

NO. 06-08336

**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**

**44<sup>TH</sup> JUDICIAL DISTRICT**

**DALLAS COUNTY, TEXAS**

**FILED**  
07 JUN 11 AM 11:22  
GARY SIMMONS  
DISTRICT CLERK  
DALLAS CO., TEXAS

**PLAINTIFFS' THIRD AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Ellen and Alan Meyer, Plaintiffs in the above styled and numbered cause and files this their Third Amended Petition and would show the Court the following:

**I. DISCOVERY CONTROL PLAN**

This is a Level 3 case under Tex. R. Civ. P. 190.

**II. PARTIES**

Plaintiffs are residents of Parker, Collin County, Texas.

Defendant Dallas - Ft. Worth Metro Golden Retriever Club is a Texas Club has entered a Special Appearance and may be served by serving its attorney of record pursuant to Rule 21a.

Defendant Judy Word is an individual resident of Texas has entered a Special Appearance and may be served by serving her attorney of record pursuant to Rule 21a.

**III. FACTUAL BACKGROUND**

Ellen and Alan Meyer (hereinafter referred to as Plaintiffs) have been longtime voting members of the Dallas-Ft. Worth Metro Golden Retriever Club (hereinafter referred to as "DFWMGRC"), dating back to 1995. Plaintiffs have both been extremely active members in the

organization and have served the organization in different volunteer positions and board positions. One of the benefits of having an active membership with Defendant Dallas-Ft. Worth Metro Golden Retriever Club (hereinafter referred to as Defendant DFWMGRC) is that it allows its members in good standing the opportunity to list and advertise puppy litters with a puppy referral service. Because of Defendant DFWMGRC's website, this provides high visibility across the country for all puppy litters listed with the puppy referral service. At/or around the spring/summer of 2005, Plaintiffs paid the necessary fees to Defendant DFWMGRC to list a litter of golden retriever puppies. According to Defendant DFWMGRC's By-Laws, 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." 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 Defendant DFWMGRC's referral service. Additionally, Plaintiffs paid the full \$50.00 amount for the eight (8) week listing.

Plaintiffs were able to sell all of their puppies before the eight (8) week time allotment elapsed. Unfortunately, one of the puppies was returned to the Plaintiffs, due to an alleged umbilical hernia. Defendant Judy Word, who at the time was the President of the Club, in direct contravention to Defendant DFWMGRC's By-Laws, made contact with the puppy buyer to discover the condition of the puppy and why it was returned to Plaintiffs. Defendant Word misled the purchaser of the puppy as to the rules and procedures of the club to obtain confidential information.

Plaintiffs sought to list the returned puppy for the remainder of the time allotment from the original listing on the puppy referral service. However, in direct contravention to Defendant

DFWMGRC's By-Laws, the board mandated that the puppy's alleged health condition be fully disclosed in the referral process rather than by the owner of the puppy. According to the By-Laws and the long standing traditions of Defendant DFWMGRC, it has been left to the individual seller to fully disclose any health conditions of the puppies to potential purchasers.

Plaintiffs sought several avenues to try and make Defendant DFWMGRC and Defendant Judy Word adhere to the Club's By-Laws and long standing traditions. However, Defendants were unyielding in their attempts to prevent Plaintiffs from fairly stating their case and further sanctioned and punished Plaintiffs with sanctions not provided for in the Club's By-Laws. Defendant Judy Word and Defendant DFWMGRC suspended Plaintiffs and anyone who co-owns a dog/bitch with the Plaintiffs or is a non-club member who has bred a bitch to a stud dog owned/co-owned by the Plaintiffs from participating in the puppy referral system for a period of five (5) years extending into 2010.

#### IV. CAUSES OF ACTION

*1. Defendant DFWMGRC*

*A. Breach of Contract*

As a contractual member and member in good standing with Defendant DFWMGRC, Plaintiffs are entitled to the full benefits of the club membership. Further, Plaintiffs have paid all necessary fees to participate in the puppy referral service. However, Defendant DFWMGRC has prohibited Plaintiffs from participating in the puppy referral service, has failed to deliver all services paid for, and has prohibited Plaintiffs and anyone who co-owns a dog/bitch with the Plaintiffs or is a non-club member who has bred a bitch to a stud dog owned/co-owned by the Plaintiffs from participating in the puppy referral system for a period of five (5) years extending into 2010. Thus,

Defendant DFWMGRC has breached it's contractual obligation to Plaintiffs.

*B. Tortious Interference with Prospective and Current Relations*

Defendant DFWMGRC's decision to disclose confidential information, act outside of the Club's By-Laws, and prohibit Plaintiffs and anyone who co-owns a dog/bitch with the Plaintiffs or is a non-club member who has bred a bitch to a stud dog owned/co-owned by the Plaintiffs from participating in the puppy referral system for a period of five (5) years extending into 2010, constitutes tortious interference with Plaintiffs' prospective relations. It is clear that if Plaintiffs were allowed to use the puppy referral service there would be a high probability that Plaintiffs would have entered into business relationships with third parties both for past litters and future litters. Plaintiffs' past listings through the puppy referral service had yielded successful results.

However, Defendant DFWMGRC intentionally interfered with these relationships and potential relationships by placing regulations on Plaintiffs' puppy and future litters that were not provided for in the Club's By-Laws. Further, Defendant DFWMGRC's five year suspension of Plaintiffs was not performed in accordance with the procedures, rules, regulations and By-Laws adopted by the Club. The inability to advertise the litters through the puppy referral service has caused economic damages to Plaintiffs. The regulations have also caused undue hardship to individuals that co-own dogs with the Plaintiffs or own offspring of the Plaintiffs' dogs. This has injured the Plaintiff's business relationships with those that purchased dogs from them or would have considered purchasing dogs from them.

*C. Negligence and Gross Negligence*

Defendant DFWMGRC's failure to adhere to the Club's rules, regulations, protocol, and By-Laws has caused and is causing injury to Plaintiffs. Specifically, Defendant DFWMGRC's failure

to follow the By-Laws and rules adopted by the club during the alleged disciplinary proceedings constituted a breach of duties owed by Defendant DFWMGRC to Plaintiffs, as members in good standing of the Club. In this tribunal plaintiffs were not allowed to fully cross-examine their accusers nor present evidence in their own defense. In direct violation of Defendant DFWMGRC's adopted rules, Plaintiffs were not allowed any time to present a defense of the charges against them before Defendant DFWMGRC issued sanctions. Further, Defendant DFWMGRC failed to follow it's own By-Laws when issuing the sanctions against Plaintiffs. The punishment issued is not provided for in Defendants DFWMGRC's By-Laws. Further, Defendant DFWMGRC did not follow it's own rules, regulations, and By-Laws when issuing the severe sanction. These actions by Defendant DFWMGRC clearly constitute negligence, gross negligence, and malice.

*D. Negligent Misrepresentation*

Defendant DFWMGRC represented to Plaintiffs that it would list their puppy litters on its puppy referral service as long as they were members in good standing, provided required health clearances on both sire and dam of the litter and paid the necessary fees (as stated within the By-laws). Plaintiffs, as members in good standing with Defendant DFWMGRC, provided the required clearances and paid the necessary fees to list a litter through the puppy referral service. Defendant DFWMGRC, acting outside of it's By-Laws and representations made to Plaintiffs, mandated that information be disclosed by the referral service as to a puppy's alleged health condition.

Further, representatives of Defendant DFWMGRC misrepresented the puppy's alleged health condition to prospective purchasers. Defendant DFWMGRC did not perform any independent evaluation to determine the alleged condition of the puppy. Defendant DFWMGRC originally represented to Plaintiffs that no information as to any puppies' health condition would be divulged

through the puppy referral service. It was represented that this was Plaintiffs' obligation and responsibility. Still, Defendant DFWMGRC supplied false representations regarding the puppy's alleged condition to potential purchasers, which undoubtedly caused injury to Plaintiffs.

*E. Civil Conspiracy*

Defendant DFWMGRC and its board members and representatives conspired to cause injury and harm to Plaintiffs. Defendant Judy Word and other members of Defendant DFWMGRC's 2005 and 2006 board, who are in direct competition with Plaintiffs, sought to limit Plaintiffs' exposure through the puppy referral service and to cause a negative stigma to be associated with Plaintiffs' dogs. Defendant DFWMGRC, through its 2005 board members, sought to unlawfully suspend Plaintiffs, who were members in good standing, from the puppy referral service. Defendant DFWMGRC's board members consistently acted outside Defendant DFWMGRC's rules, regulations, and By-Laws, to achieve their unlawful goals. Further, Defendant Judy Word, on her own or acting as a DFWMGRC board member solicited confidential information and misled a client of Plaintiffs. These actions led to Plaintiffs' suspension for five (5) years from the puppy referral service, which has caused and will cause substantial injuries to Plaintiffs' breeding program and business relationships.

*F. Texas Free Enterprise and Antitrust Act of 1983*

The actions of Defendant constitute violations of Section 15.05 of the *Texas Business and Commerce Code*, which provides the following:

- (a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.

- (b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

As described above, Defendant's actions constitute willful or flagrant violations of the Texas Business and Commerce Code Section 15.05, which is also referred to as the Texas Free Enterprise and Anti-trust Act of 1983.

*G. Violation of Plaintiffs Due Process Rights*

Defendant DFWMGRC's Board continuously violated Plaintiffs Due Process rights by its failure to adhere to the Club's existing Constitution and Bylaws (and Parliamentary Rules) throughout the administrative process regarding the alleged charges and issued sanctions against Plaintiffs, and the Club's failure to allow the Plaintiffs the ability to fully participate in the July 18, 2005, hearing.

Specifically, at the July 18, 2005, hearing Defendant DFWMGRC's Board refused to let the Plaintiffs cross examine their accusers witnesses and only allowed Plaintiff Alan Meyer a limited time to present his defense. Defendant DFWMGRC did not allow Plaintiff Ellen Meyer to address and/or defend the charges issued against her. Further, Defendant DFWMGRC's Board did not allow Alan Meyer the opportunity to present a witness, Dr. Kirk Esmond, to testify on the Meyer's behalf at the hearing. The time limits imposed by Defendant DFWMGRC's Board initially given 15 minutes, and barely extended did not allow Plaintiff Alan Meyer the opportunity to call another witnesses on his behalf, Ann Horton, and forced him to merely read his testimony into the record.

Following the hearing, Defendant DFWMGRC's Board issued sanctions against the Plaintiffs that were clearly outside of the Club's Constitution and Bylaws. Defendant DFWMGRC's Board 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 Plaintiffs. 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. Based on the continued deprivation of Plaintiffs rights throughout the administrative process with the Club, and Plaintiffs exhaustion of Defendant Dallas-Ft. Worth Metro Golden Retriever Club's administrative (appeal) process, the Plaintiffs were denied their Due Process rights.

*H. Defendant DFWMGRC Committed Business Disparagement Against Plaintiffs*

Defendant DFWMGRC knowingly published disparaging words about the Plaintiffs' economic interests (Golden Retriever breeding) on its website regarding the Puppy Referral Service; which Defendant DFWMGRC knew was false; that Defendant DFWMGRC published with malice; that was published without privilege; and the disparaging words which were placed on the website regarding the Plaintiffs and the Puppy Referral Service caused special damages to Plaintiffs.

*I. Permanent Injunction*

Plaintiffs request that after a trial on the merits, the Court order a permanent injunction against Defendant Dallas Metro Fort Worth Golden Retriever Club prohibiting the Club from sanctioning Plaintiffs for their past actions and more specifically from barring Plaintiffs Alan and Ellen Meyer from full use and privileges associated with the puppy referral service provided for by the Club. Defendant Dallas Metro Fort Worth Golden Retriever Club's sanctions issued against Plaintiffs that prohibits them and people associated with them, the right to use the puppy referral service has caused irreparable harm to Plaintiffs. Further, Plaintiffs have no adequate remedy at law for the harm that is occurring. The injuries and losses are continuing. The property and rights



involved are unique and irreplaceable, so that it will be impossible to accurately measure, in monetary terms, the damages caused by Defendant Dallas Metro Fort Worth Golden Retriever Club's conduct.

**2. Defendant Judy Word**

**A. Tortious Interference with a Contract**

As a member of DFWMGRC, having provided the required health clearances and payment of the puppy referral service fee (as previously stated and outlined within the By-Laws), Plaintiffs had a contractual relationship with Defendant DFWMGRC. As a board member, Defendant Judy Word, willfully and intentionally interfered with Plaintiffs contract and/or contracts. Specifically, Defendant Judy Word willfully and intentionally sought confidential information regarding Plaintiffs' puppy from a client of Plaintiffs. Defendant Judy Word used the incorrect information to place restrictions on Plaintiffs, not provided for in Defendant DFWMGRC's rules, regulations, and By-Laws, to interfere with Plaintiffs' contractual rights with Defendant DFWMGRC. Further, Defendant Judy Word misled potential customers of Plaintiffs during the puppy referral service. Plaintiffs suffered damages as a result of Defendant Word's tortious interference with Plaintiffs' contract with Defendant DFWMGRC.

**B. Tortious Interference with Prospective Relations**

Through Defendant DFWMGRC's puppy referral service Plaintiffs would have entered into business relationships with third parties for the sales of puppies. However, Defendant Judy Word intentionally interfered with the relationships by misleading potential customers and placing unfair restrictions on Plaintiffs ability to utilize the puppy referral service. Defendant Word's tortious interference with Plaintiffs' prospective relations has caused and is causing actual damages and

losses to Plaintiffs.

*C. Negligence and Gross Negligence*

Defendant Judy Word's actions regarding her attempts to obtain confidential information from a client of Plaintiffs, constitute negligence and gross negligence. These actions led to Plaintiffs' suspension for five (5) years from the puppy referral service, which has caused substantial injuries to Plaintiffs' breeding business.

*D. Breach of Fiduciary Duty*

As an officer of Defendant DFWMGRC, Defendant Judy Word owed Plaintiffs a fiduciary duty. As previously stated, Judy Word, acting as DFWMGRC President solicited confidential information from a client of Plaintiffs. These actions led to Plaintiff's suspension for five (5) years from the puppy referral service, which has caused substantial injuries to Plaintiffs' breeding business. It is clear that Defendant Judy Word breached her fiduciary duty owed to Plaintiffs.

*E. Texas Free Enterprise and Antitrust Act of 1983*

The actions of Defendant constitute violations of Section 15.05 of the *Texas Business and Commerce Code*, which provides the following:

- (a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.
- (b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

As described above, Defendant's actions constitute willful and flagrant violations of the Texas Business and Commerce Code Section 15.05, which is also referred to as the Texas Free Enterprise and Anti-trust Act of 1983.

*F. Violation of Plaintiffs Due Process Rights*

Defendant Judy Word, acting as President of Defendant DFWMGRC, continuously violated Plaintiffs Due Process rights by her failure to adhere to the Club's existing Constitution and Bylaws (and Parliamentary Rules) throughout the administrative process regarding the alleged charges and issued sanctions against Plaintiffs, and the Club's and her failure to allow the Plaintiffs the ability to fully participate in the July 18, 2005, hearing, which violated Plaintiffs due process rights.

Defendant Judy Word arbitrarily and capriciously acted outside of the Club's Constitution and Bylaws at every step of the administrative process, by improperly creating new legislation solely to punish the Plaintiffs, and failing to allow Plaintiffs the opportunity to adequately defend themselves against the newly created legislation and/or the charges that were later brought against them. These repeated actions and/or violations of the existing rules and regulations of the Club reflect a clear pattern of Defendant Judy Word improperly creating legislation, instead of interpreting the Club's existing Constitution and Bylaws, to arbitrarily punish Plaintiffs. Based on the continued deprivation of Plaintiffs rights throughout the administrative process by Defendant Judy Word, and Plaintiffs exhaustion of Defendant Dallas-Ft. Worth Metro Golden Retriever Club's administrative (appeal) process, the Plaintiffs were denied their Due Process rights.

*G. Defamation*

Defendant Judy Word has continuously and maliciously defamed Plaintiffs both before and after the 2005 sanctions were issued against them by Defendant DFWMGRC. Specifically, Defendant Judy Word has made defamatory statements about Plaintiffs to other members of DFWMGRC that were false, that were malicious and/or negligent, and caused Plaintiffs injuries.

## V. DAMAGES

Upon trial of this case, it will be shown that Plaintiffs were caused to sustain injuries and damages as a proximate result of Defendant DFWMGRC's Breach of Contract, Tortious Interference with Prospective Relations, Negligence and Gross Negligence, Negligent Misrepresentation, Civil Conspiracy and violations of the Texas Free Enterprise and Anti-trust Act of 1983. Further, Plaintiffs sustained damages as a result of Defendant Judy Word's Tortious Interference with a Contract, Tortious Interference with Prospective Relations, Negligence and Gross Negligence, Negligent Misrepresentations, and violations of the Texas Free Enterprise and Anti-trust Act of 1983.

Plaintiffs respectfully request the Court and Jury to determine the amount of economic loss, incidental damages, punitive damages, and damages to Plaintiff's reputation. Defendants' conduct as described in this Petition and the resulting damage and loss to Plaintiffs has necessitated that Plaintiffs retain the attorneys whose names are subscribed to this Petition. Plaintiffs, therefore, are entitled to recover from Defendants an additional sum to compensate Plaintiffs for a reasonable fee for such attorneys' necessary services in the preparation and prosecution of this action, as well as a reasonable fee for any and all necessary appeals to other courts or for defending any appeals to other courts.

Further, Plaintiffs are entitled under Business and Commerce Code Section 15.21(a)(1) to recover the cost of suit, including a reasonable attorney's fee; provided, however, that if the trier of fact finds that Defendants' unlawful conduct violated Texas Business and Commerce Section 15.05 (a) or (b), and was willful or flagrant, it shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee, provided that interest on actual

damages as specified above may not be recovered when recovered damages are increased threefold.

#### **VI. DEMAND FOR JURY TRIAL**

By the filing of this Petition and any subsequently amended Petitions, Plaintiffs hereby demand that this case be tried to a jury. The appropriate jury fee has been paid.

#### **VII. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Ellen and Alan Meyer pray that Defendant Dallas-Ft. Worth Metro Golden Retriever Club and Defendant Judy Word be cited to appear and answer herein, and upon final hearing Plaintiffs have judgment against Defendants that Plaintiff recover such amounts that they may be entitled to recover under the law and the facts, together with interest, and Plaintiffs be awarded all costs and reasonable and necessary attorney fees, that all sanctions against Plaintiffs be removed, and that Plaintiffs be allowed full access and use of Defendant DFWMGRC's puppy referral service, that a permanent injunction be issued, on final trial of this cause, enjoining Defendant Dallas-Ft. Worth Metro Golden Retriever Club its agents, servants, and volunteers from sanctioning Plaintiffs and specifically from prohibiting Plaintiffs from participating and enjoying full use of and all rights associated with the Club's puppy referral service, and that Plaintiffs recover such other and further relief, to which they may be just entitled, either at law or in equity, general or special.

Respectfully submitted,



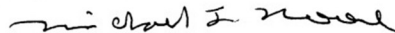
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ATTORNEYS FOR PLAINTIFFS

**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 27<sup>th</sup> day of June, 2007.



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Donald A. Ferrill/Michael J. Moore