

**EXHIBIT A**

**Initial Chapter Territory:**

**Bristol, Kent, Newport, Providence and Washington.**

**Initial Headquarters Location:**

**757 Park Avenue  
2<sup>nd</sup> Floor  
Cranston, RI 02910**

## **EXHIBIT B**

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Arbitrator

### ARBITRATION

MAKE-A-WISH FOUNDATION OF  
RHODE ISLAND, INC.

Claimant,

v.

MAKE-A-WISH FOUNDATION OF  
AMERICA,

Respondent.

### ARBITRATOR'S RULING

The parties entered into a contract called the Chapter Agreement (Agreement). That agreement detailed the parties' relationship by its terms and by reference to a number of other documents.

The Chapter Agreement at Paragraph 11, provided:

Chapter discipline. If chapter is in breach of its obligations under this Agreement, foundation's Bylaws or the Policies (a "Breach"), the Chapter Performance Committee shall the power to place the Chapter on "Probation" ... "inactive Status" ... or impose Revocations .....

The Chapter Agreement also set out a process whereby the Chapter could participate in the Chapter Performance Committee, Chapter Action Meeting (Paragraph 15) and the process for appeal of the Chapter Performance Committee decision (Paragraph 17). The Agreement declares that "(t)he decision of the Executive Committee on the appeal shall be final and unappealable." (Paragraph 17.3)

1 The Chapter Agreement further provided for the use of Arbitration, rather than  
2 court litigation to resolve disputes, with limited exceptions that do not apply in this case.  
3 (Paragraph 21). It is important to note that Paragraph 21.2 provides that all disputes  
4 regarding discipline are governed exclusively by the terms of the Agreement.

5 The parties, in their agreement regarding the arbitration of their disputes, agreed  
6 that the issue to be arbitrated is "the revocation of the Make-A-Wish Foundation of  
7 Rhode Island by Make-A-Wish Foundation of America and the remedies available to  
8 the parties through arbitration."

9 The Chapter Agreement provides that the Chapter would be subject to the  
10 provisions of the Agreement, Foundation Bylaws and policies. (Paragraph 4).  
11 Paragraph 5 sets out the Chapter's duties warranties and obligations including  
12 compliance with all enumerated Foundation documents and all state, local and federal  
13 laws.

14 Most of the facts in this matter are not in dispute. Make-A-Wish Foundation of  
15 Rhode Island (MAWFRI) entered into the Chapter Agreement with Make-A-Wish  
16 Foundation of America (MAWFA) in November 2004.

17 Because of concerns about another organization in Rhode Island, the Executive  
18 Director of MAWFRI sought advice about the requirement to disclose her salary on the  
19 Federal Reporting Form 990. The form, while not a tax return is a required for all 501(c)  
20 (3) organizations. After review and discussion the Chapter concluded that it was  
21 permissible to aggregate the Executive Director's salary with all salaries (line 26) and to  
22 leave blank or enter a zero (0) on the portions of the form requesting detail regarding  
23 the Executive Director's compensation (line 25), key employee identification and  
24 compensation (Part V) and Compensation of the five highest paid Employees other than  
25 Officers Directors and Trustees (Schedule A).

26 In its efforts to decide how to disclose the executive director compensation, the  
27 Chapter spoke with Steve Hunt, an employee of MAWFA. Mr Hunt does not recall the  
28

1 specifics of his conversation with the Chapter but all agree that he would have or did tell  
2 the Chapter that if they did what other Chapters did it should be all right.

3 Unrelated to the salary decisions, MWFRI had followed the practice for a number  
4 of years of including in the Form 990, the names of all their wish recipients and the  
5 value of their wishes.

6 The Chapter followed the same practice regarding the executive director  
7 compensation and the wish recipients on the Form 990, the following year.

8 When information came to MAWFA about the filings, a letter was sent to the  
9 Chapter advising that the Chapter Review Committee would have a Chapter Action  
10 Meeting to review the issues surrounding the 990 filings and would consider what action  
11 to take up to and including possible revocation. The Chapter was advised pursuant to  
12 the terms of the Agreement that it could have representatives present to provide  
13 additional information it felt was necessary and to answer any questions.

14 The meeting was held via telephone. The Chapter was present and made its  
15 presentation.

16 Upon being informed of the decision to revoke the Charter of the Rhode Island  
17 chapter, MAWRI filed its appeal. In accordance with the Chapter Agreement, the  
18 Executive Committee meeting/hearing to review the Chapter Review Committee action  
19 was held. Again, the Chapter was represented and made its presentation. Again the  
20 meeting was telephonic.

21 The Executive Committee voted to sustain the decision of the Chapter Review  
22 Committee, thus the decision to revoke the charter stands as the decision of MAWFA.

23 The first matter for decision by the Arbitrator is the scope of the hearing.  
24 MAWFRI urges that the review is a de novo review of the decisions by MAWFA.  
25 MAWFA on the other hand argues that the standard is that of breach of contract.

26 The Rhode Island Chapter entered into the Agreement with the national  
27 organization and agreed to be bound by its terms and the various governing documents  
28 of the national organization. No one has argued that any of the terms of the agreement

1 violate public policy or any laws. Generally courts (and by analogy arbitrators) will not  
2 interfere with the internal functions of a private organization unless the actions are  
3 contrary to public policy, violate the law, or in some manner violate the organizations  
4 own by-laws. The cases in Arizona, Rhode Island and around the country recognize  
5 that courts should not become involved in the internal workings of a private organization  
6 as long as the rules are reasonable and there is no fraud, collusion, violation of the law  
7 or actions that could be construed as arbitrary or capricious. None of the cases would  
8 permit a court/arbitrator to rewrite the agreements between the parties to add terms that  
9 were not a part of the agreement when entered into.

10 It is clear from this Chapter Agreement, that it was contemplated by both parties  
11 that the decision regarding the status of the Chapter would be exclusively a decision  
12 within the organization. Perhaps in part because of the finality of the decision the  
13 Agreement provided for an internal hearing and review process.

14 This Arbitrator cannot sit as the 'super-court of review' and substitute its judgment  
15 for that of the national organization. To do so would amount to rewriting the Agreement  
16 of the parties adding a term that was not contemplated at the time the representatives  
17 signed the documents.

18 Therefore, the review of the revocation and available remedies is a breach of  
19 contract standard.

20 The first question is whether there was a breach of the Agreement by the Rhode  
21 Island Chapter.

22 The Chapter presented evidence that at the time it filed the 990 it believed that it  
23 was a proper filing, with regard to the Director's salary, but the Chapter has since come  
24 to understand that the filing was not as required and have in fact filed an amended  
25 return.

26 There was no question raised during the hearing that the manner in which the  
27 Chapter completed the Form 990 was a violation of the law, as it related to the  
28 disclosure of the Executive Director's salary. Because the Chapter Agreement required

1 that the Chapter follow all applicable federal laws, the Chapter did breach its Chapter  
2 Agreement.

3 With regard to the disclosure of the grantee's names, two issues were raised,  
4 one that it violated Make-A Wish-Foundation's bylaws etc and two that some of the  
5 disclosures were made without properly signed releases. Again, while there were  
6 factual issues raised, if the names were released, the names were released contrary to  
7 MAWFA policies, this is certainly true to the extent some were published without the  
8 proper releases.

9 Having determined, as the National Organization did, that it seemed that the  
10 Rhode Island Chapter had breached its Agreement, the organization went forward with  
11 the Chapter Agreement specified procedures for discipline of a Chapter.

12 Once the Chapter was believed to be in breach or considered by the national  
13 organization to have breached the Agreement the only basis upon which the Chapter  
14 could find relief through arbitration would be if the National Organization in its  
15 implementation of the terms of the Agreement behaved arbitrarily or capriciously, itself  
16 violated the law, acted in bad faith or in some other extra ordinary manner.

17 The chapter complains that the meetings were telephonic rather than in person.  
18 However, there is nothing that would require a meeting to be in person. Case law does  
19 not support that requirement nor does the Chapter Agreement require or suggest that  
20 the meetings be in person.

21 There was certainly some informality in the manner in which the meetings were  
22 conducted. There were no set procedures or order of presentation provided to the  
23 Chapter or the members of the committees. A more formal process might have given  
24 some greater comfort to the Chapter, but by its informality alone there was no conduct  
25 that could be considered a breach by the national organization.

26 Next, the Chapter suggests that the decision to revoke had been made before the  
27 meeting of the Chapter Performance Committee began. Certainly, prior to beginning  
28 the meeting the members of the committee were aware that serious concerns had been

1 raised. The Chapter was invited to present information that would assist the Chapter  
2 Performance Committee and, if necessary, the Executive Committee to decide the  
3 appropriate discipline. The Chapter Performance Committee had been provided with a  
4 staff document that recommended revocation. The briefing paper alone is not an  
5 indication that the discipline had been pre-determined. The evidence does not support  
6 a finding that the Chapter Performance Committee or the Executive Committee acted  
7 arbitrarily or capriciously in reaching its conclusions.

8 Finally the Chapter points to the fact that no other Chapter has had its Charter  
9 revoked for filing an inaccurate Form 990. The national organization points out that no  
10 other Chapter intentionally filed what was determined to be an inaccurate or even  
11 unlawful Form 990. The Chapter argues that it believed the Form 990 was appropriate  
12 based on its research. Further, the Chapter represents that the Form 990 was filed in  
13 this manner because the Chapter believed that this filing was in the best interest of the  
14 organization given the pressures that were being placed upon it by the competing  
15 organization. The Chapter also argues that as soon as the problem was pointed out it  
16 filed an amended return. Further in its presentations the Chapter pointed out all of the  
17 good work it had been doing for the children and families in Rhode Island and the  
18 importance of having a local Chapter of the Make-A-Wish Foundation in Rhode Island.

19 The decision on how to discipline a Chapter lies within the organization. In this  
20 case, there were enough issues that varied from those of other Chapters such that the  
21 decision to revoke cannot be found to violate the law or the Agreement.

22 The fact that a person outside the organization or a differently constituted  
23 committee would have reached a different conclusion about the appropriate discipline  
24 does not permit a finding for the Chapter. Once it is determined that the Chapter was in  
25 breach of the Agreement, subject to the criteria set out in this order, the Chapter is  
26 bound by the decisions of the organization of which it is a member.

27 The Arbitrator finds the Claimant has failed to carry its burden. The complaint is  
28 dismissed with prejudice.



1 DATED this 26<sup>th</sup> day of March, 2009.

2 BOWMAN AND BROOKE LLP

3 By: /s/ Rebecca A. Albrecht

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9 **COPY** of the foregoing emailed and mailed  
10 this 26<sup>th</sup> day of March, 2009 to:

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