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1 Deposition of HENRY S. DUNLEAVY
 2 taken in the above-entitled matter before
 3 Suzanne Druga, a Certified Shorthand Reporter
 4 (License No. 1845) and Notary Public of the
 5 State of New Jersey, taken at the GALAXY TOWERS
 6 CONDOMINIUMS, 7000 Boulevard East, Guttenberg,
 7 New Jersey, on Thursday, September 15, 2005,
 8 commencing at 11:30 a.m.
 9
 10
 11 APPEARANCES:
 12 RUTGERS SCHOOL OF LAW
 13 BY: FRANK ASKIN, ESQ.
 14 123 Washington Street
 15 Newark, New Jersey 07102
 16 Attorneys for the Plaintiffs
 17 BUCKALEW, FRIZZELL & CREVINA, ESQS.
 18 BY: DONNA R. SHAHRABANI, ESQ.
 19 - and -
 20 BY: CHERYL SIEGEL, ESQ.
 21 55 Harristown Road
 22 Glen Rock, New Jersey 07452
 23 Attorneys for the Defendants
 24
 25 ALSO PRESENT:
 Gina Riggi

4

1 HENRY S. DUNLEAVY,
 2 having first been duly sworn, was examined and
 3 testified as follows:
 4
 5 EXAMINATION
 6 BY MR. ASKIN:
 7 Q. Mr. Dunleavy, I'm Frank Askin, I am
 8 the attorney for the plaintiffs in this case.
 9 Have you ever had your deposition
 10 taken before?
 11 A. Yes. Military and local courts.
 12 Q. So you are aware that you are under
 13 oath, that everything you say will be taken
 14 down by the court reporter and it could even be
 15 used as evidence in court?
 16 A. Yes.
 17 Q. I will ask you questions, you
 18 answer them, if you can, to the best of your
 19 ability. You've got to be verbal. You can't
 20 nod your head. If you don't understand
 21 something, just tell me and I will try to
 22 rephrase it?
 23 A. Yes.
 24 Q. Now, are you employed by Galaxy
 25 Towers?

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1 I N D E X
 2
 3 WITNESS EXAMINATION BY PAGE
 4
 5 HENRY S. DUNLEAVY
 6 MR. ASKIN 4
 7
 8
 9 E X H I B I T S
 10
 11 NUMBER DESCRIPTION PAGE
 12
 13 (No exhibits were marked.)
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1 A. I'm freelance.
 2 Q. Freelance, like a contractor?
 3 A. Right.
 4 Q. And what kind of work do you do for
 5 the Galaxy?
 6 A. Mainly videotape.
 7 Q. And you --
 8 A. Some basic engineering as well, but
 9 that's already finished.
 10 Q. Now, you videotape all of the board
 11 meetings; is that correct?
 12 A. Yes, that's correct.
 13 Q. And do you have any instructions as
 14 to how to videotape the board meetings?
 15 A. Well, you take that on a
 16 professional level and you start from back
 17 here, which you can see the focal end where
 18 this young lady is sitting.
 19 Q. Are the board meetings held in this
 20 room?
 21 A. Yes. We did try them once in the
 22 spa and it didn't work.
 23 But the thing is the focal end
 24 where the sound is coming at you, which we had
 25 problems with, is directly from the person who

6

1 runs the meeting, okay. Then you have the
 2 cross talk, which is mainly what I'm concerned
 3 with, you know, that I have difficulty
 4 sometimes picking it up. And you are limited
 5 to what you do. I make the decision on how I
 6 tape it.
 7 Q. Now, is there an audience usually
 8 at the board meeting?
 9 A. They're invited, you know,
 10 residents do come down.
 11 Q. Would they be sitting behind me
 12 there against the wall?
 13 A. Yes.
 14 Q. Do you ever include the audience in
 15 the --
 16 A. I pan the audience.
 17 Q. You pan the audience sometimes?
 18 A. Yes.
 19 Q. Do you have any instructions as to
 20 whether you should or should not pan the
 21 audience?
 22 A. No, sir.
 23 Q. That is strictly you --
 24 A. Yeah. You can't miss them
 25 sometimes, but the problem is you have five

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1 people here, five people here and one person
 2 here and then up against the wall.
 3 Q. Now, when you're videotaping the
 4 live meeting, that is shown live over Channel
 5 26; is that correct?
 6 A. Yes, sir.
 7 Q. Now, after the meeting you then
 8 have a videotape of the meeting which is used
 9 for rebroadcast on Channel 26; is that correct?
 10 A. Yes, closed circuit, not broadcast,
 11 that is different.
 12 Q. Okay.
 13 A. I didn't mean to correct you, but
 14 the terminology it is a closed circuit.
 15 Q. I have a total ignorance, so
 16 correct me, please do.
 17 Now, do you have any instructions
 18 as to -- strike that.
 19 Is the rebroadcast of the board
 20 meeting always identical to the live showing?
 21 MS. SHAHRABANI: Objection as to
 22 the term "rebroadcast". But you can go ahead
 23 and answer.
 24 Q. Well, I believe you said that the
 25 board meetings are rebroadcast between board

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1 meetings? If the board meeting takes place on
 2 February 4th, it will be rebroadcast maybe
 3 February 5th, 6th, 7th and 8th until the next
 4 board meeting; is that correct?
 5 A. Yes, transmitted. Not rebroadcast.
 6 Q. It is a called transmitting?
 7 A. Yes. That's closed circuit.
 8 Q. Okay.
 9 A. Is the tape you mentioned, is it
 10 identical? Because I shoot in two formats.
 11 Q. Okay. Explain that.
 12 A. The reason I why shoot in high
 13 eight, one is for quality, I think Gina is
 14 aware of that, and for sound. And I have an
 15 amplifier over there to boost the sound, the
 16 sound is good now.
 17 If I did not use the two formats,
 18 in other words, my digital goes on to VHS,
 19 which is a format we play for the residents on
 20 the channel, years back I used to have to hang
 21 around for as much as two hours to duplicate
 22 the digital tape to VHS, and then it dawned on
 23 me why should I do that, I'll make both at the
 24 same time.
 25 Mainly I have a backup in my camera

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1 in case there is a problem at the spa where
 2 they transmit it or for one reason or another
 3 if they need it. But these tapes are kept
 4 here. The only time that the tape is different
 5 is when there is a recess.
 6 Q. Explain that to me.
 7 A. When there is a recess the machine
 8 stops, the camera stops, the slide goes up
 9 "Board meeting in recess, please stand by."
 10 One in particular, one recess was
 11 45 minutes, okay. And, you know, the people
 12 were asked to leave, some of them hung out in
 13 the reception area and came back in. That
 14 particular tape after that night, because there
 15 are so many blocks in it and I don't have the
 16 -- I have a studio at home, a small studio, I
 17 don't have the facility here to add a recess
 18 slide to the VHS tape, okay. I take that home
 19 and the very first portion, however long that
 20 is, I pick that up on my digital, I add a slide
 21 recessed four seconds, I'm not going to put it
 22 on for 45 minutes. Then I go to the next
 23 portion. In this instance we had three
 24 recesses that night. I think there were maybe
 25 three sessions that we had to shut it down.

10

1 Q. Do you ever delete from the
2 rebroadcast or the retransmitted tape actual
3 activities that took place at the board
4 meetings?
5 A. No, sir.
6 I have done that at parties, you
7 know, something off color, something not in
8 the, you know, to be acceptable for a viewer
9 including a child, because anybody can watch
10 the channel.
11 Q. All right. Then bear with me for a
12 second. I have viewed two tapes of the
13 February 3, 2005 board meeting.
14 You correct me if I'm wrong, I
15 viewed the first tape that went out live. That
16 tape, prior to a recess, shows a member of the
17 audience trying to ask a question of the board,
18 at which point the president shut down the
19 meeting. Then I have seen what is purported to
20 be the tape of the meeting that was
21 retransmitted or rebroadcast on subsequent
22 days. Those few seconds of that person trying
23 to ask a question from the audience are not on
24 the second tape. Now, am I wrong about that or
25 is that possible that that happened?

11

1 A. It's very possible. Do you know
2 who the person was?
3 Q. Yes. I believe it was Michael
4 Deluca?
5 A. And if I'm not mistaken, he may
6 have walked in front of my camera head.
7 Q. That's possible. But he also was
8 trying -- had asked a question that does not
9 appear on the second tape as I recall.
10 A. I believe that was done during a
11 fade out when I got the command to cut it. And
12 what happens is fade out on the digital, it's
13 clean, what they call a full frame, you go into
14 black. When the VHS starts up again you get a
15 blip because you don't have full frames in
16 there, okay. It's something like 30 frames a
17 second on editing for say digital one inch
18 three quarter Beta or whatever you're using.
19 The problem with VHS is you may hit
20 a full frame in one out of 50, it's highly
21 unlikely. You're going to get a blip in the
22 screen. And what happens is that the VHS
23 didn't pick him up, in other words, I stopped
24 the VHS. As a matter of fact, I think he may
25 have even asked me why I cut his question.

12

1 Q. Right. And what did you say, what
2 did you answer him?
3 A. I said I faded out, you know, I
4 stopped the machine. When I stop the VHS there
5 is nothing.
6 Q. So you're saying you did not
7 deliberately edit that tape for rebroadcasting?
8 A. No, absolutely not. And
9 particularly here because, as you know the
10 rule, they're not allowed to speak, they're
11 just here to observe, the audience here.
12 Q. Right. That's the rule for board
13 meetings?
14 A. And we have had outbursts, okay,
15 where people come up or people come in with
16 signs on their T-shirts and stuff like that and
17 you can't miss that.
18 MS. SHAHRABANI: I'm sorry.
19 There's no question.
20 MS. SIEGEL: Is there a pending
21 question?
22 THE WITNESS: I'm just explaining
23 what can happen.
24 A. We had have outbursts --
25 MS. SIEGEL: There should be a

13

1 question asked.
2 Q. Do you have specific instructions
3 what to do if someone asks the question or
4 comes in with a sign on their T-shirt?
5 A. No, sir, for the simple reason you
6 wouldn't know.
7 Q. So it is up to the president to say
8 whether the meeting should be recessed; is that
9 correct?
10 A. Yes. And she is somewhat lenient,
11 I mean, before she goes into recess, so she'll
12 give them a few warnings usually. That
13 particular night that you mentioned there were
14 over 30 people in here I believe.
15 Q. Over 30 people in here?
16 A. Oh, yeah. They were all over. And
17 I think Ms. Riggi was here too because I was
18 literally up against the wall. But you have no
19 control whatsoever if somebody decides to open
20 their mouth.
21 Q. And until the president recesses
22 the meeting you just continue to shoot; is that
23 correct?
24 A. Yes.
25 Q. Do you also sometimes videotape

1 club events at the Galaxy for rebroadcast or
2 for transmission on Channel 26?

3 A. Yes.

4 Q. Suppose a candidate for the board
5 appeared at one of those events that you were
6 broadcasting, would they be, is it possible
7 they would be shown on Channel 26?

8 A. Very possible.

9 Q. You have no instructions as to what
10 to do in that regard?

11 A. No. For that reason just say if it
12 is a 4th of July party or something like that I
13 try and include just about everybody. And if
14 it is anything of a political nature it's out.

15 Q. I'm sorry, if it's anything of a
16 political nature it's out?

17 A. It's out of the tape. Anything
18 derogatory, political, religious, any of that
19 nature it is out.

20 Q. You would edit it out?

21 A. Yes, I take it out.

22 Q. But if say a candidate showed up at
23 the event just mingling, would you take them
24 out?

25 A. No. We had a president show up at

1 couple of months. This is a show that we
2 started roughly ten years ago and it runs about
3 an hour, it is a monthly new show.

4 Sometimes we'll only have two tapes
5 or then we'll take what we call an encore tape,
6 if you will, a cabaret net or something of that
7 nature just to fill up the program. Because
8 when I first came in they had very little, if
9 anything, other than a slide on the TV. And of
10 course we went live, taping, editing.

11 Q. But if a -- would a resident ever
12 bring you a tape of their own and say "could
13 you run this", did that happen?

14 A. Which they taped?

15 Q. Yes.

16 A. Oh, sure.

17 Q. Do you decide whether to run it or
18 do you ask somebody?

19 A. No. I look at it first and at that
20 time we had a committee and the committee would
21 approve or --

22 Q. How about now after no committee?

23 A. I don't get any more tapes. I do
24 most of them myself.

25 Q. Since the committee has been

1 a wine tasting function one night, you know,
2 just congratulating the people there as far as
3 the event goes.

4 Q. Have you ever been instructed not
5 to run a particular tape on Channel 26?

6 A. Not to my knowledge. I mean I've
7 had some people come on, which we have to be
8 flexible, that actually should never come on,
9 but we put them up because we're nice people.
10 Nothing bad on the tape, they were just
11 terrible, whether it was music or something
12 like that.

13 Q. Do you decide what tapes to run on
14 Channel 26? Do you ever make that decision
15 yourself?

16 A. Well, I kick it around, but mainly
17 we are limited to what we have. I have a TV
18 guide and some stuff in my car. But you have
19 basically a special, which I filmed -- taped,
20 rather, of Creative Eye of basic photograph
21 that's running now. You have the previous
22 board meeting that's running now. You have the
23 August, September new show that has roughly
24 nine segments in there, including the 4th of
25 July and anything that happened in the last

1 disbanded nobody has really ever offered you a
2 tape to run?

3 A. I will get one from maybe one
4 person, okay, but the majority of the stuff is
5 done myself.

6 MS. SHAHRABANI: And we're talking
7 about the video committee?

8 MR. ASKIN: Yes.

9 Q. Right now if somebody came up with
10 a tape and looked at it, would it be your
11 decision whether to put it on or would you ask
12 somebody else for guidance?

13 A. If there was some question, I would
14 give it to the general manager.

15 Q. What do you mean by "some
16 question"?

17 A. The subject matter of the tape.

18 Q. Sometimes you might decide yourself
19 it is perfectly okay and I'll run it?

20 A. You mean a home spun tape?

21 Q. Yes.

22 A. Somebody, "hey, I have these kids"
23 or whatever, that type of a thing, yeah.

24 Q. You could make that decision
25 yourself if you felt it was appropriate?

18

1 A. As far as an editor on the program
 2 and the content is acceptable and it has to do
 3 with the Galaxy.
 4 MS. SHAHRABANI: What time frame
 5 are you talking about? Now?
 6 MR. ASKIN: Since the disbandment
 7 of the committee.
 8 MS. SHAHRABANI: Does your answer
 9 change since the disbandment of the committee?
 10 Because I think he testified that he hasn't
 11 been given any tapes since the committee has
 12 been disbanded.
 13 Q. I thought you said maybe there was
 14 one.
 15 A. Well, one is what I will say, "hey,
 16 so-and-so, could you please do me a favor, I
 17 can't make this event, would you tape me ten
 18 minutes of this piece because it is important,
 19 it's a new club that is started?" For
 20 instance, next Thursday night there is another
 21 seminar with Creative Eye which they contacted
 22 me at my home would I please come down and tape
 23 it? No charge, I'd be glad to, and I'll come
 24 down and tape it and then do my board meeting
 25 and leave.

19

1 Q. But if you have some doubt as to
 2 whether to run a tape or not, would you take it
 3 to the manager; is that who you would take it
 4 to?
 5 MS. SHAHRABANI: What time frame
 6 are you talking about?
 7 MR. ASKIN: Right now.
 8 MS. SHAHRABANI: I don't think he's
 9 testified that he runs tapes now.
 10 MS. SIEGEL: Or that he's been
 11 given tapes by other people now. His testimony
 12 is that he asks other people to tape things for
 13 him.
 14 Q. Suppose Ms. Riggi came to you
 15 tomorrow with a tape, "would you mind running
 16 this on Channel 26" --
 17 MS. SHAHRABANI: Objection. I
 18 don't think you have established that he has
 19 the authority to do that.
 20 MR. ASKIN: That's all I want to
 21 know, whether he has the authority.
 22 A. No.
 23 Q. You don't have that authority?
 24 A. No.
 25 Q. Who would have the authority, the

20

1 manager?
 2 A. It would go before the general
 3 manager of the board.
 4 Q. Okay.
 5 A. Because that's -- there is no
 6 committee.
 7 Q. Okay. That explains it. All
 8 right.
 9 MR. ASKIN: Let's take a break.
 10 (Whereupon a short break was
 11 taken.)
 12 MR. ASKIN: Okay. I've got nothing
 13 else.
 14 (The witness is excused.)
 15 (Deposition of Henry S. Dunleavy
 16 concluded at 11:50 a.m.)
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1 CERTIFICATE
 2
 3
 4 I, SUZANNE DRUGA, a Certified
 5 Shorthand Reporter and Notary Public in and for
 6 the State of New Jersey, do hereby certify that
 7 the foregoing is a true and accurate transcript
 8 of the stenographic above-captioned matter.
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 14 SUZANNE DRUGA, C.S.R.
 15 LICENSE NO. 1845
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 18 DATED: SEPTEMBER 23, 2005
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