

IN THE CIRCUIT COURT OF THE 3rd
JUDICIAL CIRCUIT IN AND FOR
COLUMBIA COUNTY, FLORIDA

CASE NO.: CACE-18-000105-CA

ADD HELIUM, LLC
a Delaware Limited Liability Corporation
and PETER SOTIS, individually,

Plaintiffs,

vs.

INTERNATIONAL ASSOCIATION OF NITROX
DIVERS, INC.,
a Florida Corporation,

Defendants.

PLAINTIFFS' RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR FINAL SUMMARY JUDGMENT

Plaintiffs, ADD HELIUM, LLC (hereinafter referred to as "ADD HELIUM") and PETER SOTIS (hereinafter referred to as "SOTIS"), by and through their undersigned counsel hereby file this, their Response in Opposition to *Defendant's Motion for Summary Judgment* and, as grounds therefore, would show unto this Court:

1. On June 24, 2017, Plaintiffs, ADD HELIUM and SOTIS, filed a two-count complaint in seeking Declaratory Relief from this Court arising out of: (a) their suspension from the IANTD for a period of two (2) years; (b) Plaintiffs' inability to represent themselves as members or affiliates of IANTD; and (c) IANTD's determination that neither ADD HELIUM nor SOTIS may teach any IANTD courses.

2. On September 11, 2018, the Defendant sent a letter to SOTIS informing him that that IANTD had re-opened their investigation into the events surrounding the disappearance of

Rob Stewart in the Florida Keys on January 31, 2017 and blatantly threatening to escalate SOTIS' wrongful suspension from IANTD to a wrongful expulsion in retaliation for the Plaintiffs' commencement of this action.

3. IANTD attempted to use this Re-Opened Investigation unilaterally demand information from SOTIS that is clearly relevant to this case outside of the proper discovery process and simultaneously objecting SOTIS and ADD HELIUM obtaining the same information through proper discovery requests in this case.

4. Then, on October 19, 2018, IANTD sent a further letter to SOTIS indicating that they had escalated his wrongful suspension into a wrongful expulsion.

5. An actual, present and justiciable controversy exists between ADD IELIUM and SOTIS on one side and IANTD on the other emanating from the aforementioned suspensions **and subsequent escalation of those suspensions to wrongful expulsions**, which failed to adhere to IANTD's own protocols for suspension, as well as IANTD's failure to adhere to its own procedures for "due processes" damaging both ADD HELIUM's and SOTIS' reputations.

6. Moreover, IANTD's unilateral wrongful suspensions and expulsions, accomplished without due processes, continue to preclude SOTIS and ADD IELIUM from earning a living in their chosen field and discipline.

7. On May 5, 2019, Defendant filed its *Motion for Final Summary Judgment* pursuant to Florida Rule of Civil Procedure 1.510 and its *Motion for Leave to Set Hearing For Defendant's Motion for Final Summary Judgment After Pre-trial Conference*.

8. This Court granted the Defendant's *Motion for Leave to Set Hearing* as set forth in the Order entered on May 16, 2019 and the Defendant's *Motion for Final Summary Judgment* is set to be heard on Tuesday, July 2, 2019.

9. Defendant's *Motion for Final Summary Judgment* is largely premised on the misconception that the Defendant has absolved itself of the legal consequences for wrongfully suspending the Plaintiff, PETER SOTIS, by wrongfully expelling him in retaliation for the commencement of this litigation.

10. Defendant argument that there is no justiciable question for this Court or genuine issue of material fact, because the Defendant re-opened the same investigation that was conducted without due process to wrongfully suspending SOTIS and ADD HELIUM in order to escalate their wrongful suspensions to wrongful expulsions in retaliation for this litigation, simply defies logic.

11. Further, the Defendant's *Motion for Final Summary Judgment* also states, at Paragraph 4, that Plaintiff, ADD IELIUM, was never suspended (or presumably expelled) and insinuates that ADD HELIUM is still an IANTD Facility that has been "*placed on a non-teaching status.*"

12. Defendant's aforementioned assertion regarding ADD HELIUM's status as an IANTD Facility is entirely inconsistent with the Defendant's treatment of ADD HELIUM and clearly demonstrates the existence of doubts as to the existence or nonexistence of ADD IELIUM's rights, statuses, immunities, powers or privileges.

13. This is an action against IANTD for a Declaratory Judgment under the Florida Declaratory Judgment Act, §86.011 *et.seq.*, Florida Statutes. In Florida "*to be entitled to declaratory relief, a party must show he is in doubt as to some right or status and that he is entitled to have such doubt removed.*" § 86.021, Fla. Stat. (2000); *Palumbo v. Moore*, 777 So. 2d 1177, 1178 (Fla. Dist. Ct. App. 2001); *Kelner v. Woody*, 399 So.2d 35, 37 (Fla. 3d DCA 1981).

14. The present, ascertained or ascertainable state of facts or present controversy as to **whether the suspension (including the escalation of that suspension to an expulsion) of the**

Plaintiffs, SOTIS and ADD HELIUM, from IANTD was wrongful and in contravention of IANTD's internal procedures which were designed to afford each and every one of its member's procedural and sustentative due process.

15. Mr. SOTIS and ADD IELIUM have clearly demonstrated that they are in doubt as to the status of their contractual rights to membership and the due process rights IANTD has designed its Standards & Procedures to afford each and every one of its member's procedural and sustentative due process. § 86.021, Fla. Stat. (2000); *Palumbo*, supra.

16. The IANTD Quality Assurance Process, by its own Terms & Conditions provides:

"The Quality Assurance Process involves a protocol that strictly adheres to a system that includes: (1) due process – consistent internationally and made available to every Member inaugurated into the system. (2) Equal and Fair Opportunity – for each member and Licensee to present their issues and protect their interests. (3) Standards and Procedures – are made available to each and every member of the IANTD family and are clearly explained. This process also involves a presentation of IANTD's Training Philosophy. (4) Confidentiality – maintained through all matters and stages within a Quality Assurance Inquest. The Licensee will hold students, Instructors, Instructor Trainers, other Members and divers names in confidence."

17. It is affirmatively asserted that the IANTD has relied on different versions of its Standards & Procedures in a targeted and calculated effort to suspend (and expel) SOTIS and ADD HELIUM without affording either with Due Process and without regard for the serious and career devastating decisions the IANTD has inflicted.

18. IANTD's recommendations for the Quality Assurance Maintenance provide:

"the training director is not convinced of the defense of the instructor or the evaluation of the evidence and documents and it is determined that a clear violation has been alleged, the training director will appoint a 3 member Quality Assurance Board and they will analyse all the acts of

*the process. One secretary of the Board (secretary) will prepare a summary of the allegations along with any letters of complaint, witness statements and evidence. **This information will be sent to the investigated instructor, with a clear indictment of which faults this instructor has committed. (10 days).***”

19. IANTD did not comply with those internal requirements when it suspended or expelled SOTIS and ADD HELIUM. It is clear that the IANTD acted in contravention to its own internal procedures, which were designed to afford each and every one of its member’s procedural and sustentative due process, and the membership agreement of the Parties to said procedures.

20. Mr. SOTIS and ADD HELIUM have clearly demonstrated that they are in doubt as to the status of rights to be employed in their chosen discipline and the due process rights IANTD has designed its Standards & Procedures to afford its certified teachers procedural and sustentative due process. § 86.021, Fla. Stat. (2000); Palumbo, supra.

21. The IANTD’s unilateral suspension and expulsion of both SOTIS and ADD HELIUM’s teaching status is in direct contravention to IANTD’s own Standards & Procedures for ensuring Due Process to its members.

22. Further, IANTD escalated Plaintiffs’ suspensions to expulsions without due process and without permitting SOTIS or ADD HELIUM to confront the unknown evidence which purportedly supported IANTD’s actions, which was also wrongful and in contravention to IANTD’s own standards and Mr. SOTIS and ADD HELIUM’s contractual membership rights.

23. The suspension and expulsion of SOTIS and ADD HELIUM continue to result in irreparable harm to both their ability to earn a livelihood and to their previously respected and unblemished professional reputations.

24. The added fact that IANTD wrongfully escalated SOTIS and ADD HELIUM's suspensions to wrongful expulsions (arising from the same incident and supposed facts) does not change the justiciable question at hand. It simply exacerbates the harm from which the Plaintiffs continue to seek relief.

25. *The purpose of the declaratory judgment act is to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations, and is to be liberally construed, section 86.101, Florida Statutes.*" Kelner v. Woody, 399 So. 2d 35, 37 (Fla. Dist. Ct. App. 1981).

26. At all times material hereto, prior to his unilateral suspension and expulsion by IANTD, SOTIS was an IANTD member and certified IANTD instructor.

27. At all times material hereto, prior to IANTD's unilateral suspension and expulsion, ADD HELIUM was also an IANTD instructor facility.

28. IANTD had already undertaken to provide SOTIS and ADD HELIUM's memberships and teaching certifications, as well as adhere to their own internal procedures pursuant to their Standards & Procedures and Contractual Membership Agreement.

29. The Defendant has clearly argued in its *Motion for Final Summary Judgment* that IANTD's Standards and Procedures Manual "*is not a contract and does not create any right, status, immunity, power or privilege for the Plaintiffs.*" Plaintiffs disagree.

30. Plaintiffs had a right to IANTD's adherence to its own protocols written by IANTD to govern its relationship with its members, including SOTIS and ADD HELIUM, **prior to suspension or termination events**, as set out in the IANTD's controlling standards and procedures that were in effect at the time SOTIS and ADD HELIUM were initially placed on non-teaching status and suspended.

30. Plaintiffs are respectfully asking this Honorable Court to determine that IANTD's suspensions and expulsions of the Plaintiffs were wrongful and invalid by virtue of the fact that the IANTD failed to comply with its own procedures, safeguards and guarantees of procedural due process in suspending both SOTIS and ADD IIELIUM, such that reinstatement of the Plaintiffs' teaching certifications is warranted as a matter of law.

SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate where no genuine disputed issue of material fact is present, entitling the moving party to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed.R.Civ.P. 56. "*The framework for deciding a summary judgment places the initial burden on the moving party to inform the court of the basis for its motion, identifying portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' that the party believes show the absence of a genuine disputed issue of material fact.*" *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993)(quoting *Celotex*, 477 U.S. at 323). "*If the moving party fails to discharge its initial burden, then the court must deny the motion for summary judgment.*" *Id.* at 1116 (quoting *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Accordingly, Defendant's *Motion for Final Summary Judgment* must be denied as a matter of law because it clearly details the existence of questions of material fact as set out above.

Further, the entry of summary judgment is premature where discovery has not been completed. "*In UFF DAA, Inc. v. Towne Realty, Inc.*, 666 So.2d 199 (Fla. 5th DC A 1995), (the court held that it was **reversible error** to enter summary judgment when relevant discovery was in progress and a deposition of a party was pending. See also *Villages at Mango Key Homeowners Assoc., Inc. v. Hunter Development, Inc.*, 699 So.2d 337 (Fla. 5th DCA 1997)(holding that

summary judgment should not be granted when depositions are pending unless protective order is sought or entered).” *Arguelles v. City of Orlando*, 855 So. 2d 1202, 1203 (Fla. Dist. Ct. App. 2003). The deposition of the named Plaintiff in this action was set by the Defendant, but has not taken place. Defendant has been ordered to respond to Plaintiffs’ outstanding interrogatories and requests for production on or before July 14, 2019. *Defendant’s Motion for Final Summary Judgment* is premature and must be denied.

WHEREFORE, PETER SOTIS and ADD HELIUM respectfully request that this Honorable Court enter an Order denying Defendant’s Motion for Final Summary Judgment.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing document was furnished by e-mail this 30th day of June, 2019 to: Jennifer C. Biewend, Esq., Robinson, Kennon & Kendron, P.A., 582 W. Duval Street, Lake City, Florida 32055; Telephone: 386-755-1334; Email: _

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