

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

HEALTH ADVANCE, INC.,

Case No. 17-CV-132-SWS

Plaintiff,

vs.

Casper, Wyoming
September 12, 2017
5:16 p.m.

JORDAN STARKMAN,

Defendant.

EXCERPTED TRANSCRIPT OF
MOTION HEARING PROCEEDINGS - ORAL RULING

BEFORE THE HONORABLE SCOTT W. SKAVDAHL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:

MR. LUCAS E. BUCKLEY
MR. SEAN M. LARSON
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For the Defendant:

MR. KEITH J. DODSON
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Casper, Wyoming 82602

Court Reporter:

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*Proceedings recorded by stenography; transcript produced by
computer-aided transcription.*

1 (Beginning of excerpted proceedings.)

2 THE COURT: Thank you. Please be seated. I note the
3 presence of parties, presence of counsel.

4 Let me first begin by noting what it is that I am to
5 do here today. The question before this Court is not whether
6 or not someone's likely to prove an insider trading violation
7 or a self-dealing or fraud in the inducement, but the question
8 here today is who has control of or should be in control of
9 Advanced -- or Health Advance, Inc. And as I said at the
10 beginning of this hearing, my focus was on who legally, from a
11 legal standpoint, appears to have a likelihood of success on
12 the merits of who is entitled to sit in those chairs as the
13 board of directors, the president, et cetera, of Health
14 Advance, Inc.

15 As the Tenth Circuit has most recently noted in its
16 decision in *New Mexico Department of Game and Fish v. United*
17 *States Department of Interior*, 854 F.3d 1236, a preliminary
18 injunction is an extraordinary remedy that may only be awarded
19 upon a clear showing -- I don't think clear and convincing is
20 the standard, but it's clear showing -- of the movant being
21 entitled to such relief.

22 The court went on in that citing various cases it
23 previously noted and that four factors must be shown by the
24 movant to obtain a preliminary injunction: One, the movant is
25 substantially likely to succeed on the merits. Two, the

1 movant will suffer irreparable injury if the injunction is
2 denied. Three, the movant's threatened injury outweighs the
3 injury to the opposing party -- the opposing party may suffer
4 under the injunction. And the injunction would not be adverse
5 to the public interest. That is also out of the *New Mexico*
6 *Department of Game and Fish* case, citing *Fish v. Kobach*, 840
7 F.3d 710 at 723, Tenth Circuit 2016 decision.

8 The Court in determining the likelihood of success as
9 a fundamental issue in terms of entitlement to control of this
10 corporation would note that I have to look to what actions
11 were taken and -- in terms of the removal of or attempted
12 removal of Mr. Starkman, what actions were taken with regards
13 to the issuance of the stocks, the common stock in this
14 matter; and based upon that, who should or is likely to
15 succeed on the assertions as to control.

16 And in this case there's a couple of things that I
17 see. There's two avenues of attack that have been pursued by
18 the plaintiff. One is that, "Judge, we are the majority
19 shareholder, and we acted as the majority shareholder in
20 doing or conducting or removing Mr. Starkman. And if we're
21 not on the books, the majority shareholder, we should be
22 because the deal that they cut with" -- I want to call it
23 Haitian Labs -- "Hantian Labs was not closed on time. And if
24 it was closed on time, it was not closed in accordance with
25 the terms of the original agreement as announced. And had

1 that gone through as announced, there would be controlling --
2 today a controlling ownership of stock by the Med Tech --
3 Micro Medtech, Mr. Peterson, whoever it might be."

4 But the problem with that argument is that there's
5 the January 16 press release that -- I could buy it a little
6 easier and I suppose Micro Medtech could sell it better if a
7 couple things didn't exist. One, the January 16 press release
8 clearly indicates how many shares are going to get issued, and
9 it was 18 million shares as opposed to the original 15 million
10 shares. So that in and of itself puts it over the threshold
11 in terms of rendering the stock closing with Micro Medtech on
12 March 7. Micro Medtech did not become the majority
13 shareholder. So that's -- that's problem number one.

14 A couple of things in here that I would note, and
15 this is really more on the -- for future issues, I suspect.
16 But I've got -- on one side of the courtroom I have a party
17 that has a vested interest in closing and keeping the Micro
18 Medtech deal, the million stock, however many shares he gets
19 if the deal goes through, goes forward. On the other side
20 I've got a poison pill that was created to give myself
21 7 million shares of stock in the event they want to kick me
22 out.

23 And so by golly, I mean, by the time both sides are
24 done with this case, I estimate that any money will be in the
25 lawyers' pockets, not any shareholders' pockets. But that's

1 going to be a choice to be made by the parties in how they
2 want to finagle their deals or undo their deals or whatever.
3 But neither side comes to this Court with clean hands in terms
4 of the issue before it.

5 But the question here is, has the plaintiff
6 established that Mr. Starkman is not entitled to be or is not
7 likely to succeed on the merits of establishing himself as the
8 proper CEO and member of the board of directors along with --
9 I believe it's Mr. Diesveld with Hantian Labs are on that
10 board. And the answer is they -- plaintiff has not shown that
11 they're likely to succeed on the merits of that issue because,
12 one, the undisputed evidence establishes that Micro Medtech
13 did not become the controlling shareholder following the
14 closing of their deal on March 7 or 6. I think the shares
15 were issued on the 7th of March, 40 million shares. The
16 reality is at best they were 40 million and the others were
17 44 million, 44.5 million. So they don't get there that way.

18 Then to the extent that they can cancel deals despite
19 the fact that they're not the controlling issue or they could
20 combine resources of other shareholders, there is no evidence
21 that the conduct that they engaged in on April 8, April 9,
22 April 18, April 19 was done in accordance with the bylaws and
23 corporate law and structure.

24 There is no indications that notice was properly
25 provided to the shareholders as to the action taken, and there

1 is no indications that they, first, had authority to engage in
2 the conduct or actions taken. But second, there's issues as
3 to whether notice was even properly given to the other
4 shareholders or of the action that was taken. And the
5 evidence simply does not support a likelihood of success on
6 the merits of the plaintiff's claim in terms of Med Tech being
7 able to take the actions that they took in purportedly
8 removing Mr. Starkman.

9 Second, as to the irreparable injury if the
10 injunction is denied, I think Mr. Dodson successfully noted
11 that there is an ability to accurately assess the value of the
12 stock at certain times. It's recorded on a daily -- not
13 minute -- basis. There's a market -- at least if you want to
14 call it a market. There's a market for the ability to assess
15 the value and determine what was or wasn't lost. And to the
16 extent someone engages in conduct that reduces that value,
17 then the Court at some later date will be able to accurately
18 determine or be able to calculate damages. So I don't think
19 that in terms of irreparability the ability to assess and to
20 determine damages minimizes the strength of any such argument.

21 "The movant's threatened injury outweighs the injury
22 the opposing party will suffer under the injunction." Here,
23 given the likelihood of success or the lack of likelihood of
24 success of Micro Medtech's and the action that was taken
25 purportedly to remove Mr. Starkman, I cannot say that the

1 threatened injury outweighs the injury the opposing party will
2 suffer under the injunction -- or if the injunction is not
3 issued.

4 And finally, this is, I think, one of the more
5 important points: "The injunction would not be adverse to the
6 public interest." Well, in this case it could be adverse to
7 the public interest for this Court to issue an injunction
8 based upon the facts presented to the Court this afternoon.

9 As best this Court can determine, a minority
10 shareholder has attempted to evict the, unless otherwise
11 shown, self-dealing director and president CEO of Health
12 Advance, Inc. He, until proven otherwise or shown otherwise,
13 appears to be properly the president, CEO, on the board of
14 directors. And certainly the various allegations regarding
15 self-dealing and/or fiduciary duty breaches, those will go
16 forward, and, you know, we'll see what that brings. But in
17 terms of adverseness to the public interest, the evidence
18 simply does not support a determination that Micro Medtech,
19 the actions that were taken by Mr. Shusterman and the others,
20 was likely to succeed on the merits in terms of their ouster
21 of Mr. Starkman.

22 So for those reasons I will grant the defendant's
23 motion to dissolve the temporary restraining order that was
24 issued in this matter.

25 I'm inclined to appoint a receiver. This is a

1 matter -- I think the parties are -- well, you go to bed with
2 fleas, you wake up with fleas. And you made your beds, and
3 you can figure out how to get out of it. You can work
4 together and figure out how to prosper from it. But it's not
5 a matter that I see that at this point in time I could
6 properly figure out who to even appoint as a trustee or a
7 holder in this matter. So for those reasons I leave the
8 parties to their own devices pending a review and
9 consideration of the evidence and the merits of the claims
10 asserted in this matter.

11 I will enter the order as presented by the defendant
12 dissolving the TRO. I will also dissolve the bond -- well,
13 I'm not going to dissolve it yet. I don't know if we have any
14 issues on that. I'll allow counsel to confer on that. But I
15 will dissolve the TRO and the restrictions imposed pursuant to
16 that. And I will incorporate by reference this reference to
17 the Court's findings of fact and conclusions of law with
18 regards to the factors to be considered into that order as
19 presented.

20 Without arguing the merits of the Court's ruling --
21 which you are more than invited, entitled to pursue with the
22 Tenth Circuit Court of Appeals -- are there any other matters
23 or issues we need to address at this time? Mr. Buckley?

24 MR. BUCKLEY: Not from plaintiff, Your Honor.

25 THE COURT: Mr. Dodson?

1 MR. DODSON: No, Your Honor.

2 THE COURT: Thank you very much. We'll stand in
3 recess. Have a good evening.

4 (Proceedings concluded at 5:31 p.m., September 12, 2017.)

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C E R T I F I C A T E

I, ANNE BOWLINE, Court Reporter in the state of Wyoming, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing 9 pages constitute a full, true and correct transcript.

Dated this 25th day of September, 2017.

 /s/ Anne Bowline

ANNE BOWLINE
Registered Merit Reporter
Certified Realtime Reporter