IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA, a municipal corporation, 400 6th Street, N.W. Washington, D.C. 20001, Plaintiff, v. **PAVILION USA 2020, INC.** Serve: 1015 15th Street, N.W., #1000 Washington, D.C. 20016 **and** **FREDERICK BUSH** Serve: 1200 23rd Street NW, Apt 906 Washington, DC 20037 **and** **ALAN M. DUNN** Serve: 3338 Reservoir Road, N.W. Washington, DC 20007 Defendants.	Civil Action No.: ____________________

COMPLAINT FOR VIOLATIONS OF THE
NONPROFIT CORPORATION ACT AND THE COMMON LAW

Plaintiff, the District of Columbia (the "District"), through the Office of the Attorney General, brings this action against Defendants Pavilion USA 2020 Inc. ("Pavilion USA"), Frederick Bush ("Bush"), and Alan M. Dunn ("Dunn") for violations of the District's Nonprofit Corporation Act ("NCA"), D.C. Official Code § 29-401.01 *et seq*., and the common law. In support of its claims, the District states as follows:

INTRODUCTION

1. Pavilion USA is a now-dissolved District nonprofit founded by the two individual Defendants to raise $60 million to operate the U.S. pavilion at the 2020 World's Fair Exposition in Dubai. Rather than serving this public purpose, the individual Defendants instead used their control over the nonprofit to pay themselves more than $350,000 in unreasonable compensation. Bush and Dunn obtained this compensation by misleading Pavilion USA's independent Board members and undermining internal controls of the nonprofit. Bush and Dunn worked together to advance their financial interests through Pavilion USA, while at the same time contributing to mismanagement that led to the nonprofit failing at its stated goal. Through this enforcement action, the District seeks a constructive trust to recover the compensation that Pavilion USA improperly paid to directors Bush and Dunn and to direct those funds toward the furtherance of an appropriate nonprofit purpose.

PARTIES

2. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory containing the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District, and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is responsible for ensuring that nonprofits operating in the District or under its laws operate for a public purpose under statute and common law and is expressly authorized to enforce the provisions of the District's Nonprofit Corporation Act as stated in D.C. Code § 29-412.20(a).

3. Defendant Pavilion USA was a nonprofit charitable corporation incorporated under the laws of the District of Columbia in April 2018. It was also exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986. It dissolved in August 2019.

4. Defendant Frederick Bush is a founding director of Pavilion USA. Bush was chairman to the Pavilion USA Board from its inception in April 2018 until he resigned in or about May 2019. He also entered into a compensation agreement with Pavilion USA to be paid as an independent contractor for his fundraising services. In both roles, director and independent contractor, Bush was involved with developing, implementing, and enacting most of Pavilion USA's major operating policies, and formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

5. Defendant Alan M. Dunn is a founding director of Pavilion USA. Dunn served as Board member from Pavilion USA's inception in April 2018 until its dissolution in August 2019. Throughout this period, Dunn, through his firm AMDE, LLC, also served as general counsel to Pavilion USA. At all times relevant to this Complaint, Dunn formulated, directed, controlled, had the authority to control, participated in, or with knowledge approved of the unlawful acts and practices set forth in this Complaint.

JURISDICTION

6. This Court has subject matter jurisdiction over this matter under D.C. Code § 11-921, § 29-412.20(a)(1), § 1-301.81 and the common law.

7. This Court has personal jurisdiction over defendant Pavilion USA under D.C. Code § 13-422.

8. This Court has personal jurisdiction over defendants Frederick Bush and Alan M. Dunn under D.C. Code § 13-422 and § 13-423.

FACTS GIVING RISE TO THE DISTRICT'S CLAIMS

9. Pavilion USA was incorporated as a District nonprofit on April 6, 2018, as part of a proposal to partner with the United States Department of State ("State Department") "to oversee and operate a USA pavilion at [the 2020 World's Fair]" in Dubai. The State Department selected Pavilion USA in May 2018 and instructed it to first fundraise and then design the pavilion.

10. Pavilion USA's articles of incorporation and bylaws specifically prohibit private inurement of its nonprofit funds. The bylaws also specifically prohibit compensation to any director unless the director serves the nonprofit corporation in another capacity, for which he or she may receive reasonable compensation.

11. At various points throughout its existence, Pavilion USA tried to implement controls to prevent private inurement. For example, soon after its incorporation, Pavilion USA retained an outside accounting firm, Gelman, Rosenberg & Freedman ("Gelman") to provide advice on compensation and procurement policies. Pavilion USA determined that an outside opinion on these issues was needed in part because of the high visibility of its public project.

12. In July 2018, Gelman advised Pavilion USA to expand its Board to include independent members with no financial stake in Pavilion USA and involve those members in evaluating and approving compensation. Gelman also recommended that Pavilion USA document the reasonableness of payments in any interested party transaction and adopt a conflict-of-interest policy.

13. Following this recommendation, the Board added additional members over the course of the next several months. The Board eventually consisted of seven directors. Three of these directors, including Bush and Dunn, had a financial stake in the corporation. The other four directors had no financial interest and were considered independent directors.

14. Because several Board members intended to provide services to Pavilion USA beyond their roles on the Board and seek compensation for these services, Pavilion USA requested further guidance from Gelman as to whether such services would be properly classified as those of an employee or of an independent contractor.

15. One such individual was Bush, who sought to provide fundraising services as an independent contractor. Bush had a personal financial interest in classifying his fundraising services as those of an independent contractor rather than an employee.

16. In September 2018, Gelman advised that if a Pavilion USA Board member's work in a capacity outside of Board service included day-to-day management, such work would be considered that of an employee rather than an independent contractor. Compensation for work involving day-to-day management should be reported on a W-2.

17. Part of Gelman's advice applied specifically to Bush, finding that he should be classified as an employee if he was retained to provide fundraising services.

18. At the end of September 2018, Pavilion USA's Chief Financial Officer ("CFO") requested that Gelman formalize this advice into a written opinion in light of the potential legal and financial ramifications to Pavilion USA should Bush's fundraising services be misclassified. As part of Gelman's preparation of this analysis, Bush was asked to supply responses to Gelman's requests for additional information regarding his responsibilities and duties as a fundraiser.

19. In his September 2018 financial report, Pavilion USA's CFO strongly urged the Board to take caution in ensuring that any compensation to potential "insiders," including Bush and Dunn, be reasonable and not above-market. He also noted that although Pavilion USA had strong internal controls in place, there was a serious concern about lack of compliance. The CFO reiterated these concerns in his December 2018 financial report.

20. At a November 2018 meeting, the Board resolved to establish compensation and procurement committees. The purpose of these committees was to evaluate transactions that could involve conflicts of interest, such as Dunn's and Bush's compensation agreements, and offer recommendations to the full Board on how to proceed with such transactions.

21. However, Bush and Dunn pushed their compensation contracts to be approved by the Board before either committee could be sufficiently staffed to review their contracts and provide needed independent oversight.

A. Bush's Push to Secure a Favorable Compensation Agreement Undercut Pavilion USA Controls and Led to Mass Board Resignations.

22. On October 24, 2018, Pavilion USA received its first fundraising offer from an outside sponsor, Sky Food Catering ("Sky Food"), a Minneapolis food services company. Sky Food agreed to donate $1,000,000 for the right to operate all food and drink concessions at the U.S. pavilion. Even though Sky Food's primary business was airline catering, and it had no experience running restaurants, Bush did not solicit competing offers for this contract. Bush also rejected advice from Pavilion USA's CFO to engage an expert to establish the market value of the concession.

23. During this time, even though Gelman was still in the process of preparing its formal opinion on Bush's classification and the Board was still trying to staff up compensation and procurement committees, Bush pushed to formalize his compensation agreement as an independent contractor to oversee Pavilion USA's fundraising efforts. Per the terms of his contract with Pavilion USA, Bush would be paid to manage the entity's fundraising program, meet with potential sponsors, and identify support for the project inside and outside of the United States government. He also sought to receive compensation retroactively to June 1, 2018, even though he was not actively fundraising at that time or throughout the summer of 2018. His responsibilities

largely overlapped with that of Pavilion USA's Chief Executive Officer ("CEO"), Gregory Houston.

24. The Board accepted Sky Food's proposal at its November 16, 2018 meeting, in part because Bush insisted that Pavilion USA urgently needed funds.

25. At this same November 16, 2018 meeting, the Board adopted an interim compensation package for Bush, setting his pay at $200,000 per year as an independent contractor.

26. Bush eventually received his initial payments from the funds obtained from Sky Food.

27. By urging the Board to accept Sky Food's proposal, Bush put Pavilion USA's longer-term fundraising prospects at risk for the sake of ensuring his own immediate compensation: he advised the Board to accept a sponsorship agreement that would result in quicker funding of his compensation arrangement but would preclude potentially higher sponsorship offers. In doing so, he abandoned his fiduciary duties as a director and as Board Chair.

28. At a December 14, 2018, board meeting, the Board voted to re-approve Bush's compensation at the increase of $206,000 per year. At this meeting, an independent Board member inquired why Bush would be paid as an independent contractor when CEO Greg Houston was paid as an employee for similar management work. However, the independent Board members were not informed about Bush's personal financial interest in being paid as an independent contractor and were not provided with Gelman's assessment that Bush should be classified as an employee.

29. Prior to the November 16, and December 14, 2018 votes, the Board did not look at any comparability data or other information to determine whether Bush's proposed pay was reasonable or whether fundraising services could be obtained for a better price from disinterested parties.

30. Bush's classification as an independent contractor in his compensation agreements continued to be a subject of dispute between Bush and Pavilion USA's CEO Greg Houston. Bush was aware that Gelman's analysis found that Bush's independent contractor classification was arguably unlawful and placed Pavilion USA at risk of losing its IRS tax-exempt status.

31. After Bush introduced a revised independent contractor agreement for himself that increased his annual compensation to $207,000 at a January 25, 2019 Board meeting, Houston informed the full Board that Bush's classification as an independent contractor was still the subject of dispute.

32. However, rather than provide the independent Board members with Gelman's analysis determining that Bush should be classified as an employee rather than an independent contractor – the result of a months-long impartial review for which Pavilion USA had paid Gelman – Dunn provided a misleading summary of Gelman's assessment. Dunn incorrectly stated that Gelman was equivocal about whether Bush could be classified as an independent contractor and that Gelman's analysis was based upon incorrect information supplied by Pavilion USA's CEO and CFO, the two individuals who had been flagging Bush's problematic compensation arrangement for months. The CEO again interjected that Bush should be treated as an employee given his influence over Pavilion USA's operations. The Board ended the meeting without a vote on Bush's compensation arrangement.

33. That same day, one of the independent directors resigned, in part because of the ongoing conflict between Pavilion USA's CEO, Bush, and Dunn that included their disagreement over Bush's compensation agreement.

34. Continuing to undermine the independently prepared Gelman report, Dunn prepared his own memo that, without support, reached the opposite conclusion, that Bush's

fundraising services should be classified as those of an independent contractor. Dunn sent his memo to Bush, as Board chair, on January 31, 2019.

35. Bush and Dunn then held an "emergency" Board meeting on February 12, 2019, without two of the independent directors present, and stripped the CEO of several of his core responsibilities. The independent directors subsequently expressed concerns about "the unilateral actions." The two absent directors and one who was present at the emergency meeting resigned from the Board the following day. One independent director specifically noted the ongoing conflicts and problematic behavior of the remaining Board members as a reason for resigning.

36. At a Board meeting on February 14, 2019, the three remaining directors, including Bush and Dunn, resolved to terminate CEO Houston's employment with Pavilion USA.

37. Bush failed to fulfill the fundraising requirements set for him by Pavilion USA: by the end of December 2018, he had only raised $1.5 million out of a projected $37 million.

38. On April 29, 2019, the State Department terminated its relationship with Pavilion USA, emphasizing the entity's significant fundraising shortfalls. These fundraising shortfalls constituted an utter failure to fulfill Pavilion USA's nonprofit purpose.

39. By May 6, 2019, Bush resigned as Chairman of the Board.

B. <u>Dunn Negotiates a Compensation Arrangement Including a Favorable Risk Premium and Covering Months when His Bar License Was Suspended.</u>

40. In November and December 2018, Dunn also was negotiating a compensation agreement with Pavilion USA that would give him special benefits that were unavailable to other vendors and employees.

41. On November 7, 2018, Dunn sent Pavilion USA's CEO a proposed compensation agreement paying Dunn $5,000 per month for legal services, including retroactive payments beginning in March 2018. The agreement included a "risk premium" that doubled Dunn's monthly

fee to $10,000 if Dunn was paid late, which protected Dunn from receiving reduced or delayed compensation as a result of fundraising shortfalls.

42. After the CEO challenged the monthly risk premium as excessive, Dunn reconfigured his compensation arrangement to include an $8,000 monthly fee and a $2,000 monthly risk premium for late payment. Although he nominally reduced his risk premium, Dunn increased his regular compensation and would still receive $10,000 per month for his work if payments were late. Dunn received the full $10,000 per month in 2018. Pavilion USA's CEO and CFO continued to object to the proposal.

43. Pavilion USA's other service providers did not have similar risk premiums in their contracts. Many had been providing services to the nonprofit, or in furtherance of the design of the pavilion, since Pavilion USA's inception in April 2018 and had not been compensated.

44. On December 21 and 22, 2018, the independent directors of the Board approved Dunn's compensation agreement through an email vote, paying him at a rate of $10,000 per month totaling $70,000 for the period between June 1, 2018 and December 31, 2018. This sum included the risk premium.

45. At the time of their approval, the independent Board members were unaware that the agreement contained a de facto risk premium. They also did not know that Pavilion USA's CEO never approved the $10,000 monthly fee presented to the Board.

46. The Board failed to review comparability data or consider whether the services Dunn proposed to provide could be obtained for a better price or without a risk premium from disinterested parties.

47. Additionally, at the time the Board approved Dunn's compensation, it was unaware that Dunn's D.C. Bar membership had been suspended in October 2018. Dunn continued performing legal work for Pavilion USA without notifying the Board of the suspension.

48. Pavilion USA also retroactively paid Dunn $30,000 for work he allegedly performed during the pre-State Department award period from March to May 2018. Other entities with which Pavilion USA contracted were not compensated for their services during this period.

C. Bush and Dunn's Conduct Caused the Nonprofit to Provide Them with Private Benefit to the Detriment of Nonprofit Assets and Mission.

49. Bush and Dunn coordinated to push and obtain unreasonable compensation packages for themselves and to the detriment of the nonprofit. They also withheld Gelman's advice and opinion from the independent Board members to ensure that Bush would be compensated as an independent contractor. Bush's ultimate classification and payment as an independent contractor benefited Bush, provided no benefit to the nonprofit, and subjected Pavilion USA to legal exposure and potential financial detriment.

50. When Bush and Dunn sought approval of their compensation arrangements, they knew, or should have known, that Pavilion USA was not meeting its fundraising goals and had significant funding shortfalls. Many of Pavilion USA's employees and consortium partners faced risks of delayed or non-existent payments, and of being out of pocket on large outlays of funds in support of the project.

51. Bush and Dunn's focus on prioritizing their financial interests over their fiduciary duties to Pavilion USA caused Pavilion USA to ignore the advice received from Gelman and from Pavilion USA's own CFO, to fail to meet its own procedures for ensuring that compensation agreements and procurement were reasonable, and to approve contracts for Bush and Dunn, without full knowledge of material facts, that were improper private inurement to those directors

and were not in the interest of Pavilion USA. Payments received from sponsorships were used to compensate Bush and Dunn rather than further Pavilion USA's nonprofit purpose.

52. By prioritizing their own compensation and sowing discord among the Board, Bush and Dunn caused Pavilion USA to exceed or abuse its authority and act contrary to its nonprofit purpose for the sake of their private benefit.

53. Bush and Dunn are still in possession or control of nonprofit funds they received as compensation as a result of their improper conduct, which they have failed to repay and which the nonprofit failed during its existence to recoup.

COUNT I

(Against all Defendants for Exceeding or Abusing the Authority Conferred by Law or Continuing to Act Contrary to Nonprofit Purposes in Violation of D.C. Code § 29-412.20(a)(1)(B)-(C))

54. The District re-alleges paragraphs 1 through 53 as if set forth fully in this paragraph.

55. The District's NCA broadly empowers the Attorney General to police nonprofits incorporated under District law. This includes the ability to secure broad equitable relief whenever a District nonprofit "has exceeded or abused and is continuing to exceed or abuse the authority conferred on it by law" or "has continued to act contrary to its nonprofit purposes." D.C. Code § 29-412.20(a)(1)(B)-(C).

56. In the District, a charitable corporation must adhere to the nonprofit purposes outlined in its bylaws and articles of incorporation. D.C. Code § 29-402.06(b).

57. Pursuant to its articles of incorporation, Pavilion USA was required to spend its funds exclusively for charitable purposes and for the specific purpose of overseeing and operating a U.S. pavilion at the 2020 World's Fair Exposition in Dubai. Pavilion USA was further prohibited from allowing its funds to be spent in any way that violated the prohibition on private inurement.

58. By engaging in private inurement transactions for the private benefit of the individual Defendants, and by failing to implement procedures to ensure that interested party transactions were reasonable, appropriately authorized, and fair to the nonprofit, Defendants have violated or caused the nonprofit to violate, and continue to violate, the authority granted to Pavilion USA by the NCA and its organizational documents.

59. Defendants have exceeded or abused, or caused the nonprofit corporation to exceed and abuse, and continue to exceed or abuse, the authority conferred on them by law, in violation of the District's NCA.

60. Defendants have acted or caused the nonprofit to act, and continue to act, contrary to Pavilions USA's nonprofit purpose, in violation of the District's NCA.

61. Defendants are in possession or control of nonprofit funds through their improper conduct that they have failed to repay and that the nonprofit failed during its existence to recoup. In equity, Defendants should not be in possession of these funds and a constructive trust should be imposed over these funds to restore these funds to the benefit of Pavilions USA's stated charitable purposes.

COUNT II

(Against all Defendants Pursuant to the Common Law)

62. The District re-alleges paragraphs 1 through 53 as if set forth fully in this paragraph.

63. The Attorney General has broad common law authority to ensure that the governance and funds of a District charitable corporation are exercised and used in ways that benefit the public and that charitable funds are not wasted, used for private inurement, or otherwise used in a manner incompatible with a nonprofit purpose or the directors' fiduciary duties.

64. Defendants diverted nonprofit funds to the private benefit of Bush and Dunn through compensation agreements that did not serve Pavilion USA's nonprofit purpose, and they failed to ensure that interested party transactions were reasonable, appropriately authorized, and fair to the nonprofit.

65. Defendants have failed to safeguard nonprofit assets and observe basic governance and accountability standards.

66. Defendants' failure to meet their fiduciary duties in ensuring that nonprofit funds are spent in ways that benefit the public and avoid waste and in accordance with Pavilion USA's charitable purposes violates these responsibilities of a charitable corporation under the common law, and entitles the District to appropriate equitable relief, including a constructive trust over all funds Pavilion USA paid to Bush and Dunn.

PRAYER FOR RELIEF

WHEREFORE, the District, pursuant to the Nonprofit Corporation Act, D.C. Official Code § 29-412.20(a) and the common law, requests that this Court:

A. Impose a constructive trust over all unreasonable compensation and benefits paid directly or indirectly by Defendant Pavilion USA to Defendants Bush and Dunn, to restore these funds to the benefit of Pavilion USA's stated charitable purposes;

B. Order such other equitable and injunctive relief as the Court determines to be just and proper.

Dated: June 4, 2021

Respectfully submitted,

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