

IN THE CIRCUIT COURT OF THE 20th
JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA

Case No. 11-2020-CA-001791-0001

PAMELA VICKARYOUS, an individual,

Plaintiff,

vs.

MASON CLASSICAL ACADEMY, INC.,
A Florida not for profit corporation,

Defendant.

DEFENDANT'S OBJECTION TO PLAINTIFF'S
NOTICE OF NON-PARTY PRODUCTION

Defendant, MASON CLASSICAL ACADEMY, INC. ("MCA"), by and through its undersigned counsel and pursuant to Fla. R. Civ. P. 1.351, hereby objects to Plaintiff PAMELA VICKARYOUS ("Vickaryous") Notice of Non-Party Production and subpoena directed to Jennifer A. Borislow Insurance Agency, and states as follows:

1. MCA is a tuition-free charter K-12 school ("School"), which is chartered by the Collier County School Board.
2. Vickaryous was the principal for the School for the 2019-20 school year. She has alleged that she was wrongfully terminated in violation of the the state's private and public whistleblowers acts.
3. On December 3, 2020, Plaintiff filed her Notice of Non-Party Production, indicating that she intends to issue a subpoena duces tecum directed to Jennifer A. Borislow Insurance Agency, Inc. ("Borislow") in Methuen, MA. A copy is attached as **Exhibit "A"**.

4. David Bolduc, a board member at MCA, is an employee of Borislow.

5. Scott Moore, a former compliance officer with the School during the 2019-2020 school year, brought a whistleblower case against MCA in Case No. 2020-CA-001471-0001 (“Moore case”). In the Moore case, he alleged that he was terminated as a result of disclosing a possible conflict of interest to MCA’s board concerning Bolduc’s association with Captivated Health, which has common ownership with Borislow. Both are owned by an entity called B&G Holdings.

6. MCA was exploring new healthcare providers for School staff and met with representatives from Captivated Health for a presentation. Moore prepared a written notice to MCA’s board on Mar. 27, 2020 according to MCA Policy B 13.0, stating that Bolduc had not disclosed his relationship with Captivated Health before MCA voted on Mar. 23, 2020 to move forward with the next steps in determining whether a health plan with Captivated Health was best for the School. The School later voted on April 14 in favor of rescinding the Mar. 23 vote. The School decided that with the present demands on the administration, faculty and staff, along with the uncertainties surrounding COVID-19, stability and peace of mind favored remaining with its current healthcare provider.

7. Moore filed an identical Notice of Production of Non-Party directed to Borislow on Sept. 10, which was objected to by MCA. Those objections were never challenged before the case was resolved.

8. There are five categories of documents included in the proposed subpoena to Borislow, none of which will lead to the discovery of admissible evidence in this case. The Complaint does not include extensive factual allegations. As opposed to the Moore case which directly addressed his disclosure of Bolduc’s alleged conflict of interest, Plaintiff alleges that she

disclosed Sunshine Law violations (such as delaying the response to public records requests, secretly removing staff access to the email server and conducting MCA business outside of a properly noticed board meeting). She alleges that Moore's purported termination was also a violation, as it was not an agenda item.

9. MCA further objects to the production of the complete personnel file for Bolduc, and all payroll records for Bolduc (see #2, 3). These documents are not relevant to the instant case, and the requests are overbroad. Further, Bolduc is not a party to this suit, and his employment files and payroll records are privileged and confidential.

10. We will attempt to work with Plaintiff's counsel and determine whether he is agreeable to issuing an amended subpoena with requests which are not objectionable.

WHEREFORE, Mason Classical Academy respectfully requests that its objections to the proposed subpoena directed to Jennifer A. Borislow Insurance Agency, Inc. be sustained.

MARSHALL, DENNEHEY,
WARNER, COLEMAN & GOGGIN
Counsel for Defendant Mason Classical
Academy, Inc.
2400 E. Commercial Blvd., Suite 1100
Ft. Lauderdale, FL 33308
(954) 847-4920
(954) 627-6640 (facsimile)

By: /s/ Jonathan E. Kanov
JONATHAN E. KANOV
Florida Bar No. 91413
jekanov@mdwccg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-Portal this 11th day of December, 2020, to Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, FL 34135 (byormak@yormaklaw.com).

By: s/ Jonathan E. Kanov

**CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA**

PAMELA VICKARYOUS, an individual,

Plaintiff,

v.

MASON CLASSICAL ACADEMY, INC., a Florida
not for profit corporation,

Defendant.

CIVIL ACTION

Case No. 20-CA-1791

Judge: Hugh D. Hayes

PLAINTIFF'S NOTICE OF NON-PARTY PRODUCTION

YOU ARE HEREBY NOTIFIED that after ten (10) days from the date of service of this Notice, and if no objection is received from any party, the undersigned will issue or apply to the Clerk of the Court for issuance of the attached subpoena directed to:

JENNIFER A. BORISLOW INSURANCE AGENCY, INC.
c/o Jennifer A. Borislow, Registered Agent
ONE GRIFFIN BROOK DRIVE
METHUEN, MA 01844

Dated: December 3, 2020

s/ Benjamin H. Yormak

Benjamin H. Yormak
Florida Bar Number 71272
Trial Counsel for Plaintiff
YORMAK EMPLOYMENT & DISABILITY LAW
9990 Coconut Road
Bonita Springs, Florida 34135
Telephone: (239) 985-9691
Fax: (239) 288-2534
Email: byormak@yormaklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2020, I delivered the foregoing document by electronic mail to:

jekanov@mdwcg.com

kafriday@mdwcg.com

/s Benjamin H. Yormak

Benjamin H. Yormak

**CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA**

PAMELA VICKARYOUS, an individual,

Plaintiff,

v.

MASON CLASSICAL ACADEMY, INC., a Florida
not for profit corporation,

Defendant.

CIVIL ACTION

Case No. 20-CA-1791

Judge: Hugh D. Hayes

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO: JENNIFER A. BORISLOW INSURANCE AGENCY, INC.
c/o Jennifer A. Borislow, Registered Agent
ONE GRIFFIN BROOK DRIVE
METHUEN, MA 01844

YOU ARE COMMANDED to appear at, mail or otherwise deliver to Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, Florida 34135, within 15 days from service hereof, and to have with you, mail or otherwise deliver, at the above place and time the documents identified below.

INSTRUCTIONS

1. When producing the requested documents, keep all documents segregated by the file in which the documents are contained and the name of the documents being produced.

2. If such file(s) or document(s) have been removed for purposes of this action or for some other purpose, identify the person who removed the file or document, the title of the file and each sub-file, if any, maintained within the file, and the present location of the file or document.

3. If you choose to withhold any documents from production on the ground of privilege, identify the documents so withheld and state the grounds for withholding these documents.

4. The items enumerated below will be inspected and may be copied. YOU WILL NOT BE REQUIRED TO SURRENDER THE ORIGINAL ITEMS. You may comply with this subpoena by providing via U.S. Mail, other delivery, or electronic transmittal true, correct, legible, and complete copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. Such delivery will eliminate your appearance at the time and place specified. You may condition the preparation of the copies upon the payment in advance or the reasonable cost of preparation. You have the right to object to the production pursuant to this subpoena at any time before the date of production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

5. If you fail to:

- (1) Appear as specified,
- (2) Furnish the records instead of appearing as specified, or
- (3) Object to this subpoena,

you may be in contempt of court. You are subpoenaed by the attorney named below, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

DEFINITIONS

1. The term “you” shall refer to JENNIFER A. BORISLOW INSURANCE AGENCY, INC. and “Captivated Health”, along with your agents, servants, employees, attorneys, consultants, accountants, auditors, and all other persons or entities over whom you have or had control or who has been hired, retained, or employed for any purpose by you, whether directly by you or through any other persons or entity acting, or purporting to act, on your behalf.

2. The term “document” or “documentation” shall refer to and shall include, without limitation and in the singular as well as in the plural, any stored or retained data or information in any form, including but not limited to all memoranda (including written memoranda of telephone conversations, other oral communications, discussions, agreements, acts, and activities), letters, postcards, telegrams, intra-office and interoffice communications, electronic communications, correspondence, handwritten or typewritten notes, pamphlets, diaries, sound recordings, transcripts of sound recordings, contracts, agreements, books, reports, catalogs, price lists, financial statements, book of accounts, journals, ledgers, purchase orders, invoices, indices, summaries and histories of customer transactions, data processing cards, other data processing materials, data sheets, tapes, e-mail messages, electronic mail system messages or other electronic communications, photographs, photo-stats, microfilm, maps, directives, bulletins, circulars, notices, messages, tabulations, notes, economic or statistical studies, surveys, polls, minutes, instructions, requests, canceled checks, calendars, desk pads, appointment books, scrapbooks, notebooks, specifications, drawings, diagrams, sketches, and writings and records of every kind and character, including preliminary drafts and other copies of the foregoing, however produced or reproduced.

3. The term “communication” shall refer to any oral or written statement, dialogue, colloquy, discussion, correspondence, conversation, exchange or transfer of words, thoughts, or ideas to or among any person or persons, whether it be person to person or in a group, by means of words or documents, including any transfer of data from one location to another by electronic or similar means. All such communications and writings shall include, without limitation, printed, typed, handwritten, electronic or other documents, correspondence, memoranda, reports, minutes, notes, audio recordings, and video recordings. The word “correspondence” refers to and includes, but is not limited to, any letter, e-mails, text message, fax, notice or message.

4. The terms “any and all” shall refer to and shall include every document, as defined above, within your possession, custody, or control, or which may be located or discoverable by reasonably diligent efforts.

5. The terms “showing” or “reflecting” shall refer to constituting describing, discussing, mentioning, commenting about, referring to, reflecting, or in any way logically or factually connecting with the matter described in that paragraph of this subpoena.

DOCUMENTS TO BE PRODUCED

1. Complete copy of the personnel file for David Bolduc, including any applications for employment by David Bolduc.
2. Payroll records for David Bolduc.
3. All communication to/from Mason Classical Academy, Inc (including anyone acting on behalf of Mason Classical Academy, Inc.).
4. All contracts and draft contracts prepared for Mason Classical Academy, Inc.
5. All communications to/from Kelly Lichter, including but not limited to klichter@masonacademy.com, lichterkelly@gmail.com and (239) 285-3599.

DATED this _____ day of December, 2020.

ISSUED FOR THE COURT:

s/ Benjamin H. Yormak

Benjamin H. Yormak

Florida Bar Number 71272

Trial Counsel for Plaintiff

YORMAK EMPLOYMENT & DISABILITY LAW

9990 Coconut Road

Bonita Springs, Florida 34135

Telephone: (239) 985-9691

Fax: (239) 288-2534

Email: byormak@yormaklaw.com