

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR DOUGLAS COUNTY

KEVIN CAMPBELL individually and on
behalf of COMMUNITY HEALTH
ALLIANCE;

Plaintiff,

v.

COMMUNITY HEALTH ALLIANCE, an
Oregon public benefit corporation; and
ADAPT, an Oregon Public Benefit
Corporation;

Defendants.

Case No. 15CV34826

COMPLAINT

(Declaratory Relief, Injunction
pursuant to ORS 65.084)

Not Subject to Mandatory Arbitration

Allegations

1.

Community Health Alliance (“CHA”) is a solvent Oregon public benefit corporation primarily engaged in the provision of mental health services in Douglas County, Oregon. Defendant ADAPT is an Oregon public benefit corporation primarily engaged in the provision of addiction services in Douglas County, Oregon. CHA and ADAPT are current and future competitors. Plaintiff is and has been at all material times a director of CHA. ADAPT’s Chief Executive Officer, Gregory S. Brigham, has at all material times served as a member of CHA’s Board of Directors as ADAPT’s designee.

1 2.

2 ADAPT made a proposal to CHA with the following basic terms:

3 (a) CHA will make a gift to ADAPT of all of CHA's significant assets,
4 including in excess of \$4 Million in cash and operations generating in excess of \$1 Million in
5 profit annually and estimated to be worth in excess of \$5 Million, to ADAPT;

6 (b) ADAPT may assume certain contracts and leases, hire some of CHA's
7 employees, and continue all or portions of CHA's operations to the extent ADAPT decides that
8 doing so is favorable to it;

9 (c) CHA will be left with only known and unknown liabilities and limited, if
10 any, assets that ADAPT chooses not to accept, and will be forced wind up its affairs and dissolve
11 at substantial expense;

12 (d) CHA will immediately forgo its right to sell its businesses, enter into a
13 joint venture, or enter into any other alternative arrangement; and

14 (e) CHA will provide ADAPT with immediate access to all of its confidential
15 business information.

16 That proposal is not in CHA's best interest.

17 3.

18 CHA's bylaws require transactions like the one in dispute to be approved by its board of
19 directors. Those bylaws permit seven entities with financial or other interests in CHA's
20 operations, and indirect conflicts of interest, to each designate one director, and require those
21 directors to elect eight unaffiliated directors. The designated directors have not done so. The
22 bylaws prohibit the directors from meeting electronically without permitting all directors to do so
23 and prohibit special meetings without at least 48 hours' notice.

24 4.

25 The board of directors of CHA has adopted a Conflict of Interest policy that purports to
26 contradict the requirement in ORS 65.357 that directors make all decisions "in the best interest of

1 the corporation” and purports to permit the directors to approve an “unfair” conflict of interest
2 transaction, contrary to ORS 65.361(7).

3 5.

4 CHA’s board of directors considered that proposal on short notice in an electronic special
5 meeting at which Plaintiff was not permitted to participate or was held without the required notice
6 to Plaintiff, with little or no investigation or analysis, without significant information as to
7 ADAPT’s finances, with limited legal assistance, and without significant consideration of
8 alternatives. In part as a result of actions by ADAPT and/or third-parties with contracts with both
9 CHA and ADAPT and a financial interest in the decision (including express or implied threats to
10 terminate a contract and apparent efforts to interfere with CHA’s relationships with its employees),
11 and in part to satisfy or benefit ADAPT and/or a third-party, the board of directors of CHA
12 approved the proposed transaction. It did so over Plaintiff’s express written objection and in
13 apparent reliance on the invalid Conflict of Interest Policy. The directors voting to approve the
14 proposal acted knowing that the proposed transaction was not in CHA’s best interest, acted
15 contrary to advice to use great care in breach of their fiduciary duties of care and loyalty and their
16 statutory duty imposed by ORS 65.361. CHA has signed or will or soon will sign one or more
17 agreements committing CHA (but not ADAPT) to the proposed transaction.

18 6.

19 Plaintiff is entitled to a declaration that the board’s purported approval is invalid,
20 rescission of any agreement implementing that approval, an injunction prohibiting further action
21 on the proposal pursuant to ORS 65.084, and ancillary relief as may be appropriate, including an
22 award of damages caused by the disclosure of confidential information and interference with
23 CHA’s relationships with its employees and operations.

24 7.

25 Plaintiff is entitled to recover his reasonable attorney’s fees and related expenses
26 under the “common fund doctrine.”

1 **Prayer**

2 Plaintiff prays for judgment as follows:

- 3 1. Declaring that the board of director’s purported action is invalid and ineffective,
4 the Conflict of Interest Policy is invalid to the extent it purports to allow the board to approve a
5 transaction unfair to or otherwise not in the best interest of CHA, and any agreement executed in
6 accordance with the board of director’s approval or direction is ineffective and rescinded;
- 7 2. Making such additional declarations as may be appropriate;
- 8 3. Enjoining continued actions having the effect of furthering or continuing the
9 disputed transaction, including the disclosure of confidential information; and
- 10 4. Awarding additional relief as may be appropriate.

11
12
13 DATED: December 29, 2015

14 /s Wm. Randolph Turnbow
15 Wm. Randolph Turnbow, OSB 803910
16 Attorney for Plaintiff
17 Trial Attorney