

RETURN DATE: : SUPERIOR COURT  
: :  
LAUREL WOODS, INC., : J.D. OF HARTFORD  
PETER SANTINO, and HERMAN DOSTIE: :  
: AT HARTFORD  
vs. :  
: :  
THE STATE OF CONNECTICUT :  
DEPARTMENT OF PUBLIC HEALTH, :  
and J. ROBERT GALVIN, :  
COMMISSIONER OF THE STATE OF :  
CONNECTICUT DEPARTMENT OF :  
PUBLIC HEALTH :

**VERIFIED COMPLAINT**

1. Plaintiff Laurel Woods, Inc. (“Laurel Woods”) is a Connecticut corporation, which has a principal place of business in East Haven, Connecticut.
2. Plaintiffs Peter Santino and Herman Dostie are the co-owners of Laurel Woods and are currently 20% shareholders in East Shore Development, Inc. (“East Shore.”).
3. In 1991, East Shore Development, Inc. (“East Shore.”) obtained a Certificate of Need (“CON”) to construct a skilled nursing facility (the “facility”) from the defendant State of Connecticut Department of Public Health (“Department of Public Health.”) On October 18, 1993, when the construction was complete, the Department of Public Health granted Laurel Woods a license to operate the facility.
4. Since November, 1993, plaintiffs have operated the facility pursuant to a series of written lease agreements between plaintiffs and East Shore and the license issued to Laurel Woods, and repeatedly renewed by defendants.
5. On July 1, 2000, East Shore entered a three year lease agreement with Laurel Woods that contained an additional five year option of renewal, which Laurel

Woods exercised. Exhibit A, § 22.01. Accordingly, Laurel Woods is entitled to lease the premises until June 30, 2008. Id. The lease requires Laurel Woods to continuously operate a full service nursing facility on the property during the term of the lease. Id., § 3.02.

6. On April 10, 2001, Donald Franco (“Franco”) became the 80% owner of East Shore. Franco is also the owner and operator of a nursing home located in New Haven, Connecticut, which was recently fined for improper billing practices. Additionally, Franco has been held liable for other financial improprieties at this facility.

7. Defendant Department of Public Health is a state entity charged with, among other things, the regulation and licensing of nursing homes in the state of Connecticut.

8. Defendant J. Robert Galvin is the Commissioner of the Department of Public Health (“Commissioner”), charged with, among other things, the regulation and licensing of nursing homes on behalf of the Department of Public Health. At all relevant times, defendant Commissioner was acting in his official capacity.

9. Subsection (b)(1) of Section 19a-493 of the Connecticut General Statutes provides that a “nursing home license may be renewed biennially after (A) an unscheduled inspection conducted by the department, (B) submission of the information required by subsection (a) and (c) of section 19a-491a and any other information required by the commissioner pursuant to subsection (b) of said section, and (C) submission of evidence satisfactory to the department that the nursing home is in compliance with the provisions of this chapter, the Public Health Code and licensing regulations.”

10. Prior to 1999, subsection (a) of Section 19a-491a required the applicant to provide information regarding the name and address of the home's owners and officers; the criminal histories, if any, of the top administrators; financial information; and affiliations. Subsection (c) of Section 19a-491a merely required an applicant seeking to renew a nursing home license to furnish the Department of Public Health with any information required by subsection (a) that was not previously submitted, and further provided that the Commissioner of the Department of Public Health “may refuse to issue or renew a nursing home license if the person seeking renewal fails to provide the information required under this section.”

11. In 1999, the legislature amended subsection (c) of Section 19a-491a to require an applicant seeking to renew a nursing home license to furnish the Department of Public Health with “satisfactory written proof that the owner of the nursing home consents to such renewal, if the owner is different than the person seeking renewal.” June Sp. S. P.A. 19-2. Franco sought this amendment in anticipation of his purchase of an ownership interest in East Shore and in order to allow East Shore to prevent Laurel Woods from renewing its license, thereby rendering Laurel Woods performance of the lease impossible.

12. After Franco purchased the majority interest in East Shore, he sought a court order to terminate the leasehold between East Shore and plaintiffs. The court denied the request. East Shore Development, Inc. v. Franco, No. CV-98-0417124 (October 25, 2001) (Munro, J.)

13. Franco thereafter lobbied Connecticut legislators to enact legislation that would allow him to not only circumvent the lease between East Shore and Laurel Woods,

but to appropriate Laurel Woods' license to operate the facility. Specifically, Franco sought an amendment of the Connecticut General Statutes to include language that would (a) ensure that Franco could prevent Laurel Woods from renewing its license and (b) require the Commissioner of the Department of Public Health to then transfer the license to East Shore.

14. As requested, the legislature approved Senate Bill 569, which included the underlined language and deleted the bracketed language, as an amendment to C.G.S. § 19a-491a(c):

(c)A person seeking to renew a nursing home license shall furnish the department with any information required under subsection (a) of this section that was not previously submitted and with satisfactory written proof that the owner of the nursing home consents to such renewal, if the owner is different than the person seeking renewal, and shall provide data on any change in the information submitted. The commissioner [may] shall refuse to issue or renew a nursing home license if the person seeking renewal fails to provide the information required under this section. Upon such refusal, the commissioner shall grant such license to the holder of the certificate of need, provided such holder meets all requirements for such licensure. If such holder does not meet such requirements, the commissioner shall proceed in accordance with sections 19a-541 to 19a-549, inclusive, as amended. If the commissioner is considering a license renewal application pursuant to an order of the commissioner, the procedures in this subsection shall apply to such consideration.

15. This amendment was not a part of the original bill, which was addressed to other statutes. The Amendment to Section 19a-491a(c) was only included in later versions of the bill pursuant to Senate Amendment "A." The summary descriptions of the amendment did not include any statement that the amendment would require the Department of Public Health to refuse to renew a nursing home license if the owner of the property refused to consent to the renewal. Instead, the amendment was described in a "Bill Analysis" to the legislators as follows:

The bill requires, rather than permits, the DPH commissioner to refuse to issue or renew a nursing home license if the applicant fails to provide the information required by law. This information includes the name and address of the home's owners and officers; the criminal histories, if any, of the top administrators; financial information; and affiliations. If the commissioner refuses to grant a license to the applicant under these circumstances, the bill requires him to grant it to the holder of the home's certificate of need, if he meets all licensure requirements. If he does not, the commissioner must proceed to place the home in receivership. The bill specifies that it governs a license renewal application that is under consideration because of a DPH order.

16. Laurel Woods' license is due to expire on September 30, 2004. Laurel Woods submitted a timely application to defendants to renew its license. Pursuant to C.G.S. § 19a-493, the renewed license would be effective for two years, until September 30, 2006.

17. Laurel Woods submitted all of the information required by C.G.S. § 19a-491a(a) and (b), and the Department of Public Health is in possession of the lease between Laurel Woods and East Shore, in which East Shore has not only consented to allow Laurel Woods to operate the facility for another four years, but has required Laurel Woods to do so.

18. Department of Public Health informed Laurel Woods that its application for license renewal was deficient solely because Laurel Woods had failed to provide a written statement of consent to the renewal of the license by the landlord, East Shore. Exhibit B, hereto.

19. Notwithstanding East Shore's obligation under the lease to allow Laurel Woods to operate the nursing home for four more years, East Shore has failed and refused to provide a written statement of consent to the license renewal required by the defendants. East Shore has stated that it desires to take over operation of the facility and

that it has withheld its consent so that it may do so based on the recent amendment to C.G.S. § 19a-491a(c) and defendants' interpretation of the amendment.

20. In a letter dated July 28, 2004, the Department of Public Health informed Laurel Woods of the "Department's position that the Commissioner is mandated to deny a licensure application if it does not include proof of the landlord's consent . . . based on the balance of the language of Connecticut General Statutes § 19a-491a(c), which clearly states that if any of the information required by Connecticut General Statutes § 19a-491a, including the consent required in subsection (c) is not provided, the Commissioner is mandated to deny the licensure renewal and to grant the license to the certificate of need holder, if such holder meets all requirements of licensure." Exhibit C, hereto.

### **COUNT ONE**

#### **(VIOLATION OF DUE PROCESS – AS APPLIED)**

21. Plaintiffs hereby incorporate paragraphs 1 through 20 of this complaint in this Count One.

22. Plaintiffs have a protected liberty and property interest in the pursuit of their business of operating a skilled nursing facility and in their lease and license to operate the facility.

23. Defendants' refusal to accept the lease agreement between Laurel Woods and East Shore as the written statement of consent to the renewal of Laurel Woods' license required by subsection (c) of Section 19a-491a of the Connecticut General Statutes, and defendants' interpretation and application of this subsection to mandate the denial of Laurel Woods' license in the absence of additional specific written consent to the renewal of Laurel Woods' license beyond the lease agreement, is arbitrary and

unreasonable, having no substantial relationship to the public health, safety, morals or general welfare, and thus violates and threatens to violate, plaintiffs' right to due process protected by the state and federal constitutions in that it:

(a) subjects and delegates plaintiffs' liberty and property rights to the whims of a private party without any accountability, direction, control or guidelines; and

(b) is not supported by C.G.S. § 19a-491a and is contrary to the statutory authority granted to the defendants;

24. Defendants' interpretation and application of C.G.S. § 19a-491a to mandate the transfer of Laurel Woods' license to East Shore on the ground that East Shore is the holder of the CON is further arbitrary and unreasonable, having no substantial relationship to the public health, safety, morals or general welfare, and thus violates and threatens to violate, plaintiffs' right to due process protected by the state and federal constitutions in that:

(a) it grants a private party the power and incentive to deprive plaintiffs' of their liberty and property for its own personal gain; and

(b) the CON is expired and/or subsumed within, Laurel Woods' license.

25. Defendants' application of the statute as interpreted by defendants has caused, and threatens to further cause plaintiffs irreparable harm by the violation of plaintiffs' rights under Section 1 of the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Connecticut Constitution, the loss of Laurel Woods' license, the transfer of Laurel Woods' license and business to East Shore, and Laurel Woods' consequent inability to fulfill the terms of its lease agreement with East

Shore, which require that Laurel Woods continuously operate a full service nursing facility on the premises.

**COUNT TWO**

**(VIOLATION OF DUE PROCESS – FACIAL)**

26. Plaintiffs hereby incorporate paragraphs 1 through 25 of this complaint in this Count Two.

27. To the extent that subsection (c) of Section 19a-491a of the Connecticut General Statutes either mandates or allows defendants to deny Laurel Woods' license renewal and terminate plaintiffs' ability to act as skilled nursing facility operators, in the absence of written consent to the renewal of Laurel Woods' *license*, rather than written consent to Laurel Woods' operation of the facility on the owner's property, and further mandates the transfer of Laurel Woods' license to the owner of the CON, the statute is arbitrary and irrational and violates and threatens to violate, plaintiffs' right to due process protected by the state and federal constitutions on its face in that it:

(a) Subjects and delegates plaintiffs' continued licensure and ability to operate the facility to the whims of a private party without any accountability, direction, control or guidelines while at the same time granting that private party an improper incentive to terminate plaintiffs' license and ability to operate the facility;

(b) Constitutes an unlawful delegation of governmental authority to a private party; and

(c) does not serve any legitimate public purpose.

28. The unconstitutional requirement of the statute described above has caused, and threatens to further cause plaintiffs irreparable harm by the violation of



plaintiffs' rights under Section 1 of the Fourteenth Amendment to the United States Constitution and Article I, Section 8 of the Connecticut Constitution, the loss of Laurel Woods' license, the transfer of Laurel Woods' license and business to East Shore, and Laurel Woods' consequent inability to fulfill the terms of its lease agreement with East Shore, which require that Laurel Woods continuously operate a full service nursing facility on the premises.

### **COUNT THREE**

#### **(UNLAWFUL PUBLIC EMOLUMENT OR PRIVILEGE)**

29. Plaintiffs hereby incorporate paragraphs 1 through 28 of this complaint in this Count Three.

30. Allowing the owner of a nursing facility to prevent a lessee from renewing its license by withholding consent to the renewal, irrespective of the fact that the lessee has an enforceable lease agreement to operate a nursing facility on the owner's property during the entire term of the renewed license, and that the lessee has complied with all legal requirements for the operation and licensing of the nursing facility, is wholly unrelated to any public interest.

31. The sole objective of the amendments to C.G.S. § 19a-491a(c) was to allow East Shore to prevent Laurel Woods from renewing its license, render Laurel Woods' performance of the lease impossible, and allow the transfer of Laurel Woods' license, and business, to East Shore, thereby granting East Shore a personal gain and advantage.

32. Plaintiffs have been, and continue to be, harmed by the unlawful exclusive public emolument and privilege granted to East Shore by the amendments to C.G.S. § 19a-491a(c).

#### **COUNT FOUR**

##### **(VIOLATION OF CONTRACT CLAUSE AS APPLIED)**

33. Plaintiffs hereby incorporate paragraphs 1 through 32 of Count Three as paragraphs 1 through 32 of this Count Four.

34. On July 1, 1998, and thereafter Laurel Woods executed a series of written contracts with East Shore pursuant to which East Shore was obligated to lease its property to Laurel Woods for the operation of a skilled nursing facility through June 2008, at Laurel Woods' option, and that obligated Laurel Woods to continually operate a nursing facility, in compliance with all laws and regulations, on the premises during the term of the lease. Exhibit A hereto, §§ 3.01, 3.02, 22.01.

35. The 1999 and 2004 amendments to subsection (c) of C.G.S. § 19a-491a, as interpreted and applied by the defendants, to allow East Shore to unilaterally prevent Laurel Woods from renewing its license, render Laurel Woods' performance under the contract impossible, and thereby curtail the term of the lease, substantially impairs plaintiffs' rights under the contract with East Shore.

36. Allowing East Shore to avoid the lease by withholding its consent to the renewal of Laurel Woods' license does not further any significant or legitimate public purpose.

37. Mandating that the Commissioner deny Laurel Woods' application to renew its license based solely on the fact that East Shore has refused to consent to the

renewal is not a reasonable condition, nor is it of a character appropriate to any public purpose.

38. Defendants' application of the statute as interpreted by defendants has caused, and threatens to further cause, plaintiffs irreparable harm by the violation of plaintiffs' rights under Article I, Section 10, clause 1 of the United States Constitution, the loss of Laurel Woods' license, the transfer of Laurel Woods' license and plaintiffs' business to East Shore, and Laurel Woods' consequent inability to fulfill the terms of its lease agreement with East Shore, which require that Laurel Woods continuously operate a full service nursing facility on the premises.

**WHEREFORE**, Plaintiffs pray for:

1. A temporary injunction preventing the defendants from refusing to renew and/or terminating Laurel Woods' license to operate the facility;
2. A temporary injunction preventing defendants from transferring Laurel Woods' license to Franco and/or East Shore;
3. A declaration that C.G.S. § 19a-491a(c) is unconstitutional either on its face or as applied by defendants and a permanent injunction preventing defendants from requiring Laurel Woods to furnish written consent to the renewal of its license beyond the lease agreement between Laurel Woods and East Shore;
4. Reasonable attorneys' fees and costs as allowed by 42 U.S.C. § 1988(b);
5. Any and all other relief, legal or equitable, which the Court deems just and proper.