

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CLERK
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THE HOEHL FAMILY FOUNDATION,
Plaintiff

v.

RONALD L. ROBERTS and
EIDEARD GROUP, LLC,
Defendants

Case No. 2:19. CV. 229

COMPLAINT

The Hoehl Family Foundation (“Foundation”), by its attorneys Gravel & Shea PC, file this Complaint against Ronald L. Roberts and Eideard Group, LLC (“Eideard”) as follows:

Nature of Action

1. On March 31, 2017, Ronald L. Roberts and Eideard directed an investment of \$1 million from the Foundation to G-Form, LLC (“G-Form”). Mr. Roberts and Eideard did this secretly. They did not tell the six Hoehl siblings who served as trustees of the Foundation with Mr. Roberts. The investment breached the investment management agreement the parties had signed and breached Eideard and Mr. Roberts’ fiduciary duties to the Foundation. By keeping the investment a secret for the next two years for the purpose of inducing the Foundation to remain its client and preventing the discovery of Internal Revenue Code (“Code”) violations, Roberts and Eideard also violated the Vermont Consumer Protection Act.

2. The Foundation’s investment in G-Form violated the self-dealing and excess business holding penalty provisions applicable to tax-exempt private foundations under the Code. Under these provisions, and as a direct result of the investment, the Foundation incurred

an excise tax penalty of \$300,000, and may be subject to additional excise tax penalties. The Foundation also incurred over \$100,000 in professional fees to address and report to the Internal Revenue Service (“IRS”) the excise tax penalty exposure created by the Defendants’ actions.

3. Eideard currently values the Foundation’s G-Form interest at \$0, making the investment a total loss. The Foundation also lost the opportunity to invest the \$1 million during the almost three years it has been invested in G-Form. Eideard has charged the Foundation at least \$660,000 in management fees since March 31, 2017, which the Foundation also seeks to recover.

Parties

4. The Foundation was created by Cynthia and Robert H. Hoehl in 1993 to support Vermont through grants to local nonprofits that help Vermont families. It is a tax-exempt private foundation under Section 501(c)(3) of the Code. The current trustees of the Foundation are the surviving children of Cynthia and Robert H. Hoehl: Robert F. Hoehl, John Hoehl, Peter T. Hoehl, Krystin Downes and Katharine Kostin (“Hoehl Siblings”).¹

5. Eideard is a New Hampshire company that provides investment management services and home office services for families with significant assets. Eideard, and its predecessors in interest, served as the investment manager for the Foundation for more than ten years. Eideard has provided day-to-day administration services to the Foundation since at least 2012.

¹ At the time that most of these events occurred, a sixth child, Nicholas Hoehl, was also a trustee. Nicholas passed away on November 12, 2019.

6. Upon information and belief, Mr. Roberts is a one-half owner of Eideard. Between 2011 and September 2019, Mr. Roberts also served as treasurer and a trustee of the Foundation.

Jurisdiction and Venue

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because Eideard is a New Hampshire limited liability company that is owned by two New Hampshire residents, Mr. Roberts is a New Hampshire resident and the Hoehl Family Foundation is a Vermont non-profit corporation.

8. Eideard regularly conducts business in Vermont, as it has multiple Vermont clients. Mr. Roberts regularly conducts business in Vermont as an agent of Eideard.

9. Eideard regularly conducted business in Vermont as the investment manager for the Foundation. Through its agent Mr. Roberts, Eideard regularly interacted with the Foundation's trustees, including attending regular board meetings in Vermont beginning in at least 2011. The Foundation's By-Laws require regular meetings to be held in Vermont.

10. The amount in controversy exceeds \$2 million.

11. Venue lies in this judicial district pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events occurred in Vermont.

Background

12. Mr. Roberts, through Eideard and its predecessors, began managing the assets of the Hoehl family approximately twenty years ago. Mr. Roberts and Eideard also managed assets for Robert H. and Cynthia Hoehl, their children and grandchildren, and multiple entities in which the Hoehl family had ownership interests, including BDP Holdings, LLC (“BDP”), R & A Venture Capital III, LLC (“R&A”), and Hoehl Family Real Estate, LLC. The Hoehls viewed Mr. Roberts as a trusted adviser for investment management services and home office services.

13. Robert H. Hoehl passed away in 2010 and Cynthia Hoehl passed away in 2016. Since 2010, Robert F. Hoehl has been the President of the Foundation.

14. In 2012, the Foundation signed an investment management agreement (“IMA”) with Mr. Roberts and Eideard. Exhibit 1.

15. The IMA stated that Mr. Roberts and Eideard would provide investment management services to the Foundation in exchange for a fee. *Id.*

16. Mr. Roberts and Eideard agreed to develop an investment strategy for the Foundation, construct a portfolio, and regularly review the portfolio. *Id.*

17. The IMA contemplated investments in: (a) traditional investment vehicles like “ETFs and mutual funds;” and (b) alternative investments such as “private equity funds, hedge funds and real estate partnerships.” *Id.* The IMA also stated that Roberts and Eideard had “*full investment discretion*” but that Roberts and Eideard would “refrain from recommending specific industry sectors or *individual securities*. . . .” *Id.* (emphasis added).

18. Mr. Roberts and Eideard promised to use their best professional judgment “to identify the most suitable investments for the Foundation’s assets.” *Id.* Mr. Roberts and Eideard

also promised to provide full disclosures about the investments to the trustees [not defined] and their tax counsel on a regular basis. *Id.*

Excess Business Holding

19. In addition to managing assets for the Foundation, Eideard and Mr. Roberts managed assets for other Hoehl family entities and most of the individual family members.

20. Mr. Roberts is the managing member of BDP, which is approximately 99% owned by the Hoehl Siblings.

21. Mr. Roberts is also the managing member of R&A, a venture capital fund in which the Hoehls hold, directly or indirectly, a 75% interest.

22. Beginning in approximately 2012, Mr. Roberts began periodically directing BDP to loan large sums to G-Form without the knowledge of the Hoehl Siblings. As of March 31, 2017, Mr. Roberts had secretly directed more than \$19 million in loans from BDP to G-Form.² In addition, prior to March 31, 2017, Mr. Roberts had also secretly directed BDP to make an equity investment in G-Form of approximately \$2.5 million.

23. During this same period, Mr. Roberts secretly directed R&A to invest millions of dollars in G-Form. By 2017, R&A held a 20% ownership interest in G-Form.

24. Mr. Roberts did not properly disclose any of the aforementioned G-Form investments or loans to the other members of BDP or R&A.

25. Mr. Roberts also invested his and his family's assets in G-Form through the Ronald L. Roberts Revocable Trust, the RTR 2013 Revocable Trust and the RTR 2016 Revocable Trust.

² At a later date, BDP's loan to G-Form was converted to an equity interest.

26. On March 31, 2017, Mr. Roberts used the absolute discretion granted to him in the IMA to improperly invest \$1 million of the Foundation's money into G-Form. That same month, Mr. Roberts was selected as chairman of G-Form's board of members.

27. For a multitude of reasons, G-Form was an inappropriate investment for the Foundation including, but not limited to, that G-Form was on the verge of financial collapse.

28. As of March 2017, G-Form had three straight years of operating losses exceeding \$10 million in each such year. In 2016, G-Form's accountants issued a "going concern" warning, indicating that it may not be a viable business at all.

29. Mr. Roberts invested the Foundation's money in G-Form because he had already loaned or invested tens of millions of dollars of his personal assets and his other clients' assets into G-Form, which was having significant cash flow shortfalls.

30. Mr. Roberts kept the investments secret from the Hoehl Siblings until early 2019, when Mr. Roberts distributed a financial report at a meeting that disclosed the Foundation's investment in G-Form.

31. Prior to this 2019 meeting, the financial reports presented by Mr. Roberts and Eideard did not disclose G-Form as a Foundation investment.

32. During the course of 2019, the Hoehl Siblings began to uncover the full extent of Defendants' mismanagement of the Foundation's assets, which include violations of the Code and investments not aligned with the interests of the Foundation's public stakeholders.

33. All three of the Roberts family revocable trusts, R&A, and BDP were disqualified persons, as defined in provisions of the Code relating to excise tax penalties applicable to private foundations.

34. At all relevant times, Mr. Roberts was acting in his role as investment manager for the Foundation.

35. None of the Foundation's trustees had the authority to make investment decisions, nor did the Foundation's treasurer.

36. Mr. Roberts and Eideard, in their role as investment manager, had the sole authority and discretion to make the Foundation's investment decisions.

Tax Reporting Obligations

37. Upon learning that the Foundation had invested in G-Form at a time when other disqualified persons owned more than 20% of G-Form, the Foundation's accountant expressed concerns that the Foundation may have an excess business holding and that Mr. Roberts may have engaged in self-dealing, each of which is subject to a range of excise tax penalties under the Code.

38. The Foundation engaged professionals to review the issue, including an attorney who specializes primarily in the taxation of charitable organizations.

39. The Foundation concluded that it had an obligation to report to the IRS that, when Mr. Roberts directed the Foundation to make a \$1 million investment in G-Form, Mr. Roberts engaged in self-dealing and the investment resulted in an excess business holding.

40. Under the Code, the Foundation is required to dispose of its investment in G-Form both to cure its excess business holding and to prevent the imposition of additional penalties.

41. Under the G-Form operating agreement, the sale of G-Form interests is restricted. The Foundation may offer its interests to any other current member without restriction.

However, it is unable to sell to a non-member without that purchaser being willing to buy all other outstanding membership interests at the same price.

42. If the Foundation does not successfully dispose of its G-Form interests, it may be subject to additional excise tax obligations exceeding \$2 million.

43. Eideard currently lists the G-Form shares as worth \$0 on its Foundation financial statements.

44. The Foundation timely filed its 2018 federal tax return³ on November 15, 2019, and remitted a \$300,000 excise tax for the excess business holding caused by Defendants. The Foundation also reported that its manager, Mr. Roberts, had engaged in self-dealing by making the 2017 investment in G-Form.

45. The Foundation's 2018 return will likely be subject to IRS audit and the Foundation may be subject to potential additional excise taxes.

46. The Foundation has spent over \$100,000 on professional fees to evaluate the tax consequences of Defendants' improper investment in G-Form and to attempt to mitigate the resulting adverse tax consequences.

47. As required by the Code, and in compliance with the G-Form operating agreement, the Foundation has offered to sell the shares to all G-Form members by auction scheduled for December 16, 2019.

Harm to the Foundation

48. Since March 31, 2017, the Foundation has been deprived of the opportunity to invest the \$1 million in traditional investments, such as a mutual fund.

³ The Foundation is in the process of preparing an amended 2017 tax return to report the self-dealing and excess business holding for that year, as well.

49. Between 2017 and 2019, the stock market has seen gains averaging more than 15% per year.

50. The Foundation has paid Eideard at least \$660,000 in investment management fees since March 31, 2017.

51. The IMA is terminable by the Foundation with 30 days' notice.

52. The Foundation kept Eideard as an investment manager after March 31, 2017 because it did not know about Defendants' decision to invest the Foundation's money in G-Form and the violations of the Code created by that investment.

53. Approximately one month after concluding that the G-Form investment violated multiple excise tax provisions of the Code related to private foundations, the Foundation terminated its relationship with the Defendants.

54. Defendants' concealment of the investment in G-Form also harmed the Foundation by making it impossible for the Foundation to take appropriate corrective steps in a timely manner.

COUNT I
Breach of Contract

55. Plaintiff realleges the above paragraphs as though fully set forth herein.

56. The IMA is a contract between Eideard and the Foundation.

57. By making a \$1 million investment in G-Form, Mr. Roberts breached the IMA by:

- (a) investing in an individual security as opposed to the agreed upon investment vehicles;
- (b) investing in G-Form without seeking advice of tax professionals prior to the investment or immediately thereafter; (c) making an investment that violated the Code and caused the Foundation to incur an excess business holding excise tax and potentially additional excise taxes;

and (d) identifying and investing in an investment that was not suitable for the Foundation given its obligation to its public stakeholders.

58. Through the actions of its principal and employee, Eideard breached the IMA by:

- (a) investing in an individual security as opposed to the agreed upon investment vehicles;
- (b) investing in G-Form without seeking advice of tax professionals prior to the investment or immediately thereafter; (c) making an investment that violated the Code and caused the Foundation to incur an excess business holding excise tax; and (d) identifying and investing in an investment that was not suitable for the Foundation given its obligation to its public stakeholders.

59. The Foundation fulfilled its obligation under the IMA.

60. Defendants did not have a legal excuse for breaching the IMA

61. The breaches of the IMA by Eideard and Mr. Roberts caused the Foundation harm.

62. The Foundation's damages include: (a) the \$ 1 million investment; (b) the professional fees it was forced to incur to address the excess business holding and self-dealing violations created by the investment in G-Form; (c) the \$300,000 excise tax it has paid to the IRS; (d) the loss of investment opportunity for the \$1 million since March 31, 2017; and (e) the fees it paid to Eideard since March 31, 2017.

COUNT II
Breach of Fiduciary Duty

63. Plaintiff realleges the above paragraphs as though fully set forth herein.

64. Defendants had a fiduciary relationship with the Foundation, in that Defendants had complete discretion over the Foundation's investments, subject to the terms of the IMA.

65. Defendants owed the Foundation fiduciary duties, including without limitation, the duty to be loyal to the Foundation and not put their own interests before the Foundation's interests, the duty to care for the Foundation and provide advice in the Foundation's best interests, and the duty to disclose material information to all of the Foundation's trustees.

66. Defendants breached their duty of loyalty to the Foundation by using their discretionary investment powers to invest \$1 million of the Foundation's funds in G-Form to benefit themselves and not the Foundation.

67. Defendants breached their duty of care to the Foundation by using their discretionary investment powers to invest \$1 million of the Foundation's funds in G-Form when that was not an appropriate use of the Foundation's assets and was not in the Foundation's best interests.

68. Defendants breached their duty to disclose material information to all of the Foundation's trustees by actively concealing the investment in G-Form, in violation of the Code.

69. The Foundation's damages include: (a) the \$ 1 million investment; (b) the professional fees it was forced to incur to address the excess business holding and self-dealing violations created by the investment in G-Form; (c) the \$300,000 excise tax it has paid to the IRS; (d) the loss of investment opportunity for the \$1 million since March 31, 2017; and (e) the fees it paid to Eideard since March 31, 2017.

COUNT III
Violation of the Vermont Consumer Protection Act

70. Plaintiff realleges the above paragraphs as though fully set forth herein.

71. Mr. Roberts and Eideard are “sellers” of investment management services, as that word is defined in 9 V.S.A. § 2451a, and hold themselves out as offering home office and investment management services.

72. The Foundation is a “consumer” of investment management services, as that word is defined in 9 V.S.A. § 2451a, and purchased Defendants’ services for the use and benefit of the Foundation.

73. Defendants had an obligation to disclose the Foundation’s investments to all of its trustees.

74. Defendants acted in an unfair and deceptive manner when they made an investment that violated the IMA.

75. Defendants acted in an unfair and deceptive manner when they concealed their decision to make an illegal and unsuitable investment in G-Form from six of the Foundation’s trustees for approximately two years.

76. The purpose of Defendants’ deceptive and unfair acts was to keep the Foundation and other entities related to the Hoehls as their clients and to increase the value of Roberts’ investment in G-Form.

77. As a result of these deceptive acts, Defendants harmed the Foundation by, among other things, receiving more than \$660,000 in fees.

78. Mr. Roberts and Eideard have damaged the Foundation, and the Foundation seeks compensatory and exemplary damages, as well as its attorneys’ fees and costs.

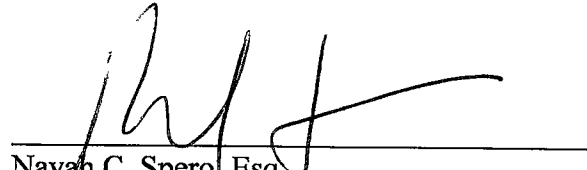
WHEREFORE, Plaintiff respectfully requests that this Court enter the following relief:

A. Compensatory money damages to make the Foundation whole for Defendants’ decision to invest Foundation money into G-Form, including: (i) the loss of the \$1 million

investment; (ii) the \$300,000 excise tax the Foundation was required to pay to the IRS, as well as any additional excises taxes that may arise; (iii) the more than \$100,000 in professional fees the Foundation was forced to pay address and mitigate Defendants' actions; (iv) the lost investment opportunity for the \$1 million between March 31, 2017 until the date of judgment; and (v) the \$660,000 in fees it has paid to Eideard since March 31, 2017.

- B. Exemplary damages against Defendants pursuant to 9 V.S.A. § 2461(b);
- C. Reasonable attorneys' fees and costs pursuant to 9 V.S.A. § 2461(b);
- D. Pre- and post-judgment interest; and
- E. Such other relief available under the law that may be considered appropriate under the circumstances, including interest and other fees of this action to the extent allowed by the law.

Dated: Burlington, Vermont
December 6, 2019



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