

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
22nd JUDICIAL CIRCUIT
DIVISION 3

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.,

Plaintiff

v.

EDWARD R. BENNETT,
CARL T. FISCHER, JR.,
KRIS KNIGHT, TOM FERREBEE,
SIMON FREDERICKS, M.D.,
and LYNN W. VIA,

Defendants

Case No. 09-CI-05292

DEC 15 2011

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO DISMISS
COUNTS II AND III OF DEFENDANTS'
COUNTERCLAIM AS MOOT AND FOR
ENTRY OF A FINAL JUDGMENT AND
APPEALABLE ORDER

INTRODUCTION

This matter came before the Court on Joint Motions for Summary Judgment by the Plaintiff, American Saddlebred Horse Association, Inc. ("ASHA") and the Defendants, Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredricks, MD and Lynn W. Via ("Members") on the ASHA's Complaint and the Members' Counter-Claim. On December 2, 2010, the Court entered an Opinion, Order and Judgment (the "Court's Opinion") denying the ASHA's motion and granting the Members' motion. On December 13, 2010, the Members received the ASHA's motion for entry of a final and appealable order. The ASHA's motion is to be heard on the morning of December 17, 2010. The Members have contacted the ASHA about a potential agreement that may eliminate the need for a hearing. In the event that an agreement cannot be reached, the Members submit this response to advise the Court of their position.

RESPONSE

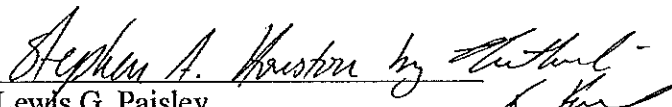
The Members are willing to agree to dismiss their remaining counter-claims, without prejudice, if the corresponding final judgment includes the following three items.

(1) The Court's Opinion concluded that the Members are entitled to Summary Judgment on Count I of their Counter-Claim which sought an order declaring that the ASHA must allow the Members to inspect and copy the records at issue pursuant to KRS 273.233. Accordingly, the final judgment should include an order requiring the ASHA to allow the Members to inspect the records, and obtain copies of records at the Members' discretion and for a reasonable fee, within a specified period of time. The Members propose that the final judgment should require the ASHA to allow the Members to inspect and copy records within fifteen (15) days of entry of the final judgment. If the ASHA believes that it will be aggrieved by such an order, it may seek relief pursuant to Rule 65.08 of the Kentucky Rules of Civil Procedure.

(2) The final judgment should note that Counts II (Breach of Contract) and III (Promissory Estoppel) of the Members' Counter-Claims are dismissed without prejudice.

(3) The final judgment should preserve this Court's authority to enforce its order.

Respectfully submitted,


Lewis G. Paisley
Culver V. Halliday
Stephen A. Houston
STOLL KEENON OGDEN PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
Counsel for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing Response to Plaintiff's Motion to Dismiss Counts II And III Of Defendants' Counterclaim As Moot And For Entry Of A Final Judgment And Appealable Order was served via electronic mail and first class United States Mail, postage prepaid, to the following on the 15th day of December, 2010:

Edward H. Stopher
Jefferson K. Streepey
Jeff W. Adamson
Boehl Stopher & Graves, LLP
400 West Market Street, Suite 2300
Louisville, KY 40202-3354

And by First Class United States Mail to:

James B. Cooper
Boehl Stopher & Graves LLP
444 West Second Street
Lexington, Kentucky 40507-1009



Counsel for Defendants

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