

STATE OF VERMONT

SUPERIOR COURT  
Essex Unit

CIVIL DIVISION  
Docket No. \_\_\_\_\_

ELIZABETH H. BROWN HUMANE SOCIETY, INC.  
Plaintiff

vs.

TOWN OF VICTORY  
Defendant

**COMPLAINT**

COMES NOW Plaintiff Elizabeth H. Brown Humane Society, Inc. ("Humane Society") by and through its attorney, Deborah T. Bucknam, of Bucknam & Black, P.C., and hereby states as follows:

**PARTIES**

1. Plaintiff Humane Society is a Vermont non-profit 501 (c) (3) corporation located in Victory, Vermont.
2. Defendant Town of Victory ("Victory") is a duly organized town in the State of Vermont.

**JURISDICTION**

3. Jurisdiction of this matter is based on V.R.C.P. Rule 75.

**FACTS**

4. Plaintiff re-alleges paragraphs 1-3.
5. The Humane Society was incorporated as a non-profit corporation in 1985 [Exhibit 1— Vermont Secretary of State Printout showing the Society's corporate information], and enjoys 501(c)(3) status. Its annual budget is approximately \$12,000, and its income is derived from rent from the caretaker living on the property, and from donations. It does

not receive any funds for its services, other than by court ordered restitution or other court ordered means.

6. Patricia Mitchell is the President of the Humane Society.
7. The Humane Society owns real and personal property in Victory, Vermont. [Exhibit 2—Humane Society Deed]
8. The Humane Society is exempt from taxation pursuant to 32 V.S.A. § 3802 (15), which provides as follows: “The following property shall be exempt from taxation:....(15) Real and personal property owned by a charitable, nonprofit organization devoted to the welfare, protection and humane treatment of animals, including any premises of a custodian or caretaker which is attached to or is located on the grounds of such an animal shelter.”
9. The Humane Society has been actively involved in the welfare, protection and humane treatment of animals during its entire existence. For example, the Humane Society is presently taking care of 11 horses seized by the Caledonia County Sheriff’s Department, per order of the Caledonia Superior Court..
10. The Humane Society purchased real property in 2010 from sale of a foreclosed property. That year, the Victory Board of Civil Authority determined that the Humane Society was exempt from taxation, and the Humane Society has remained property tax exempt until June, 2014 when Victory listers determined it was no longer exempt. ever since.
11. In June 2013, a resident of the Victory, Greg Hovey, applied for an Act 250 permit for a dog kennel located in Victory.

12. Patricia Mitchell did not oppose Greg Hovey's application for an Act 250 permit, and in response to various complaints by Victory part time and fulltime residents, determined that the animals in Mr. Hovey's kennel were healthy and well cared for.
13. Ms. Mitchell's opinion was vehemently opposed by several people in town, including several Victory town officials, and she received anonymous threatening letters.
14. Greg Hovey has been targeted by Victory town officials, who have filed various complaints about his kennel, all of which have proven to be without merit.
15. The town officials have targeted Mr. Hovey and his supporters, such as Patricia Mitchell, to benefit Mr. Hovey's neighbors, Robert and Toni Flanigan, who have complained to multiple town and state officials about Mr. Hovey, all without merit.
16. At the March 2014 Town Meeting, Jan Stanley was elected Lister. She was heard to say that now that she was elected Lister, she could go after Pat Mitchell and the Humane Society.
17. On April 8, 2014, a member of the Victory Board of Listers wrote to John Westinghouse, of the Vermont Department of Taxes requesting an opinion regarding the tax exempt status of the Humane Society.
18. Mr. Westinghouse wrote back to the Victory Lister stating that the Humane Society was tax exempt. [Exhibit 3]
19. Despite Mr. Westinghouse's opinion, on or about June 2, 2014, the Listers of Defendant Town changed the Humane Society's exempt status and assessed the Humane Society's property. [Exhibit 4—Undated Notice to Humane Society]
20. The Listers notified the Humane Society of its right to grieve the decision to the Listers [Exhibit 4]

21. The Humane Society duly grieved to the Listers, and a meeting was held on June 25, 2014.
22. On June 26, 2014, the Listers denied the Humane Society's grievance and notified the Humane Society that it had 14 days to appeal to the Board of Civil Authority. [Exhibit 5—Denial of appeal from Listers]
23. The Humane Society duly grieved the Lister's decision, and Patricia Mitchell attended the hearing in front of the Victory Board of Civil Authority ("Board") on July 21, 2014.
24. The Board is required, under 32 V.S.A § 4404 to "...within 15 days from the time of the report, certify in writing its notice of decision, with reasons, in the premises, and shall file such notice with the town clerk who shall thereupon record the same in the book wherein the appeal was recorded and forthwith notify the appellant in writing of the action of such board."
25. At the hearing, some members of the Board claimed they had no authority to change the decision of the Listers. Therefore, upon information and belief, the Board has determined it will not issue a written decision, as required pursuant to 32 V.S.A. § 4404.

**COUNT I—DECLARATORY AND INJUNCTIVE RELIEF**

26. Plaintiff re-alleges paragraphs 1-24.
27. The Listers violated their ministerial duty in determining that the Humane Society was not exempt from property taxation, when 32 V.S.A. § 3802 (15) is clear and unambiguous.
28. The Humane Society provides exemplary and necessary services to the public at no cost.

29. The Humane Society cannot afford to pay property taxes on its property located in Victory.
30. Plaintiff seeks declaratory and injunctive relief asking this Court to declare that the Humane Society is exempt from property taxes, and enjoining Victory from collecting those taxes.

### **COUNT II—VIOLATION OF PLAINTIFF'S CIVIL RIGHTS**

31. Plaintiff re-alleges paragraphs 1-30.
32. Victory town officials are targeting the Humane Society because Patricia Mitchell did not oppose Greg Hovey's Act 250 permit, and did not agree with town officials' complaints about the operation of the kennel.
33. Victory Listers' decision was wholly irrational and arbitrary, and actuated by personal motives unrelated to the Listers' duties.
34. Victory Listers' decision was made to benefit Robert and Toni Flanigan in their ongoing campaign against Greg Hovey's kennel operation.
35. The Lister's conduct violates Article 7 of the Vermont Constitution, the Common Benefits Clause, and the 14<sup>th</sup> Amendment to the United States Constitution.
36. As a result of these violations, and the requirement that Plaintiff vindicate its rights by requesting declaratory and injunctive relief, Plaintiff has suffered damages, including but not limited to attorney's fees and costs.

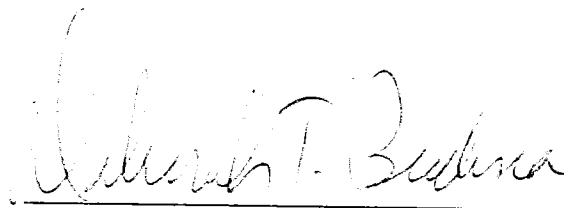
**WHEREFORE**, Plaintiff prays this Honorable Court:

1. Declare that Plaintiff is exempt from Victory property taxes.
2. Issue a preliminary and permanent injunction ordering that Victory declare Plaintiff exempt from taxes, and not assess Plaintiff property taxes.

3. Award damages, including attorney's fees and costs.
4. Award any and all other relief which to this Honorable Court seems just and equitable.

Dated at St. Johnsbury, Vermont this 21 day of July, 2014.

Respectfully submitted,



Elizabeth H. Brown Humane Society,  
by their attorney,  
Deborah T. Bucknam, Esquire (ERN 1391)  
(802) 748-5525 ext. 101  
dbucknam@vtlegalhelp.com



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**Business Information**

**Business Details**

**Business Name:** ELIZABETH H. BROWN HUMANE SOCIETY, INC.      **Business ID:** 0047134  
**Business Type:** Domestic Non-profit Corporation      **Business Status:** Active  
**Business Description:** ANIMAL CARE  
**Date of Incorporation / Registration Date:** 12/09/1985  
**Principal Business Office Address:** 80 Buttonwood Lane, Victory, VT, 05858, USA      **Mailing Address:** 80 Buttonwood Lane, Victory, VT, 05858, USA  
**Citizenship / State of Incorporation:** Domestic/VT      **Last Annual Report Year:** 2014

**Principals Information**

**Name/Title:**

Patricia D Mitchell President  
 Wendy Bora Vice President  
 Jan Wade Secretary

**Business Address:**

80 Buttonwood Lane, Victory, VT, 05858, USA  
 52 Minister Hill, S Wheelock, VT, 05851, USA  
 238 Horseshoe Lane, Lyndonville, VT, 05851, USA

[View All Principals\(4\)](#)

**Registered Agent Information**

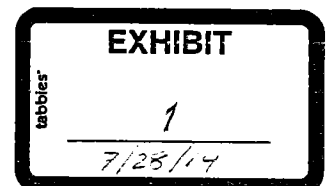
**Name:** RANDALL D. NORTHROP  
**Physical Address:** 270 SUMMER STREET, ST. JOHNSBURY, VT, 05819, USA  
**Mailing Address:** 270 SUMMER STREET, ST. JOHNSBURY, VT, 05819, USA

**Trade Name Information**

No Trade Name(s) associated to this business.

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STATE OF VERMONT  
ESSEX COUNTY, SS.

ESSEX SUPERIOR COURT  
DOCKET NO. 20-3-09 Exec

Deutsche Bank National Trust Company,  
as Trustee for the Certificateholders of  
Soundview Home Loan Trust 2005-OPT3,  
Asset-Backed, Certificates, Series 2005-OPT3,  
Plaintiff

FILED

MAR 30 2010

BY ESSEX COUNTY CLERK 92  
CLERK/DEPUTY CLERK

v.

Phillip W. Atkins  
And Occupants residing at  
1814 Masten Road, Victory, Vermont,  
Defendants

REVISED  
CONFIRMATION ORDER

This foreclosure action was filed by Plaintiff, Deutsche Bank National Trust Company, as Trustee for the Certificateholders of Soundview Home Loan Trust 2005-OPT3, Asset-Backed, Certificates, Series 2005-OPT3, by Complaint dated March 30, 2009, against Defendant/Mortgagor, Phillip W. Atkins et al. A Judgment Order and Decree of Foreclosure was issued by this Court on January 23, 2009, which Order provided for the public sale of the property unless the property was redeemed by a defendant in this action. Since no defendant redeemed their interest in this property, a public auction sale of the property was held on February 5, 2010. A Report of Sale has been filed with the Court by the Auctioneer, Robert Prozzo.

Therefore, based on the Report of Sale and all other pleadings filed with the Court, and the opposition, if any, and good cause appearing, the Court hereby finds as follows:

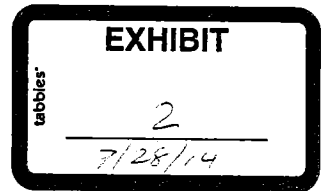
1. That the duly noticed sale of the subject land and premises was held by plaintiff on February 5, 2010;
2. That The Elizabeth II. Brown Humane Society was the high bidder at the public sale.
3. The real property which is the subject of this foreclosure action is described as follows:

*Being all and the same lands and premises as conveyed to Phillip W. Atkins by Warranty Deed of George W. Brown and Marjorie D. Brown, Trustees of the Marjorie D. Brown 1992 Revocable Declaration of Trust dated December 14, 1994 of record at Book 19, Page 287 of the Town of Victory Land Records.*

A. FORTIN, PLC  
100 BALL AVENUE  
SUITE 306  
BURLINGTON, VT  
05403  
202.660.9000

I CERTIFY THIS DOCUMENT TO BE A  
TRUE COPY OF THE ORIGINAL ON FILE  
IN THE OFFICE OF THE CLERK OF THE  
ESSEX COUNTY SUPERIOR COURT THIS

14 DAY OF April 2010  
Cynthia M. Muddell  
Clerk/Deputy Clerk





*Being a certain land and premises consisting of a parcel of land together with a house, barn and other improvements and being all and the same land and premises conveyed to the Grantors by Warranty Deed of George W. Drown and Majorie H. Drown, dated May 13, 1993, and recorded in Book 19, Page 132 of the Town of Victory Land Records. Said and premises may be subject to certain spring rights.*

*Being more commonly known and designated as 1814 Masten Road in the Town of Victory, Vermont.*

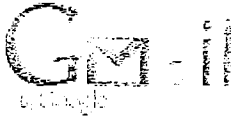
4. That the interests of the following persons and/or entities in the subject land and premises were foreclosed pursuant to a Judgment Order and Decree of Foreclosure dated January 23, 2009:
  - a. Phillip W. Atkins
5. There is no party defendant whose interest in the aforesaid land and premises is superior to the interest of plaintiff;
6. The Judgment Indebtedness as of the date of sale is \$182,280.87. The winning bid was \$57,751.00. There is no surplus available for distribution.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- a. The interests of Phillip W. Atkins and all other named defendants in the above described land and premises are forever foreclosed.
- b. \$750.00 of the proceeds of the sale shall be paid to Robert Prozzo, in full satisfaction of the cost of sale. The remaining sale proceeds of \$57,001.00 shall be paid to Plaintiff on account of the funds due to it under the Judgment Order and Decree of Foreclosure.
- c. The duly noticed sale of the subject land and premises held by Plaintiff on February 5, 2010 to **The Elizabeth H. Brown Humane Society** is hereby confirmed.

Dated at St. Johnsbury, Vermont this 25 day of March, 2010.

Town Clerk's Office  
Victory, Vermont April 30, 2010 Hon. Harold E. Eaton, Jr.  
Received for record 10:00 o'clock A. M. Presiding Judge  
and recorded in Vol. 32 of land records Essex Superior Court  
on page 394  
Attest [Signature] Town Clerk



Tiffany Boyd <victorylister.tboyd@gmail.com>

**EBHS Tax Exemption**

8 messages

Tiffany Boyd <victorylister.tboyd@gmail.com>  
To: John Westinghouse <john.westinghouse@state.vt.us>

Sat, Feb 22, 2014 at 1:51 AM

Hi John,

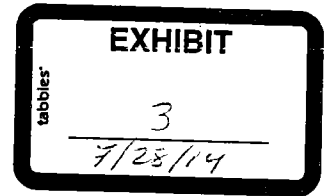
Have you had a chance to look of the Elizabeth Brown Humane Society Deed?

We are curious as to what your opinion is about that.

--

~Tiffany Boyd~  
Victory Town Lister  
PO Box 609  
North Concord, Vermont

Office Phone: 802-328-2400



Tiffany Boyd <victorylister.tboyd@gmail.com>  
To: John Westinghouse <john.westinghouse@state.vt.us>, Michele Wilson <michelle.wilson@state.vt.us>

Tue, Apr 8, 2014 at 8:50 PM

Hi John & Michele,

We, the Victory Lister, received a tax exempt application from the Elizabeth H. Brown Humane Society on January 17th, 2014. We would greatly appreciate you opinions concerning this matter.

Please find attached at the bottom of this email the application & supporting documents submitted, a folder entitled "Our Research" and a letter with questions we have.

Thank You

☞ EHBHS Tax Exempt Application & Our Research.zip

📎 EHBHS\_QuestionsRegardingTaxExemptApp\_4.8.2014.docx  
26K



Westinghouse, John <John.Westinghouse@state.vt.us>

Tue, Apr 8, 2014 at 11:29 PM

To: Tiffany Boyd <victorylister.tboyd@gmail.com>, "Wilson, Michelle" <Michelle.Wilson@state.vt.us>

Tiffany

I have run this past several people in our department and we of the opinion that this property should be tax exempt. Humane Societies are Statutorily exempt. This particular property may have some variances from the norm, however they are an active organization that is frequently called upon to manage severe animal cruelty problems in the area. i.e. the Bona case in Lyndonville and Rabbit run in Danville, both of

which received wide media attention. Pat is very active in finding protection in various locations for these abused animals and the area benefits from her services and network system.

John

John Westinghouse

Vermont Department of Taxes

Division of Property Valuation and Review

District Advisor

802-626-8643- Home Office

802-828-6603- Cell Phone

john.westinghouse@state.vt.us

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**From:** Tiffany Boyd [mailto:victorylister.tboyd@gmail.com]

**Sent:** Tuesday, April 08, 2014 8:51 PM

**To:** Westinghouse, John; Wilson, Michelle

**Subject:** Re: EBHS Tax Exemption

Hi John & Michele,

We, the Victory Lister, received a tax exempt application from the Elizabeth H. Brown Humane Society on January 17th, 2014. We would greatly appreciate you opinions concerning this matter.

Please find attached at the bottom of this email the application & supporting documents submitted, a folder entitled "Our Research" and a letter with questions we have.

Thank You

---

**Tiffany Boyd** <victorylister.tboyd@gmail.com>  
To: Michele Wilson <michelle.wilson@state.vt.us>

Wed, Apr 16, 2014 at 3:56 PM

Hello Michele,

I just wanted to make sure you had received my phone messages. I am curious to know if you have had a chance to review this tax exempt application and questions about it. I would really like to speak with you about this before I move forward.

You can also reach me on my cell phone at 802-393-2976.

Thanks!

[Quoted text hidden]

--

~Tiffany Boyd~  
Victory Town Lister  
PO Box 609  
North Concord, Vermont

Office Phone: 802-328-2400

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Wilson, Michelle <Michelle.Wilson@state.vt.us>  
To: Tiffany Boyd <victorylister.tboyd@gmail.com>  
Cc: "Westinghouse, John" <John.Westinghouse@state.vt.us>

Fri, Apr 18, 2014 at 9:39 AM

Tiffany,

I have been out sick. I see that John Westinghouse has replied to you, do you have an issue with his response? It seems appropriate to me. Let me know if you have a differing opinion, we can discuss it.

*Michelle W Wilson*, Operations Chief

Property Valuation and Review

Department of Taxes

133 State Street FL 1

Montpelier, VT 05633

802-828-5639 fax 828-2824

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**From:** Tiffany Boyd [mailto:victorylister.tboyd@gmail.com]  
**Sent:** Wednesday, April 16, 2014 3:56 PM  
**To:** Wilson, Michelle

[Quoted text hidden].

[Quoted text hidden]

Tiffany Boyd <victorylister.tboyd@gmail.com>  
To: "Wilson, Michelle" <Michelle.Wilson@state.vt.us>

Fri, Apr 18, 2014 at 3:23 PM

Hi Michele,

Yes, I do have more in-depth concerns about this. Are you available Tuesday April 22nd? I will be in the office from 1-5pm.

Thank you for your reply,  
[Quoted text hidden]

Wilson, Michelle <Michelle.Wilson@state.vt.us>  
To: Tiffany Boyd <victorylister.tboyd@gmail.com>

Fri, Apr 18, 2014 at 4:05 PM

I have appts all day Tuesday. I will be in Monday, Thursday and Friday. Wednesday is TOEC in Killington.

*Michelle W Wilson*, Operations Chief

Property Valuation and Review

Department of Taxes

133 State Street FL 1

Montpelier, VT 05633

802-828-6639 fax 828-2824

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**From:** Tiffany Boyd [mailto:victorylister.tboyd@gmail.com]  
**Sent:** Friday, April 18, 2014 3:24 PM

[Quoted text hidden]

[Quoted text hidden]

Tiffany Boyd <victorylister.tboyd@gmail.com>  
To: "Wilson, Michelle" <Michelle.Wilson@state.vt.us>

Fri, Apr 18, 2014 at 4:58 PM

Monday after 2pm works for me, shall I call you?

[Quoted text hidden]

TOWN OF VICTORY  
 NOTICE TO TAXPAYERS AS OF 06/2/2014

Change in Appraisal of Real Estate

BROWN ELIZABETH H HUMANE SOCIETY  
 80 BUTTONWOOD LANE  
 VICTORY VT 05658

-----  
 Parcel ID : 10-06. Location A:  
 SPAN : 672-213-10210 Location B:  
 Total Acreage : 5.00 Property Description: 5.00 ACRES & DWL  
 -----

	Total Real Value	Homestead Value	House Site Value
Previous (last year) total	194,900	194,900	187,400
Current (this year) total	227,500	227,500	218,100
Difference:	32,600	32,600	30,700

Real Value Comments: LAND GRADE TO 1, ADDED RABBIT & ROOSTER PENS, OUTBUILDINGS TO AVG & 80%GOOD, HOUSE TO AVG

Homestead Comments: LAND GRADE TO 1, ADDED RABBIT & ROOSTER PENS, OUTBUILDINGS TO AVG & 80%GOOD, HOUSE TO AVG

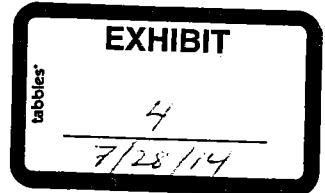
Title 32, Vermont Statutes Annotated, section 4111 (g) reads as follows:  
 "A person who feels aggrieved by the action of the listers and desires to be heard by them, shall, on or before the day of the grievance meeting, file with them his objections in writing and may appear at such grievance meeting in person or by his agents or attorneys. Upon the hearing of such grievance the parties thereto may submit such documentary or sworn evidence as shall be pertinent thereto."

The grievance meeting will begin on: Wednesday, June 25, 2014  
 Location: Town Hall, 102 Radar Road, Victory VT Phone: 802-328-2400

DATE: June 25th, 2014

Hours: 1:00 PM to 6:00 PM

\* A homestead is the principal dwelling improvements and land owned and occupied by a Vermont resident individual as the individual's domicile. A homestead does not include buildings or improvements detached from the home and used for business or rental purposes. A housesite is that portion of a homestead that includes the principal dwelling and as much of the land surrounding the dwelling as is reasonable necessary for use of the dwelling as a home, but in no event more than two acres per dwelling unit.



TOWN OF VICTORY  
NOTICE  
RESULT OF GRIEVANCE DAY APPEAL

DATE OF NOTICE: JUNE 26, 2014

TO: BROWN ELIZABETH H HUMANE SOCIETY  
80 BUTTWOOD LANE  
VICTORY VT 05858

You are hereby notified of the following disposition of the appeal in regards to the value of your property identified in the grand list book as follows:

Parcel ID: 10-06.

SPAN: 672-213-10210

Property Description: 10-06

5.00 ACRES & DWL

[ X ] Appeal denied.

Fair Market Value remains \$227,500

Remarks: LAND GRADE TO 1, ADDED RABBIT & ROOSTER  
PENS, OUTBUILDINGS TO AVG & 80%GOOD, HOU  
SE TO AVG

Pursuant to Title 32, Vermont Statutes Annotated, Section 4404, a person aggrieved by the final decision of the board of listers, after grievance day may appeal to the board of civil authority of the town. The APPEAL MUST BE MADE WITHIN FOURTEEN (14) DAYS OF THE TIME THIS NOTICE WAS MAILED by the listers. The APPEAL MUST BE MADE IN WRITING AND DELIVERED TO THE TOWN CLERK and it must briefly set forth the grounds upon which the appeal is based.

BOARD OF LISTERS  
TIFFANY BOYD  
DALE SOMERVILLE  
JAN STANLEY

