

EMERGING VISION INC  
Form DEFA14A  
July 14, 2004

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No. 1)

Filed by the Registrant

Filed by a Party other than the Registrant

**Check the appropriate box:**

Preliminary Proxy Statement

Confidential, For Use of the Commission

Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Under §240.14a-12

**EMERGING VISION, INC.**

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(Names of Registrant as Specified in its Charter)

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(Names of Person(s) Filing Proxy Statement, if other than the Registrant)

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Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

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.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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July 13, 2004

## WHY YOU CAN'T TRUST FERNANDEZ AND HORIZONS

Dear Fellow Shareholders:

If you're thinking about voting for the hand-picked nominees of Fernandez and Horizons Investors Corp. at the upcoming Annual Meeting of Shareholders, **think again**.

*Fernandez says:*

He and his hand-picked nominees are experienced, mature and independent business people. . . who should be entrusted with your Company's future?

*The National Labor Relations Board said:*

Horizons Hotel Corp. ( Horizons Hotel ), a company owned by Fernandez, **committed unfair labor practices**. (*NLRB v. Horizons Hotel Corp. d/b/a Carib Inn of San Juan*, 312 NLRB 1212 (1993)).

*The U. S. District Court said:*

The [National Labor Relations Board] found that **Fernandez** improperly **manipulated corporate assets** to evade obligations to creditors. (Emphasis added) (*Brooklyn Manor Corp. v. NLRB*, 1999 WL 1011935 (September 22, 1999, E.D.N.Y))

*The U. S. District Court also said:*

The [National Labor Relations Board] suspects that **improper siphoning and fraudulent transfers** of [Horizons Hotel s] assets may have occurred. . . . (Emphasis added) (*Id. at \*3*)

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*An Administrative Law Judge said:*

That the money of several patients was improperly **kept** by Brooklyn Manor [a nursing home owned and operated by Fernandez], and at least one patient was **deprived** of over \$45,000. (Emphasis added) (*In the Matter of New York State Department of Social Services v. Benito Fernandez Brooklyn Manor Home for Adults*, FH# 2011361H, March 7, 1996).

*The New York State Department of Health said:*

**Brooklyn Manor**, which had **committed** numerous and repeated **violations** of and **non-compliance** with its Rules and Regulations, should not be used as a placement source because of **Systemic Endangerment**. (Emphasis added) (NYS Department of Health Referral Suspension List; DOH News, Sept. 13, 2002; DOH Adult Care Facility Quarterly Survey From January 1, 2004 through March 31, 2004)

*Newsday said:*

**Herman Badillo**, one of Fernandez's hand-picked director nominees, was **rejected** for a **nursing home license** in 1987 because **his partner [Fernandez]**, an adult home operator with a **history of neglecting patients**, was **found to be unfit** according to state records. (Emphasis added) (Newsday, July 22, 1993)

*Newsday also said:*

**Badillo** was legal counsel for Prospect, Inc., a **Fernandez** promoted but **ill-fated proposal** to turn a defunct South Bronx hospital into a drug rehabilitation clinic which was **attacked by government watchdogs** for **spending about \$175,000** on the project even though it expired **without treating a single addict**, and that [s]ome of the [\$175,000] was **spent paying the rent on Fernandez one-bedroom Manhattan apartment**. (Emphasis added) (Newsday, July 22, 1993)

*The New York Times said:*

**Joseph Erazo** (another of Fernandez nominees), **resigned** in 1999 as the **director** of New York's Correctional Health Services agency, and that during **Mr. Erazo's** yearlong tenure, the [Correctional Health Services] agency has been **widely criticized** by the Board of Corrections, a watchdog agency, for **failing to monitor** the quality of jail care adequately, and for being **uncooperative** with outside agencies and investigators.

**Mr. Erazo** was **fired** from his previous job as **executive director** of the Nassau County Medical Center because of what was described as **an abrasive style**. In August 1998, **Erazo** was **forced off** the Campaign Finance Board of the City of New York. (Emphasis added) (NYT, July 10, 1999)

*What should you say?*

**MR. FERNANDEZ ARE YOU KIDDING?!!!**

**YOU CAN'T TRUST FERNANDEZ AND HIS NOMINEES**

**DON'T PLACE THE FUTURE OF YOUR COMPANY IN THEIR HANDS!**

WE URGE YOU TO **CAREFULLY CONSIDER** WHAT YOU HAVE JUST READ. WE RECOMMEND THAT YOU USE THE **WHITE** PROXY CARD ENCLOSED, FOR YOUR CONVENIENCE, WITH THIS LETTER AND VOTE **FOR** THE ELECTION OF EACH OF ROBERT COHEN, ALAN COHEN, JOEL L. GOLD, HARVEY ROSS, CHRISTOPHER G. PAYAN AND SEYMOUR G. SIEGEL.

**HOW TO PROTECT YOUR INTERESTS**

**To Vote For Emerging Vision's Nominees On-Line Or By Toll-Free Telephone:**

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1. **Dial the toll-free** number appearing on the front of your **WHITE** proxy card, or use **www.proxyvote.com** up until 11:59 p.m. eastern time through July 13, 2004. Please have your 12-digit control number ready. Your control number is located in the upper right hand corner black box on the reverse side of your **WHITE** proxy card.
2. Voting On-Line or by toll-free telephone is the quickest way to cast your vote for Emerging Vision's nominees.

### **To Vote For Emerging Vision's Nominees By WHITE Proxy Card:**

1. You should have received Emerging Vision's definitive proxy materials. We urge you to vote **FOR** Emerging Vision's nominees using the **WHITE** proxy card enclosed with this letter.
2. We urge you to discard any blue proxy card Fernandez or his company Horizons will be sending to you, or which you already may have received. Please note that a withhold authority vote on the blue proxy card is **not** effective to vote for the Company's nominees.

The only way to vote **FOR** your company's nominees is to sign and return a **WHITE** proxy card.

3. Even if you previously have returned a blue proxy card, at any time prior to the Annual Meeting, you can change any vote you may have cast in favor of Fernandez /Horizons' nominees, and vote, instead, for the election of Emerging Vision's nominees by subsequently signing, dating and returning the enclosed **WHITE** proxy card. **Only your latest signed and dated proxy will determine how your shares will be voted at the Annual Meeting. Please use only the WHITE proxy card.**
4. If any of your shares are held in the name of a bank, broker or other nominee, we suggest that you promptly contact the party responsible for your account and direct them to vote your shares for the Company's nominees by using and returning the **WHITE** proxy card.

For more information, please call Georgeson Shareholder Communications Inc., our proxy solicitor, using the contact information in the box below, or contact our Chief Executive Officer, Christopher G. Payan, at (516) 390-2134 or [chris.payan@sterlingoptical.com](mailto:chris.payan@sterlingoptical.com).

17 State Street, 10th Floor

New York, NY 10004

Toll Free (800) 733-0823

Email [info@georgesonshareholder.com](mailto:info@georgesonshareholder.com)

Banks and Brokerage Firms please call collect:

(212) 440-9800



Remember, voting the **WHITE** proxy is a vote for the future of your Company.

Alan Cohen

Chairman of the Board of Directors

Robert Cohen

Director

Joel L. Gold

Director

Christopher G. Payan

Director and Chief Executive Officer