



## AlaFile E-Notice

03-CV-2013-901066.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DR. ROBERT E. PITMAN V. ALABAMA VETERINARY MEDICAL ASSOCIATION ET AL  
03-CV-2013-901066.00

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TIFFANY B. MCCORD  
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MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL 36104

334-832-1260





IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  
CIVIL DIVISION

DR. ROBERT PITMAN,	*	
	*	
Plaintiff,	*	
v.	*	Case No.: CV-2013-_____
	*	
ALABAMA VETERINARY MEDICAL	*	
ASSOCIATION, CHARLES FRANZ,	*	
FRANZ MANAGEMENT SERVICES,	*	
LLC And Unknown Defendants A – K,	*	
	*	
Defendants.	*	

COMPLAINT

Jurisdiction and Venue

1. Jurisdiction of this Court is proper pursuant to § 10A-17-1.01 *et seq.*, Code of Alabama, 1975 and § 10A-17-1.07(e) *et seq.*, Code of Alabama, 1975.

2. Venue is proper in this Court in that the Defendants operate in the County of Montgomery, Alabama, material acts complained of herein occurred in the County of Montgomery, Alabama, and the Defendant corporation and its officers and agents operate in the County of Montgomery, Alabama. See § 6-3-7 *et seq.*, Code of Alabama, 1975 and § 6-5-60(b) *et seq.*, Code of Alabama, 1975.

Parties

3. Plaintiff Dr. Robert Pitman, DVM (hereinafter "Pitman") is more than nineteen years of age, a resident of Limestone County, Alabama, and at all times relevant to this action has been a member of the Alabama Veterinary Medical Association (hereinafter "ALVMA"), a

defendant in this case and an Alabama corporation incorporated in the State of Alabama with its principal office located in Montgomery County, Alabama. Plaintiff Pitman has been a member of the ALVMA for several years, is a Past President of the ALVMA, has served as a member of the Alabama State Board of Veterinary Medical Examiners (hereinafter “ALBVME”), and has been selected as the Veterinarian of the year by the ALVMA in past years.

4. Defendant Alabama Veterinary Medical Association (hereinafter “ALVMA”) is an Alabama non-profit corporation incorporated in the State of Alabama with its principal office located in Montgomery County, Alabama.

5. Defendant Charles F. Franz, Jr., DVM (hereinafter “Franz”), is more than nineteen years of age, a resident of Montgomery County, Alabama, and has at all times relevant to this action acted and served as the executive director of the Defendant AVMA. Defendant Franz is responsible for the day to day operations of the AVMA and has a fiduciary responsibility to operate the AVMA pursuant to the Constitution and Bylaws of the Defendant AVMA.

6. Defendant, Franz Management Services, LLC (hereinafter “Franz Management”), is an Alabama Limited Liability Company organized and created in the State of Alabama with its principal office located in Montgomery County, Alabama. The initial member upon formation of Franz Management was Defendant Franz and the Plaintiffs are of information and belief that Defendant Franz remains the sole member of Defendant Franz Management.

7. Unknown Defendants A-K are any and persons who worked with or participated in the actions by Defendant Franz and the other Defendants to engage in conduct not in the interest of the members of the Defendant ALVMA, and who have engaged in a gross abuse of authority or discretion with respect to the Defendant ALVMA and the interests of the members of the Defendant ALVMA, including Plaintiff Pitman.

### Facts

8. The ALVMA was formed in 1959 as a non-profit corporation with specific objectives to advance the science and art of veterinary medicine including its relationship to public health and agriculture, to promote the welfare of the State of Alabama and its citizens and animals, to maintain high standards of professional qualifications for veterinary medicine through veterinary medical education and continuing education, to increase public awareness of problems concerning animal health and disease control, to actively support sound legislation concerning animal health and disease control, and to encourage pet ownership and humane treatment of all animals. The Constitution and Bylaws of the ALVMA provide for membership in the ALVMA by active members and other members that pay fees, assessments, and contribute financially to the operation of the ALVMA to conduct and perform the stated objectives of the ALVMA. These members have voting authority and power to elect board members and to vote on matters involving the ALVMA including any amendments to the Constitution and Bylaws of the ALVMA. The ALVMA Constitution and Bylaws was and is recorded in the Probate Office of Montgomery County, Alabama. This Constitution and Bylaws was last amended in February of 2010. To amend the Constitution and Bylaws, there is a requirement of a supermajority vote

of the members of the ALVMA “in good standing” and by and through an election process described in the Constitution and Bylaws in a process required to occur several weeks before regular meetings of the ALVMA. Procedures for amendments of the Constitution and Bylaws for the ALVMA are described and defined in Article XIII of the Constitution and Bylaws.

9. The ALVMA Constitution and Bylaws provide for the selection of an Executive Director, an Assistant Executive Director, and for an Executive Board with specific qualifications, authority, and procedures for the operation of the ALVMA. Defendant Franz and/or Defendant Franz Management are currently acting and serving in the position of Executive Director and/or as management consultants with the responsibility and assigned duties of the Executive Director. Defendants Franz and Franz Management have fiduciary responsibilities to the members of the ALVMA and are required to conduct the affairs of the ALVMA pursuant to the Constitution and Bylaws of the ALVMA. The described duties of the Executive Director are enumerated and described in detail in Article III of the Constitution and Bylaws and provide that the Executive Director shall be the “general manager of the Association” with custodial financial responsibilities including requirements to provide a bond for security to the ALVMA and its members.

10. Defendants Franz and Franz Management have acted outside the scope of their permitted authority under the Constitution and Bylaws of the ALVMA and have engaged in conduct that is a violation of their fiduciary responsibilities to the members of the ALVMA. Defendants Franz and Franz Management are conducting business in the name of the ALVMA and its members, actions which are in effect “for profit” ventures exclusively for the personal

gain and benefit of Defendants Franz and Franz Management, and actions which did not protect the fiduciary interests and non-profit interests of the members of the ALVMA, including Plaintiff Pitman, and the required interests and stated purposes of the ALVMA.. The actions of Defendants Franz and Franz Management have been and continue to be detrimental to the ALVMA and its members, including Plaintiff Pitman. Plaintiff Pitman and the members of the ALVMA have been damaged by the actions of Defendant Franz and Franz Management and are damaged by the continued breach of fiduciary duties and responsibilities by Defendants Franz and Franz Management that are not in the interest of the members of the ALVMA and its members pursuant to the Constitution and Bylaws of the ALVMA.

11. Defendants Franz and Franz Management have transferred outside of the operations of the ALVMA and outside of the control of the members of the ALVMA, without authority and in violation of the Constitution and Bylaws of the ALVMA, certain functions and responsibilities reserved to the ALVMA and its members. These functions include the presentation of continuing education classes for members of the ALVMA, meetings of the ALVMA and its members, the selection of vendors for participation at the meetings of the ALVMA and the collection of fees from said vendors for the participation in the meetings of the members of the ALVMA, and other operations which are exclusively for the benefit of the members of the ALVMA and its stated objectives and purposes. Defendants Franz and Franz Management are acting in their own personal interests and not in the interests of the ALVMA and its members as is required by the Constitution and Bylaws of the ALVMA.

12. The ALVMA has been authorized by state law to serve as a nominating entity for the submission of names to the Governor of the State of Alabama for persons to serve on the state licensing board for veterinarians, the Alabama State Board of Veterinary Medical Examiners (hereinafter “ASBVME”). This process has always permitted any qualified person, who otherwise meets the criteria described in state law to serve as a member of the ASBVME, to be nominated and have their name submitted to the Governor, without regard to or requiring those persons to be a member of the non-profit ALVMA currently managed by Defendants Franz and Franz Management. In February 2013, Defendant ALVMA, Defendant Franz, and Defendant Franz Management, created a system of nomination that requires nominees to the ASBVME to have been a member in good standing of the ALVMA for at least one year prior to nomination. This closed nomination process, limiting nominees to the ASBVME to only members in good standing of the ALVMA, is not authorized by state law or by the Constitution and Bylaws of the ALVMA. This unauthorized closed nomination process is actually an illegal restraint on trade that is prohibited by state law.

### COUNT ONE

#### (VIOLATIONS OF THE CONSTITUTION AND BYLAWS OF THE ALVMA)

13. Plaintiff Pitman incorporates by reference each and every allegation contained in Paragraphs 1 through 12 as if fully set forth herein.

14. Defendant Franz, Defendant Franz Management, and Defendant ALVMA jointly and/or severally have taken actions outside of their authority under the Constitution and Bylaws



of the ALVMA have violated the Constitution and Bylaws of the ALVMA by unilaterally changing the nomination procedures and criteria for nominations to the Alabama State Board of Veterinary Medical Examiners (ASBVME), the licensing board for the Veterinarian Medical Profession in the State of Alabama.

15. Defendant Franz, Defendant Franz Management, and Defendant ALVMA, acting either jointly or separately, have acted with a gross abuse of authority or discretion with respect to the operations of the ALVMA, its Constitution and Bylaws, and the duties and obligations owed to the members of the ALVMA. As a result of the Defendants conduct set forth above, Plaintiff Pitman is entitled to equitable and declaratory relief, reasonable attorney's fees and costs, and to other relief as appropriate to insure compliance with the Constitution and Bylaws of the ALVMA and its obligations, duties, and responsibilities to the members of the ALVMA.

16. Plaintiff Pitman is currently, and has been for several years, a member in good standing of the ALVMA and is entitled to assert this action on behalf of himself and other members to enforce compliance with the Constitution and Bylaws of the ALVMA under state law. See § 10A-17-1.07(e) *et seq.*, Code of Alabama, 1975.

17. Plaintiff Pitman further requests that the Court enter any and all orders necessary to correct past violations of the Constitution and Bylaws of the ALVMA, and to insure present and future compliance with the Constitution and Bylaws of the ALVMA.

COUNT TWO

(ACTIONS BY THE DEFENDANTS IN VIOLATION OF STATE LAWS IN  
RESTRAINT OF TRADE) ALABAMA CODE SECTION 6-5-60

18. Plaintiff Pitman incorporates by reference each and every allegation contained in Paragraphs 1 through 17 as if fully set forth herein.

19. Defendants Franz, Franz Management, and the ALVMA, acting either jointly or separately, and acting either directly or indirectly with one another, have injured or damaged the Plaintiffs, and will continue to injury or damage the Plaintiffs, by creating an unlawful trust, combine, or monopoly in restraint of trade in violation of § 6-5-60(b) *et seq.*, Code of Alabama, 1975.

20. Defendants Franz, Franz Management, and the ALVMA, through their actions in restraint of trade have attempted to require persons to become members of the ALVMA, and in fact, refuse to consider non-members of the ALVMA for nomination to the licensing board for state veterinarians in Alabama. These actions restricting non-members of the ALVMA from consideration to important public bodies involving the practice of veterinary medicine are not reasonable or justified and have caused restriction on competition that is inherently suspect between members of the ALVMA and non-members of the ALVMA. These anti-competitive restrictions are in direct contradiction to the stated objectives of the Constitution and Bylaws of the ALVMA and the advancement of the science and art of veterinary medicine.

21. As a result of the conduct of Defendants Franz, Franz Management, and the ALVMA, the Plaintiffs are entitled to equitable and declaratory relief, actual monetary damages

as described in § 6-5-60(b) *et seq.*, Code of Alabama, 1975, reasonable attorney's fees and costs, and to other relief as appropriate to insure compliance with the Constitution and Bylaws of the ALVMA and its obligations, duties, and responsibilities to the members of the ALVMA, and to allow free and open competition for all veterinarians without regard to whether they are members or non-members of the ALVMA.

### COUNT THREE

#### (BREACH OF FIDUCIARY DUTIES AND MANAGEMENT RESPONSIBILITIES TO THE MEMBERS OF THE ALVMA PURSUANT TO THE CONSTITUTION AND BYLAWS OF THE ALVMA)

22. Plaintiff Pitman incorporates by reference each and every allegation contained in Paragraphs 1 through 21 as if fully set forth herein.

23. Defendants Franz and Franz Management, acting either jointly or separately as the Executive Director of the ALVMA, have caused unlawful distributions from the assets and funds of the ALVMA and have caused these unlawful distributions to go for the personal benefit of Defendant Franz and/or Defendant Franz Management. These unlawful distributions were not in the best interests of Plaintiff Pitman and/or the members of the ALVMA, including Plaintiff Pitman.

24. Defendant Franz and Defendant Franz Management are personally liable to the ALVMA and its members for the unlawful distributions from the assets and funds of the ALVMA. Plaintiff Pitman requests an immediate repayment of these unlawful distributions from the assets and funds of the ALVMA by Defendant Franz and/or Defendant Franz Management.

As a result of the conduct of Defendant Franz and/or Defendant Franz Management set forth above, Plaintiff Pitman and the members of the ALVMA are entitled to equitable, compensatory and declaratory relief, damages for reduction of the assets of the ALVMA, and reasonable attorney's fees and costs.

25. As a direct and proximate cause of the actions of the Defendants, the Plaintiffs demand judgment against the Defendants on the Counts in this complaint and request injunctive relief as necessary and appropriate to deter the Defendants from such fraudulent conduct in the future.

THE PLAINTIFFS DO NOT DEMAND A TRIAL BY STRUCK JURY AND SEEK NON JURY RELIEF FROM THE COURT.

Done this the 24th day of JUNE, 2012

Respectfully submitted,

*/s/Mark G. Montiel*

Mark G. Montiel, Sr.  
Attorney for the Plaintiff

OF COUNSEL:

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