

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*  
MICHAEL DEWINE, OHIO ATTORNEY  
GENERAL

Plaintiff,

vs.

MICHAEL B. WIESER  
2715 Burbank Street  
Middletown, Ohio 45044

and

REBECCA J. WIESER  
3010 South Main Street  
Middletown, Ohio 45044

and

MIDDLETOWN ORIOLES  
NEST ENERGIZING  
YOUTH, INC.  
3010 South Main Street  
Middletown, OH 45044

Defendants.

CASE NO.:

JUDGE

ASSURANCE OF DISCONTINUANCE

Pursuant to the authority granted in the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.*, specifically, R.C. § 1716.16(C); the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*, specifically, R.C. § 109.24(E); and R.C. Chapter 2915 governing the administration and regulation of charitable bingo, Ohio Attorney General Michael DeWine (hereinafter the "Attorney General") accepts this Agreement from Michael Wieser, Rebecca Wieser, and Middletown Orioles Nest Energizing Youth, Inc. ("M.O.N.E.Y.") (collectively "Middletown Parties"). The Attorney General and Middletown Parties, as parties to this

Agreement, acknowledge and agree that it is in their best interest and consistent with the best interests of the people of the State of Ohio to resolve the issues between them in the manner set forth herein. As part of this Agreement, the Attorney General and the Middletown Parties stipulate as follows:

### I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 1716; R.C. § 109.23 *et seq.*; R.C. Chapter 2915 and the Administrative rules adopted thereunder; and the Attorney General's common law authority to enforce charitable trusts. This Court has jurisdiction over the parties. Venue is proper in this Court.

### II. FACTS

- B. The Attorney General's findings, as outlined below, are the basis upon which this Agreement was negotiated. However, this Agreement is the culmination of disputed claims and does not constitute an admission of any wrongdoing by the Middletown Parties.
- C. Michael Wieser resides in Middletown, Ohio and operates a sole proprietorship, Bill's Open Door, at 2715 Burbank Street, Middletown, Ohio 45042.
- D. M.O.N.E.Y. is a "charitable organization" as that term is defined in R.C. § 1716.01(A) and a "charitable trust" as that term is defined in R.C. § 109.23.
- E. Michael Wieser founded M.O.N.E.Y., an Ohio 501(C)(3) non-profit corporation, on September 22, 2005, and was named as an initial trustee in the Articles of Incorporation filed with the Secretary of State.
- F. Since M.O.N.E.Y.'s inception, Michael Wieser has been the Secretary-Treasurer or a Trustee of the Fraternal Order of Orioles Nest 193.

- G. According to M.O.N.E.Y.'s 2008 through 2013 Form 990's filed with the Internal Revenue Service, Michael Wieser was the principal Officer and a Trustee. Michael Wieser signed the Form 990's in 2007, 2008, 2009, 2011, and 2012.
- H. The Middletown Parties held M.O.N.E.Y. out to the public as a "non-profit youth athletic organization" operating exclusively for charitable and educational purposes and did "operate and/or contribute to the support of youth athletic activities for persons who are twenty-one years of age and younger."
- I. M.O.N.E.Y. was also established with the purpose to receive the bingo proceeds of the Fraternal Order of Orioles Nest 193 as required under R.C. Chapter 2915 and pursuant to agreement between the organizations.
- J. M.O.N.E.Y. held a license to conduct Type III charitable bingo for the years 2007 through 2014.
- K. The Fraternal Order of Orioles Nest 193, located at 3010 South Main Street, Middletown, Ohio 45044, is a non-profit fraternal organization that solicits for charitable purposes pursuant to R.C. § 1716.01. The Fraternal Order of Orioles Nest 193 also had a license to conduct Type III charitable bingo for the years 2006 through 2014.
- L. Rebecca Wieser was the Principal Bingo Operator for Fraternal Order of Orioles Nest 193 and was custodian of their records during the time that the organization held a bingo license as required under OAC 109:1-3-01(B).
- M. Michael Wieser breached his fiduciary duty to both the Fraternal Order of Orioles Nest 193 and its contracting charity, M.O.N.E.Y., by holding officer positions in both organizations thus creating a conflict of interest.

- N. The Middletown Parties employed charitable appeal when soliciting and received things of value for charitable use.
- O. The funds raised and held via solicitation and bingo by the Middletown Parties are on behalf of charitable purposes and, as such, are subject to a valid "charitable trust" under R.C. § 109.23 and R.C. § 1716.01.
- P. The Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*, enumerates certain registration and reporting requirements with which charitable trusts established or active in Ohio must comply, and it prohibits certain acts and practices in the administration of any charitable trust.
- Q. Michael Wieser and Rebecca Wieser hold a fiduciary duty to M.O.N.E.Y. and the funds raised for the charitable beneficiaries of M.O.N.E.Y. under R.C. § 109.23 *et seq.*, R.C. § 1716.17, and the common law.
- R. From its inception only Michael Wieser and Rebecca Wieser had access to the bank accounts holding the bingo proceeds and charitable assets of M.O.N.E.Y. and the Fraternal Order of Orioles Nest 193.
- S. Michael Wieser contracted with M.O.N.E.Y. to sell Type III charitable bingo instant tickets from his sole proprietorship, Bill's Open Door, though he was an officer and Trustee of M.O.N.E.Y.
- T. M.O.N.E.Y. paid for office space in a building solely owned by Michael Wieser in the amount of Twenty Seven Thousand and Fifty Dollars (\$27,050.00).
- U. Self-dealing is prohibited by M.O.N.E.Y.'s Articles of Incorporation and is a breach of fiduciary duty under Ohio law.

- V. An investigation by the Attorney General determined that no true independent Board or officers govern M.O.N.E.Y. but rather it is under the control of Michael Wieser and Rebecca Wieser.
- W. The Attorney General reviewed the Type III charitable bingo operations for M.O.N.E.Y., which included ticket tracking records, tickets, invoices, and bank account information for the years 2007 through 2013 to calculate the projected net profit. Upon review, the Attorney General determined that, based upon projected net profit, the bank deposits were short One Hundred Ten Thousand Five Hundred and Fifty Eight dollars (\$110,558.00).
- X. The Attorney General also reviewed the Type III charitable bingo operations for Fraternal Order of Orioles Nest 193, which included ticket tracking records, tickets, invoices, and bank account information for the years 2006 through 2013 to calculate the projected net profit. Upon review, the Attorney General determined that, based upon the projected net profit, Fraternal Order of Orioles Nest 193 should have paid an additional One Hundred Nine Thousand and Fifty Three dollars and Seventy Eight cents (\$109,053.78) to M.O.N.E.Y. as the contracting charity of Fraternal Order of Orioles Nest 193's Type III charitable bingo operations but did not.
- Y. M.O.N.E.Y paid medical insurance for Rebecca Wieser, Amber Wieser, and M.O.N.E.Y.'s attorney Randy McClain totaling Ninety Three Thousand Five Hundred and Eighty Eight dollars and Nineteen cents (\$93,588.19) though the charity had no compensated employees.
- Z. The Middletown Parties transferred a total of Five Hundred Dollars (\$500.00) for unknown expenses from M.O.N.E.Y.'s charitable account.

### III. FINDINGS OF THE ATTORNEY GENERAL

- AA. The charitable trust, solicitation activities, and bingo operations in Ohio of the Middletown Parties are the subject of this Agreement. Such activities are described in and regulated by the Ohio Charitable Organizations Act, R.C. § 1716.01 *et seq.*; the Ohio Charitable Trust Act, R.C. § 109.23 *et seq.*; R.C. Chapter 2915 and the Ohio Administrative Rules adopted thereunder; and the Attorney General's common law authority to enforce charitable trusts.
- BB. The Attorney General is the party charged with enforcing the Ohio Charitable Organizations Act, the Ohio Charitable Trust Act, and regulating the conduct of charitable bingo. The Attorney General caused an investigation to be conducted by the Charitable Law Section of the charitable trust, solicitation activities, and bingo operations of M.O.N.E.Y., the Fraternal Order of Orioles Nest 193, Michael Wieser, and Rebecca Wieser.
- CC. R.C. § 1716.17 states in pertinent part: "Every person who solicits, collects, or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee, or employee of that person who is concerned with the solicitation, collection, or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity."
- DD. R.C. § 109.23(A) states: A charitable trust "means any fiduciary relationship with respect to property arising under the law of this state or of another jurisdiction as a result of a manifestation of intention to create it, and subjecting the person by whom the property is held to fiduciary duties to deal with the property within this state for any charitable, religious or educational purpose."

EE. Trustees carry significant fiduciary duties under Ohio law, including the broad duty of care, duty of loyalty, duty to properly manage accounts, and the duty to comply with the law, as well as more specific duties within these broad categories such as the duty not to waste charitable assets and the duty to act exclusively in the best interest of the charitable beneficiaries, in this case, youth athletics.

FF. As a result of its investigation, the Attorney General found that the Middletown Parties are in violation of the Ohio Charitable Organizations Act, the Ohio Charitable Trust Act, R.C. Chapter 2915, and the common law by violating the following:

1. R.C. § 1716.17 and R.C. § 109.23(A): The Middletown Parties each breached their fiduciary duties of care, to properly manage accounts, to comply with the law, and to act in the best interest of the charity, resulting in loss and other damages to the charitable beneficiaries of the M.O.N.E.Y.;
2. R.C. 2915.101 (A)(1)(a)(i) and (B): The Middletown Parties failed to distribute the net profit of instant bingo to charity as required by law thus harming the charitable beneficiaries of M.O.N.E.Y.

#### IV. ASSURANCE

GG. Michael Wieser and Rebecca Wieser agree that that they will not hold any position as an officer, trustee, or employee of any charitable organization in the State of Ohio following the date this Agreement is filed, with the exception that they may volunteer with a charitable organization in the State of Ohio so long as they do not have any involvement with, or responsibility concerning, any charitable trust assets.

HH. Michael Wieser and Rebecca Wieser agree that they will not participate in solicitations as defined by R.C. § 1716.01(K), including the selling of chances, in the State of Ohio for

any charitable purpose or on behalf of any charitable organization following the date this Agreement is filed. This exclusion includes solicitations conducted as a volunteer, officer, trustee, employee, representative, or agent of any charitable organization including Fraternal Order of Orioles Nest 193.

- II. Michael Wieser and Rebecca Wieser agree that they will not participate as a bingo game operator or compile or create bingo financial and tracking records nor have any oversight of any bingo game operator.
- JJ. The Middletown Parties agree that they will dissolve M.O.N.E.Y. and any other Ohio charity with which any of them is associated and send proof of the dissolution to the Ohio Attorney General within one calendar year of the filing of this Agreement.
- KK. The Middletown Parties agree that M.O.N.E.Y. immediately cease conducting bingo and will relinquish any past charitable Bingo licenses to the Attorney General's Office and withdraw any pending bingo applications within one calendar year of the filing of this Agreement.
- LL. The Middletown Parties agree they are jointly responsible to pay the total sum of Three Hundred and Forty Thousand Seven Hundred and Forty Nine dollars and Ninety Seven Cents (\$340,749.97), which represents the Attorney General's calculated sum of questionable expenses and Bingo shortage. This amount shall be paid in full within one calendar year of the filing of this Assurance of Discontinuance. The payment(s) shall be in the form of a check, cashier check, or bank money order payable to the State of Ohio and delivered to: Ohio Attorney General Mike DeWine, Charitable Law Section, Attn: Chief Accountant, 150 East Gay Street, 23rd Floor, Columbus, Ohio 43215-3130. The payment(s) may be made from the funds formerly held by the United States' Government

in case SDOH 3:10CV317 that are returned to Michael Wieser by deposit to the trust account of Porter Wright Morris & Arthur LLP. The Attorney General shall redistribute the funds paid under this paragraph for charitable purposes at his sole discretion. If any portion of the total sum remains unpaid at the expiration of the one year payment period as set forth above, the Middletown Parties will be considered in default and the Attorney General shall collect the remaining balance as set forth below.

MM. If Michael Wieser and Rebecca Wieser fail to comply with the payment requirements of this Agreement, the Attorney General shall certify the unpaid balance of the Payment to the Ohio Attorney General's Collections Enforcement Section ("Collections") for collection. In the event of certification, Michael Wieser and Rebecca Wieser agree to pay additional collection costs assessed by Collections in accordance with R.C. § 131.02(A) equal to the amounts charged pursuant to R.C. §§ 109.08 and 109.081 for the cost of certification and the use of Special Counsel for the collection of the debt. Interest shall also be charged upon certification in accordance with R.C. § 131.02(D). Nothing in this paragraph should be construed to limit the Attorney General's discretion to pursue any other available remedy.

NN. The Middletown Parties agree that they will distribute all remaining charitable assets and proceeds of M.O.N.E.Y. and any other Ohio charities for which they solicited, if any, to the Attorney General within one calendar year of the filing of this Agreement.

OO. The Middletown Parties agree that this Agreement is made in lieu of prosecution of a civil action based upon the findings set forth herein.

PP. The Middletown Parties agree that any evidence of a violation of this Agreement shall be *prima facie* evidence of a violation of Chapter 1716 of the Ohio Revised Code and any

rule adopted thereunder in any subsequent action or proceeding brought by the Attorney General as provided in R.C. §1716.16(C).

QQ. In the event that the Middletown Parties fail to comply with any requirement or deadline contained in this Agreement, the individual(s) who failed to comply is/are liable for and shall pay stipulated penalties in accordance with the following schedule for each failure to comply:

1. For each day of each failure to comply with any requirement or deadline from one (1) to thirty (30) days past due, the Middletown Parties are liable for and shall pay twenty-five dollars (\$25.00) per day for each requirement or deadline not met;
2. For each day of each failure to comply with any requirement or deadline from thirty-one (31) to sixty (60) days past due, the Middletown Parties are liable for and shall pay fifty dollars (\$50.00) per day for each requirement or deadline not met; and
3. For each day of each failure to comply with any requirement or deadline over sixty (60) days past due, the Middletown Parties are liable for and shall pay one-hundred dollars (\$100.00) per day for each requirement or deadline not met.

RR. The Middletown Parties agree that any matter closed by the acceptance of this Agreement may be reopened at any time by the Attorney General for further proceedings in the public interest based upon any violation of the terms of this Agreement or upon the discovery of evidence not known or anticipated by the parties hereto at the time of signing as provided in R.C. §1716.16(C).

V. RETENTION OF JURISDICTION

SS. This Court shall retain jurisdiction of this action for the purpose of enforcing this Agreement.

VI. ACKNOWLEDGEMENTS

TT. The Middletown Parties acknowledge that they have been given ample opportunity to be advised by legal counsel as to the meaning and effect of each provision of this Agreement and that they have elected of their own free will and accord to enter into this Agreement.

UU. The Attorney General and the Middletown Parties hereby agree that this Agreement is binding upon the successors and assignees of all parties hereto and that this Agreement constitutes the entire agreement and understanding of the parties.


CERTIFICATION

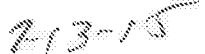
Each individual signing below represents that he or she is authorized and directed to sign this Agreement on behalf of the party represented and further represents that he or she has the requisite authority to bind the party on behalf of whom they are signing.

In witness whereof, the parties hereby agree to the terms and conditions of this Assurance of Discontinuance.

  
MICHAEL B. WIESER  
2715 Burbank Street  
Middletown, Ohio 45044

  
Date Signed

  
REBECCA J. WIESER  
3010 South Main Street  
Middletown, Ohio 45044


  
Date Signed

  
KATHLEEN BRINKMAN, ESQ.

Attorney for M.O.N.E.Y.  
Porter Wright Morris & Arthur, LLP  
250 E. Fifth Street, Suite 2200  
Cincinnati, Ohio 45202

7/13/15  
Date Signed

MICHAEL DEWINE (0009181)  
Ohio Attorney General

  
PETER THOMAS (0040887)

Section Chief  
Charitable Law Section  
On Behalf of Michael DeWine

9-1-15  
Date Signed

  
Attorney of Record

CHRISTOPHER WAGNER (0072524)  
Managing Attorney  
Charitable Law Section  
1600 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202  
Counsel for Ohio Attorney General

6/17/15  
Date Signed