

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO, <i>ex rel.</i>	:	
DAVE YOST,	:	
OHIO ATTORNEY GENERAL	:	
Charitable Law Section	:	Case No.
150 East Gay Street, 23 rd Floor	:	
Columbus, Ohio 43215,	:	Judge
	:	
Plaintiff,	:	
	:	
v.	:	COMPLAINT OF OHIO ATTORNEY GENERAL DAVE YOST
	:	
MAKING HEALTHY RELATIONSHIPS	:	
c/o Doug Smith, statutory agent	:	
169 E. North Street	:	
Worthington, Ohio 43085,	:	
	:	
	:	
DOUG SMITH	:	
169 E. North Street	:	
Worthington, Ohio 43085,	:	
	:	
and	:	
	:	
REBECCA SMITH	:	
169 E. North Street	:	
Worthington, Ohio 43085,	:	
	:	
Defendants.	:	

Plaintiff State of Ohio, *ex rel.* Dave Yost, is the duly elected, qualified and acting Attorney General of Ohio and hereby alleges:

I. JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the Attorney General of Ohio, Dave Yost (“Attorney General” or “Attorney General’s Office”), having reasonable cause to believe that violations of Ohio’s charitable laws have occurred, brings this action in the public interest and under the authority vested in the Attorney General by Ohio Revised Code Section 109.23 *et seq.* (“Ohio Charitable Trust Act”), Ohio Revised Code Chapter 1716 (“Ohio Charitable Organizations Act”), and the Attorney General’s common law authority to enforce charitable trusts.

2. Defendants’ actions, as described herein, occurred in Franklin County, Ohio.

3. At all relevant times, Defendants have resided in Franklin County, Ohio.

4. This is an action for injunctive relief, equitable relief, damages, and civil penalties for Defendants’ violations of the common law, the Ohio Charitable Trust Act, and Ohio Charitable Organizations Act.

5. Venue is also proper in Franklin County pursuant to R.C. 109.16 as the amount in controversy exceeds \$500.00. Through the undersigned, the Attorney General certifies that the amount in controversy exceeds \$500.00.

II. ACTIVITIES GIVING RISE TO THIS COMPLAINT

6. Defendant Doug Smith (“Smith”) currently resides at 169 E. North Street, Worthington, Ohio 43085.

7. Defendant Rebecca Smith currently resides at 169 E. North Street, Worthington, Ohio 43085. Rebecca Smith is Smith’s wife.

8. Defendant Making Healthy Relationships (“MHR”) was incorporated as an Ohio non-profit corporation in 2012.

9. Smith is the statutory agent and incorporator of MHR.

10. At all relevant times, Smith directed the activities and served as the principal operator of MHR. Smith had access to MHR's bank account and debit card and principally handled MHR's finances.

11. Smith has personally participated in the violations of law described in this Complaint, or, through his actions or inaction, authorized, directed adopted, ratified, allowed or otherwise caused or permitted such violations to occur. This action is being initiated against Smith both individually and in his capacity as a director, trustee, officer and/or agent of MHR.

12. Rebecca Smith did not serve as a fiduciary or board member of MHR. Upon information and belief, however, Rebecca Smith received unearned benefits from MHR at the expense of MHR's intended charitable beneficiaries.

13. MHR's original Articles of Incorporation state that MHR was organized to "educate adolescents about making healthy choices."

14. MHR is a "charitable organization" as that term is defined in R.C. 1716.01(A) and a "charitable trust" as that term is defined in R.C. 109.23. At all relevant times, MHR has been a 501(C)(3) tax-exempt non-profit organization.

15. At present, MHR does not conduct programming. From January 2012 through July 2016, MHR's programming consisted primarily of providing abstinence education to teens at local schools in Franklin County, Ohio.

16. Funding for MHR's programming came largely from state grants administered by the Ridge Project. The Ridge Project received state funding and dispersed these funds to organizations such as MHR to provide education services.

17. Pre-suit investigation by the Attorney General's Office revealed a number of improprieties in the manner in which Smith administered the grant from the Ridge Project.

18. MHR hired presenters to attend schools in Franklin County to provide the abstinence education and programming. Under the grant, MHR was required to submit invoices to the Ridge Project for reimbursements for payments made to presenters.

19. Smith submitted invoices to the Ridge Project, representing alleged payments by MHR to individual presenters, totaling \$67,679.22. MHR's bank accounts, however, indicate only \$41,944.48 was paid to presenters. Thus, Smith overbilled the Ridge Project \$25,734.74. Upon information and belief, Smith's actions were intentional.

20. Through MHR's grant with the Ridge Project, Smith also was entitled to receive a salary of up to \$33,000 per year, or \$2,750 per month, during the life-cycle of the grant. The life-cycle of the grant was January 2012 to July 2016. Thus, Smith was entitled to receive up to \$151,250 in salary for this time period.

21. Smith received \$108,417.62 in salary payments from January 2012 to July 2016.

22. From 2012 to 2017, Smith directly expended or disbursed \$135,254.55 in MHR's charitable funds for his or his wife's personal benefit, including:

- a. \$15,150 in payments to FIA Credit Services for Rebecca Smith's credit card;
- b. \$18,801 in cash withdrawals;
- c. \$14,163.01 in restaurant and grocery store purchases, including Fresh Thyme, Whole Foods, and Giant Eagle;
- d. \$50,401.52 in unexplained or otherwise questionable expenses, including purchases at House of Cigar, The Brewhouse, Andrews Jeweler, Sapphire Nightclub, Petco, European Style Tailoring, Dick's Sporting Goods, and various other retailers.

None of the preceding expenditures or disbursements were in support of the charitable mission or programming of MHR.

23. None of the preceding expenditures or disbursements were lawful income or compensation paid to Smith, in that these expenditures or disbursements were not reported or disclosed to any taxing or other governmental authorities.

24. In the alternative, even taking into account the difference between the full amount of salary Smith could have received under the grant from the Ridge Project, or \$151,250, and the amount actually received, or \$108,417.62, Smith still improperly expended over \$90,000 of MHR's charitable funds for personal purposes.

25. Upon information and belief, Smith misused or misappropriated MHR's charitable funds and assets in other ways.

26. Smith historically operated MHR with little to no oversight from any other purported board member. This lack of oversight allowed Smith to expend charitable funds for personal purposes undetected and unrestricted. Upon information and belief, MHR observed no corporate formalities and currently has no functioning board.

III. ATTORNEY GENERAL'S CLAIMS

COUNT ONE: UNJUST ENRICHMENT

27. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

28. As alleged in this Complaint, MHR and the Ridge Project have conferred a variety of benefits on Smith.

29. Smith had knowledge of the benefits conferred and/or received these benefits under circumstances that have resulted in him being unjustly enriched at the expense of MHR, the Ridge Project, and their intended charitable beneficiaries.

30. Rebecca Smith had knowledge of the benefits conferred and/or received these benefits under circumstances that have resulted in her being unjustly enriched at the expense of MHR, the Ridge Project, and their intended charitable beneficiaries.

31. The Attorney General, in his role as *parens patriae*, protects charitable trusts and the beneficiaries who should have benefitted from the operation of charitable trusts.

32. The Attorney General is entitled to an order from this Court imposing a constructive trust on all property or assets unjustly retained by Smith or Rebecca Smith.

33. Alternatively, the Attorney General is entitled to an order from this Court that Smith and Rebecca Smith repay all funds unjustly retained or received.

COUNT TWO: BREACH OF FIDUCIARY DUTIES

34. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

35. Smith owed fiduciary duties to the charitable beneficiaries of MHR including the duty of care, the duty of loyalty, the duty to properly manage accounts, and the duty to comply with the law, as well as other duties, including, but not limited to, the duty not to waste charitable trust assets and to act in the best interest of the charity.

36. Smith violated his fiduciary duties by diverting charitable assets for his own personal use and placing his personal interests above the interests of MHR and its charitable beneficiaries.

37. Smith violated his fiduciary duties to preserve the charitable trust property of MHR for intended charitable trust purposes and to properly manage and maintain the charitable trust property for the benefit of the charitable beneficiaries.

38. Smith violated his fiduciary duties to account for all assets of MHR collected and expended for charitable purposes.

39. Smith violated his fiduciary duties to use all the money or assets collected on behalf of MHR for charitable purposes.

40. As a direct and proximate cause of Smith's breaches of fiduciary duties as alleged in this Complaint, there was a waste of charitable assets to the detriment of the charitable beneficiaries in any amount not yet known, but more than \$25,000.

41. Smith is liable for charitable funds that have been wrongfully diverted from their intended charitable purposes.

42. Smith's actions were willful, wanton, and in reckless disregard of the legal rights of the charitable beneficiaries of MHR, and are of the nature for which the recovery of punitive damages is appropriate.

COUNT THREE: CONVERSION

43. Plaintiff Attorney General incorporates all prior paragraphs of this Complaint as if fully rewritten herein.

44. Smith wrongfully took possession of the assets of MHR and expended it for his personal benefit depriving MHR of its property.

45. Smith's conversion of the funds and property of MHR was intentional and contrary to the rights and interests of MHR.

COUNT FOUR: FALSE AND MISLEADING INFORMATION IN FILINGS

46. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

47. R.C. 1716.14(A)(9) makes it unlawful to file “false or misleading information in any document required to be filed with the attorney general under this chapter.”

48. On behalf of MHR, Smith filed annual reports for 2012 through 2017.

49. Each of the filings referenced above were required by R.C. Chapter 1716 and each contain false or misleading information.

50. Each of the filings referenced above constitute separate violations of R.C. 1716.14(A)(1), for which the Attorney General is entitled to an injunction and for which Smith is liable to pay a civil penalty of up to \$10,000 per violation pursuant to R.C. 1716.16(B).

COUNT FIVE: BREACH OF FIDUCIARY DUTIES, R.C. 1716.17

51. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

52. R.C. 1716.17 provides: “Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose or who conducts a charitable sales promotion, and every officer, director, trustee, or employee of that person who is concerned with the solicitation, collection, or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity.”

53. The duty under R.C. 1716.17 requires fiduciaries to perform their duties in good faith, in a manner reasonably believed to be in or not opposed to the best interests of the organization, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.

54. Smith solicited, collected, and/or expended contributions on behalf of a charitable organization or for a charitable purpose and, as a result, was acting in a fiduciary capacity.

55. R.C. 1716.14(A)(12) provides that it is unlawful to operate “in violation of, or fail[] to comply with, any of the requirements” in R.C. Chapter 1716.

56. Smith’s actions, as alleged above, constitute multiple breaches of fiduciary duty in violation of R.C. 1716.17 and/or R.C. 1716.14(A)(12).

COUNT SIX: ABUSE OF A CHARITABLE TRUST, R.C. 109.24

57. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

58. R.C. 109.24 provides that the Attorney General “shall institute and prosecute a proper action to enforce the performance of any charitable trust, and to restrain the abuse of it whenever he considers such action advisable.”

59. The acts and omissions of Defendants identified constitute an abuse of a charitable trust, in violation of R.C. 109.24.

COUNT SEVEN: REFORMATION OF CHARITABLE TRUST

60. Plaintiff Attorney General incorporates the preceding paragraphs of this Complaint as if fully rewritten herein.

61. Ohio courts recognize the equitable doctrine of *cy pres*, and courts will apply the doctrine when: (A) there is a viable charitable trust; (B) the donor evidenced a general charitable intent on promoting the trust; and (C) it has become impossible or impractical to carry out the specific purposes or terms of the trust.

62. Ohio case law recognizes the equitable doctrine of deviation. Courts may apply the

doctrine when it deems necessary or highly desirable in order to enable the trustee to perform the purposes of the trust. Courts may deviate from the terms of the trust if the provisions have become so restrictive as to impair accomplishment of the trust purposes.

63. MHR was formed as a charitable trust and was required to operate for the benefit of its charitable beneficiaries. As such, the funds of MHR may be used only for the charitable purposes set forth in the terms of the trust. Additionally, all charitable proceeds unjustly or illegally retained by the individual Defendants are subject to the same charitable trust.

64. The specific purposes and/or specific terms of the charitable trust have become impossible or impractical to perform due to the actions or inactions of Defendants.

65. As an example of the frustration of purpose, Smith took assets and proceeds under trust, or held such assets, and used them for his personal or other unlawful purposes.

66. The Ohio Attorney General is entitled to an order reforming the terms of the charitable trust, in order to most nearly fulfill the purposes of the charitable trust in accordance with the doctrine of *cy pres* or deviation.

67. Because Defendants have proven incapable of appropriately managing and distributing the charitable trust assets of MHR, the Ohio Attorney General requests an order reforming the charitable trusts, dissolving MHR, and distributing all assets and proceeds to the Ohio Attorney General to be distributed to an organization with a similar charitable purpose.

PRAYER FOR RELIEF

WHEREFORE, pursuant to his statutory and common law authority, Plaintiff Ohio Attorney General respectfully requests this Court grant the following relief:

- A. Grant a permanent injunction and perpetually enjoin Smith from incorporating a nonprofit in Ohio or holding any position as a volunteer, officer, trustee, employee, representative, independent contractor, or agent of any charitable organization in the State of Ohio;
- B. Grant a permanent injunction and perpetually enjoin Smith from soliciting in the State of Ohio for charitable purposes or on behalf of any charitable organization, including, but not limited to, solicitations conducted as a volunteer, officer, trustee, employee, representative, independent contractor, or agent of an organization; or solicitations conducted as a professional solicitor, fundraising counsel, or commercial co-venturer, as those terms are defined in Revised Code Chapter 1716;
- C. Impose a constructive trust over all assets or funds unjustly or illegally received or retained by Smith and order him to disgorge all assets held under that constructive trust to the Ohio Attorney General;
- D. Order Smith to pay restitution and compensatory damages, including interest for all amounts unjustly or illegally retained or received by Smith, to the Ohio Attorney General;
- E. Order Rebecca Smith to pay restitution, including interest for all amounts unjustly or illegally retained or received by Rebecca Smith, to the Ohio Attorney General;
- F. Order Smith to pay punitive damages to the Ohio Attorney General;
- G. Declare the terms of the charitable trust, and enter an order enforcing those terms in a manner consistent with this Complaint, including dissolving MHR and distributing all assets and proceeds to the Ohio Attorney General;

- H. Reform the charitable trust in accordance with the doctrine of *cy pres* or deviation, including dissolving MHR and distributing all assets and proceeds to the Ohio Attorney General;
- I. Order Smith to pay Plaintiff Attorney General a civil penalty of up to \$10,000 for each violation of R.C. Chapter 1716 as alleged in this Complaint, including any violations occurring after the filing of the Complaint;
- J. Order Smith to undertake any and all actions necessary to delete and/or shut down all websites, social media accounts, and/or internet posts of any type related to MHR.
- K. Award Plaintiff Attorney General his reasonable attorney's fees and costs of investigation and litigation, as permitted by R.C. 1716.16(B); and
- L. Grant Plaintiff Attorney General other relief as the Court deems proper and necessary.

Very respectfully submitted,

DAVE YOST
ATTORNEY GENERAL OF OHIO

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