

RETURN DATE: SEPTEMBER 9, 2014

GEORGE JEPSEN, ATTORNEY GENERAL	:	SUPERIOR COURT
	:	
<i>Plaintiff</i>	:	JUDICIAL DISTRICT OF HARTFORD
	:	
v.	:	
	:	
AMISTAD AMERICA, INC.,	:	
<i>Defendant</i>	:	AUGUST 21, 2014

COMPLAINT
FOR APPOINTMENT OF RECEIVER
WITH CONSENT OF DEFENDANT

COUNT ONE

1. George Jepsen, Attorney General for the State of Connecticut, brings this action pursuant to his authority under Conn. Gen. Stat. § 3-125 and in accordance with Conn. Gen. Stat. §§ 45a-514 and 47-2, to secure the appointment of a receiver for the defendant, the charitable corporation Amistad America, Inc. (“Amistad America”), to enjoin Amistad America and its directors, officers and employees from any actions on behalf of the corporation during the course of the receivership, and to obtain appropriate equitable relief that will enable the receiver to return the corporation to the control of an appropriate governing structure as a fully functioning and legally sound charitable corporation. *See Exhibit 1, Amistad America, Inc. Resolution for Consent.*

2. Amistad America is a Connecticut nonstock corporation organized for public and charitable purposes and has received gifts, legacies or devises intended to further such purposes.

See Exhibit 2, Corporate Documents.

3. Amistad America owns and operates the reproduction vessel (ship) Amistad. The vessel Amistad was constructed at Mystic Seaport under the direction and control of Amistad America as an accurate reproduction of the 19th-century Spanish slave schooner, to further the goal of informing the public about the 1839 uprising against the crew of the Amistad, and the United States Supreme Court case that arose from that uprising. Unlike the original slave schooner, the completed reproduction vessel has contemporary navigational equipment that enables it to be fully certified under 21st century standards for trans-ocean travel. Upon information and belief, the reproduction vessel Amistad is the only reproduction or restored historic sailing vessel that meets current required standards for trans-ocean travel. *See Exhibit 3, screenshots from Amistad Website at <http://www.amistadvoyages.org/index.html>.*

4. The State of Connecticut has provided significant funds to Amistad America for the construction and operation of the vessel (ship) Amistad. Pursuant to Public Act 03-20 (Conn. Gen. Stat. § 3-110m), the Amistad is the State of Connecticut's official state flagship and tall ship ambassador of the state. *See Exhibit 4, Audit Reports and Findings, also posted on the State's publicly available database at <https://www.appsvcs.opm.ct.gov/Auditing/Home.aspx> at IDs 1784, 1785, 1786, and 1787.*

5. As set forth below in this Complaint, Amistad America has engaged in a course of conduct that (1) is inconsistent with the requirements of charitable corporations in the State of Connecticut, (2) is detrimental to its charitable purpose to manage and operate the reproduction vessel Amistad and conduct educational programs advancing knowledge of the historic events

known as the "Amistad Affair" and the broad struggle for human rights generally, and (3) is in conflict with and does injury to the public's interest in charitable organizations and charitable gifts.

6. The Attorney General is aware of no information suggesting intentional malfeasance by any current director or officer of the Amistad. Nor is the Attorney General aware of any information suggesting that state funds directed to Amistad America or other assets of Amistad America have been misappropriated or expended for personal gain. However, the existing directors and officers have demonstrated an inability to properly manage the affairs of the Amistad America, Inc. in the current circumstances.

7. Amistad America currently maintains an office in Hamden, Connecticut. The reproduction vessel (ship) Amistad, is owned and operated by Amistad America, and docks in the New Haven, Connecticut harbor as its home port. *See Exhibit 2, Corporate Documents.*

8. Amistad America's corporate and charitable purpose is stated in its Amended and Restated Certificate of Incorporation filed with the Secretary of State on July 27, 1998:

1. The Corporation shall be a nonprofit Corporation formed under Chapter 600, pursuant to Title 33 of the General Statutes of the State of Connecticut.
2. The purpose of Amistad America, Inc. is to own, manage and operate the reproduction vessel (ship) Amistad, including raising and managing all necessary funds for the operation and support of that vessel.
3. Institute and raise funds for educational programs directly and indirectly related to the vessel and its mission of broadly advancing knowledge of the historic events collectively known as the "Amistad Affair," and of the

broad struggle for human rights generally, and to secure the fiscal and other management of such programs.

See Exhibit 2, Corporate Documents.

9. Amistad America applied for and was granted § 501(c)(3) tax-exempt status by the Internal Revenue Service ("IRS") on or about 1996. Additionally, Amistad America, Inc. registered with the Department of Consumer Protection pursuant to the Solicitation of Charitable Funds Act ("Solicitation Act"), Conn. Gen. Stat. § 21a-175 *et seq.* Registration with the Department of Consumer Protection is a necessary prerequisite to Amistad America's solicitation of contributions from the public for the charitable purposes of the corporation pursuant to the Solicitation Act, Conn. Gen. Stat. § 21a-190b. *See Exhibit 5, Paragraphs 3 and 4, Cheryl Turner Affidavit.*

10. Beginning on or about 2009, Amistad America, Inc. began defaulting on its required corporate filings. *See Exhibit 5, Paragraphs 3, 4, and 5, Cheryl Turner Affidavit.*

11. Amistad America failed to file its required annual Internal Revenue Service ("IRS") Form 990 with the IRS for fiscal years ending March 31, 2009 through March 31, 2012, which resulted in the Foundation's losing its § 501(c)(3) tax-exempt status on March 11, 2013. *See Exhibit 5, Paragraph 3, Cheryl Turner Affidavit.*

12. Amistad America failed to maintain its charitable registration with the Connecticut Department of Consumer Protection ("DCP"), pursuant to the Solicitation of Charitable Funds Act (the "Solicitation Act"), Conn. Gen. Stat. § 21a-175 *et seq.*, which resulted in the expiration of its registration on February 28, 2010. This DCP registration is necessary for a charity to solicit charitable donations pursuant to the Solicitation Act. *See Exhibit 5, Paragraph 4, Cheryl Turner Affidavit.*

13. Amistad America, Inc. failed to file in a timely manner its annual reports with the Connecticut Secretary of the State as required by Conn. Gen. Stat. § 33-1243(a) from 2010 to the present. Reports were brought up to date only on July 10, 2014. *See Exhibit 5, Paragraph 5, Cheryl Turner Affidavit.* The corporate filing defaults are a result of Amistad America's lack of adequate corporate procedures and internal control mechanisms. *See Exhibit 4, Audit Reports and Findings.*

14. On or about July 1, 2013, Amistad America informed the Office of the Attorney General that it was addressing the steps necessary for reinstatement of its tax-exempt status but was facing significant difficulties in preparing and completing the delinquent IRS Forms 990 and audits that were necessary to bring the corporation into compliance with government requirements.

15. On or about July 1, 2013, the Connecticut Office of Policy and Management intervened pursuant to Conn. Gen. Stat. § 4-232, to retain an audit firm to conduct audits for Amistad America for the years 2009 through 2013. *See Exhibit 6, Correspondence from OPM to Amistad America, Inc.*

16. Due to lack of internal controls and inadequate record keeping, it became necessary for Amistad America, with assistance from the auditors, to reconstruct financial records for the relevant time period in order to complete the audits and, often, to make material adjustments to corporation-generated financial statements as a part of the audit process. *See Exhibit 4, Audit Reports and Findings.*

17. Audit reports for fiscal years ending on March 31 in 2009, 2010, 2011, and 2012 were released on August 8, 2014. Each of those audit reports contain multiple findings of material weaknesses or deficiencies in internal control over financial reporting, major programs,

and compliance with requirements of laws, regulations, contracts and grants applicable to state programs. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. *See Exhibit 4, Audit Reports and Findings.*

18. The Audit Reports represent that the management of Amistad America concurs with each of the Auditor's Findings of material weakness or deficiency in internal control over financial reporting, major programs, and compliance with requirements of laws, regulations, contracts and grants applicable to state programs. *See Exhibit 4, Audit Reports and Findings.*

19. The audit reports disclose that Amistad America, Inc. has accumulated and defaulted on significant debts. *See Exhibit 4, Audit Reports and Findings.*

20. Amistad America, Inc. has insufficient resources to service its cumulative debt. *See Exhibit 4, Audit Reports and Findings.*

21. Amistad America expended gifts on ongoing operations that were permanently restricted for endowment or investment purposes. *See Exhibit 4, Audit Reports and Findings.*

22. During the relevant time period, Amistad America, Inc. continued operations for which it was severely underfunded and failed to accumulate and maintain adequate reserves to carry out scheduled events and programs. *See Exhibit 4, Audit Reports and Findings.*

23. The accumulated debts, and the material weaknesses or deficiencies in record keeping and internal controls, are a direct result of the failure of Amistad America to implement internal controls and procedures to ensure good fiscal management, compliance with all laws and regulatory or licensing requirements, and to ensure the financial safety and security of the vessel (ship) Amistad for its charitable purposes. *See Exhibit 4, Audit Reports and Findings.*

24. Amistad America engaged in activities and conduct that are in derogation of and inconsistent with its charitable purpose; namely, it compromised its obligation to protect the vessel (ship) Amistad and the charitable purposes to which the vessel and the corporation are dedicated. *See Exhibit 4, Audit Reports and Findings.*

25. The best course for ensuring the protection of the state's flagship, the vessel (ship) Amistad, and enabling return of the corporation to the control of an appropriate governing structure as a fully functioning and legally sound charitable corporation is temporary injunction as permitted by Conn. Gen. Stat. § 52-471 to enjoin the current directors, officers and employees of Amistad America from any and all actions or transactions for or on behalf of the corporation, and appointment of a receiver pursuant to Chapter 920 of the Connecticut General Statutes. Such receiver should have full authority under the supervision of the Court to protect the vessel (ship) Amistad, assess and present a plan for settlement of outstanding debts and obligations, and manage the affairs of the corporation until a plan for new governance of the corporation and operation of the vessel Amistad can be developed and implemented. *See Exhibit 1, Amistad America, Inc. Resolution for Consent.*

COUNT TWO

1 - 25. Paragraphs 1 through 25 of Count One are incorporated by reference as paragraphs 1 through 25 of Count Three, as if fully set forth herein.

26. The exigencies of this matter require the appointment of a receiver pursuant to Conn. Gen. Stat. § 52-504 et seq. for Amistad America in order to secure and protect the vessel (ship) Amistad and its charitable purposes. *See Exhibit 1, Amistad America, Inc. Resolution for Consent.*

DEMAND FOR RELIEF

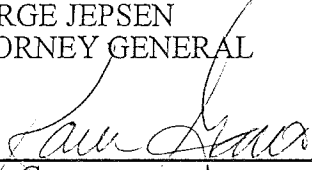
WHEREFORE, the Attorney General prays for the following relief:

1. An order appointing Katharine B. Sacks, Esq. of 165 Bishop Street, New Haven, Connecticut, as temporary receiver for Amistad America with all powers and authority authorized by Conn. Gen. Stat. § 52-507;
2. A temporary injunction enjoining the directors, officers and employees of Amistad America, Inc. from any and all actions or transactions for or on behalf of the corporation;
3. A temporary injunction enjoining all entities from (1) instituting or prosecuting any action, suit or proceeding against Amistad America or any of Amistad America's assets, (2) seeking or executing on any levy, attachment or garnishment against Amistad America or any of its assets, (3) taking or attempting to take possession of any of Amistad America's assets, and (4) cancelling any insurance policy, lease, or other contract with Amistad America or terminating any telephone, electric, gas or other utility service to Amistad America; and

4. Such other relief in law or in equity as the Court deems necessary.

GEORGE JEPSEN
ATTORNEY GENERAL

BY:



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