

NO. 06-08336

FILED

ELLEN AND ALAN MEYER
Plaintiffs,

v.

**DALLAS-FT. WORTH METRO
GOLDEN RETRIEVER CLUB
AND JUDY WORD,**
Defendants.

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IN THE DISTRICT COURT
MAR 29 AM 11:20
JIM HANLIN
DISTRICT CLERK
GARY
FITZSIMMONS
4TH JUDICIAL DISTRICT
DEPUTY

DALLAS COUNTY, TEXAS

**PLAINTIFF ELLEN AND ALAN MEYER'S
RESPONSE BRIEF TO DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Ellen and Alan Meyer, Plaintiffs in the above-entitled and numbered cause, and make this their Response Brief to Defendants Dallas-Ft. Worth Metro Golden Retriever Club and Judy Word's Motion to Dismiss. Plaintiffs Ellen and Alan Meyer ask the Court to overrule Defendants' Motion to Dismiss. The evidence supporting this Brief is contained in a separate Appendix, which is filed and attached to this Brief. In support thereof, Plaintiffs Ellen and Alan Meyer would show the Court as follows:

Summary of the Argument

Defendants Dallas-Ft. Worth Metro Golden Retriever Club (hereinafter sometimes referred to as the "Club") and Judy Word arbitrarily, capriciously, and fraudulently, acted outside the scope and in breach of the Club's adopted Constitution and Bylaws and agreed rules in their treatment of Plaintiffs Ellen and Alan Meyer (hereinafter referred to as the "Plaintiffs") throughout the administrative process. Specifically, Defendants improperly legislated rules and regulations outside of the Club's Constitution and Bylaws to arbitrarily deny the Plaintiffs' listing of a puppy on the Puppy Referral Service without a health disclosure (it is customary within the Club for the puppy

and/or dog owner to individually disclose health defects to the prospective buyer), and knowingly allowed other members of the Club to list puppies with known health problems on the referral service, without the newly legislated disclosure.

Additionally, Defendants arbitrarily denied Plaintiffs their due process rights during the administrative proceedings by failing to allow them to call their own witnesses and/or cross examine the prosecution's witnesses and by not allowing them adequate time to present their case. Further, Defendants created a newly legislated punishment solely for Plaintiffs that was admittedly outside of the Club's Bylaws and adopted Rules.

Defendants' arbitrary, capricious, and fraudulent actions clearly violated Plaintiffs due process rights within the Club and clearly reflect that Defendants' actions were legislative and not interpretative, and were arbitrary and capricious, thus clearly giving this Court subject-matter jurisdiction over Plaintiffs' claims and disputes in this case.

Introduction.

Plaintiffs have been longtime voting members of Defendant Dallas-Ft. Worth Metro Golden Retriever Club, dating back to 1995.¹ Plaintiffs have both been extremely active members in the organization and have served the organization in different volunteer positions.² One of the benefits of having an active membership with the Club is that it allows its members in good standing the opportunity to list and advertise their puppy litters with the Club's Puppy Referral Service.³

¹ Affidavit of Ellen Meyer, which is attached as Exhibit "A," and Affidavit of Alan Meyer, which is attached as Exhibit "B."

² Exhibit "A," paragraph 2 and Exhibit "B," paragraph 2.

³ Exhibit "A," paragraph 3, and Exhibit "B," paragraph 2.

The Club's Puppy Referral Service provides high visibility across the country for all puppy litters listed and constituted a major portion of Plaintiff s' advertising for their puppy litters to show prospect homes and as a direct result their income sustained for their puppy litters and their improvement of their line of Golden Retrievers.⁴ At /or around February 2005, Plaintiffs paid the necessary fees to the Club to list a litter of Golden Retriever puppies.⁵

Puppy Referral Service.

According to the Club's Bylaws, Section 7:

"a member who desires to list a litter or stud dog with the committee must have been a voting member of the club for at least six months prior to the listing. A litter listing shall be \$50.00 per litter for an eight (8) week listing. Additional weeks for the same litter will be \$25.00 per four (4) week period."⁶

There is no dispute as to whether Plaintiffs were members in good standing or voting members for the previous six months when they listed their litter of puppies with the Club's Puppy Referral Service (hereinafter referred to as the "Service"). Additionally, Plaintiffs paid the full \$50.00 amount for the eight (8) week listing.⁷

⁴ Exhibit "A," and paragraph 3 and Exhibit "B," and paragraph 3.

⁵ Exhibit "A," and paragraph 3 and Exhibit "B," and paragraph 3.

⁶ Constitution and Bylaws, Standing Rules Pertaining to Public Information and Puppy Referral Committee, pages 22-24 (Exhibit C). A true and correct copy of the Constitution and Bylaws of the Dallas-Ft. Worth Metro Golden Retriever Club (the "Bylaws") that were in effect during the relevant time period are attached to this brief as Exhibit "C."

⁷ Exhibit "A," and paragraph 3 and Exhibit "B," and paragraph 3.

Plaintiffs were able to sell their available puppies before the eight (8) week time allotment elapsed.⁸ Unfortunately, one of the puppies was returned to Plaintiffs, due to an alleged umbilical hernia, by a customer named B.J. Elliot.⁹ Pursuant to their contract with the Service and the Club's Bylaws, Plaintiffs sought to list the returned puppy for the remainder of their time allotment from the original listing on the Service.¹⁰ The Club's Constitution and Bylaws provide that all personal feelings should be put aside when dealing with puppy referral.¹¹

Events Giving Rise to Litigation.

Plaintiffs attempted to contact Debra Allen, a member of the Club's Board on **April 14, 2005**, to reactivate their puppy listing on the Service.¹² Plaintiffs received an email from Debra Allen on **April 15, 2005**, asking why the puppy was returned and stating that "[i]f the buyer is just a perfectionist it would be nice to warn the others with puppies."¹³ Plaintiffs did not wish to disclose information regarding their customer to Defendants because Defendant Judy Word had sent out an email on April 6, 2005, warning some breeders in the Dallas, Austin, and Houston clubs to be careful

⁸ Exhibit "A," and paragraph 4 and Exhibit "B," and paragraph 4.

⁹ Affidavit of Ellen Meyer, which is attached as Exhibit "A," and Affidavit of Alan Meyer, which is attached as Exhibit "B."

¹⁰ Exhibit "A," and paragraph 4 and Exhibit "B," and paragraph 4.

¹¹ Bylaws, Standing Rules Regarding Puppy Referral, section XI, Page 24, Exhibit "C", paragraph 5.

¹² Exhibit "A," paragraph 5 and Exhibit "B," paragraph 5.

¹³ Exhibit "B," A copy of an E-mail correspondence sent from Debbie Allan to Alan Meyer on April 15, 2005, which is attached to this brief as Exhibit "D."

of a certain puppy buyer.¹⁴ Plaintiffs did not want a similar email being sent out in regards to Mr. Elliot so they chose not to respond to Debbie Allen's email.¹⁵

Plaintiffs did not receive a return phone call after leaving numerous voice messages with Debbie Allen regarding the reactivation of their puppy litter listing and therefore contacted the Service volunteer on duty, Linda Marquart, directly early in the evening on April 22, 2005.¹⁶ Alan Meyer stated to the volunteer that their contract had not expired with the Service and advised her to confirm this with Debra Allen.¹⁷ Plaintiff Alan Meyer advised Linda Marquart that he had requested that the litter be reactivated and suggested that she could receive verification from Debbie Allen.¹⁸

Following this conversation with Linda Marquart on April 22, 2005, Alan Meyer talked with Defendant Judy Word on the phone with regards to the puppy in dispute.¹⁹ Defendant Word indicated that she had already discussed the issue with the Board as to whether to list the puppy.²⁰ Alan Meyer alerted Defendant Judy Word that he talked with Linda Marquart earlier in the evening to verify if she had the puppy on her referral list.²¹ In the early morning hours of April 23, 2005,

¹⁴ Exhibit "B," paragraph 5 A copy of an E-mail correspondence sent from Judy Word on April 6, 2005, which is attached to this brief as Exhibit "E," paragraph 5.

¹⁵ Exhibit "A," paragraph 6 and Exhibit "B," and paragraph 6.

¹⁶ Exhibit "A," paragraph 6 and Exhibit "B," paragraph 6.

¹⁷ Exhibit "B," paragraph 6.

¹⁸ Exhibit "A," paragraph 7 and Exhibit "B," paragraph 7.

¹⁹ Exhibit "A," paragraph 7 and Exhibit "B," paragraph 7.

²⁰ Exhibit "A," paragraph 7 and Exhibit "B," paragraph 7.

²¹ Exhibit "A," paragraph 7 and Exhibit "B," paragraph 7.

Plaintiffs received an email from Judy Word advising that the Board may consider listing the puppy; however, the Service would be required to provide a health disclosure on the puppy.²²

There is no provision in the Club's Constitution and Bylaws that requires that a known health condition of a puppy or a dog be disclosed by the Service.²³ In fact, the Standing Rules Pertaining to Public Information and Puppy Referral Committee require that Committee members fielding calls "must refer litter listings as they were given to the Committee."²⁴ (Emphasis added). Further, Plaintiff Ellen Meyer served as a puppy referral volunteer for approximately 10 years and during that time was never instructed to provide a health disclosure to potential puppy and/or dog buyers.²⁵ It should also be noted that the Club disclaims any responsibility to disclose such health information to prospective buyers calling the Puppy Referral Committee.²⁶

*Improper Procedures followed by Defendants in
Enacting Newly Created Legislation to Prohibit Plaintiff's from Listing
their Puppy without a Health Disclaimer by the Puppy Referral Service*

Defendant Judy Word, who at the time was the President of the Club, acting outside of the Club's Bylaws (Standing Rules Pertaining to Public Information and Puppy Referral Committee

²² Exhibit "A," paragraph 7 and Exhibit "B," paragraph 7.

²³ Bylaws, Standing Rules Pertaining to Public Information and Puppy Referral Committee, Pages 22-24, (Ex. "C").

²⁴ *Id.*

²⁵ Exhibit "A," paragraph 8.

²⁶ See DFWMGRC Puppy Referral information sheet taken from Defendant's website, www.dfwmgrc.org, which is attached as Exhibit "D-1". Further, the Puppy Referral website states: IMPORTANT INFORMATION: These Referrals are provided as information only. DFWMGRC is unable to do site inspections of breeders receiving referrals from the Club. DFWMGRC is not responsible for the physical condition of the puppies.....

pages 22-24), had direct contact with the puppy buyer to discover the condition of the puppy and why it was returned to Plaintiffs.²⁷ As stated in Defendant Judy Word's affidavit, which is attached to Defendants' Motion to Dismiss, on **April 21, 2005**,

"After hearing the problems his vet reported to him, and because of the recent information the Club had received from the Golden Retriever Club of America (the "National Club") concerning potential liability of clubs referring to unhealthy puppies, I asked Mr. Elliot to send me an email setting out the health issues his vet reported to him. Since I was president of the Club, I felt it was my responsibility to protect the Club."²⁸

Though given the opportunity by Mr. and Mrs. Meyer, Defendant Judy Word chose not to discuss the puppies alleged health problem with the veterinarian, Dr. Kirk Esmond.²⁹ Defendant Judy Word stated to Mr. and Mrs. Meyer in an April 22, 2005 phone call that she would be taking this issue up with the Board.³⁰ During this conversation, Mr. and Mrs. Meyer advised Defendant Judy Word that they had talked to a volunteer from the Service earlier that evening and that they had contacted Debbie Allen on April 14, 2005, about reactivating their litter listing.³¹

Acting outside the existing Constitution and Bylaws section "Standing Rules Pertaining to Public Information and Puppy Referral Committee (pages 22-24)," Defendant Judy Word and

²⁷ Bylaws, Standing Rules pertaining to Public Information and Puppy Referral Committee, pages 22-24, Exhibit "C".

²⁸ Defendants Affidavit of Judy Word, which is attached as Exhibit "F."

²⁹ Exhibit "A," paragraph 8 and Exhibit "B," paragraph 8 and see Affidavit of Dr. Kirk Esmond, which is attached as Exhibit "G."

³⁰ Exhibit "A," paragraph 8 and Exhibit "B," paragraph 8.

³¹ Exhibit "B," paragraph 8.

Defendant Dallas-Ft. Worth Metro Golden Retriever Club mandated that the puppy's alleged health condition be fully disclosed by the Service rather than by the Meyers, the breeder of the puppy.³² (Interestingly, the Meyers were later charged with knowingly and intentionally violating a Board directive prohibiting the listing of a puppy with puppy referral, despite the fact that this Board directive did not exist at the time of the alleged reactivation).

The Meyers do not dispute that the health conditions should be disclosed to prospective buyers; however, they maintain that in keeping with the long standing traditions and Standing Rules of the Club that the breeder should personally disclose the health condition of a puppy, instead of a volunteer from the Service.³³ As previously stated, Ellen Meyer served as a puppy referral volunteer for 10 years and was never instructed to provide health disclosures to potential puppy or dog purchasers who had called into the service.³⁴

According to the Constitution and Bylaws, and Standing Rules, and the long standing traditions of the Club, it has been left to the individual seller to fully disclose any health conditions of the puppies to potential purchasers.³⁵ Further, Dick Caldwell, a member of the Club, was allowed

³² Bylaws, Standing Rules pertaining to Public Information and Puppy Referral Committee, pages 22-24; Exhibit "A," paragraph 9, and Exhibit "B," paragraph 9.

³³ Exhibit "A," paragraph 9 and Exhibit "B," paragraph 9.

³⁴ Exhibit "A," paragraph 8.

³⁵ Bylaws, Standing Rules pertaining to Public Information and Puppy Referral Committee, pages 22-24; Exhibit "A," paragraph 9, and Exhibit "B," paragraph 9.

by Defendants to list his puppies with known health defects at/or around the same time.³⁶ Mr. Caldwell noted in email correspondence that he personally alerts prospective buyers to the puppies conditions,³⁷ rather than have the Service describe the health defect.

Interestingly, it was known to Defendant Judy Word and Debbie Allen that puppies listed on the Service by Dick Caldwell had a known health defect (undescended testicles).³⁸ This listing occurred at/or around the time of the events giving rise to this lawsuit occurred.³⁹ Both Defendant Judy Word and Debbie Allen had personally examined Mr. Caldwell's puppies and were advised of and/or had personal knowledge of the undescended testicles.⁴⁰ Still, Mr. Caldwell was allowed to list his puppies without any health disclosure(s) issued by the Service.⁴¹ This provides strong evidence of collusion by Defendant Judy Word and the Club's Board.

It is believed that Defendant Judy Word had a pecuniary interest in Mr. Caldwell's puppies (the dam of the litter is by Defendant Judy Word's stud dog). Further, it is known by a former Puppy Referral volunteer, that Debbie Allen has knowingly listed dogs with known defects on the Service, without having the Service provide a health disclaimer.⁴² This reveals a clear and consistent pattern

³⁶ Affidavit of Ann Horton, which is attached as Exhibit "H," paragraphs 2-5.

³⁷ Exhibit "H," paragraph 4 and Email correspondence between Ann Horton and Dick Caldwell, which is attached as Exhibit "I."

³⁸ Exhibit "H," paragraph 4 and Exhibit "I"

³⁹ Exhibit "H," paragraph 5.

⁴⁰ Exhibit "H," paragraph 4.

⁴¹ Exhibit "H," paragraph 5 and Exhibit "I."

⁴² Affidavit of Bernadette Tetro, which is attached as Exhibit "J," paragraph 4.

of arbitrary and capricious behavior, and/or collusion, by Defendants and the creation of new legislation that was only enforced against the Meyers.

*Defendants Failed to follow the Constitution and Bylaws
when Creating the Newly Enacted Legislation Regarding the Disclosure Rule*

It does not appear from the evidence presented that the Club ever held a special Board meeting as would have been required to promulgate this newly legislated "disclosure rule," pursuant to the existing Constitution and Bylaws. **Article III, Meetings and Voting, Section 4, Pages 4-5,**⁴³ of the Constitution and Bylaws mandates that:

"Special meetings of the Board may be called by the President, or may be called by the Corresponding Secretary upon receipt of a written request signed by at least two (2) members of the Board.....Written notice of such meeting shall be mailed by the Corresponding Secretary and postmarked at least five (5) days prior to the date of the hearing. Any such notice shall state the purpose of the meeting and no other business shall be transacted thereat. A quorum of such a meeting shall be a majority of the Board and without a quorum no official business may be conducted."

Defendants clearly acted outside the Constitution and Bylaws by arbitrarily and capriciously creating this rule by email,⁴⁴ which is strictly prohibited by the Club's Constitution, Bylaws, and Robert's Rules of Order Newly Revised (Defendant Dallas-Ft. Worth Metro Golden Retriever Club is governed by Robert's Rules of Order, Newly Revised, pursuant to the Constitution and Bylaws)⁴⁵ to prohibit the Meyers, and only the Meyers, from listing their puppy without a disclosure.

⁴³ Bylaws, Article III, Meetings and Voting, pages 4-5 (Ex. "C").

⁴⁴ Affidavit of Judy Word, which is attached as Exhibit "F," paragraph 6.

⁴⁵ Bylaws, Article XI, Parliamentary Authority, Page 12 (Ex. "C")

Instead, according to Defendant Judy Word's affidavit, which is attached to Defendants' Motion to Dismiss, she stated that:

"I **emailed** the Board and explained the situation to them. I asked for guidance on whether to allow the returned puppy to be relisted, in light of the recent warning from the National Club. The Board unanimously decided that the Meyers' returned puppy could not be relisted without a specific explanation of the puppy's health condition to be given to callers. In the Board's view, this action was necessary to protect the Club and the National Club."⁴⁶

It is clear that Defendants, acting outside the Club's Constitution and Bylaws, arbitrarily and capriciously created this newly enacted legislation that was previously not provided for in the Club's Constitution and Bylaws.

It appears from Defendant Word's affidavit that all discussions and decisions by the Board were made by telephone and/or email.⁴⁷ As previously noted, there were no "Special Meetings" of the Board called let alone any procedures followed as required by the Club's Constitution, Bylaws, and Standing Rules. Per Defendant Dallas-Ft. Worth Metro Golden Retriever Club's **Constitution and Bylaws, Article XI, Parliamentary Authority, Page 12:**

"The rules contained in the current edition of Robert's Rules of Order, Newly Revised, shall govern the club in all cases to which they are applicable and in which they are not inconsistent with these Bylaws and any other special rules of order the Club may adopt."

⁴⁶ Exhibit "F," paragraph 6.

⁴⁷ Exhibit "F," paragraph 6.

Roberts Rules of Order states:

“Efforts to conduct the deliberative process by postal or electronic mail or facsimile transmission, which are not recommended, must be expressly authorized by the Bylaws and should be supported by special rules of order and standing rules as appropriate, since so many situations unprecedented in parliamentary law may arise and since so many procedures common to parliamentary law are not applicable.”

RONR (10 ed.), p. 2, citing footnote⁴⁸.

Further, Robert’s Rules of Order holds that:

“Motions that conflict with the corporate charter, constitution or bylaws of a society, or with procedural rules prescribed by national, state, or local laws, are out of order, and if any motion of this kind is adopted, it is **null and void**.”

RONR (10th ed.), p. 322, l. 15-18.

“The personal approval of a proposed action obtained separately by telephone or individual interview, even from every member of a Board, is not the approval of the Board, since the members were not present in one room where they could mutually debate the matter.”

RONR (10th ed.), p. 469, l. 29-34⁴⁹

The Board and/or club never specifically authorized or amended their Constitution and Bylaws to allow email to substitute in place of the existing procedures and/or Bylaws.⁵⁰ It is once again clear that the Board acted arbitrarily and capriciously outside the Club’s Constitution and Bylaws when legislating the newly created rule against the Meyers by email. Further, Defendants

⁴⁸ *Robert’s Rules of Order, Newly Revised, 10th Edition*, Henry M. Robert III, William J. Evans, Daniel M. Honeman, Thomas J. Balch, De Capo Press, October 2000. Copies of the Rules cited are attached to the Brief as Exhibit “K.”

⁴⁹ *Id.*

⁵⁰ Bylaws. (Ex. “C”). Further, Defendants have still not changed the Bylaws to prohibit this action.

have never provided the Meyers and/or members of the Club with the alleged written warning received from the National Club as evidence in this matter.⁵¹

As stated in Defendants' Motion to Dismiss, the Club received a letter from Debbie Allen, which was stamped received by the Board on June 24, 2005.⁵² Once again, according to the Club's Constitution and Bylaws, Article III, Meetings and Voting, Section 4, pages 4-5, it is mandated that:

"Special meetings of the Board may be called by the President, or may be called by the Corresponding Secretary upon receipt of a written request signed by at least two (2) members of the Board. Such special meetings shall be held within the greater Dallas-Ft. Worth area at such a place, date and hour as may be designated by the person authorized herein to call such a meeting. Written notice of such meeting shall be mailed by the Corresponding Secretary and postmarked at least five (5) days prior to the date of the hearing. Any such notice shall state the purpose of the meeting and no other business shall be transacted thereat. A quorum of such a meeting shall be a majority of the Board and without a quorum no official business may be conducted."⁵³

Further, the Constitution and Bylaws, Article VII, Discipline, Charges, Pages 8-9, states that:

"The Recording Secretary shall promptly send a copy of the charges to each member of the Board, and the Board shall schedule a meeting (or may instead consider them at its next regularly scheduled Board Meeting) to first vote upon whether the actions alleged in the charges, if proven, might constitute conduct prejudicial to the best interests of the Club or Board."

According to Defendant Judy Word's affidavit, Paragraph 18, the Board received a written complaint on June 24, 2005, from Debbie Allen, and the Board held an "impromptu" Board meeting via email to discuss the situation.⁵⁴ It is apparent that the recording secretary, Sherri Farmer, did not

⁵¹ Exhibit "A," paragraph 10, Exhibit "B," paragraph 10.

⁵² Letter from Debbie Allen to Board. (Ex. "L").

⁵³ Bylaws Page 5, Article III, Meetings and Voting, Sections 4 and 5, page 5 (Ex. "C").

⁵⁴ Exhibit "F," paragraph 18.

promptly send written notice of such meeting by registered or certified mail that was postmarked at least five (5) days prior to the date of the Special Meeting where the Board voted to entertain jurisdiction of the charges, pursuant to the Constitution and Bylaws.⁵⁵ Defendants have not provided the returned confirmations for the registered or certified mail.

The alleged charges were stamped received on June 24, 2005,⁵⁶ by the Club and the Meyers had already been mailed a notice of Scheduled Disciplinary hearings and a copy of the alleged charges on June 28, 2005.⁵⁷ According to the timing required by the Constitution and Bylaws, it would have been impossible for the Board to discuss charges during a special Board meeting called, as required by the Constitution and Bylaws, since the letter to Plaintiffs was received within (4) days of the Board's stamped receipt date of June 24, 2005.⁵⁸ Further, it is not likely that the Board members had already received a mailed copy of the charges and set a hearing in accordance with the Constitution and Bylaws.⁵⁹ It is clear that the Club and its board did not follow the Constitution and Bylaws⁶⁰ with regards to the procedures required for preferring charges against the Meyers and acted in an arbitrary and capricious manner.

Further, the "impromptu" email Board discussion and/or meeting as claimed by the Club was clearly held in direct violation of the Club's Constitution and Bylaws (was improperly done by e-mail

⁵⁵ Bylaws, Article VII, Discipline, Section 2, Charges, Pages 8-9. (Ex. "C").

⁵⁶ Letter from Sherri Farmer to Debra Allen, which was attached to Defendants Motion as exhibit "E." For Plaintiffs' Motion this will be Exhibit "L."

⁵⁷ Letter from Defendant Dallas-Ft. Worth Metro Golden Retriever Club, which is attached as Exhibit "M."

⁵⁸ Bylaws, Article VII, Discipline, Section 2, Charges, Pages 8-9. (Ex. "C").

⁵⁹ *Id.*

⁶⁰ *Id.*

and failed to follow the Bylaws regarding notice of and procedure for a Special Meeting of Board of Directors). The Club's Constitution and Bylaws, Article XI, Parliamentary Authority, Page 12, adopts Robert's Rules of Order, Newly Revised, as the governing standard when not inconsistent with the Constitution and Bylaws.

As previously discussed regarding email by the Club's Board, Robert's Rules of Order states:

"Efforts to conduct the deliberative process by postal or electronic mail or facsimile transmission, which are not recommended, must be expressly authorized by the Bylaws and should be supported by special rules of order and standing rules as appropriate, since so many situations unprecedented in parliamentary law may arise since many procedures common to parliamentary law are not applicable."

RONR (10th ed.), p. 2, citing footnote⁶¹.

Further, Robert's Rules of Order holds that

"Motions that conflict with the corporate charter, constitution or bylaws of a society, or with procedural rules prescribed by national, state, or local laws, are out of order, and if any motion of this kind is adopted, it is **null and void**."

RONR (10th ed.), p. 322, l. 15-18.

Further, Robert's Rules of Order, Newly Revised state:

"The personal approval of a proposed action obtained separately by telephone or individual interview, even from every member of a Board, is not the approval of the Board, since the members were not present in one room where they could mutually debate the matter."

RONR (10th ed.), p. 469, l. 29-34.⁶²

⁶¹ *Robert's Rules of Order, Newly Revised, 10th Edition*, Henry M. Robert III, William J. Evans, Daniel M. Honeman, Thomas J. Balch, De Capo Press, October 2000. Copies of the Rules cited are attached to the Brief as Exhibit "K."

⁶² *Id.*

It is once again apparent, that the Club's Board clearly acted in an "arbitrary" and "capricious" manner acting once again outside the Club's Constitution and Bylaws, while bringing charges of the newly and improperly created legislation against the Meyers. Throughout every step of the process, Defendants acted outside of the Constitution and Bylaws, improperly creating and enforcing legislation that was solely created to single out and punish the Meyers.

The charges alleged by Defendant Dallas-Ft. Worth Metro Golden Retriever Club against the Meyers consisted of:

1. Knowingly and intentionally violating a Board directive prohibiting the listing of a puppy with puppy referral, and by doing so potentially causing liability against the Club for referring prospective buyers to a puppy with known health problems without full disclosure. (As previously discussed the alleged reactivation of the puppy litter listing would have occurred prior to the Board's improper creation of the newly legislated "disclosure rule").
2. Violation of puppy referral guidelines, i.e., contacting the puppy referral volunteer directly and coercing her into adding the puppy to the list without prior approval of the puppy referral committee. The Meyers contacted the Puppy Referral volunteer to see if their litter listing had been reactivated.
3. Failure to disclose that the puppy was (not) on the puppy referral list due to their violation of puppy referral guidelines.
4. Failure to disclose that they were receiving phone calls regarding the subject puppy as a direct result of the puppy being on the puppy referral list.
5. Threatening legal action against the Board and Club for not permitting the subject puppy to be listed without full disclosure.
6. Intentional harassment of club members.⁶³

⁶³ Exhibit "M".

No Pre-Hearing Investigation was performed by the Board as Required by the Constitution and Bylaws, pursuant to Robert's Rules of Order, Newly Revised.

Roberts Rules of Order, Newly Revised, Chapter 20, Disciplinary Procedures, provides that:

“Confidential Investigation by Committee. A committee whose members are selected for known integrity and good judgment should conduct a confidential investigation (usually including an interview with the accused) to determine whether further action, including the preferring charges if necessary, is warranted.

RONR (10 ed.), p. 632, l. 10-15⁶⁴

“For the protection of parties who may be innocent, the first resolution should avoid details as much as possible. It is best that an individual member not prefer charges, even if has proof of another’s wrongdoing. If a member introduces a resolution preferring charges unsupported by an investigating committee’s recommendation, another member should move to postpone the resolution indefinitely, saying that if the indefinite postponement is approved, he will move the appointment of such a committee. A resolution is improper if it implies the truth of specific rumors or contains insinuations unfavorable to a member, even if he is to be accused.

RONR (10th ed.), p. 632, l. 30-35, p. 633, l. 1-7⁶⁵

“An investigating committee appointed as described above has no power to require the accused or any other member of the society to appear before it, but should quietly conduct a complete investigation, making an effort to learn all the relevant facts. Before any action is taken, fairness generally demands that the committee or some of its members meet with the accused for frank discussion and to hear his side of the story.

RONR (10th ed.), p. 633, l. 14-18 and l. 22-25⁶⁶

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

“Report of Resolutions Either Exonerating the Accused or Preferring Specific Charges. But if the committee from its investigations finds substance to the rumors and cannot resolve the matter satisfactorily in any other way, it should make a report in writing-which should be signed by every committee member who agrees—outlining the course of its investigation and preferring charges.”

RONR (10th ed.), p. 633, l. 28-35, p. 634, l. 1-2⁶⁷

There is absolutely no evidence that Defendants complied with the rules regarding an investigation into the charges alleged against the Meyers in compliance with Roberts Rules of Order, Newly Revised, which procedures are authorized pursuant to the Club’s Constitution and Bylaws.⁶⁸ Plaintiffs were never interviewed or given the opportunity to discuss the alleged charges levied against them with the board or members of an investigative committee.⁶⁹ Based on Defendants’ clear pattern of acting outside the Constitution and Bylaws, when creating the “disclosure rule,” and when improperly drafting and issuing charges against the Meyers; that in their haste to punish and sanction the Meyers, for activity that Defendants had knowledge other members of the club were partaking in at the time, it is no wonder no formal or informal investigation took place as required by Defendant’s own rules and regulations.

The Meyers were not allowed to properly participate in the July 18, 2005. Hearing

The Club ordered a hearing to be conducted on July 18, 2005, regarding the allegations against the Meyers.⁷⁰ For the Court’s convenience a copy of a transcript of the July 18, 2005, hearing, which was transcribed by Ellen Meyer, and was recorded by Defendants is attached to this Brief as Exhibit

⁶⁷ *Id.*

⁶⁸ Bylaws, Article XI, Parliamentary Authority, Page 12. (Ex. “C”).

⁶⁹ Exhibit “A1,” paragraph 10, Exhibit “B,” paragraph 10.

⁷⁰ *Exhibit “M.”*

“A1 ” and the actual taped hearing is attached as Exhibit “N.” Procedurally, the July 18, 2005, hearing conducted by Defendants against the Meyers was not conducted pursuant to the Roberts Rules of Order, Newly Revised, as prescribed by the Constitution and Bylaws of the Club.⁷¹ Despite initially advising Plaintiffs that the hearing would be conducted pursuant to Roberts Rules of Orders, Newly Revised, these procedures were clearly not adhered to by Defendants.⁷² Specifically Roberts Rules of Order, Chapter 20, Disciplinary Procedures provides that:

‘Rights of the Society and the Accused. A member has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If a member is thus accused, he has the right to due process – that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself and to be fairly treated.

RONR (10th ed.), p. 631, l. 18-23.⁷³

‘Steps in a Fair Disciplinary Process. Most ordinary societies should never have to hold a formal trial, and their bylaws need not be encumbered with clauses on discipline. For the protection of the society and members alike, however, the basic steps which, in any organization make up the elements of fair disciplinary process should be understood.

RONR (10th ed.), p. 631, l. 34-35, p. 632, l. 1-5.⁷⁴

⁷¹ Bylaws, Article XI, Parliamentary Authority, Page 12. (Ex. “C”).

⁷² Exhibit “A,” and/or Exhibit “N.”

⁷³ *Robert’s Rules of Order, Newly Revised, 10th Edition*, Henry M. Robert III, William J. Evans, Daniel M. Honeman, Thomas J. Balch, De Capo Press, October 2000. Copies of the Rules cited are attached to the Brief as Exhibit “K.”

⁷⁴ *Id.*

“The managers at trial have the task of presenting the evidence against the accused, and must be members of the society. Their duty, however, is not to act as prosecutors—in the sense of every effort to secure conviction—but rather to strive that the trial will get at the truth and that, in the light of all facts brought out, the outcome will be just.

RONR (10th ed.), p. 636, l. 16-23.⁷⁵

“Trial procedure. The trial is a formal hearing on the validity of the charges, at which the evidence against the accused is presented by the managers for the society, at which the accused has the right to be represented by counsel and to speak and produce witnesses in his own defense, and after which, if the charges are found to be true, a penalty is imposed or recommended, but if the charges are not substantiated, the accuser is exonerated and his privileges of membership are automatically restored.

RONR (10th ed.), p. 638, l. 1-9.⁷⁶

“At the trial, in calling the meeting to order, the chair should call attention to the fact that the meeting is in executive session, and to the attendant obligation of secrecy. Preliminary steps then include the secretary’s reading from the minutes that resolutions adopted by the society relating to the trial, the chair’s verification – by inquiring of the secretary– that the accused was furnished with a copy of the charges, the chair’s announcement of the names of the managers of the society, and the chair’s inquiry of the accused as to whether he has counsel. The trial then proceeds as follows:

- “a) The chair directs the secretary to read the charges and specifications
- “b) The chair asks the accused how he pleads—guilty or not guilty—first to each of the specifications in order, and then to the charge.
- “c) If a plea of guilty is entered to the charge, there need be no trial, and the meeting can proceed directly to the determination of the penalty after hearing a brief statement of facts.
- “d) If the plea to charge is not guilty, the trial proceeds in the following order, the chair first explaining all the steps, then calling for each of them in sequence: (1) opening statements by both sides—the managers first; (2) testimony of

⁷⁵ *Id.*

⁷⁶ *Id.*

witnesses produced by the managers for the society; (3) testimony of defense witnesses; (4) rebuttal witnesses on behalf of the society; and then on behalf of the defense, if any; and (5) closing arguments by both sides. Up until the completion of the closing arguments, no one is entitled to the floor except the managers and the defense, and they must address the chair except when questioning witnesses. Cross examination, re-direct examination, and re-cross examination of witnesses is permitted, and witnesses can be recalled for further testimony as the occasion may dictate.

- “e) When the closing arguments have been completed, the accused must leave the room. If the trial is before the assembly rather than a trial committee, the managers, defense counsel (if members of the society), and member witnesses for both sides remain, take part in the discussion, and vote as any other members. The chair then states the question on the findings as to the guilt of the accused, as follows: “The question before the assembly [of “the committee”] is: Is Mr. N guilty of the charge and specifications, and the charge, is read, opened to debate, and voted on separately—although the several votes can be delayed to be taken on a single ballot. The specifications of the charge can be amended to conform to facts brought out in trial—but not in such a way as to find the accused guilty of a charge not wholly included within charge(s) for which he has been tried. If the accused is found guilty of one or more of the specifications but not the charge, a lesser charge should be moved and voted on. If the accused is found guilty, the chair announces that the next item of business is the determination of the penalty. One of the managers for the society usually makes a motion for a penalty that the managers feel appropriate; this motion is debatable and amenable.
- “f) After voting is completed, the accused is called back into the hall and advised of the result.’

RONR (10th ed.) p. 638, l. 20-35, p. 639, l. 1-35, p. 640, l. 1-15⁷⁷

Further, the process prescribed in the Club’s Constitution and Bylaws, specifically **Article VII, Discipline, Section 3**, were not provided to the Meyers during the hearing.

Article VII, Discipline, Section 3, Page 9, of the Constitution and Bylaws states:

“The Board shall make any decisions based only upon the actual evidence presented by the witnesses and the accused and the accuser. The accuser shall be required to

⁷⁷ *Id.*

present his or her evidence first and the accused shall have a right to be present at all times during such testimony, and the **accused shall then have the right to present the accused's own evidence. The accused shall have the right to cross examine the accuser and the accuser's witnesses.**"

As shown in the hearing transcript the July 18, 2005, hearing provided no rules or formal structure as required by Robert's Rules of Order, Newly Revised.⁷⁸ It appears from the transcript that Defendants merely made up the procedures as they went along and had no desire to listen to the evidence presented by Plaintiffs.⁷⁹ As shown in Defendants' Affidavit of Lynda Williams, Plaintiffs were not even allowed to present their own witnesses in this hearing, in direct contradiction to the Club's Constitution and Bylaws, and Roberts Rules of Order.⁸⁰ Although testimony was presented by the accuser (oddly the testimony was actually presented by the accuser's witness, Defendant Judy Word, directly contrary to the Club's rules and opening instructions by the Board)⁸¹ with regards to the health and condition of the puppy, the veterinarian at issue, Dr. Kirk Esmond, was not allowed to testify on behalf of the Meyers.⁸² Further, Alan Meyer was rarely allowed to finish a sentence at the hearing and Ellen Meyer was never given audience at the hearing.⁸³

⁷⁸ Transcript of July 18, 2005, hearing, which is attached as Exhibit "A1," and the taped recording which is attached as Exhibit "N."

⁷⁹ *Id.*

⁸⁰ Defendants' Affidavit of Lynda Williams, which is attached as Exhibit "O" and "N."

⁸¹ Transcript of July 18, 2005, hearing, Exhibits "A1" and "N."

⁸² Defendants' Affidavit of Lynda Williams, which is attached as Exhibit "O," paragraph 4.

⁸³ Transcript of July 18, 2005, hearing, which is attached as Exhibit "A1," and the taped recording which is attached as Exhibit "N."

As claimed in Lynda Williams Affidavit, Paragraph 4, since the charges allegedly did not have anything to do with the seriousness of the puppy's health issues (despite the first charge that was levied against the Meyers)⁸⁴ or the liability resulting from listing the puppy, she ruled them out of order and would not let them call Dr. Esmond as a witness.⁸⁵ This decision was clearly a capricious decision in contempt of the Club's Constitution and Bylaws and was a further newly legislated rule by Defendants, as opposed to merely interpreting the Bylaws.

Further, Ann Horton, who had personal knowledge that Board members, Defendant Judy Word and Debbie Allen knowingly allowed a Club member to list a litter, with known health defects on the Service, without a disclosure of the health defects,⁸⁶ was not given an opportunity to testify by Defendant Dallas-Ft. Worth Metro Golden Retriever Club's Board member Lynda Williams.⁸⁷ According to Mrs. Horton, this occurred simultaneously to the listing of the Meyer litter; however, Mr. Caldwell was not required to have a disclosure by the Board.⁸⁸ It is stated in Lynda Williams affidavit, Paragraph 4, that it was her "understanding that she (Ann Horton) was not involved in any of the events giving rise to the lawsuit."⁸⁹ This decision was clearly arbitrary and capricious by Lynda Williams, who was a Board member for the Club.

⁸⁴ Exhibit "M."

⁸⁵ *Id.*

⁸⁶ Affidavit of Anne Horton, Exhibit "H," paragraphs 2-5.

⁸⁷ Transcript of July 18, 2005, hearing, Exhibits "A1," and "N," Defendants' Affidavit of Lynda Williams, Exhibit "O," paragraph 4.

⁸⁸ Exhibit "H," paragraphs 2-5.

⁸⁹ Exhibit "O," paragraph 4.

Additionally, the Meyers as mandated by the Club's Constitution and Bylaws were not allowed to cross examine the accusers witnesses. Lynda Williams stated in the hearing to Alan Meyer, "You're not allowed to cross examine the witnesses."⁹⁰ Further, the accuser (actually the accuser's witness, Defendant Judy Word) was allowed to present evidence of written statements, which clearly circumvented the Meyers' right and ability to cross examine witnesses, and as a witness Defendant Judy Word should have been sequestered.⁹¹ These witness statements were in all likelihood used by Defendants in evaluating the charges brought against the Meyers. As previously stated, the Meyers are guaranteed the right under the Club's existing Constitution and Bylaws to fully cross examine the witnesses of the accuser.⁹² Defendant Judy Word, while a witness for the accuser, was allowed to remain and participate in the questioning of the accused, which is against the Constitution and Bylaws, and in violation of Robert's Rules of Order, and contradicts Lynda Williams' opening instructions that witnesses would remain outside and not be present outside of their testimony.⁹³ Defendants did not allow the Meyers to present their own evidence and they restricted their ability to defend themselves from their accuser.⁹⁴

⁹⁰ Exhibit "A1" page 6.

⁹¹ Transcript of July 18, 2005, hearing, which is attached as Exhibit "A1," and the taped recording which is attached as Exhibit "N."

⁹² Bylaws, Article VII, Discipline, Section 3, Board Hearing, Page 9. (Ex. "C").

⁹³ Transcript of July 18, 2005, hearing, which is attached as Exhibit "A1," and the taped recording which is attached as Exhibit "N."

⁹⁴ *Id.*

Furthermore, the Meyers were not allowed sufficient time to present their evidence.⁹⁵ They were initially instructed that they would have fifteen minutes to present their defense, and only Alan Meyer was allowed to present evidence despite charges also being brought against Ellen Meyer.⁹⁶ Additionally, Alan Meyer was continuously interrupted, badgered, and mocked throughout the entirety of his attempt to present a defense.⁹⁷ Nowhere in the Club's Constitution or Bylaws, nor in the letter to the Meyers bringing charges against them by Defendants did it indicate that they would be limited in their time to present their defense of the charges brought against them.⁹⁸

Defendants consistently and repeatedly changed and/or violated the Club's existing Constitution and Bylaws (legislating instead of interpreting) to prejudice the Meyers during the administrative hearing and through the entire administrative process. Interestingly, at several points in the hearing, Board members acknowledged that some of the alleged charges against the Meyers did not have merit;⁹⁹ however, each charge was later upheld against Plaintiffs.

The Five Year Suspension from Puppy Referral Service was invalid pursuant to Constitution and Bylaws and inconsistent with the charges brought against the Meyers

The June 28, 2005, letter sent by Sherri Farmer on behalf of the Club to the Meyers listed the possible sanctions/punishments that the Meyers could receive if proven guilty.¹⁰⁰ Consistent with the

⁹⁵ Transcript of July 18, 2005, hearing, Exhibit "A," paragraph 13 and Exhibit "B," paragraph 13.

⁹⁶ Exhibit "A1," page 2 and 36.

⁹⁷ Transcript of July 18, 2005, hearing.

⁹⁸ Bylaws. (Ex. "C"). June 28, 2005, letter sent to Plaintiffs by Defendants, Exhibit "M."

⁹⁹ Exhibit "A1," pages 19 and 22, Exhibit "A," paragraph 13, and Exhibit "B," paragraph 13.

¹⁰⁰ Exhibit "M."

Constitution and Bylaws Article VII, Section 5, Pages 9-10, the letter stated that the possible punishments are:

- A. "Reprimand. A letter of reprimand from the Board to the accused. The letter is not to be published.
- B. "Requirement. A letter requiring the accused sustain from performing, or perform, an activity that was the subject of the charges. A failure to sustain from performing, or perform, such activity may subject the accused to further sanctions as set forth in the letter. This letter is not to be published.
- C. "Suspension. Suspension of the accused from all privileges of the Club for not more than six (6) months following the date of the hearing.
- D. "Expulsion. If the Board votes for expulsion, a vote of the membership is required...."

Despite the listed sanctions by the Constitution and Bylaws, and Mrs. Farmer's June 28, 2005, letter regarding the charges issued, the Club, instead of interpreting their existing Rules and Regulations, legislated a new punishment/sanction against the Meyers and other members that were clearly outside of the Club's Constitution and Bylaws.

Specifically, the sanctions/punishment issued against the Meyers in the July 20, 2005, letter from the Club were that:

"Pursuant to Article VII, Section 5.D of the DFWMGRC Constitution and Bylaws, Alan and Ellen Meyer, and members of their immediate family, are suspended from listing puppies, or older dogs with the DFWMGRC Puppy Referral service until July 18, 2010. Neither Alan Meyer nor Ellen Meyer or any member of their immediate family may be on the Puppy Referral list to receive calls for any litter(s), individual puppy(ies), or older dog(s) whatsoever. For clarification, the following classifications of puppies and older dogs are prohibited from being listed with DFWMGRC Puppy Referral Until July 18, 2010:

- "1. Puppies or dogs born to any bitch owned or co-owned by Alan Meyer, Ellen Meyer, and/or any member of their immediate family; and

- “2. Puppies or dogs born from any stud dog owned or co-owned by Alan Meyer, Ellen Meyer, and/or any member of their immediate family out of a bitch owned by a non-DFWMGRC member.

“Additionally, Alan and Ellen Meyer are prohibited from serving on the DFWMGRC Puppy Referral committee during the term of this suspension.”¹⁰¹

It is clear that these sanctions were not provided for within and were clearly outside of the scope of the Club’s Constitution and Bylaws. The suspension of Plaintiffs until 2010 clearly exceeds Article VII, Section 5.C, Page 10, of the Constitution and Bylaws that states that “suspension of the accused from all privileges of the Club **for not more than six (6) months** following the date of the hearing. The July 20, 2005, letter sending notice of the sanctions issued to Plaintiffs states that the sanctions were issued pursuant to Article VII, **Section 5.D, Page 10**, of the Club’s Constitution and Bylaws. Once again, Article VII, Section 5.D states,

“Expulsion. If the Board votes for expulsion, a vote of the membership is required .
.”

Furthermore, it is apparent from the July 20, 2005, letter that **only** Defendant Dallas-Ft. Worth Metro Golden Retriever Club’s Board voted on the sanctions/punishment.¹⁰² Thus, the Board capriciously and arbitrarily legislated the sanctions imposed on the Meyers outside of the provisions of the Constitution and Bylaws.¹⁰³ Further, Defendant’s Board imposed sanctions against puppies or dogs born to any bitch owned or co-owned by Alan Meyer, Ellen Meyer, and/or any member of their immediate family, and puppies or dogs born from any stud dog owned or co-owned by Alan Meyer,

¹⁰¹ Letter dated July 20, 2005, from Sherri Farmer to Plaintiffs; Exhibit “P.”

¹⁰² Sherri Farmer to Plaintiffs, Exhibit “P.”

¹⁰³ Bylaws, Article VII, Discipline, Section 5, Sanctions, Pages 9-10. (Ex. “C”).

Ellen Meyer, and/or any member of their immediate family out of a bitch owned by a non-DFWMGRC member.¹⁰⁴ These people, classes and/or groups were clearly not involved in the administrative process and the Club's Constitution and Bylaws gives no power to Defendant Dallas-Ft. Worth Metro Golden Retriever Club to issue sanctions against them.¹⁰⁵

Defendants have been inconsistent in their enforcement of the sanctions levied against the Meyers. In February of 2006, the Meyers submitted a catalog advertisement for the upcoming DFWMGRC speciality show catalog as per the published guidelines in an approved AKC premium.¹⁰⁶ This was an offering to the general public.¹⁰⁷ Defendant Judy Word and the Club's Board refused to accept the advertisement because they legislated that it was allegedly part of the sanctions issued against the Meyers.¹⁰⁸ However, this catalog advertisement was approved, and accepted by the 2007 Board for the 2007 DFWMGRC speciality catalog.¹⁰⁹ Defendant Judy Word is no longer a member of the Club's Board.¹¹⁰

Arguments and Authorities

Defendants base their Motion to Dismiss on the doctrine of judicial noninterference. The case law that Defendants have presented state that "the courts will not interfere with the internal

¹⁰⁴ Letter dated July 20, 2005, from Sherri Farmer to Plaintiffs.

¹⁰⁵ Bylaws, Article VII, Discipline, Section 5, Sanctions, Pages 9-10. (Ex. "C").

¹⁰⁶ Exhibit "B," paragraph 14.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

management of a voluntary association **so long as the governing bodies of such associations do not substitute legislation for interpretation**, and do not act unreasonably or contravene public policy or the laws in such interpretation and administration.”¹¹¹ Further, “**the judiciary may intervene when arbitrariness, fraud, or collusion are involved.**”¹¹²

Texas Courts have held that when a member of a voluntary association has been convicted of an offense and expelled in violation of the rules and by-laws of the association, and where the by-laws and other laws of the association do not allow adequate relief by appeal from such conviction and expulsion, such member may in fact resort to a court of equity for relief.¹¹³ Additionally, an association’s order of suspension is subject to review by the court and its enforcement will be enjoined if it is accomplished contrary to the rules and regulations of the association.¹¹⁴

Texas Courts have held that the term “due process of law” is synonymous with “the law of the land,” and its essential elements are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case.”¹¹⁵ Further, the courts have also held in regards to clubs and/or associations that an accused shall “have an opportunity to make a defense, which

¹¹¹ *Brotherhood of Railroad Trainmen v. Price*, 108 S.W.2d 239, 241 (Tex.Civ.App.-Galveston 1937, writ dismissed).

¹¹² *Burge v. Am. Quarter Horse Ass’n*, 782 S.W.2d 353, 355 (Tex.App.-Amarillo January 5, 1990) (citing *Harden v. Colonial Country Club*, 634 S.W.2d 56, 59 (Tex.App.-Fort Worth 1982, writ refused n.r.e.).

¹¹³ *Brown v. Harris County Medical Society*, 194 S.W. 1179, 1181, (Tex.Civ.App.-Galveston May 01, 1917), no writ history.

¹¹⁴ *American Institute of Real Estate Appraisers v. Hawk*, 436 S.W.2d 359, 365 (Tex.Civ.App.-Hous [14th Dist.] Dec 18, 1968), no writ.

¹¹⁵ *Masonic Grand Chap. of Order of East Star v. Sweatt*, 329 S.W.2d 334, 337 (Tex.Civ.App.-Fort Worth Nov 06, 1959), writ refused n.r.e.

involves more than notice and hearing, but time in which to prepare a defense.”¹¹⁶ Ordinarily, counsel will be employed, witnesses interviewed, and a study of the Constitution and by-laws will be made.”¹¹⁷

CONCLUSION

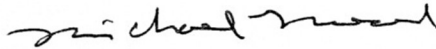
Defendants arbitrarily and capriciously acted outside of the Club’s Constitution and Bylaws at every step of the administrative process in their pursuit of sanctions/punishment against the Meyers. These repeated actions and/or violations of the existing rules and regulations of the Club reflect a clear pattern of Defendants improperly creating legislation, instead of interpreting their existing Constitution and Bylaws, to arbitrarily punish Plaintiffs. Further, there is evidence of collusion by Defendant Judy Word and the Board against Plaintiffs. Based on these actions, and the Meyers exhaustion of Defendant Dallas-Ft. Worth Metro Golden Retriever Club’s administrative process, this Court has the necessary Subject Matter Jurisdiction to hear this matter. Therefore Defendants Motion to Dismiss should be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Ellen and Alan Meyer pray that this Court deny Defendants’ Motion to Dismiss and grant them such other and further relief to which they may show themselves justly entitled at law or in equity.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned attorney of record hereby certifies that a true and correct copy of the foregoing document has been served to all other parties in this cause in accordance with Texas Rule of Civil Procedure 21a on this the 28th day of March, 2007.



Donald A. Ferrill/Michael J. Moore