

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

Jill and Ron Ryan, et al.,	:	
individually and on behalf of others	:	
similarly situated,	:	
	:	
Plaintiffs,	:	No. 2:06-CV-0146 (WCO)
	:	
vs.	:	
	:	
Hidden Lake Academy, Inc., et al.,	:	
	:	
Defendants.	:	

**DEFENDANTS' RESPONSE TO THE SETTLEMENT CLASS
REPRESENTATIVES' MOTION AND INCORPORATED
MEMORANDUM OF LAW TO ENFORCE SETTLEMENT AND
JUDGMENT**

Come now defendants Hidden Lake Academy, Inc., HLA, Inc., Hidden Lake Foundation, Inc. and Dr. Leonard Buccellato and submit this response to the Settlement Class Representatives' motion to enforce settlement and judgment.

STATEMENT OF FACTS

On October 24, 2008, this court granted final approval of the parties' settlement agreement. (Doc. 94) The Stipulation of Settlement provided that the Defendants shall pay \$400,000.00 in settlement funds on or before December 31, 2008.

Due to a significant decrease in enrollment at Hidden Lake Academy, Hidden Lake Academy, Inc., HLA, Inc., and Hidden Lake Foundation, Inc. were unable to pay the settlement before, on or after December 31, 2008. Moreover, Dr. Leonard Buccellato, was unable to satisfy the settlement on or before December 31, 2008. (See Exhibit A hereto, affidavit of Dr. Leonard Buccellato).

Defendants have previously sought, and are currently working on, a refinance of the existing loan on the real property to secure funding for the agreed upon settlement. Following receipt of funds by the Defendants via the refinance, the Defendants fully intend to issue payment in accordance with the settlement agreement.

ARGUMENT AND CITATION TO AUTHORITY

Defendants respectfully ask that the Class Representatives' Motion to Enforce Settlement and Judgment be denied, as sanctions are not warranted under these circumstances. The Defendants are not willfully defying the agreed upon terms of settlement and fully intend to issue payment of the Settlement Funds once they have the capability to do so.

The Class Representatives' request for interest and costs should be denied. The Defendants were unable to issue payment before, on or after December 31, 2008, due to financial incapability. The Defendants are presently not in

possession of the funds to satisfy the settlement and will not be able to issue any payment until they procure a refinance of the existing loan on the real property on which the school is located. The imposition of interest and costs would further inhibit the Defendants' ability to comply with the terms of settlement.

Defendants respectfully request that they not be held in contempt.

Inability to comply is a defense to failing to comply with a court order. U.S. v. Hayes, 722 F.2d 723, 725 (11th Cir. 1984). This defense is not available to a party who is responsible for creating the inability. U.S. v. Asay, 614 F.2d 655, 659 (9th Cir. 1980) (a party relinquished possession of documents that the court ordered him to produce). The non-compliant party "must go beyond a mere assertion of inability" and produce evidence that all reasonable efforts have been made to comply. Hayes, 722 F. 2d at 725.

At present, Defendants are unable to issue payment of the settlement funds. Defendants did not create the inability to comply with the settlement agreement, and the Class Representatives have not pointed to evidence thereof. Moreover, by initiating a refinance of real property the Defendants have made reasonable efforts to comply. The Defendants are not in willful defiance of the agreement, as they intend to issue payment under the terms of the approved settlement upon the closing of the refinance.

CONCLUSION

For the foregoing reasons, Defendants request the Settlement Class Representatives' motion to enforce settlement and judgment be denied.

/s/ Robert A. Barnaby II
Robert A. Barnaby II
rbarnaby@dhnc-law.com
Georgia Bar No. 038525
Counsel for Defendants

Donahue, Nelson & Cohen, LLC
1050 Crown Pointe Parkway
Suite 1600
Atlanta, GA 30338
770-391-1300 (office)
770-391-1320 (facsimile)

EXHIBIT A

AFFIDAVIT

STATE OF GEORGIA

COUNTY OF Lumpkin

The undersigned deponent, Leonard A. Buccellato, having personally appeared before the undersigned notary public and first having been sworn according to law, deposes and says under oath as follows:

1.

I am competent to make this affidavit. I make this affidavit based upon my personal knowledge.

2.

I am the founder and headmaster of Hidden Lake Academy which is owned and operated by HLA, Inc., a non-profit corporation. I have personal knowledge of the financial status of HLA, Inc.

3.

I am president of Hidden Lake Academy, Inc., a for profit corporation which provides management services to Hidden Lake Academy. I have personal knowledge of the financial status of Hidden Lake Academy, Inc. All income of Hidden Lake Academy, Inc. is derived from payments made by HLA, Inc.

4.

I have no official position or role with Hidden Lake Foundation, Inc., a non-profit corporation which was established in 2005 in order to raise funds to build a chapel at Hidden Lake Academy. However, I am familiar with the operation of the Foundation and have personal knowledge of its financial status.

5.

Unfortunately, as a result of the drastic decrease in the student body of Hidden Lake Academy subsequent to, and in my opinion, caused by the filing of plaintiffs' complaint in this action and a continuing barrage of negative emails to educational consultants who in the past referred prospective students to Hidden Lake Academy, HLA, Inc. and Hidden Lake Academy,

Inc. have suffered drastic decreases in revenue over the past 2.3 years. See Exhibit A-1, a copy of a recent email sent by an unidentifiable individual or entity to certain educational consultants.

6.

During the past 2.3 years HLA, Inc. has had to substantially cut the number of teachers, counselors and other employees that comprised its staff in an effort to match expenses with revenue.

7.

At the present time, and for more than one year, neither HLA, Inc. nor Hidden Lake Academy, Inc. have, or have had, funds to pay the \$400,000 specified in the parties' Stipulation of Settlement. All assets of HLA, Inc. and Hidden Lake Academy, Inc. are encumbered by a loan from, and deed to secure debt executed in favor of, Brand Banking and Trust Company ("BB&T").

8.

I do not currently have, and have not had for more than one year, funds to pay the \$400,000 specified in the parties' Stipulation of Settlement. In 2006 I executed a personal guarantee in favor of BB&T in order to assist in the procurement of the loan by BB&T to HLA, Inc.

9.

Hidden Lake Foundation, Inc. has never had, and does not now have, funds sufficient to pay the \$400,000 specified in the parties' Stipulation of Settlement.

10.

Even if all unencumbered assets of HLA, Inc., Hidden Lake Academy, Inc., Hidden Lake Foundation, Inc. and me were combined, no meaningful payment could be made to the plaintiffs at this time.

11.

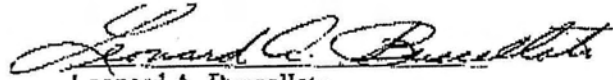
For over a year HLA, Inc., Hidden Lake Academy, Inc., and I have worked diligently in an effort to obtain from BB&T and other financial entities a new loan that would enable HLA, Inc. to pay off the 7.2 million dollar loan made by BB&T and acquire sufficient additional cash to pay to plaintiffs the \$400,000 specified in the parties' Stipulation of Settlement.

12.

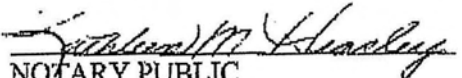
At the present time, and since early December 2008, HLA, Inc., Hidden Lake Academy, Inc. and I are, and have been, working with a new financial entity regarding a new loan in an amount sufficient to pay off the loan made by BB&T and to pay the \$400,000 to plaintiffs:

Under penalty of perjury, I declare that I have examined this Affidavit and hereby certify that it is true, correct and complete.

Date: 1/19/09

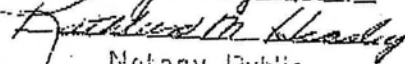

Leonard A. Buccellato

Sworn to and subscribed before me, a Notary Public in and for the aforesaid State by Leonard A. Buccellato, known personally to me, who, being duly sworn and on oath deposed and said that the within and foregoing statements are true and correct as of this 19 day of January, 2009.


NOTARY PUBLIC

My Commission Expires: 19 Aug 09

Sworn and Subscribed before me this 9th day of January 2008


Notary Public

My Commission Expires 19 Aug 2009

EXHIBIT A-1

--- On Tue, 1/6/09, Nancy Edwards <academicchoices@yahoo.com> wrote:

From: Nancy Edwards <academicchoices@yahoo.com>
Subject: Fw:
To: "Len Buccellato" <lbuccellato@hiddenlakeacademy.com>, "leonard buccellato" <leonardbuccellato@yahoo.com>, "Jeff Holloway" <jholloway@hiddenlakeacademy.com>
Date: Tuesday, January 6, 2009, 5:19 PM

FYI

Nancy Edwards
Education Consultant
NY Office/ Cell 315-277-6063
WV Office 304-898-8313
Fax 304-898-8312
E-Mail academicchoices@yahoo.com

----- Forwarded Message -----

From: Nancy Edwards <academicchoices@yahoo.com>
To: John Cornell <drjohntheshrink@gmail.com>; dga84@aol.com; mbodin@bodinassociates.com; plrudy@awwwsome.com; schoolbuff@comcast.net; darnold64@aol.com; lmeberle@yahoo.com; wbyeats@sbcglobal.net; imywax@aol.com; cadwallader@att.net; nikeedcon@aol.com; scottaas@comcast.net; dwdingle@educdir.com; mbconsoli@aol.com; sbdarling@aol.com; susanbedwards@att.net; magormaneducon@comcast.net; edufax@edufax.com; guidance@schoolcounseling.com; david@altshulerfamily.com; consuegraeducati@bellsouth.net; georgia@gkirvin.com; pattimconsultant@aol.com; mengeman@educationdirections.com; mengelman@educagtionaldirections.com; kreinercon@aol.com; margaritadonnely@gmail.com; bfdudley@sbcglobal.net; lmay@campusselection.com; echdas@aol.com; rwolframsis@airmail.net; egordon@therightschool.com; mmoses@gate.net; drfred@drdred.net; judirobin@aol.com; tancona@tagcounseling.com; brownellenv@aol.com; rhyken@ed-psy.com; glasspn@optonline.net; jeanhague@aol.com; linda.mcmullen@gmail.com
Sent: Tuesday, January 6, 2009 5:13:13 PM
Subject: Re:

I hope you are not actually a psychiatrist.

Nancy Edwards
Education Consultant
NY Office/ Cell 315-277-6063
WV Office 304-898-8313
Fax 304-898-8312
E-Mail academicchoices@yahoo.com

From: John Cornell <drjohntheshrink@gmail.com>
To: dga84@aol.com; mbodin@bodinassociates.com; plrudy@awwwsome.com; schoolbuff@comcast.net; darnold64@aol.com; lmeberle@yahoo.com; wbyeats@sbcglobal.net; imywax@aol.com; cadwallader@att.net; nikeedcon@aol.com; scottaas@comcast.net; dwdingle@educdir.com; mbconsoli@aol.com; sbdarling@aol.com; susanbedwards@att.net; magormaneducon@comcast.net; edufax@edufax.com; guidance@schoolcounseling.com; david@altshulerfamily.com; consuegraeducati@bellsouth.net; georgia@gkirvin.com; pattimconsultant@aol.com; mengeman@educationaldirections.com; mengelman@educagtionaldirections.com; kreinercon@aol.com; margaritadonnelly@gmail.com; bfdudley@sbcglobal.net; lmay@campusselection.com; echdas@aol.com; rwolfamsis@airmail.net; egordon@therightschool.com; mmoses@gate.net; drfred@drdred.net; judirobin@aol.com; tancona@tagcounseling.com; brownellenv@aol.com; rhyken@ed-psy.com; glasspn@optonline.net; academicchoices@yahoo.com; jeanhague@aol.com; linda.mcmullen@gmail.com
Sent: Tuesday, January 6, 2009 5:08:43 PM
Subject:

Since all of you have consented to having your name and contact information posted on Hidden Lake's website as consultants who are expert on HLA, I thought you might want to know that Len is, as of December 31, in default regarding the settlement of the class action suit brought by the parents of various former HLA students. Apparently, he doesn't have the money to pay the plaintiffs; or he has simply chosen to treat them as he does all of his creditors. But don't let a little thing like that stop you from recommending his school to parents who have hired you for professional guidance. Nothing else he's done has bothered you, so why should this?

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Plaintiffs,	:	No. 2:06-CV-0146 (WCO)
	:	
vs.	:	
	:	
Hidden Lake Academy, Inc., et al.,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties in the foregoing matter with a copy of: **DEFENDANTS' RESPONSE TO THE SETTLEMENT CLASS REPRESENTATIVES' MOTION AND INCORPORATED MEMORANDUM OF LAW TO ENFORCE SETTLEMENT AND JUDGMENT** with the Clerk of Court using CM/ECF system which will automatically send e-mail notification of such filing to the following counsel of record:

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(404) 239-1179 Fax

This 19th day of January, 2009.

/s/ Robert A. Barnaby II

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Counsel for Defendants