Defendant incurred expenses that she sought reimbursement from AKA in primarily one of three ways:

- a) through an AKA American Express card;
- b) through a personal American Express card and expense vouchers;
- c) and through a quarterly stipend.

63. Examination of Defendant's AKA American Express charges and reimbursements show Defendant amassed approximately \$326,500 worth of charges during her tenure as President.

64. Many of the charges are either undocumented or poorly documented and are not accompanied with information with which investigators could ascertain whether such charges were related to AKA business.

65. Defendant submitted AKA American Express expenses for reimbursement knowing that such reimbursements were only supposed to be for legitimate expenses incurred on behalf of AKA.

66. Records indicate Defendant was reimbursed approximately \$99,000 pursuant to AKA's quarterly expense reimbursement policy.

67. Records indicate that Defendant submitted expense reports for only \$41,066 of that \$99,000.

68. Records indicate that Defendant was reimbursed \$12,784 for expenses pre-dating her term as President.

69. Defendant submitted these expenses for reimbursement pre-dating her term as President knowing that such reimbursements were only for legitimate expenses incurred as President.

70. Records show that Defendant was reimbursed for expenses charged on her personal American Express card as well as other personal expenses totaling approximately \$300,000 from 2006 through 2010.

71. Defendant acknowledged she owed AKA for her personal expenses in July 2009 when she gave AKA staff two checks for \$150,000.

72. Defendant instructed AKA staff to wait a week before depositing the checks.

73. AKA staff kept the checks in an office in AKA's headquarters.

74. After a week passed, AKA staff went to retrieve the checks to deposit them, yet found them missing.

75. AKA staff informed Defendant of the missing checks.

76. Defendant refused to replace them.

77. Defendant never discussed this with the Board of Directors.

COUNT I- BREACH OF FIDUCIARY DUTIES

78. AKA restates and incorporates the allegations contained in Paragraphs 1 through 78 as if fully set forth herein.

79. From July 2006 until July 2010, Defendant occupied the position of Supreme Basileus of the AKA.

80. As the Supreme Basileus, Defendant owed AKA a duty of loyalty.

81. Defendant's duty of loyalty encompassed a duty to preserve the corporate res for the benefit of AKA.

82. AKA's corporate res included AKA monies.

83. Defendant also owed AKA a fiduciary duty to not improperly profit from her position.

84. Defendant breached her fiduciary duties to AKA when she:

- a) Used her position to take AKA money for which she had no right;
- b) Failed to alert the Directorate or AKA that money was being improperly funneled to her;
- c) Directed AKA staff to create a set of records only accessible to restricted personnel in order to circumvent AKA's internal accounting policies, procedures, and personnel and thereby facilitate Defendant's embezzlement; and

- d) Failed to notify the Directorate that the correct amount for a monthly stipend was *less than* \$4,000 per month.

85. As a direct and proximate result of Defendant's breaches, AKA has been damaged and suffered in an amount to be determined at trial, but not less than 1.3 million dollars.

86. Defendant's actions have been willful and malicious and were done in complete disregard of her fiduciary duties to AKA.

WHEREFORE, AKA respectfully requests that this Court enter judgment in its favor on its Count I against Defendant Barbara McKinzie and that:

- a) AKA be awarded money damages in an amount to be proven at trial, but not less than \$1,300,000;
- b) AKA be awarded exemplary and punitive damages of not less than \$500,000;
- c) The Court impose a constructive trust on all funds of Defendant on which she cannot provide positive proof of ownership separate and apart from the funds derived from AKA;
- d) AKA be awarded the costs and reasonable attorney's fees incurred in determining the amount of loss, including any reasonable costs to AKA such as the cost of responding to the offense, conducting a damage assessment, and other consequential damages incurred because of Defendant's conduct; and
- e) AKA be awarded any further relief as the Court deems just.

COUNT II- CONVERSION

87. AKA restates and incorporates the allegations contained in Paragraphs 1 through 87 as if fully set forth herein.

88. AKA was at all times the rightful owner of the money in its accounts.

89. Defendant wrongfully and without authorization usurped monies from the accounts of AKA by taking and receiving money beyond what was budgeted and approved by AKA.

90. AKA has an absolute, unconditional right to the immediate possession of the money Defendant misappropriated.

91. On June 2, 2012, AKA made a demand to Defendant to *immediately* restore the specific amounts of money Defendant embezzled.

92. Defendant has yet to return the money.

WHEREFORE, AKA respectfully requests that this Court enter judgment in its favor on Count II against Defendant Barbara McKinzie and that:

- a) AKA be awarded restitution of not less than \$1,300,000;
- b) AKA be awarded exemplary and punitive damages not less than \$500,000;
and
- c) Any further relief as the Court deems just.

COUNT III- UNJUST ENRICHMENT

93. Plaintiff repeats and realleges paragraphs 1 through 93 as though fully set forth herein.

94. But for the misleading and deceptive conduct by Defendant, AKA would not have allowed her to receive excess compensation.

95. Defendant's retention of the excess compensation is unconscionable.

96. Defendants' retention of the excess compensation deprives AKA of the benefit of that money.

97. Defendant's retention of that money violates fundamental principles of justice and equity and constitutes unjust enrichment.

WHEREFORE, AKA respectfully requests that this Court enter judgment in its favor on Count III against Defendant Barbara McKinzie and that:

- a) AKA be awarded restitution of not less than \$1,300,000; and

b) Any further relief as this Court deems just.



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