

IN THE CIRCUIT COURT FOR PUTNAM COUNTY, TENNESSEE

PAT STOUT,)	
Plaintiff,)	
v.)	No. _____
TENNESSEE WALKING HORSE)	
BREEDERS AND EXHIBITORS)	JURY DEMAND
ASSOCIATION, INC., and JOHN DOES I-X,)	
Defendants.)	
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**COMPLAINT TO RESCIND ILLEGAL CORPORATE ACTION
AND FOR DAMAGES**

COMES PAT STOUT, who presents this complaint for relief against the wrongful acts performed by the Defendant, and would show this honorable Court as follows:

1. Plaintiff Pat Stout (“Mrs. Stout”) is a resident of Putnam County, Tennessee.
2. Defendant Tennessee Walking Horse Breeders And Exhibitors Association, Inc. (“TWHBEA”) is a nonprofit corporation organized under the laws of the State of Tennessee, doing business in Tennessee and Putnam County, having its registered agent for service of process at: Kevin Kennedy, 127 South Third Street, Clarksville TN 37040.
3. Defendants John Doe I – John Doe X and unknown at this time and are unnamed by the Plaintiff. These are individuals who participated with and/or through TWHBEA to further the illegal, improper and tortious acts described more fully herein. The Plaintiff reserves the right to add names of Defendants as they come to light. These individuals are expected to be members, directors, officers, employees or affiliates of TWHBEA but the same is not known at this time.

4. Jurisdiction lies in this honorable Court pursuant to T.C.A. Section 16-10-101 *et seq.*

5. Venue lies in this honorable Court pursuant to T.C.A. Section 20-4-101 *et seq.*, because a substantial part of the cause of action arose in Putnam County, Tennessee, in that the harm was directed by the Defendant to Plaintiff in Putnam County, Tennessee, and the damages suffered by her have been incurred in Putnam County, Tennessee, and as may be further shown to the Court.

6. Plaintiff demands a trial by jury of the disputed matters set forth herein.

Statement of Facts

7. Mrs. Stout is a long-time breeder, trainer and rider of Tennessee Walking Horses. Her income is to a considerable part dependent on her ability to show horses and participate in walking horse related activities.

8. Defendant TWHBEA is the traditional organization of Tennessee Walking Horse breeders and those who show Tennessee Walking Horses and currently is the pre-eminent organization for persons actively involved in the industry.

9. Among other things, TWHBEA maintains a breeding registry and both conducts and authorizes shows where Tennessee Walking Horses are viewed by participants in the industry.

10. TWHBEA also publishes magazines and maintains a website that members of the Tennessee Walking Horse industry read, study and discuss regarding events, updates and news in and about the industry.

11. For years, Mrs. Stout has belonged to TWHBEA and has participated in its governance.

12. Mrs. Stout is a full-fledged, lifetime member of TWHBEA.

13. Mrs. Stout has served in several capacities with TWHBEA. Most recently, she served as the Vice-President in charge of TWHBEA's Tennessee Walking Horse shows and exhibitions.

14. Mrs. Stout loves the Tennessee Walking Horse breed and has generally enjoyed her participation in the business.

15. For at least the last fifty (50) years, the training methods used by certain people in the walking horse industry have caused a deep division within TWHBEA.

16. Specifically, the practice of "soring" horses has come into near-universal condemnation despite the tendency of some ultra conservatives in TWHBEA to ignore the law and shifts in public opinion related to animal cruelty.

17. Soring refers to the application of blistering agents, burns, lacerations, sharp objects, or other substances or devices to a horse's limb to produce a higher gait by making it painful for the horse to step down. These practices artificially enhance the Tennessee Walking Horse's traditional gait in a way that some find desirable.

18. Since at least 1976, federal law has criminalized soring. Under the Horse Protection Act, 15 U.S.C. Section 1815 *et seq.*, first offense of soring is a misdemeanor while a second offense is a felony punishable by a sentence exceeding a year in federal prison.

19. Sorers developed new methods to evade detection by the United States Department of Agriculture (“USDA”) which is charged with enforcing the laws and regulations prohibiting soring.

20. Upon information and belief, pursuant to its status as a Horse Industry Organization (“HIO”) under USDA regulations, TWHBEA has hired multiple veterinarians and others who have been instructed by TWHBEA, either expressly or implicitly, to turn a “blind eye” to all but the most egregious cases of soring, and whose compensation was tied either directly or indirectly to their willingness to comply with this pressure from TWHBEA. In so doing, if these facts are as commonly believed within the Tennessee Walking Horse industry, the pro-soring advocates in TWHBEA have facilitated, encouraged, conspired and been accessories to the violation of the Horse Protection Act and regulations promulgated thereunder. In furtherance of this conspiracy, Defendant TWHBEA and the pro-soring advocates within it have perpetrated several wrongful acts against Mrs. Stout that are detailed herein.

21. While the law and public opinion outside of TWHBEA are uniformly against the practice of soring, a significant few ultra conservatives within the industry remain committed to soring horses, protecting those who sore horses and helping them evade detection.

22. These pro-soring individuals also strongly oppose attempts to update the laws relating to the prohibition of soring.

23. In the past few years, opinion has been divided within TWHBEA over the progress of new federal legislation to update the 38-year old Horse Protection Act. The Prevent All Soring Tactics (“PAST”) act (HB1518/SB1406) seeks to prohibit certain “action devices”

that sore horses in a more subtle and less detectable manner, and would dramatically increase the penalties for soring horses.

24. The PAST Act has been progressing through Congress and recently passed a crucial committee vote in the United States Senate.

25. The PAST Act has 52 co-sponsors in the Senate and 275 co-sponsors in the 435 member House (63%).

26. Several members of TWHBEA support the PAST Act. Others oppose it. Mrs. Stout supports it.

27. Pro-soring advocates in TWHBEA had resisted the suggestion to poll the membership of TWHBEA regarding the PAST Act, presumably because they knew that the membership supports abiding by federal law and strongly opposes the soring practices favored by a few renegade members.

28. Mrs. Stout was contacted by certain pro-horse, anti-soring advocates who suggested conducting a poll of TWHBEA membership to determine the percentage of membership supporting or opposing the PAST Act.

29. Mrs. Stout consented to the use of her name as part of this poll of TWHBEA membership.

30. Mrs. Stout did not design the card sent out as part of the poll, nor did she perform the mailing.

31. A reply card was mailed to TWHBEA's membership asking members to declare their preference for or against the PAST Act. A true and correct copy of this reply card sent by others is attached hereto as **Exhibit 1** and is incorporated as if fully set forth herein.

32. The poll solicited no money and was not performed for any commercial purpose whatsoever.

33. Using her own funds, Mrs. Stout hired an independent accounting firm to perform count the cards and determine the results of the poll.

34. The poll issued a “yes/no” question, as follows: “I am FOR passage of HR1518/S1406 – “Prevent All Soring Tactics” Act to remove the pads and chains in order to end the public perception of soring and abuse presently associated with the Tennessee Walking Horse Breed, to eliminate HIOs and to increase penalties for soring.”

35. 1795 members responded to the poll, which is approximately 26% of TWHBEA’s membership. 63% supported the PAST Act, and 37% opposed it.

36. Pro-soring members of TWHBEA were livid to find that Mrs. Stout had participated in this attempt to determine members’ true feelings on this issue of national political and social importance.

37. Pro-soring members prepared a complaint dated September 27, 2013. The Complaint was signed by apparent pro-sorer Thomas Kakassy, Esq., a resident of the State of North Carolina. A true and correct copy of the purported Complaint signed by Kakassy is attached hereto as **Exhibit 2** and is incorporated as if fully set forth herein (hereinafter referred to as the “Kakassy Complaint”).

38. The Kakassy Complaint makes several false and defamatory statements regarding Mrs. Stout, including at least the following:

a. Paragraph 14 alleges that Mrs. Stout “organized the printing and caused the mailing of a form” that was used in the poll;

b. Paragraph 23 claims that “Stout intended to convey, and did convey, the impression that the Association had sponsored and endorsed the distribution of the poll”;

c. Paragraph 24 claims that by requesting a membership available to members of nonprofit corporations under Tennessee law, Mrs. Stout was “concealing her true and illegal purpose” when in fact there was nothing illegal about it, nor was there a concealment;

d. Paragraph 25 states that “Stout’s actions were intended to deceive and in fact continue to deceive the members of the Association” when in fact the poll was an attempt to determine if pro-sorers like those opposed to Mrs. Stout were the majority of TWHBEA or, as turned out to be the case, those who oppose illegal soring and animal cruelty predominate;

e. Paragraph 26 claims without any support that “Stout has committed a civil fraud upon the members of the association” which is ludicrous as matter of law and fact;

f. Paragraph 32 claims without any citation whatsoever that Mrs. Stout “violated the bylaws of the Association” when she, in fact, had not;

39. These false statements were made by Mr. Kakassy and those unnamed individuals referenced in the Complaint with knowledge of their falsity and were made for the purpose of maliciously defaming Mrs. Stout.

40. Mr. Kakassy and those unnamed individuals referenced in the Complaint published these falsehoods willfully, intentionally and maliciously, or in the alternative, recklessly, with the intent to damage Mrs. Stout, and have in fact damaged her.

41. Although presented and circulated to TWHBEA members, the Kakassy Complaint was never formally filed with TWHBEA for action. Filing required a \$ 250 filing fee and other requirements that were not met.

42. Despite the non-filing of the Kakassy Complaint, the TWHBEA Executive Committee referred the Pat Stout matter to the TWHBEA Enforcement Committee for processing on or about September 27, 2013.

43. This referral violated TWHBEA's own Bylaws Paragraph 20, which require a certain process and procedure to be followed. Defendant TWHBEA utterly failed to follow its own processes in this matter as will be shown to the Court at trial in this cause and as partially delineated in the March 3, 2014, letter from undersigned counsel to TWHBEA regarding their procedural deficiencies in this matter. A true and correct copy of this letter is attached hereto as **Exhibit 3** and is incorporated as if fully set forth herein.

44. The TWHBEA Board was notified of several procedural deficiencies at the time by Attorney Clant M. Seay of the Mississippi bar in a series of letters from October 2, 2013 until November 15, 2013. A true and correct copy of this series of correspondence is attached hereto as collective **Exhibit 4** and is incorporated as if fully set forth herein.

45. The Kakassy Complaint was never heard, and certainly was not heard within ninety (90) days as required by TWHBEA's bylaws, Rule 20.05.

46. On November 12, 2013, TWHBEA sent a letter to Mrs. Stout attempting to investigate and prosecute an alleged violation of TWHBEA's rules. As noted TWHBEA had been previously informed that it lacked authority to perform such an investigation under its own Rule 20. A true and correct copy of the November 12, 2013, letter from TWHBEA to Mrs. Stout is attached hereto as **Exhibit 5** and is incorporated as if fully set forth herein.

47. The November 12, 2013, letter, TWHBEA made many false allegations, including that "[t]he Bylaws of the Association require that members comply with the investigatory and

disciplinary efforts of TWHBEA, as a condition of membership.” In fact, no such condition or requirement appears in the Bylaws, and indicates the reckless, fraudulent and intentional deception used by TWHBEA in its attempt to persecute Mrs. Stout for having views different from the pro-soring faction.

48. The November 12, 2013, letter also falsely claims that the Enforcement Committee may draw a negative inference from a failure to respond to the inquiry. In fact, nothing in the TWHBEA Bylaws supports this claim. It is a falsehood intended to bully Mrs. Stout into submitting to illegal, arbitrary and capricious procedures implemented by TWHBEA in this matter.

49. Heedless of the procedural violations of its own Bylaws, TWHBEA’s duly appointed Enforcement Committee did meet and issue findings, despite not holding a hearing. This report was issued on December 4, 2013. A true and correct copy of the Enforcement Committee Findings Report dated December 4, 2013 (hereinafter referred to as the “Dec. 2013 Findings Report”) is attached hereto as **Exhibit 6** and is incorporated as if fully set forth herein.

50. The Dec. 2013 Findings Report made no findings of any fraud, dishonesty or other improper conduct by Mrs. Stout.

51. On Dec. 5, 2013, TWHBEA’s Executive Committee voted to dismiss the Complaint. Note that the Complaint had never been filed or served in accordance with the TWHBEA Bylaws, but the Executive Committee voted to dismiss the Complaint.

52. In an act of vengeful retribution, on December 6, 2013, the TWHBEA Board of Directors refused to ratify the action of the Executive Committee. Instead, the Directors referred to matter to the Bylaws Committee – consisting of the Complainant, Thomas Kakassy, Esq., and

other individuals who are believed to be pro-soring including Jeff Smith, Jeff Tanner, Dr. David Mullis, and Sheryl Crawford.

53. Without a complaint, without notice, without authority and without following any of the procedures listed in TWHBEA bylaws, on or about January 8, 2014, the TWHBEA Bylaws Committee proceeded in a secret session to make so-called “findings” that unsurprisingly were virtually identical to the unfiled Complaint authored and judged by apparent pro-soring advocate Thomas Kakassy. A true and correct copy of the Findings is attached hereto as **Exhibit 7** and is hereby incorporated as if fully set forth herein.

54. On or about January 17, 2014, the TWHBEA Executive Committee adopted the illegally rendered, unjustifiable and improper findings. Furthermore, the Executive Committee then took further illegal and improper actions not authorized by TWHBEA Bylaws, without notice or an opportunity to be heard, including but not limited to:

- a. Suspending Mrs. Stout’s privileges at TWHBEA;
- b. Prohibiting Mrs. Stout from showing horses in TWHBEA shows and exhibitions, which is a right extended to TWHBEA members;
- c. Imposing increased fees on Mrs. Stout’s use of the breeder’s registry at TWHBEA, said reduced fees being a right extended to TWHBEA members;
- d. Conditioning Mrs. Stout’s reinstatement on various requirements that were neither authorized nor permitted under the TWHBEA Bylaws.

A true and correct copy of the January 21, 2014, letter from TWHBEA to Mrs. Stout first notifying her of these actions is attached hereto as **Exhibit 8** and is incorporated as if fully set forth herein.

55. TWHBEA then compounded the damage from their illegal and improper actions by publishing the false and defamatory statements on its website and circulating emails to TWHBEA's membership regarding the illegal and improper actions taken against Mrs. Stout.

56. By barring Mrs. Stout from participating in TWHBEA shows, Defendant TWHBEA has drastically and significantly damaged Mrs. Stout's ability to market her horses to potential buyers and thus significantly reduced her ability to generate sales of her horses.

57. By charging Mrs. Stout increased fees for using the TWHBEA breeder's registry, TWHBEA's illegal actions have increased Mrs. Stout's costs of doing business.

58. By publishing the illegal actions and the false and defamatory statements about Mrs. Stout, the pro-soring faction in current command of TWHBEA attempted to further its pro-soring agenda by chilling opposing views of its members and sending a clear message that TWHBEA would stoop to whatever tactics were necessary to try and purge the viewpoints of those members opposed to horse soring and opposed to abuse of animals. TWHBEA's bad faith is further demonstrated by its utter refusal to remedy its illegal actions or behave in a reasonable manner after being warned multiple times by legal counsel that it was overstepping not just the bounds of decency but also the law. See Exhibits 3 and 4.

COUNT ONE – RESCISSION OF ILLEGAL CORPORATE ACTS

59. All other statements of this Complaint are realleged as if fully set forth herein.

60. T.C.A. Section 48-56-302 requires any Tennessee non-profit corporation to follow certain procedures before it can expel, suspend or terminate the membership of any member of a non profit corporation in the State of Tennessee.

61. Before being wrongfully suspended by TWHBEA, Mrs. Stout had the right to vote for TWHBEA's directors and did so several times over the years.

62. Mrs. Stout is a lifetime member of TWHBEA and a "member" under the definition set forth in T.C.A. Section 48-51-201(22)(A).

63. Neither TWHBEA's charter or its Bylaws provide for the removal of a member and termination of membership without cause.

64. T.C.A. Section 48-56-302(a) expressly states that "[N]o member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith."

65. T.C.A. Section 48-56-302(b) states that a procedure is presumptively fair and reasonable only when it provides for (a) 15 days prior written notice of the expulsion, suspension or termination and the reasons therefor and (b) an opportunity for the member to be heard, orally or in writing, by a person authorized to stop the action, not less than five (5) days before the effective date of said expulsion, suspension, or termination.

66. TWHBEA ignored the law and honored none of these safeguards in its suspension of Mrs. Stout. This has damaged her and should be reversed immediately.

67. In addition, pursuant to T.C.A. Section 48-52-156 and as otherwise provided by law, the Bylaws of a non profit corporation are the laws of that company and must be adhered to in order for any corporate action to be proper, so long as said Bylaws conflict neither with the corporate charter nor the prevailing laws.

68. TWHBEA's persecution of Mrs. Stout failed to follow the Bylaws of the nonprofit corporation, including, but not limited to, the ways identified in this Complaint.

69. TWHBEA's actions toward Mrs. Stout were illegal, improper and in violation of her rights as a member of TWHBEA.

70. Said actions are causing Mrs. Stout irreparable harm and damage and continue to cause her irreparable harm each day they continue.

71. Injunctive relief should issue both temporarily and permanently halting these illegal and improper actions by TWHBEA and reinstating Mrs. Stout to full membership in the organization.

72. These illegal actions were instituted intentionally, in bad faith and /or recklessly by TWHBEA and should give rise to punitive damages against TWHBEA for such knowing and improper violations of federal and state law and of its own corporate Bylaws.

COUNT TWO – BREACH OF FIDUCIARY DUTIES

73. The other allegations appearing in this Complaint are hereby realleged as if fully set forth herein.

74. The Defendants owed Mrs. Stout fiduciary duties of loyalty and fair dealing in their processing of these matters.

75. The Defendants, and the officers and directors of TWHBEA who participated in them, breached these duties through their actions and have damages Mrs. Stout.

76. Mrs. Stout should have and receive her damages from the Defendants.

COUNT THREE – BREACH OF CONTRACT

77. The other allegations appearing in this Complaint are hereby realleged as if fully set forth herein.

78. The corporate organizational documents, including the TWHBEA Bylaws, constitute an enforceable contract between Defendant TWHBEA and its members, including Mrs. Stout.

79. TWHBEA breached said contract in many different ways, including but not limited to not following the Bylaws, misrepresenting the Bylaws and otherwise failing to comply with its own organizational rules.

80. Said breaches damaged Mrs. Stout, for which she should receive damages for her full compensation.

COUNT FOUR – LIBEL AND DEFAMATION

81. All other statements appearing in this Complaint are hereby realleged as if fully set forth herein.

82. Defendant TWHBEA willfully, intentionally and knowingly and/or recklessly made false and defamatory statements regarding Mrs. Stout.

83. Said false and defamatory statements were made with actual malice by Defendants.

84. Defendant TWHBEA published said false and defamatory statements and said statements were heard and understood by others to refer to Mrs. Stout.

85. Said defamatory statements damaged Mrs. Stout, for all of which she should be compensated.

COUNT FIVE - CIVIL CONSPIRACY

86. The other allegations appearing in this Complaint are hereby realleged as if fully set forth herein.

87. TWHBEA and John Does I-X shared a common design and accomplished by concerted action using unlawful means to achieve several ends: to wit, the silence, defamation, discrediting and punishment of Mrs. Stout for taking steps pursuant to her anti-soring position.

88. Upon information and belief, TWHBEA and John Does I-X conspired to use lawful and/or unlawful means to achieve an unlawful end, to wit: the evasion of the enforcement of the anti-soring laws of the Horse Protection Act.

89. Said conspirators took several overt acts detailed elsewhere in this Complaint in furtherance of said conspiracies.

90. Said conspiracies have caused serious injury and damage to Mrs. Stout for which she should receive judgment against Defendants.

91. Said conspiracies were entered into knowingly, intentionally, recklessly and used fraudulent means in its implementation, all of which entitle Mrs. Stout to punitive damages against TWHBEA and its co-conspirators.

PRAYER FOR RELIEF

PREMISES CONSIDERED, Plaintiff prays for the following relief from this honorable Court:

A. That process issue and Defendants be required to answer within the time provided for by law, but their oath thereto is hereby expressly waived;

B. That after a trial before a jury, Plaintiff have and receive judgment for actual damages inflicted by the Defendants in an amount not to exceed five hundred thousand dollars (\$500,000.00);

C. That the trial be bifurcated and a hearing had before the jury on the issue of the propriety and the amount of punitive damages and that after said hearing, Plaintiff have and receive judgment against the Defendants in an amount of punitive damages not to exceed an additional five hundred thousand dollars (\$ 500,000.00);

D. That the Plaintiff also have and receive both temporary and permanent injunctive relief reinstating her to her membership and officer's position with TWHBEA and as may be otherwise necessary to prevent further irreparable harm from happening to her;

E. That Mrs. Stout have and receive her attorneys' fees and costs incurred in this matter, including but not limited to any and all discretionary costs and court costs;

F. That Mrs. Stout have and receive such other and further relief as the Court may deem just.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

This the __ day of May, 2014.

Respectfully submitted,

Henry D. Fincher (No. 16682)
305 East Spring Street
Cookeville TN 38501
(931) 528-4000

Attorney for Plaintiff Pat Stout

COST BOND

I am surety for my client's court costs in this matter not to exceed five hundred dollars (\$500.00)

Henry D. Fincher