

Matter of McGuire v East Hampton Vil. Ambulance Assoc., Inc.
2024 NY Slip Op 35262(U)
June 7, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 608762/2024
Judge: Jerry Garguilo
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SHORT FORM ORDER

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**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY**

PRESENT:

**HON. JERRY GARGUILO
SUPREME COURT JUSTICE**

**ORIG. RETURN DATE: 4/9/24
FINAL SUBMITTED DATE: 5/15/24
MOTION SEQ# 001, 002
001-MG
002-MG**

IN THE MATTER OF THE APPLICATION OF:

**MARY ELLEN MCGUIRE, MARY MOTT, LAURA
VAN BINSBERGEN, and SUZANNE DAYTON,**

Petitioners,

-against-

**EAST HAMPTON VILLAGE AMBULANCE ASSOC.,
INC., NEW YORK STATE ATTORNEY GENERAL,
and VILLAGE OF EAST HAMPTON,**

Respondents.

ATTORNEYS FOR PETITIONERS

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Syracuse, New York 13214

ATTORNEYS FOR VILLAGE OF EAST HAMPTON

Perillo Hill LLP
285 Main Street, Ste 203
Sayville, New York 11782

ATTORNEYS FOR RESPONDENT EAST HAMPTON
VILLAGE AMBULANCE ASSOC. INC.

Joel J. Ziegler
199 East Main Street, Ste 2
Smithtown, New York 11787

The Court has considered the following in consideration of its determination:

1. Petition, Order to Show Cause (Mot. Seq. 001), Affidavits and Affirmation in Support, Exhibits (Doc. 1 – 12, 15, 16, 18, 20, 21)
2. Opposition to Motion, Affidavit and Affirmation, Exhibits, (Doc. 22 – 33)
3. Notice of Motion (Mot. Seq. 002), Affidavits, Exhibits, Memorandum of Law in Support (Doc. 34 – 40)
4. Opposition to Motion, Affidavit and Affirmation, Exhibit (Doc. 42, 43, 45, 46)

It is

ORDERED that the Petitioners' motion for dissolution of the East Hampton Village Ambulance Association, Inc. (Mot. Seq. 001) is granted; and it is further

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ORDERED that the actions taken by the members at the May 15, 2024 meeting are null and void and are hereby set aside; and it is further

ORDERED that the Petitioners are reinstated to the Board of Directors in order to oversee and facilitate the winding up of the Corporation's affairs; and it is further

ORDERED that the temporary restraining order shall continue until this matter is disposed; and it is further

ORDERED that the Petitioners are directed to efile proof of service of the order to show cause upon the newspapers and Village for publication; and it is further

ORDERED that the Petitioners' motion (Mot. Seq. 002) for an order to disqualify Joel Ziegler as counsel to the Corporation is granted; and it is further

ORDERED that the parties are directed to appear in person in the courtroom of the undersigned at a valuation hearing on July 22, 2024 at 2:15 pm.

In this action, the Petitioners seek to dissolve the East Hampton Village Ambulance Association, Inc. (the Corporation) pursuant to Not-For-Profit Corporation Law §§§§ 1102 (a) (1), 1102 (a) (2) (B), (C), and (E). The Petitioners aver in affidavits that they encompass more than ten percent of the seated Directors and Executive Officers of the corporation and actually represent one hundred percent of the seated Board of Directors. In addition, the Petitioners comprise more than ten percent of the Corporation's approximately 31 members. The Petitioners submit the Certificate of Incorporation, the Bylaws of the Corporation, the Corporate membership list, and affidavits of service.

Sometime in 2023, the Village of East Hampton (the Village) formed a new Emergency Medical Services Department (EMS Department) and decided to hire full time ambulance workers, including the Petitioners. Dissention arose among the volunteer members of the Corporation who subsequently held a meeting on May 15, 2023 that was allegedly not noticed in accordance with the Not-For-Profit Corporation Law § 605 or the bylaws of the Corporation. At that meeting, the members admitted former members back into the Corporation and removed the executive officers of the Corporation, who are also the Petitioners in this proceeding. The members subsequently elected former members to the Board of Directors and reorganized the corporate structure. The members of the Corporation also started a go fund me page to raise funds to retain a lawyer. These acts have divided the membership to the point of confusing the public. In a separate action, captioned *East Hampton Village Ambulance Association, Inc. v the Village of East*

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Hampton, Index No. 628525/23, the court denied the Corporation's motion seeking leave to file a late notice of claim by order dated February 2, 2024 (Santorelli, J.).

The record reveals that the Corporation was formed for the sole purpose of supporting the Village's ambulance service and its volunteer members by recruiting and training new members. As a result of the actions taken by the members of the Corporation to raise money to retain a lawyer, the Village of East Hampton will not permit the Corporation to serve its volunteer ambulance workers, thus making it impossible for the Corporation to fulfill its purposes. The Village no longer desires the Corporation's services. This proceeding was commenced by the service of a Petition for Dissolution on April 8, 2024 and the submission of an order to show cause on April 9, 2024. On April 17, 2024, Joel Ziegler, Esq. filed a Notice of Appearance in which he stated that he was appearing on behalf of the Corporation.

The Petitioners submit the certificate of incorporation of the corporation wherein it reveals that "the corporation will promote and encourage brotherhood, guidance and training among volunteer ambulance workers for the Village of East Hampton." The Certificate also states "nothing herein shall authorize this corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-For-Profit Corporation Law, Section 404(b) through (v)."

NY Not-For-Profit Corporation Law § 1102 provides:

(a) A petition for the judicial dissolution of a corporation may be presented:

(1) By a majority of the directors then in office, or by the members, or such of them as are designated for such purpose, * * * in the following cases:

(A) The assets of the corporation are not sufficient to discharge its liabilities.

(B) Dissolution will be beneficial to the members.

(2) By ten percent of the total number of members or by any director, in the following cases:

(A) The Directors are so divided respecting the management of the corporation's affairs that the votes required for action by the board cannot be obtained.

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(B) The members are so divided that the votes required for the election of directors cannot be obtained.

(C) There is internal dissension and two or more factions of members are so divided that dissolution would be beneficial to the members.

(D) The directors or members in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.

(E) The corporation is no longer able to carry out its purposes.

The ByLaws, Article VII: Executive Board provide in Paragraph E:

No less than six members may, by petition to the Executive Board, demand the recall of any officer, the secretary, or treasurer, in allegedly failing in his/her duties.

1. The said petition shall specifically state the allegations of misconduct or failure to fulfill the obligations and/or the responsibilities of the office.
2. The Executive Board shall review the petition and may, upon a two-thirds vote of the board, recommend to the membership the officer, secretary, or treasurer, be removed from office.
3. Within fourteen days of the recommendation, a special meeting of the EHVA membership shall be called to consider the petition and recommendation of the Executive Board.
4. The officer in question shall be entitled to appear, represented by their counsel, at this meeting.
 - a. Any and all witnesses produced by the petitioners and the officer shall testify under oath.
 - b. At the conclusion of the hearing, the membership shall vote on whether to remove the member from office.

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- c. A vote of two-thirds of the active members present at the special meeting shall be required to sustain the charges and remove the officer, secretary, or treasurer from office.

Any attempt to amend or adopt by-laws in a manner that violates the certificate of incorporation of a not-for-profit corporation is null and void (see *Sealey v American Socy. of Hypertension, Inc.*, 10 Misc3d 572, 809 NYS2d 421 [NY Sup Ct. November 2, 2005]).

The Petitioners submit the affidavit of Marcos K. Baladron, the Village Administrator, in support of dissolution. He states that unauthorized former members of the Corporation are claiming to be, and act on behalf of, the Corporation. They are attempting to divert funds away from the Corporation and its accounts and are disseminating misinformation concerning ambulance services and membership. This misinformation is resulting in unwarranted and baseless confusion to Village residents and the Town of East Hampton concerning the provision and reliability of Village ambulance services. The Village can no longer rely on the Corporation to provide and train volunteers.

Mr. Baladron also states that it is the responsibility of the Village pursuant to New York General Municipal Law § 122-b to provide an emergency medical service, a general ambulance service or a combination of such services for the purpose of providing prehospital emergency medical treatment or transporting sick or injured persons within the boundaries of the municipality. Therefore, the Village created an Emergency Medical Services Department in 2023 which will provide a paid and volunteer ambulance service to the Village and the contracted-for areas of the Town of East Hampton. Since the EMS Department has been fulfilling this function very well since its creation, there is no need for the Corporation to continue to serve its stated purpose. Without the Village's consent, approval and participation, the Corporation cannot fulfill its stated corporate purposes for the benefit of the Village and residents.

Mr. Baladron further states that the Corporation is attempting to raise funds to compete with the Village's EMS Department to provide ambulance services directly, which is not authorized by the Corporation's Certificate of Incorporation or by applicable law. He states that such competition is adversarial to the Village and is prohibited.

The Petitioners submit a copy of the minutes of a meeting which was held by members and former members of the Corporation on May 15, 2023. The Petitioners contend that notice was improperly given to the members. The members in attendance elected Amanda Thompson as President, Teresa Bertha as Vice President and other new

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officers and reasoned that the Petitioners, who are current chiefs of East Hampton Village EMS Department, should not remain as chiefs of the Corporation. In addition, the minutes state that the Corporation is no longer a responding agency and the old bylaws would no longer be relevant to its new reality. Moreover, the members of the Corporation conceded at the meeting that their purpose has expired, since the Village has not negotiated a contract with the Corporation for training ambulance personnel and the Certificate of Incorporation does not provide for the operation and maintenance of ambulances or other emergency vehicles by the Corporation's members.

The members discussed a new mission of the Corporation and the need for new by-laws. In addition, the members decided to send a letter to the chiefs and other officers of East Hampton Village EMS Department to inform them that they were no longer officers of the Corporation. The members also discussed hiring an attorney.

In opposition, the Respondents submit the affidavit of Teresa Bertha, who states that she is the President of the Corporation. She states that the members were concerned about a pending contract with the Village to train the ambulance personnel that did not materialize. Ms. Bertha states that a meeting notice was sent by email to all members and the day after the meeting a letter was sent to the officers who had been replaced.

NY Not-For-Profit Corporation Law § 1102 provides for the dissolution of a non-profit corporation. The Petitioners have satisfied one or more of the elements, mainly that the Corporation is no longer able to carry out its purposes, that there was dissension among the members, and that the dissolution would be beneficial to the membership.

The Court finds that the members failed to follow the procedure set forth in the By-Laws, Article VII, as stated above, for the removal of officers and followed their own procedure, although the Petitioners did not resign and their terms did not yet expire, pursuant to Article VI: Leave of Absence/Resignation. Therefore, the removal of the Petitioners in their absence by a vote of no confidence in May 2023 was without authority. Such action in reality is a change to the By-Laws, which is addressed at Article XI – Amendment of By-Laws, which requires, at the very least, a reading of proposed new by-laws at three consecutive meetings. In addition, the members failed to comply with NY Not-For-Profit Corporation Law § 605 (a), which provides that “notice of a meeting by email must be given not less than ten nor more than fifty days before the meeting. Notice shall not be deemed to have been given electronically if the Corporation is unable to deliver two consecutive notices to the member by *** email.” Here, since the email notice of the meeting was sent on May 15, 2023, the date of the meeting, the corporation has failed to

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properly give advance notice pursuant to the statute. In addition to lack of notice, the actions taken by the members to remove of the Petitioners from office at the meeting are deemed to be null and void. The Petitioners are hereby reinstated to the Board of Directors to oversee and facilitate the Corporation's winding up. Moreover, the temporary restraining order shall remain in place until this matter is disposed.

The Petitioners' motion seeking an order disqualifying Joel Ziegler as counsel to the Respondents is granted. The Order to Show Cause dated April 8, 2024 sought, among other things, a temporary restraining order barring the members of the Corporation and Teresa Bertha from conducting any fundraising activities and from soliciting donations in the name of or for the benefit of the Corporation, which was granted by this court by Order dated April 9, 2024 (Garguilo, J.). The members have not complied with the court's order and the Petitioners moved to disqualify Mr. Ziegler on May 3, 2024.

Since the court found that the members of the Corporation failed to follow the By-Laws, did not comply with the subject statute, and do not have the authority to elect new officers, they also cannot retain an attorney. Mary Mott, in her personal affidavit, states that the Chief is the chief executive officer of the Corporation with the duty and authority to, among other things, direct and supervise the members, preside at meetings, discuss and plan the operation and business with the officers, and sign all vouchers received from all vendors and all businesses with whom the department has accounts, citing Article II, Section 4 of the By-Laws. Ms. Mott further states that Mr. Ziegler does not, and cannot, represent the Corporation because he was not hired, retained or otherwise engaged by the Board of Directors or the Chief. Ms. Mott states that a former member retained Mr. Ziegler without the authority or approval of the Board of Directors or the Chief when that member staged an illegal and unauthorized coup that led to the filing of the Petition in this matter.

Not-For Profit Corporation Law § 701 (a) provides that a corporation shall be managed by its board of directors. "It is the policy of the courts of New York to avoid interference with the internal management and operation of corporations (see *Grace v Grace Institute*, 19 NY2d 307, 279 NYS2d 721 [1967]). Applying these principles, the Court finds that the former members of the Corporation failed to comply with the statute and the By-Laws of the Corporation when they retained Mr. Ziegler. Therefore, the Court rejects Mr. Ziegler's affirmation in opposition to the motion to disqualify him as without merit and determines that Mr. Ziegler is disqualified as counsel to the Corporation.

Accordingly, it is

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ORDERED that the Petitioners' motion for dissolution of the East Hampton Village Ambulance Association, Inc. (Mot. Seq. 001) is granted; and it is further

ORDERED that the actions taken by the members at the May 15, 2024 meeting are null and void and are hereby set aside; and it is further

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ORDERED that the parties are directed to appear in person in the courtroom of the undersigned at a valuation hearing on July 22, 2024 at 2:15.

The foregoing constitutes the decision and **ORDER** of this Court.

Dated: June 7, 2024


HON. JERRY GARGUILO, JSC