

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF STEELE

THIRD JUDICIAL DISTRICT

Case Type: Employment & Other Civil

Stephen Habberstad
and Habberstad Investments, LLC,

Court File Nos. 74-CV-13-1086
74-CV-13-1246
74-CV-14-1428
74-CV-14-1754

Plaintiffs,

vs.

Country Bankers, Inc., Citizens State Bank
of Hayfield, Farmers and Merchants State
Bank of Blooming Prairie, Kimberly
Habberstad, Susan Boschetti, Terry
Boschetti, David Dovenberg, Maureen
Denges, and Phyllis Sieveke,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT**

Defendants.

The above-captioned matters were tried to the Court from January 25, 2016, to February 17, 2016 (approximately 3.5 weeks), at the Steele County Courthouse, 111 East Main Street, Owatonna, Minnesota. Plaintiffs appeared and were represented by counsel, Celeste E. Culberth and Leslie L. Lienemann of Culberth & Lienemann, LLP, and Mark D. Sherinian of Sherinian & Hasso Law Firm. Defendants appeared and were represented by counsel, Donald W. Savelkoul of Savelkoul Law Office, and John Harper III and Kristy A. Saum of Messerli & Kramer, P.A.

At issue are claims asserted in four separate files, which were consolidated for purposes of discovery and trial. Plaintiff Stephen Habberstad brought claims based on breach of fiduciary duty, sexual orientation discrimination, and reprisal. Plaintiff Habberstad Investments, LLC, also

asserted claims of sexual orientation discrimination. Plaintiff Habberstad Investments, LLC, also asserted a claim for tortious interference with contract; however, this claim was settled by the parties during the course of the trial and therefore is not at issue and is not addressed herein. Defendants David Dovenberg, Phyllis Sieveke and Maureen Denges were also dismissed with prejudice as a result of the settlement. Farmers and Merchants State Bank of Blooming Prairie has asserted claims against Stephen Habberstad to recover on an unpaid loan. Finally, Terry and Susan Boschetti have a judgment against Stephen Habberstad based on an overdue loan which has also been consolidated in these matters.

Having heard the testimony, arguments of counsel, and considered the evidence submitted, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. PROCEDURAL BACKGROUND OF THE LITIGATION.

1. In April 2013, Plaintiffs Stephen Habberstad and Habberstad Investments, LLC, initiated an action captioned *Stephen Habberstad, Habberstad Investments, LLC, v. Country Bankers, Inc., Citizens State Bank of Hayfield, Farmers and Merchants State Bank of Blooming Prairie, Kimberly Habberstad, Susan Boschetti, Terry Boschetti, David Dovenberg and Maureen Denges*, Court File No. 74-CV-13-1086. Plaintiffs served an Amended and Supplemental Complaint adding Phyllis Sieveke as a Defendant in August 2014.

2. In June 2013, Terry and Susan Boschetti initiated an action based upon an unpaid loan captioned *Terry Boschetti and Susan Boschetti v. Stephen D. Habberstad*, Court File No. 74-CV-13-1246 (hereinafter the “Boschetti Action”).

3. On December 6, 2013, a default judgment was entered in the Boschetti Action in the amount of \$184,548.00.

4. In July 2014, Farmers and Merchants State Bank of Blooming Prairie initiated an action based upon an unpaid loan captioned *Farmers and Merchants State Bank of Blooming Prairie v. Stephen D. Habberstad*, Court File No. 74-CV-14-1428.

5. Stephen Habberstad asserted a counterclaim in response to the unpaid loan claim, Court File No. 74-CV-14-1428, alleging sexual orientation discrimination, retaliation/reprisal, and abuse of process in August of 2014.

6. In August 2014, Plaintiff Stephen Habberstad initiated an action captioned *Stephen Habberstad v. Country Bankers, Inc., and Farmers and Merchants State Bank of Blooming Prairie*, Court File No. 74-CV-14-1754.

7. On October 9, 2014, this Court ordered all of the above actions be consolidated for purposes of discovery and trial.

II. THE PARTIES INVOLVED

8. The shareholders and other individuals named as parties in this action are members of or related to the Habberstad family.

9. Plaintiff Stephen Habberstad is the son of Edward C. Habberstad and grandson of Oscar Habberstad, who was involved with the founding of Farmers and Merchants State Bank of Blooming Prairie.

10. Susan Boschetti is Stephen Habberstad's sister. Susan Boschetti is married to Terry Boschetti.

11. Kimberly Habberstad is Stephen Habberstad's ex-wife.

12. Maureen Denges is Kimberly Habberstad's mother and Stephen Habberstad's former mother-in-law.

13. Phyllis Sieveke is Stephen Habberstad's aunt.

14. Dave Dovenberg is Phyllis Sieveke's son-in-law.

III. BACKGROUND AND HISTORY OF THE BANKS.

15. This lawsuit involves two separately chartered banks, Farmers and Merchants State Bank of Blooming Prairie and Citizens State Bank of Hayfield, collectively the ("Banks") and their holding company, Country Bankers, Inc.

16. The Banks have been in the Habberstad family since their inception.

17. Farmers and Merchants State Bank of Blooming Prairie ("F&M") was founded by Oscar Habberstad and other members of the Blooming Prairie community in 1904. A majority of the shares of F&M, and subsequently the holding company, Country Bankers, Inc., have always been held by members of the Habberstad family.

18. Oscar Habberstad was President of F&M from 1914 to 1954. Exhibit 899.

19. Following Oscar Habberstad, his son Edward Habberstad became President of F&M in 1954. Exhibit 899.

20. Edward Habberstad was President of F&M until 1983. Exhibit 899.

21. In 1990, Country Bankers, Inc. ("CBI"), was formed as a holding company for F&M and any future-acquired banks.

22. In 1992, Country Bankers, Inc., purchased Citizens State Bank of Hayfield ("Citizens"). Since 1992, Country Bankers, Inc., has been the holding company for the two separately chartered banks.

23. Each chartered bank has multiple locations. F&M has locations in Blooming

Prairie and Austin. Citizens has locations in Hayfield, Dodge Center, and Mantorville.

24. Jim Fiebiger has been the President of F&M since 1999. He has a B.S. degree in business administration and a minor in economics and has more than 30 years of experience in the banking industry.

25. Mark Miedtke became the President of Citizens in 1989. He has a B.S. degree in agricultural business administration and completed the Graduate School of Banking in Madison, Wisconsin. Mr. Miedtke has more than 30 years of experience in the banking industry.

26. Each bank President is in charge of running and managing the day-to-day operations of their respective bank.

27. Each chartered bank has its own Board of Directors.

28. Country Bankers, Inc., also has a Board of Directors that oversees the operations of the Banks.

IV. HISTORICAL SUCCESSION OF THE BANKS IN THE HABBERSTAD FAMILY.

29. After founding F&M, Oscar Habberstad worked at the bank until 1954, when he resigned as President. Exhibit 899. From 1955 until his death in 1967, Oscar Habberstad remained involved in the Blooming Prairie community and was compensated by F&M for his position as Chairman of the Board. For the first two years, his compensation was \$400/month, and then was reduced to \$300/month. Exhibit 899.

30. Oscar Habberstad brought his son Edward Habberstad into the banking business after Edward Habberstad served in the Army Air Corps from 1937-1948 and finished his degree at Northwestern University. After Oscar Habberstad retired, Edward Habberstad took over and ran F&M.

31. Oscar Habberstad drew a salary from the bank until he suffered a stroke in 1961.

32. Edward Habberstad was President of F&M from 1954 until 1983. Exhibit 899. After that time, he became a consultant to F&M.

33. Edward Habberstad retired from running day-to-day activities of F&M in 1976. After that time, he spent winter months in Florida, during which time he did no work in F&M. During the summer months, he provided advisory services to F&M and served as its Chair of the Board. Edward Habberstad turned the leadership of F&M over to Stephen Habberstad in 1986 or 1987.

34. After retiring as President, Edward Habberstad received no compensation from F&M from 1984-1991, other than a bonus in 1985. Exhibit 899. Edward Habberstad was then paid as a consultant for seven years, from 1992-1998. Exhibit 899. He was paid for his presence at F&M and the input he provided to the bank.

35. Edward Habberstad remained involved in the local community in Blooming Prairie and continued to come into F&M on a regular basis well into his 80's. He maintained a residence in Blooming Prairie and spent approximately three months during the winter in Florida.

36. Edward Habberstad's consulting arrangement with F&M was memorialized by a written Consulting Agreement. Exhibits 6, 9. The Consulting Agreement included a 30-day termination provision.

37. After turning F&M over to his son, Edward Habberstad had a consulting agreement with F&M. One such agreement, dated July 1, 1992, required payment of \$24,000 per year. Exhibit 6. On October 1, 1998, the amount was increased to \$75,000 per year. Exhibit 9. Edward Habberstad was 87 years old as of the date of his last consulting agreement. From

1986 forward, Edward Habberstad spent his winter months in Florida, during which time he spent little to no time on bank business. After 1986, during the summer months, Edward Habberstad continued to visit F&M but spent his time there reading his mail and greeting people, sometimes napping in his chair. He was paid a consulting fee for his general contributions to F&M during his lifetime. Exhibit 899. F&M had no executive retirement plan, so the consulting fee paid to Edward Habberstad was, in part, compensation for his retirement in place of a retirement plan. From the testimony, it is clear to the Court that these consulting contracts were really a retirement plan. Some consulting services were performed, but the bulk of the money received was to recognize the work the bank executive did during his full-time working years within F&M.

38. Stephen Habberstad testified that his grandfather and father received consulting fees as a retirement plan. There is evidence in the record to suggest that retirement plans were contemplated for the CEOs of the banks. However, the evidence did not show that the CEOs historically received lifetime retirement plans. In 1992, Edward received a consulting contract at \$2,000 per month or \$24,000 per year. Exhibit 6. In 1998, Edward received \$6,250 per month or \$75,000 per year. Exhibit 9. It was never explained why Oscar Habberstad and Edward Habberstad did not get year after year or lifetime retirement monies.

39. Stephen Habberstad did not have a retirement plan. This was not a priority of the business. This was not part of the history or tradition of the business. Generally, the main Shareholders/CEO/Chairs work hard, put profits back into the business, and then reap the benefits of a retirement package at the end of their career. The retirement package was in the form of a consulting contract. There was testimony that the 401(k) plan was available, but Stephen Habberstad did not take advantage of this, partly to allow other employees to contribute

to the maximum amount.

40. On the issue of whether the other board members/shareholders believed that Stephen Habberstad had a right to a retirement plan, the Court finds that all shareholders knew that Stephen Habberstad had a right to a reasonable retirement plan. In some of the documents, Stephen Habberstad alludes to the fact that "don't I have the right to a retirement plan?" Exhibit 431("I do want to repeat, that my compensation package prior to January 10th 2013 was set and approved, in part, to serve as a retirement package. I invite your analysis and explanation why a 30 year plus employee and Chairman/CEO isn't entitled to a retirement package?"). There was no written response by the Defendants on this point. This is a tacit admission that a reasonable retirement plan was understood as part of the banks history and business model. The court finds that the board understood that Stephen Habberstad would have a retirement plan provided by the Banks.

41. In these successful banks, Stephen Habberstad "spread the love" (money) to other family members to achieve familial harmony. Stephen Habberstad tried to provide for the Boschetti family while they were board members. The Boschettis were paid consulting fees of approximately \$77,000. Susan attended quarterly board meetings and received compensation in the \$30,000/year range. Terry attended quarterly board meeting and provided some additional work and received approximately \$47,000/year. Although the Boschettis argue that Stephen was overcompensated for the work he did, the Boschettis need to "look in the mirror" because they were paid more money on an hourly basis than Stephen generally was and for very little work in the business. The trial testimony also showed that the Boschettis did not have a very good understanding of the business world in general or the banking industry in particular. The Banks were flush with money, and both Stephen Habberstad and the Boschettis felt that they could reap

the benefits of the Banks' success without much justification or thought.

V. STEPHEN HABBERSTAD.

A. Overview of Involvement with the Banks.

42. Stephen Habberstad, Edward Habberstad's son, was born in 1954. Stephen Habberstad started working periodically for F&M at 14 years old. He worked in the basement filing checks and later started working as a teller. Stephen Habberstad had numerous roles and titles at the Banks.

i. Employee of F&M.

43. Stephen Habberstad attended Blooming Prairie High School. Stephen Habberstad attended college for three years at Mankato State University but did not obtain a degree. After his college experience, in 1976 Stephen Habberstad began working for F&M full-time. He was employed by F&M in various capacities until 2013. Stephen Habberstad worked full-time for the Banks for 37 years.

44. There was no written employment agreement between Stephen Habberstad and F&M at any time.

ii. Shareholder.

45. Stephen Habberstad was a shareholder in F&M and, later, in Country Bankers, Inc. Stephen acquired his stock in the Banks from more than one source. Some of the stock was purchased from his sister Sally Williamson. Most of the stock was gifted by his parents or purchased from his parents, Edward C. and Mary Habberstad.

46. Stephen Habberstad obtained majority control of the Banks in 1995 by virtue

of an agreement with his parents, Edward C. and Mary Habberstad, which was executed in 1994. Exhibit 8. The agreement provided that “if and when Stephen Habberstad acquires 51% of Country Bankers, Inc., earnings of Farmers and Merchants State Bank and Citizens State Bank will be distributed in the form of dividends after the payment of operating costs including fair and adequate salaries and bonuses. The controlling interest will not be utilized for personal enrichment at the expense of the other shareholders.” Exhibit 8. This document foreshadows some of the problematic family dynamics within the Habberstad family. It seems clear to the Court that Edward Habberstad knew of some unhealthy family dynamics. At the time of the transfer of stock, Edward Habberstad tried his best to tell the new leader, Stephen Habberstad, that he was to treat other shareholders fairly and pay dividends. The obvious intent was to “keep the family happy,” but time told a different story.

47. As recognized in the agreement between Stephen Habberstad and his parents, there is an inherent risk that the majority owner of a business (or any combination of shareholders reaching a 51%) can exercise their control for personal enrichment and gain at the expense of the best interests of the company and its other shareholders. Exhibit 8.

48. Stephen Habberstad maintained majority control of the Banks from 1994 through mid-2012.

49. Stephen Habberstad and every other shareholder received dividends every year under Stephen Habberstad’s leadership of the Banks. Although not fully disclosed at trial, the dividends were historically generous and lucrative for all shareholders.

iii. Board Member.

50. Stephen Habberstad was elected a board member of both Banks as well as

Country Bankers, Inc. He served as a board member continuously from 1982 - 2012. Exhibit 5.

51. Stephen Habberstad served as Chairman of the Board of F&M from 1998 - 2012. Exhibit 899.

52. Stephen Habberstad served as Chairman of the Board of Country Bankers, Inc., from 2001 - 2012. Exhibits 5, 53.

iv. Consultant for Citizens.

53. Stephen Habberstad had a Consulting Agreement with Citizens. Exhibits 94, 305, 31.

54. The Consulting Agreement began in 1993 and was renewed each year until 2012.

55. In 2012, the Consulting Agreement was changed from an agreement with Stephen Habberstad to an agreement with Habberstad Investments, LLC, a limited liability company owned solely by Stephen Habberstad. Exhibit 94. The Consulting Agreement still specified that Stephen Habberstad was responsible for providing services to the Banks. The identity of the contracting party was the only change to the consulting agreement.

B. Stephen Habberstad's Sexual Orientation and Marriage to Kimberly Habberstad.

56. Stephen Habberstad discussed his sexual orientation during the trial. Stephen Habberstad stated that since he was a young boy, he knew he was gay. When asked why he married, he stated that he enjoyed Kimberly Habberstad's company and felt that he could suppress his sexual feelings and live a "normal life." Stephen Habberstad married Kimberly Habberstad in 1977, and they subsequently had four children together: Eric, Alyssa, Brendan and Nicole.

57. Stephen Habberstad and Kimberly Habberstad were married for 30 years.

58. Stephen Habberstad and Kimberly Habberstad separated in 2002.

59. Stephen Habberstad disclosed to Kimberly that he was gay in 2004.

60. Upon separation, Stephen Habberstad did not ask for a divorce because he wanted to preserve his relationship with Kimberly Habberstad and the children and preserve the estate of the family.

61. Stephen Habberstad credibly testified that during the separation and divorce, Kimberly Habberstad stated that she always knew that Stephen Habberstad was gay but did not realize it would hurt so much when it was disclosed to her. Kimberly Habberstad was deeply resentful and hurt by the disclosure that Stephen Habberstad was gay. Many of Kimberly Habberstad's motives as they relate to this case are based on her resentment and anger associated with Stephen Habberstad being gay.

62. Kimberly Habberstad filed for divorce against Stephen Habberstad in 2007.

63. Both Stephen Habberstad and Kimberly Habberstad described how difficult their divorce was. Stephen Habberstad described the divorce as "ugly." However, both Stephen Habberstad and Kimberly Habberstad engaged in a "pitched battle of a divorce" with huge, unnecessary cost overruns. From the information gathered at trial, they were both to blame for the length, nastiness, and expense of the divorce proceeding. Neither Stephen Habberstad nor Kimberly Habberstad communicated during the divorce. Both of them engaged in excessive discovery. Both of them dragged out the case. Their divorce was so high-conflict that both Stephen and Kimberly Habberstad spent over \$1 million in attorney fees.

64. Furthermore, Stephen Habberstad made poor decisions post-separation that were not necessarily related to the divorce. Stephen Habberstad, in his pride, felt that he could build two \$1 million homes, one for him and one for her, and be able to keep his finances afloat. Nothing

could be farther from the truth. Now, in retrospect, Stephen Habberstad believes that he was real estate rich and cash poor. He certainly was. This was obvious to anyone—except Stephen Habberstad and Kimberly Habberstad—at the time he was building two \$1 million homes. He was building these two expensive homes at the time when the real estate market and the general economy became very unstable. Unfortunately, losses occurred in the eventual sale of one home and the foreclosure of another home. Stephen Habberstad did not persuade the Court that it was the Defendants’ behaviors that caused the collapse of his real estate holdings. What caused the collapse of the real estate holdings was the following: First, Stephen Habberstad and Kimberly Habberstad overextended themselves in the initial purchase of the homes; second, decisions were made during the divorce that completely depleted assets and made keeping the two expensive homes totally impossible. At that point, both Stephen and Kimberly could not afford the two expensive homes due to their own spending choices. Money spent on lawyers was money that could not be spent on mortgages. In other words, they had one foot in bankruptcy court and another on a banana peel. For whatever wrongs that the Defendants perpetrated on Stephen Habberstad, they did not cause the loss of the two expensive homes. Financial losses and the eventual foreclosure or sale at “pennies on the dollar” of the two expensive homes was in the works well before January 10, 2013.

65. The Court finds Stephen Habberstad's claim that Kimberly Habberstad was against him for being gay credible.

66. Given the expense of the divorce and the way the divorce judgment and decree was structured, Stephen Habberstad gave Kimberly Habberstad a "chunk" of stock to settle property claims in 2010. Steve was naïve in thinking this would not cause problems for him at the Banks. Stephen was naive in thinking that Susan Boschetti would protect him through the

divorce and in the corporate boardroom. Stephen Habberstad should have anticipated that Kimberly Habberstad and Susan Boschetti and other shareholders could use their voting power to impact his employment. The problem is that Kimberly Habberstad and Susan Boschetti engaged in illegal and biased motivated decisions in plotting to remove Stephen Habberstad from his positions with the Banks because of Stephen Habberstad's sexual orientation, in violation of the Minnesota Human Rights Act and in violation of the duty of good faith and fair dealing amongst shareholders in a closely held corporation.

67. One of the things that Stephen Habberstad did notice was that the relationship between Susan Boschetti and Kimberly Habberstad had changed through time. Susan Boschetti and Kimberly Habberstad, who previously had not had a close relationship, were seemingly very friendly with each other at Alyssa Habberstad's marriage in 2012. Stephen Habberstad thought it was strange that they were all "buddy-buddy" but did not seem to "connect the dots" into the future. The divorce proceedings were and continue to be very contentious.

C. Stephen Habberstad's Historic Involvement with the Banks.

68. There was conflicting testimony at trial about the level of Stephen Habberstad's involvement with the Banks after 2002.

69. Prior to 2002, Stephen was involved in the Blooming Prairie community. He was involved in the local schools and purchased land for a local church cemetery. During this time, he was also present at the Banks on a daily basis and actively involved in the day-to-day operations of the Banks. Prior to 2002, Stephen was a small town banker. He went to the Banks on a regular basis and was heavily involved in the community. He had children living with him, and they were in the Blooming Prairie School District. He was active in the community, serving a short while on the Blooming Prairie City Council and worked longer term

as a volunteer firefighter.

70. From 2002 to 2012, Stephen's role at the Banks changed. He removed himself from the day-to-day operations in Blooming Prairie and took on more of a Chairman/CEO role. Stephen felt that he had two capable people working at the two bank branches, Mark Mietke and Jim Fiebiger. At that point, Stephen spent more time looking at the data generated at the Banks, the financial statements, in order to steer the Banks' course. He looked into the future of banking and tried to determine what new products or services may be on the horizon. He was interested in expanding the Banks by purchasing new banks into the future. He was also on the lookout for new customers and quality loans. He wined and dined current and future clients. Although some Defendants objected to Stephen spending money on travel and dinners, business development requires expenditures of that sort. Defendants did not prove that Stephen Habberstad engaged in excessive client entertainment or wasteful spending on these engagements. The situations noted at trial were necessary and reasonable expenses in pursuing and retaining large bank customers.

71. Part of Stephen's strategy in moving to a Chairman/CEO position was understanding that he had two good bank presidents working with him. He stated that between himself, Jim Fiebiger, and Mark Mietke, the three complemented each other and helped make the Banks successful businesses. Jim was good at creating loans but was not good with the banking regulation aspect of the business. Mark Mietke, on the other hand, was good at the regulation side of the business but was not good at making loans. Stephen Habberstad thought of himself as the "captain of the ship" and provided a general oversight over the businesses. Stephen Habberstad reviewed financial statements, looked at loans, expense reports, and was always looking for investments.

72. Each year that Stephen served as an employee and consultant to the Banks, the bank boards approved his compensation.

73. Stephen Habberstad testified, and Defendants did not dispute, that under Stephen's leadership, the Banks improved in their industry ratings and increased their deposits from approximately \$28,000,000 to approximately \$150,000,000.

74. Although the Court cannot say that Stephen Habberstad was the hardest working Chairman or CEO of a bank, he did put in time and have an interest in and was a part of the success of the business. Whether he fully earned the wages he was receiving is entirely another matter. But for purposes of this case, Stephen did do work on behalf of the Banks and promoted the business.

75. Caroline Houzenga, Stephen Habberstad's former assistant and former Vice President of F&M ("Houzenga"), testified that beginning in 2002, Habberstad's involvement at the Banks began to decrease and he stopped coming into the Blooming Prairie bank on a daily basis. She also testified that, after 2003, Habberstad stopped having a presence in the community and was not actively involved in the local community.

76. In 2003, Stephen Habberstad sent an abrasive email to Houzenga instructing her to advise bank employees not to leave messages on his desk any longer because "I am not there anymore." Exhibit 10.

77. Terry and Susan Boschetti testified that, in 2003, Stephen Habberstad packed his office and said he would never set foot in the Blooming Prairie bank again. This testimony is not credible.

78. Stephen and Kimberly Habberstad moved out of their Blooming Prairie home in 2003.

79. Stephen Habberstad lived in an apartment across from the Blooming Prairie Bank in 2003 for a short period of time and then moved to La Crosse, Wisconsin. From 2004 – 2006, Habberstad lived between La Crosse, Wisconsin; Lanesboro, Minnesota; Okoboji, Iowa; and Key West, Florida.

80. There was significant argument about Caroline Houzenga's raises or lack thereof in 2010. The Court does not believe Caroline Houzenga's contention that her raises were tied to extra work she was required to perform for Stephen Habberstad. Much of her extra work during the divorce was simply tied to extra work required because F&M was involved in discovery issues in the dissolution. Caroline Houzenga was not merely working for Stephen Habberstad or Kimberly Habberstad but was working as a bank representative in the divorce process. She was also willing to "plant the seed" in Kimberly Habberstad's mind after Kimberly Habberstad received additional bank shares in the divorce settlement that she had new found power within the Banks. Exhibit 63.

81. Emails sent by Caroline Houzenga establish that she carried some resentment against Stephen Habberstad. Caroline Houzenga was certainly allied with Kimberly Habberstad, both during and after the divorce. The evidence shows that Caroline Houzenga went out of her way to provide information to Kimberly Habberstad or to help Kimberly Habberstad obtain a loan from another bank.

82. The Court believes that Caroline Houzenga was aware that changes would be made in the bank at the January 10, 2013, meeting. She was concerned about Stephen Habberstad being the only signatory on Country Bankers, Inc., checkbook. Specifically, the Court finds that she was aware that the shareholders were planning to remove Stephen and his children from the board in order to terminate Stephen Habberstad's position in the Banks.

83. It was obvious that Caroline Houzenga changed the minutes to reflect what other board members wanted to reflect at the shareholders meeting, rather than the truth of what happened at the meeting. The Court finds that the initial draft of the January 10, 2013, meeting minutes reflect what actually transpired at that board meeting. After communications with other shareholders, Caroline changed the minutes of the January 10, 2013, shareholder meeting. Exhibit 102 and 102A and 103. These changes were not to clarify what truly happened at the meetings. These changes were authorized by other shareholders and directors to create a perception that the Defendants were not acting in concert and with the intent to terminate Stephen based on illegal discriminatory motives and in violation of statutory and common law duty of good faith and fair dealing required between shareholder and directors in a closely held corporation. The multiple drafts of the minutes catch Defendants in the act of attempting to manufacture a legitimate non-discriminatory motive for the termination of Stephen Habberstad's employment.

84. In 2005-2006, Stephen Habberstad, age 51-52, permanently moved to Florida. At that point, he had worked approximately 29 years full-time for the Banks.

85. Stephen Habberstad admitted that he provided deposition testimony in 2007 that in 2007 the extent of his involvement with the Banks included monitoring the Banks, looking at the reports, and being involved in troubled loans. He stated that he had monthly contact with the Banks, that this work did not "require a lot of time," and agreed that he did not "spend much time on the bank business right now" or in the last two years since he moved to Florida. Exhibit 454.

86. The Court finds that Stephen Habberstad did work less when he moved to Florida. Stephen Habberstad was phasing into a semi-retired status, like his father and

grandfather did. Stephen Habberstad had a reasonable expectation that some type of retirement package was in order. All of the shareholders knew of this historical and reasonable arrangement within the Banks. The retirement package would be couched either within employment contracts or consulting contracts. Further, Stephen Habberstad would continue to have a voice in the day-to-day operation of the Banks and would do tasks designed to promote the banking business. These tasks ranged from entertaining clients to data analysis to investigating new banking products and services.

VI. CONCERNS WITH STEPHEN HABBERSTAD'S CONTROL OF THE BANKS AND BANK SPENDING.

87. Fellow shareholders and directors Terry and Susan Boschetti testified that Stephen Habberstad exercised his majority control in ways that benefitted his own personal interests, not necessarily the interests of the Banks or other shareholders. There is some truth to these concerns.

88. Susan Boschetti expressed concerns on more than one occasion regarding Stephen Habberstad's personal spending and improper use of bank expense accounts. Exhibits 47, 57, 68. Susan Boschetti's concerns about Stephen Habberstad's "extravagant lifestyle" is really a code word for her disapproval of Stephen Habberstad's gay lifestyle. Susan Boschetti did not prove to this Court any improper use of bank expense accounts. Generally, Stephen Habberstad's own personal spending habits should really be of no concern to Susan Boschetti. However, Stephen Habberstad's spending became Susan Boschetti's concern when she was not being paid on the \$175, 000 promissory note between Stephen Habberstad and the Boschettis. She did not like the fact that he was going on vacation while he was indebted to her. She did not like the fact that Stephen Habberstad was gay.

89. Susan Boschetti testified that Stephen Habberstad used bank expense accounts

to pay for personal items, including, but not limited to, personal travel, his children's cell phone expenses, and gas for his children's cars. Susan Boschetti's testimony on this not was not credible. Defendants did not prove there were any improper spending within bank expense accounts. This testimony speaks to Susan Boschetti's poor understanding of the banking business. Susan Boschetti's claims that this motivated her decision to terminate Stephen Habberstad are not credible.

90. Susan Boschetti also expressed concern about the significant amount of money being spent by the Banks relating to Stephen Habberstad's divorce. Susan Boschetti seems to blame Stephen Habberstad for this issue. Exhibit 353. As noted in this opinion, the Banks did experience expenses related to discovery requests by Stephen Habberstad and Kimberly Habberstad. Both Stephen Habberstad and Kimberly Habberstad may have abused the discovery process in the dissolution, but Stephen Habberstad should not be solely responsible for the extra work experienced by the Banks generally and Caroline Houzenga in particular. All of the work was required of the bank to fulfill dissolution discovery requests.

91. Houzenga testified that during the divorce, and as directed by Plaintiff, she spent a significant amount of time gathering documents to respond to requests for information for purposes of the divorce and that she often came in during weekends at Stephen Habberstad's request. All of Houzenga's time and efforts in gathering documents and responding to information sought during the divorce were compensated by F&M. Houzenga even received an additional bonus one year directly related to the time she was dedicating to the divorce, all at the direction of Stephen Habberstad. Exhibit 38.

92. Terry Boschetti testified that in July 2010 Stephen Habberstad created fictitious "Special Meeting Minutes" (Exhibit 608) to document his unilateral decision to require

any shareholder wishing to transfer his/her shares to first offer those shares to the Board of Directors, which at the time was comprised of Terry and Susan Boschetti, Stephen Habberstad and three of his children. Terry Boschetti also testified that he was not part of this decision. Jim Fiebiger also testified regarding his concerns with these minutes and the limitations they placed on minority shareholders.

93. Terry and Susan Boschetti also testified regarding their concerns with Stephen Habberstad's decision in August 2010 to appoint three of his children - Nicole Wiczek, Eric Habberstad, and Brendan Habberstad - to the Country Bankers, Inc., Board of Directors. Both Terry and Susan Boschetti testified that they were not consulted about this decision, nor agreed to the same, and allege that Stephen Habberstad created fictitious "Special Meeting Minutes" to document his unilateral decision. Exhibit 333. Houzenga testified that she had typed all of the quarterly Board of Director meeting minutes for Country Bankers, Inc., since 1997. She testified, however, that she did not type the Special Meeting Minutes, but that those Minutes were handed to her by Stephen Habberstad and she was told to include them in the corporate book. This was credible, but had nothing to do with Stephen Habberstad's termination in this case.

94. In 2002, Kimberly Habberstad was elected to the Board of Directors for Country Bankers, Inc. She remained a board member during her marriage to Stephen Habberstad until 2007. Exhibit 5.

95. In 2008, Stephen Habberstad removed Kimberly Habberstad from the Board of Directors because she filed for divorce. Exhibit 5.

96. Stephen Habberstad never told Kimberly Habberstad he was removing her from the Board of Directors.

97. Shareholders Susan and Terry Boschetti also testified that from approximately 2008 – 2012, they felt that Stephen Habberstad was being overcompensated for the minimal amount of work he was actually doing for the Banks while living full-time in Florida. This is not credible because they never raised this alleged concern with Stephen Habberstad or other shareholders.

98. Stephen Habberstad admitted that after 2005 he was no longer involved in the day-to-day operations of the Banks, however he was doing some tasks on behalf of the Banks.

99. While Susan Boschetti expressed some of her concerns regarding expenses to Stephen Habberstad, both Susan and Terry Boschetti voted to re-elect Stephen Habberstad to the Board each year. Terry Boschetti testified that he felt he could not disagree with or challenge Stephen Habberstad's decisions because of how he exercised his majority control and his ability to dictate board membership and dividends. The Court does not find this testimony credible. While Stephen was the majority shareholder, there was no indication that he would retaliate against Terry if Terry had voiced concerns about his compensation to Stephen.

100. President Jim Fiebiger testified that Stephen Habberstad's compensation was "rubber stamped" by the Board of Directors each year because of Stephen's majority control. Given all of the evidence in this case, this does not seem credible. The Board or shareholders could have raised compensation concerns at any time, but chose not to.

101. Kimberly Habberstad and Caroline Houzenga each testified that Stephen Habberstad told them on many occasions that he owned 51% and could make all the decisions. This testimony was not credible.

102. Kimberly Habberstad testified that Stephen Habberstad told her he ran the Banks

and if any minority shareholder opposed him, then he would stop paying dividends and pay bigger bonuses. This testimony was not credible.

103. Maureen Denges testified that even though she and her husband were shareholders, Stephen Habberstad told her “I walk in and tell everybody what we’re going to do and then I walk out, and there’s nothing you can do because I control the bank.” This statement is not credible.

104. After hearing the many complaints about Stephen Habberstad at trial, the Court wonders, if it was so bad, why Defendants did not bring a minority right type of lawsuit prior to January 10, 2013? Defendants point out these gripes at trial, but they did nothing at the time of these feelings to tell Stephen Habberstad that they disagreed with what had occurred. Defendants had the opportunity to raise these concerns personally, at board meetings, or through litigation. Defendants did not know or did not care because the money kept flowing. Dividends were strong. They could have challenged Stephen Habberstad with an argument that he violated the statutory or common law duties of good faith and fair dealing amongst minority shareholders. As time went on, Defendants themselves engaged in illegal discrimination and violated the statutory and common law duty of good faith and fair dealing to minority shareholders to get even with Stephen Habberstad for these historic gripes. Again, these historic gripes are not the true motivation for Defendants’ actions against Stephen Habberstad. The Court thinks that many of these historic gripes were raised to divert the attention of the Court and are after-the-fact rationalizations of the Defendants’ illegal and discriminatory conduct.

VII. CHANGE IN CONTROL OF THE BANKS.

105. As part of the divorce between Stephen and Kimberly Habberstad, the Court entered a Stipulated Order to Divide Country Bankers, Inc. Stock and Other Related Matters on May 16, 2012. Both Kimberly Habberstad and Stephen Habberstad agreed to divide the stock as set forth in the Stipulated Order. Per the Order, 9,059 shares of Country Bankers, Inc., stock was transferred from Stephen Habberstad to Kimberly Habberstad. Exhibit 712.

106. As a result of the Stipulated Order to Divide Country Bankers, Inc. Stock, Stephen Habberstad no longer had majority control of Country Bankers, Inc. Exhibit 712.

107. After the transfer of the stock in May 2012, the Defendant shareholders and the bank presidents were aware that Stephen Habberstad no longer had majority control of the Banks. Exhibit 64.

108. Evidence at trial demonstrated that, as early as February 2012, Defendants Susan and Terry Boschetti anticipated Stephen Habberstad's loss of control of the Banks and saw an opportunity to remove him from the Board of Directors of Country Bankers, Inc., from his employment with F&M Bank, and from his contractual relationship with Citizens State Bank. Exhibits 57, 58. Susan Boschetti contacted Citizens State Bank President Mark Miedtke in February 2012, and she contacted F&M President Jim Fiebiger in July 2012. Exhibits 57, 66. She also contacted Kimberly Habberstad in the spring or summer of 2012.

109. Caroline Houzenga, who testified she was a long-time friend of Kimberly Habberstad, sent an email to Kimberly Habberstad on May 23, 2012, saying, "You and Suzie get together – you have alot of votes." Exhibits 32, 63. This is evidence of a plan going into the January 10, 2013 board meeting.

VIII. REGULATOR INVOLVEMENT IN THE BANKS.

110. The Banks are both Minnesota chartered banks subject to the regulations of

the FDIC and the Minnesota Department of Commerce.

111. The FDIC's role as a regulator is to oversee the safety and soundness of banks to ensure their proper operation and to protect against and attempt to prevent bank failures.

112. The FDIC recognizes that a majority owner of a bank may utilize majority control to circumvent the Board of Directors, thereby creating an unsafe and unsound environment by setting salaries disproportionate to the work performed or engaging in unsound insider lending practices.

113. The FDIC has implemented rules and regulations directed towards protecting the safety and soundness of banks, including rules relating to excessive compensation.

114. In 1996, Stephen Habberstad made \$238,200.00 as CEO of F&M. Exhibit 899. The 1996 FDIC Exam criticized Habberstad's compensation stating: "Habberstad's salary exceeds the median range of \$55,000 to \$90,000 for executive officers in Southeastern MN for financial institutions that are similar in size and structure." The FDIC labeled the salary as "excessive." Exhibit 906. As a result of the examination, Habberstad's compensation was reduced. Exhibit 899. During 1996, Habberstad was actively involved in the Banks and maintained a full-time daily presence.

115. The only other mention of excessive compensation offered by Defendants is a State of Minnesota Department of Commerce report dated 1997. Exhibit 906. The report notes that Stephen's compensation was higher than the "median range" of salaries. Furthermore, Defendants' expert testified that FDIC regulations indicate that bank performance is one factor considered in determining whether executive compensation is excessive, as well as whether the compensation harms the bank. The parties agree that these banks performed very well compared to their peer group under the leadership of Stephen Habberstad. Further, the evidence

demonstrates that Stephen's compensation was reduced after 1997 - at his own recommendation-and never exceeded the compensation level of 1997. Exhibit 899. Later FDIC reports do not mention any issue with Stephen's level of compensation. Defendants' expert testified that, as a former FDIC examiner, he would expect to see evidence that an executive employee was engaged in the following activities: hiring, employment decisions, personnel management, setting compensation, bank investments, loans and acquisitions. Stephen Habberstad provided evidence that he was engaged in many of these activities in 2012. Exhibits 5, 52, 53, 60, 69, 70, 71, 72, 75, 77, 79, 83, 84, 85, 87, 88, 90, 91.

116. In their 2012 exam, the FDIC addressed Stephen Habberstad's Consulting Agreement with Citizens, stating: "We again recommend that services to be provided in accordance with COB Habberstad's consulting agreement be appropriately documented for the services rendered. . . . Other than functions performed as director of the bank, there is no detailed support itemizing the specific services provided by COB Habberstad. This was also noted at the last examination." Exhibit 905.

117. Although Defendants point to these excessive compensation or lack of documentation issues as the reasons for taking actions against Stephen Habberstad, this is not credible to the Court. While Stephen Habberstad was employed by the Banks, the Defendants could have raised the alleged excessive compensation or lack of documentation issues at any time. These issues are "red herrings" and are used to cover up Defendants' discriminatory behavior and breach of statutory and common law duties of good faith and fair dealing to minority shareholders.

118. Defendants also knew that Stephen Habberstad was due some type of retirement plan. The Defendant Banks' vehicle for this retirement plan was through consulting contracts or

other payments. This has occurred for many years within the Defendant Banks. Even though this may not be the way the FDIC regulations would want retirement compensation to be structured, it does not negate the fact that these Defendants knew of an obligation to pay retirement benefits to Stephen Habberstad, just like retirement benefits were paid to Oscar Habberstad and Edward Habberstad.

IX. PERFORMANCE OF THE BANKS.

119. From 2004 to 2012, during Stephen Habberstad's tenure as majority shareholder and CEO, the Banks performed well in relation to other banks in their peer group and, overall, both Banks were profitable and successful.

120. The Banks continue to be profitable and successful.

121. Since 2013, and the removal of Stephen Habberstad, business at the Banks has not suffered. Jim Fiebigger testified "2015 was the best year out of the last five."

X. HABBERSTAD FAMILY DYNAMICS

122. Throughout the relevant time period, there were multiple family disagreements, discord, and arguments among the various family members, including, among others, Stephen Habberstad, Susan and Terry Boschetti, Kimberly Habberstad, and Eric Habberstad. Exhibit 47.

123. Some of the discord arose from the divorce between Stephen and Kimberly Habberstad, some from loans between family members or other lawsuits, and many others involved other miscellaneous concerns. Exhibits 47, 711, 693.

124. In 2010, Susan and Terry Boschetti took out a loan from F&M in order to fund a personal loan to Stephen Habberstad in the amount of \$175,000. Exhibit 622. The loan was supposed to be paid back within a couple of weeks; however, Stephen Habberstad has only

made a single interest payment on the loan. Despite promises to pay, Stephen Habberstad has failed to pay the loan, leading to family discord between himself and the Boschettis.

125. In February 2012, Susan Boschetti expressed frustration with Stephen Habberstad's spendthrift lifestyle, as he was going on a cruise while she was paying the attorney's bills and his "settlement shit." Exhibit 693.

126. In May 2012, in response to an email regarding use of the apartment for an upcoming memorial service, Stephen Habberstad wrote to Susan Boschetti: "Don't ever darken my door again you miserable person. fuck u . . ." Exhibit 711.

127. This is pointed out to show that some Defendants - particularly the Boschettis and Kimberly Habberstad - had non-banking business and personal animosity against Stephen Habberstad and, coupled with the anti-gay bias, Defendants acted to "right perceived wrong" against Stephen Habberstad.

X. EVENTS LEADING UP TO JANUARY 2013 SHAREHOLDER MEETING

128. During the latter part of 2012, some of the shareholders discussed Stephen Habberstad's role at the Banks and the approaching 2013 shareholder meeting.

129. The shareholders viewed the January 2013 shareholder meeting as their first chance to voice their opinion in an effective manner, given that Stephen Habberstad no longer had majority control of the Banks and each shareholder for the first time had the ability to affect bank decisions and the outcome of votes.

130. The By-Laws of Country Bankers, Inc., provide that directors are to be elected annually by a majority vote of the shareholders. Exhibit 7. A director's position with Country Bankers, Inc., is not guaranteed from year to year but is subject to shareholder vote.

131. In December 2012, Susan Boschetti had email communications with Phyllis

Sieveke regarding the January 2013 shareholder meeting and removing Stephen Habberstad from the Board of Directors. Exhibit 92.

132. Susan Boschetti testified that all of her communications with fellow shareholders or bank employees prior to January 2013 involving Stephen Habberstad were fueled by her concerns over what she viewed to be his excessive compensation, abuse of company perks, and spendthrift lifestyle. This is not credible. Susan Boschetti's anti-gay bias against Stephen Habberstad motivated her to coordinate with like-minded biased shareholders to remove Stephen Habberstad from his positions with the Banks.

133. Susan Boschetti also communicated with shareholder Kimberly Habberstad prior to the January 2013 shareholder meeting regarding her desire to remove Stephen Habberstad from the Board of Directors. Susan Boschetti used anti-gay rhetoric to solidify her support to remove Stephen Habberstad from the Board of Directors. In December 2012, Susan and Terry Boschetti met with bank presidents Mark Miedtke and Jim Fiebiger. The Boschettis inquired if the presidents would remain with the Banks if there was a realignment of the Board of Directors.

134. In December 2012, Terry Boschetti also called Dave Dovenberg and asked if Phyllis Sieveke was attending the shareholder meeting in January. Terry Boschetti asked Dovenberg if he was planning to drive Sieveke to the meeting and if he would consider being a director of Country Bankers, Inc., stating that following the divorce there was a shift in control and Stephen Habberstad did not control the majority of the shares any longer. Dovenberg replied that he would consider the director position.

135. In December 2012, Mark Miedtke relayed to Stephen Habberstad that the Boschettis were planning to discuss Habberstad's position with the Banks at the upcoming

meeting. Stephen Habberstad responded to Miedtke saying “don’t worry about it” and that he had it “covered.”

136. Jim Fiebiger also testified that he thought Stephen Habberstad was “putting something together with Kim” and, therefore, did not know what was going to happen at the January 2013 shareholder meeting.

137. In December 2012, after a conversation with Eric Habberstad, Mark Miedtke understood that Eric and Stephen Habberstad were negotiating with Kimberly Habberstad.

138. On December 19, 2012, Stephen Habberstad sent an email to Terry Boschetti. Exhibit 400. In his email, he recognized the animosity involving Susan Boschetti, alleged that Kimberly Habberstad has manipulated the situation to put the Boschettis against him, and asserted: “I hope you are still at my side, I told you I would always be there for you guys and hoped to return the favor some day . . .” Exhibit 400.

139. Stephen Habberstad knew that after the stock transfer to Kimberly Habberstad in 2012, he could no longer unilaterally control the outcome of the vote for directors as he had done in the past.

140. In late 2012, during settlement discussions in the divorce, Stephen Habberstad requested of Kimberly Habberstad that she not interfere with his employment. Although Stephen Habberstad inquired of Kimberly Habberstad's counsel, he did not receive any assurances as to how Kimberly Habberstad would vote her shares.

141. On January 9, 2013, Stephen Habberstad emailed his three oldest children to ensure their attendance at the shareholder meeting, stating “They need to be there otherwise run the risk of being voted off the board for lack of interest.” Exhibit 97. In addition, the email stated, “. . . this needs to be recorded . . .” Exhibit 97.

142. Stephen Habberstad testified that he asked Eric Habberstad to record the January 10, 2013, shareholder meeting. Eric Habberstad agreed to record the meeting. Exhibit 97.

143. Neither Eric Habberstad nor Stephen Habberstad informed the other shareholders of the request to record the meeting. There is no prohibition on recording of the shareholder meetings.

144. Going into the January 2013 shareholder meeting, Stephen Habberstad was aware that there could be problems with his positions with the Banks. He had his attorney Peter Cannon call the Boschettis to see if there were any concerns about his employment. Peter Cannon testified that on December 18, 2012, he called Terry Boschetti and asked him if Stephen Habberstad had anything to worry about with regard to his job. Peter Cannon testified that Terry Boschetti responded “no.” Peter Cannon’s testimony on this matter is credible.

145. This testimony is disputed as Terry Boschetti denies having made any assurances to Peter Cannon regarding Stephen Habberstad’s employment. Terry Boschetti’s testimony is not credible.

146. Peter Cannon inquired if Stephen had anything to worry about with his employment going into the January 10, 2013, shareholder and board meetings. Peter Cannon was credible in his claim that Terry Boschetti said that “Steve had nothing to worry about.” This was a lie that Terry Boschetti told to Peter Cannon to avoid friction at the upcoming board meeting and to allow the plan in place to vote Stephen off of the board and terminate his employment to “go like clockwork.” As may have been anticipated, Stephen Habberstad did “lawyer up” ASAP and did not “go gentle into that good night” of forced retirement and loss of employment and retirement benefits.

147. On the evening of January 10, 2013, Stephen Habberstad made a “friend call” as opposed to an attorney-client communication to Peter Cannon. Stephen Habberstad was emotionally distraught over the happenings at the shareholder meeting. This testimony was credible and is evidence of Stephen Habberstad’s emotional distress related to this incident.

148. Stephen Habberstad knew that he was at risk going into the January 2013 shareholder meeting. What he did not know was the degree of sexual orientation animosity that was being fomented by Susan Boschetti and forwarded to other shareholders. It is her emails and her meeting with Jim Fiebiger and Mark Miedtke that helped solidify the anti-gay, biased decision-making that occurred at the shareholder meeting. This anti-gay, biased decision-making occurred before the shareholder meeting, during the shareholder meeting, and culminated in the termination of Stephen Habberstad. The anti-gay bias drove the plan to terminate Stephen Habberstad from his positions with the Banks.

149. In looking at all the facts and circumstances of the case, the Court finds that there were communications between shareholders prior to the January 2013 board meeting. These communications involved anti-gay statements and a clear desire to not only remove Stephen Habberstad from the Board but also to terminate his employment. The evidence leads the Court to conclude that the vast majority of the shareholders wanted to terminate Stephen Habberstad at the January 2013 shareholder meeting because he was gay. The shareholders changed their decision to terminate Stephen at the meeting in order to attempt to manufacture a nondiscriminatory reason for the firing. The intent all along was to ultimately remove Stephen Habberstad from employment with the Banks. The shareholders and the directors acted with an anti-gay animus against Stephen Habberstad. Essentially, after listening to all the testimony and reviewing the exhibits, the Court finds that the shareholders and directors involved in the

decision to terminate Stephen Habberstad felt that Stephen, as a gay man, was a liability to the Banks. The Defendants' wrongful attitude was the business would be better if they did not have a gay banker in Blooming Prairie, Hayfield, Dodge Center, or Austin. The shareholders and the board members all shared this view, and this view was the primary motivation for the termination of Stephen Habberstad.

XI. JANUARY 10, 2013

150. On January 10, 2013, a shareholder meeting of Country Bankers, Inc., was held at Farmers and Merchants State Bank in Blooming Prairie.

151. In attendance at the shareholder meeting were Eric Habberstad, Stephen Habberstad (via telephone), Brendan Habberstad, Kimberly Habberstad, Caroline Houzenga, Dave Dovenberg, Phyllis Sieveke, Charles Bird, Donald Savelkoul, Maureen Denges, Mark Miedtke, Terry Boschetti, and Susan Boschetti. Jim Fiebiger was not present due to a recent medical procedure. Charles Bird attended the meeting as counsel for Kimberly Habberstad. Donald Savelkoul attended the meeting as counsel for Terry and Susan Boschetti.

152. A partial audio recording was made of the shareholder meeting by Eric Habberstad at the request of Stephen Habberstad. The recording of the meeting was played during trial. Exhibit 213.

153. The first order of business at the meeting was the election of directors for Country Bankers, Inc. Prior to the January 10, 2013, vote, the existing directors of Country Bankers, Inc., were Stephen Habberstad, his children Nicole Wiczek, Eric Habberstad, Brendan Habberstad, and Susan Boschetti.

154. The following nominations and votes were made during the shareholder meeting: Exhibit 213.

- a. Dave Dovenberg was nominated by Kimberly Habberstad. The nomination unanimously carried.
- b. Terry Boschetti was nominated by Susan Boschetti. The nomination unanimously carried.
- c. Eric Habberstad was nominated by Stephen Habberstad. There were no affirmative votes.
- d. Mark Miedtke was nominated by Terry Boschetti. The nomination unanimously carried.
- e. Jim Fiebiger was nominated by Mark Miedtke. The nomination unanimously carried.
- f. Susan Boschetti was nominated by Phyllis Sieveke. The votes were all affirmative with the exception of Stephen Habberstad.
- g. Stephen Habberstad was nominated by Eric Habberstad. There were no affirmative votes.

155. Eric and Brendan Habberstad testified that there was eye contact and other nonverbal cues that occurred between the Defendants during the meeting and suggested the nominations and votes were orchestrated among the various Defendants. At trial, Dave Dovenberg and Kimberly Habberstad denied observing any nonverbal cues. On this point, Eric Habberstad and Brendan Habberstad were credible. Dave Dovenberg and Kimberly Habberstad were not credible. After the nominations and votes for directors, Mark Miedtke gave a presentation on the status of the Banks, and the meeting was then adjourned.

156. The Court finds that after the shareholder meeting on January 10, 2013, Charles Bird - Kimberly Habberstad's lawyer - told Kimberly Habberstad that he was surprised that Stephen Habberstad did not even vote for himself during the board election. Eric, who was leaving the restroom, overheard Charles Bird comment after the meeting, "that could not have gone better than planned." Charles Bird denied that he said "that could not have gone better than planned." Charles Bird's testimony was not credible. Eric Habberstad was credible in his

testimony on this point.

157. It does not make any sense that Kimberly Habberstad, who brought a lawyer to the shareholder meeting, did not have a plan on how to vote her shares. Why else would you bring an attorney to the shareholder meeting except to act on a thought-out legal strategy? There was a plan going in to the meeting and the plan was acted upon. Charles Bird thought after the meeting that it went better than planned. Charles Bird told others his opinion, and Eric overheard Charles Bird's opinion.

158. Brendan Habberstad, Stephen and Kimberly Habberstad's son, has little interest in the banking business. He was on the Board of Directors for a period of time and attended the January 10, 2013, board meeting. He testified credibly that the voting was orchestrated based upon his observation of the eye contact between various shareholders and nods of agreement.

159. Brendan Habberstad testified that Phyllis Sieveke told him after the meeting that Stephen Habberstad needed to get his act together, get back in the closet and get back to work. This testimony was credible. Phyllis Sieveke knew that this statement was wrong but seemingly could not help herself in making the declaration. Brendan Habberstad testified that Phyllis Sieveke told him that she knew she shouldn't be telling him about her feelings towards Stephen. Brendan Habberstad was credible when he testified that his great-aunt Phyllis Sieveke stated that she was not comfortable about Stephen Habberstad's lifestyle change. This was a clear reference to great-aunt Phyllis Sieveke's belief that back in her time homosexuality was not acceptable. Although Brendan Habberstad did not recall the conversation word for word, he did clearly recollect that his great-aunt Phyllis Sieveke said that Stephen should get in the closet and back to work. This comment stuck out in Brendan Habberstad's mind because he felt it was such an odd comment.

160. Given the strong evidence that Stephen Habberstad's termination was planned prior to the meeting, the Court believes that Phyllis Sieveke's statements reflected not only her own views, but the views of her co-defendants. Defendants believed that Stephen's sexual orientation was a detriment to the Banks and distracting from the business of banking. Phyllis Sieveke clearly articulated this point of view to Brendan Habberstad.

XII. FINDINGS ON INDIVIDUAL TESTIMONY

A. Terry Boschetti

161. Terry Boschetti was not always aware of what Susan Boschetti was sending in her emails, but he was aware of Susan's anti-gay bias. He shared this bias against Stephen Habberstad as well.

162. Terry Boschetti was all too willing to receive excessive compensation as a board member for very little work. He gladly took the pay and benefits associated with a directorship position, and then later had the moxie to complain that Stephen Habberstad was overpaid. It was Terry Boschetti as a board member who should have directly dealt with Stephen Habberstad's alleged excessive compensation. If Terry Boschetti had a genuine concern about Stephen Habberstad's compensation, he had ample opportunity to both express that to Stephen Habberstad and to bring Stephen Habberstad's compensation to the Board's attention.

163. Terry's claim that he found online that bank CEOs are paid \$30-\$40,000 per year and believed that to be accurate is laughable and speaks to his lack of sophistication in understanding the economics of modern banking. This is not credible.

164. Terry's concern about the future implementation of Basel III to justify his actions is not credible. The Basel III requirements will not be implemented until the year 2019. Post January 10, 2013, the Banks have continued to give out large dividends which again suggests

that concerns about meeting the Basel III capital requirements are not legitimate.

165. Terry Boschetti's claim that he did not know how the vote would go at the January 10, 2013, shareholder meeting is not credible. He knew that there was a plan in place to remove Stephen Habberstad as a member of the Board of Directors and as an employee because Stephen Habberstad is gay.

166. Terry Boschetti complains that Stephen did not document his time as chairman of the board, but when Terry Boschetti became the chairman of the board, he did not document his time. The hypocrisy of this practice casts doubt on the legitimacy of Terry Boschetti's documentation concern.

167. Despite all the rhetoric in this case about acting in the best interest of the Banks or in the best interest of the shareholders, Terry Boschetti removed Stephen Habberstad from his position due to illegal discrimination, to support his wife, and to get even for the lawsuit that Stephen Habberstad brought against the Banks.

B. Dave Dovenberg

168. Dave Dovenberg and his family have never been shareholders in the Banks. However, he is Phyllis Sieveke's son-in-law. He became involved in this because of his family relationship with Phyllis Sieveke.

169. Dave Dovenberg talks about his general philosophy that it should be performance based and not based on nepotism. However, Dave Dovenberg misses the point; this is a family corporation, a closely held corporation with strong family ties. The whole point of a closely held family corporation is nepotism. Dave Dovenberg seems to use a public company analysis to many of the problems he was encountering in this closely held family corporation. Dave Dovenberg failed to understand the historic corporate culture, how former presidents and CEOs

expected to ease into retirement when the next generation was being groomed for future leadership. Dave Dovenberg also failed to recognize the historic retirement income that was given to former presidents and CEOs. By missing these historic/corporate cultural issues, he blindly sided with Phyllis Sieveke and her viewpoint and engaged in illegal discrimination and violated the duty of good faith and fair dealing. Dave Dovenberg acted as if Stephen Habberstad was a mere employee and not a shareholder or business partner.

170. Dave Dovenberg claims he bent over backwards to try to negotiate compensation and job duties with Stephen Habberstad, but as noted previously, the original intent at the shareholder meeting on January 10, 2013, was to terminate Stephen Habberstad. All of the behaviors of the Board after the fact were clearly designed in an attempt to justify a decision that was already made — terminate Stephen Habberstad. Dave Dovenberg's position that Stephen Habberstad was not adding value that could not be done by someone else at a lower cost goes against the historic principles that were developed in this closely held corporation. The *Pedro* case notes that there can be a reasonable expectation of lifetime employment. In this case, there was reasonable expectation for near lifetime income which included a fair retirement package. As noted in the corporate records, the former presidents and CEOs were not paid a lifetime of income, but were paid many years into retirement but not up until the date of death. Why that happened is not clear from the record, but the corporate payment records do show that former presidents and CEOs did get near lifetime employment/retirement benefits. Exhibit 899. The parties knew Stephen Habberstad should have been treated the same.

171. What does not make sense to the Court is Dave Dovenberg and others suggesting that the Banks were doing so poorly that action had to be taken. The Banks were being reasonably run and were quite profitable. A change was not necessarily in order. Even though

there were shifting alliances, there was really no need to make major changes in the bank by firing Stephen Habberstad. As noted in these findings, however, Stephen Habberstad may have been overcompensated relative to others in the industry. But this overcompensation issue could have been remedied short of firing Stephen Habberstad.

172. The Court does not find credible Dave Dovenberg's statement that sexual orientation was not a factor in Stephen Habberstad's termination.

C. Caroline Houzenga

173. Caroline Houzenga sat through the January 10, 2013, shareholder and board meetings in order to take notes to later transcribe into meeting minutes.

174. Houzenga had been typing board meeting minutes for 25 years; however, she had never attended a board meeting. Her prior minutes were nearly identical from year to year. Information for completing the minutes in prior years was provided to Houzenga by Habberstad.

175. There were two unsigned drafts of the January 10, 2013, Country Bankers, Inc., Board of Directors meeting. Exhibits 102 and 102A. The signed minutes indicate that the Board was going to consider its options regarding Habberstad's employment and consulting arrangement in the upcoming months. Exhibit 103. Testimony by Dave Dovenberg and Mark Miedtke stated that the final version of the board minutes accurately reflect the discussions and decisions reached during the meeting. This testimony is simply not credible. The meeting minutes were modified to cancel the plan to terminate Stephen Habberstad and lend an air of legitimacy to the compensation study. The decision to terminate Stephen Habberstad was made prior to the January 10, 2013, board meeting. All of the actions taken by the Board later - the changing of the meeting minutes, the salary study, slashing Stephen Habberstad's job

description and job duties, and claims that Stephen Habberstad was not documenting his time - were ham-fisted attempts to obfuscate the truth. The truth is: Stephen Habberstad was terminated because he is gay. In doing so, Defendants breached fiduciary duties owed to Stephen Habberstad. Defendants frustrated the reasonable expectations of Stephen Habberstad as a shareholder. Defendants violated the fiduciary duties to Stephen Habberstad requiring them to exercise the highest degree of integrity and good faith in their dealings. Defendants acted in a manner unfairly prejudicial to Stephen Habberstad.

176. During and after the January 10, 2013, board meeting, a main concern of the newly-elected board members was the level of compensation received by Stephen Habberstad. The Country Bankers, Inc., Board of Directors testified that they decided to open a dialogue with Stephen Habberstad in hopes of finding an agreeable set of duties that Stephen Habberstad would perform and a reasonable rate of pay directly commensurate to those duties. The board members testified that they were concerned with documentation of the work performed by Stephen Habberstad, both to justify his compensation and to satisfy the requirements of the regulators. This testimony was not credible. The compensation study was merely a pretextual attempt to conceal an illegal termination.

177. Defendants testified that they generally agreed that Stephen Habberstad was qualified to perform services as an employee of F&M and as a consultant to Citizens but felt that the work being performed was not sufficient to justify the level of compensation received. As noted in other sections of this decision, Defendants might have a point regarding Stephen Habberstad's compensation; however, Defendants failed to renegotiate Habberstad's salary in a good faith manner. In a heavy-handed manner, Defendants cut Habberstad's salary and job description in half. That was not an attempt to bring Habberstad's salary to a more reasonable

level. It was an attempt to force Stephen out of the business altogether. Defendants did not want to have an honest negotiation with Stephen because he might have agreed to a reasonable salary/retirement package - then they would be stuck with him. They wanted him out, not properly paid.

D. Mark Miedtke

178. Mark Miedtke testified that he went to lunch with Eric Habberstad and Brendan Habberstad immediately after the January 10, 2013, meetings. Stephen Habberstad called Eric Habberstad at the lunch meeting. Eric Habberstad handed the phone to Mark Miedtke. Mark Miedtke testified that Stephen Habberstad stated that he already had lawyers lined up to address the fact that he was not elected to the Board. Stephen Habberstad made a comment that the shareholders had brought the divorce into the boardroom. To this, Mark Miedtke stated, "Yes, they did." Mark Miedtke also stated, "They want you out." What Stephen Habberstad did not fully know at this time was how much the decision-making was fueled by illegal discriminatory motives. Stephen Habberstad asked if Mark Miedtke knew this was going to happen, and Mark Miedtke stated he knew nothing of this. This was not true because Mark Miedtke had a meeting with the Boschettis prior to this meeting and knew that there would be a change in the Board composition. This is further evidence that Defendants were engaged in duplicitous, bad faith behavior.

179. Two weeks later, Mark Miedtke spoke to Stephen Habberstad and asked him, "What is it going to take to get rid of you?" Stephen stated, "They gave you the dirty work." Mark Miedtke stated to Stephen Habberstad that he "did not want to get into the middle of this situation."

XIII. EVENTS AFTER JANUARY 10, 2013, RELATING TO PLAINTIFFS' EMPLOYMENT AND CONSULTING ARRANGEMENT.

180. Stephen Habberstad testified that after the shareholder meeting on January 10, 2013, his first telephone call was to one of his attorneys.

181. On January 18, 2013, Attorney Mark Sherinian sent a letter to Mark Miedtke, copying Susan and Terry Boschetti, Maureen Denges, Dave Dovenberg, and Charles Bird on behalf of Kimberly Habberstad, alleging that the shareholders' decision to not elect Stephen Habberstad to the Board on January 10, 2013, constituted discrimination and breach of fiduciary duty. In the letter, Sherinian threatened "five years of horrifically expensive litigation," exposure which would "bankrupt the Banks," and risk to the shareholders' personal assets. Exhibit 109.

182. On January 30, 2013, Country Bankers, Inc.'s, newly-elected CEO, Terry Boschetti, sent a letter to Stephen Habberstad on behalf of Country Bankers, Inc., and the Banks, advising him that the Country Bankers Board decided to address the amount Habberstad was being compensated in relation to the actual work he was performing. The letter further informed Habberstad that there was uniform discomfort with his level of compensation in relation to the work being done and that this concern was shared by bank examiners. Exhibit 114.

183. Board member Dave Dovenberg testified that the Board's intent was to "open some dialogue or discussions with Steve to more clearly delineate what he would be doing and to arrive at a level of compensation that was both fair to Steve, fair to the shareholders, and was consistent with the regulatory environment that we're in." This is not credible.

184. Terry Boschetti testified that after January 10, 2013, his intent was to negotiate with Stephen Habberstad for him to continue with the Banks at a reduced compensation. This

is not credible.

185. On February 13, 2013, Terry Boschetti, on behalf of Country Bankers, Inc., sent another letter to Stephen Habberstad stating: “We can no longer justify compensating you at the rate that you have been receiving. To do so would leave the Banks exposed to legal claims by other shareholders and to regulatory action.” The letter informed Stephen Habberstad that his compensation was being reduced to \$100,000; \$50,000 as an at-will employee of F&M and \$50,000 for his consulting services to Citizens. Alternatively, the Banks offered to submit the compensation issue to a disinterested third party to obtain a compensation study. The Banks proposed to split the fee for the compensation study with Stephen Habberstad. The letter had a “take it or leave it” quality to it. If Stephen Habberstad did not accept the proposed compensation package, “we will then treat it as if you have resigned.” Stephen Habberstad was given until 5:00 p.m. on February 20, 2013, to make his decision. Exhibit 116.

186. On February 28, 2013, Terry Boschetti, on behalf Country Bankers, Inc., corresponded with Stephen Habberstad by letter and email and confirmed that the Banks would be proceeding with a compensation study and would pay the costs associated with the study, as Habberstad had refused to pay half of the costs. The letter stated that until the compensation study was complete, Habberstad’s compensation would be reduced to \$100,000. Of this compensation, \$50,000 would be for his services as an at-will employee to F&M, and \$50,000 for his consulting services with Citizens. The letter affirmed that if the salary study came back with a salary higher than the \$100,000, the Banks agreed to be bound by that higher amount. The letter also clarified that, as of April 1, 2013, his Consulting Agreement with Citizens terminated and would become an at-will arrangement, terminable by either party. Stephen

Habberstad was also instructed to log all of his work “with specific details of what you do and how long it takes.” Exhibit 122.

187. Over the course of the five months, from February - June 2013, Country Bankers, Inc., and the Banks sent five letters to Habberstad in an attempt to ascertain the duties he was performing as an employee and consultant to the Banks and to engage in a conversation with Habberstad regarding an appropriate level of compensation in light of the services being performed. Exhibits 114, 116, 122, 132, and 138.

188. Stephen Habberstad provided some written response to the various communications. However, at no time did Stephen Habberstad provide a log of the time he was spending on behalf of the Banks. Stephen Habberstad claimed that the Banks should have the information to know what services he was providing and also referred to specific findings in his divorce. Exhibit 431. Stephen Habberstad’s claim is reasonable. It is clear that he was performing work for the Banks and generating a fair number of emails, especially to bank presidents. While Stephen was likely not the most productive bank president in the state, the claim that the Banks had no idea what he was doing with his time is not true. Defendants could look at bank email accounts and see Stephen Habberstad’s numerous correspondence regarding banking business.

189. On July 25, 2013, Country Bankers, Inc., sent correspondence to Habberstad informing him that his employment with Farmers and Merchants State Bank of Blooming Prairie and his consulting arrangement with Citizens had been terminated. In part, the letter stated:

As you know, we have corresponded with you on a number of occasions trying to obtain your cooperation in documenting the work completed and otherwise arranging for a productive working relationship. Unfortunately, we have not been provided

with the documentation requested and it appears that no work is being completed. We can no longer justify continuing to pay you.

Exhibit 152.

190. After receiving the July 2013 termination letter, Habberstad provided a letter to the Banks outlining the services he alleged he was performing. Exhibit 155.

191. In response to Stephen Habberstad's letter described above (Exhibit 155), Country Bankers, Inc., responded indicating its general disagreement and stating "the fact of the matter is that there simply was no longer a need for either of your positions – even if you were doing everything that we requested. The ongoing expenditures simply were not justified." Exhibit 158. As noted above, these communications were a smokescreen to cover up the Defendants' true intentions. They wanted Stephen Habberstad out of the business. They did not act in good faith. They did not treat Stephen Habberstad as if he were a partner in a partnership. They considered him an at-will employee, completely ignoring any duties they had as shareholders in a closely held corporation to Stephen Habberstad, another shareholder in a closely held corporation.

XIV. STEPHEN HABBERSTAD'S COMPENSATION.

192. The parties provided conflicting testimony regarding the approval process for Stephen Habberstad's compensation and whether Stephen Habberstad, as CEO and majority shareholder, recommended and approved his own salary each year from 1999-2012.

193. Habberstad's compensation from the Banks for the timeframe from 1994-2013 is summarized as follows (Exhibits 899, 310, 312):

Date	F&M Salary	F&M Bonus	Citizens Consulting Fee	Total Received
2002	\$148,000	\$25,000	\$75,000	\$248,000

2003	\$148,000		\$75,000	\$223,000
2004	\$148,000	\$35,000	\$75,000	\$258,000
2005	\$150,000	\$42,000	\$75,000	\$267,000
2006	\$175,000	\$42,000	\$90,000	\$307,000
2007	\$175,000	\$42,000	\$90,000	\$307,000
2008	\$175,000	\$33,180	\$90,000	\$298,180
2009	\$175,000	\$37,000	\$90,000	\$302,000
2010	\$175,000	\$37,000	\$90,000	\$302,000
2011	\$211,000	\$47,500	\$90,000	\$348,500
2012	\$211,000	\$11,500	\$90,000	\$312,500
2013 (until 3/1/13)	\$211,000		\$90,000	\$301,000

194. All Defendants testified that the level of Stephen Habberstad's compensation caused concern among board members and the Banks' presidents. However, no Defendants were able to point to any documentary evidence (besides some banking regulatory reports) that they held this concern prior to January 10, 2013. The Banks' responses to the banking reports were weak to the point of basically ignoring any alleged problem, and the regulator's enforcement response was even weaker.

195. In 2012, Stephen Habberstad was paid total compensation of \$312,500 from the Banks. Exhibits 899, 94.

196. According to the Minnesota Bankers Association Salary Guide, the average salary for a full-time CEO of a multi-bank holding company comparable to Country Bankers, Inc., in 2012 was \$157,200. The average fee to board members was approximately

\$502 per board meeting. Exhibit 881.

197. The salaries of the bank presidents were generally in the MBA average range. The compensation study completed by McLagan in 2013 found there was no entirely analogous position for comparison to Stephen Habberstad's function but that the two closest positions were as follows:

<u>Title</u>	<u>Average Cash Compensation</u>
Head of Business Development (Full-Time Position)	\$130,000
Chairman of the Board (Non-Executive)	\$15,000

Exhibit 883.

198. Terry Boschetti sent another letter to Stephen Habberstad on April 22, 2013, directing him to work on two specific loan files. Exhibit 132. In addition, Terry Boschetti attached information from a compensation study by McLagan, which had been solicited by Country Bankers, Inc., although Terry Boschetti notes, "McLagan would not help us formulate an appropriate compensation rate for your new job description." Defendants offered no evidence suggesting that they ever sought or received a compensation study based upon the work Stephen Habberstad performed prior to January 10, 2013. Defendants contend that they did not know what work Habberstad performed prior to that date. Given the volume of information presented at trial concerning Stephen Habberstad's work in 2012, the Court finds their testimony not credible. Defendants' arguments concerning its "compensation study" are pretextual.

199. Stephen Habberstad responded to Terry Boschetti's letter on April 29, 2013. Exhibit 431. In it, he indicated that he had assisted in the services of the loans, as requested, and noted that this was not the best use of his skills. He also noted that he had contacted the

contractor regarding the Dodge Center remodel and was told that the project had been cancelled. He also wrote:

I am available to perform other duties that are commensurate with my skills and experience. Your limited and shifting job description limits my ability to contribute to the Bank as I have done in the past. I welcome an expansion of your February 26th job description to maximize my value. Your limiting my job description to those similar to a mid-level loan officer and then deciding I am not worth the salary you offered in February based on those limitations, is a transparent self-fulfilling strategy.

207. Terry Boschetti sent another letter to Habberstad on May 3, 2013, in which he wrote, “On a personal level, Susie and I supported you when you needed us most, and for our ‘thanks’ we get sued.” Exhibit 138. Terry also wrote that he was putting the Dodge Center renovation on hold, thereby removing one of the job duties he had previously asked Habberstad to continue. This letter is evidence of retaliatory intent by Terry Boschetti and also demonstrates Terry Boschetti’s intentionally narrowing the scope of Stephen Habberstad’s job duties.

208. At trial, Mark Miedtke, Terry Boschetti, Dave Dovenberg, and Jim Fiebiger attempted to portray Terry Boschetti’s letters as a request for Habberstad to tell the Board what work he was willing to do and what pay he was willing to accept. This testimony is not credible. None of Terry Boschetti’s letters asked Stephen Habberstad to inform the Board what work he was *willing* to do or what compensation he was *willing* to accept. Rather, the letters demonstrate that Terry Boschetti had dramatically limited Stephen Habberstad’s job duties. Stephen Habberstad responded to Terry Boschetti’s letters indicating his willingness to continue performing the work he had done before his removal. Stephen Habberstad’s email also reflects that he continued to review bank information in detail, to analyze various markets, to watch the bond market, to watch the agricultural market, to watch other investments, to keep track of real estate loan markets and generally provide guidance, continuing through the termination of his

employment and after. Exhibit 431. While Stephen Habberstad's summation of the job duties he had performed and was willing to perform are vague at best, they at least offered a starting point for negotiations on Stephen Habberstad's future role and salary with the Banks. Since Defendants had no sincere interest in Stephen Habberstad continuing with the Banks, this was a non-starter. Defendants' goal through this time period was to string Stephen Habberstad along long enough with the hope that it would allow them to conceal their true, discriminatory motives for the firing. Given the history of the business, Defendants knew of Stephen Habberstad's reasonable expectation of continued employment or reasonable retirement package. Without justification, Defendants plotted to frustrate these reasonable expectations.

XV. DISCRIMINATION

209. Plaintiff Stephen Habberstad contends that his reduction in compensation and ultimate termination from employment with F&M and the termination of the Habberstad Investments, LLC, consulting arrangement with Citizens was due to his sexual orientation.

210. Defendants knew Stephen Habberstad was gay by 2006.

211. Defendant Terry Boschetti's son, Rusty Boschetti, is gay. Rusty Boschetti is Susan Boschetti's stepson. The fact that Terry Boschetti and Susan Boschetti may treat Rusty Boschetti with respect does not mean that they did not improperly discriminate or illegally terminate Stephen Habberstad.

212. Stephen Habberstad testified that Terry and Susan Boschetti loaned him \$175,000 in 2010.

213. Eric Habberstad testified credibly that in July 2012, he had a conversation with Susan Boschetti wherein Susan Boschetti spoke negatively about the gay "lifestyle" and discussed her religious beliefs regarding homosexuality.

214. Susan Boschetti denied any conversations with Eric Habberstad in July 2012 or at any other point discussing homosexuality. Susan Boschetti was not credible on this point.

215. Stephen Habberstad credibly testified that Terry Boschetti made a comment to him in 2003 or 2004 relaying that Susan Boschetti said that if a person was gay they were going to hell. Stephen Habberstad testified that the statement was made approximately ten years ago and did not relate to him personally. Terry Boschetti denied such statement. Stephen Habberstad was credible on this point, and Terry Boschetti was not credible on this point.

216. The Court is persuaded that several emails sent by Susan Boschetti demonstrate discriminatory animus.

217. On August 12, 2012, Susan Boschetti sent an e-mail to Stephen Habberstad's children following Alyssa Habberstad's wedding. In the email, Susan Boschetti wrote, among other things, "I am so heartsick to see how fragmented your family has become and you four children have turned on your Mom the way you have. And if for one minute you can comfortably sleep at night knowing the battle that has been raging on for the last five years; there is something terribly wrong in your hearts...it looks to me, your Dad only used your Mother's womb to produce 4 children for him; then came out of the closet after his parents died...now he's trying to make her penniless and those are the exact words I've heard...Don't you see how morally wrong this simply is!! Your Mom has not deserved this treatment and in the big picture of things; none of you will end up with more of anything...you would have gotten it anyway!! Your Dad has lived a lie for years and years and it has spilled over into the lives of his family causing a lot of heartache." Exhibit 68

218. In the same email, Susan Boschetti wrote: "My Grandfather founded this bank

on honesty, principles and by-laws that will remain the same, forever, with NO change from anyone; it's illegal to do so without stockholder approval...This has nothing to do with ousting your Mom out on what is owed and due to her....This is the most horrible and unfair action I have ever witnessed in a family and am sure it will go down in history in the Minnesota law books as one of the worst settlement cases in the history of Minnesota...what a legacy for our family name; which has been tarnished long ago, not to mention the reputation of your Father, I hate to say it, but it's true, and all that has happened, and the way he now lives his life.....People thrive on gossip and it has been ugly, ugly.... I even hear it where I live.” Exhibit 68 (emphasis added)

219. On January 3, 2013, Susan Boschetti forwarded her August 12, 2012, email described above to the bank presidents, Jim Fiebiger and Mark Miedtke. Exhibit 95.

220. Jim Fiebiger testified that neither Habberstad's sexual orientation nor Susan Boschetti's January 3, 2013, email was a factor in their decision-making regarding Stephen Habberstad. The Court does not find this testimony credible. Both Jim Fiebiger and Mark Miedtke had an incentive to “go along” with the sexual orientation biased decision of the shareholders and board of directors. With Stephen Habberstad removed from management, they could gain power, status, and possibly improved earnings potential. They were aware that Susan Boschetti asked them that if Stephen Habberstad was removed from leadership in the business, would they remain in the business. This led them to believe that after Stephen Habberstad was removed, they would have greater authority over the business because the remaining board members did not have the ability to run the Banks like Stephen Habberstad did.

221. Habberstad's sexual orientation was a factor in Mark Miedtke's decision concerning Habberstad's employment and consulting relationship.

222. Jim Fiebiger and Mark Mietke were placed in a difficult position throughout this case. They dedicated their whole career to the Banks. They were employed in a family banking business with all of the unhealthy family dynamics that were displayed in this case. Ultimately, they did become approximately 5% shareholders. In doing so, they had an interest in this litigation. They both were aware of Susan Boschetti's anti-gay bias, and they both acted upon that to their advantage. Stephen Habberstad at times was not a kindly boss. He could be rude and short with the Banks' staff. As noted throughout these findings, Stephen Habberstad possibly took advantage of his 51% shareholder status and maybe paid himself a little too much historically. Jim Fiebiger and Mark Miedtke did not deal with the long simmering issues of Stephen Habberstad's compensation or the documentation in the consulting contract in a direct manner. To the extent it was an issue, they were intimidated by Stephen's 51% shareholder status and did not discuss this issue with other shareholders or with Stephen Habberstad directly. Jim Fiebiger and Mark Miedtke acted with a discriminatory mindset as to their more limited involvement with the unlawful termination of Stephen Habberstad from his positions at the Banks. Jim Fiebiger and Mark Miedtke knew that the other Defendant board members (Boschettis, Kim Habberstad, etc.) would be dependent upon them for running the Banks. If they stayed with the Banks and supported the termination of Stephen Habberstad, they would be in a stronger negotiating position with the board of directors in obtaining a greater pay, benefits, power, and status in the future.

223. On the retaliation claim, Jim Fiebiger knew of Stephen Habberstad's Human Rights Act lawsuit at the time Stephen Habberstad requested a usual and customary loan workout arrangement. F&M, as part of any loan workout, demanded that Stephen Habberstad would have to dismiss this lawsuit. In retrospect, it is comical to think that this was a good-faith

effort to work out the loan. At that point in time, Stephen - even with his significant dividend income -did not have sufficient streams of income to pay back his various debts. Jim Fiebiger's strategy in attempting the loan workout was only to make things worse for Stephen rather than make things better. As a shareholder, he knew that Stephen Habberstad's income had been significantly decreased through time and that it was only a matter of time before Stephen Habberstad lost his job. Defendants "had him (Stephen Habberstad) where they wanted him" and were acting, in part, with discriminatory motivation and also without regard to the common law and statutory duty of good faith and fair dealing.

224. There was testimony at trial regarding discriminatory animus by Kimberly Habberstad.

225. Kimberly Habberstad testified that after learning Stephen Habberstad was gay, Kimberly Habberstad maintained a positive relationship with him and his partners until she filed for divorce in 2007.

226. Kimberly Habberstad spent time with Stephen Habberstad and his partner, Rafael Gonzalez, in Key West, Florida. Exhibit 874.

227. Kimberly Habberstad also hosted Stephen Habberstad and Rafael Gonzalez for Thanksgiving at her home in La Crescent.

228. Rafael Gonzalez testified that Kimberly Habberstad was welcoming and made him feel comfortable during the time he spent with her and Stephen Habberstad in Key West. Kimberly Habberstad maintained a front of collegiality but had significant resentments about Stephen Habberstad's sexual preference.

229. Eric Habberstad testified that Kimberly Habberstad made derogatory statements regarding the gay lifestyle in general in 2013 or 2014. Kimberly Habberstad denies

making any such statements to Eric Habberstad. On this point, the Court finds Eric Habberstad credible and Kimberly Habberstad not credible.

230. Stephen Habberstad testified that Kimberly Habberstad sent a letter to a Florida court pertaining to the custody of Rafael Gonzalez's son. Stephen Habberstad testified that Kimberly Habberstad's letter questioned a 14-year-old boy living with two men of "their lifestyle." The document was never introduced at trial. Even though this letter was not introduced at trial, Stephen Habberstad was credible on this point.

231. Kimberly Habberstad testified, and the corporate records confirm, that she was not a decision-maker in the employment decisions involving Stephen Habberstad or the consulting arrangement with Habberstad Investments, LLC. This is not credible. It was Kimberly Habberstad's newly acquired shares that tipped the balance of power and with her anti-gay bias made major changes in the Banks, mainly the firing of Stephen Habberstad. Kimberly Habberstad knew of the plan to make changes in Stephen Habberstad's employment status. Her testimony at trial that she did not know how she was going to vote going into the January 10, 2013, shareholder meeting or that she had no idea that a plan was in the works to fire Stephen Habberstad is false.

232. There was conflicting testimony about alleged discriminatory comments made by Phyllis Sieveke. Brendan Habberstad testified that immediately after the January 10, 2013, shareholder meeting, Phyllis Sieveke spoke negatively of homosexuality and said that Stephen Habberstad should go back in the closet and go back to work. Phyllis Sieveke denies any such statements. The Court does not find credible Phyllis Sieveke's statements that her voting behavior had nothing to do with Stephen Habberstad being gay or that she had a great interest in the running of the Banks. She had not taken any great interest in the running of the

Banks for many, many years. Phyllis Sieveke said, the yearly dividends were “mana from heaven.”

233. The Court does not find it credible that Phyllis Sieveke did not talk with Susan Boschetti or Kimberly Habberstad about the upcoming January 10, 2013, shareholder meeting. There is a Phyllis Sieveke email dated December 20, 2012, stating, “Kim is a key player. I sure hope she comes through.” On December 25, 2012, Susan Boschetti made the clear admission in an email that the attorneys said that we should not “write anything on the computer.” Exhibit 92.

234. Phyllis Sieveke disapproved of Stephen Habberstad’s gay lifestyle and was all too willing to tell this to Stephen's son Brendan Habberstad.

235. Phyllis Sieveke was aware that Susan Boschetti claimed that Stephen stole \$300,000 from Stephen Habberstad and Susan Boschetti’s mother. Susan Boschetti never confronted Stephen Habberstad about this allegation. Susan Boschetti at trial readily admits that her claim that Stephen Habberstad stole \$300,000 from their mother is not true. After the fact, Phyllis seems to realize that this was a lie. Susan Boschetti made up this lie to influence people such as Phyllis Sieveke. Susan Boschetti fomented an anti-gay bias and called Stephen Habberstad a thief to turn an elderly shareholder against Stephen Habberstad. This is evidence of illegal discrimination and a breach of a duty of good faith and fair dealing between shareholders and directors of a closely held corporation.

236. Defendants argue that Stephen Habberstad introduced no evidence that his sexual orientation was ever referenced or discussed at any board meeting or was an influence on the Board during any board meeting or any decisions relating to Habberstad. Discrimination claims are hard to prove. The die had already been cast prior to and at the January 10, 2013, meeting.

There was no need to beat a dead horse. It was a foregone conclusion to fire Stephen Habberstad prior to January 10, 2013. This firing was based on illegal sexual orientation discrimination. Defendants lawyered-up, and they were smart enough not to blatantly act in a discriminatory manner after there was a general agreement to terminate Stephen Habberstad based on, in part, sexual orientation discrimination and by breaching a duty of good faith and fair dealing between shareholders and directors of a closely held corporation.

237. Further evidence that Defendants had decided to terminate Habberstad's employment is shown by the February 13, 2013, email written by F&M president, Jim Fiebiger, to Terry Boschetti asking about the status of his employment contracts for himself and Mark Miedtke, saying he wanted them in place *prior to terminating Habberstad's employment*. Exhibit 117. Jim Fiebiger testified at trial that his email did not mean what it plainly said, and the Court finds Jim Fiebiger's testimony on this point not credible.

238. The evidence showed and the Court finds that all Defendants agreed to terminate Stephen Habberstad prior to the January 10, 2013, board meeting because of his sexual orientation. The board members selected at the meeting were selected for the purpose of carrying out this plan. When the board members terminated Stephen Habberstad, they were primarily motivated, both individually and collectively, by their anti-gay animus towards Stephen Habberstad.

239. The Court finds that the compensation study was commenced in bad faith, and Defendants' claims they terminated Stephen Habberstad because of his failure to cooperate with it mere pretext to cover up their illegal discrimination against Stephen Habberstad. Defendants were already intent on firing Stephen Habberstad prior to commencing the Salary Study. The original meeting minutes of the January 10, 2013 meeting show they had unambiguously

decided to terminate Stephen, a decision they later attempted to obfuscate in a futile attempt to conceal their discriminatory motive. Defendant further attempted to load the dice of the salary study by immediately and unilaterally cutting many of Stephen's job duties to reduce the amount of work he would be able to show. Defendants dramatically and unilaterally cut Stephen's salary prior to the salary study in a bad faith attempt to dissuade his cooperation with the salary study. Stephen Habberstad's lack of cooperation with the salary study is fully understandable, and it was an obvious bad faith gesture on the part of Defendants from the very beginning. Defendants cared very little about Stephen's compensation. It was always a red herring. Defendants only ever had one goal—removing Stephen Habberstad from the Banks because he was gay.

XVI. REPRISAL RELATING TO HABBERSTAD'S EMPLOYMENT CLAIMS.

240. Stephen Habberstad testified that he was terminated as an employee of F&M in retaliation for his assertion of his discrimination claims in his lawsuit, Court File No. 74-CV-13- 1086 (the "Employment Claims").

241. The Employment Claims were asserted by Stephen Habberstad in April 2013.

242. Habberstad's employment with F&M was terminated in July 2013.

243. In support of his reprisal claim, Stephen Habberstad points to a January 30, 2013, email from Terry Boschetti on behalf of Country Bankers, Inc., whereby he writes "the Board will consider whether it makes sense to have an employee or consultant threatening to ruin us." Exhibit 114. In a May 5, 2013, correspondence, Terry Boschetti wrote: "on a personal level . . . for our thanks we get sued." Exhibit 138.

244. Terry Boschetti testified that the lawsuit was not a factor in Stephen Habberstad's termination. This is not credible.

245. During the adverse examination of Terry Boschetti, Plaintiffs' counsel read in a

portion of his deposition which read as follows:

Q: Why is it that you approved or agreed with removing Steve Habberstad from any role in the bank in August of 2013? [Question was read back by the Court Reporter]

A: Because I felt that we were - - what he - - I felt that his thoughts were that he was not being compensated fairly when we were willing to pay him the kind of money we were willing to pay him with benefits and I didn't - - I-- the management I was talking to was advising me - - and I had written these letters to Stephen and I had never got any kind of a response directly to me other than other than - -

Q: Exhibit 29? [an email from Stephen Habberstad explaining the work he did for the banks]

A: Other than that type of response. There was never a call to say; how can we - - what can we do here? How can we manage this? What can we do to rectify this? It was, you know, I'm suing you.

Q: And the lawsuit was filed in May of 2013, correct? Correct?

A: I think it was filed before that.

Q: April of 2013?

A: I think by April it was out to the recipients, but I think it was filed, you know, early than that time.

Q: So if I understand you correctly, you're saying that you expected Steve to contact you to try to resolve the issue of compensation, but instead Steve pursued the lawsuit?

A: That's what I would have done.

Q: But instead he pursued the lawsuit, correct?

A: Yeah.

Q: Yes?

A: Yes.

As noted in the decision denying summary judgment to the Plaintiffs, this testimony can be read in two different ways. Nonetheless, the Court, having observed the testimony and demeanor of Terry Boschetti, concludes that Terry Boschetti is stating that he was expecting Stephen Habberstad to cooperate to determine the amount of his future compensation, but when

Stephen Habberstad sued for sexual orientation discrimination instead, Terry Boschetti terminated him. Under this reading, Terry Boschetti was admitting to reprisal under the Minnesota Human Rights Act. Terry Boschetti was the CEO and chairman of the board of CBI when Stephen Habberstad was terminated. That statement was thus an admission that the decision by the Defendant banks to terminate Stephen Habberstad was a reprisal under the Minnesota Human Rights Act.

246. The Court finds that the way the Board attempted to reduce Stephen Habberstad's pay and reduce his job responsibilities contradicts their arguments that Stephen Habberstad did not do enough work for the Banks. Why did the Banks argue that they did not know what he did, then cut his job description and cut his pay twice in a very short period of time? The clear reason for this is the Board was always intending on firing Stephen Habberstad. They were only trying to justify their illegal behavior by arguing some type of business judgment rule in questioning Stephen Habberstad's salary and work habits.

247. The Court finds that Habberstad's final termination was motivated, in whole or in part, by the fact that he had brought a lawsuit alleging claims of discrimination. This testimony is supported by the letters written by Terry Boschetti, by the testimony of Jim Fiebiger, the admission made by Terry Boschetti during his deposition, and by the testimony of Dave Dovenberg. Exhibits 114, 116, 122, 132, 138, 152.

XVII. STEPHEN HABBERSTAD'S EMOTIONAL AND FINANCIAL DISTRESS

248. Plaintiff Stephen Habberstad testified that he has suffered emotional distress as a result of Defendants' alleged wrongful conduct.

249. Stephen Habberstad testified that following his removal from the Board of Directors in January 2013, he experienced severe anxiety and panic attacks, nausea,

sleeplessness, and other symptoms.

250. Rafael Gonzalez, Stephen Habberstad's spouse, testified that he observed Habberstad in extreme distress, and even suicidal, after January 10, 2013. Gonzalez testified that he observed Habberstad experience extreme mood swings, anxiety issues, restlessness, loss of focus, physical illness and vomiting.

251. Stephen and Kimberly Habberstad's divorce was bitterly contested, and ongoing litigation surrounding the divorce has continued from 2007 to 2016. Emails from Stephen Habberstad in 2012 indicate that Habberstad was experiencing significant stress and anxiety as a result of his divorce in 2012. Exhibits 43, 74, 400.

252. Stephen Habberstad testified that as early as 2010 he was having significant personal financial troubles attributable to his divorce.

253. In 2005 and 2006, Stephen Habberstad elected to build two homes, each over \$1 million. Beginning in 2010 to the time of trial, Habberstad had been unable to pay his debt obligations.

254. Habberstad admits to having to borrow money from his children as early as 2010 in order to meet his financial obligations and does not attribute his financial despair in 2010 to any conduct of the Defendants.

255. Habberstad also borrowed \$175,000 from Terry and Susan Boschetti in 2010, as his divorce lawyer was threatening to withdraw for nonpayment. Exhibit 622.

256. Stephen Habberstad and other witnesses testified that he experienced stress and anxiety prior to January 10, 2013, as a result of the divorce, his financial situation, and general family discord.

257. The Court does find credible emotional distress based on the Defendants'

behavior. The Court does find credible that Stephen Habberstad experienced depressive symptoms, panic attacks, anxiety attacks, rashes, and occasional vomiting. Stephen Habberstad experienced sleeplessness and nightmares due to Defendants' behavior and this situation. There is compensable emotional distress in this case. The Court does not find credible Stephen Habberstad's claim that he experienced hearing loss. True, prior to this lawsuit, Stephen Habberstad had stress due to the divorce, his financial situation, and general family discord; however, the Defendants' behavior added to Stephen Habberstad's emotional distress. Defendants caused some added emotional distress to Stephen Habberstad, but this is not the only emotional distress in his life.

258. An award of \$25,000 is reasonable to fairly and adequately compensate Stephen Habberstad for the stress Defendants caused Stephen Habberstad in this case.

XVIII. F&M'S LOAN CLAIMS.

259. Stephen Habberstad borrowed \$160,000 from Farmers and Merchants State Bank pursuant to a Personal Line of Credit agreement in 2009 (hereinafter, the "Loan"). The Loan accrued interest at the rate of 4.5%. Exhibit 841. The Loan matured on February 1, 2014. Exhibit 841.

260. Stephen Habberstad failed to make any interest or principal payments on the Loan and was in default of the Loan as of February 2, 2014.

261. At trial, Stephen Habberstad did not contest the existence of the Loan nor its terms. He also did not contest the fact that he has made no payment on either the principal or interest on the Loan.

262. Stephen Habberstad is in default of the Loan.

263. As of June 20, 2014, the principal and interest due on the Loan was \$169,429.04.

Exhibit 945.

264. Interest continues to accrue on the Loan at a daily rate of \$19.35. Exhibit 945.

265. The terms of the Loan allow for the recovery of attorneys' fees and costs.

Exhibit 841.

XIX. REPRISAL RELATING TO HABBERSTAD'S LOAN.

266. Habberstad has also asserted reprisal against F&M and Country Bankers, Inc., in refusing to enter into a workout agreement with Habberstad in 2014. This claim is also a counterclaim in the loan case brought by F&M.

267. Stephen Habberstad admitted that he was in a troubled financial situation and unable to meet his debt obligations as early as 2012.

268. Stephen Habberstad made a number of requests to the Banks, and specifically to F&M President Jim Fiebiger, regarding proposals for assisting Habberstad in resolving his financial crisis.

269. In October 2013, Stephen Habberstad requested that F&M make the tax and insurance payments on his La Crescent home pursuant to the Home Affordable Modification Program ("HAMP"). Exhibit 203.

270. Jim Fiebiger spent time researching the HAMP program but ultimately determined that it was not applicable to the situation. Exhibit 203.

271. In February 2014, Fiebiger reviewed the potential option of advancing money to Stephen Habberstad at his request pursuant to a "Future Advance Clause." Fiebiger reviewed the mortgage but found that it did not contain such a provision. Instead, Fiebiger offered the potential of a fourth mortgage or line of credit. Exhibit 203.

272. Fiebiger continued working with Stephen Habberstad through June 2014

regarding Habberstad's various financial options. In a March 21, 2014, email, Fiebiger writes:

“Steve, I know this appears to you to be a headache but this is what any customer would have to provide. I'll do my best to try and put this together but it is by the book with everything going on in the industry. Real Estate lending has changed since the Dodd-Frank bill was passed and not changed to the good.” Exhibit 203.

273. In an attempt to assist Habberstad, Fiebiger offered to accept an interest payment on the Loan and then backdate and extend the Loan by another year. This is considered to be a workout agreement on the Loan. At the time of this proposal, there was sufficient funds in Habberstad's accounts to make the interest payment.

274. After discussing a variety of options with Fiebiger in the beginning part of 2014 to assist in Stephen Habberstad's financial condition, in June 2014, Stephen Habberstad made an informal request to Jim Fiebiger for an \$825,000 loan.

275. Fiebiger responded to Stephen Habberstad's request in an email dated June 17, 2014. Exhibit 181.

276. In his email, Fiebiger evaluates the \$825,000 loan option and relays to Habberstad that, in Fiebiger's opinion, it would take a \$1,258,000 loan to put Habberstad's finances in manageable shape. In his email, Fiebiger also states:

“You are suing the banks, that isn't going to make the board excited about borrowing addition monies.”

“You are suing stockholders and board members – that isn't going to make the Board excited about borrowing either.” Exhibit 181.

In connection with the idea of F&M facilitating the \$1.2 million loan from United Bankers Bank, Fiebiger writes: “The lawsuits against Country Bankers Inc., Farmers and

Merchants State Bank, Citizens State Bank, the Board members and Stockholders would need to be completely stopped.” Exhibit 181.

275. Fiebiger closes his June 17, 2014, email to Stephen Habberstad writing, “We are willing to present either the \$825,000 loan request or the loan facilitation with UBB to the remaining Board members. For a credit decision please let me know which way you wish us to travel.” Exhibit 181.

276. Given the condition that this lawsuit has to be dismissed, Stephen Habberstad did not respond to the June 17, Stephen Habberstad did not respond to the June 17, 2014, email.

277. Fiebiger testified that all of his communications and discussions with Stephen Habberstad were in an attempt to help him find a resolution to his financial concerns. Fiebiger testified that he had no retaliatory intent. This is not true. In the grand scheme of things, the Banks were trying to gain a great advantage by conditioning the loan based on a dismissal of this lawsuit.

278. Fiebiger testified that in connection with Stephen Habberstad’s request for a new loan, he treated Habberstad better than the average customer in trying to find a workable solution for Habberstad. This is not true.

279. On the reprisal claim, as it relates to the F&M loan, the Court finds that the Banks had an established pattern and practice of working out distressed loans. F&M knew of the human rights claim at the time of the requested loan workout. The Jim Fiebiger letter clearly requested Stephen Habberstad to dismiss his discrimination claim. However, finding economic damages on this retaliation claim is difficult because, as noted above, the expensive properties were destined to be either foreclosed or sold in short order. Given the expenses associated with the divorce and Stephen and Kimberly Habberstad’s general economic situation, even with a loan

from the bank, the properties could not be saved. However, as an equitable remedy, F&M should not profit from their retaliatory behavior. Therefore, F&M should forfeit any interest they would have received on the note after June 17, 2014. Also, Stephen obtained this loan while he was working at the Banks and before any discriminatory behavior by the Banks. It is unequitable to forgive this loan because clearly Stephen Habberstad got money on this line of credit, used it, and is obligated to pay back principal and interest up to June 17, 2014. After June 17, 2014, the reprisal claim happened, and as a matter of equity, F&M should forfeit future interest.

CONCLUSIONS OF LAW

1. The claiming party carries the burden of proof to establish the essential elements of their claim. Fownes v. Hubbard Broadcasting, Inc., 246 N.W.2d 700, 704 (Minn. Ct. App. 1976). “Deciding the credibility of witnesses is generally the exclusive province of the [fact-finder].” State v. Doppler, 590 N.W.2d 627, 635 (Minn. 1999).

I. BREACH OF COMMON LAW FIDUCIARY DUTY (CT. FILE NO. 74-CV-13-1086, COUNT I)

2. A claim of breach of fiduciary duty requires proof of the existence of a duty, breach of that duty, causation, and damages. Padco, Inc. v. Kinney & Lange, 444 N.W.2d 889, 891 (Minn. App. 1989) (breach of fiduciary duty elements same as negligence elements), rev.denied (Minn. Nov. 15, 1989). Fiduciary obligations in closely held corporations impose on each other the “highest standards of integrity and good faith in their dealings with each other” and require each shareholder to deal “openly, honestly, and fairly with other shareholders.” Pedro v. Pedro, 489 N.W.2d 798 (Minn. Ct. App. 1992).

3. “The common law fiduciary duty, sometimes called the ‘duty of good faith and fair dealing,’ embraces both substantive obligations that focus on the outcomes of shareholder conduct and procedural obligations that focus on process.” Gunderson v. Alliance of Computer

Professionals, Inc., 628 N.W.2d 173, 185 (Minn. Ct. App. 2001). Co-shareholders in a closely held Minnesota corporation owe each other fiduciary duties. Advanced Commc'n Design, Inc. v. Follett, 615 N.W.2d 285, 294 (Minn. 2000). “The relationship between shareholders of a closely held corporation is analogous to the relationship between partners in a partnership.” Haley v. Forcelle, 669 N.W.2d 48, 56 (Minn. Ct. App. 2003).

4. “Likewise, close-corporation shareholders owe each other a duty of loyalty, which encompasses an obligation to act with complete candor in their negotiations with each other.” Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 186 (Minn. Ct. App. 2001).

5. “In a closely held corporation the nature of the employment of a shareholder may create a reasonable expectation by the employee-owner that his employment is not terminable at will.” Pedro v. Pedro, 489 N.W.2d 798, 803 (Minn. Ct. App. 1992). “Further, the shareholder's expectation of continued employment is only reasonable if that expectation is known and accepted by other shareholders and properly balanced against the majority or controlling shareholders' need for flexibility in running the business.” Haley v. Forcelle, 669 N.W.2d 48, 59-60 (Minn. Ct. App. 2003).

6. The business judgment rule does not protect decisions where there is a breach of fiduciary duty. Potter v. Pohlrad, 560 N.W.2d 389, 392 (Minn. Ct. App. 1997).

7. It is evident from the testimony of various witnesses at trial that general family discord and ill feelings exist between Stephen Habberstad, Kimberly Habberstad, Eric Habberstad, Susan Boschetti, and Terry Boschetti, and that these disagreements often spilled over into the relationship between these family members and their interactions as shareholders, officers and employees of the Banks.

8. By conspiring to terminate Stephen Habberstad because of his sexual orientation under the pretext of a compensation dispute, itself an illegal and illegitimate end, Terry Boschetti, Susan Boschetti, Phyllis Sieveke, and Kimberly Habberstad violated their duty of loyalty to deal or negotiate in complete candor with Stephen Habberstad. All were aware that the compensation study was a sham and that the only goal was the termination of Stephen Habberstad, motivated by his sexual orientation. Defendants all knew of the Banks' history and tradition of providing for a near lifetime stream of income for its top executive, whether called continued employment or a retirement plan. Defendants violated fiduciary duties owed to Stephen Habberstad. This breach of loyalty caused the termination of Stephen Habberstad and the resulting damages.

II. BREACH OF MINN. STAT. § 302A.751 (CT. FILE NO. 74-CV-13-1086, COUNT II).

9. Minn. Stat. § 302A.751 provides that directors or those in control of closely held corporations must not act in a manner that is unfairly prejudicial to minority shareholders. See Minn. Stat. § 302A.751, subd. 1(b)(3). If they do, the prejudiced shareholder may be entitled to equitable relief. Minn. Stat. § 302A.751.

10. Minnesota law provides that:

A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business in an action by shareholder when it is established that: the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation.

Minn. Stat. 302A.751, subd. (b)(3).

11. Conduct is “unfairly prejudicial” if it frustrates the reasonable expectations of a shareholder in his capacity as a shareholder. Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 190 (Minn. App. Ct. 2001).

12. Recognized expectations of shareholders may include continued employment and an active voice in the management of the corporation. Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 189-92 (Minn. App. Ct. 2001).

13. “Shareholders in a closely held corporation typically have an expectation of continuing employment, and the discharge of a shareholder-employee may be grounds for equitable relief under Minn. Stat. § 302A.751.” Haley v. Forcelle, 669 N.W.2d 48, 59 (Minn. Ct. App. 2003) “Whether a fiduciary duty has been breached generally is a question of fact.” Berreman v. West Publ'g Co., 615 N.W.2d 362, 367 (Minn. Ct. App. 2000), review denied (Minn. Sept. 26, 2000). “Whether a shareholder's reasonable expectation has been frustrated is essentially a fact issue.” Regan v. Natural Res. Group, Inc., 345 F. Supp. 2d 1000, 1012 (D. Minn. 2004).

14. In the absence of a written agreement, the Gunderson Test determines a shareholder’s reasonable expectations by examining the understanding that objectively reasonable close-corporation shareholders would have reached if they had bargained over how their investments should be protected when the venture began. Haley v. Forcelle, 669 N.W.2d 48, 59 (Minn. 2003), citing Gunderson v. Alliance of Computer Professionals, Inc., 628 N.W.2d 173, 186 (Minn. 2001).

15. The threshold issue in a claim of shareholder oppression based on termination of employment is whether the minority shareholder had a reasonable expectation of continued employment. Gunderson, 628 N.W.2d at 190. Factors to be considered in determining whether

a shareholder's expectation of continued employment are reasonable include whether: (1) the shareholder made a capital investment in the company; (2) continued employment could be considered part of the shareholder's investment; (3) the shareholder's salary could be considered a de facto dividend; and (4) continued employment was a significant reason for making the investment. *Id.* at 191. Further, the shareholder's expectation of continued employment is only reasonable if that expectation is known and accepted by other shareholders and properly balanced against the majority or controlling shareholders' need for flexibility in running the business. *Id.* Oppression liability does not arise and a shareholder's expectation of continued employment is not reasonable when the employee-shareholder is terminated for misconduct or incompetence. *Id.* at 192.

16. The Court finds that all of the Gunderson factors are met: (1) Stephen Habberstad made a capital investment in the company by purchasing shares and was a long time employee and majority shareholder; (2) Continued employment was part of Stephen Habberstad's investment; his ownership of the bank essentially coincided with him taking operational control of the Banks. His father and grandfather had both enjoyed continued employment with the Banks even after they had long since stopped working to any significant degree. Stock ownership and continued family employment were linked in the Banks. Stephen was the only child of his generation to devote himself to working in the Banks—his sister Susan Boschetti never did; (3) Stephen Habberstad's salary did function as a de facto dividend. Stephen Habberstad's salary served dual purposes, first to compensate him for the services he provided to the Banks and secondly as a benefit of his ownership and years of work in the Banks; (4) Stephen Habberstad was given and took majority ownership in the Banks with the expectation that he would continue to be employed at the Banks, first as an active CEO and later as a symbolic head as his father

and grandfather did. All of the shareholders understood and accepted this arrangement. Stephen Habberstad was not terminated due to misconduct or incompetence.

17. The Court finds that other shareholders both knew and accepted that Stephen Habberstad had a right of continued service. No shareholder or board members ever voiced concerns about Stephen Habberstad's continued employment at the Banks until they decided to terminate Stephen Habberstad because of his sexual orientation. No one ever objected to Stephen Habberstad's characterization of his employment as a retirement plan. When Stephen Habberstad gave up his 401(k) to prevent the plan from becoming top-heavy, all shareholders and board members understood that his employment and consulting plan were in place, in part, to serve as his retirement package in lieu of the 401(k). All of the shareholders understood and accepted this arrangement. Stephen Habberstad was not terminated due to misconduct or incompetence.

18. The practice at CBI was that bank presidents were kept on the payroll after they stopped working full-time at the bank as the retirement package for the bank. Stephen Habberstad referred to his employment as a retirement package to Defendants, a contention that went unrefuted. Stephen Habberstad forfeited his 401(k) in order to prevent the plan from becoming top-heavy. He did this because he understood, like his father and grandfather, that he had a reasonable expectation of continued employment or retirement plan at the Banks. Part of the value of his ownership and investment in the Banks was realized through his continued employment or retirement plan. Exhibits 889, 431. Defendants all understood this. Defendants chose to terminate Stephen, in part, because they knew he expected to remain employed or receive a retirement plan. Defendants were motivated by anti-gay animus and spite, not the well-being of the Banks or its shareholder Stephen Habberstad. This anti-gay animus and spite drove

them to prevent Stephen Habberstad from receiving his reasonable expectation of continued employment or retirement plan.

19. Defendants each violated Minn. Stat. § 302A.751 when they unfairly and prejudicially terminated Stephen Habberstad because of spite and anti-gay animus, despite their knowledge of his reasonable expectation of continued employment or retirement plan.

III. SEXUAL ORIENTATION DISCRIMINATION – EMPLOYMENT (CT. FILE NO. 74-CV-13-1086, COUNT III)

20. The Minnesota Human Rights Act (“MHRA”) makes it an unlawful employment practice for an employer, because of sexual orientation, to:

1. Refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment;
2. Discharge an employee; or
3. Discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities or privileges of employment.

Minn. Stat. § 363A.08, subd. 2 (1)-(3).

21. The ultimate burden on the plaintiff in a discrimination claim is to prove, by the greater weight of the evidence, that their employer took an adverse employment action against them because of a discriminatory motive. This burden is met by showing that the protected trait was a discernible, discriminating, and causative factor in the adverse employment action. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 627 (Minn. 1988).

22. A plaintiff can prove a discriminatory motive by either direct or indirect evidence. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 627 (Minn. 1988).

23. “Direct evidence of an employer’s discriminatory motive shows that the

employer's discrimination was purposeful, intentional or overt" and establishes a specific link between the discriminatory animus and the challenged decision. Goins v. West Group, 635 N.W.2d 717, 722 (Minn. 2001); Ludwig v. Church of the Epiphany, 2013 Minn. App. Unpub. LEXIS 96 (Minn. Ct. App. Feb. 4. 2013). The Court finds direct evidence of discrimination based upon sexual orientation.

24. "Claims under the MHRA, not involving direct evidence of discriminatory animus, are subject to the three-part burden-shifting framework set forth by the Supreme Court in McDonnell Douglas Corp v. Green, 411, U.S. 792, 93 (1973)." Hansen v. Robert Half Int'l, Inc., 813 N.W.2d 906, 918 (Minn. 2012). "The discharged employee carries the initial burden of establishing a prima facie case by showing (1) he is a member of a protected class; (2) he was qualified for the job from which he was discharged; (3) he was discharged; and (4) the employer assigned a nonmember of the protected class to do the same work." Hubbard v. United Press Int'l, Inc., 330 N.W.2d 428, 442 (Minn. 1983). "Once established, the burden shifts to the employer to articulate a legitimate and nondiscriminatory reason for the adverse employment action." Hansen, 813 N.W.2d at 918. "The burden then shifts again to the plaintiff to put forward sufficient evidence to demonstrate that the employer's proffered explanation was pretextual." Id.

25. Stray remarks, statements by non-decisionmakers, or statements unrelated to the decisional process are generally too isolated, remote, vague or ambiguous to establish discrimination. Hansen v. Robert Half Int'l, Inc., 813 N.W.2d 906, 920 (Minn. 2012).

26. Direct evidence that a discriminatory criterion was a motivating factor in an employment decision includes evidence of actions or remarks of the employer that reflect a discriminatory attitude and comments which demonstrate a discriminatory animus in the

decisional process, or those uttered by individuals closely involved in employment decisions. Beshears v. Asbill, 930 F.2d 1348, 1354 (8th Cir. 1991), citing Gray v. Univ. of Arkansas, 883 F.2d 1394, 1398 (8th Cir.1989) and Price Waterhouse v. Hopkins, 490 U.S. 228, 278 (1989). Stated differently, direct evidence of discriminatory intent is evidence that tends to show that the employer intentionally acted on a discriminatory motive. See Goins v. West Grp., 635 N.W.2d 717, 722 (Minn. 2001).

27. In this case, there are several statements made by the various Defendants that reflect a discriminatory attitude and therefore constitute direct evidence of discrimination. They include: 1) the various statements by Susan Boschetti about her brother's conduct and lifestyle; 2) emails she sent to various family members and bank officers making derogatory comments about him dishonoring the bank and "living a lie" etc.; 3) comments made by Kimberly Habberstad about her ex-husband and his lifestyle being "wrong"; 4) and the statements of Phyllis Sieveke that being gay was not acceptable in her day and that Stephen Habberstad should "get back in the closet and get back to running the bank." This is direct evidence of discriminatory intent that tends to show that the employer intentionally acted on a discriminatory motive.

28. Alternatively, the Court also finds that under the *McDonnell Douglas* analysis, the Plaintiffs have proven that the articulated reason for the termination of Stephen Habberstad - the amount of his compensation - or lack of cooperation was not worthy of credence and merely pretext for illegal discrimination. As described above, it was clear that the Defendants' plan from the beginning was to terminate Stephen Habberstad, as evidenced by the statements by Mark Miedtke shortly after the January 10, 2013, board meeting and the draft minutes. Had the amount of compensation truly been the reason for Stephen

Habberstad's removal, the board members would have made sincere efforts to raise the issue with him before the removal and, given his experience and success at running the Banks, kept him involved with the Banks but simply set a lower salary. This evidence supports a finding that Stephen Habberstad's sexual orientation was a discernable, discriminating, and causative factor in the termination of his employment.

29. Defendants contend that their actions were taken in the best interest of the Banks because Stephen Habberstad was not doing sufficient work to justify his compensation. The Court finds this testimony not credible for the following reasons: Phyllis Sieveke admitted she had no knowledge of what work Stephen Habberstad was doing and could not reasonably have formed any opinion on the subject. Maureen Denges admitted she had no knowledge of what work Stephen Habberstad was doing and could not reasonably have formed any opinion on the subject. Maureen Denges was involved to support the agenda of her daughter, Kimberly Habberstad, which was a discriminatory agenda. Kimberly Habberstad admitted she had no knowledge of what work Stephen Habberstad was doing and could not reasonably have formed any opinion on the subject. Dave Dovenberg admitted he had no knowledge of what work Stephen Habberstad was doing and could not reasonably have formed any opinion on the subject.

30. The Court does not find credible any contention that long-time shareholders who rarely or never attended prior annual shareholder meetings, who did not previously take any interest in the Banks' business, suddenly were interested in attending - all at the same time - merely out of benign curiosity. The remarkable synchronicity that these players converged at the meeting and voted the way they did can lead to only one conclusion: that their conduct was orchestrated, intentional, and meant to harm Plaintiffs.

31. Stephen Habberstad did present direct evidence of discrimination. Discrimination was proven by direct evidence.

32. Alternatively, Stephen Habberstad sustained his initial burden of proof to establish a prima facie case of discrimination. Stephen Habberstad proved that Defendants proffered legitimate and nondiscriminatory reason for his reduction in compensation and ultimate termination was mere pretext.

33. After weighing the evidence, credibility, and testimony presented, the Court concludes that discriminatory statements were made by Kimberly Habberstad and Phyllis Sieveke. Additionally, the Court concludes that both Kimberly Habberstad and Phyllis Sieveke were part of the decision-making process regarding Stephen Habberstad's employment or consulting relationship.

34. The emails and comments by Susan Boschetti were not stray remarks and Plaintiffs proved that either the emails or any alleged comments by Susan Boschetti played a role in the decision-making process regarding Stephen Habberstad's employment or consulting agreement.

35. Stephen Habberstad proved by the greater weight of the evidence that the proffered legitimate business reason was not the true reason for his reduction in compensation and ultimate termination but was instead mere pretext to cover up for discrimination based upon sexual orientation.

36. Stephen Habberstad proved by the greater weight of the evidence that his sexual orientation was a discernible, discriminatory, and causative factor in his reduction in compensation or termination as an employee of F&M.

37. Accordingly, Defendants did engage in an unlawful employment practice in

violation of Minn. Stat. § 363A.08.

38. The Court finds that Stephen Habberstad has shown that his emotional distress was caused by the wrongful conduct of the Defendants

IV. SEXUAL ORIENTATION DISCRIMINATION – BUSINESS (CT. FILE NO. 74- CV-13-1086, COUNT IV)

39. The MHRA provides that it is an unfair discriminatory practice of a person engaged in a trade or business or in the provision of a service to “intentionally refuse to do business with, to refuse to contract with or to discriminate in the basic terms, conditions, or performance of the contract because of a person’s race, national origin, color, sex, sexual orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.” Minn. Stat. § 363A.17 (3).

40. The evidence described above in Section III also demonstrates that Defendants Country Bankers, Inc., and Citizens State Bank of Hayfield have violated the Minnesota Human Rights Act by discriminating against Habberstad Investments, LLC, in contract.

41. Habberstad Investments, LLC, did present direct evidence of discrimination. Discrimination was proven by direct evidence.

42. Alternatively, Habberstad Investments, LLC, established a prima facie case of discrimination. Habberstad Investments, LLC proved Defendants offered legitimate business reason for the reduction in compensation and ultimate termination of the consulting arrangement with Habberstad Investments, LLC was mere pretext.

43. Habberstad Investments, LLC, did sustain its burden of proof to establish that Defendants’ proffered business reasons for terminating the consulting arrangement were pretextual. The evidence of pretext and discriminatory motive, as outlined above, was credible or convincing to the Court to sustain Plaintiffs’ burden of proof.

44. Habberstad Investments, LLC, proved by the greater weight of the evidence that Stephen Habberstad's sexual orientation was a discernible, discriminatory, and causative factor in its reduction in compensation or termination of its consulting arrangement with Citizens.

45. Accordingly, Defendants did engage in an unlawful business discrimination in violation of Minn. Stat. § 363A.17.

V. REPRISAL (CT. FILE NO. 74-CV-14-1754)

46. The MHRA protects individuals who assert their rights under the act from reprisal. The MHRA provides:

It is an unfair discriminatory practice for any individual who participated in the alleged discrimination as a perpetrator, employer. . . or agent thereof to intentionally engage in any reprisal against any person because that person:

- (1) opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter; or
- (2) associated with a person or group of persons who are disabled or who are of different race, color, creed, religion, sexual orientation, or national origin.

Minn. Stat. § 363A.15

47. The MHRA further provides:

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

Id.

48. A plaintiff can prove a reprisal claim using the direct or indirect method, as described above.

49. A plaintiff's ultimate burden is to prove by a preponderance of the evidence that a retaliatory motive was a discernible, discriminating and causative factor in his discharge. Anderson v. Hunter, Keith, Marshall & Co., 417 N.W.2d 619, 627 (Minn. 1988).

50. The Court finds that Terry Boschetti directly admitted the statement about expecting a conversation but getting a lawsuit and the letters from Terry Boschetti in which he said the Banks could not have an employee who was threatening to ruin them. The Court also finds that Dave Dovenberg's statements about not wanting to deal with an employee who files a lawsuit shows an inclination to terminate Stephen Habberstad because he filed a lawsuit under the Minnesota Human Rights Act.

51. The Court finds that Stephen Habberstad's termination was motivated in part by Defendants' desire to retaliate against him for filing a suit under the Minnesota Human Rights Act. However, the Court believes that this motivation was icing on the cake. Defendants had already decided to terminate Stephen based on their anti-gay animus. The lawsuit simply encouraged Defendants to terminate Stephen sooner rather than later.

52. After weighing the evidence and considering the credibility of the witnesses, the Court concludes that Stephen Habberstad did present convincing direct evidence of a retaliatory motive sufficient to sustain his burden of proof. The Court does not find credible the trial testimony of Terry Boschetti that the Employment Claims were not a factor in the decision to terminate Stephen Habberstad's employment.

53. Alternatively, Stephen Habberstad has sustained his initial burden under the burden-shifting framework set forth in McDonnell Douglas Corp v. Green, 411 U.S. 792, 793

(1973), as he has established a causal connection between any statutorily protected conduct and his termination. Defendants did not establish a legitimate business reason for his termination, and Stephen Habberstad established evidence of pretext.

54. Stephen Habberstad proved by the greater weight of the evidence that a retaliatory motive was a discernible, discriminating, and causative factor in his employment termination from F&M.

VI. BREACH OF CONTRACT (COURT FILE NO. 74-CV-14-1428)

55. The promissory note dated February 1, 2013, between Stephen Habberstad and F&M in the amount of \$160,000 is a valid and enforceable contract.

56. Stephen Habberstad materially breached his contractual obligations to F&M when he did not repay the promissory note on or before February 1, 2014. Stephen Habberstad did not have a legally sufficient excuse for breaching the contract.

57. Stephen Habberstad's breach caused F&M to incur damages in the amount of the unpaid balance of the note, plus interest and attorneys' fees.

58. F&M has shown damages in the amount of \$180,407.10 with reasonable certainty.

59. Stephen Habberstad has met his burden of proof on reprisal claim to eliminate or reduce the damages owed to F&M. This Court finds that in connection with Stephen Habberstad's requests for a loan workout or additional funding to cure his default to F&M, among other financial obligations, the Banks did not treat Habberstad fairly and in the same manner than they would treat an individual in the situation who was not suing the Banks under the Minnesota Human Rights Act.

60. As noted above, this loan will be generally enforced, but interest shall stop at the point that F&M demanded a dismissal of the lawsuit as a condition of the loan workout, June

17, 2014. The amount of principal and interest as of June 20, 2014, was \$169,429.04. Interest accrued at \$19.03. Reducing the interest by three days to the date of the reprisal letter of June 17, 2014, is \$58.05 less interest. ($\$169,429.04 - \$58.05 = \$169,370.99$) F&M is entitled to judgment against Stephen Habberstad on the F&M loan in the amount of \$169,370.99.

VII. BOSCHETTI JUDGMENT (COURT FILE NO. 74-CV-13-1246)

61. Terry and Susan Boschetti have a valid and enforceable judgment against Stephen Habberstad in the principal amount of \$184,548. The Boschetti note was due and owing before the events leading up to January 10, 2013, and the discrimination, retaliation, and breaches of fiduciary duties. Stephen Habberstad's duty to pay the Boschettis on this note had nothing to do with the contested issues in this case.

62. Stephen Habberstad has not proven any defense or set of facts that would invalidate the judgment.

VIII. MITIGATION OF DAMAGES

63. Plaintiffs have a duty to mitigate damages. Ewald v. Royal Norwegian Embassy, 82 F. Supp. 3d 871, 954 (D. Minn. 2014) (interpreting the Minnesota Human Rights Act).

64. A plaintiff has a duty to both use reasonable diligence to find suitable employment and not to refuse a substantially equivalent position if they are offered one. Id. A plaintiff who fails to mitigate damages can see their damages reduce, including subtracting an amount equal to what a plaintiff would have earned if they had made a diligent effort to obtain full-time employment. Denesha v. Farmers Ins. Exch. 161 F.3d 491, 502 (8th Cir. 1998) (Interpreting the Age Discrimination in Employment Act).

65. After being wrongfully terminated by the Banks, Stephen Habberstad failed to mitigate his damages completely and did not engage in a good-faith job search. Stephen did not

have any employment after his termination because he chose not to seek out work to any significant degree. Stephen Habberstad did not act reasonably to reduce his loss of earnings. Minn. CIVJIG 91.47. Stephen Habberstad made very few job applications. What he did cannot be considered a good-faith job search. Stephen Habberstad has considerable banking experience and marketable skills. Between his termination and the date of trial, Stephen Habberstad had the ability to earn approximately \$75,000 per year. Stephen Habberstad's damages should be reduced because he failed to mitigate his damages.

VIV. LIFE EXPECTANCY AND DAMAGES

66. Stephen Habberstad can be expected to live to an age of roughly 82 years, based on the life expectancy tables contained in the appendix for the Minnesota Civil Jury Instruction Guide. (using the 2009 life table for males, adding 20.7 to the age 61-62 row). See Vol. 4A Minn. Prac. Jury Instructions Guides-Civil, p.477 (2014) (referencing a www.cdc.gov web page).

67. After finding the dollar value of future damages, the Court must find the present cash value of the amount.

68. The Court must determine the value of future earning capacity, how long Stephen Habberstad will experience lost or reduced earning capacity, and decide how much money Stephen Habberstad needs if he invests it now through the time when he will need it for lost or reduced future earning capacity. *See* CIVJIG 90.25. As noted below, this step can be prevented by awarding a yearly payment with adjustment for inflation.

IX. OVERVIEW OF CRITICAL ISSUES AND DAMAGES

69. The Court finds that Susan Boschetti, Kimberly Habberstad, and Phyllis Sieveke together controlled more than 50% of the shares voted during the January 10, 2013, shareholder

meeting and that their anti-gay bias motivated their votes resulting in Stephen Habberstad being removed from the CBI Board of Directors in order to terminate his employment. Other voting shareholders had anti-gay bias that motivated their votes. Susan Boschetti admitted that this action was taken for the purpose of depriving him of compensation.

70. Susan Boschetti was a member of the CBI Board of Directors in 2013 and acted to terminate Plaintiffs' employment and contractual relationships with the Defendant banks. The Court finds that her personal animus toward Stephen Habberstad, along with her discriminatory animus, were motivating factors in the decisions of the CBI Board of Directors.

71. Kimberly Habberstad voted to remove her ex-husband as CEO of his family banks, knowing that he would be unable to pay her maintenance if he lost his income. She did so, even though she claimed to know nothing about the banks or what work he did on behalf of the banks. The lack of any rational reason for her conduct leads the Court to believe anti-gay discrimination, general animosity, and ill will were her motives.

72. Further, the Court finds that the actions of the members of the CBI Board were so at odds with what would reasonably be expected absent discrimination that anti-gay discrimination was the more likely than not the cause. The CBI Board acted on behalf of Defendants F&M Bank and Citizens State Bank, and therefore the Court finds that the same causative factors apply to those Defendants.

73. The Court finds that the Defendants were shareholders in a closely held corporation, a family business. In this family business, Stephen Habberstad had an expectation of continued employment or reasonable retirement pay, which had been enjoyed by his father and grandfather, and which was well known to the individual Defendants. In closely held family businesses, many times the shareholders do have an expectation of a return on their lifetime

investment when the business has been the principal source of income for the employee/shareholder.

74. Defendants' reference to the 30-day notice provision of the Citizen State Bank consulting contract is unavailing here. Whether or not there was a breach of the contract, if the contract was terminated for discriminatory or wrongful reasons in breach of a fiduciary duty, the law has been violated. Further, Edward Habberstad's consulting contract had a similar termination notice, but it was never utilized, and he continued to receive payment past the age of 90 years old and long past the time when any party contends he performed substantive work. This compensation was in recognition of his years of service to the Banks. The Court also notes that Stephen Habberstad had no retirement package, and had foregone that type of compensation in reliance on the expectation of continued employment.

75. Common law fiduciary duties embrace both substantive obligations that focus on the outcomes and the procedural obligations. The duties owed by shareholders to one another requires the exercise of the highest degree of integrity and good faith in their dealings. The Court finds that, even if there had been a genuine issue regarding Habberstad's compensation, the actions of the Defendants belie a different motive. No Defendant ever raised any issue of compensation with Stephen Habberstad prior to removing him from the Board and voting to terminate his income stream.

76. The Court finds that Susan Boschetti failed to act honestly and openly with Stephen Habberstad and instead acted with personal ill will and intent to harm him.

77. The Court finds that Terry Boschetti failed to act honestly and openly with Stephen Habberstad and instead acted with personal ill will and intent to harm him. The Court

finds that Terry Boschetti intended to mislead Stephen Habberstad when he assured Peter Cannon that Habberstad's employment was secure.

78. The Court finds that Kimberly Habberstad failed to act honestly and openly with Stephen Habberstad and instead acted with personal ill will and intent to harm him.

79. Defendants' termination of Stephen Habberstad's employment with F&M Bank deprived him of income from January 10, 2013, through the last day of trial, totaling \$731,273. Stephen Habberstad failed to mitigate these damages at approximately \$75,000 per year. The time between firing and the trial was approximately three years. Minn. CIVJIG 91.47 (A person has a duty to act reasonably to prevent or reduce his or her loss of earnings. He is limited to those damages that he would have experienced if he had acted reasonably in finding new employment). Therefore, this award shall be reduced by \$225,000. ($\$75,000 \times 3 = \$225,000$). F&M Bank back pay owed to Stephen Habberstad totals \$506,273.

80. Defendants' termination of the Habberstad Investments, LLC, consulting contract with Citizens State Bank deprived him of income from January 10, 2013, through the last day of trial, totaling \$292,500.

81. Stephen Habberstad is not seeking reinstatement of his position, although he could make a good case for it. This is a wise choice. The Court has had the opportunity to view at trial the animosity of the individual defendants toward Stephen Habberstad and determines that reinstatement would be untenable for all parties. Stephen Habberstad wisely is stepping away from the business. The Banks would get more dysfunctional with a court order reinstating Stephen Habberstad to his old position. The hope of the Court is to have the Banks continue to be successful in the future, not only to pay the below judgment, but to provide the historic strong dividends that have been awarded. The value of the Banks is in the stock ownership and

the future stream of income (dividends) that flows from stock ownership. In lieu of reinstatement, the Court finds the following remedies appropriate. The Court believes that Defendants should pay Stephen Habberstad a future stream of income to represent a retirement package similar to the benefits both Oscar Habberstad and Edward Habberstad received after turning over day-to-day running of the Banks to their respective sons but continued to serve the Banks as advisors. Recognizing that Stephen Habberstad was well compensated during his tenure as CEO and Chairman, that the Banks performed well under his leadership, and that he worked approximately 37 years for the Banks, he should receive \$100,000 per year during his 21-year life expectancy. This amounts to \$2,100,000. If this was awarded in the form of a judgment, the Court would then reduce the \$2,100,000 award to a present cash value. Minn. CIVJIG 90.25. The Court has a problem with awarding this large of a lump sum. The Court has equitable powers to fashion relief in this case. “Minn. Stat. § 302A.751 allows a trial court to grant any equitable relief it deems just and reasonable under the circumstances.” Pedro v. Pedro, 489 N.W.2d 798, 803 (Minn. Ct. App. 1992).

82. Courts have broad powers to fashion equitable relief. City of Cloquet v. Cloquet Sand & Gravel, Inc., 312 Minn. 277, 279, 251 N.W.2d 642, 644 (Minn. 1977) “A court of equity has the power to adapt its decree to the exigencies of each particular case so as to accomplish justice.” Beliveau v. Beliveau, 217 Minn. 235, 242, 14 N.W.2d 360, 366 (Minn. 1944). A court may invent new remedies or modify old remedies in order to meet the demands of the case. *Id.* “The form an equitable remedy may take is ‘as unlimited as the powers of such courts to shape relief awarded in accordance with the circumstances of the particular case.’ ” Deutsche Bank Nat. Trust Co. v. Wilson, A13-0960, 2014 WL 349734, at *9 (Minn. Ct. App.

Feb. 3, 2014), *review denied* (Apr. 15, 2014) (unpublished) quoting Prince v. Sonnesyn, 222 Minn. 528, 548, 25 N.W.2d 468, 474 (Minn. 1946).

83. First, the Court does not want to damage the Banks. The Banks will have a large immediate judgment and anticipated large attorney fees to pay already. These will be significant. The Court does not want to “stress” the Banks with paying for this court case. The Court wants the Banks to be profitable into the future and allow the fourth generation in the Habberstad family to run the Banks. (The third generation has made a mess of it). Second, giving Stephen Habberstad a judgment this size could create an incentive for Stephen Habberstad to collect his judgment in stock of the shareholder Defendants. The Court does not want Stephen Habberstad to “make mischief” in the future. Through the divorce and in this case, litigation has become a weapon. By collecting his judgment through shares of stock, Stephen Habberstad could become a majority shareholder again. This could be disruptive to the Banks. As a newly minted majority shareholder, would Stephen Habberstad retaliate against other shareholders and employees? Would this reignite another five years of horrifically expensive litigation? Exhibit 109. Third, Stephen Habberstad is terrible at personal finance. For all the money that he has made, at age 62 he has very little to show for it. This is not the Defendants’ fault but a problem within Stephen Habberstad. If he immediately collected over \$2 million, how soon would it be squandered? In order to lessen the blow of the \$2.1 million retirement award, the Court shall order that the Banks pay Stephen Habberstad at least \$100,000 per year for the next 21 years. This will be less stressful for the Banks. Stephen Habberstad will be placed on the Banks’ payroll and receive a check as if he were a salaried employee (no taxes shall be taken out) using the usual pay period (weekly, bi-weekly, or monthly) throughout the year. In order to protect his retirement from inflation, there shall be a 2.5% increase each year,

compounded. For example, year one he will get \$100,000; year two he will get \$102,500 (\$100,000 x 1.025); year three he will get \$105,062.50. (\$102,500 x 1.025), etc. In the event that Stephen Habberstad would die before full payment of this retirement benefit under this Order, no further retirement benefit shall be paid. This fixed income retirement package is equitable to all because: It reduces the stress of a very large judgment on the Banks; it will be easy to administer; it will reduce litigation associated with collection; it will provide a steady stream of income for a very comfortable retirement for Stephen Habberstad; and most importantly, this will conform to the traditions of this closely held corporation.

84. Treble back pay or treble front pay is also an option pursuant to the Minnesota Human Rights Act. The Court may, in its discretion, award up to three times actual damages pursuant to Minn. Stat. §363A.29, Subd. 4. Application of the multiplier rests entirely in the Court's discretion. Phelps v. Commonwealth Land Title Ins. Co., 537 N.W.2d 271, 274-76 (Minn. 1995). See Also Ray v. Miller Meester Advertising, Inc., 684, N.W.2d 404, 407-08 (Minn. 2004). Given all of the facts and circumstances, the Court will exercise its discretion and not award treble damages. Plaintiffs will be fairly and adequately compensated without assessing treble damages.

85. Pursuant to Minn. Stat. 363A.29, subd. 4 and 363A.33, subd. 6, the Court will assess a civil penalty against Defendants Country Bankers, Inc., Farmers and Merchants State Bank, and Citizens State Bank of Hayfield payable to the State of Minnesota.

A. This is a serious violation of the Human Rights Act. As the above findings of fact show, Defendants' behavior was secretive, coordinated, and mean-spirited. Even when documentary evidence or statements reflected bias, the Defendants self-

righteously believed they had the right to do what they did. Defendants used a compensation dispute to mask human rights violations.

- B. Even though these human rights violations occurred within a closely held corporation, there is harm to the public. One of the Court observations is that Defendants thought having an openly gay Chairman and CEO was bad for business. Therefore, in Defendants' view, the openly gay Chairman and CEO had to be removed from the business. "It is the public policy of this state to secure for persons in this state, freedom from discrimination in employment because of ... sexual orientation Minn. Stat. § 363A.02, Subd. 1(a) (1). Further, "[s]uch discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect all persons from wholly unfounded charges of discrimination. Nothing in this chapter shall be interpreted as restricting the implementation of positive action programs to combat discrimination." Minn. Stat. § 363A.02, subd.1(b). We have a free market economy. Open and non-discriminatory access to credit is important to allow for individual flourishing, self-reliance, and the promotion of economic growth. If the Banks would discriminate against its openly gay Chairman and CEO, would they not also discriminate against an openly gay person applying for a business loan, mortgage, or car loan?
- C. As noted above, the human rights violations were intentional and calculated to financially ruin, stress out, and embarrass Stephen Habberstad. With a discriminatory motive, Defendants abused their power within a closely held business to punish Stephen Habberstad for his sexual orientation. With a discriminatory motive,

Defendants breached fiduciary duties to Stephen Habberstad. Stephen Habberstad's sexual orientation had nothing to do with the running of this closely held corporation.

- D. The Banks have the financial resources to pay the civil penalty. Ironically, it was under Stephen Habberstad's leadership that the Banks experienced acquisitions and significant growth in earnings. The Banks continue to be successful. The Banks have the ability to pay Stephen Habberstad his damages and the civil penalty. The civil penalty will specifically deter the Banks from discriminating in the future and generally deter other banks and other closely held corporations from committing future human rights violations. "The opportunity to obtain employment ... without such discrimination as is prohibited by this chapter is hereby recognized as and declared to be a civil right." Minn. Stat. § 363A.02, Subd. 2. Each bank - Country Bankers, Inc., Farmers and Merchants State Bank, and Citizens State Bank of Hayfield - can pay the \$50,000 civil penalty.

Based on the Findings of Fact and the Conclusions of Law, the Court makes the following:

ORDER

1. For discrimination, retaliation, and breach of fiduciary duties, Plaintiff Stephen Habberstad is awarded a judgment against Defendants for payment of lost income through the date of trial in the amounts of: \$506,276 from the F&M Bank claim and \$292,500 from the Citizens State Bank claim, for a total recovery of back pay of \$798,733.

2. For discrimination, retaliation, and breach of fiduciary duties, payment of future lost income (retirement package) as follows:

- a. The Defendants shall pay Stephen Habberstad at least \$100,000 per year for the next 21 years. Stephen Habberstad shall be placed on F&M Bank's payroll and receive a check as if he were a salaried employee (no taxes shall be taken out) using the usual pay period (weekly, bi-weekly or monthly) throughout the year.
 - b. In order to protect his retirement from inflation, there shall be a 2.5% increase each year, compounded. For example, year one he will get \$100,000; year two he will get \$102,500 ($\$100,000 \times 1.025$); year three he will get \$105,062.50 ($\$102,500 \times 1.025$), etc.
 - c. In the event that F&M Bank cannot pay these damages, Defendants Susan Boschetti, Terry Boschetti, and Kimberly Habberstad shall be jointly and severally liable for payment of these future damages.
 - d. In the event that Stephen Habberstad would die before full payment of this retirement benefit, under this Order no further retirement benefit shall be paid.
3. For discrimination, retaliation, and breach of fiduciary duties, payment of damages for emotional distress in the amount of \$25,000. Defendants shall be jointly and severally liable for payment of these damages.
 4. Pursuant to the Minnesota Human Rights Act, Plaintiffs Stephen Habberstad and Habberstad Investments, LLC, are hereby awarded attorney fees. Plaintiffs' attorneys shall submit their petition for attorney fees within 14 days of the date of this Order.
 5. Pursuant to the Minnesota Human Rights Act, Defendants Country Bankers, Inc., Farmers and Merchants State Bank, and Citizens State Bank of Hayfield are each ordered to pay a civil penalty to the State of Minnesota in the amount of \$50,000.

A. Pursuant to Minn. Stat. 363A.33, subd. 6, the Minnesota Attorney General shall be served with a copy of this order.

6. The judgment in favor of Terry Boschetti and Susan Boschetti against Stephen Habberstad in the amount of \$184,548.00 remains in full force and effect. Civ. No. 74-CV-13-1246.

A. As the prevailing party, in Civ. No. 74-CV-13-1246, Terry Boschetti and Susan Boschetti are entitled to costs and disbursements from Defendant Stephen Habberstad.

B. Pursuant to the contract, Plaintiffs Terry Boschetti and Susan Boschetti are hereby awarded attorney fees. Plaintiffs' attorney fees shall be awarded only for time associated with prosecuting the claims, not defending against Stephen Habberstad's claims. Plaintiffs' attorneys shall submit their petition for attorney fees within 14 days of the date of this Order.

7. For breach of contract, in 74-CV-14-1428, judgment in favor of F&M and against Stephen Habberstad in the amount of \$169,370.99.

A. As prevailing party in Civ. No. 74-CV-14-1428, F&M is entitled to costs and disbursements from Defendant Stephen Habberstad.

B. Pursuant to the contract, Plaintiff F&M is hereby awarded attorney fees from Defendant Stephen Habberstad. Plaintiff's attorney fees shall be awarded only for time associated with prosecuting the claims, not defending against Stephen Habberstad's claims. Plaintiff's attorneys shall submit their petition for attorney fees within 14 days of the date of this Order.

8. Susan and Terry Boschetti and F&M are entitled to an offset against the amount awarded to Stephen Habberstad against them as individuals or business in the amount of

principal, interest, costs and attorney fees in complete satisfaction of the amounts owed to them as described in Civ. No. 74-CV-13-1246 or 74-CV-14-1428.

9. Defendants shall each be jointly and severally liable for payment of these damages.

10. As the prevailing party, for discrimination, retaliation, and breach of fiduciary duties, Plaintiffs Stephen Habberstad and Habberstad Investments, LLC, are entitled to costs and disbursements from Defendants.

11. The Court Administrator shall stay Entry of Judgment for 30 days pursuant to Minn. R. Civ. Pro. 58.02 and Minn. Gen. R. Prac. 125.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Joseph A. Bueltel
Judge of District Court

I hereby certify that the foregoing order
Constitutes the Judgment of the Court