

COUNXEL

LEGAL FIRM

FROM: [Anthony Saccocio](mailto:Anthony.Saccocio@counxel.com)
Asaccocio@counxel.com

DATE: December 19, 2023

TO: Lake Havasu Tourism Bureau Inc.
314 Lond Bridge Road
Lake Havasu City, AZ 86403
ATTN: Board of Directors

Re: Termination of Regan Ross — Lake Havasu Tourism Bureau Inc.

I. Introduction

Please accept this communication on behalf of our client, Regan Ross, regarding her termination from Lake Havasu Tourism Bureau Inc. d/b/a Go Lake Havasu. As Ms. Ross's legal representative, it is imperative to address certain crucial aspects of her position with Go Lake Havasu, which have led to a situation necessitating careful consideration and a fair resolution.

II. Factual Background

Go Lake Havasu ("GLH"), is a reputable non-profit, taxpayer-funded corporation instrumental in fostering tourism in the Lake Havasu region. This correspondence serves to formally address the circumstances surrounding Ms. Ross's dismissal, which we contend to be unjust and in contravention of the established by-laws of GLH and the laws of the State of Arizona.

Ms. Ross's association with GLH has been characterized by a commitment to the organization's mission and objectives. However, her tenure has been marred by internal dynamics that have seemingly influenced her professional trajectory and, ultimately, her abrupt termination. A key aspect of this situation involves Ms. Ross's prior interaction with a current board member, Jennifer Whetten. Despite a history of rivalry between Ms. Ross and Ms. Whetten, it was Ms. Ross's understanding that any previous discord had been amicably resolved and bore no relevance to her role at GLH.

Notwithstanding, it has come to our attention that Ms. Whetten harbored intentions to terminate Ms. Ross's employment, under the pretext of a conflict of interest emanating from their prior interactions. This allegation was thoroughly investigated and subsequently dismissed by the then-CEO, Terence Concannon, who found no basis for such a conflict. Nonetheless, the departure of Mr. Concannon in June, 2023 created a leadership vacuum within GLH, exacerbating the governance challenges within the organization. Ms. Ross, wary of these challenges, communicated her concerns regarding the absence of a CEO, but was advised to maintain her regular duties without embarking on new initiatives.

Subsequently, Ms. Ross was subject to a "verbal counseling session" by board member Shawn Lawless for reasons that were not clearly articulated to her. This incident, which was recorded in her employment file, now

appears to be a potential pretext for undermining her position within the organization and her prospective candidacy for the CEO role.

On or around Jun 21, 2023 the CEO position became available, and both Ms. Ross and Mr. Lawless submitted their applications for the position. The candidacy of Mr. Lawless is particularly concerning, given his involvement in the removal of Mr. Concannon. Despite these applications, the board decided to pursue only external candidates for the position. As part of this process, Ms. Ross and other staff members were requested to review the resumes of potential candidates, including those from Nevada and Texas.

In her due diligence, Ms. Ross identified a professional connection familiar with the Texas candidate. In an effort to thoroughly vet the candidate, Ms. Ross, with full transparency and in the presence of her colleagues, engaged in a conversation with this contact. The feedback received was not favorable towards the Texas candidate, highlighting significant concerns about this person's suitability for the CEO role.

However, in an unexpected turn of events, Ms. Ross was summarily dismissed by a board member, Heather Petaishiski, for her outreach to the Texas contact. Upon information and belief, Ms. Ross's termination was never brought up in any public meeting and was only considered by the executive committee via telephone and e-mail.

Further exacerbating the impropriety of Ms. Ross's termination is a critical violation of the by-laws of Go Lake Havasu. As per Article IV, Section 2(E) the by-laws, "the President/CEO shall be the Chief Administrative and Executive Officer of GLH and shall be responsible for the hiring, discharging, directing, and supervising of all employees." At the time of Ms. Ross's dismissal, the role of CEO was vacant, following the departure of Mr. Concannon. This leadership void not only created governance challenges but also meant that any employment decisions, particularly terminations, were without the requisite authority as mandated by these by-laws. This disregard for the established governance protocol further underscores the invalidity of Ms. Ross's termination. The dismissal, conducted in the absence of a CEO, directly contravenes the by-laws, thereby questioning the legality of the action taken against Ms. Ross and reinforcing our position that her termination was improper and unlawful under the governing rules of GLH.

Prior to Mr. Concannon, GLH had an interim CEO. It was during that time the CEO was directed by the board not to discharge any employee, only that he could hire. Although such a policy is not stated identically as such in the bylaws, Ms. Ross was of the understanding it was GLH's policy not to terminate any employee while under an interim CEO. Similarly, upon information and belief, Ms. Petaishiski communicated to another GLH staff member that she did not possess the authority to terminate an employee.

In light of these facts, we contend that Ms. Ross's termination was not proper. We respectfully request a comprehensive review of this matter and seek an equitable resolution for Ms. Ross. We remain open to further discussion and are prepared to provide additional information as required.

III. Legal Standard

In addition to the potential violation of GLH bylaws, there are several additional claims Ms. Ross has, including but not limited to, Breach of Contract, breach of Fiduciary Duty, and Retaliation

Breach of Contract

Ms. Ross's employment with GLH was governed by a contractual relation. Although her employment was "at-will" such a contract is still a contract is therefore governed by A.R.S, § 23-1501(A)(1) which states that "the employment relationship is contractual in nature." In this regard, the law supporting good faith and fair dealing within that contract remains applicable.

Breach of Good Faith and Fair Dealing

In light of the essential elements of the implied covenant of good faith and fair dealing, we assert that Ms. Ross's dismissal from GLH constitutes a significant breach of this covenant. Firstly, the exercise of express discretion by GLH's board, particularly in the manner of Ms. Ross's termination, was starkly inconsistent with any party's reasonable expectations. Ms. Ross, an employee committed to GLH's mission, could not have reasonably anticipated that her proactive engagement in the CEO selection process, a duty entrusted to her, would be twisted into a pretext for dismissal. This action by the board, especially given the past resolution of any discord with board member Jennifer Whetten and the approval by the then-CEO, Terence Concannon, of her conduct, clearly deviated from what any reasonable employee would expect in the course of their employment.

Secondly, the actions taken against Ms. Ross were not expressly excluded by the terms of her employment contract or the organization's by-laws. Yet, these actions bore adversely on the reasonable expected benefits of her bargain with GLH. Furthermore, the lack of a clear and justified rationale for her termination, coupled with the previously mentioned procedural irregularities, including the failure to conduct an exit interview as per the personnel manual, significantly impaired the benefits Ms. Ross was entitled to expect under her employment contract. These circumstances demonstrate a clear breach of the duty of good faith and fair dealing, which is foundational to the employment relationship between Ms. Ross and GLH.

Breach of Fiduciary Duty

The board members of GLH, as fiduciaries, are obligated to act in the best interest of the of the organization's mission, its employees, and its stakeholders. The decision to terminate Ms. Ross, however, appears to contravene these duties.

In addressing the breach of fiduciary duty in the context of Ms. Ross's dismissal from GLH, it is crucial to examine the conduct of the board members and other key decision-makers within the organization. Fiduciary duty, by its nature, obligates those in positions of trust to act in the best interests of the organization and its stakeholders, including employees. In Ms. Ross's case, the actions of certain board members, notably Jennifer Whetten and Heather Petaishiski, raise serious questions about their adherence to these fiduciary responsibilities.

The apparent personal animosity from Ms. Whetten towards Ms. Ross, stemming from past interactions, suggests a conflict of interest that was not managed in accordance with the standards of fiduciary duty. This conflict seemingly influenced the decision-making process regarding Ms. Ross's employment, diverting it from the best interests of GLH and toward personal vendettas. Moreover, the involvement of Shawn Lawless in both the "verbal counseling session" and his subsequent application for the CEO position, followed by the board's decision to exclude internal candidates like Ms. Ross, indicates a potential misuse of position for personal gain or advantage.

Violation of GLH Bylaws

Central to our contention is the violation of the by-laws of GLH, which governs the operational and procedural integrity of the organization. These by-laws, as a binding internal legal framework, were notably disregarded in the termination of Ms. Ross.

The by-laws of GLH explicitly state that “the President/CEO shall be the Chief Administrative and Executive Officer of GLH and shall be responsible for the hiring, discharging, directing, and supervising of all employees.” This provision underlines the importance of centralized decision-making in employment matters and ensures that such decisions are made by an individual with a comprehensive understanding of the organization’s needs and legal obligations. At the time of Ms. Ross’s dismissal, this role was unoccupied. The absence of a CEO means that the authority to terminate her employment was not vested in any individual or collective body within the organization, rendering her dismissal procedurally invalid.

The by-laws form part of the contractual agreement between GLH and its employees. By breaching these by-laws, GLH has not only failed in its internal governance but also breached its contractual obligations to Ms. Ross. This violation is particularly unfair given that Ms. Ross’s termination was influenced by factors outside of her professional performance, such as unresolved personal animosities and the internal politics surrounding the CEO appointment process.

In light of these facts, we assert that the violation of the GLH by-laws in the termination of Ms. Ross is a clear legal failing. This violation not only undermines the integrity of GLH’s operational procedures but also represents a breach of the legally binding agreement between Ms. Ross and GLH. It is our position that this violation further solidifies the legal basis for Ms. Ross’s claims against GLH.

The abrupt and unjustified dismissal of Ms. Ross, especially after her diligent and transparent effort in vetting an external candidate for the CEO role, contrasts sharply with the expectation of fair and impartial decision-making mandated by fiduciary duty. Her termination, especially under the pretext of her outreach to a Texas contact, points to a failure to prioritize the organization’s interests and a breach of the trust and fairness owed to her as an employee.

Given the above, it is evident that the actions of GLH’s board members, in this case, constitute a breach of their fiduciary duties. This breach has caused significant harm to Ms. Ross, including loss of employment, reputational damage, and emotional distress.

IV. Litigation Hold

This letter is a demand by our office, pursuant to federal and state law that you, and any affiliated individual or entity preserve all documents, including all tangible things and digitally and/or electronically stored information, including but not limited to emails, text messages, (hereinafter “ESI”) that is potentially relevant to the retaliation and breach of contract issues involving my client and place a litigation hold on such information. *See, Voom HD Holdings, LLC v. Echostar Satellite, LLC*, 93 A.D.3d 33, 939 N.Y.S.2d 321 (1st Dept. 2012); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003).

We believe that information subject to disclosure or responsive to the above-mentioned matter is retained by you in the form of paper documents and files; and/or stored on its current or former computer systems and other media and “high-tech” devices (including personal cell phones, smart phones, iPads, tablets, computers, voice-messaging systems, online repositories, email servers, cameras, audio and video recorders). This letter is to ensure that such information is not destroyed or otherwise made unavailable to our client in connection with this matter. Accordingly, you must act immediately to preserve potentially relevant information and ESI. Not only are you required to immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things, and to act diligently and in good faith to secure and audit compliance with this hold; you must also immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss or destruction of potentially relevant documents or ESI.

Consistent with your duty to prevent the destruction or loss of data, you should take affirmative steps to prevent anyone with access to its files, data, system, and archives from seeking to modify, destroy, or hide this relevant information. Please note that mere preservation of hard paper copies of any of the information described above does not excuse the necessity to retain ESI. If information exists in both electronic and paper forms, it is very clear that you must preserve both forms.

This letter demands that you and any affiliated individual or entity take all necessary steps to preserve relevant documents and ESI in this litigation. We believe a failure to take these steps now would constitute spoliation of evidence in connection with this matter.

V. Purpose of Correspondence

The primary purpose of this correspondence is to demonstrate the multiple failures of GLH's governing board in the improper termination of Ms. Ross and to request the following of GLH:

- 1) Pay to my client a sum of \$250,000.00 representing the total of her justifiable and merited claims against you in this matter;
- 2) Ms. Ross' status as "terminated" (or similar equivalent verbiage) be changed to "wrongful termination" or "resignation;"
- 3) A positive employment reference and deemed eligible for re-hire;
- 4) Agreement to non-disparagement of Ms. Ross;
- 5) Verbal apology to Ms. Ross

VI. Conclusion

In conclusion, my client's claims against you are merited and justified. If you refuse my client's demand then my client can, and will, initiate an action against you for, at least, the causes of action enumerated. Please direct your acceptance of my client's demand to me at this office prior to **5:00pm on January 12, 2023** or my client will presume you have no intention of an amicable resolution and will take such actions as necessary to protect her interests.

Sincerely,



Anthony Saccocio
Attorney
ASaccocio@counxel.com

cc: Client