

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA  
CABELL COUNTY BOARD OF EDUCATION,

Plaintiff,

v.

Civil Action No 22-ccC-327

ERIC A. MORRISON and  
E T ADVISOR SERVICES LLC

Defendants.

ANSWER AND COUNTERCLAIM

Comes now Eric A. Morrison and E T Advisor Services LLC, by  
counsel, Clinton W. Smith, and for their answer state as  
follows:

I.

The Defendants admit the allegations contained in  
Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16,  
22, 23, 24, 25, 27, 32, 37, 47, 56, and 57.

II.

The Defendants deny the allegations contained in Paragraphs  
17, 28, 33, 39, 40, 41, 42, 43, 44, 45, 49, 51, 52, 53, 54, 58,  
59, 60, 61, 62, 63, 64, and demand strict proof thereof.

III.

The Defendants admit that each individual school named  
planned a trip to Washington, D.C. as alleged in Paragraph 8,  
but deny it was a "joint trip" as they were scheduled for  
different dates and demand strict proof thereof.

IV.

The Defendants admit that neither school made contractually required fifth payment as alleged in Paragraph 26 but does not have sufficient knowledge to either admit or deny the allegation that the Plaintiff refunded the final payment to the families and demand strict proof thereof.

V.

The Defendants admit none of the \$136,500.00 paid by the Plaintiff has been returned as alleged in Paragraph 50 as the Defendants have no obligation to do so are entitled to retain said sum but denies the allegation they performed none of the services promised or that they have no valid claim upon the money and demand strict proof thereof.

VII.

The Defendants admit none of the \$136,500.00 paid by the Plaintiff has been returned as alleged in Paragraph 35 as the Defendants have no obligation to do so are entitled to retain said sum but denies the allegation the Plaintiff has exerted arduous efforts and demand strict proof thereof.

VIII.

The Defendants do not have sufficient knowledge to either admit or deny the allegations in Paragraphs 18, 19, 20, 21, 29, 30, 31, 34, 38, 48 and demand strict proof thereof.

IX.

The allegations contained in Paragraphs 36, 46, 55, do not require a response but to the extent it may be found that a response is required, the Defendants deny such allegations and demand strict proof thereof.

X.

The Defendants assert and reserve to themselves any affirmative defense which may be revealed as discovery and this litigation progresses, including the complaint fails to state a claim on which relief can be granted, unclean hands, unjust enrichment, failure to mitigate, laches, lack of exhaustion, statute of limitations, waiver and any and all affirmative defenses set forth in West Virginia Rule of Civil Procedure 8.

Wherefore, the Defendants pray this Court dismiss the complaint filed herein and hold it for naught, award the Defendants their attorney fees, costs incurred and for such other relief as this Court deems just.

**COUNTERCLAIM**

Defendants, Eric A. Morrison and E T Advisor Services LLC, having answered the Plaintiff's Complaint, hereby files its Counterclaim against Plaintiff, Cabell County Board of Education, for Breach of Contract and each Defendants'

Counterclaim against said Plaintiff for Defamation of Character,  
as follows:

I.

Plaintiff's Schools, Barboursville and Milton Middle Schools, breached their respective contracts with E T Advisor Services LLC by failing to pay the fifth and final installments due to said Defendant under the terms and conditions of each school's contract for the 8<sup>th</sup> Grade Washington D.C. Trips, which were to occur from April 26, 2020, to April 29, 2020, for Milton Middle School and from May 3, 2020, to May 6, 2020, for Barboursville Middle School.

II

Plaintiff and its Schools further breached the terms and conditions of section #4 of each agreement, entitled "Performance," as the Plaintiff and each school refused to do everything necessary to ensure the terms of their respective Agreements with E T Advisor Services LLC would take effect.

III.

Upon Plaintiff's cancellation of the trips due to COVID-19, and its unreasonable request for total refunds, which were clearly prohibited under the terms of each school's contract, E T Advisor Services LLC, offered to provide a partial cash refund, and to reschedule, rebook, and extend travel vouchers/credits for trips that could be taken in the future,

and Plaintiff refused to accept such partial refunds for each school and refused all of Defendants' reasonable offers to extend travel vouchers/credits which would have allowed Plaintiff's students to use the travel services at a later date and time.

#### IV.

Barboursville and Milton Middle Schools' breach of their respective contracts caused damages to Plaintiff in lost profits that E T Advisor Services LLC would have realized if the Plaintiff's Schools had not breached said contracts by cancelling the trips and failing to pay the fifth and final installments due to E T Advisor Services LLC.

#### V.

Plaintiff and its schools have publicly defamed, disparaged, and maligned the character and reputation of E T Advisor Services LLC and Eric A. Morrison, by making and publishing false accusations against them to their students, their families, and WSAZ News, which imply that the company and Mr. Morrison have stolen money from these schoolchildren and their families, by allegedly refusing to provide refunds to them, when no such refunds were owed under the terms of the contracts E T Advisor Services LLC entered with Barboursville and Milton Middle School and all of the payments received by E T

Advisor Services LLC were from Barboursville and Milton Middle School not individual students or their families.

VI.

On or about July 23, 2020, Plaintiff Cabell County Board of Education (the school district) sent a robocall to WSAZ, and/or students and their families, in which Plaintiff confirmed that E T Advisors Services LLC was the travel agency used for the Washington D.C. Trips, but "because the contracts are directly between the parents and the travel company, the district's options are limited." This statement is and was false at the time it was made, as E T Advisor Services LLC had no contracts with the parents, but instead had contracts with Barboursville and Milton Middle School, which plainly stated in Bold, Underlined print that no refunds would be paid of any monies paid under these Agreements. Plaintiff's robocall further stated that: "However, our legal counsel has filed a complaint with the West Virginia Attorney General and we are awaiting a date for mediation, which is the first step toward reaching a solution. While we can't make any promises, we hope this process will result in some restitution to parents from the travel company." See, <https://www.wsaz.com/2020/07/23/wsaz-investigates-parents-seek-refund-in-canceled-school-trip/>.

## VII.

Plaintiff's robocall to WSAZ falsely stated that the travel company had contracts with the parents and implied that E T Advisor Services LLC owed restitution to the parents of these students under such contracts when neither of these statements were true. WSAZ's broadcast and article about the parents seeking refunds disseminated Plaintiff's untrue statements from its robocall about E T Advisor Services LLC contracts for the Schools Washington D.C. trips to the community and general public in WSAZ's viewing area which includes Huntington and Charleston, West Virginia, as well portions of Kentucky.

## VIII.

On November 30, 2021, Plaintiff's General Counsel, Sherrone Hornbuckle, made the following statement to WSAZ, which was broadcast and published by WSAZ, "We understand the hardship this puts parents under. We are continuing to work diligently to retrieve the funds for families. We will exhaust every legal remedy to make these families whole."

<https://www.wsaz.com/2021/11/30/wsaz-investigates-still-no-school-trip-refunds/>. Ms. Hornbuckle's statement was misleading and false at the time it was published to and by WSAZ, as by October 23, 2020, E T Advisor Services LLC had already made two offers to Ms. Hornbuckle as counsel for the Plaintiff for immediate cash refunds of \$26,000 to each school; a \$10,000

credit to each school for the next year's motorcoach cost; and \$100 per person per trip for the next three years, despite having no legal obligation under the contracts to refund the same and Plaintiff had refused both times to accept such cash refunds and travel credits.

#### IX.

On November 30, 2021, Ms. Hornbuckle did not inform WSAZ that E T Advisor Services LLC had made any refund offers or travel credit offers; and she failed to inform WSAZ that the contracts expressly prohibited refunds -- instead Ms. Hornbuckle continued to paint E T Advisor Services LLC in a bad light by informing WSAZ that the school district had cut ties with Eric Morrison and E T Advisors Services LLC and that the school district had updated their policies and procedures regarding contracts with vendors. WSAZ's broadcast about the status of the refunds to the school trips, included Ms. Hornbuckle's misleading and false statements, which implied that E T Advisor Services LLC had not offered any refunds, and this broadcast and WSAZ's article related to the same are both still available to the general public on WSAZ's website, which continues to paint E T Advisor Services LLC and Mr. Morrison in a bad light within the community. <https://www.wsaz.com/2021/11/30/wsaz-investigates-still-no-school-trip-refunds/>.



X.

Upon information and belief, Plaintiff has never informed its students, their families, and/or WSAZ that the contracts it entered prohibited refunds, nor that E T Advisor Services LLC made offers of immediate cash refunds in the amount of \$26,000 to each school as well as offering the substantial travel credits of \$10,000 each to each school and \$100 per person for the next three years. Instead, to date, Plaintiff has continued to disparage, defame, and malign E T Advisor Services LLC and Eric A. Morrison, by making false statements and by failing to tell the whole truth.

XI.

On September 27, 2022, representatives of the Plaintiff made the following untrue, defamatory statements to WSAZ, which were broadcast by WSAZ in a segment regarding the alleged status of refunds for the canceled trips, and WSAZ's broadcast, and the article containing these statements are still available to the community and general public on WSAZ's website

<https://www.wsaz.com/2022/09/27/cabell-co-board-education-fileslawsuit-against-travel-ven>, as follows:

Plaintiff informed WSAZ that it filed a lawsuit in Cabell County Circuit Court accusing Eric A. Morrison and E T Advisor Services LLC of collecting \$136,500 from families from Barboursville and Milton Middle Schools during the 2019-2020

school year, and then not returning those funds when the trips were canceled due to the COVID-19 pandemic. These statements were untrue and defamatory, as Eric Morrison did not receive or collect any monies in his individual capacity; E T Advisor Services LLC did not collect any money from the families, but instead received all payments directly from Barboursville and Milton Middle Schools, as its contracts were entered with said Schools; and E T Advisor Services LLC had offered partial cash refunds to each school prior to the time Plaintiff's representatives made these false and defamatory statements to WSAZ.

## XII.

In this same article and broadcast, Plaintiff's President, Rhonda Smalley, further told WSAZ that: "The travel company has refused to return the funds our students and parents worked so incredibly hard to raise." "The school district has been working diligently for nearly two years to find a way to ensure the travel company makes our families whole. It is disappointing we have come to this point, but we have exhausted all other avenues." Ms. Smalley's statements were untrue and defamatory, as E T Advisor Services LLC had previously offered to make partial refunds and extend travel credits to each school and person, and her false statements imply otherwise.

<https://www.wsaz.com/2022/09/27/cabell-co-board-education-fileslawsuit-against-travel-ven>.

XIII.

Plaintiff's Superintendent, Dr. Ryan Saxe, also made false and defamatory statements to WSAZ which were broadcast and published on September 27, 2022, by stating that approximately 150 families from Barboursville Middle School and Milton Middle school are owed refunds from Eric A. Morrison and E T Advisor Services LLC, and that "We recognize the burden our families have had to bear because this contractor has refused to reimburse them. Our main goal in filing the lawsuit is to assist these families now by helping them get their money back. We are compelled to help right this wrong placed upon our children and their families." Dr. Saxe's statements are and were untrue and defamatory for all the same reasons stated above, and E T Advisor Services LLC and Eric A. Morrison have been and continue to be damaged by such statements, which are still available to the general public and the community on the WSAZ website broadcast and article related to the same. *Id.*

XIV.

The good business reputation and character of E T Advisor Services LLC and the good personal reputation and character of Eric A. Morrison, have been directly and proximately damaged in the community by Plaintiff's defamatory and untrue statements,

in the form of lost travel bookings, lost revenues, loss of goodwill and respect, and further caused both Defendants to suffer humiliation, embarrassment, public scorn and ridicule, and Plaintiff Cabell County Education is liable for the payment of such damages to E T Advisor Services LLC and Eric A. Morrison.

WHEREFORE, E T Advisor Services LLC demands judgment against Cabell County Board of Education for breach of contract in an amount equal to the final installment payments that were due under the contracts for each school, pre-judgment and post-judgment interest, court costs, and reasonable attorney fees; and

E T Advisor Services LLC and Eric A. Morrison demand judgment against Cabell County Board of Education for its defamation of their reputation and character in an amount

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E T ADVISOR SERVICES LLC

Defendants.

CERTIFICATE OF SERVICE

I, Clinton W. Smith, counsel for the Defendants, certify  
that a copy of the foregoing Answer And Counterclaim was served  
upon:

Thomas P. Boggs  
Duffield, Lovejoy & Boggs, PLLC  
P.O. Box 608  
Huntington, WV 25710-0608

by placing the same in an envelope, properly addressed, with  
postage fully paid, and depositing the same in the United States  
Mail, this 1st day of December 2022.



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Clinton W. Smith

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