

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CHICAGO ASSOCIATION OF)
REALTORS® and VIRGINIA)
DOWNS)
Plaintiffs,)
v.)
ANDREA GELLER,)
Defendant.)

No.

2012L010003
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Other Com Litigation

COMPLAINT

The CHICAGO ASSOCIATION OF REALTORS®, an Illinois not-for-profit corporation, and VIRGINIA DOWNS, for their Complaint against ANDREA GELLER, allege as follows:

1. Geller knowingly or recklessly published a series of statements on the internet falsely claiming the existence of financial irregularities and dishonest actions by Chicago Association of Realtors® and Virginia Downs. Geller's libelous postings constitute defamation *per se*.

Parties, Jurisdiction & Venue

2. The Chicago Association of Realtors® ("Association") is a professional association of members of the real estate community dedicated to providing information, education, support, and advocating on real estate-related issues in the Chicago area.

3. The Association was founded in 1883 and has a long history of integrity and service to real estate professionals and the community.

4. Virginia Downs is the Chief Executive Officer of the Association.

5. Downs also holds various leadership positions in the real estate industry, including Chair of the National Association of REALTORS'® Executive Committee, Treasurer on the Board of Regents of REALTOR® University, member of the Marshall Bennett Institute of Real Estate Advisory Board, member of the Real Estate Advisory Committee of John Marshall Law School, member of the Real Estate Advisory Committee of DePaul University, Director of The Chicago Alliance to End Homelessness and the Emergency Fund, and member of the Goldie B. Wolfe Milles Scholarship Advisory Council. Downs enjoys an excellent reputation within her profession.

6. The Association is often referred to by the acronym "C.A.R." or "CAR".

7. Andrea Geller is a real estate agent licensed in Illinois.

8. Geller resides in Chicago, Cook County, Illinois.

9. There is jurisdiction over Geller because she is a resident of Illinois.

10. Venue is proper because Geller resides in Chicago, Cook County, Illinois and because the acts giving rise to the complaint were committed in Chicago.

Facts

11. The Chicago Association of Realtors is a professional association governed by a volunteer Board of Directors and managed by paid professional staff.

12. The Chief Executive Officer is the chief administrative officer of the Association and is responsible for the management, execution, and administration of the business and affairs of the Association.

13. Warren Frank is the Chief Operations and Financial Officer of the Association and oversees the Associations' finances. Frank is a Certified Public

Accountant, with an MBA, Management at Northwestern University, Kellogg School of Management and an Adjunct Professor of Finance at Columbia College in Chicago.

14. The Association's Board of Directors are selected by the members of the Association through election in accordance with the By-Laws of the Association.

15. Geller is a member of the Association. She previously served on the Association's Board of Directors. She does not currently serve as a member of the Board of Directors.

16. The Association maintains a number of standing committees to assist the Board of Directors in carrying out its duties and responsibilities.

17. The Finance Committee is a Standing Committee of the Association.

18. The Finance Committee is comprised of the Secretary/Treasurer of the Association and 10 at-large members.

19. The Finance Committee works with the Association's senior management to provide oversight of the financial management and financial reporting activities of the Association.

20. Members of the Finance Committee have a duty not to disclose confidential financial information regarding the Association that they may have access to as part of their service on the Committee.

21. The Board of Directors has established an Audit Subcommittee to oversee audits; the financial accounting process; internal controls regarding finance,

accounting, and use of assets; and to take an active role in the prevention and deterrence of fraud.

22. The Audit Subcommittee has between five and seven members, including at least one non-Director and one past president.

23. Association Officers (the President, President-Elect, and Secretary/Treasurer) may not simultaneously serve on the Audit Subcommittee.

24. No member of the Audit Subcommittee may serve simultaneously as a member of the Finance Committee.

25. No member of the Audit Subcommittee can be related to any other member of the Subcommittee or to any member of the Finance Committee.

26. In 2011, Geller was appointed as a member of the Finance Committee.

27. As of the date of this Complaint, Geller remains a member of the Finance Committee.

28. In June 2012, Geller requested to review tax returns for the Association and related various entities. Geller was promptly provided with tax information for 2009, 2010, and 2011.

29. Geller then asked to review all of the tax returns for the Association and all of its related entities dating back to 2005. Geller was advised that if she wanted financial information in addition to the information that was already made available pursuant to the Association's existing policies, she should make a specific request to the Board explaining the documents she wanted and the rationale for the additional documents and review. Geller never made that request or provided

additional information regarding the justification for her request for additional documents.

30. Geller stated that she would take her concerns to the Audit Subcommittee. Geller was advised that if she provided specific concerns to the Audit Subcommittee the Audit Subcommittee would investigate Geller's concerns.

31. Geller indicated that she had "concerns" about Association financials, but never specifically identified the substance of her concerns to any member of the Audit Subcommittee.

32. On October 6, 2010, the Association Board of Directors adopted Section 424 of the Association's Policy Manual, establishing a "Whistleblower Policy."

33. The Whistleblower Policy establishes procedures for members, employees, and officers of the Association to submit concerns regarding financial, accounting, and auditing matters, as well as compliance with state or federal laws.

34. Under the Whistleblower Policy all Association volunteers, including members of the Finance Committee, have an obligation to report in writing questionable or improper accounting or audit matters and violations and suspected violations of state and federal law. Concerns are submitted to the Chair of the Audit Subcommittee, and the Audit Subcommittee promptly investigates.

35. The Whistleblower Policy requires that anyone reporting a concern must do so in good faith and have reasonable grounds. The Whistleblower Policy prohibits making malicious, reckless, or false allegations.

36. Geller was provided a copy of the Whistleblower Policy and urged to report any concerns so an investigation could be conducted.

37. Geller never reported any concerns to the Audit Subcommittee.

38. Geller did not come forward with any concerns because she would have violated the Whistleblower Policy against making malicious, reckless, or false allegations.

39. The Association Bylaws require, as a condition of membership, that all members of the Association comply with the Bylaws and the rules and regulations of the Association.

40. On July 16, 2012, the Association Board of Directors made a leadership change by replacing its then-President Robert Floss with its President-Elect, Ezekiel "Zeke" Morris.

41. Chicago Agent Magazine is a trade magazine for the Chicago area real estate community, with a stated circulation of 500 residential real estate offices and 32,000 email recipients.

42. Chicago Agent Magazine is primarily circulated by email and through Chicago Agent Magazine's website.

43. On July 23, 2012, Chicago Agent Magazine published an article announcing that Zeke Morris had become President of the Association. The article was entitled: "Zeke Morris Begins Presidency Ahead of Schedule."

44. Geller and Floss are friends and professional colleagues. Geller strongly disagreed with the Board's decision to change leadership from Floss to Morris.

45. Immediately after the July 23rd Chicago Agent article was released, Geller was the first to post a comment to the article on Chicago Agent Magazine's website stating that it was a "sad day" for the Association.

46. On August 20, 2012, Chicago Agent Magazine published another article, entitled: "Bob Floss Speaks Out On Impeachment."

47. Immediately after the August 20th Chicago Agent article Geller began posting negative comments about the Association, Virginia Downs, Warren Frank, and the Board of Directors and officers of the Association of Realtors.

48. Geller was the first to post a comment to the August 20 Chicago Agent Magazine Article. She posted the following comments to the August 20th article on Chicago Agent Magazine's website <http://chicagoagentmagazine.com/former-car-president-bob-floss-speaks-out-on-impeachment/>:

- a. As a member of the finance committee I was in the room at the June finance committee meeting when Bob Floss announced that the current treasurer, president-elect and himself would be "going through the books" as a result of questions that had arisen about the financials of the different non-profit and for profit entities of CAR. The expression on the faces of the CEO, Ginger Downs and the CFO, Warren Frank were those of extreme fear. I had never seen two people looking that nervous.
- b. Over the time I sat as a member of the finance committee it became clear to me that there were irregularities which when asked about would be responded to in a round about way or direct responses from the CEO such as she does not answer to the committee, only to her board of

directors. It is financials. Numbers are numbers not a short story or novel long explanation.

- c. The whistle blower policy was created in June of 2012 as this was coming to a head. What I have discovered after reading the bylaws that the CEO has slowly tweaked over the years, is that there really are not checks and balances in place to protect the association against the CEO in cases where there are allegations.
- d. The way the bylaws and policies have been tweaked there really are no checks and balances in place that truly give us a fair way as members to address the issues. How do we know that if we can get a third party forensic audit that there are no pre-existing relationships such as with the CEO, CFO, or board members?

It has always amazed me that there are no background checks done on the executive officers (President, President-Elect, Treasurer) who sign the checks at CAR. When I asked about it, I was told the board voted the motion down recently. I cannot even be a part of a relocation program to sell a home without one. These people have access to millions of dollars.

49. Geller's August 20th postings on Chicago Agent Magazine's website contained false statements that she either knew were false or that she made recklessly without regard for their truth.

50. Geller, on or about August 21, 2012, posted on the "Raise the Bar in Real Estate Facebook Page," <http://www.facebook.com/groups/RaiseTheBar/>:

- a. At my loca [sic] association we don't even enforce the COE for our 'officers' (I am using the term loosely right now:) [sic]
- b. It just seems like a pile of cover-ups.
- c. What gets me on the award thing [sic] goes awarding people for bad behavior. I suspect she is also tied to the financial mess at CAR as well. She

was fighting tooth and nail not to allow the President to go through the financials.

- d. You think the master charter of NAR would allow it to step in where there is this level of suspicion of 'irregularities' at one of their local boards. As far as Ginger's salary- I cannot believe the board opted to renew her contract again, especially with all that is going on. Who are they protecting? This has been going on for a while but it is finally out in the public.
- e. It is the bylaws that the current CEO throws out there to protect herself from providing full financials.

The reason for the forensic audit is because even if the policy and bylaws [sic] do not allow for the way the money has been spent.

51. Geller's August 21st postings on Raise the Bar in Real Estate Facebook Page contained false statements that she either knew were false or that she made recklessly without regard for their truth.

52. Geller, on August 21, 2012, then posted a link on the "Raise the Bar in Real Estate Facebook Page" encouraging viewers to read her August 20th posting on Chicago Agent Magazine's website.

53. As of August 22, 2012, Geller had still never reported any financial concerns to the Chair of the Audit Subcommittee or to anybody else on the Audit Subcommittee. Geller has never identified the "irregularities" to which she refers in her postings.

54. Geller, on August 22, 2012, again posted on Chicago Agent Magazine's website <http://chicagoagentmagazine.com/former-car-president-bob-floss-speaks-out-on-impeachment/>:

- a. The time has come for members to call for a forensic audit.

I have seen many documents including the the [sic] tax returns and annual audit. Being that Ginger Downs is a former auditor, she knows how to make sure everything is in the correct columns. That is only what the annual audit tells us.

- b. I came to realize over the years a pattern with the current CEO. She only seems to want to follow the bylaws when it appears to work to her advantage.

55. Geller's August 22nd postings on the Chicago Agent Magazine's website contained false statements that she either knew were false or that she made recklessly without regard for their truth.

56. On August 23, 2012, the Association posted on the members-only section of its website five years of information, including its audited financials with notes, 990 statements, and tax returns.

57. Geller, on August 23, 2012, posted on Chicago Agent Magazine's website <http://chicagoagentmagazine.com/former-car-president-bob-floss-speaks-out-on-impeachment/>:

- a. If the questions would have been completely and truthfully answered within the finance committee we would not be here now. I realized a few months back that was never going to happen. The system at CAR is broken. The board is never going to vote for a forensic audit because the first concern for some, but not all, is to protect themselves.
- b. I just looked at all the financial documents listed on the Chicago Association of REALTORS website. It is all material I have already gone through. The only thing that the documentation is showing is that everything is in the correct columns.

- c. I have gone through the whistle blower policy and [sic] have others read it as well. It does not provide for checks and balances needed in this situation. It runs too deep. There is no way this can any longer [sic] be handled internally with trust.

58. Geller's August 23rd postings on the Chicago Agent Magazine's website contained false statements that she either knew were false or that she made recklessly without regard for their truth.

59. Geller, on August 23, 2012, posted on Chicago Agent Magazine's Facebook page, <http://www.facebook.com/ChicagoAgentMagazine/>:

As a member of the finance committee, we were never provided printouts from the accounting systems for the entities. When question [sic] were asked about specific numbers the answers were more of anecdotal stories rather than concrete numbers. The director of membership never seems to be [sic] offer exact members [sic]. Again the answers were given in "about" [sic] with a series of stories. With ever [sic] question the round about answers created more red flags. The more I asked for additional information to see what was missing or give them the opportunity to show nothing was wrong the more they freaked out. Innocent people do not act like that.

60. Geller's August 23nd postings on the Chicago Agent Magazine's Facebook Page contained false statements that she either knew were false or that she made recklessly without regard for their truth.

61. Geller, on August 24, 2012, posted on Chicago Agent Magazine's website <http://chicagoagentmagazine.com/former-car-president-bob-floss-speaks-out-on-impeachment/>:

With more recent service to the board as both director and member of the finance committee than John, I fail to see a

board acting with integrity and fiduciary responsibility to the organization.

62. Geller's August 24th posting on the Chicago Agent Magazine's website contained false statements that she either knew were false or that she made recklessly without regard for their truth.

63. Geller, on September 2, 2012, posted on Chicago Agent Magazine's website <http://chicagoagentmagazine.com/former-car-president-bob-floss-speaks-out-on-impeachment/>:

- a. After attending my last finance committee meeting as a member last week, I realize that [sic] is going to be business as usual as [sic] the Chicago Association of Realtors. The staff and leadership involved will continue to cover up for each other and have the [sic] lead the rest of the board of directors to go along with it. Unless there are changes at the top it will be business as usual as they hide behind the bylaws.

The financials posted for the members only prove that the [sic] know how to get everything in the correct columns. It will take a forensic audit to uncover the truth of inappropriate spending of our dues money by a few staff members and leadership. A third party auditor needs to go through every bank statement, disbursement and receipt throughout every entity of CAR. Everything needs to be looked at which includes but not limited to every cent gone through [sic] the petty cash, events, travel and membership invoicing. Exactly how many members do we have?

- b. The Chicago Association of Realtors is going to need a higher power to come in and clean this mess up. Being a local charter I only hope that NAR is somehow working in the background on behalf of its members.

64. Geller's September 2nd posting on Chicago Agent Magazine's website contained false statements that she either knew were false or that she made recklessly without regard for their truth.

Count I

Defamation *Per Se*

65. Plaintiffs incorporate paragraphs 1 through 64 as if fully set forth herein.

66. On August 20, 21, 22, 23, 24, and September 2, 2012, Defendant Andrea Geller posted statements on several different websites that she either knew were false or made recklessly without regard to the falsity of the statements.

67. Geller posted, referring to her membership on the Association's Finance Committee, intending to convey the impression that she was knowledgeable about the subject matter and that her allegations have a basis in fact.

68. Unlike the readers of Geller's postings, Geller knew the statements were false, or, she posted the statements with reckless disregard for whether the statements were true or not.

69. The statements are defamatory *per se* because they are highly prejudicial and falsely impute that both the Association and Downs, and by association the Association professional staff, including the COFO, lack integrity,

are unethical, have misappropriated funds from the Association, and are otherwise unable to perform their duties faithfully.

70. The defamatory statements were published on Chicago Agent Magazine's website and on Facebook.

71. The defamatory statements are available on the internet and are therefore published to the public-at-large.

72. Several dozen people reviewed and commented on the statements.

73. Multiple people who commented on the statements indicated that they took Geller's defamatory statements as factually correct.

74. Geller's defamatory statements were not privileged because they were not made in good faith, were not limited to uphold a duty, and were not published in the proper manner to the proper parties.

75. Geller had the opportunity to report any concerns to the Association Audit Subcommittee, but never did.

76. Although the statements are *per se* defamatory and damages are presumed, the statements have caused damage.

77. There are numerous professional associations available for members of the real estate community. The Association's reputation and integrity has contributed substantially to its success.

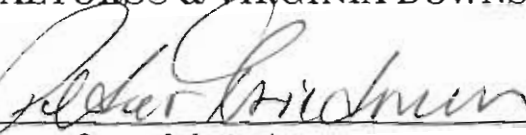
78. Down's integrity is similarly paramount to her reputation in the real estate industry.

79. As a direct and proximate result of Geller's false and malicious statements the Plaintiffs have suffered damage to their respective and collective reputations and have incurred costs responding to and dispelling these false statements.

80. Plaintiffs are entitled to punitive damages as Geller's conduct was willful, wanton, and malicious.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against the Defendant, that damages be awarded in an amount to be determined and in excess of \$50,000, that punitive damages be awarded, and that costs, attorneys' fees, and any other relief deemed just and equitable under the circumstances be awarded.

**THE CHICAGO ASSOCIATION OF
REALTORS® & VIRGINIA DOWNS,**

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