

CAUSE NO. DC-19-16781

Belinda Hernandez

**KEVIN BUCHANAN, as Appointed
Receiver of NATIONAL CENTER FOR
POLICY ANALYSIS,
*Plaintiff,***

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IN THE DISTRICT COURT

v.

 JUDICIAL DISTRICT

**JAMES AMOS, JR., STEPHEN A.
BATMAN, WILLIAM D. GROSS,
RONALD S. IVY, DENNIS
McCUISTION, JACKI PICK, REAGAN
STEWART, ALLEN B. WEST, and
MICHAEL L. WHALEN,
*Defendants.***

DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

COMES NOW, Plaintiff KEVIN BUCHANAN, as Appointed Receiver of NATIONAL CENTER FOR POLICY ANALYSIS (hereinafter “NCPA”), and files this its Original Petition against JAMES AMOS, JR. (hereinafter “AMOS”), STEPHEN A. BATMAN (hereinafter “BATMAN”), WILLIAM D. GROSS (hereinafter “GROSS”), RONALD S. IVY (hereinafter “IVY”), DENNIS McCUISTION (hereinafter “McCUISTION), JACKI PICK (hereinafter “PICK”), REAGAN STEWART (hereinafter “STEWART”), ALLEN B. WEST, and MICHAEL L. WHALEN (hereinafter “WHALEN”), collectively referred to as “Defendants”, and would show the Court as follows:

I.

DISCOVERY CONTROL PLAN

1. In accordance with TEXAS RULE OF CIVIL PROCEDURE 190.4, NCPA designates this case as a Level 3 case.

II.

MONETARY RELIEF DESIGNATION

2. In accordance with Texas Rule of Civil Procedure 47, NCPA hereby gives notice that it seeks monetary relief over \$1,000,000.00, including damages of any kind, penalties, costs, expenses, and interest.

III.

PARTIES

3. Plaintiff KEVIN BUCHANAN, as Appointed Receiver of NATIONAL CENTER FOR POLICY ANALYSIS, is a non-profit corporation with its place of business in Dallas, Texas.
4. Defendant JAMES AMOS, JR. was an executive officer of the NCPA. He may be served with process at 2204 Still Water Ct. Southlake, Texas 76092, or wherever he may be found.
5. Defendant STEPHEN A. BATMAN was a board member of the NCPA board of directors. He may be served with process at 6902 Gaston Avenue, Dallas, Texas 75214, or wherever he may be found.
6. Defendant WILLIAM D. GROSS was a board member of the NCPA board of directors. He may be served with process at 4214 Manning Lane, Dallas, Texas 75220, or wherever he may be found.
7. Defendant RONALD S. IVY was a board member of the NCPA board of directors. He may be served with process at 5430 Northbrook Drive, Dallas, Texas 75220, or wherever he may be found.

8. Defendant DENNIS McCUISTION was an executive officer and a board member of the NCPA board of directors. He may be served with process at 68 Vista Court, Pottsboro, Texas 75076, or wherever he may be found.
9. Defendant JACKI PICK was an executive officer of the NCPA. She may be served with process at 10134 Waller Drive, Dallas, Texas 75229, or wherever she may be found.
10. Defendant REAGAN STEWART was the dissolution manager for the NCPA. He may be served with process at his business address, Clarion Financial Services, LLC, 4809 Cole Avenue, Suite 108, Dallas, Texas 75205.
11. Defendant ALLEN B. WEST was an executive officer and a board member of the NCPA board of directors. He may be served with process at 9925 Wood Forest Drive, Dallas, Texas 75243, or wherever he may be found.
12. Defendant MICHAEL L. WHALEN was a board member of the NCPA board of directors. He may be served with process at 2140 St. Andrews Circle, Bettendorf, Iowa 57222, or wherever he may be found.

IV.

JURISDICTION AND VENUE

13. The Court has jurisdiction over Defendants because the amount in controversy falls within the jurisdictional limits of this Court.
14. Venue is proper in this Court because all of a substantial part of the events or occurrences giving rise to the cause of action took place in Dallas County, Texas. Venue is therefore proper in Dallas County pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002(a)(1).

V.

FACTUAL BACKGROUND

15. The NCPA was a non-profit economic think-tank formed in 1982.
16. From 1983 to 2014 the NCPA was highly respected by members of both political parties. It's ideas and policy proposals were adopted by presidents, members of Congress, governors, state legislators and city councils throughout the country.
17. The NCPA was founded and supported by pillars of both the Dallas business community and the Dallas philanthropic world.
18. Because of the NCPA, Dallas became a center of intellectual activity that was recognized throughout the United States and around the world.
19. The NCPA drew on an academic network that included the best and brightest scholars in the country – including such Nobel Prize winners as Milton Friedman, George Stigler, James Buchanan and Vernon Smith.
20. The NCPA was the source of legislation that created Health Savings Accounts, which today allow twenty-five million people to manage some of their own health care dollars in accounts they own and control.
21. The NCPA was the source of legislation that created Roth IRAs, by means of which 19.2 million people now own \$660 billion of retirement money that will never be taxed again.
22. The NCPA was the source of legislation that has allowed seventy-eight million baby boomers to work beyond the retirement age without losing Social Security retirement benefits.

23. The NCPA (along with the Brookings Institution) was the source of legislation that allows employers to automatically enroll new employees in 401(k) plans with diversified portfolios – giving sixteen million people higher and safer retirement incomes.
24. Through its speaker series the NCPA introduced Dallas audiences (including special sessions with college students) to such figures as Israeli Prime Minister Benjamin Netanyahu, Newt Gingrich, Steve Forbes, President George W. Bush, Gov. Rick Perry, Supreme Court Justice Clarence Thomas, Sen. Pat Moynihan, Sen. Bob Kerrey, former French President Valery Giscard d'Estaing, Jordan's Queen Noir, TV newsman Walter Cronkite, TV commentator Juan Williams and many others.
25. The NCPA sponsored over twenty (20) "Firing Line" programs with Willian F. Buckley, introducing a national public television audience to debates on such topics as school choice, Social Security privatization, the flat tax, welfare reform and health reform.
26. In June 2014, there was approximately \$750,000 in the bank, \$6,000,000 in endowment bequests, and \$5,000,000.00 million in annual giving, as well as a reliable group of supporters.
27. In November 2016, NCPA executives and board members realized they were unable to meet payroll and essentially began operating "paycheck to paycheck." It is evident that the NCPA was insolvent long before it actually closed the doors.
28. In 2017, the NCPA announced it was dissolving and immediately ceased to do business. At that time, the NCPA was not supported or involved with a single major Dallas business or local foundation, had virtually no money in the bank, no endowments and had accumulated over \$1,000,000.00 in debt.
29. In February 2018, NCPA filed for Chapter 7 Bankruptcy.

30. The Bankruptcy Court approved the Chapter 7 Trustee Report in June 21, 2018.
31. Had the NCPA been responsibly and prudently managed, it could have reasonably enjoyed an expected income of approximately fifty million dollars (\$50,000,000.00) from 2014 through 2024, but instead closed its doors in 2018.
32. The beginning of the demise of the NCPA can be traced to a number of grossly negligent decisions made by executives and board members of the NCPA, the first of which was engaging the services of a public relations strategist to assist the executives and board members of the NCPA going forward.
33. At the direction of the executives and board members of the NCPA, and to the absolute detriment of the NCPA, the NCPA engaged in a self-destructive public relations battle with former NCPA president and founder, Dr. John Goodman. As part of that effort, the NCPA published false and defamatory statements about Dr. Goodman in press releases, email messages, and website postings. As a result of these efforts, the NCPA was forced to pay Dr. Goodman more than half a million dollars to settle a libel and slander suit.
34. At the direction of the executives and board members of the NCPA, and to the detriment of the NCPA, the NCPA proceeded to file a number of frivolous lawsuits against leaders of the Dallas business community. The same Dallas business community that the NCPA depended on for both financial contributions and leadership. This approach led to the eventual loss of both donations and memberships from the Dallas business community.
35. For example, the NCPA sued its own board secretary, Mike Baggett, and every single partner of his law firm, Winstead, P.C. At the time, Mr. Baggett was arguably the most prominent attorney in Dallas, and Winstead P.C. the city's largest law firm. The NCPA pleadings, which contained false, defamatory, and highly salacious language, were

widely covered by the local media. On information and belief, the NCPA, through the baseless lawsuit, was attempting to embarrass, humiliate, and extort money from some of the very people it depended on for financial support and good will.

36. It took over thirty (30) years and tens of millions of dollars for the NCPA to establish a world-wide reputation as an intellectual think tank, and the reputation was destroyed in less than three (3) years by abject abandonment by the NCPA executives and board members of their legal duties to the NCPA.
37. The three-year demise of the NCPA could serve as a Harvard Business School case study on how to destroy a successful, relevant, and influential organization.

VI.

BREACH OF FIDUCIARY DUTY

38. The executives and board members of the NCPA owed a fiduciary duty to the NCPA. It is well established that corporation officers and directors are fiduciaries. *Int'l Bankers Life Ins. Co. v. Holloway*, 368 S.W.2d 567, 576 (Tex. 1963). As such, officers and directors owe a duty to act only in the best interest of the corporation and its shareholders. *Hughes v. Houston NW Med.Ctr., Inc.* 680 S.W.2d 838, 843 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e).
39. The facts exhibiting Defendants' breach of the fiduciary duty owed to the NCPA are as follows:
 - a. The approval and hiring of Joshua Galloway as CFO for the NCPA. It was discovered in January 2016 that Mr. Galloway embezzled between \$600,000.00 and \$1,000,000.00. When asked why he did it, Mr. Galloway said there was too much temptation and opportunity.

- b. The NCPA executives and board members failed to implement and observe the rigorous financial standards, policies, and procedures that had previously been in place to prevent actions by employees such as Mr. Galloway. The lack of operational oversight by the NCPA executives and board members directly placed the NCPA in an alarming and precarious financial position that inevitably doomed the NCPA.
- c. The NCPA board members hired individuals as executives in full time positions without requiring full time commitments in the roles to be filled. These executives were allowed to focus on positions and roles outside of the NCPA, to the detriment of the NCPA, including fundraising for competing causes and organizations.
- d. During the period from 2017 until February 2018, NCPA executives and board members failed to preserve the intellectual properties and online library of the NCPA that included thousands of documents, charts, graphs, etc. that had been created over thirty-four (34) years and by more than \$100,000,000 in voluntary contributions.
- e. Prior to July 2014, the NCPA's internet site received in excess of 150,000 visits each month by users from more than 190 countries. Based on information and belief, the amount of traffic alone would provide an estimated advertising revenue stream of twenty thousand dollars and no cents (\$20,000.00) per month. However, the NCPA executives and board members failed to maintain control and eventually lost documents, communications, videos, and other historical records that were not only valuable assets of the NCPA, but historical archives for the public as a whole.
- f. Instead, the NCPA executives and board members sold the rights to the NCPA domain name for a minimal amount and consequently lost control of the NCPA's most important and valuable asset, the NCPA's library.

- g. Because the NCPA executives and board members virtually gave away the NCPA's most valuable asset, hundreds of thousands of links have been destroyed and thirty-four (34) years of NCPA studies, brief analyses, backgrounders, blog entries, photos, videos, and other online documents are now lost to convenient internet access, forever.
- h. The NCPA executives and board members showed a blatant disregard for the wishes of donors who contributed millions of dollars in support of the NCPA's work and for the interest of creditors to whom the organization owed a great deal of money.
- i. During the period from 2016 until February 2018, NCPA executives and board members failed to manage expenses to prioritize NCPA operations, failing to pay the following:
 - I. NCPA's internet service provider, resulting in the loss of control of the NCPA website;
 - II. the auditor, which prevented access to the most recent audit, access that the NCPA needed to obtain gifts from most large foundations;
 - III. the rent, which lead to the landlord blocking access to the premises and important and vital documents including the board books, board minutes, and board resolutions; and
 - IV. the storage company, preventing the NCPA access to their own archives.
- j. At the time the NCPA closed its doors, the organization could not communicate with the outside world over the internet, could not raise significant money, and could not access its own archives, records, and documents.

- k. During the period from 2016 until February 2018, NCPA executives and board members failed to obtain the necessary authority in operations decisions.
 - l. During the period from 2017 until February 2018, NCPA executives and board members failed to obtain the necessary authority on the negotiation and sale of NCPA assets.
 - m. During the period from 2017 until February 2018, NCPA executives and board members began stripping out assets and selling them at below market value, by accepting bids that were less than the highest offers, thus failing to maximize the return the NCPA should have expected.
 - n. During the period from 2014 until February 2018, NCPA executives and board members mismanaged funds that were directed, and or restricted, for certain uses. All told, funds in excess of one million dollars (\$1,000,000.00) were illegally and improperly used for operating costs and expenses. Upon information and belief, this practice was never reported to the full board of directors or to the individuals and foundations who donated the restricted funds.
 - o. During the period from 2017 until February 2018, NCPA executives and board members failed to share meeting minutes and other information with the board as a whole, despite the repeated request of certain members.
40. Defendants breached the fiduciary duty owed to the NCPA by failing to act in good faith or with ordinary care in a manner that one would believe to be in the best interest of the NCPA.
41. Defendants breached the following duties:
- a. The duty of loyalty;

- b. The duty of utmost good faith and honesty;
 - c. The duty of full disclosure of all matters affecting the corporation;
 - d. The duty not to usurp corporate opportunities for personal gain;
 - e. The duty of full disclosure of any personal interest the officer or director has in the subject matter of a contract the officer or director negotiates within the corporation; and
 - f. The duty to use uncorrupted business judgment for the sole benefit of the corporation.
42. Defendants' actions were not in good faith, with ordinary care, or in a manner reasonably believed to be in the best interest of the NCPA. As such, Defendants breached the fiduciary duty owed to the NCPA. Defendants' breach not only resulted in injury to Plaintiff NCPA, but served to benefit Defendants. Plaintiff NCPA seeks actual damages and exemplary damages as a result of the breach of Defendants.

VII.

DAMAGES

43. As a direct and proximate result of the acts, errors, or omissions of Defendants that breached the fiduciary duty owed to the NCPA, the NCPA has suffered actual damages.

VIII.

EXEMPLARY DAMAGES

44. Pursuant to Texas Civil Practices & Remedies Code §41.003(a), NCPA is entitled to exemplary damages because the injury resulting from Defendants' fraud, malice or gross negligence.

IX.

REQUESTS FOR DISCLOSURE

45. Pursuant to Rule 194, Defendants are requested to disclose, within 50 days of service of this petition, the information or material described in TEXAS RULES OF CIVIL PROCEDURE 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, JAMES AMOS, JR., STEPHEN A. BATMAN, WILLIAM D. GROSS, RONALD S. IVY, DENNIS McCUISTION, JACKI PICK, REAGAN STEWART, ALLEN B. WEST, and MICHAEL L. WHALEN, Defendants, be cited to appear and answer herein and that upon final hearing, KEVIN BUCHANAN, as Appointed Receiver of NATIONAL CENTER FOR POLICY ANALYSIS have judgment against Defendants for the following:

1. Actual damages incurred by Plaintiff as a direct and proximate result of Defendants' acts, errors, or omissions;
2. Exemplary damages upon a finding of malice or gross negligence as to Defendants' acts, errors, or omissions,
3. Post-judgment interest at the rate per annum as published by the Texas Office of Consumer Credit Commission at the time of Judgment;
4. Costs of court; and
5. Such other and further relief, at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted,

DARRELL W. COOK & ASSOCIATES,
A PROFESSIONAL CORPORATION

/s/ Darrell W. Cook

DARRELL W. COOK
State Bar No. 00787279
dwcook@attorneycook.com
CATHERINE A. KEITH
State Bar No. 24046193
catherine@attorneycook.com
6688 North Central Expressway, Suite 1000
Dallas, TX 75206
(214)368-4686
(214)593-5713 – Facsimile

ATTORNEYS FOR PLAINTIFF