

The Bachman Law Firm PLLC
365 South Main Street, 2nd Floor
New City, New York 10956
845-639-3210

June 25, 2021

By E-Mail and Certified Mail RRR

Adirondack Mountain Club
814 Goggins Road
Lake George, NY 12845
Attn: Michael Barrett and Tom Andrews

Re: ADK Letter, dated June 21, 2021, to Various Members of ADK NY

Dear Ladies and Gentlemen:

As you are aware, we represent the New York Chapter, Inc. of The Adirondack Mountain Club, Inc. (“ADK NY”) and we are in possession of your letter (“Letter”), dated June 21, 2021, addressed to certain members of ADK NY (including, but not limited to Mark Fedow, Raymond Kozma, Suzanne Rocheleau, Eve Mancuso, Teri Gabel, and Susanne Flower, collectively “Recipients”). That Letter purports to “pursuant to Section 1.2. (b) of ADK’s bylaws [regarding suspension or expulsion of an individual member], . . . provid[e] written notice and opportunity to be heard [(“Hearing”)] regarding . . . charges [(“Charges”).”

We write on behalf of both ADK NY and the Recipients in response to that Letter. **Please be advised that none of the Recipients or ADK NY will appear at the Hearing. The Letter and the Hearing is rejected as they are invalid, defective, and a nullity;** neither the Letter nor the Hearing meets the legal due process requirements.

Any proceeding to remove a member of a not for profit corporation must adhere to “due process.” 1855 7 Ave. Hous. Dev. Fund v. Wigfall, Index No. 81069/10, 2014 NYLJ LEXIS 7472 (Civ. Ct. N.Y. Cnty. Feb. 20, 2014). At a minimum, due process requires that removal proceedings “provide for adequate notice of charges prior to a hearing on those charges, a hearing at which the charges are presented in detail with supporting documentation and at which the [accused] whose removal is sought has an opportunity for rebuttal, including the presentation of witnesses and cross-examination of witnesses. The [accused] should also have the opportunity to obtain counsel.” Ellis v. Brodert, 2006 NYLJ LEXIS 899 (Sup. Ct. N.Y. Cnty. Feb. 7, 2006).

The Letter and the Hearing it describes wholly fail to meet these due process requirements:

- The Letter is dated June 21, 2021, a mere five (5) days prior to the Hearing (the Letter itself acknowledges the inadequacy of the short “proximity” of the June 26 Hearing)

- The Charges are insufficiently specified as they make no allegations of wrongdoing by any particular Recipient
- The Letter does not list who the witnesses against the Recipients will be at the Hearing
- The Recipients cannot prepare to or, seemingly, actually cross-examine such witnesses at the Hearing
- The Letter prohibits the Recipients from bringing witnesses of their own (“[o]nly those individually noticed will have the right to appear at this meeting.”)
- The Letter does not provide the documentary evidence which will be used against the Recipients
- The Recipients cannot prepare to or, seemingly, question any such documentary evidence at the Hearing
- The Recipients cannot have counsel appear at the Hearing (“[o]nly those individually noticed will have the right to appear at this meeting.”)

You should be mindful that without due process, a decision to suspend or expel a member of a not for profit corporation is invalid. Pepe v. Missanellese Soc. of Mut. Aid., 141 Misc. 7, 252 N.Y.S. 70 (Sup. Ct. Oneida Cnty. 1930); Weinberg v. Carton, 196 Misc. 74, 90 N.Y.S.2d 398 (Sup. Ct. Special Term Bronx Cnty. 1949).

Moreover, even if a removal proceeding is due process compliant, such removal can only be “done in good faith and to further a legitimate corporate purpose” and must be based upon a “reasonable business judgment.” 1855 7 Ave. Hous. Dev. Fund v. Wigfall, Index No. 81069/10, 2014 NYLJ LEXIS 7472 (Civ. Ct. N.Y. Cnty. Feb. 20, 2014). See also, Matter of Koch, 257 N.Y. 318 (1931) (decision to remove must be reasonable).

Again, because the Letter and the Hearing are not due process compliant, none of the Recipients or ADK NY will appear at the Hearing and the Letter and the Hearing is rejected as they are invalid, defective, and a nullity.

Beyond the objection to the Letter and the irregularities in the proposed Hearing, though, both ADK NY and the Recipients vigorously deny the purported Charges and reserve all of their rights and remedies. Should the Charges be properly noticed and heard in an appropriate manner and forum, we look forward to proving the Charges to be false and the removal effort to be unreasonable, in bad faith, and an ultra vires act.

Separately, **please be advised that we will be serving you with notices pursuant to Not for Profit Corporation Law §621 (right to inspect the books and records) and §718 (right to obtain a list of officers and directors).** To streamline those coming requests, please advise, within the time frames set by those statutes, when we can visit the office to conduct those reviews or if you will provide digital copies of those materials.

With all of that, I reiterate my previous offer to discuss this matter directly with you.¹ Should you continue to escalate this matter, we reserve our rights to institute litigation, seek damages, and obtain other recourse. Given the time and expense that will require of all parties, plus the poor light in which the whole Club may be cast, I urge you to reconsider your course of action.

Very truly yours,

/s/

Judith Bachman

cc: Virginia Etu (by email)

¹ You apparently rejected, without explanation, my previous offer to do so and yet accused **us** of refusing to communicate with you.