

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

AMERICAN ISLAMIC WAQF
5001 Wilcox Road
Dublin, Ohio 43016,

10 CVH 1 1391

v.

Case No.

Hany Saqr
5169 Green Castle Ct.
Columbus, Ohio 43221

Judge

MOTION FOR TEMPORARY RESTRAINING ORDER
and REQUEST FOR EXPEDITED DISCOVERY

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2910 JAN 28 4 51 PM '11
CLERK OF COURTS - CV

Plaintiff American Islamic Waqf (hereinafter, "AIW") hereby respectfully moves the Court pursuant to Civil Rule 65 (A) of the Ohio Rules of Civil Procedure for a Temporary Restraining Order preventing Defendant Hany Saqr from:

1. Representing to any person that Saqr is the Chairman, Director, member, agent, or employee of the AIW Board.
2. Making a representation in any document or correspondence (including email), that Defendant Saqr is the Chairman, Director, member, agent, or employee of the AIW Board.
3. Taking any action while representing that it is authorized by, or on behalf of, AIW or NICC.
4. Soliciting any donations in the name of, or on behalf of AIW or NICC.
5. Utilizing AIW or NICC assets and intellectual property, including, but not limited to mailing lists, email directories, passwords, and software.
6. Retaining any assets belonging to AIW and/or NICC, including, but not limited to keys, email directories, mailing lists, passwords, software, etc.
7. Conducting any event or meeting that purports to be a meeting of AIW or its Board.
8. Conducting any event or meeting that purports to be an AIW or NICC function.
9. Directing any AIW or NICC employee or volunteer in the conduct of their work.

AIW asks that the Court waive the requirement for the posting of a bond.

A Memorandum in Support explaining the grounds for this Motion is attached and incorporated by reference. In addition, a Complaint and Affidavit of Jeffery Poth has been filed contemporaneously herewith and are incorporated by reference.

Respectfully submitted,

LANE, ALTON & HORST LLC



Edward G. Hubbard (0067784)
Jenifer A. French (0081951)
Two Miranova Place, Ste. 500
Columbus, Ohio 43215
614-228-6885; Fax: 614-228-0146
Attorneys for American Islamic Waqf

MEMORANDUM IN SUPPORT OF MOTION

Introduction

Plaintiff American Islamic Waqf (AIW) is a 501-(C)-3 charity operating in Franklin County, Ohio. AIW was founded on the premise of partnership with all Muslims and Non-Muslims who wish to contribute to the benefit of a good and healthy society. AIW is structured as a private foundation and is managed by a Board of Directors.

AIW owns and operates the Noor Islamic Cultural Center (NICC).¹ NICC is both a large multi-use facility and a platform to give more positive profile to the multi-cultural, multi-ethnic and multi-lingual Islamic Community in central Ohio.

Defendant Hany Saqr (Saqr) is a resident of Franklin County, Ohio and was a member of the AIW Board in 1998 and served as Director until October 27, 2009, when the Board, by vote, expressed no confidence in him and terminated his membership on the Board.

Since October 27, 2009 until date, Saqr has:

- A. Held himself out as the Chairman and Director of the AIW Board without legal right to do so.
- B. Attempted to direct and instruct AIW employees without legal right to do so.
- C. Developed and scheduled events under AIW's name without legal right to do so.
- D. Sent emails and announcements to the AIW address list and signed those communications as Chairman of the Board without legal right to do so.
- E. Unjustly retained possession of keys, email lists, account passwords, and other physical and intellectual property after the Board requested their return.

Basis for Granting of Temporary Restraining Order.

Rule 65 (A) of the Ohio Rules of Civil Procedure specifically authorizes the issuance of a temporary restraining order when the applicant has shown that "immediate and irreparable injury, loss or damage will result to the applicant . . ."

Unless this Court immediately restrains Saqr as requested in the Motion, AIW will suffer immediate and irreparable harm. First, AIW and NICC are funded by donations. Saqr's actions pose the substantial risk of causing donations intended for AIW and NICC to be misdirected to Saqr's control; even if used for charitable purposes, substantial implications with the Internal Revenue Service could then arise for both donors and AIW as Saqr is not a tax exempt charity.

Second, wide spread confusion as to AIW governance caused by Saqr will cause the community served by NICC to suspend their vital donations to AIW/NICC until such time that it is made clear to them that Saqr is no longer a member of the Board.

Third, there is a substantial risk that Saqr's actions will cause third parties to believe that he is authorized to act on behalf of AIW and/or NICC and, as such, rely on this belief to their detriment. In turn, this would lead such third parties to institute litigation against AIW under the doctrine of apparent authority. While AIW would deny such claims, it would nonetheless be obligated to defend them.

Finally, the confusion sown by Saqr's actions is undermining the ability of AIW to focus on its charitable mission.

It is impossible to measure AIW's injury in terms of monetary damages. Thus, a temporary restraining order is necessary to prevent irreparable injury. *Garano v. State*, (1988) 37 Ohio St. 3d 171, 173; *Poth Aff.* at par. XX.

The Court Should Dispense with the Requirement for Bond.

Plaintiff AIW hereby requests that the Court waive the requirement for a bond in the above-referenced action, as Saqr will not suffer any financial loss in the event it is later determined that the injunction ought not to have been granted. *Accord, In re Cattell* (1945), 146 Ohio St. 112, 64 N.E.2d 416.

This is because this dispute relates entirely to a claim by AIW, a charity, that Saqr is purporting to act on its behalf without authority to do so. To AIW's knowledge, Saqr is not doing so for self-profit or material gain and thus there is no potential financial loss to Saqr to bond against. Moreover, AIW is not seeking temporary control of any of account or asset owned by Saqr. As such, it is respectfully submitted that no bond be required.

The Court Must Order Expedited Discovery.

In order to ensure that the evidentiary hearing in this matter proceeds in an orderly fashion, AIW will serve discovery requests in this case immediately after the appearance of counsel on behalf of the Saqr. It is essential that Saqr respond to these requests before the


date of the hearing, so that AIW may create meaningful exhibits and limit the testimony of the witnesses.

Conclusion

For the reasons stated above, Plaintiff AIW respectfully moves the Court for an order specifically enjoining Defendant Hany Saqr and any persons or entities acting in concert with him, and allowing expedited discovery as set forth in the proposed Order attached hereto. Saqr, however, remains welcome to worship at AIW facilities. Plaintiff asks that the Court waive the requirement of bond.

Respectfully submitted,

LANE, ALTON & HORST LLC



Edward G. Hubbard (0067784)
ehubbard@lanealton.com
Jenifer A. French (0081951)
jfrench@lanealton.com
Two Miranova Place, Ste. 500
Columbus, Ohio 43215
614-228-6885; Fax: 614-228-0146
Attorneys for American Islamic Waqf