

# Charities in the Courtroom, Pt. 13: Creative Differences

08.23.17 | Linda J. Rosenthal, JD



Aspen Film, founded in 1979, is a “year-round film arts and education organization.” Appealing to “both the serious cinephile and casual movie lover,” the nonprofit group “organizes a major movie event in every season, offers an extensive education program, and hosts numerous special presentations. Each year, some 30,000 people participate.”

It’s a membership organization with a 10-member board of trustees and an International Advisory Committee with luminaries including Michael Douglas, Angelica Huston, and Steve Tisch. On the screen, there is non-stop high drama. Unfortunately, this apparently occurs off-screen as well. There have been four executives in five years, and 11 staff members have left in within 22 months. Seven new board members have joined since 2015. “Something unusual and unsettling is going on.”

A lawsuit just filed doesn’t turn on arcane issues in federal tax law. Instead – despite some colorful allegations by the most recently fired executive director – it’s a garden-variety discharge case. Whenever there are employers and employees, in a for-profit or nonprofit setting, there are going to be bread-and-butter employment law disputes.

## *The Wrongful Termination Lawsuit*

After a national search, in 2015, Aspen Film hired John Thew, an Aspen resident, as executive director. This new leader had some success according to the numbers; revenues from memberships and sponsorships jumped. But he has been criticized on a number of fronts: his budget handling and communications with the board, for instance. Most notably, though, there has been fallout from his planning of Aspen Film’s primary annual fundraiser. He was “abruptly” fired in April 2017.

Thew immediately filed a lawsuit against the nonprofit organization, “claiming Aspen Films breached his three-year employment contract ‘by not giving Thew a 90-day termination notice and by

'intentionally' disclosing terms of Thew's contract agreement, including salary details. There were allegations, too, about "ginning up fabricated and unsubstantiated tales of alleged 'improper behavior' toward former employees such as 'stomping his foot' and making 'frightening gestures.'" Thew asserts this has damaged his reputation and – because of the specialized nature of the employment – he may have to relocate somewhere else in the United States. Was the firing justified or does Mr. Thew's lawsuit have merit? Much like other ordinary employment litigation cases, the answer will depend on who is believed and which facts are determined to be relevant. Of course, the details will be more interesting than an ordinary wrongful discharge case because it's part of the "arts world," where "passions run high and 'creative differences' is a phrase laden with emotional ... endings."

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*Thew may have been part of Aspen Film's problems, or part of the solution, or both. What is clear is that the staff and executive turnover at the nonprofit continue with Thew's departure, building a track record that new executives will find cautionary.*

## Conclusion

No one knows what will happen here, but Michael Wyland of The Nonprofit Quarterly opines that what is clear is that "a nonprofit executive leading a volatile organization should have a solid employment contract in place to protect themselves in times of rapid board turnover and shifting performance expectations."