

FILED  
COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

2023 MAY 17 PM 3: 53

JEANNE M. STEPHEN  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
TUSCARAWAS COUNTY, OHIO

State of Ohio, *ex rel.* Dave Yost,  
Ohio Attorney General,

*Plaintiff,*

v.

Newcomerstown Emergency Rescue Squad,  
Inc.

*Defendant.*

CASE NO. 2023 CV 04 0282

JUDGE ELIZABETH LEHIGH THOMAKOS

**ORDER FOR PRELIMINARY  
INJUNCTION AND APPOINTING  
RECEIVER**

---

This matter came before the Court on May 15, 2023, for non-oral hearing. The matter was placed before the Court for consideration of Plaintiff's **Motion for Preliminary Injunction and Appointment of Receiver** filed April 21, 2023. The motion did not request an oral hearing.

The docket sheet setting the motions for hearing was mailed to the Defendant.

The file reflects service upon the Defendant Corporation through its statutory agent of record, Julie McKibbe. There is a response filed May 11, 2023, wherein Ms. McKibbe indicates she resigned from her position with the Defendant in 2021. The document is in the form of a letter, which states that she delivered the court documents to John Marstrell, the Defendant's last board president. The document was not served on the Plaintiff, and it is a *pro se* filing.

Plaintiff the State of Ohio, *ex rel.* Dave Yost, Ohio Attorney General filed a Complaint on April 21, 2023 seeking injunctive relief, equitable relief, statutory penalties, and other available relief against Defendant Newcomerstown Emergency Rescue Squad, Inc. (“**NERS**”) for violations of the common law, the Ohio Revised Code Section 109.23 et seq. (“**Ohio Charitable Trust Act**”), and Ohio Revised Code Chapter 1716 (“**Ohio Charitable Organizations Act**”). The Complaint asserts a number of causes of action, including claims for violation of Assurance of Discontinuance, failure to file annual reports with the Charitable Law Section of the Ohio Attorney General’s Office, breach of fiduciary duties, abuse of a charitable trust, and reformation of a charitable trust. Together with that Complaint, Plaintiff filed the Motion for Preliminary Injunction and Appointment of Receiver (the “**Motion**”) to preserve any charitable assets held by Defendant.

Having considered Plaintiff’s Motion, supporting Memorandum, and accompanying affidavits, the Court hereby **GRANTS** Plaintiff’s Motion based on the following **FINDINGS**:

1. This Court has subject matter of this case and all the parties thereto.
2. Venue in this county is proper.
3. NERS owns the real property located at 1066 East State Street, Newcomerstown, Tuscarawas County, Ohio 43832 (the “**Civic Center**”).
4. NERS uses, and the Village of Newcomerstown owns, the real property at 200 South College Street, Newcomerstown, Tuscarawas County, Ohio 43832 (the “**Fire Station**”).
5. NERS owns multiple vehicles, including an ambulance and fire truck.
6. NERS has opened and owns at least the following bank accounts at Huntington National Bank: x1333, x0116, x0093, and x0080 (collectively, the “**NERS Bank Accounts**”).

7. For purposes of granting a preliminary injunction only, there is good cause to believe that NERS violated the Assurance of Discontinuance entered into with the Ohio Attorney General on September 21, 2020, and that Plaintiff is likely to prevail on the merits of such claims.

8. For purposes of granting a preliminary injunction only, there is good cause to believe that NERS failed to file its annual report with the Ohio Attorney General for 2021, and that Plaintiff is likely to prevail on the merits of such claims.

9. For purposes of granting a preliminary injunction only, there is good cause to believe that NERS has breached its fiduciary duties, including duties of care and to comply with the law, and that Plaintiff is likely to prevail on the merits of such claims.

10. For purposes of granting a preliminary injunction only, there is good cause to believe that there has been an abuse of the charitable trust of NERS, and that Plaintiff is likely to prevail on the merits of such claims.

11. For purposes of granting a preliminary injunction only, there is good cause to believe the specific purposes and/or specific terms of NERS as a charitable trust have become impossible or impracticable due to the actions or inactions of NERS such that the Ohio Attorney General is entitled to an order reforming the terms of the charitable trust, and that Plaintiff is likely to prevail on the merits of such claims.

12. For purposes of granting a preliminary injunction only, there is good cause to believe that immediate and irreparable damage to this Court's ability to grant effective final relief will occur unless NERS is immediately restrained and enjoined by Order of this Court.

13. For purposes of granting a preliminary injunction only, there is good cause to believe that entry of this temporary restraining order is in the public interest, and that no private interest of NERS outweighs the public interest.

14. The Office of the Ohio Attorney General is an independent agency of the State of Ohio and no surety is required for issuance of a restraining order under Civ. R. 65(C).

15. Plaintiff has indicated that it supports this Court's appointment of Attorney Ken Goldberg of the law firm Strip Hoppers Leithart McGrath & Terlecky Co., LPA, 575 S. Third Street, Columbus, Ohio 43215, as receiver to act with full authority and power as more fully described herein and under the supervision and direction of the Court and pursuant to Local Rule 12.03. The Court finds, upon consideration of the Motion and the accompanying evidentiary materials that the Motion is well-taken and should be granted in its entirety and that the conditions for the appointment of a receiver under R.C. 2735.01 are also satisfied; and that the proposed Receiver is qualified to act as receiver for the Receivership Property subject to this action.

**THEREFORE, IT IS ORDERED** as follows:

1. The Court orders the following relief until further notice:
  - a. The Defendant, and each officer, agent, employee, attorney, and other person in active concert or participation with Defendant who receives actual notice of this Order, is prohibited from selling or transferring any real or personal property held by it and that was purchased, in whole or in part, with charitable assets.
  - b. The Defendant, and each officer, agent, employee, attorney, and other person in active concert or participation with Defendant who receives actual notice of

this Order, is prohibited from withdrawing, transferring, disbursing, or in any way moving funds from any bank, investment, or other financial account held or owned in the name of NERS.

- c. Huntington National Bank shall immediately suspend all activity involving or relating to the NERS Bank Accounts and any other accounts held or owned in the name of NERS (collectively, the "Receivership Bank Accounts"), including but not limited to: (i) prohibiting any type of teller withdraw from or cashier's check drawn upon the Receivership Bank Accounts; (ii) suspending or deactivating all ATM and debit cards; (iii) suspending on-line access to the Receivership Bank Accounts; (iv) declining payment on any check or other negotiable instrument made payable to an individual Defendant; and (v) declining payment on any check or other negotiable instrument first presented for negotiation after the date and time this Order was entered. The suspension of the Receivership Bank Accounts shall remain in place only until the Receiver takes possession and control of the Receivership Bank Accounts, as provided by this Order.

2. Attorney Ken Goldberg (the "Receiver"), is appointed as Receiver of all the operations and assets of NERS, and is authorized to engage such agents, employees, or counsel as he deems necessary and appropriate to accomplish the work and purpose of the Receiver.

3. The Receiver is authorized to immediately enter, take possession of, manage, operate, protect, and have complete and exclusive charge and control of all of the assets, business and operations of NERS, without limitation, all real property, inventory, equipment, accounts, Revenues (as defined below), general intangibles, investment property, instruments, documents,

bank accounts and amounts therein and any other property of any nature whatsoever of NERS whether held by NERS or jointly with another, now or hereafter in the possession of, in transit to or from or under the custody or control of NERS, and the proceeds and products of the foregoing in whatever form the same may be, wherever located, now existing and hereafter arising or coming into existence (collectively the “Assets”).

4. The Receiver is authorized to collect the profits, rents, revenues, and all other income of any nature whatsoever from the Assets and/or the operation of the businesses of the NERS (collectively, the “Revenues”).

5. The Receiver is authorized to do all things and to take all actions, in his judgment, that are necessary or appropriate to preserve, protect and maintain the Assets including, but not limited to, continuing operation of the businesses, completing all works-in-progress, or to assign said projects to third parties, and further to take necessary steps to provide a reasonable and efficient plan for document retention and preservation of records.

6. With regard to any leases or executory contracts of NERS, the Receiver shall be empowered to cancel said leases or contracts if the performance of same would not be beneficial to the receivership estate, and cancellation of same shall be effective upon notice by the Receiver to the affected parties.

7. With regard to pending litigation, the Receiver shall be authorized to direct same on behalf of NERS, and make all decisions with regard to said litigation.

8. The Receiver is authorized to incur and to pay out of the Assets, including, without limitation, Revenues, such expenses and obligations coming due after the date of the Receiver’s appointment as, in his judgment, may be necessary or appropriate for such maintenance, protection, preservation or operation of the Assets (collectively, the “Receivership”).

Expenses”), including, without limitation, all taxes and assessments, insurance premiums for property, casualty, liability and other essential insurance thereon; utilities expenses; the Receiver’s compensation as set forth below. No expenses, obligations, liabilities, or risks incurred by the Receiver in connection with the maintenance, preservation or operation of the Assets or in the performance or fulfillment of his duties shall be the personal expense, obligation, liability, or risk of the Receiver but shall be exclusively the expense, obligation, liability, and risk of the receivership estate.

9. The Receiver shall also be authorized to pay all payroll obligations, and all health claims accruing prior to the appointment of the Receiver, so as to secure the continued cooperation of the staff of NERS.

10. The Receiver shall not be liable for any expenses or accounts payable with regard to the Assets incurred prior to Receiver taking possession of the Assets, nor shall Receiver be required to use any Revenues collected after Receiver takes possession of the Assets for payment of any expenses or accounts payable with regard to the Assets incurred prior to the Receiver’s taking possession of the Assets. Notwithstanding the foregoing, in the Receiver’s sole and absolute discretion, the Receiver is authorized to (but is not obligated to) pay those expenses and accounts payable incurred in the normal and ordinary course of business prior to Receiver taking possession of the Assets, including, without limitation, tax obligations attributable to the receivership property, to the extent that the payment of any such pre-existing expense or account payable is necessary and desirable to the preservation of the Assets, or essential to the filing of this action. Except as otherwise noted herein, Receiver shall pay no expenses or accounts payable incurred prior to the Receiver’s taking possession of the Assets. Further, nothing in this

Order shall require the Receiver to advance funds other than from Revenues generated from the Assets without a bond or security for payment satisfactory to Receiver.

11. The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary, on all the Assets, subject to maintaining adequate coverage.

12. In the event that Revenues or other assets of the receivership estate are not sufficient or available to pay any Receivership Expenses, the Receiver is authorized to borrow funds that are reasonably necessary, in the Receiver's discretion, to preserve and protect the Assets and to undertake and complete his duties. The borrowing of any funds shall be evidenced by the Receiver's Certificate of Indebtedness, or other instrument, and will constitute a first administrative charge and lien on the Assets in the custody of the Receiver and shall be repaid as soon as practicable by the Receiver.

13. The Receiver is authorized to take possession of all books and records of or relating to the Assets, wherever located, as the Receiver deems necessary for the proper administration, management or control of the receivership estate. Any party in possession of such books and records is ordered to turn them over to the Receiver, including, without limitation, any and all financial information and documents related to the Assets, documentation regarding bank accounts, and such other documents as may be necessary for the Receiver to take custody of and manage the Assets in accordance herewith.

14. The Receiver is authorized to use NERS's existing bank accounts or to open and maintain bank accounts in his own name, as Receiver, at such financial institutions as he may deem advisable in which he shall deposit money received by him, and from which he shall disburse such funds as may be required to pay the expenses of the receivership.



15. The Receiver shall have the right to invest any excess cash in one or more interest-bearing accounts with a state or national financial institution, so long as all amounts (including, without limitation, accrued interest thereon) in such account(s) are fully insured by the Federal Deposit Insurance Corporation.

16. The Receiver shall hold and preserve all excess cash subject to the further order of this Court.

17. The Receiver is authorized to employ and to pay from the Assets such managers, agents, employees, servants and others, and to delegate tasks as, in his judgment, may be advisable or necessary in the management, conduct, control or custody of the Assets and business affairs of NERS, each upon such terms and conditions as the Receiver determines to be in the best interests of the receivership estate. Alternatively, the Receiver is authorized to terminate the employment or service of such managers, agents, employees, servants and others as, in his judgment, may be advisable or necessary in the management, conduct, control or custody of the Assets and business affairs of NERS, each upon such terms and conditions as the Receiver determines to be in the best interests of the receivership estate.

18. NERS and all of its officers, directors, trustees, managers, agents, employees, volunteers, and representatives shall cooperate with the Receiver in the discharge of the Receiver's duties.

19. The Receiver is authorized to take a complete inventory and appraisal of the assets of NERS and report same to the Court as required by the Local Rules of this Court. The Receiver shall serve a copy of the report upon any interested party who has filed an appearance in this case.

20. The Receiver is directed to make such reports to this Court setting forth the Receiver's receipts, disbursements and other matters regarding the performance of his duties as required by the Local Rules of this Court.

21. The Receiver is ordered, upon a determination of all outstanding creditors as provided herein, to send a notice to all such persons or entities having a claim or demand against NERS, or who is claiming any right, interest or lien in or upon any of the Assets, that they must file a claim no later than forty-five (45) days from the date of mailing of such Notice. Each claim must include the name and address of the Claimant, the basis for the amount of the claim, and the date or dates upon which the claim arose. If the claim purports to be secured by any property or assets of NERS, it should also include evidence of such security interest and its perfection. All such claims shall be mailed to the Receiver at the address provided in the Notice.

22. At such time as moneys are available for distribution to creditors, as determined in the Receiver's discretion, the Receiver shall review and validate the claims, and make a recommendation to the Court as to treatment of the claims, and distribution as amongst the creditors.

23. Due to the possible volume of creditors, and administrative expense, the Receiver shall not be obligated to serve each and every pleading, motion, or other filing upon all creditors, but shall serve any person or entity filing an appearance in the case, or has otherwise specifically requested service of all matters. The Receiver shall serve upon all creditors any motion, application or other filing which recommends distribution of funds or treatment of creditor claims, and same shall be permitted reasonable opportunity to respond to same.

24. Based upon the nature of the matter, the Receiver shall be compensated at the rate of \$150 per hour and shall be entitled to administrative expense priority on any claim for

compensation. Counsel for Receiver shall be compensated at the rate of \$285 per hour and shall be entitled to administrative expense priority on any claim for compensation.

25. The Receiver is authorized to undertake all other actions, including, without limitation, executing documents on behalf of the receivership estate that are, in his judgment, necessary or appropriate to accomplish the foregoing.

26. In the event the Receiver determines the best use of the receivership estate would be the disposition of some or all of the Assets, then the Receiver may make application to the Court for authorization to sell the property, after notice and an opportunity to object has been given to all interested parties. However, the Receiver shall be empowered to liquidate, without further notice or approval, any Assets which he reasonably determines to have a value of less than \$2,000.00, and shall further be authorized to otherwise dispose of those items it determines to have a "de minimus" value to the receivership by way of donation to various charitable organizations or casual sales, as he may deem reasonable.

27. All creditors, claimants, bodies politic, parties in interest, and all sheriffs, marshals, and other officers, and their respective attorneys, servants, agents, and employees and all other firms, persons and corporations are hereby jointly and severally enjoined and stayed from commencing or continuing any action at law or proceeding in equity to foreclose any lien or enforce any claim against the Assets, or against the Receiver in any court. Without further order from this Court, all such entities or individuals are further stayed from executing or issuing or causing the execution or issuance out of any Court of any writ, process, summons, attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or enforcing any claim or lien upon the Assets or any property owned by or in the possession of the Receiver, and from doing any and all things whatsoever to

interfere with the Receiver in the discharge of the Receiver's duties in this proceeding with the exclusive jurisdiction of this Court over the Assets and the Receiver.

28. All persons and entities are hereby enjoined from interfering with the Receiver performing the Receiver's powers and duties as Receiver, as granted and imposed in this Order.

29. All individuals and entities are hereby enjoined and restrained (a) from making payment of any amounts owing to NERS other than the Receiver, and (b) from in any way disturbing or interfering with the collection, management or sale of any of the Assets. All amounts or other Assets held by any party, person or entity are held in trust for the benefit of the receivership estate and shall be promptly turned over to the Receiver.

30. The Receiver shall have the right to issue demands in the name of the receivership upon the U.S. Postal Service, or any other public or private entity, to gain exclusive possession and control of such postal boxes as are or may have been used by NERS and all persons or entities acting under or in concert with NERS for the receipt of rent, income, and other mail or packages related to the or containing Assets. The Receiver is authorized to open all mail (including all email), open all packages, and receive all faxes and other communications addressed to NERS and all persons or entities acting under or in concert with NERS concerning the Assets and received in any postal box(es) or elsewhere.

31. The Receiver's appointment shall remain in effect until further order of this Court. The Receiver may file a motion requesting the Court's permission to resign as Receiver herein.

32. Notwithstanding any other provision of this Order, the following shall apply to the operation of NERS:

- a. The Receiver is not obligated to continue any service or programming currently offered by either NERS.
- b. The Receiver shall use best efforts to cooperate with Plaintiff and the third-party service providers identified by Plaintiff to provide transition of services to the contracting entities of NERS.
- c. NERS shall cease providing fire protection, ambulance, and emergency response services within fourteen days of entry of this Order and sooner if practicable.

33. Pursuant to Civil Rule 65(E), service of this Order may be made in any of the following ways: (1) by sending a copy of the Order via email to counsel or the statutory agent for the Defendant; (2) by personal or residential service of the Order to the statutory agent for Defendant; (3) by sending a copy of the Order via regular mail to the statutory agent for Defendant; or (4) by any other means or manner authorized under the Ohio Civil Rules.

34. Personal and residential service of this Order may be made by the Receiver or any other person authorized by law or order of this court and evidenced by a return of service filed with the Clerk of Court.

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes.

Date: May 17, 2023

  
Judge Elizabeth Lehigh Thomakos

cc: Elaine Wilson, Esq. & William Sieck, Esq.  
Newcomerstown Emergency Rescue Squad