

CAUSE NO. _____

DR. ARNOLD S. COHEN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	
	§	DALLAS COUNTY, TEXAS
THE LAMPLIGHTER SCHOOL, KAREN	§	
POLLOCK, and P. DAVID MILLER,	§	
	§	
Defendants.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION AND JURY DEMAND

Plaintiff Dr. Arnold S. Cohen (“Dr. Cohen”) files this Original Petition and Jury Demand against Defendants The Lamplighter School (the “School”), Karen Pollock, and P. David Miller, upon personal knowledge as to his own actions, and upon information and belief as to all other matters, as follows:

I.

PRELIMINARY STATEMENT

In 1999, after a national search, the School recruited Dr. Cohen to move from Rockville, Maryland to Dallas, Texas to serve as its Headmaster, a position he has held since July 1, 2000. From that original employment agreement (the “Agreement”), the School has renewed its Agreement with Dr. Cohen on three separate occasions, with the last renewal extending through December 31, 2012. As Headmaster, Dr. Cohen is responsible for directing the administration and operation of the School, including its academic program and curriculum, the retention and supervision of its faculty, and its public relations program.

Under Dr. Cohen’s leadership, the School has achieved significant success. To that end, Dr. Cohen has raised faculty salaries to ensure the School’s ability to attract and retain the best teachers, has guided the School’s effort to diversify its community, and has been a prime mover

in updating its educational curriculum.

In addition, Dr. Cohen has taken the School to financial stability bordering upon affluence. For example, Dr. Cohen has been instrumental in expanding the School's endowment from roughly \$100,000 in 2000, to more than \$4.4 million as of Summer 2009. The School's endowment is critical to maintaining the financial strength of the School, and supporting the School's strategic initiatives, including faculty salaries and financial aid. Dr. Cohen has also successfully implemented nearly every action item contained in the School's strategic plan, which was created in 2006, thereby ensuring that the School fulfills its mission.

Moreover, Dr. Cohen successfully directed the 2009-2010 "quiet" phase of the School's campaign to purchase the land on which it now resides, raising \$4.6 million in nine months. In addition, the School's Annual Fund has raised approximately \$400,000 during the current fiscal year, which is the second highest dollar amount ever raised by the Fund and involved the highest parent participation (98%) ever.

Against this background, it is small wonder that Dr. Cohen was shocked by the activities of the incoming Chair of the School's Board of Trustees (the "Board"), who has wrongfully interfered with Dr. Cohen's administration and operation of the School. Specifically, the individual Defendants have interceded into Dr. Cohen's decision to dismiss a particular teacher, who, in Dr. Cohen's view, no longer fulfilled the School's obligation to deliver the best academic experience for its students. Although the outgoing Chair of the Board instructed the Board after Dr. Cohen's dismissal decision that it has no role or involvement in such decisions, the incoming Chair of the Board has failed to adhere to that view. She and others have interfered with Dr. Cohen's prerogatives and, as a result, materially breached the Agreement by impairing Dr. Cohen's ability to perform his duties as the Headmaster of the School. Dr. Cohen files this

lawsuit to restrain the individual Defendants and the Board from interfering with his ability to run the School, for a declaration of his rights pursuant to the Agreement, and for damages in excess of a million dollars.

II.

DISCOVERY CONTROL PLAN

1. Pursuant to Texas Rule of Civil Procedure 190.3, discovery in this case should be conducted under a Level 2 Discovery Control Plan.

III.

PARTIES

A. Plaintiff

2. Dr. Cohen is a resident of Dallas County, Texas. Dr. Cohen is the current Treasurer of the Independent Schools Association of the Southwest (“ISAS”), a member of the ISAS Executive committee, and the Chair of the ISAS Finance committee. He is also as a member of the board of trustees of The Winston School, which is located in Dallas, Texas.

B. Defendants

3. The School is a Texas non-profit corporation which has its principal office located at 11611 Inwood Road, Dallas, Dallas County, Texas 75229. The School may be served with process by serving Karen Pollock at 9929 Strait Lane, Dallas, Texas 75229. The School was founded in 1953, and is an independent, co-educational day school for students in pre-kindergarten through fourth grade. Today, the School has an enrollment of approximately 440 students and a faculty of approximately forty-nine members (among 75 total employees). The School resides on a 12.8-acre campus, with thirty classrooms. The School is a member of the National Association of Independent Schools, and is a member of and accredited by the ISAS.

4. Ms. Pollock is a resident of Dallas County, Texas. She may be served with

process at 9929 Strait Lane, Dallas, Texas 75229. Ms. Pollock is the current Chair of the Board for the School.

5. Mr. Miller is a resident of Dallas County, Texas. He may be served with process at 10995 Crooked Creek Drive, Dallas, Texas 75229. Mr. Miller is a member of the Board for the School.

IV.

JURISDICTION AND VENUE

6. Pursuant to §§ 24.007 and 24.008 of the Texas Government Code, this Court has subject matter jurisdiction over this action.

7. The Court has personal jurisdiction over the School because it is a citizen of Texas.

8. Pursuant to §§ 15.002 and 15.005 of the Texas Civil Practice and Remedies Code, venue is proper in this county because it is the judicial district in which Defendant resides and the place where a substantial part of the events or omissions giving rise to the claims asserted herein occurred.

V.

FACTUAL BACKGROUND

A. Dr. Cohen's Extensive Experience As An Educator And School Administrator

9. Dr. Cohen has 39 years of experience as an educator and school administrator. He obtained his B.A. in history and Latin in 1968 from Dickinson College in Carlisle, Pennsylvania, and was thereafter offered a teaching assistantship and a full scholarship to The Ohio State University, at which he received his M.A. in 1969 and Ph.D. in 1978.

10. While completing his Ph.D., Dr. Cohen taught high school Greek, and middle school English, social studies, and Latin, at Columbus Academy in Gahanna, Ohio. He remained

at Columbus Academy for seventeen years, eventually becoming the Director of Studies (Curriculum Director) for the school, a position that he held for two years while also serving as the school's College Counselor.

11. Dr. Cohen was then hired as head of the middle school at the Orchard School in Indianapolis, Indiana, in which capacity he served for four years. Thereafter, he served for seven years as Head of School at Green Acres School in Rockville, Maryland.

12. Prior to his employment by the School, Dr. Cohen also served for six years as a trustee of Lowell School in Washington, D.C., and was on the Board of the Association of Independent Schools of Washington, D.C.

B. Dr. Cohen Is Recruited To Become The School's Headmaster.

13. Dr. Cohen was recruited by Wickenden, a national search firm retained by the School, to become the Headmaster of the School. When he accepted the Headmaster position at the School, Dr. Cohen was also a finalist in two other searches for new heads of school.

C. Dr. Cohen And The School Enter Into The Agreement.

14. Dr. Cohen and the School entered into the Agreement on December 23, 1999. The initial term of the Agreement was from July 1, 2000, through June 1, 2003. The Agreement was subsequently renewed and modified three times, with the last renewal occurring on December 1, 2008. As a result of that last renewal, the term of the Agreement was extended from July 1, 2000, through December 31, 2012, "unless terminated at an earlier date in accordance with this Contract." A copy of the Agreement is attached hereto as Exhibit A.

15. The Agreement delineates Dr. Cohen's duties and responsibilities as "the Head of School." Specifically, the Agreement provides that, as "the senior educational officer" and "Chief Executive Officer" of the School, Dr. Cohen "generally shall have the duties assigned to heads of independent schools," and is responsible for "the general administration of the School,"

“its academic program and curriculum,” and “the hiring, dismissal and supervision of members of the faculty and staff.” Dr. Cohen also has “general charge” of the School’s public relations programs.

16. Given the breadth of his responsibilities and his successful administration of the School, the Agreement entitles Dr. Cohen to substantial compensation and benefits. Beginning June 1, 2009, Dr. Cohen is entitled to an annual compensation, which “increase[s] annually at a rate of five percent (5%) for the duration of the Term of the Contract, plus any additional amounts awarded based on a performance review conducted by the Chairman of the Board.”

17. The Agreement also entitles Dr. Cohen to coverage under the School’s health plan (the School pays 100% of Dr. Cohen’s coverage, and his wife is also entitled to group coverage at his expense), disability income insurance, life insurance, retirement benefits, three weeks of vacation per year, a non-qualified deferred compensation account under section 457(b) of the Internal Revenue Code, and a three-month paid sabbatical. In addition, beginning June 1, 2009, the School established and maintained for Dr. Cohen a non-qualified deferred compensation account under section 457(f) of the Internal Revenue Code, to which the School is obligated by the Agreement to contribute for the benefit of Dr. Cohen. The School’s contributions to Dr. Cohen’s section 457(f) non-qualified deferred compensation account are expressly not considered part of his base compensation. By separate agreement, which is attached hereto as Exhibit B, Dr. Cohen becomes 100% vested in the section 457(f) account if he remains continuously employed by the School through December 31, 2012, or if he is involuntarily terminated by the School without cause.

D. Dr. Cohen’s Successful Leadership Of The School Is Widely Recognized.

18. As demonstrated by the subsequent renewals of the Agreement, as well as by the substantial compensation and benefits afforded to him thereby, the School has achieved

unquestionable success under Dr. Cohen's leadership.

19. Indeed, in 2006 Dr. Cohen was awarded by the Klingenstein Foundation a prestigious Visiting Fellowship to the Heads of School Program at Teachers College, Columbia University, which once a year gathers 20 heads of schools from around the world for two weeks of intensive study and reflection among professional peers. The Fellowship includes full tuition and accommodations.

20. Dr. Cohen's successful leadership of the School is perhaps best reflected by the effusive praise from members of his executive management team at the School, members of the Board, and his peers. For instance, after Dr. Cohen took one month of his allowed three-month sabbatical during the Summer of 2009, Jack Foxworth, then Chair of the Board, expressed to Vicki Raney, the Assistant Head of Academics for the School, his "appreciation for 'how calm' [the School] was this summer, with Arnie on his sabbatical. . . . Having a '2nd in command' run the school with the CEO on sabbatical is both a reflection of Arnie's leadership, and your abilities to manage." Ms. Raney responded: "Arnie is undoubtedly the best head of school I've ever worked with It was an honor to manage 'the quiet' this summer for him" This and other e-mail communications referenced herein are attached hereto as Exhibit C.

21. In March 2010, Ms. Pollock, then Vice-Chair of the Board, wrote to Dr. Cohen and Ms. Raney that "You are both too humble around the incredible actions you take to make [the School] and our faculty reach new standards of excellence. . . . Every time I have the opportunity to step back and observe our school with an objective view, I am even more impressed with what [the School] has to offer it's [sic] students and it's [sic] faculty and staff."

E. The Individual Defendants Interfere With Dr. Cohen's "Running Of The School."

22. After a significant period of mentoring, observation, and reflection, on or about April 1, 2010, Dr. Cohen determined that it was in the best interests of the School to dismiss a

certain teacher at the School whom it has employed for many years (the “Teacher”). In particular, he determined that the Teacher’s dismissal was necessary because the academic performance of the students in the affected classes was unsatisfactory. His decision was based on: (i) the reading comprehension test scores at the School on the Independent School Entrance Examination (“ISEE”), over which the Teacher had primary responsibility; (ii) the disparity between the reading comprehension test scores and the mathematics test scores (which are the only two subject matters tested on the ISEE), as well as the sharp decline from the reading comprehension test scores of the same students at the end of the previous grade; (iii) input from his executive management team; and (iv) extensive parent feedback.

23. This should not have come as a surprise to Ms. Pollack, the incoming Board Chair. On March 31, 2010, she completed a parent survey in which she commented on her daughter’s academic performance during her years at the School. She stated:

I continue to think there is opportunity to improve the reading/writing process. Katherine’s test scores have been consistently weaker in vocabulary and reading comprehension throughout her years at [the School].

24. Certain members of the Board did not agree with Dr. Cohen’s decision to dismiss the Teacher, given her lengthy tenure at the School. Unfortunately, certain of those Board members, specifically Ms. Pollack and Mr. Miller, have improperly interfered with Dr. Cohen’s administration and operation of the School by instructing him not to dismiss the Teacher and by requiring him to retain her in a public relations capacity on behalf of the School. In fact, the individual Defendants instructed Dr. Cohen to create a “new” and unnecessary public relations position for the Teacher, and directed him to prepare the job description for this new position – a job for which the Teacher is unsuited.

25. The Board’s interference with Dr. Cohen’s decision to dismiss the Teacher

coincided with an impending change of the Chair of the Board. Mr. Foxworth officially relinquished his position as Chair of the Board to Ms. Pollock on June 1, 2010. Ms. Pollack, however, had effectively taken over as the Chair of the Board weeks earlier and, as a result, had assumed primary responsibility for the Board's interactions with Dr. Cohen concerning his faculty decisions.

26. The attempt by the individual Defendants to compel Dr. Cohen to retain the Teacher, despite his determination that dismissal was in the best interests of the School, is a breach of Dr. Cohen's right to direct the School's faculty. It is Dr. Cohen's customary and contractual prerogative as the Head of School to run the School. In fact, the Agreement expressly recognizes that he alone is responsible for the hiring, dismissal, and supervision of the faculty and staff. The School's outside counsel, Robert B. Krakow, even wrote Dr. Cohen that he "[j]ust wanted to let you know how much Leslie and I appreciate all that you do for the school. We know you always have [the School's] best interests at heart. Hang tough."

27. Indeed, in the days following Dr. Cohen's decision to dismiss the Teacher, Mr. Foxworth, after first circulating a draft to Dr. Cohen and Ms. Pollack, wrote the following to the Board:

As you know, this is the time in the school year when management (Arnie and executive leadership) determine which faculty and staff will receive a new contract for the coming school year. Each year's contract "stands alone." And, as is the case most any year, some faculty and staff members will not be offered a contract for the next year.

The purpose of this e-mail is to remind you, as Trustees and members of [the School's] "strategic leadership team," that we are NOT part of the management team. Part of our responsibility is to support our executive management team, including Arnie as the Head of School. As you would find in a for-profit business, we are the Directors and Arnie is our CEO. And as CEO, Arnie is responsible for recruiting and maintaining personnel that will best support our Mission, best support the education and growth of our students. I am confident that Arnie continues to recruit and manage the finest faculty and staff, most capable of fulfilling our

Mission.

28. On May 17, 2010, Mr. Foxworth reiterated that position to the Board in light of the “rampant rumor, significant sadness, anger, dismay and misunderstanding with the [School] community” concerning Dr. Cohen’s “thorough and deliberate” decision not to renew the annual contract of the Teacher. Specifically, Mr. Foxworth wrote the Board:

The Board has only one employee, Head-of-School. We hope that you join us in our confidence in Arnie’s abilities to make the best decisions for our children. [The School] will best be served going forward if the Board can speak unanimously in support of Arnie’s decisions throughout the year. Personnel decisions are strictly the purview of the school management and are confidential.

29. The Board’s interference has already undermined Dr. Cohen with the School’s faculty and staff and the broader School community.

30. On May 20, 2010, Mr. Foxworth appreciated the additional effect of the Board’s interference on Dr. Cohen’s general ability to perform his duties as the Headmaster of the School, empathizing with and expressing support for Dr. Cohen in the face of the meddling by Ms. Pollack despite his own admonitions against her interference:

WE ARE WITH YOU. WE SUPPORT YOU. I SUPPORT YOU.
And I am confident that you will hear that David and Karen
equally support you. It is in the best interest of the children and
school that you continue as our leader!!!!

31. On May 25, 2010, although Dr. Cohen agreed to “continue to work . . . in the most upbeat and positive way,” he informed Ms. Pollack that he would not accommodate the Board’s interference with his determinations as to the School’s faculty.

32. Further, since the Board’s interference with Dr. Cohen’s decision to dismiss the Teacher, the Board has failed to include Dr. Cohen in various communications concerning the School, to the detriment of Dr. Cohen’s ability to administer and operate the School.

33. Finally, the Board, including in particular Ms. Pollock and Mr. Miller, have

sought to force Dr. Cohen to acquiesce in their interference and meddling with his administration and operation of the School by threatening – but not yet formally seeking – to terminate the Agreement, which would result in Dr. Cohen losing substantial compensation and benefits remaining to be paid to him under the Agreement. Specifically, Ms. Pollock and Mr. Miller have orchestrated certain circumstances under which Dr. Cohen would feel compelled to resign as Headmaster of the School, notwithstanding his desire to remain as Head of School for the duration of the Agreement.

34. In the early days of June, Ms. Pollock and Mr. Miller let it “slip” among members of the School community that Dr. Cohen purportedly intended to retire as Headmaster of the School, prompting some members of the School community to notify Dr. Cohen of their dissatisfaction with such an apparent occurrence.

35. And on June 15, 2010, Ms. Pollock and Mr. Miller authorized and directed the public dissemination of a purported retirement announcement concerning Dr. Cohen. In addition, Ms. Pollock and Mr. Miller authorized and directed the public dissemination of a related confidential memorandum to the School’s faculty and staff discussing the purported retirement announcement. The purported retirement announcement is referred to herein as the “Disseminated Materials,” a copy of which is attached hereto as Exhibit D.

36. Among other things, the Disseminated Materials falsely stated that Dr. Cohen had resigned as Headmaster of the School.

37. The release of the Disseminated Materials was contrary to the interests of the School and was not approved by the School, but was motivated by the personal interests of Ms. Pollock and Mr. Miller to force the removal of Dr. Cohen as the Head of School.

F. The Damage Done.

38. In short, the actions taken by the Board, including specifically Ms. Pollack and

Mr. Miller, have significantly hindered and undermined the ability of Dr. Cohen to administer and operate the School in accordance with his duties and role as the Head of School, cast Dr. Cohen in a negative public light, and threatened his well-being.

VI.

CLAIMS

A. Count One: Breach Of Contract (Against The School)

39. Dr. Cohen hereby incorporates the allegations set forth in the preceding paragraphs.

40. Dr. Cohen has fulfilled all conditions precedent to enforcement of the Agreement.

41. The Agreement is a valid and enforceable contract.

42. The School has breached the Agreement by interfering with and inhibiting Dr. Cohen's performance of his duties under the Agreement.

43. As a result of the School's breaches, Dr. Cohen has been damaged in an amount to be proven at trial.

44. Notwithstanding the School's breaches, Dr. Cohen chooses to continue the Agreement, and is able and willing to continue to perform his duties thereunder for the remainder of the term of the Agreement.

B. Count Two: Declaratory Judgment (Against The School)

45. Dr. Cohen hereby incorporates the allegations set forth in the preceding paragraphs.

46. An actual controversy exists regarding whether the School has improperly interfered with and inhibited Dr. Cohen's performance of his duties under the Agreement.

47. Dr. Cohen, therefore, seeks a declaration that, under the Agreement, he is in charge of, and the Board is prohibited from interfering and meddling with, the administration and

operation of the School, including all personnel decisions.

C. Count Three: Tortious Interference With Contract (Against Ms. Pollock And Mr. Miller)

48. Dr. Cohen hereby incorporates the allegations set forth in the preceding paragraphs.

49. The Agreement is a valid and enforceable contract.

50. Ms. Pollock and Mr. Miller have intentionally interfered with the Agreement to further their personal interests, contrary to the interests of the School.

51. Ms. Pollock's and Mr. Miller's intentional interference with the Agreement has proximately caused Dr. Cohen to be damaged in an amount to be proven at trial.

52. Dr. Cohen is entitled to an award of punitive damages in an amount to be proven at trial as a result of Ms. Pollock's and Mr. Miller's intentional interference with the Agreement.

D. Count Four: Defamation (Against Ms. Pollock And Mr. Miller)

53. Dr. Cohen hereby incorporates the allegations set forth in the preceding paragraphs.

54. Ms. Pollock and Mr. Miller caused the publication of the Disseminated Materials concerning Dr. Cohen, a private individual.

55. The Disseminated Materials contained false statements concerning Dr. Cohen and, therefore, were defamatory.

56. In authorizing the release of the Disseminated Materials, Ms. Pollock and Mr. Miller acted negligently with respect to the truth of the statements contained therein.

57. The false statements contained in the Disseminated Materials concerned Dr. Cohen's profession and calling and, thus, constitute defamation *per se*.

58. Dr. Cohen was damaged by the release of the Disseminated Materials in an

amount to be proven at trial.

59. Dr. Cohen is entitled to an award of punitive damages in an amount to be proven at trial as a result of Ms. Pollock's and Mr. Miller's defamatory statements.

E. Count Five: Attorneys' Fees (Against The School)

60. Dr. Cohen hereby incorporates the allegations set forth in the preceding paragraphs.

61. As a result of the Board's conduct, Dr. Cohen was forced to retain the undersigned counsel to pursue this lawsuit. Because this action involves his claims for breach of a written contract, Dr. Cohen is entitled to recover his reasonable and necessary attorneys' fees pursuant to Texas Civil Practice and Remedies Code §§ 38.001 *et seq.*

VII.

DEMAND FOR TRIAL BY JURY

62. Dr. Cohen hereby demands a trial by jury on all issues so triable.

VIII.

REQUEST FOR RELIEF

63. Dr. Cohen requests that this Court enter a final judgment in his favor and against Defendants, providing for the following relief:

- a. Actual damages, including compensatory and consequential damages, in an amount to be determined at trial;
- b. A declaration that the Agreement places Dr. Cohen in charge of, and prohibits the Board's interference and meddling with, the administration and operation of the School, including all personnel decisions;
- c. Punitive damages against Ms. Pollock and Mr. Miller in an amount to be determined at trial;
- d. Costs of Court;
- e. Reasonable and necessary attorneys' fees incurred by Dr. Cohen in connection with this action pursuant to Texas Civil Practice and Remedies Code § 38.001 *et*

seq.;

- f. Pre- and post-judgment interest; and
- g. Such other and further relief to which Dr. Cohen may be entitled and which this Court deems just and proper.

Respectfully submitted,

BICKEL & BREWER

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