

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil  
(Charitable/Nonprofit Violations)

Court File No. \_\_\_\_\_

In the Matter of Thomas Gray, in his capacity as  
a director and officer of A Place to Call Home**PETITION FOR ORDER  
APPROVING ASSURANCE OF  
DISCONTINUANCE**

The State of Minnesota, by its Attorney General, Keith Ellison, hereby petitions the Court, pursuant to Minn. Stat. §§ 8.31, subd. 2b, for an Order approving the attached, fully-executed Assurance of Discontinuance between the State of Minnesota, through its Attorney General, Keith Ellison, and Thomas Gray, former director and officer of A Place to Call Home.

Dated: September 8, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota/s/ Collin R. BallouCOLLIN R. BALLOU  
Assistant Attorney General  
Atty. Reg. No. 0395256445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101-2130  
(651) 757-1474 (Voice)  
(651) 296-1410 (TTY)  
collin.ballou@ag.state.mn.us

ATTORNEYS FOR STATE OF MINNESOTA

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In the Matter of Thomas Gray, in his capacity as  
a director and officer of A Place to Call Home**ASSURANCE OF  
DISCONTINUANCE**

WHEREAS, this Assurance of Discontinuance (“Assurance”) is entered into pursuant to Minnesota Statutes section 8.31, subdivision 2b, between the State of Minnesota, through its Attorney General, Keith Ellison (the “State” or “AGO”), and Thomas Gray, individually;

WHEREAS, the State has sought separate resolutions with A Place to Call Home (“APCH”), former APCH director and officer Renee LaVoi, and APCH director and officer Genevieve LaVoi;

WHEREAS, the State has authority to enforce Minnesota’s laws relating to nonprofit corporations, including as *parens patriae*. See, e.g., Minn. Stat. §§ 8.31, 317A.813.

WHEREAS, APCH is a Minnesota nonprofit corporation organized under the Minnesota Nonprofit Corporation Act, Minn. Stat. ch. 317A. APCH is registered with the State as a soliciting charitable organization pursuant to the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61. APCH is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). APCH’s registered office address with the Minnesota Secretary of State is 16371 Impatiens Court, Lakeville, Minnesota 55044.

WHEREAS, Thomas Gray served as a director and officer of APCH from September 2017 to November 2019.

NOW, THEREFORE, the State and Thomas Gray hereby agree to entry of an Assurance of Discontinuance with the following terms and conditions:

### **ALLEGATIONS**

**I. APCH Did NOT PROVIDE ASSISTANCE TO FOSTER HOMES IN ACCORDANCE WITH ITS CHARITABLE MISSION, AND THOMAS GRAY ALLOWED GENEVIEVE LAVOI TO USE APCH FOR HER PERSONAL BENEFIT.**

1. APCH incorporated as a Minnesota nonprofit corporation in April 2016. APCH registered as a soliciting charitable organization with the AGO on or about January 6, 2017. APCH's Articles of Incorporation, filed with the AGO along with APCH's initial registration, indicate that the organization's mission is twofold: (1) "[t]o raise money and assist in the funding of foster homes and other facilities providing housing, care, and nurturance to children lacking thereof;" and (2) "[t]o solicit volunteers to help provide such care and nurturance, as well as mentoring opportunities, and other provisions for the special needs of these children."

2. APCH's website, *www.aplace2callhome.us*, further explains that its mission is "to assist in providing underprivileged and homeless children with a loving, comfortable home" and "provide funding for various types of healing therapy for these children." APCH solicits donations through its website.

3. Thomas Gray ("Gray") was a board member and officer of APCH from September 2017 to November 2019, serving as APCH's secretary. The other board members and officers during this period were Geneveive LaVoi and Renee LaVoi. On November 23, 2019, following the departure of Renee LaVoi and Gray from APCH's board of directors, Jessica Wilson and Erin Whitehead joined APCH's board of directors.

4. APCH's accounting records reflect that it received \$136,216 in donations between July 2016 and December 2019. During this period, Genevieve LaVoi personally donated \$55,101 to APCH, the Medtronic Foundation donated \$66,085, and the remaining \$15,030 came from individual donors and businesses. APCH received donations from the Medtronic Foundation through a "Matched Giving" program provided by Genevieve LaVoi's employer, Medtronic. Medtronic offers the program, which matches employee donations to eligible nonprofits, in conjunction with the Medtronic Foundation. Medtronic Foundation's Matched Giving policies state that "contributions that result in you or a family member receiving a benefit" are not eligible to be matched.

5. Despite APCH's mission to "assist in the funding of foster homes and other facilities providing housing, care, and nurturance to children," from April 2016 through October 2020, APCH was used almost exclusively to pay for Genevieve LaVoi's personal expenses. During that time, APCH paid numerous, costly bills for Genevieve LaVoi, including for her personal residence. Nearly all the payments APCH made on Genevieve LaVoi's behalf occurred in 2018 or 2019 and, according to APCH's financial documents, were as follows:

- \$10,005 for earnest money to purchase LaVoi's personal residence;
- \$40,003 for a down payment that LaVoi used on her personal residence;
- \$42,318.68 for payments that LaVoi used to pay the mortgage on her personal residence;
- \$35 for a purchase from Lowes;
- \$392 for an "amazon stove;"
- \$650 for "Jay's plumbing;"
- \$468.09 for the "mattress store;"
- \$1,200 for "Jellison's Blacktop;"
- \$80 for "Trio Landscaping;"
- \$6,700 for "Lakeville Heating and Air;"
- \$13,418 for "Premier Fence;"
- \$8,936 for "Every Season Landscape;"
- \$2,000 for "Twin City Roofing;" and
- \$1,175 for "MAK Professional Services."

6. The above expenses paid by APCH on LaVoi's payments total \$127,380.77 and constitute the entirety of APCH's non-administrative expenses.

7. APCH's board of directors, including Gray, gave Genevieve LaVoi sole authority and ability to access APCH's bank accounts. According to APCH's board meeting minutes, Gray and Renee LaVoi gave Genevieve LaVoi blanket "authority to fund these repairs and payments as she deem[ed] appropriate." APCH's minutes further reflect that Genevieve LaVoi initiated motions for APCH to "release funds," and Renee LaVoi seconded the motions. Gray then approved the distributions through his own vote, and the above payments were made directly from APCH to each vendor at Genevieve LaVoi's instruction.

8. Thus, the \$55,101 that Genevieve LaVoi ostensibly donated to APCH, the \$66,085 Medtronic Foundation donated to APCH through matching Genevieve LaVoi's donations, and the remaining \$15,030 donated by individuals and businesses to APCH unjustly enriched Genevieve LaVoi. Gray authorized and approved this arrangement.

## **II. GRAY AND APCH'S OTHER DIRECTORS AND OFFICERS BREACHED THEIR FIDUCIARY DUTIES TO APCH.**

9. Minnesota Statutes section 317A.251, subdivision 1, provides in part that "[a] director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." Minnesota law provides an analogous provision for nonprofit corporate officers. *See* Minn. Stat. § 317A.361.

10. The fiduciary duties delineated by Minnesota Statutes sections 317A.251 and .361 are referred to as the duty of loyalty and the duty of care. Minn. Stat. §§ 317A.251, .361; *Westgor v. Grimm*, 318 N.W.2d 56, 58 (Minn. 1948); *see Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings*, 626 N.W.2d 436, 442 (Minn. Ct. App. 2001). The

duty of loyalty requires directors and officers to discharge their duties in good faith in a manner they believe to be in the best interests of the corporation. Minn. Stat. §§ 317A.251, .361. The duty of care requires directors and officers to act with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Minn. Stat. §§ 317A.251, .361.

11. APCH's primary charitable mission is "to raise money and assist in the funding of foster homes and other facilities providing housing, care, and nurturance to children lacking thereof." Contrary to this mission, the directors and officers of APCH, including Gray, violated their respective duties of care by approving the use of nonprofit funds for the personal benefit of Genevieve LaVoi. APCH's board minutes reflect that Gray, as a director and officer, approved motions that gave Genevieve LaVoi authority to use APCH funds "capped at \$100,000" for her personal benefit—primarily to purchase, pay off, and upgrade her personal residence. APCH's financial statements reflect that, pursuant to the authority granted to Genevieve LaVoi by Gray, Genevieve indeed used \$50,008 in APCH nonprofit funds for the purchase of her home.

12. Knowing that Genevieve LaVoi had spent over \$50,000 of APCH funds on her personal residence, Gray—as the only voting board member of APCH—again voted to give Genevieve LaVoi blanket authority to use nonprofit funds "capped at \$100,000" for the "purpose [of] funding repairs and for mortgage support" for LaVoi's home. Under the direction of APCH's board on which Gray served, from April 2016 through October 2020, APCH's only non-administrative expenditures were to pay personal bills for Genevieve LaVoi. APCH's board minutes reflect that the board never considered, in any fashion, supporting any other foster home or foster children except those residing with Genevieve LaVoi. In total, Gray approved of Genevieve LaVoi spending \$127,380.77 of APCH charitable funds on herself. Gray's decisions enriched Genevieve LaVoi, flouted APCH's charitable mission, and fell outside the standard of

care an ordinarily prudent person would exercise under these circumstances, resulting in a breach of the duty of care. *See* Minn. Stat. § 317A.251, .361.

13. Gray also breached his duty of loyalty to APCH. *See* Minn. Stat. §§ 317A.251, .361. Gray and Renee LaVoi allowed Genevieve LaVoi sole access to APCH's bank accounts. Without regard for APCH's charitable mission or its best interests, Gray voted in favor of two separate resolutions authorizing Genevieve LaVoi to access APCH's bank account with virtually no restriction and use APCH's funds to enrich herself. Each member of APCH's board, including Gray, was involved in this process and authorized it. APCH's board minutes reflect that Gray was aware that the funds would be used for Genevieve LaVoi's home.

14. Gray and APCH's board spent APCH's charitable funds in a manner contrary to its charitable mission and placed Genevieve LaVoi's personal interests above the best interests of the organization. By enabling and authorizing Genevieve LaVoi's conduct, Gray failed to discharge his duties in good faith in a manner that he reasonably believed to be in the best interests of APCH, and thereby breached his duty of loyalty. Minn. Stat. §§ 317A.251, .361; *see Mid-List Press v. James J Nora, Sr.*, 275 F. Supp. 2d 997, 1003 (D.Minn.2003), *aff'd*, 374 F.3d 690 (8<sup>th</sup> Cir. 2004) (holding, in part, that a director's misappropriation of a nonprofit organization's assets for personal benefit constitutes a breach of the duty of loyalty).

### **INJUNCTIVE RELIEF**

15. Gray shall not hereinafter, whether directly, indirectly, individually, representatively, or through or in combination with any other person or entity, engage in any of the following conduct in Minnesota:

- (a) act as a director, officer, employee, agent, or representative of a nonprofit organization, or otherwise receive compensation from or act for, in concert with, or on behalf of a nonprofit organization;

- (b) have access to or exercise any control over, manage, supervise, oversee, or otherwise administer a nonprofit organization's finances, operations, or other affairs;
- (c) solicit contributions from Minnesota donors, accept or receive contributions from Minnesota donors, or otherwise act as a "professional fund-raiser" as the term is defined in Minnesota Statutes section 309.50, subdivision 6; or
- (d) engage in any activity that results in having any control or responsibility for property held for a charitable purpose, or from otherwise acting as a "trustee" as the term is defined in Minnesota Statutes section 501B.35, subdivision 4.

16. For the purposes of this Assurance, the following definitions apply:

- (a) "Contribution" shall have the meaning given the term by Minnesota Statutes section 309.50, subdivision 5.
- (b) "Director" shall have the meaning given the term by Minnesota Statutes section 317A.011, subdivision 7.
- (c) "Nonprofit organization" shall mean the following: (i) any corporation governed by or organized under Minnesota Statutes chapter 317A, section 322C.1101, or equivalent laws in other states, and (ii) any organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).
- (d) "Officer" shall have the meaning given the term by Minnesota Statutes section 317A.011, subdivision 15.
- (e) "Solicit" shall have the meaning given the term by Minnesota Statutes section 309.50, subdivision 10.

17. The State shall have all powers and authority specified by Minnesota Statutes sections 8.31, 317A.813, 501B.40, and all other authority otherwise available to it for purposes of investigating any suspected violations of this Assurance and securing compliance with the terms of this Assurance.

18. Gray shall have a duty to fully, completely, truthfully, and promptly cooperate with the State in its compliance monitoring or investigation of any suspected violations of this Assurance, including promptly providing information requested by the State.



19. Gray is hereby enjoined from effecting any change to any entity's form of doing business, organizational identity, organizational structure, affiliations, or management composition as a method of avoiding the terms of this Assurance. Gray is further permanently enjoined from effecting any change in his ownership stake in, or management authority over, any entity in which he has such ownership stake or management authority as a method of, or if the effect is, avoiding the terms of this Assurance. Gray is further permanently enjoined from engaging in any conduct prohibited by this Assurance through or in combination with a family member or any other person.

### **STAYED RELIEF**

20. Gray is liable for a civil penalty of \$25,000 if the Court finds, after a motion by the AGO, and pursuant to a hearing as determined by the Court, that Gray violated any provision of this Assurance. The AGO shall provide notice to Gray of any alleged violation prior to seeking relief from the Court under this paragraph and offer a reasonable opportunity for Gray to respond to the AGO's allegations, which Gray shall do in a timely manner. The release provided for in Paragraph 22 of this Assurance does not prevent, restrict, or otherwise limit in any way the AGO from moving for, using any information and materials in its possession, and, should a violation be found, collecting the stayed civil penalty referenced in this paragraph.

### **GENERAL TERMS**

21. This Assurance constitutes neither an admission nor denial of the allegations set forth above.

22. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the AGO, upon approval of this Assurance by the Court, hereby fully and completely releases Gray of any and all claims of the AGO under Minnesota Statutes sections 317A.251 and 317A.361

arising out of the allegations contained in this Assurance, up to and including the date of the Court's approval of this Assurance. The AGO through this Assurance does not settle, release, or resolve any claim against Gray by any person or entity not party to this Assurance, or by any other person or entity involving any private causes of action, claims, or remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. This release does not apply in any way to claims of any other Minnesota state agency, department, official, or division, including but not limited to the Minnesota Department of Revenue.

23. The claims, remedies, and relief provided for in this Assurance are in addition to all other claims, remedies, and relief available to the State of Minnesota or the AGO.

24. Gray shall not state or imply, directly or indirectly, that the State of Minnesota or the AGO have approved of, condone, or agree with any conduct, actions, or inactions by Gray.

25. Nothing in this Assurance shall relieve Gray of his obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

26. If this Assurance is violated, Gray agrees that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the allegations in this Assurance, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Assurance.

27. Gray warrants that he has been fully advised by counsel or has voluntarily forgone such advisement before entering into this Assurance.

28. This Assurance may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Assurance may be executed by facsimile or electronic copy in any image format.

29. This Assurance constitutes the full and complete terms of the agreement entered into by the AGO and Gray.

30. Service of notices or other documents required or permitted by this Assurance shall be served on the following persons, or any person subsequently designated to receive such notices, by mail and email at the addresses identified below:

**As to the State of Minnesota:**

Collin R. Ballou, Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1200  
St. Paul, Minnesota 55101  
collin.ballou@ag.state.mn.us

**As to Gray:**

Thomas Gray  
2603 Martin Way  
White Bear Lake, Minnesota 55110

31. The failure of a party to exercise any rights under this Assurance shall not be deemed to be a waiver of any right or any future rights.

32. This Assurance, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

33. Nothing in this Assurance shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the AGO, except as expressly set forth herein in with regard to Gray.

34. Each of the parties participated in the drafting of this Assurance and agree that the Assurance's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.


35. Each signatory hereto shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Assurance, including that Gray shall promptly comply with any reasonable request from the AGO for information regarding verification of Gray's compliance with this Assurance.

36. The AGO may file this Assurance with the Court without further notice to Gray and the Court may approve and enter this Assurance without further proceedings.

37. The Court shall retain jurisdiction of this matter for purposes of enforcing this Assurance, notwithstanding any judgment that may be entered dismissing this proceeding with prejudice or otherwise. All signatories hereto further consent to the jurisdiction of the Court for the purposes of enforcing this Assurance. The State may move the Court, as appropriate, to enforce or interpret the provisions of this Assurance, or to maintain an action for other relief as it determines is proper for the enforcement of this Assurance. The parties agree that, in any such motion or action brought by the State, the Court shall have authority to award all appropriate legal and equitable relief, including but not limited to specific performance.

KEITH ELLISON  
Attorney General  
State of Minnesota

Dated: 9/7/2021

  
\_\_\_\_\_  
COLLIN R. BALLOU  
Assistant Attorney General

THOMAS GRAY, individually

Dated: 8/11/21

By:   
\_\_\_\_\_

**ORDER**

Having reviewed the terms of the foregoing Assurance, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Judge of District Court

**LET JUDGMENT BE ENTERED ACCORDINGLY.**