



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBERT D. KEYSER, JR., FRANK)
SALVATORE, and SCOTT SCHALK,)
)
Plaintiffs,)
)
v.)
)
TOM CURTIS, THOMAS HANDS,)
DONALD SHEK, and ALBERT)
POLIAK,)
)
Defendants,)
)
and)
)
ARK FINANCIAL SERVICES, INC., a)
Delaware corporation,)
)
Nominal Defendant.)

C.A. No. 7109-VCN

ANSWER TO VERIFIED COMPLAINT

Defendants Tom Curtis, Thomas Hands, Donald Shek and Albert Poliak, and Nominal Defendant Ark Financial Services, through their undersigned counsel, respond to Plaintiffs' Verified Complaint as follows:

NATURE OF ACTION

1. This is brought pursuant to Section 225(a) of the Delaware General Corporation Law. On December 13, 2011, stockholders (including Plaintiffs) who collectively hold in excess of a majority of the outstanding voting power of Ark Financial Services, Inc. ("Ark" or the "Company") delivered a written consent to the Company's registered office in the State of Delaware, pursuant to 8 *Del. C* § 228, (i) removing defendants Tom Curtis, Thomas Hands, and Donald Shek (the "Former Directors") from Ark's board of directors (the "Board") and (ii) electing Messrs. Keyser, Salvatore, and

Schalk to the Board to fill the vacancies created by the removal of the Former Directors (the "Written Consent").

RESPONSE:

Paragraph 1 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Plaintiffs purport to bring this action pursuant to 8 *Del. C.* § 225, to have a majority of the outstanding voting power of Ark, to have removed Defendants Tom Curtis, Thomas Hands and Donald Shek from the board of directors and to have elected Plaintiffs Robert Keyser, Frank Salvatore and Scott Schalk to the board of directors.

2. The Written Consent is the latest effort by the holders of a majority of Ark's stock to limit, if not eliminate, the influence of defendant Albert Poliak, a co-founder and former director and officer of the Company, over Ark. On December 1, 2010, Messrs. Keyser and Schalk, along with certain other stockholders, who collectively owned shares constituting a majority of the Company's voting power, executed and delivered a written consent that, among other things, removed Mr. Poliak -- then the Company's sole director -- from the Board (the "2010 Written Consent").

RESPONSE:

Paragraph 2 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Messrs. Keyser and Schalk, along with certain other stockholders, delivered a written consent on December 1, 2010 purporting to remove Mr. Poliak from the board of directors.

3. Mr. Poliak refused to acknowledge the effectiveness of the 2010 Written Consent and acted promptly -- and illegally -- to entrench himself as the Company's

president, chief executive officer, and sole director. On the very day he received the 2010 Written Consent, Mr. Poliak purportedly created and issued super-voting Series B Preferred Stock to himself for grossly inadequate consideration. Mr. Poliak also purportedly authorized amendments to the Company's bylaws, which, in clear violation of Delaware statutory law, purported to limit the stockholders' ability to remove directors and to elect directors by written consent. Mr. Poliak's sole purpose in taking these actions was to entrench himself, in blatant violation of his fiduciary duties.

RESPONSE:

Denied, except admitted that Mr. Poliak challenged the validity of the December 1, 2010 Written Consent, approved the creation and issuance of Series B Preferred Stock to himself and approved amendments to the Company's bylaws.

4. In an effort to avoid litigation, the parties engaged in settlement efforts. Those efforts, however, were not entirely successful. In or about November 2011, Mr. Poliak resigned as a director and officer of Ark. Before doing so, however, Mr. Poliak nominated and oversaw the election of the Former Directors as his replacements on the Board at an annual meeting of stockholders held on November 1, 2011.

RESPONSE:

Denied, except admitted that Mr. Poliak and Mr. Keyser engaged in settlement efforts that turned out to be unsuccessful, Mr. Poliak resigned as a director and officer of Ark in November 2011 and Mr. Poliak nominated Messrs. Tom Curtis, Thomas Hands and Donald Shek to the board of directors at annual meeting of stockholders held on November 1, 2011.

5. Mr. Poliak still contends that he validly holds a majority of Ark's outstanding voting power. Upon information and belief, Mr. Poliak and the Former Directors also take the position that the bylaws Mr. Poliak adopted in December 2010 are valid to preclude the removal and election of directors by written consent. Mr. Poliak's actions in issuing super-voting stock to himself and amending the bylaws were void and invalid under Delaware law. Plaintiffs, therefore, bring this action pursuant to Section 225(a) of the Delaware General Corporation Law and seek an order (i) declaring that the Written Consent removing the Former Directors and appointing Plaintiffs was valid and effective and (2) authorizing all of the officers, directors, employees and agents of Ark to take any and all actions necessary or appropriate to carry out the Written Consent.

RESPONSE:

Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Mr. Poliak contends that he validly holds a majority of Ark's outstanding voting power, Mr. Poliak approved certain bylaws in December 2010 and Plaintiffs purport to bring this action pursuant to 8 *Del. C.* § 225(a).

PARTIES

6. Nominal Defendant Ark Financial Services, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in Boca Raton, Florida.

RESPONSE:

Admitted.

7. Plaintiff Robert D. Keyser, Jr., is an individual residing in Boca Raton, Florida. Mr. Keyser is a stockholder of Ark, holding 7,000,000 shares of the Company's outstanding Common Stock. Mr. Keyser is also a co-founder of Ark. Pursuant to the Written Consent, Mr. Keyser has been duly elected as a director of the Board by holders of a majority in voting power of Ark's validly issued and outstanding stock.

RESPONSE:

The allegations in the first three sentences of paragraph 7 are admitted. The remaining allegations of Paragraph 7 are denied.

8. Plaintiff Frank Salvatore is an individual residing in Gulfstream, Florida. Mr. Salvatore is a stockholder of Ark, holding 3,948,000 shares of the Company's outstanding Common Stock. Pursuant to the Written Consent, Mr. Salvatore has been duly elected as a director of the Board by holders of a majority in voting power of Ark's validly issued and outstanding stock.

RESPONSE:

Defendants are without sufficient information to admit or deny the allegations in the first sentence of Paragraph 8 and, therefore, deny. The allegations in the second sentence of paragraph 8 are admitted. The remaining allegations in paragraph 8 are denied.

9. Plaintiff Scott Schalk is an individual residing in Royal Palm Beach, Florida. Mr. Schalk is a stockholder of Ark, holding 1,186,000 shares of the Company's outstanding Common Stock. Pursuant to the Written Consent, Mr. Schalk has been duly elected as a director of the Board by holders of a majority in voting power of Ark's validly issued and outstanding stock.

RESPONSE:

Defendants are without sufficient information to admit or deny the allegations in the first sentence of Paragraph 9 and, therefore, deny. The allegations in the second sentence of paragraph 9 are admitted. The remaining allegations in paragraph 9 are denied.

10. Defendant Albert Poliak is an individual residing in Parkland, Florida. Mr. Poliak is a stockholder and former officer of Ark. Mr. Poliak was a co-founder of Ark, along with Plaintiff Keyser. Mr. Poliak owns 7,000,000 shares of the Company's outstanding Common Stock. He also purports to be the holder of 25,000 shares of Series B Preferred Stock, which for the reasons explained herein are invalid and were not properly issued.

RESPONSE:

Admitted, except denied that the Series B Preferred Stock is invalid and was not properly issued.

11. Defendant Thomas Hands is an individual residing in Boca Raton, Florida. Mr. Hands is a stockholder and officer of Ark, and served as a director of Ark until removed by the Written Consent. Mr. Hands owns 850,000 shares of the Company's outstanding Common Stock.

RESPONSE:

Admitted, except denied that Thomas Hands was removed as a director of Ark by the Written Consent.

12. Defendant Donald Shek is an individual residing in Boca Raton, Florida. Mr. Shek is an officer of Ark, and served as a director of Ark until removed by the Written Consent.

RESPONSE:

Admitted, except denied that Donald Shek resides in Boca Raton, Florida or was removed as a director of Ark by the Written Consent.

13. Defendant Tom Curtis is an individual residing in Baltimore, Maryland. Mr. Curtis is an officer of Ark, and served as a director of Ark until removed by the Written Consent.

RESPONSE:

Admitted, except denied that Tom Curtis resides in Baltimore, Maryland, is an officer of Ark or was removed as a director of Ark by the Written Consent.

JURISDICTION

14. This Court has subject matter jurisdiction over this action pursuant to 8 *Del C.* § 225(a), as well as 8 *Del C.* § 111, and, 10 *Del C.* §§ 341, 342, and 6501 *et seq.*

RESPONSE:

Paragraph 14 states legal conclusions to which no response is required. To the extent a response is required, admitted.

15. This Court has personal jurisdiction over the Defendants pursuant to 10 *Del C.* § 3314, and jurisdiction over Ark pursuant to 8 *Del C.* § 225(a).

RESPONSE:

Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, admitted.

BACKGROUND

A. Ark is Formed.

16. Robert Keyser and Albert Poliak founded the Company on April 18, 2002. Ark acts as a holding company for Dawson James Securities ("Dawson James"), an investment-banking firm based in Boca Raton, Florida and having offices in Boca Raton, Jacksonville, and West Palm Beach, Florida; Baltimore, Maryland; New York, New York; Santa Clara and San Francisco, California; and Manasquan, New Jersey.

RESPONSE:

Admitted.

17. On February 13, 2009, Ark issued a promissory note for \$300,000 payable by Ark to Kenneth A. Steel, Jr., Allan R. Lyons, and Burton Koffman (the "Promissory Note"). The Promissory Note included an option allowing the note holders to acquire 24% ownership of Ark (the "Option").

RESPONSE:

Admitted.

18. In December of 2009, Mr. Keyser stepped down as an officer and director of the Company. Upon Mr. Keyser's doing so, Mr. Poliak became the sole member of the Board, as well as the Company's President and Chief Executive Officer.

RESPONSE:

Admitted.

B. Mr. Poliak Defies the Will of the Stockholders and Wrongfully Entrenches Himself at the Company.

19. During 2010, Messrs. Steel, Lyons, and Koffman (holders of the Promissory Note), reached out to Mr. Keyser to express certain concerns regarding

Mr. Poliak's management of the Company and the fact that the Company was delinquent on its debt payments. They suggested to Mr. Keyser that they would like him to formulate a debt settlement plan and replace Mr. Poliak at the Company.

RESPONSE:

Defendants are without sufficient information to admit or deny the allegations in the Paragraph 19 and, therefore, deny.

20. By Assignment Agreement dated November 29, 2010, Messrs. Steel, Lyons, and Koffman assigned their Option to Mr. Keyser. By notice dated that same day, Mr. Keyser exercised the Option and delivered a check to Ark in the amount of the aggregate purchase price for the 8,604,521 shares issuable upon exercise of the Option (the "Option Shares"). Mr. Keyser thereafter was the holder of the 8,604,521 Option Shares, in addition to the 7,000,000 shares of Common Stock he already owned.

RESPONSE:

Denied, except admit that Mr. Keyser purported to exercise the Option and delivered a check for \$1 to Ark for 8,604,521 shares.

21. On December 1, 2010, Mr. Keyser and other stockholders, who collectively held in excess of a majority of Ark's outstanding stock, executed the 2010 Written Consent and delivered it to Mr. Poliak. Pursuant to the 2010 Written Consent, the stockholders, (i) removed Mr. Poliak from the Board, (ii) set the size of the Board at two directors, and (iii) elected Messrs. Keyser and R. Douglas Armstrong as Ark's new directors. That same day, Messrs. Keyser and Armstrong executed a Written Consent Action of Board of Directors to (i) immediately remove Mr. Poliak as Chief Executive Officer and President of Ark, and as a director and officer, in all positions held by him, of

Dawson James and (ii) elect and appoint: Mr. Keyser as a director and as Chief Executive Officer and President of Dawson James.

RESPONSE:

Denied, except admitted that Mr. Keyser and other stockholders executed a written consent dated December 1, 2010 purporting to remove Mr. Poliak from the board of directors, set the size of the board at two directors and elect Messrs. Keyser and R. Douglas Armstrong as directors. Defendants further admit that Messrs Keyser and Armstrong purported to execute a written consent removing Mr. Poliak as an officer and director of Ark and Dawson James and to elect Mr. Keyser as a director and officer of Dawson James.

22. Mr. Poliak refused to surrender control. He spuriously challenged the effectiveness of the assignment and exercise of the Option and, unbeknownst to the other stockholders, rapidly took a number of actions designed to entrench himself as Ark's president, chief executive officer, and sole director, to usurp voting control over Ark for himself, and to thwart the stockholders' exercise of their franchise.

RESPONSE:

Denied, except admitted that Mr. Poliak challenged the assignment of the Option.

23. On the same day that he received notice of his removal, Mr. Poliak maneuvered to purportedly create a new Series B Preferred Stock, having 1,000 votes per share and a \$1.00 per share redemption right that could be exercised at any time at the sole option of the holder (Exhibit A hereto). Mr. Poliak then authorized the issuance of the Series B Preferred Stock for "no less than \$.01 per share" and, upon information and belief, thereafter issued 25,000 shares of that stock to himself for nominal consideration.

(*Id.*) There was no valid corporate purpose for the issuance of the Series B Preferred Stock, and Mr. Poliak issued the shares to himself at a grossly inadequate price for the sole purpose of usurping control, entrenching himself, and thwarting the will of the holders of a majority of the common stock. Acting as the Company's sole director, Mr. Poliak made no effort to ensure the fairness of the transaction to Ark and its stockholders. As a result of this purported issuance, Mr. Poliak claims to have acquired a majority of Ark's voting power.

RESPONSE:

Paragraph 23 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Mr. Poliak authorized new Series B Preferred Stock with the rights set forth in Exhibit A, a document which speaks for itself, to the Verified Complaint and approved the issuance of 25,000 shares to himself. Mr. Poliak further admits that he has a majority of Ark's voting power.

24. On the same day he purported to create the Series B Preferred Stock, Mr. Poliak also purported to amend Ark's bylaws to entrench himself further. (Exhibits A and B hereto). He purported to amend Section 412 of the bylaws to permit the removal of directors only "for cause," only at a meeting of stockholders (and not by written consent), and only by a supermajority (75%) stockholder vote. Mr. Poliak also purportedly amended Section 402 of the bylaws to require nominations for directors to be elected, other than nominations submitted by the incumbent Board, to be submitted *ninety days* in advance of the stockholders' meeting. The advance notice provision had previously required only thirty days advance notice of nominations in connection with director elections at a meeting. The bylaw amendments violate the Delaware General

Corporation Law, including Section 102(b)(4) (which requires any provision mandating a greater than majority vote to remove directors to be set forth in the certificate of incorporation), Section 141(a) (which specifies, in the case of a corporation without a staggered board, that stockholders may remove directors "with or without cause" by vote of the holders of a majority), and Section 228 (which requires that elimination of, or the imposition of any material restrictions on, the right of stockholders to act by written consent be set forth in the certificate of incorporation). Even though the bylaw amendments violate the Delaware General Corporation Law and were adopted in violation of Mr. Poliak's fiduciary duties, Mr. Poliak contends that the bylaw amendments were effective to preclude stockholder action by written consent to remove and elect directors. Mr. Poliak also contends that the advance notice bylaw applies to stockholder action by written consent to elect directors (even though it applies by its express terms only to stockholder actions at meetings).

RESPONSE:

Paragraph 24 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Mr. Poliak approved amendments to Ark's bylaws as set forth in Exhibits A and B, documents which speak for themselves, to the Verified Complaint.

25. At or about the same time that he purportedly issued the Series B Preferred Stock and amended the bylaws, Mr. Poliak took other improper actions designed to entrench himself and thwart the will of the stockholders. Such actions included (i) instructing the officers of Ark and Dawson James not to recognize the stockholders' actions, (ii) hiring a security firm to keep the dissenting stockholders and

certain employees off the Company's premises; and (iii) causing the Company to engage legal counsel to advise it on additional ways to buttress his control and frustrate the stockholders efforts to exercise their rights.

RESPONSE:

Denied, except admitted that Mr. Poliak informed officers of Ark and Dawson James that the December 1, 2010 Written Consent was ineffective, hired an off duty police officer to maintain the security of Company premises and caused the Company to engage legal counsel.

26. Having entrenched himself, Mr. Poliak used this control over Ark and Dawson James to enrich himself at the expense of the Company and its stockholders. For instance, it was discovered that in December 2010, he caused the Company to distribute to him (Poliak) warrants in another company for which Dawson James had served as an investment banker. Although Mr. Poliak would have been entitled to receive a small percentage of these warrants in accordance with past practices, the majority of the warrants should have been issued to and held by Dawson James. Through this and similar self-dealing conduct, Mr. Poliak stripped the Company of significant assets and misappropriate that value for himself.

RESPONSE:

Denied, except admitted that Mr. Poliak caused the distribution of warrants to himself.

27. While maintaining that their assignment of the Option to Mr. Keyser on November 29 was effective, out of an abundance of caution, Messrs. Steel, Lyons, and Koffman submitted a "back-up exercise" of the Option to Ark on December 2, 2010. On

December 9, 2010, Ark issued a certificate for the 8,604,520 Option Shares in the names of Messrs. Steel, Lyons, and Koffman, which Messrs. Steel, Lyons, and Koffman assigned to Mr. Keyser. Although Mr. Poliak initially refused to recognize the assignment, he eventually acknowledged that Mr. Keyser owned the Option Shares. Even so, Mr. Poliak maintained the position that the Series B Preferred Stock he issued to himself was valid and afforded him voting control.

RESPONSE:

Defendants are without sufficient information to admit or deny the allegations in Paragraph 27 and, therefore, deny, except admit that Messrs. Steel, Lyons, and Koffman exercised the Option on December 2, 2010, Ark issued a certificate for the 8,604,520 Option shares on December 9, 2010 to Messrs. Steel, Lyons and Koffman who assigned those shares to Mr. Keyser and that Mr. Poliak initially disputed the assignment of the Option.

C. Messrs. Keyser and Poliak Reach a Settlement Agreement, Which Mr. Poliak Then Breaches.

28. While Mr. Keyser opposed the actions taken by Mr. Poliak, the various parties eventually reached an agreement in principle, whereby, among other things, Ark would purchase certain promissory notes, the Option Shares, and certain shares of Dawson James from an affiliate of Mr. Keyser (which had acquired the ownership rights to those notes and shares). Ark in fact purchased the promissory notes, the 8,604,521 Option Shares, and the Dawson James shares. Ark, Mr. Poliak, and Mr. Keyser also entered into a separate Settlement Agreement as of April 29, 2011 that provided for Ark's repurchase of Mr. Keyser's remaining 7,000,000 shares of common stock. Ark and MR. Poliak breached the Settlement Agreement, however, by, among other things, providing

misleading financial information to the valuation firm engaged pursuant to the agreement. Because of their breaches, on October 11, 2011, Mr. Keyser rescinded the Settlement Agreement. He continues to own 7,000,000 shares of Ark's common stock.

RESPONSE:

Denied, except admitted that various parties reached an agreement under which Ark purchased certain promissory notes, Option shares and shares of Dawson James and Ark and Mr. Keyser and Mr. Poliak entered into the Settlement Agreement.

29. In or about November of 2011, Mr. Poliak was forced to resign as a director and officer of both Ark and Dawson James, in order to comply with sanctions imposed by the Financial Industry Regulatory Authority, Inc. ("FINRA"). As detailed on FINRA's website, Mr. Poliak was:

Fined \$30,000 and suspended from association with any FINRA member in any capacity for one year for acting unethically in his capacity as a principal of [Dawson James] in that he facilitated the improper and obscured commission recapture arrangement between his firm and a customer and cause[d] his firm to fail to comply [with] NASD Rule 1017, in violation of FINRA Rule 2010 and NASD Rule 2110; participating in the receipt and deposit of customer funds in an account other than a special reserve account, as required by Exchange Act Rule 15C3-3(E)(!), in violation of FINRA Rule 2010 and NASD Rule 2110; participating in his firm's holding of customer funds in violation of Exchange Act Rule 15C3-3 and causing his firm's net capital and books and records violations, in violation of FINRA Rule 2010 and NASD Rules 2110 and 3110(A); and failing to document the basis upon which research analyst compensation was established, in violation of FINRA Rule 2010 and NASD Rules 2110 and 2711(D)(2).

Financial Industry Regulatory Authority, <http://www.finra.org> (follow "FINRA BrokerCheck" hyperlink; then follow the "Start Search" hyperlink directors) (all caps omitted).

RESPONSE:

Denied, except admitted that Mr. Poliak resigned as an officer and director of Ark and Dawson James to comply with sanctions imposed by FINRA and the FINRA website sets forth the grounds for those sanctions.

30. Before resigning, Mr. Poliak nominated and oversaw the election of the Former Directors as his replacements on the Board. At Ark's annual meeting of stockholders, held on November 1, 2011, the Former Directors were elected to the Board. Mr. Keyser and the other plaintiffs voted their shares in the election by proxy, but did not attend the meeting. Plaintiffs requested that the Company's counsel read in to the record at the meeting a reservation of rights – specifically, with respect to the shares of the Series B Preferred Stock Mr. Poliak professed to own, that Plaintiffs did “not recognize or believe that the issuance of Mr. Poliak's, or any, Series B Preferred Stock, was proper or valid, and [demanding] that Mr. Poliak not vote these improper shares so that the proper and valid shareholders have an effective vote representing their ownership interests.” Other stockholders who did not attend or vote their shares at the meeting concur with Plaintiffs' objection and reservation of rights.

RESPONSE:

Defendants are without sufficient information to admit or deny the allegations in the last sentence of Paragraph 30 and, therefore, deny. Defendants deny the remaining allegations of paragraph 30, except admit that Tom Curtis, Thomas Hands and Donald Shek were elected to the board of directors at an annual meeting of stockholders held on November 1, 2011, Plaintiffs voted their shares by proxy and did not attend the meeting and Plaintiffs purported to reserve their right to challenge the Series B Preferred Stock.

31. On December 13, 2011, stockholders (including Plaintiffs), who collectively hold approximately 63% of Ark's valid, outstanding Common Stock (and therefore approximately 63% of the valid, outstanding voting power), delivered the Written Consent to the Company's registered office in the State of Delaware, pursuant to 8 *Del. C.* § 228. The Written Consent removed the Former Directors from the Board and elected Messrs. Keyser, Salvatore, and Schalk to fill the vacancies on the Board created by the removal of the Former Directors. A copy of the Written Consent is attached hereto as Exhibit C.

RESPONSE:

Paragraph 31 states legal conclusions to which no response is required. To the extent a response is required, denied, except admitted that Plaintiffs and other stockholders delivered a written consent on December 13, 2011 purporting to remove Defendants Tom Curtis, Thomas Hands and Donald Shek from the board of directors and to have elected Plaintiffs Robert Keyser, Frank Salvatore and Scott Schalk to the board of directors. Defendants further admit that a copy of that written consent is attached as Exhibit C to the Verified Complaint.

COUNT I

**(Declaratory Judgment Validating the Election of
Messrs. Keyser, Salvatore, and Schalk to the Board)**

32. Defendants hereby incorporate their responses to Paragraphs 1-32 as if fully set forth herein.

RESPONSE:

Paragraph 32 states legal conclusions to which no response is required. To the extent a response is required, denied.

33. Pursuant to the Written Consent, which was executed by the holders of a majority of the Company's outstanding Common Stock, the Former Directors have been effectively removed as directors of the Board and Messrs. Keyser, Salvatore, and Schalk have been duly and properly elected as the directors of the Board. Having been effectively removed from office, the Former Directors have no legal right to remain on the Board or continue to act as directors for the Company.

RESPONSE:

Paragraph 33 states legal conclusions to which no response is required. To the extent a response is required, denied.

34. Nevertheless, Mr. Poliak and, upon information and belief, the Former Directors deny the effectiveness of the Written Consent. Upon information and belief, this position is predicated upon (i) Mr. Poliak's contention that he validly holds shares of Series B Preferred Stock, which, together with his shares of Common Stock, he claims vests him with control over a majority of Ark's outstanding voting power, and (ii) the purported restrictions on the stockholder franchise imposed by the bylaw amendments Mr. Poliak claims to have put in place. Both assertions are meritless.

RESPONSE:

Denied, except admitted that Defendants challenge the effectiveness of the Written Consent and Mr. Poliak contends that he owns a majority of Ark's outstanding voting power.

35. First, Mr. Poliak does not lawfully own the Series B shares and, therefore, does not control a majority of Ark's outstanding voting power. Mr. Poliak created the super-voting Series B Preferred Stock and issued shares of such stock to himself for grossly inadequate consideration and without taking any steps to ensure the fairness of the transaction to Ark or its stockholders. There was no valid corporate purpose for Mr. Poliak's issuance of shares of Series B Preferred Stock to himself and Mr. Poliak caused Ark to issue those shares solely for the purposes of usurping voting control over Ark, entrenching himself, and disenfranchising Ark's other stockholders. Such action constitutes a flagrant breach of Mr. Poliak's fiduciary duties, including the fiduciary duty of loyalty. Accordingly, the issuance is invalid and void under Delaware law.

RESPONSE:

Paragraph 35 states legal conclusions to which no response is required. To the extent a response is required, denied.

36. Similarly, Mr. Poliak enacted the purported amendments to the Company bylaws on December 1, 2010 for no purpose other than his own entrenchment. These amendments purportedly permit the removal of directors only "for cause," only at a meeting of stockholders (and not by written consent), and only by a supermajority (75%) stockholder vote. Their adoption not only violates Mr. Poliak's fiduciary duties, but also the Delaware General Corporation Law (including 8 *Del. C.* §§ 102, 141(k), and 228). Accordingly, the purported bylaw amendments are invalid and void under Delaware law.

RESPONSE:

Paragraph 36 states legal conclusions to which no response is required. To the extent a response is required, denied.

37. Plaintiffs are therefore entitled to a declaration that the Written Consent effectively removed Messrs. Curtis, Hands, and Shek from the Board and validly elected Messrs. Keyser, Salvatore, and Schalk to fill the resulting vacancies, and that Messrs. Keyser, Salvatore, and Schalk are the duly elected directors of Ark.

RESPONSE:

Paragraph 37 states legal conclusions to which no response is required. To the extent a response is required, denied.

ADDITIONAL DEFENSES

Without admitting or acknowledging that it bears any burden of proof as to any of them, Defendants assert the following additional defenses. Defendants hereby reserve the right to amend its answer to assert additional defenses that become available or apparent during the course of this litigation.

FIRST ADDITIONAL DEFENSE

Plaintiffs fail to state a claim for which relief can be granted.

SECOND ADDITIONAL DEFENSE

Plaintiffs' claims are barred by laches.

THIRD ADDITIONAL DEFENSE

Plaintiffs' claims are barred by unclean hands.

FOURTH ADDITIONAL DEFENSE

Plaintiffs' claims are barred by equitable estoppel.

FIFTH ADDITIONAL DEFENSE

Plaintiffs' claims are barred by acquiescence.

SIXTH ADDITIONAL DEFENSE

Plaintiffs' claims are barred by waiver.

PRAYER FOR RELIEF


WHEREFORE, Defendants respectfully seek an Order:

1. Dismissing the Verified Complaint with prejudice;
2. Awarding the costs incurred in this action and reasonable attorneys' fees;

and

3. Granting such other relief as the Court may deem just and proper.

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Dated: December 30, 2011