



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LYNN J. ROGERS,

Plaintiff,

v.

**MILTON FIRE DEPARTMENT, INC.,
A Delaware corporation,**

Defendant.

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C.A. No.: 2017-0112-TMR

AMENDED VERIFIED COMPLAINT

Comes now the Plaintiff, Lynn J. Rogers (“Rogers”), by and through his undersigned counsel, for his Complaint against Defendant Milton Fire Department, Inc. (“MFD”), to allege as follows:

The Parties

1. Rogers is a 63 year old adult, having been born on September 23, 1953, who is domiciled in Sussex County, Delaware.

2. MFD is a non-stock, non-profit corporation chartered in Delaware in 1929, whose purpose is to provide “fire fighting protection, ambulance service, assistance in case of emergencies, acts of God, and to render assistance to neighboring fire companies if so requested.”

3. Rogers joined MFD in 1969, became an “Active” member in 1971, and became a “Lifetime” member in 1989.

4. Rogers was first elected MFD's Fire Chief in 1979 and re-elected to that position consecutively for the next 29 years.

5. MFD's membership honored Rogers by electing him to the position of Chief *Emeritus* on March 10, 2010.

6. In addition, Rogers' late wife, Linda, was a long-time life member of the MFD Ladies' Auxiliary up to her passing on February 28, 2016.

7. Their daughters, Amber and Blair are also members of the Auxiliary, and Rogers' ex-son-in-law, Kenny Terhune, is an "Active" member of MFD.

8. Rogers is past president of the Sussex County Firefighters Association, past president of the Sussex County Fire Chief's Association, and past president of the Delaware Volunteer Firefighter's Association.

9. Rogers is also a Master Mason, and an honorably discharged member of the Delaware National Guard.

10. Rogers was elected to the Sussex County Council in 1996, and reelected in 2000 and 2004. Rogers was elected as the President of the Sussex County Council in 2000, 2003 & 2006.

11. Rogers is the President and owner of Rogers Sign Company, Inc. ("Rogers Sign"), which is located in the town of Milton. In 2015, Rogers Sign employed approximately 20 persons and had gross receipts of approximately \$3 million.

Summary of the Dispute

12. Paragraphs one through 11 are incorporated herein by reference.

13. On or about June 29, 2014, Rogers was notified that MFD's Board of Directors ("the Board") had voted to impose "a revised status of membership" upon him and to effectively strip him of most of his rights and privileges as a Lifetime member and Chief *Emeritus* of MFD.

14. Upon personal knowledge as to his own conduct, and upon information and belief as to the conduct of others, the actions taken against Rogers were willful, unwarranted and malicious.

15. As will be shown through discovery, the "ringleader" for the actions taken against Rogers is John F. Bushey ("Bushey") who has control of and leads a portion of the MFD membership and controls the actions of its Board.

16. The MFD is vicariously liable for the acts of these members, officers and directors, although Rogers intends to file a separate action against Bushey.

17. Rogers has repeatedly requested that the MFD reconsider these actions and reverse the adverse actions taken against him. MFD has repeatedly refused, even when Rogers appealed to the mercy of the MFD Board shortly after the untimely death of his wife.

18. Thus, Rogers has now exhausted all remedies available to him and comes before this Court now to seek permanent injunctive relief per 10 *Del.C.* §§ 341, 343, to fully restore his status as a Lifetime member and Chief *Emeritus* of MFD, along with all rights and privileges appurtenant thereto, as well as any and all other forms of relief provided for by law or at equity.

Jurisdiction and Venue

19. Paragraphs one through 17 are incorporated herein by reference.

20. Jurisdiction and venue before this Court are proper because the issues presented here involve the corporate governance of a Delaware non-stock, non-profit corporation subject to Delaware corporate statutes and the common law of this Court.

21. As a non-stock, not-for-profit volunteer membership organization, MFD can (and did) establish membership disciplinary procedures, and, as a general principle, organizations such as MFD are given wide latitude in the application of their internal disciplinary processes.

22. However, this case is about the unwarranted, malicious and willful attempts by Bushey and a cabal of MFD members to use those processes to defame Rogers; destroy his reputation and legacy within MFD, the Delaware fire service, and the Sussex County community at large; and to all but expel him from MFD's membership.

23. Because Rogers has no adequate remedy at law to address MFD's breach of its duty to comply with its own rules for internal governance, the *ultra vires* acts of the Board, and MFD's failure to meet its "lawful obligation" to act consistently with the provisions of its own Constitution and Bylaws, this Court is the appropriate forum for review of this Complaint pursuant to Delaware corporate statutes and the common law of this Court.

24. Rogers also alleges that MFD violated both his substantive and procedural due rights; that by and through the acts of certain of its members, MFD defamed him; and that in the alternative to his status as a MFD "shareholder," and as an employee instead, that MFD violated its implied covenant of good faith and fair dealing due him as an employee.

25. Because it is well-settled law that if this Court "has jurisdiction over part of a controversy, it has discretion to hear the remaining part of the controversy under the "clean-up doctrine," Rogers seeks any and all other forms of relief provided for by law or at equity, and "when equity obtains jurisdiction over some portion of the controversy it will decide the whole controversy and give complete and final relief, even though that involves the grant of a purely legal remedy such as a monetary judgment.

The Facts

26. Paragraphs one through 24 are incorporated herein by reference.

John F. “Jack” Bushey and others conspire against Rogers

27. Bushey is a lifelong resident of Milton, a long time member of the MFD and has been the MFD’s (corporate) Secretary for ~~several~~ 30 years.

28. For years, Bushey and certain MFD members have set about to maliciously and willfully denigrate Rogers and destroy his standing both within the MFD and the community at large.

29. Their motivation to do this is unknown.

30. Among other things, Bushey and certain MFD members under his thrall have publicly and privately cast aspersions upon Rogers’ leadership and firefighting capabilities, his personal matters and business affairs, and his governmental and political involvement.

31. Bushey and his cabal have made, and continue to make, those remarks about Rogers to other MFD members, other members of the fire service, and members of the public at large; at the MFD station, at public functions, at fire service functions and meetings, and even while “holding court” at a local restaurant.

32. Bushey and other members has also conspired to destroy Rogers' reputation and good name within MFD and in the community at large and those efforts led to the defeat of Rogers by Lester "JR" Clark ("JR Clark") in the December 2009 election for MFD Fire Chief.

33. JR Clark had been Rogers' appointed Assistant Chief for many years, and prior to that election, Rogers had asked JR Clark to wait until the following year to run for Chief so that Rogers could complete 30 years as Chief before stepping down. But Bushey and his ilk would not let that happen.

34. A specific instance of the defamation of Rogers involved remarks Bushey made at a fire Association meeting, that Rogers had been suspended from the MFD for public drunkenness.

35. Rogers does not drink.

36. Another instance was when one of Bushey's minions commented at a joint meeting of the MFD and the ladies auxiliary, which Rogers' wife and daughters attended, that they would rid MFD of the entire Rogers family.

37. But theose members were not content with removing Rogers from the position of Fire Chief because they could not tolerate that he remained very active with MFD; for example, Rogers continued to serve on the House (Building & Grounds) Committee, having chaired that committee for over twenty years.

38. Rogers also continued to respond to alarms and, as will be explained below, was even appointed First Assistant Chief in 2013.

39. Those members even went so far as to conspire to stop the payment of Rogers' dues to the State and County Fire Chief's Associations, even though up until then the Association dues of all current and past MFD fire officers had always been paid by MFD.

40. Another example of the animus these members had towards Rogers was in 2012, when Eugene S. Dvornick, Jr. ("Dvornick"), the town manager of Georgetown, defeated JR Clark in the election for Fire Chief for the 2013 term, and subsequently appointed Rogers to the position of First Assistant Chief, Bushey began making disparaging remarks about Dvornick, for example, that he would only be a "one year chief."

41. As explained below, these members were able to orchestrate the removal of Rogers as an Assistant Chief and Dvornick as Chief for no reason other than personal animus towards them.

2011 House Committee

42. As stated above, Rogers chaired the MFD House committee for a number of years until Bushey and his followers had him removed in 2011.

43. The committee was charged that year with getting a new telephone system for the fire station. Vendors were notified of the RFP and three vendors replied.

44. The bids were opened at the department meeting and the committee was authorized to select a vendor to perform the work so long as it was under budget. The committee's budget request was more than adequate to cover the cost of two of the bids for the project.

45. On March 4, 2011, House committee members Rogers, Sam Argo and R. William Wright voted to select vendor CCC of Rehoboth Beach. Dennis Hughes ("Hughes"), who was also present, said he did not care which vendor was selected. Argo stated at that meeting that CCC had already worked on the telecommunications at the station for approximately 30 years and had always provided good service.

46. President John R. Hudson ("Hudson") was also present at this House committee meeting and told Rogers to call the vendor, CCC, as soon as he left the meeting and for Rogers to call him to advise him that Rogers had done so, which Rogers did.

47. Yet, some time prior to June 13, 2011, Rogers - but not the other members of the committee - was sent a letter ordering him to appear at the next Board meeting to explain the bids and the vendor selection.

48. Then during his report as the Chair of the House committee at the June 13, 2011 monthly fire department business meeting, Rogers reported that he had been summoned to appear before the Board to answer questions about the phone system bids, when the presiding officer, Vice President William Powers (“Powers”), interrupted Rogers to state that “we have contacted our lawyer, you have been ordered to appear, and you are out of order speaking about the matter here any further.”

49. Rogers appeared for the July 6, 2011 Board meeting.

50. The agenda for that meeting, prepared and sent out by Bushey, had an item entitled “Rogers,” but no item regarding telecommunications or the House committee.

51. At that meeting, Rogers was questioned by the presiding officer, Vice President Powers, about the timing of the bids, the amounts of those bids, and how the committee decided to recommend the vendor that it did before he was told by Vice President Powers that the Board had no further questions, at which point Rogers left the Board meeting.

52. Rogers had no prior notice that was ordered to attend to answer allegations of malfeasance or nonfeasance and was never allowed to answer the apparent charges or allegations that had been made against him. But then on July 7,

2011, Rogers received written notice that the Board had voted at that meeting to remove him from the House committee.

53. Rogers has never been given any explanation as to why that was done but as will be shown through discovery, it was Bushey and his henchmen who brought all of this about.

54. President Hudson also called Rogers around this time to request that he return any and all paperwork pertaining to the phone system bids to the fire station mailbox because Bushey and Hughes were “on the war path” about those bids. Rogers asked Hudson to explain why but he simply replied to return the paperwork by the following day.

2011 Dotterer Complaint & Suspension

55. As stated above, Rogers is past president of the Sussex County Firefighters Association, past president of the Sussex County Fire Chief’s Association, and past president of the Delaware Volunteer Firefighter’s Association.

56. The county Associations meet monthly and the state Association meets at least quarterly, and those meetings are held on a rotational basis at the various fire stations in the county or state.

57. Having been very active for many years in those Associations, Rogers attends most if not all of those meetings and through the years Rogers has held

many offices within those Associations and chaired or served upon many Association committees.

58. Then on November 27, 2011, MFD member Matt R. Dotterer (“Dotterer”) wrote a letter to the MFD Board to complain about Rogers’ behavior at the August 23, 2011 meeting of the Sussex County Fire Chief’s Association (held at the Indian River Fire Company station); and at the November 22, 2011 meeting of the Sussex County Firefighters Association (held at the Seaford Fire Company).

59. Several other MFD members were present at both of these meetings.

60. Dotterer’s letter alleged that:

a) At the August Association meeting, Rogers employed an expletive to complain about the inability of MFD’s Fire Recorder, Chad Clendaniel, to get MFD’s monthly fire reports in to the Association on time; that Rogers threw a glass bowl full of peanuts “across the table hushing the people around us,” and that throughout the meeting Rogers “mumble[d] and curse[d] like a Turrets [*sic*] patient” and “disrespect[ed]” a female from another fire company who was seated at the table with him [seated with Rogers was MFD life member Deborah Breneman];

b) At the November Association meeting, two members of other Sussex County fire companies commented on Rogers’ behavior and one asked Dotterer if Rogers was “a drinker” [to which Dotterer replied that Rogers “said awhile ago he was on some diet pills”];

c) Rogers gave him “the second degree” [*sic*] about MFD missing its obligations to submit reports and “cursing about the lack of leadership in our company” in front of members of other fire companies;

d) Rogers’ behavior at Association meetings had been an issue “for awhile” and had been “getting progressively worse;” and

e) As to whether it was “a medical issue, a mental issue, or something else altogether,” MFD “should be respected” and the “trashing of our company by our own past chief as he has been doing to many other companies in meetings past” ... “should be addressed immediately.”

61. Although Rogers had no prior knowledge of this complaint or notice of the Board’s hearing upon or consideration of this complaint, and was offered no opportunity to address these allegations, the Board voted nine to two to suspend Rogers from membership for 60 days (January 7 through March 7, 2012), “based on [his] actions” at the August 23, 2011 and November 22, 2011 County [Association] meetings.

62. Rogers was notified in writing of the suspension and that he could appeal the action of the Board in writing, and that “if an appeal is given, it will be considered in a timely manner.”

63. On January 5, 2012, Rogers engaged counsel to respond and request the “appeal.”

64. MFD then engaged counsel, who wrote to Rogers’ counsel on January 9, 2012, that “the action taken in this case has been done historically in the past by the Fire Department” and is “consistent with Section 5 of the By-laws [which includes] the authority to suspend and expel for ‘breach of trust,’” and that Rogers’ actions “as detailed in the letter of Mr. Dotterer certainly exhibited a breach of trust.”

65. The Board took up Rogers' "appeal" at its February 6, 2012 meeting. Rogers presented ten witnesses in his defense and no testimony from any witness corroborated Dotterer's allegations. Nonetheless, Rogers' counsel subsequently received written notice that the Board had decided after that appeal "to stand by [its] earlier decision" and that Rogers' suspension would continue until March 7, 2012.

2013 Clark Mediation

66. On February 13, 2013, JR Clark and his son, Jay Clark, wrote to MFD President John Hopkins ("Hopkins"), to "request a special Board Meeting with Chief Rogers," ostensibly because "Chief Rogers spoke to everyone that attended" a February 9th fire school "except for three people;" therefore "[i]t is obvious that the fire department is divided into 2 sides, the 'Rogers' side and the 'Clark' side." The letter stated that "[i]t is very hard to work with and trust someone in an officer position that will not speak to you or work with you."

67. On February 18, 2013, MFD President Hopkins sent a letter to Rogers to "respectfully request" his presence at a "special meeting" of the Board, called per Article 5, Section 2 of the "Bylaws," "regarding the resolution of differences between Lester Clark, Jr. and Chief Rogers as their differences are described in said request as to be affecting the business and membership of the Department."

68. This “special” Board meeting was called for February 22, 2013, but was postponed to March 19, 2013.

69. On March 18, 2013, Rogers sent a letter to President Hopkins expressing that the requested Board meeting was “not the proper venue” to discuss the differences between he and Clark. Rogers requested that “due to the sensitive nature of [his] concerns with Clark,” that a “Professional Conflict Mediation” done “in a private setting” take place instead.

70. At 11:42 p.m. on March 18th, President Hopkins sent Rogers an email stating that:

- a) He had consulted not one, but two, attorneys regarding the “special meeting” of the Board called for March 19th;

- b) The “meeting must be held;”

- c) He (Hopkins) “cannot close the meeting without giving Mr. Clark the opportunity to voice his concerns as per his request for the special meeting;”

- d) He can “disclose the contents” of Rogers’ March 18th letter to the Board and “suggest” that the Board consider mediation as a means to “resolve the issues as identified by Mr. Clark;”

- e) But that Rogers’ letter is not “a substitute for your presence at the meeting” and that failure to attend could be grounds for discipline for insubordination.

71. The Board met on March 19, 2013, and mandated that mediation between Rogers and Clark be scheduled and completed within 60 days.

72. On April 3, 2013, President Hopkins sent a letter to Rogers, thanking him for agreeing to participate in mediation and setting forth the “expectations of the leadership” as to the mediated agreement reached between him and Clark.

73. Rogers and Clark attended mediation with Fran Fletcher from the University of Delaware, and the parties reached an agreement which was reduced to writing and executed by Rogers and Clark on May 8, 2013.

74. Then on June 5, 2013, Lester F. “JR” Clark wrote to the Board to request that to be “fair and equal,” the Board order the Fire Chief to remove Rogers from the appointed position of First Assistant Chief, so that he and Rogers would be “at the same level to help foster the agreement set forth in mediation.”

75. It will be shown through discovery that Clark did not author this letter; rather Bushey had it created and Derrick Harvey took it to Clark to sign, so as to continue the attacks upon Rogers and have him removed as First Assistant Chief.

76. As per the mediation agreement, removal of Rogers from the position of Assistant Chief was not a term of the agreement, moreover, it was not necessary to accomplish JR Clark’s putative goal to be placed on “equal footing” with Rogers since there was another Assistant Chief’s position open at the time, which JR Clark could have been appointed to.

77. Clark's June 5th letter was read at the Board meeting held on that date and the Board voted unanimously, with two recusals, to order Fire Chief Dvornik, who was not present, to remove Rogers from the position of First Assistant Chief before the next meeting of the Board, or the Fire Chief "would face disciplinary action."

78. On July 1, 2013, Fire Chief Dvornick hand-delivered a letter to Rogers to notify him of his removal from the position of First Assistant Chief, explaining that he had no choice but to do what had been "mandated" by the Board.

79. Rogers wrote to President Hopkins on July 10, 2013 to appeal his removal from office, and Rogers also met with and read the letter to President Hopkins.

80. Hopkins stated to Rogers that it was an excellent letter which should be looked upon favorably by the Board at its meeting that evening. Rogers replied that Bushey would view his letter as insubordination, which was later proven to be correct.

81. President Hopkins responded in writing on July 31, 2013, that Rogers was removed from appointed office because the Board felt that "it needed to create an organizational dynamic where both you and Mr. Clark hold no position of authority over each other."

82. The letter also stated that the Board decided to “take no action regarding your letter of appeal” of removal from office.

83. Just as Bushey predicted (and brought about), this complete denuding of Dvornik’s authority as Fire Chief by the Board led to his one year tenure as Chief.

2013 “Probation”

84. President Hopkins’ July 31st letter also stated that the Board held another “special meeting” on July 14th to “address each area of concern identified in [Rogers’s July 10th] letter” and to address “current personnel issues.”

85. The letter went on that “[a]fter further review, the Board approved a period of probation for [Rogers],” and that “any further infractions” committed by Rogers “will result in immediate expulsion from the Department, if substantiated by the Board.”

86. This probation became effective on August 1, 2013, and continued through January 31, 2015, subject to review by the Board at its January 7, 2015 meeting.

87. This probation included loss of voting privileges, ineligibility to hold an elected or appointed office, committee member, or committee chair position.

88. President Hopkins’ July 31st letter did not state what “infraction” Rogers had committed that led to his suspension; which it could not because

Rogers had not committed any infractions. However, the sixth and seventh paragraphs of this letter seemed to indicate that Rogers's "infraction" was to disagree with the Board, controlled by Bushey, and seek to appeal his removal from office:

All Board proceedings are executed in the best interest of the [Department], and the community we serve, and not for the purposes of elevating or violating a specific individual. The Board is confident it has gone above and beyond normal expectations to give you the utmost courtesy and respect in this matter, given your many years of dedicated service.

It is the full intent of the Board for this decision to put an end to the dispute between you and Mr. Clark as it relates to the operation of [Defendant]. Both of you are now on probation until January 31, 2015. I sincerely hope this unanimous action taken sends a clear message, and draws a definitive line in the sand.

89. Rogers expects to show through discovery that Bushey authored this letter or at least made substantial contributions to its content.

2014 Imposition of a "Revised Status of Membership"

90. Rogers spoke again with President Hopkins at the Congressional Fire Service Institute's annual dinner in Washington, D.C. on March 25, 2014, asking Hopkins what was going on with his membership and to please have Bushey get off his back and leave him alone, otherwise he would have to seek assistance from legal counsel.

91. Rogers also stated to Hopkins that he would like to review his personnel file.

92. Hopkins sent a follow up email to Rogers the next day, explaining that “he was looking into the proper procedure for [Rogers] to review [his] personnel file should you choose to submit a written request” to do so, and that if Rogers submitted a written request for appeal of his probationary status, that request would be heard as quickly as possible by the Board.

93. There being no such “procedure” for review of the file, Rogers expects to show through discovery that what Hopkins actually did was consult with Bushey who maintains custody and control of those files.

94. President Hopkins further explained in that email that Rogers could continue to command at fire scenes as a Past Chief and Chief *Emeritus* and could participate in the command duty schedule and take the command vehicle home to use for responses.

95. Such operational issues properly belong with the Fire Chief, not the President. Rogers expects to show through discovery that this is a further example of the control a small number of members had over the entire MFD, much to Rogers’ detriment.

96. On April 5, 2014, President Hopkins sent an email to Rogers reporting that after consultation with counsel, Rogers would be permitted to submit a “brief

written request” to the Board “to view the information in [his] personnel file pertinent to the appeal” of his probationary status.

97. Per Hopkins’ email, Rogers could also submit a written request to the Board to appeal his probationary status, that it was his “choice” to attend the meeting when the appeal would be heard, and that the Board would direct the personnel committee “to review any relevant information in your file and submit a recommendation for Board consideration during executive session” at the next Board meeting.

98. On April 6, 2014, Rogers wrote to formally request reinstatement to full Life membership with all rights and privileges appurtenant thereto. Rogers’ letter also made note of the fact that when he asked Hopkins why JR Clark, who was also supposed to be on probation, had cast votes at the March membership meeting, he had been told by Hopkins that JR Clark had already been granted an appeal of his suspension and that all of his membership privileges had been reinstated by the Board. Rogers commented that he thought it only fair that he be afforded this relief as well.

99. On June 29, 2014, President Hopkins wrote to Rogers to inform him, not surprisingly, that the appeal of his current probationary status was denied by the Board and that because the “review of relevant information in [his] file by the personnel committee revealed documentation that had not been previously

disclosed to the Board,” that the personnel committee unanimously recommended that the Board impose “a revised status of membership” upon Rogers.

100. This personnel committee was chaired by Bushey.

101. Per Hopkins’ letter, the Board had unanimously accepted that recommendation and imposed the status of “Inactive Permanent Honorary Membership” upon Rogers.

102. Pursuant to his placement in this non-existent category of membership, the Board ordered that Rogers could not vote, hold any elective or appointed office, be appointed to a committee, attend any meetings, alarms, or training, possess any MFD property such as a radio or keys to the station, and could not attend any county, state, regional or national Association meeting or event “as a representative” of MFD.

103. Rogers received written notice on July 30, 2014 that the Board had denied his “appeal” and upheld his “modified” membership status, and that he was ordered to return all MFD property on or before August 11, 2014.

104. Then in October of 2014, Secretary Bushey drafted ~~and sent~~ letters to the Sussex County Firefighters Association, the Sussex County Fire Chief’s Association, and the Delaware Volunteer Firefighter’s Association to inform them that Rogers had been placed on “an inactive status of permanent honorary membership,” and that while MFD understood that Rogers could be placed on

Association committees “based on his past credentials and achievements within your organization,” Rogers has no “authority to directly represent the position of [MFD] in any matter considered under your jurisdiction.”

105. Rogers was devastated to suffer additional humiliation and embarrassment in front of his fire service peers and colleagues, when Bushey and Hopkins hand delivered these letters to the Presidents of the Sussex County Fire Chief’s and Firefighter’s Associations at the joint meeting of these Associations which Rogers attended.

Rogers’ Personnel File

106. Meanwhile, Rogers’ request to review his personnel file was granted and he reviewed his file on July 24, 2014, with President Hopkins and Vice President William Powers, Jr. present. Rogers was not permitted to copy anything in that file.

107. Rogers was shocked to see in his file an account prepared by President Hopkins of a meeting that took place between himself, President Hopkins, and (then) Fire Chief Dvornick on January 30, 2013.

108. That meeting was supposedly confidential, and the participants even went so far as to turn off their cell phones and place them across the room before beginning their discussion.

109. President Hopkins wrote that at this meeting, he asked Rogers if he “would seek professional help.” Understandably, Rogers’ reaction was to become quite angry and hurt, interpreting this as a baseless and foul insinuation that he needed mental health treatment and also reacting to what he thought was a lack of respect for his years of dedication and commitment to the Department.

110. Having devoted his entire adult life to the MFD, Rogers was overcome with passion, and with tears in his eyes made an emotional and idiomatic response, which President Hopkins recorded as a statement that until Bushey, Dotterer, JR Clark, and Hughes were removed from the Board nothing would change with the Department and that if those individuals were on the floor of that room right then “flopping like fish out of water” he would not offer them any assistance.

111. By comparison, Bushey recently stated in the MFD station that he “wouldn’t p--s on Rogers’ skull if his eyes were on fire.” It is unknown if Hopkins, who was present when Bushey said this, put an account of those remarks in Bushey’s personnel file.

112. Chief Rogers was further surprised to locate several other written accounts in his file of conversations that had taken place between he and the President, thus indicating that the President had been creating a dossier on him for

some time, which Rogers expects to show through discovery that Hopkins did at the behest of Bushey.

113. Rogers' personnel file also contained documentation from the Board meeting that resulted in the June 29, 2014 letter, indicating that the personnel committee that had reviewed "relevant information" in his personnel file that "revealed documentation that had not been previously disclosed to the Board" and then unanimously recommended that the Board impose "a revised status of membership" upon Rogers was chaired by Bushey and comprised of William Suess, Derrick Harvey, Roland "Skip" Millman," and Stephen Carey; all of whom were also members of the Board at the time.

114. Once Bushey was certain that he had given the committee sufficient instruction on what needed to be done he cleverly recused himself from voting with his committee.

115. The file also contained a letter of complaint from Bushey that Rogers had "violated his probation" by not sitting with the "Milton group" at the April 18, 2013 Sussex County Firefighters Association meeting held at Greenwood. The letter was signed by Bushey and Mike Justice; however, JR Clark, who was also present at that meeting, refused to sign the letter.

116. Rogers did not "sit with Milton" at this meeting because he arrived 30 minutes after the meeting had started, took the first available seat that he came to,

and did not even know at the time that others from MFD were even present at the meeting.

117. The personnel file contained notes that the motion to deny Rogers' appeal and place him into "Permanent Inactive Honorary Membership" was made by Suess, who stated in support of the motion that Rogers violated the mediation agreement "by not sitting with Jack Bushey and Milton at the Greenwood meeting," and because of "safety issues, integrity issues and breach of trust of the department due to comments he made to President Hopkins at the [supposedly confidential] January 30, 2013 meeting."

118. The personnel file also contained a letter written by Clark in 2011, stating that Clark "could no longer trust [Rogers] on a fire scene because of an incident with an apparatus air line in June of 2011 that discovery will show that Rogers actually had nothing to do with.

The Constitution & Bylaws

119. MFD has revised its Constitution & Bylaws several times since those were first adopted.

120. The set referred to herein as the 2012 Constitution & Bylaws was last revised and printed in February of 2012.

121. The set referred to herein as the 2014 Constitution & Bylaws was approved and printed in October of 2013 and became effective January 1, 2014.

122. The fourth (unnumbered) paragraph of Section 1, Article 6 of the 2012 Constitution states that “[t]he Board of Directors shall have executive power and authority for the complete operation of the corporation.”

123. The third (unnumbered) paragraph of Article V of the 2014 Constitution states that “[t]he Board of Directors shall have the executive power and authority for the complete operation of the corporation of [the Department]. The Board also shall have authority over the members of this department.”

124. Neither the 2012, nor the 2014, Constitution & Bylaws grant the Board authority to summarily suspend a member, without first giving the member notice of the charges and the opportunity to address those charges.

125. Rather, member disciplinary procedures are addressed at Section 5 of Article 5 of the 2012 Constitution, which states that:

Section 5 – Expulsion: The Board of Directors and/or two-thirds of the active membership at the meeting may expel any member from membership and/or office for Breach of trust, crime or crimes involving moral turpitude, reckless or repeatedly negligent operation of vehicles or equipment which creates a substantial likelihood of death, serious bodily harm or injury to property, another member, person or entity being served, or any other member of the community or society. Always an opportunity shall be given the member for making a defense before the Board of Directors or Company. The President or Chief or their representatives can suspend members on the spot for just cause until a meeting of the Board of Directors and/or Membership. Once a member has been expelled an application for membership will be accepted from the former member only after giving the prior misconduct the appropriate consideration. Any member that was terminated under unfavorable conditions must meet

all requirements in effect for new membership.... Prior years of service will not be credited toward life membership calculation.

126. Article VIII of the 2014 Constitution sets forth at Section 1 specific definitions for “breach of trust,” “improper conduct,” “conduct which is injurious to the Character and Interest of the Department,” and “violation[s].” Section 2 of that Article states that “[a]ny member, regardless of membership classification or office, may be expelled from office and/or membership with the Department by the Board of Directors.... Said member will be given an opportunity for a hearing and to present a defense to the Board of Directors of the Department.”

127. Neither the 2012, nor the 2014, Constitution & Bylaws includes any description of an “inactive permanent honorary membership” category.

128. Section 1 of Article 2 of the 2012 Constitution states that there “shall be four classes of membership [in the Department]: Active, Lifetime, Probationary and there may be a[n] Ambulance Squad.”

129. According to Section 3 of that Article, the “Lifetime membership shall consist of Active Firemen who have completed 20 years of service to the Department...;” and the ninth paragraph of that Article states that: “[a]ny member, upon reaching twenty (20) years active service shall automatically become a lifetime member.”

130. The first (unnumbered) paragraph of the 2014 Constitution states that “[t]he membership of the [Department] shall consist of five classes of members as follows: Active Members, Life Members, Probationary Members, Honorary Members, and Junior Members.”

131. Section 2 of that Article states that “Life members shall consist of Active Firefighters who have completed 20 years of service to the [Department].”

132. The seventh (unnumbered) paragraph of Section 2 of Article 6 of the 2012 Constitution states:

FIRE CHIEF: The Chief of the Department shall have full charge and control of the department and its members when engaged in practice drills, and any type alarms except ambulance calls. The Chief shall select and appoint a Deputy Chief, assistants, and if desired Fire Captains. In the absence of the Fire Chief it shall be the duty of the Deputy Chief or Assistant Chief who is first at the alarm to assume the Fire Chief’s duties. In the absence of any Fire Chief at an alarm the first engineer at the scene will assume the Fire Chief’s duties. The Fire Chief shall appoint the Fire Police.

133. The fourth (unnumbered) paragraph of Section 3.1 of Article IV of the 2014 Bylaws states that “[t]he Fire chief shall select and appoint a Deputy Chief, Assistant Chief(s)....”

COUNT I – *Ultra Vires*

134. Paragraphs one through 133 are incorporated herein by reference.

135. MFD violated Delaware corporate statutes and the common law of this Court; some or all of which was done willfully, maliciously and without authority and/or contrary to its own Constitution & Bylaws by:

a) The Board's 2011 removal of Rogers as chair of the House committee without cause;

b) Not providing Rogers any notice of the charges brought against him at that time;

c) Not affording Rogers the opportunity to make a defense against those charges before removing Rogers as chair;

d) The Board's usurpation of the President's authority to appoint and discharge committees and their members;

e) The Board's 2012 imposition of a 60-day suspension upon Rogers without cause;

f) Not providing Rogers any prior notice of the hearing conducted on the charges brought in November of 2011 by Matt Dotterer;

g) Not affording Rogers the opportunity to make a defense against those charges before imposing the suspension;

h) Failing to investigate and/or corroborate those charges before acting upon them;

i) Failing to offer any meaningful right of appeal by allowing those charges to be heard and passing judgment upon the charges before deciding to hear the "appeal" of those charges;

j) The Board ignoring the weight of the evidence presented by Rogers "on appeal," including the fact that the testimony of ten witnesses who were present at those alleged instances testified contrary to Dotterer's account;

k) The Board considering Clark's February 13, 2013 request for a "special" Board meeting as a presentation of some sort of charges against Rogers;

l) Forcing Rogers to participate in that meeting or in lieu thereof, in a mandatory mediation process simply because of Clark's allegations that he and Rogers could not get along;

m) Interfering with the mediation process by imposing its own set of "expected outcomes" upon the parties;

n) The Board entertaining and acting upon Clark's request that Rogers be removed as an Assistant Fire Chief, simply because Clark thought that was "unfair" and in the absence of any infractions by Rogers necessitating removal from office;

o) Not affording Rogers the opportunity to make a defense against the supposed "charges" or reasons before ordering his removal from office;

p) The Board ordering the Fire Chief to remove Rogers from the position of Assistant Fire Chief, at the risk of discipline for not doing so;

q) Failing to offer Rogers any right of appeal whatsoever regarding his removal from the position of Assistant Fire Chief;

r) Considering Rogers' July 10, 2013 letter to the Board as some sort of infraction;

s) The Board's imposition of "probation" upon Rogers as a result of that letter;

t) Not providing Rogers with any prior notice that his letter would be considered as some sort of infraction resulting in charges;

u) Not affording Rogers the opportunity to make a defense against those "charges" before imposing the "probation;"

v) Imposing "probation" upon Rogers, which is a form of punishment not authorized by the Constitution & Bylaws;

w) Restricting Rogers' rights and privileges as a Life member without following the disciplinary process set forth in the Constitution & Bylaws;

x) Failing to offer Rogers any right of appeal whatsoever regarding the imposition of "probation" and the infringement upon his rights and privileges as a Life member;

y) Failing to rescind the "probation" and restore Rogers' membership rights and privileges as was done for JR Clark;

z) The Board directing a committee of biased and partial members to conduct a review of Rogers' personnel file to compile information "relevant to his appeal;"

aa) Allowing members who were biased and partial against Rogers to view Rogers' personnel file which contains sensitive and personal information that could be used for nefarious purposes in the wrong hands;

bb) Deciding, based upon a file review conducted by a committee of members who were biased and partial against Rogers, to impose a status of membership not authorized by the Constitution & Bylaws and remove nearly all of Rogers' rights and privileges of membership without any prior notice that such disciplinary action would be taken;

cc) Not affording Rogers the opportunity to make a defense against those apparent "charges" before imposing forms of punishment not authorized by the Constitution & Bylaws for apparent "charges" not authorized by the Constitution & Bylaws for;

dd) Removing Rogers' Life membership status and the rights and privileges thereof without following the disciplinary process set forth in the Constitution & Bylaws; and

ee) Failing repeatedly to offer Rogers any right of appeal whatsoever regarding the imposition of unheard of membership status and the infringement upon his rights and privileges as a Life member.

COUNT II – Due Process

136. Paragraphs one through 135 are incorporated herein by reference.

137. The *duty* of extinguishing fires, and saving property thereupon is a public duty, and the agent to whom such authority is delegated is a public agent.

138. The functions and accomplishments of volunteer fire departments affix to their continued existence a public, *governmental* character.

139. MFD is chartered and regulated by the state of Delaware as the exclusive provider of fire, rescue, and emergency medical services in and about the town of Milton and the provision of fire protection, rescue, and emergency medical services is a highly regulated governmental function.

140. The extensive statutory legislation which enhances and directs the organization of volunteer fire companies demonstrates an adoption by the State and its citizenry of the governmental characteristic of volunteer fire companies and numerous legislative enactments further interweave the functioning of the government and the fire company.

141. Several statutes provide Delaware's volunteer fire companies such as MFD with particular benefits and powers. Some of these include:

a) Volunteer firefighters may become special fire police with full power to regulate traffic, control crowds and exercise all other police powers necessary to facilitate the fire company's work at a fire or any other emergency;

b) Volunteer fire companies associations are exempt from vehicle title and registration fees;

c) Fire companies are eligible for low interest state loans in order to purchase equipment; an employer may not terminate a volunteer firefighter for missing work while responding to a fire call;

d) Firefighters are state employees for purposes of workers compensation;

e) Fire and ambulance companies are entitled to receive a percentage of certain insurance premiums;

f) The counties are required to make appropriations to volunteer fire and ambulance companies;

g) Fire companies are immune “governmental entities” under the County and Municipal Tort Claims Act; and

h) Fire companies are exempt from state and county taxes.

142. For all of the reasons set forth herein MFD is a state actor.

143. MFD violated Rogers’ substantive and procedural due process rights; some or all of which were done willfully, maliciously and without authority and/or contrary to its own Constitution & Bylaws when:

a) Rogers was repeatedly subjected to disciplinary actions without benefit of a hearing before a fair and impartial tribunal;

b) Rogers was repeatedly subjected to disciplinary actions without benefit of notice of what those charges were against him or when those charges would be heard;

c) Rogers was repeatedly subjected to disciplinary actions without being given the opportunity to present a defense to those charges before a fair and impartial tribunal;

d) On at least one instance, the Board reached a conclusion that was contrary to the weight of the evidence presented;

e) The Board removed Rogers from a committee chairmanship and directed that he be removed from appointed office in the absence of any charges of malfeasance or nonfeasance by Rogers;

f) The Board violated Rogers' rights of free speech and free association when it imposed an impermissible "probation" upon Rogers in response to a letter written to the Board;

g) The Board impermissibly imposed restrictions upon Rogers' membership and his rights and privileges as a member without following its own procedures for discipline;

h) Members who were biased and partial against Rogers were allowed to review Rogers' personnel file which contains sensitive and personal information that could be used for nefarious purposes in the wrong hands;

i) MFD did not impose discipline in accordance with its own bylaws; and

j) Malice and bad faith motivated the imposition of discipline and attempted enforcement of the by-laws against Rogers.

144. If MFD is found not to be a state actor and is merely a private organization, albeit one "tinged with public stature or purpose," it cannot vitiate Rogers' due process rights.

145. MFD cannot discipline a member "except as a result of fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play."

146. Rogers has turned to the Court for relief because MFD's decisions relating to his membership were made "contrary to natural justice, such as the member complained of not having an opportunity to explain;" because MFD's own rules were not observed; and because the actions taken against Rogers were malicious and not *bona fide*.

147. In addition to the violations of his procedural due process set forth above, MFD has also deprived Rogers of substantive due process.

148. The false and defamatory statements made by certain of MFD's members have severely affected Rogers' standing as a member of Sussex County community at large and most especially among his peers in the Delaware fire service community.

149. MFD knew or should have known that by disseminating the disciplinary actions taken against Rogers to various fire service organizations Rogers would be required to defend his reputation amongst his peers.

150. What is unknown and unknowable to Rogers is the extent of the damage done to his reputation by MFD's improper and malicious purpose.

151. These willful and malicious acts by certain of MFD's members portrayed Rogers in a false light thus depriving him of his right to be left alone in violation of 42 U.S.C. §1983.

COUNT III – Defamation

152. Paragraphs one through 151 are incorporated herein by reference.

153. MFD and certain of its members have committed libel, slander and slander per se against Rogers:

a) When certain members cast aspersions upon Rogers' leadership, his firefighting, his personal matters, and his business affairs to other MFD members and non-members;

b) Making those remarks at the MFD station, at public functions such as the 2010 Holly Festival held at the fire station, and frequently at a coffee shop in Milton;

c) These remarks included that Rogers was suspended from MFD for public drunkenness at a fire Association meeting, and that they would rid MFD of the entire Rogers family, at a joint Ladies Auxiliary/Fire Department Meeting;

d) When Dotterer alleged that at the August Association meeting Rogers employed an expletive to complain about the inability of MFD's Fire Recorder, Chad Clendaniel, to get MFD's monthly fire reports in to the Association on time; that Rogers threw a glass bowl full of peanuts "across the table hushing the people around us," and that throughout the meeting Rogers "mumble[d] and curse[d] like a Turrets [*sic*] patient" and "disrespect[ed]" a female from another fire company who was seated at the table with him; and

e) In October of 2014, when MFD sent letters to the Sussex County Firefighters Association, the Sussex County Fire Chief's Association, and the Delaware Volunteer Firefighter's Association to inform them that Rogers had been placed on "an inactive status of permanent honorary membership," and that while MFD understood that Rogers could be placed on Association committees "based on his past credentials and achievements within your organization," Rogers has no "authority to directly represent the position of [MFD] in any matter considered under your jurisdiction."

154. Rogers retains all rights to pursue those individual members at law and to plead a cause of action for punitive damages.

COUNT IV – Age Discrimination

155. Paragraphs one through 154 are incorporated herein by reference.

156. Rogers is 63 years old.

157. Rogers has no mental or physical disability that would disqualify him from active participation as a Lifetime member and Chief Emeritus of MFD.

158. The actions taken against Rogers by MFD and certain of its members have had an adverse effect upon him as a member of MFD and the Delaware fire service.

159. The actions taken against Rogers by MFD and certain of its members were taken against him because of his age and advanced tenure.

160. MFD had no “legitimate non-discriminatory reason” for the adverse membership and / or employment actions taken against Rogers.

COUNT V – Employment Discrimination

161. Paragraphs one through 160 are incorporated herein by reference.

162. Arguing in the alternative to his status as a “shareholder,” Rogers is instead an employee of MFD for purposes of asserting a claim of employment discrimination.

163. MFD had a duty of good faith and fair dealing to Rogers, which also imposes a duty of candor, which MFD breached by conduct constituting “fraud, deceit, or misrepresentation” towards Rogers.

164. MFD further breached its duty of good faith and fair dealing to Rogers by falsifying and manipulating Rogers’ personnel records to create fictitious grounds for discipline.

COUNT VI – Civil Conspiracy

165. Paragraphs one through 164 are incorporated herein by reference.

166. Bushey and other MFD members who will be identified through discovery acted in “confederation or combination” to *de facto* expel Rogers from membership in the MFD in violation of his Constitutional rights to due process, federal law, state law and common law, and as a result thereof Rogers has been unable to peacefully enjoy his association and contractual relationship with the MFD and has suffered emotional distress; by conspiring to:

- a) Orchestrate Rogers removal as chair of the House committee without cause, notice, or due process;
- b) Orchestrate the 2012 imposition of a 60-day suspension upon Rogers without cause, notice, or due process;
- c) Orchestrate consideration of Clark’s 2013 request for a “special” Board meeting as a presentation of some sort of charges against Rogers, thus forcing Rogers to participate in that meeting or in lieu thereof, in a mandatory mediation process simply because of Clark’s allegations that he and Rogers could not get along;

d) Orchestrate the blatant interference with the mediation by influencing the imposition of its own set of “expected outcomes” upon the parties;

e) Orchestrating consideration of Clark’s request that Rogers be removed as an Assistant Fire Chief, simply because Clark thought that was “unfair” and in the absence of any infractions by Rogers necessitating removal from office; then influencing Rogers’ subsequent removal from office without cause, notice, or due process;

f) Orchestrating consideration of Rogers’ July 10, 2013 letter to the Board as some sort of infraction and the imposition of “probation” upon Rogers as a result of that letter without cause, notice, or due process;

g) Orchestrating the disparate treatment of Rogers specifically by not rescinding Rogers’ “probation” and restore Rogers’ membership rights and privileges as was done for JR Clark;

h) Orchestrating the appointment of conspirators to a committee to conduct a review of Rogers’ personnel file to compile information “relevant to his appeal;”

i) Pursuant to that review, orchestrating the imposition of a status of membership not authorized by the Constitution & Bylaws and removing nearly all of Rogers’ rights and privileges of membership without cause, notice, or due process; and

j) Influencing the repeated denial of any right of appeal whatsoever regarding the imposition of unheeded membership status and the infringement upon Rogers’ rights and privileges as a Life member.

COUNT VII – Intentional Infliction of Emotional Distress

167. Paragraphs one through 166 are incorporated herein by reference.

168. As stated above, the MFD has been a major factor in Rogers’ life as well as the life of his wife and children.

169. Rogers' wife Linda, who was herself very active in the auxiliary of the MFD, passed away at the age of 61 on February 28, 2016.

170. Perhaps one of the cruelest acts of the members who have conspired against Rogers was to even consider an appeal as an act of mercy following his tremendous loss.

171. This hardening of the hearts of these members against Rogers at such a time was extreme and outrageous conduct that was done intentionally to inflict emotional distress upon Rogers at a time when he was most vulnerable.

172. Such conduct was completely uncalled for and led to an awkwardness amongst the MFD "family" at this time of great loss.

173. Equally unconscionable was that Rogers had to ask permission to participate in the memorial service for fallen firefighter Tim McClanahan in July of 2016. Rogers was the Chief of MFD when McClanahan began his fire service career in Milton in 1994 and helped nurture and train him.

174. But when MFD member George Sherman passed away in December of 2015, his family provided the MFD with a list of pallbearers that Mr. Sherman had written in his own hand. Rogers was one of them.

175. President Hopkins called Rogers and explained that MFD had a replacement pallbearer for Rogers. Rogers said no, that he wanted to honor Mr. Sherman's wishes.

176. Rogers asked what the uniform would be and was told by Hopkins that it would be the Class A dress uniform with white gloves, for all other members, but that he should wear a suit and tie.

177. Rogers asked who would be wearing uniforms, to which Hopkins relied “firefighters.” Rogers replied that since he was also a firefighter that he intended to wear a uniform.

178. President Hopkins then offered to wear a suit & tie also because his uniform “had gotten tight on him.”

179. Rogers went, in his uniform, served as a pallbearer, along with Bushey, who was also in uniform and was also a pallbearer. Rogers had little conversation with the other members at the funeral and Bushey kept his distance from Rogers during the proceedings.

180. Rogers was devastated by the interaction over the Sherman funeral and then to learn that he may not have been permitted to wear the uniform of the MFD to the McClanahan services either.

181. On the facts presented here, these were not rational acts that were proportional to Rogers’ alleged infractions. A reasonable fact-finder can draw but one conclusion that such acts were perpetrated upon Rogers to inflict further emotional pain and loss upon him.

182. Rogers expects to show through discovery that all of these actions were orchestrated by Bushey although they may have been carried out by others such as President Hopkins.

WHEREFORE for all of the reasons set forth herein, Plaintiff Lynn J. Rogers respectfully requests that, following a trial on the merits, this Court enter judgment in his favor and against Defendant Milton Fire Department, Inc. as follows:

1. Enter a permanent Order of Injunction *nunc pro tunc* reversing the actions taken against Rogers by MFD, fully restoring his status as a Lifetime member and Chief Emeritus of MFD with full restoration of all rights and privileges appertaining thereto;
2. Enter a permanent Order of Injunction enjoining MFD from taking any further action against Rogers for anything that has allegedly occurred to date or for anything pertaining to or resulting from this litigation;
3. Award compensatory damages to Rogers for MFD's defamatory and discriminatory actions against him; and
4. Award Rogers his costs, reasonable attorney's fees, and such additional relief as the Court deems proper.

SIGNATURE ON NEXT PAGE

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