



GRANTED WITH MODIFICATIONS

EFiled: Feb 13 2017 11:50AM EST
Transaction ID: 00201141
Case No. 12400-CB



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SIMPSON CHRISTIAN, on behalf of himself)
and all other similarly situated stockholders)
of ECHO THERAPEUTICS, INC.,)

Plaintiff,)

v.)

MICHAEL M. GOLDBERG, SHEPARD)
GOLDBERG, ELAZER R. EDELMAN,)
SCOTT W. HOLLANDER , and ECHO)
THERAPEUTICS, INC.,)

Defendants.)

C.A. No. 12400-CB

[PROPOSED] ORDER GRANTING PLAINTIFF’S PETITION FOR AN AWARD OF ATTORNEYS’ FEES AND EXPENSES

WHEREAS, on July 20, 2016, the Court granted a stipulated Order dismissing the above-captioned action as moot and retaining jurisdiction solely to determine Plaintiff’s application for an award of attorneys’ fees and expenses (the “Fee Petition”);

WHEREAS, on September 1, 2016, Plaintiff filed a Brief in Support of His Petition for an Award of Attorneys’ Fees and Expenses;

WHEREAS, on October 21, 2016, Defendants filed their Answering Brief in Opposition to Plaintiff’s Petition for an Award of Attorneys’ Fees and Expenses;

WHEREAS, on November 14, 2016, Plaintiff filed his Reply Brief in Further Support of His Petition for an Award of Attorneys' Fees and Expenses; and

WHEREAS, on February 16, 2017, the Court held a hearing on Plaintiff's application for an award of attorneys' fees and expenses;

IT IS HEREBY ORDERED this ____ day of _____, 2017, that:

1. Plaintiff's application for an award of attorneys' fees and expenses is GRANTED for the reasons set forth on the record at the February 16, 2017 hearing;

2. The Court will no longer retain jurisdiction over this action; and

3. This action is closed for all purposes.

Chancellor Bouchard

Court: DE Court of Chancery Civil Action

Judge: Andre G Bouchard

File & Serve

Transaction ID: 60194781

Current Date: Feb 13, 2017

Case Number: 12400-CB

Case Name: Simpson Christian v. Michael M. Goldberg

Court Authorizer: Bouchard, Andre G

**Court Authorizer
Comments:**

This case is much ado about little. In June 2016, plaintiff filed a three-count complaint asserting that a fee-shifting bylaw Echo added to its bylaws in 2014 violated Sections 109(b) and 102(b)(6) of the DGCL (Counts I-II), and that the directors breached their fiduciary duties by failing to remove the provision after Section 109(b) was amended in 2015 (Count III). The day the complaint was filed, Echo amended its bylaws to remove the fee-shifting provision. Plaintiff's counsel now seeks a mootness fee. Because the claims have been dismissed without prejudice to any member of the putative class except plaintiff, the fee application can be resolved on the papers.

Defendants object to the fee application, asserting that (1) the litigation had no merit when filed, and (2) did not confer a compensable benefit. Defendants do not contest that plaintiff's efforts caused the removal of the fee-shifting bylaw.

On the first issue, for reasons I explained in a similar case, Counts II and III likely were not meritorious when filed, but Count I was given the clear prohibition on fee-shifting bylaws in Section 109(b), although one could debate ripeness. See *Solak v. Sarowitz*, 2016 WL 7468070 (Del Ch. Dec. 27, 2016). On the second issue, I believe the bylaw amendment did confer a benefit but only a modest one given the clarity of the prohibition in Section 109(b).

Turning to the Sugarland factors, Echo's failure to remove the fee-shifting provision after the amendment to Section 109(b) appears to have been a foot fault. This was a simple case. It probably could have been resolved by writing a letter to Echo rather than expending over 40 hours to file a boilerplate complaint. Count I was a slam dunk. There was no real contingency risk. The case was over the day it was filed. Plaintiff counsel's request for an award of \$100,000 is excessive. A reasonable fee under the circumstances, which the Court hereby approves, is \$20,000.

The February 16 hearing is canceled.

/s/ **Judge Bouchard, Andre G**