

ORIGINAL

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION, :
 Relator, : **Case No. 2008-412**
v. :
 : :
Patrick F. Moeves, : :
 Respondent. :

RELATOR'S MOTION FOR ORDER TO SHOW CAUSE

John G. Slauson (#0024700)
119 E. Court St.
Cincinnati, OH 45202
(513) 632-5315 Phone
(513) 361-0047 Fax
Counsel of Record for Relator

Patrick F. Moeves
1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
(859) 341-3900 Phone
(859) 341-4400
Respondent

Rosemary D. Welsh (#0064790)
221 E. Fourth St., Suite 2000
P.O. Box 236
Cincinnati, OH 45202
(513) 723-4487 Phone
(513) 852-8449 Fax
Co-Counsel for Relator

Richard L. Creighton, Jr. (#0021806)
1 E. Fourth St., Suite 1400
Cincinnati, OH 45202
(513) 579-6513 Phone
(513) 579-6457 Fax
Co-Counsel for Relator

RECEIVED
OCT 19 2010
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
OCT 19 2010
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

In Re:	:	
	:	
Patrick F. Moeves,	:	Case # 08-412
	:	
RESPONDENT,	:	
	:	
Cincinnati Bar Association,	:	
	:	
RELATOR.	:	RELATOR'S MOTION TO SHOW CAUSE

Relator, Cincinnati Bar Association, hereby moves the Supreme Court of Ohio for an order requiring Respondent, Patrick F. Moeves, to show cause why he should not be held in contempt for failing to obey this Court's Order of September 16, 2008, a copy of which is attached hereto as *Exhibit 1*. Respondent has failed to comply with this Order, as set forth in the Memorandum that follows.

Memorandum In Support

Pursuant to this Court's Order of September 16, 2008, Respondent, who is not licensed in Ohio, was enjoined from "practicing law in Ohio, pro hac vice or in any other respect, for two years." *Cincinnati Bar Assn. v. Mullaney*, 229 Ohio St.3d 412, 894 N.E.2d 1210, 2008-Ohio-4541, ¶ 45. Respondent has violated this Order by representing a client in an Ohio dispute.

Respondent represents Richard D. Sizemore of Fairfield, Ohio, who is in a dispute involving a non-compete provision in a business agreement. Mr. Sizemore formerly worked for Rick's Tavern in Fairfield, Ohio. SMJS Enterprises, LLC, an Ohio limited liability company owned by Steven Minnielli and Joseph Schwarz, operates Rick's Tavern. Effective November 1, 2008, Mr. Minnielli and Mr. Schwarz entered into a

written agreement with Mr. Sizemore that included a non-compete clause. The following year, Mr. Sizemore left Rick's Tavern and became affiliated with Cobblestone Tavern, which is located within a few miles of Rick's Tavern in Fairfield.

Attorney Lee H. Parrish of Hamilton, Ohio, initially represented Mr. Minnielli and Mr. Schwarz with respect to the agreement. On October 26, 2009, Respondent called Mr. Parrish. Respondent explained that he had done work for Mr. Sizemore and his family and wanted to try to resolve the dispute with Mr. Minnielli and Mr. Schwarz. Respondent asked for a face-to-face meeting and offered to come to Mr. Parrish's office. On November 2, 2009, Respondent sent a letter to Mr. Parrish in which he again stated that he represented Mr. Sizemore, reiterated the request for a face-to-face meeting, and again offered to come to Mr. Parrish's office.

On November 29, 2009, Respondent, Mr. Parrish, Mr. Sizemore and his wife, Mr. Minnielli, and Mr. Schwarz met at Mr. Parrish's office in Hamilton, Ohio, to discuss the non-compete provision. The matter was not resolved at the meeting. Respondent then sent letters to Mr. Parrish on December 9, 2009, and January 13, 2010, requesting certain records from Rick's Tavern and an opportunity to audit the books of Rick's Tavern. Mr. Parrish replied, refusing these requests. On February 2, 2010, and February 25, 2010, Respondent wrote to request a second in-person meeting to resolve all outstanding issues among the parties. On May 5, 2010, Respondent renewed his request for financial records from Rick's Tavern.

Mr. Parrish's representation of Mr. Minnielli and Mr. Schwarz concluded in early May 2010, and Mr. Parrish has had no further contact with Respondent. Throughout the course of their dealings, Respondent did not inform Mr. Parrish that he was not licensed

in Ohio and that he was subject to disciplinary action by virtue of this Court's Order. See Affidavit of Lee H. Parrish attached here to as *Exhibit 2*.

Attorney Jack F. Grove of Fairfield, Ohio, assumed representation of Mr. Minnielli, Mr. Schwarz, and SMJS Enterprises. On June 29, 2010, Mr. Grove filed suit against Mr. Sizemore in the Butler County Court of Common Pleas. A copy of the complaint is attached hereto as *Exhibit 3*. Mr. Minnielli and Mr. Schwarz are residents of Ohio, SMJS Enterprises, LLC, is an Ohio limited liability company, Mr. Sizemore is a resident of Ohio, and Mr. Sizemore's former employment with SMJS Enterprises, LLC, took place in Ohio.

On July 8, 2010, Mr. Grove received a letter from Respondent identifying himself as "local Kentucky counsel" and asking for a face-to-face meeting to resolve any and all outstanding issues. Respondent also left a voice mail message for Mr. Grove. Mr. Grove responded to Respondent's message. Shortly thereafter, Mr. Grove became aware of this Court's Order enjoining Respondent from practicing law in Ohio. On July 14, 2010, Mr. Grove sent a letter to Respondent stating that the pending litigation did not have a nexus with the Commonwealth of Kentucky and that his request for a client meeting was prohibited by *Cincinnati Bar Assn. v. Mullaney*.

Respondent replied by letter dated July 15, 2010, stating that he believed that the business records would have a nexus with the Commonwealth of Kentucky "due to outside investments amongst the parties" but that he would have no further contact with Mr. Grove until after September 2010 when the injunction would be lifted. Mr. Grove received a second letter from Respondent, also dated July 15, 2010, stating that Respondent and his client would be willing to entertain a settlement offer that would

resolve all outstanding matters. See affidavit of Jack F. Grove, attached hereto as *Exhibit*

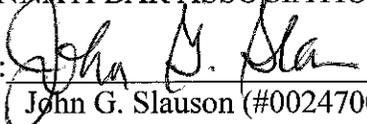
4.

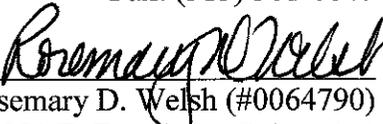
Respondent met with counsel for Relator during the investigation. Respondent was cooperative and admitted all the facts.

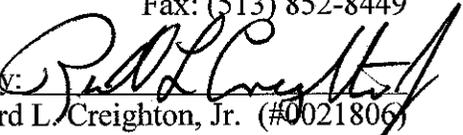
WHEREFORE, based upon the foregoing, Relator hereby moves the Supreme Court of Ohio to issue an order requiring Respondent to show cause as to why he should not be held in contempt for failing to obey this Court's Order of September 16, 2008.

Respectfully submitted,

CINCINNATI BAR ASSOCIATION

By: 
John G. Slauson (#0024700)
119 E. Court St.
Cincinnati, OH 45202
Phone: (513) 632-5315
Fax: (513) 361-0047

By: 
Rosemary D. Welsh (#0064790)
221 E. Fourth St., Suite 2000
P.O. Box 236
Cincinnati, OH 45202
Phone: (513) 723-4487
Fax: (513) 852-8449

By: 
Richard L. Creighton, Jr. (#0021806)
1 E. Fourth St., Suite 1400
Cincinnati, OH 45202
Phone: (513) 579-6513
Fax: (513) 579-6457

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Relator's Motion for Order to Show Cause was mailed by first class U.S. mail, postage prepaid, to Patrick F. Moeves, Esq., 1717 Dixie Highway, Suite 340, Ft. Wright, KY 41011 on this 18th day of October, 2010.



Edwin W. Patterson III (#0019701)

General Counsel
Cincinnati Bar Association
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202
Phone (513) 699-1403
Fax (513) 381-0528

Case No. 08-412

Cincinnati Bar Association,

Relator,

v.

Darren Joseph Mullaney, Patrick E.
Moeves, and John S. Brooking,

Respondents.

ON CERTIFIED REPORT BY THE
BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT

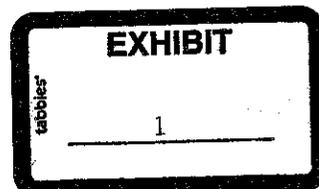
ORDER

The Board of Commissioners on Grievances and Discipline filed its Final Report in this court on February 22, 2008, recommending: that pursuant to Gov.Bar R.V(6)(B)(5) the respondent Darren Joseph Mullaney, be publicly reprimanded; that pursuant to Gov.Bar R.V(6)(B)(3) the respondent, John S. Brooking, be suspended from the practice of law for a period of one year, stayed upon conditions; and, that respondent Patrick E. Moeves, be enjoined from practicing law in Ohio, pro hac vice, for two years. Respondents filed no objections to said Final Report, and this cause was considered by the court. On consideration thereof,

It is ordered and adjudged by this court that consistent with the opinion rendered herein and pursuant to Gov.Bar R.V(6)(B)(5), respondent Darren Joseph Mullaney, Attorney Registration Number 0075929, last known business address in Cincinnati, Ohio, be publicly reprimanded, pursuant to Gov.Bar R. V(6)(B)(3) respondent, John S. Brooking, Attorney Registration Number 0055654, last known business address in Fort Wright, Kentucky, be suspended from the practice of law for a period of one year, with the entire suspension stayed on the condition that he commit no further misconduct, and that respondent, Patrick F. Moeves, last known business address in Fort Wright, Kentucky, be enjoined from practicing law in Ohio, pro hac vice or in any other respect, for two years.

It is further ordered that the respondents be jointly taxed the costs of these proceedings in the amount of \$8,047.54, which costs shall be payable to this court by certified check or money order on or before 90 days from the date of this order. It is further ordered that if these costs are not paid in full on or before 90 days from the date of this order, interest at the rate of 10% per annum shall accrue as of 90 days from the date of this order, on the balance of unpaid Board costs. It is further ordered that if costs are not paid in full on or before 90 days from the date of this order, respondents may be held in contempt and respondents Mullaney and Brooking may be suspended until costs and all accrued interest, are paid in full.

It is further ordered, sua sponte, by the court, that within 90 days of the date of this order, the respondents shall reimburse any amounts that have been awarded against the respondents by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondents pursuant to Gov.Bar R. VIII(7)(F), the respondents shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.



It is further ordered that the respondents shall keep the Clerk, the Cincinnati Bar Association, and the Disciplinary Counsel advised of any change of address where respondents may receive communications.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

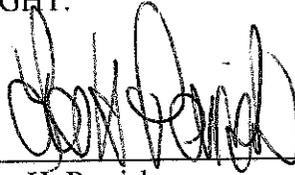
It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov. Bar R. V(8)(D)(1), that publication be made as provided for in Gov. Bar R. V(8)(D)(2), and that respondents bear the costs of publication.

THOMAS J. MOYER
Chief Justice

6. Mr. Moeves sent a letter dated December 9, 2009, requesting corporate books and records for Rick's Tavern. A true and correct copy of the letter is attached hereto as Exhibit B.
7. I responded by letter dated December 18, 2009, stating that Mr. Sizemore had no right to the financial records for Rick's Tavern. A true and correct copy of the letter is attached hereto as Exhibit C.
8. Mr. Moeves sent a letter dated January 13, 2010, in which he requested to audit the books for Rick's Tavern. A true and correct copy of the letter is attached hereto as Exhibit D.
9. Mr. Moeves sent a letter dated February 2, 2010, in which he requested a face-to-face meeting to resolve all outstanding issues among the parties. A true and correct copy of the letter is attached hereto as Exhibit E.
10. I responded by letter dated February 11, 2010, indicating that I had no objection to another meeting. A true and correct copy of the letter is attached hereto as Exhibit F.
11. Mr. Moeves sent a letter dated February 25, 2010, in which he reiterated the suggestion for another face-to-face meeting. A true and correct copy of the letter is attached hereto as Exhibit G.
12. Mr. Moeves sent a letter dated May 5, 2010, regarding the financial records for Rick's Tavern. A true and correct copy of the letter is attached hereto as Exhibit H.
13. I am aware that Jack Grove represents Mr. Minnielli, Mr. Schwarz and SMJS Enterprises, LLC, in a suit filed against Mr. Sizemore in the Butler County Court of Common Pleas. I have had no further contact with Mr. Moeves.
14. At no time did Mr. Moeves advise me that he was not licensed to practice law in Ohio and that he was subject to disciplinary action, of which I am now aware by virtue of the

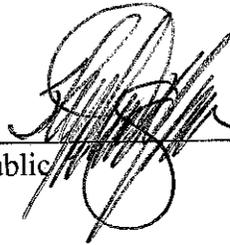
Supreme Court's decision in *Cincinnati Bar Assn. v. Mullaney, et al.*, 119 Ohio St.3d 412, 2008-Ohio-4541.

FURTHER, AFFIANT SAYETH NAUGHT.



Lee H. Parrish

Sworn to me and subscribed in my presence this 28th day of SEPTEMBER, 2010.



Notary Public

My commission expires: _____



STEPHEN S. MARCUM
Attorney at Law
Notary Public, State of Ohio
My Commission has no Expiration

Patrick E. Moeves
Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

11/4/09 4:30
Call Moeves with
Make in the office
to call Mr. Parrish
J. Moeves

November 2, 2009

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Phone conversation of October 26, 2009.

Dear Mr. Parrish:

At the outset, I want to thank-you for taking the time to speak with me on Monday October 26, 2009. As you know, the undersigned represents Richard Sizemore (hereinafter referred to as "my client") as it pertains to matter discussed on Monday (10/26/2009).

As such, I would respectfully request a face-to-face meeting to discuss and resolve any and all outstanding issues between our respective clients.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Until our next interaction and awaiting your reply, I remain

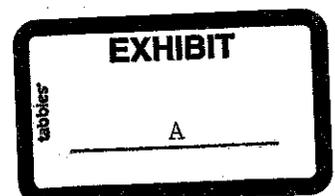
Very truly yours,

Patrick Moeves/AM

Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh
Cc: client -Sub-file: Business

Dictated but not read



Patrick E. Moeves
Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

December 9, 2009

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Rick's Tavern

Dear Mr. Parrish:

This letter will serve as my follow-up to my message of 4:02 E.S.T on December 8, 2009. As you are aware I serve as local counsel and general counsel for the Sizemores.

In addition to the sum- and substance of my voice message, I am requesting, as of this writing and pursuant to agreement amongst the parties, a complete and accurate copy of the corporate books and records for the business known as Rick's Tavern up and through November 30, 2009. I believe the request would entail December 1, 2006 up and through the before-mentioned November 30, 2009.

To my knowledge and belief, Mr. Lowry may be able, in addition to your clients, to assist you in this matter.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

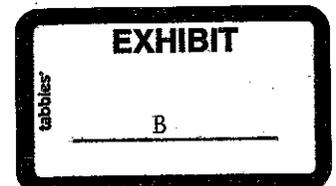
Until our next interaction and thanking you for your continued professionalism, I remain

Very truly yours,



Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh
Cc: client -Sub-file: Business (Rick's Tavern)



PARRISH, MARCUM, HIRKA & TROKHAN CO., LPA

FIRST FINANCIAL BANK BUILDING
300 HIGH STREET, SUITE 704
P.O. BOX 747
HAMILTON, OHIO 45012-0747
PHONE (513) 863-8270 - FAX (513) 863-9999
Website: www.parrishattys.com

COPY

LEE H. PARRISH
STEPHEN S. MARCUM
SARA C. HIRKA
CYNAMON T. TROKHAN

NEIL B. SMITH (RETIRED)

HUNTINGTON V. PARRISH (1906-1973)
CYRUS J. FITTON (1899-1978)
FRANCIS S. BEELER (1908-1990)
ROBERT H. FRYMAN (1928-2009)

December 18, 2009

Patrick E. Moeves, Esq.
1717 Dixie Highway, Suite 340
Fort Wright, KY 41011

Re: SMJS Enterprises, LLC/Richard D. Sizemore

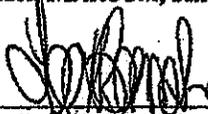
Dear Pat:

In response to your letter dated December 9th, my client is still of the opinion that Rick breached the terms of the Agreement between the parties dated November 1, 2008. As a result of that breach, Rick no longer has the right to the financial records of Rick's Tavern, and he has no debt or other obligation to my client.

Very truly yours,

PARRISH MARCUM, HIRKA & TROKHAN CO., LPA

By: _____


Lee H. Parrish

LHP:rkc

EXHIBIT

tabbies

C

Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

January 13, 2010

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Rick's Tavern

Dear Mr. Parrish:

My client has a simple request in the within matter: Under the existing agreement, my client respectfully requests to audit the books for the entity in question.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Awaiting a positive response to the request in question, I remain ..

Very truly yours,



Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: client -Sub-file: Business (Rick's Tavern)

EXHIBIT

D

Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

February 2, 2010

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Rick's Tavern

Dear Mr. Parrish:

I write, again, to see if we have a face-to-face meeting to resolve any and all outstanding issues by and amongst the parties in question. This is one (1) last effort to resolve this issue without further legal entanglement as it is clear that same is unnecessary on the simple request of a copy for the books in question.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Awaiting your timely reply and looking forward to mutual resolution and for solution, I remain

Very truly yours,



Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: client -Sub-file: Business (Rick's Tavern)

EXHIBIT

E

PARRISH, MARCUM, HIRKA & TROKHAN CO., LPA

FIRST FINANCIAL BANK BUILDING
300 HIGH STREET, SUITE 704
P.O. BOX 747
HAMILTON, OHIO 45012-0747
PHONE (513) 863-8270 - FAX (513) 863-9999
Website: www.parrishattys.com

COPY

LEE H. PARRISH
STEPHEN S. MARCUM
SARA C. HIRKA
CYNAMON T. TROKHAN

HUNTINGTON V. PARRISH (1906-1973)
CYRUS J. FITTON (1889-1978)
FRANCIS S. BEELER (1908-1990)
ROBERT E. FRYMAN (1928-2009)
NEIL B. SMITH (1934-2009)

February 11, 2010

Patrick E. Moeves, Esq.
1717 Dixie Highway, Suite 340
Fort Wright, KY 41011

Re: Rick's Tavern

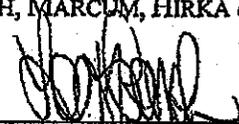
Dear Patrick:

Please find enclosed a copy of the internally prepared accounting records for the operation of Rick's Tavern for the years ending December 31, 2007, December 31, 2008 and December 31, 2009.

I have no objection to another meeting if there are issues that you believe can be reasonably discussed and with the hope that the parties can reach a settlement short of litigation.

Very truly yours,

PARRISH, MARCUM, HIRKA & TROKHAN CO., LPA

By: 

Lee H. Parrish

LHP:rkc
enclosures

EXHIBIT

tabbies

F

Patrick E. Moeves
Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

February 25, 2010

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Rick's Tavern

Dear Mr. Parrish:

I thank you for your letter dated February 11, 2010. I feel strongly that these documents fully support my client's position.

As such, my client and I would strongly agree with your suggestion on another face-to-face meeting with the accountant present at said meeting.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

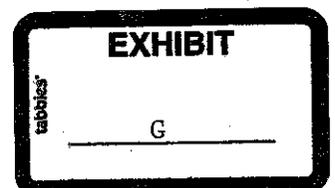
Awaiting the meeting date, I remain

Very truly yours,



Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh
Cc: client -Sub-file: Business (Rick's Tavern)



Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC

Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400

May 5, 2010

Lee Parrish, Esq.
704 First National Bank Building
P.O. Box 747
Hamilton, OH 45012-0747

Re: Rick's Tavern

Dear Mr. Parrish:

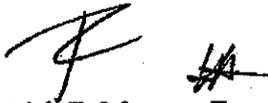
As Discussed, this matter can clearly be solved without further Court or legal intervention. Further legal entanglement will only lead to heartache and headache for all parties involved herein.

With the foregoing being said, I have a clear and concise way of breaking down the information at hand in order to avoid the before-mentioned legal entanglement. Mr. Lowry, as outlined and previously discussed, simply take care of the records at hand.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Awaiting the receipt of the records, I remain

Very truly yours,

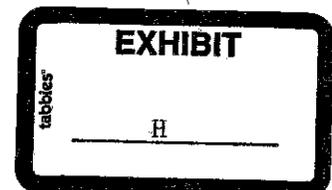


Patrick E. Moeves, Esq.

On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: client-Sub-file: Business (Rick's Tavern)



2013 JUN 29 PM 3:29
RECEIVED
CLERK OF COURTS
BUTLER COUNTY

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

06 2730
CINDY GARDNER
CLERK OF COURTS
BUTLER COUNTY

STEVEN T. MINNIELLI
5614 Williamsburg Way
Fairfield, Ohio 45014

★ CASE NUMBER
★ (Judge)

and

JOSEPH B. SCHWARZ
C/O 500 Wessel Drive, Suite 2B
Fairfield, Ohio 45014

★
★

and

SMJS ENTERPRISES, LLC
500 Wessel Drive, Suite 2B
Fairfield, Ohio 45014,

★
★

Plaintiffs

★

-vs-

★

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AND DAMAGES

RICHARD D. SIZEMORE
4 Fairwood Court
Fairfield, Ohio 45014,

★
★

Defendant

★

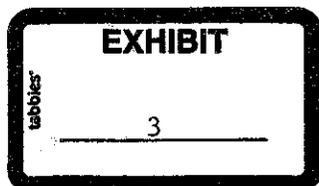
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Now come Plaintiffs, Steven T. Minnielli, Joseph B. Schwarz, and SMJS Enterprises, LLC for their complaint against Defendant, Richard D. Sizemore, would respectfully show:

FIRST CLAIM

1. Plaintiffs, Steven T. Minnielli [Minnielli] and Joseph B. Schwarz [Schwarz], are the members with the entire ownership interest of SMJS Enterprises, LLC [SMJS] an Ohio limited liability company.

JACK F. GROVE
ATTORNEY AT LAW
1251 NILLES ROAD
SUITE 10
FAIRFIELD, OHIO
45014



2. SMJS is the operator of the business known as Rick's Tavern located at 5955 Boymel Drive, Fairfield, Ohio. Rick's Tavern is an established restaurant and nightclub.

2010 06 27 30
JUDICIAL CLERK
BUTLER COUNTY
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3. In years past, Defendant Richard D. Sizemore [Sizemore] had business and employment affiliation with Rick's Tavern.

4. Effective November 1, 2008 Minnielli and Schwarz entered into a written "Agreement" with Sizemore calling for their transfer of a non-controlling, minority membership interest in SMJS to Sizemore, subject however to various conditions precedent and performance requirements and restrictions.

5. The Agreement is the subject matter of the lawsuit. Paragraph 17 of the Agreement contains a confidentiality covenant and a copy of the Agreement is therefore not attached to this complaint. Sizemore was provided with a fully executed copy of the Agreement.

6. A material term of the Agreement is Non-Competition clause at ¶ 13 which restricts Sizemore wherein he "agrees that at no time will he take any action that would be adverse to the operation and goodwill of the Business [referring to Rick's Tavern] and that he will not engage directly or indirectly in any activity that competes with the Business referred to in this paragraph as "competitive activity" within three (3) miles of the location of the Business, which covenant shall remain in effect prior to the time that Sizemore is to receive his Membership Interest. . . . " Furthermore, the Agreement explained the scope of the Non-Competition restriction: "The prohibition to engage in a competitive activity includes, but is not limited to: [i] the

ownership of any interest in a corporation, partnership, or other entity that owns, manages or controls a competitive activity located within the restricted area; [ii] authorizing the use of the name Rick's Tavern or similar name by a person or entity; and [iii] serving as an officer, director, consultant or advisor to any person or entity engaged in a competitive activity within the restricted area."

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CIVIL CENTER
CLERK OF COURTS

7. The business known as Cobblestone Tavern is located in the Cornerstone Plaza, formerly known as Hicks Manor Shopping Center, at 4737 Dixie Highway, Fairfield, Ohio within three (3) miles of Rick's Tavern. Cobblestone Tavern is a nightclub which competes with Rick's Tavern for patrons within the same market.

8. During 2009, Sizemore became affiliated with Cobblestone Tavern and thereby violated the non-competition clause in numerous ways:

- a) Sizemore held himself out as an owner of Cobblestone Tavern;
- b) Sizemore held himself out as being an owner of Rick's Tavern which was untrue;
- c) Sizemore solicited various performers to play at Cobblestone Tavern which were restricted according to their pre-existing contractual engagements with Rick's Tavern. Using the pretext of his dual involvement and purported control, he encouraged the performers to break agreements with Rick's Tavern;
- d) Sizemore solicited vendors of Rick's Tavern to provide "like kind" goods and services to Cobblestone Tavern;
- e) Sizemore solicited patrons for Cobblestone Tavern and discouraged patrons from continuing business with Rick's Tavern;

f) Sizemore provided financial support to Cobblestone Tavern; and
g) Sizemore acted as a consultant and provided advice to the operators of Cobblestone Tavern regarding how to compete including the purchase of televisions, contracts for live music, and other improvements and activities intended to duplicate Rick's Tavern's successful operating methods and customer appeal.

In addition to the forgoing activities Sizemore may have engaged in other forms of prohibited competition which remain undiscovered by Minnielli and Schwarz.

9. Minnielli and Schwarz (via their attorney) provided written notice to Sizemore dated October 22, 2009 that Sizemore's violation of the Agreement constituted a material breach, and that by reason of the breach, Minnielli and Schwarz were excused from further performance. The notice further advised that Minnielli and Schwarz deem the Agreement to be null and void to the effect that Sizemore forfeited any rights under that Agreement. A copy of the letter [Notice of Termination] is attached as Exhibit A.

10. Through the time of termination, Minnielli and Schwarz performed all duties on their part according to the Agreement.

11. After receipt of the letter, Sizemore continued to engage in prohibited competition. Such competition constitutes a repudiation of the Agreement on Sizemore's part.

12. All the while, Sizemore did not protest the Notice of Termination. Nonetheless, Sizemore has requested financial information pertaining to internal operations to which he is not entitled, and which if provided to Sizemore, could place

Rick's Tavern at a competitive disadvantage because of Sizemore's continuing conduct which is a violation of the Agreement (if it remains in effect).

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WILLIAM SANDERSON
CLERK OF COURT
BUTLER COUNTY
OHIO

13. Minnielli and Schwarz are entitled to a declaratory judgment that:

- a) Sizemore breached the Agreement by his competitive pursuits on behalf of Cobblestone Tavern;
- b) by reason of Sizemore's breach, Minnielli and Schwarz lawfully terminated the Agreement effective October 22, 2009 per the Notice of Termination;
- c) Sizemore does not have any further rights under the Agreement. Sizemore's rights were extinguished upon breach per the Notice of Termination;
- d) Sizemore repudiated the Agreement by reason of his conduct;
- e) Sizemore is not a member of SMJS and does not have authority to gain access to the financial records of SMJS; and
- f) Minnielli and Schwarz are entitled to recovery of legal fees and costs from Sizemore per the Agreement.

SECOND CLAIM

Minnielli and Schwarz incorporate the allegations contained in paragraphs 1-13 of the First Claim and would further show:

14. In the alternative, if the Agreement is not terminated, Sizemore's conduct is in violation of the Agreement.

15. Minnielli and Schwarz do not have an adequate remedy at law to enforce the non-competition clause, and are entitled to preliminary and permanent injunctive relief restraining Sizemore from prohibited competition including his conduct benefiting

Cobblestone Tavern or any other establishments operating within the scope of the restriction.

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JUDY WARDEN
BUTLER COUNTY
CLERK OF COURTS

THIRD CLAIM

Minnielli and Schwarz incorporate the allegations contained in the First and Second Claims and would further show:

16. To the extent that Sizemore was to become a member of SMJS his prohibited conduct frustrated the purpose of the contract and was self-defeating.

17. Sizemore breached a fiduciary duty to Minnielli and Schwarz.

18. By reason of Sizemore's past conduct in violation of the Agreement, Minnielli and Schwarz have suffered damages to their business enterprise in an undetermined amount which will reasonably exceed \$25,000.00

FOURTH CLAIM

SMJS incorporates the allegations contained in the First, Second, and Third Claims and would further show:

19. Sizemore's false statements to various vendors using the pretext that he is an owner with management authority of Rick's Tavern is an unlawful interference with the business relations of Rick's Tavern.

20. Sizemore's conduct is self-serving, malicious, spiteful, and for the stated purpose of harming the business of Rick's Tavern to the end of promoting Cobblestone Tavern and his interest in that business.

21. By reason of Sizemore's intentional interference with business relations, SMJS has suffered damages to the business enterprises in an undetermined amount which will reasonably exceed \$25,000.00.

22. By reason of Sizemore's intentional interference with business relations, SMJS will suffer irreparable harm to their business if Sizemore is not restrained for his use of false pretext and interference.

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JUDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

23. SMJS is entitled to preliminary and permanent injunctive relief against Sizemore restraining his unlawful conduct.

WHEREFORE, Minnielli, Schwarz, and SMJS pray judgment of the Court as follows:

1. For declaratory judgment that:

- a) Sizemore breached the Agreement by his competitive pursuits on behalf of Cobblestone Tavern;
- b) by reason of Sizemore's breach, Minnielli and Schwarz lawfully terminated the Agreement effective October 22, 2009 per the Notice of Termination;
- c) Sizemore does not have any further rights under the Agreement. Sizemore's rights were extinguished upon breach per the Notice of Termination;
- d) Sizemore repudiated the Agreement by reason of his conduct;
- e) Sizemore is not a member of SMJS and does not have authority to gain access to the financial records of SMJS; and
- f) Minnielli and Schwarz are entitled to recovery of legal fees and costs from Sizemore per the Agreement.

2. In the alternative, Minnielli and Schwarz are entitled to preliminary and permanent injunctive relief restraining Sizemore's conduct in violation of the Agreement;

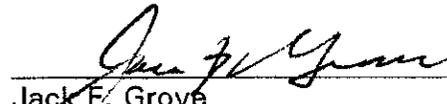
3. For damages to be provided at trial, including legal fees, litigation expense, and punitive damages;

4. SMJS is entitled to preliminary and permanent injunctive relief restraining Sizemore from use of false pretext to the effect that he is an owner with management authority of Rick's Tavern, and from interfering with business; and

5. For such further relief as may be proper.

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CUNY
CLERK
CLERK OF COURT



Jack F. Grove
Supreme Court No. 0012508
Attorney for Plaintiffs
1251 Nilles Road, Suite 10
Fairfield, Ohio 45014-7205
Telephone (513) 829-2900
Facsimile (513) 829-7538

INSTRUCTIONS FOR SERVICE OF PROCESS

To the Clerk:

Please serve the Defendant with copies of the Summons and Complaint by process server at the address as shown on the caption of this Complaint.



Jack F. Grove
Attorney for Plaintiffs

- letter is attached as Exhibit A. Mr. Moeves also left me a voice mail message on July 8, 2010.
5. After responding to Mr. Moeves's voice mail message, I became aware of the Ohio Supreme Court's decision in *Cincinnati Bar Assn. v. Mullaney, et al.*, 119 Ohio St.3d 412, 2008-Ohio-4541.
 6. On July 14, 2010, I sent a letter to Mr. Moeves stating that the pending litigation did not have a nexus with the Commonwealth of Kentucky and that his request for a client meeting was prohibited by *Cincinnati Bar Assn. v. Mullaney*. A true and correct copy of the letter is attached as Exhibit B.
 7. Mr. Moeves responded first by telephone and then by letter dated July 15, 2010, stating that he believed that the business records would have a nexus with the Commonwealth of Kentucky "due to outside investments amongst the parties" but that he would have no further contact with me until after September 2010. A true and correct copy of the letter is attached as Exhibit C.
 8. I received a second letter from Mr. Moeves, also dated July 15, 2010, in which he indicated that he and his client were willing to entertain a settlement offer that would resolve all outstanding matters. A true and correct copy of the letter is attached as Exhibit D.

FURTHER, AFFIANT SAYETH NAUGHT.

Jack F. Grove
Jack F. Grove

Sworn to me and subscribed in my presence this 29TH day of SEPTEMBER 2010.

Mark R. Dickey
Notary Public

My commission expires: OCT. 23, 2011



Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC

Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400
Email: firm300@fuse.net

July 8, 2010

U.S. MAIL AND FACSIMILE: 513-829-2900

Hon. Jack F. Grove
1251 Nilles Road, Suite 10
Fairfield, OH 45014-7205

Re: MINNIELLI V. SIZEMORE
Butler County, Ohio
Case No.: CV 2010 06 2730

Dear Mr. Grove:

Please be advised that the undersigned serves as local Kentucky Counsel for Richard D. Sizemore (hereinafter referred to as "my client"). Pertaining to same, I left a detailed message for you on July 8, 2010 outlining my desire to speak with you in this matter. At this point, my client and I would respectfully request a face-to-face meeting to resolve any and all outstanding issues in this matter.

It appears at this meeting, one would resolve the alleged three mile issue as it appears every calculation done on behalf of my client is beyond three (3) miles and get the records to my client that has been requested time after time after time prior to your involvement herein.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Awaiting your reply and looking forward to our face-to-face meeting, I remain

Very truly yours,



Patrick E. Moeves, Esq.
On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: file

Client via email per authorization

Sub-file: Litigation Minnielli, et al.

EXHIBIT

A

FROM : JOHN SLAUSON Attorney At Law PHONE NO. : 513 361 0047

Jul. 16 2010 09:39AM P2

JACK F. GROVE
ATTORNEY AT LAW
1251 NILLES ROAD
SUITE 10
FAIRFIELD, OHIO 45014

Rec'd. 7/15/10
JG

TELEPHONE: (513) 829-2900

TELECOMPER: (513) 829-7538

7006 FAIRFIELD ROAD
OXFORD, OHIO 45086

July 14, 2010

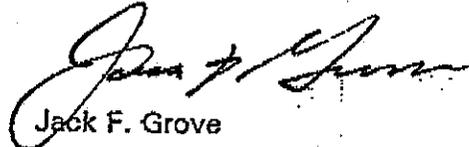
Patrick E. Moeves, Esq.
1717 Dixie Highway, Suite 340
Ft. Wright, Kentucky 41011

Re: Minnielli, et al. v. Sizemore
Case Number: CV 2010-06-2730
Butler County Court of Common Pleas

Dear Mr. Moeves:

I am writing in response to your correspondence dated July 8, 2010. When I responded to your phone call last Thursday, July 8, 2010, I was unaware of the Ohio Supreme Court's disciplinary action in Cincinnati Bar Assn. v. Mullaney, et. al, 119 Ohio St.3d 412, 2008-Ohio-4541. I take the injunction against you very seriously and according to the circumstances, your request for a client meeting about the new Butler County litigation case is prohibited. The case does not have a nexus with the Commonwealth of Kentucky.

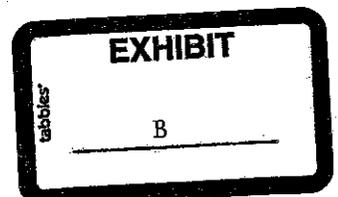
Very truly yours,


Jack F. Grove

JFG:bla

via Certified Mail-Return Receipt Requested and Ordinary U.S. Mail

cc: John G. Slauson, Esq.



Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC

Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400
Email: firm300@fuse.net

July 15, 2010

Hon. Jack F. Grove
1251 Nilles Road, Suite 10
Fairfield, OH 45014-7205

Re: MINNIELLI V. SIZEMORE
Butler County, Ohio
Case No.: CV 2010 06 2730

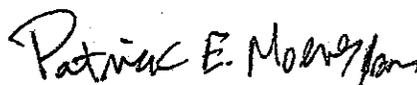
Dear Mr. Grove:

As my previous letter stated to you "local General Counsel" and the business records would have a nexus with the Commonwealth of Kentucky due to outside investments amongst the parties. Nonetheless, I will not have further contact with you until after September 2010.

As always, this letter is written expressly for informational purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Until our next interaction, I remain

Very truly yours,



Patrick E. Moeves, Esq.

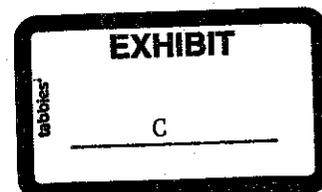
On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: file

Hon. John G. Slauson for informational purposes only.

Sub-file: Litigation Minnielli, et al.



Patrick E. Moeves

Brian D. Russell

THE MOEVES FIRM, PLLC
Attorneys and Counselors at Law

1717 Dixie Highway, Suite 340
Ft. Wright, KY 41011
Telephone: (859) 341-3900
Facsimile: (859) 341-4400
Email: firm300@fuse.net

July 15, 2010

RECEIVED
JUL 19 2010

Hon. Jack F. Grove
1251 Nilles Road, Suite 10
Fairfield, OH 45014-7205

BY:

Re: MINNIELLI V. SIZEMORE
Butler County, Ohio
Case No.: CV 2010 06 2730

Dear Mr. Grove:

My client and I are willing to entertain a settlement offer in this matter that would fully settle any and all outstanding matters amongst the partners.

As always, this letter is written expressly for informational and settlement purposes only. Further, this letter is written expressly without prejudice to all my client's rights and/or defenses, in law or in equity; hence, all of said rights and/or defenses are hereby expressly reserved as of this writing.

Awaiting your reply, I remain

Very truly yours,

Patrick E. Moeves

Patrick E. Moeves, Esq.

On behalf of the Moeves Firm, PLLC

PEM: hrh

Cc: file

Client via email per authorization

Sub-file: Litigation Minnielli, et al.

