

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

Sam Sloan

Petitioner

INDEX No. 2004-7739

-against-

Beatriz Marinello, Tim Hanke, Stephen Shutt,
Elizabeth Shaughnessy, Randy Bauer, Bill Goichberg,
Kenneth M. Chadwell and United States Chess Federation

Respondents

Memorandum of Law In Support of Petition

This is a special proceeding brought to enforce the rights of a Not-For Profit Corporation under New York Not for Profit Law, including §§ 510, 511 of that Law.

In October, 2004, the United States Chess Federation sold its principal asset, which was its building located at 3054 Route 9W, New Windsor, New York. This building is located in Orange County.

The USCF is a Not-For -Profit Corporation which has resided in New York State since its formation in 1939. Therefore, this court has jurisdiction.

Sections 510 and 511 of New York Not for Profit Law establish an elaborate mechanism for the sale of a building which is the principal asset of a Not for Profit Corporation. The building at 3054 Route 9W was the only significant asset of the corporation. The Executive Board of the USCF has ignored this law and apparently is not even aware of it. Indeed, they seem to be completely unaware of the obligations and duties of board members of a Not for Profit Corporation. They voted to move by a 4-3 vote and have taken steps to implement a move to Crossville, Tennessee, without even making a cost analysis of the costs of the move or developing a strategic plan as to the purposes and benefits of the move or comparing Crossville to other possible locations. No public hearing has been held on the move. The decision to move was made in a secret telephone conference call on October 17, 2004.

Beatriz Marinello, who is president of the Executive Board of the USCF, has made it clear that she intends to fire the entire staff of 25 at the New Windsor office and to

replace the Executive Director with herself. This would be illegal and a violation of Not for Profit Corporation Law.

The Attorney General of the State of New York distributes brochures and pamphlets explaining the rights, duties and obligations of Board members of a Not-For-Profit Corporation. The Members of the Board of the USCF have not read these pamphlets and are not even aware of their existence. Much of this same material is available on the Internet at:

<http://www.oag.state.ny.us/charities/role.pdf>

<http://www.oag.state.ny.us/charities/nylj/nylj1.pdf>

http://www.oag.state.ny.us/press/1999/dec/dec05a_99.html

<http://www.nyobserver.com/pages/story.asp?ID=2107>

http://www.law.cornell.edu/nyctap/I04_0087.htm

A case in point is Matter of Manhattan Eye, Ear & Throat Hosp. v Spitzer, 186 Misc 2d 126 (Sup Ct, NY County 1999). There, the hospital, which was losing money every year, decided to sell their building. The Attorney General of New York intervened to block the sale. The Hospital argued that the building only constituted 79% of the assets of the corporation and therefore the sale should be allowed. The court ruled in favor of the Attorney General and blocked the sale.

In the case presented here, the building was the only remaining asset of the USCF because the USCF had lost nearly two million dollars in the proceeding eight years. However, these losses were due entirely to mismanagement and wasteful expenditures, since the USCF had a healthy \$6.5 million in annual sales.

From the facts presented here, it is evident that the board members who voted in favor of the move to Crossville, Tennessee are guilty of self-dealing. Beatriz Marinello has stated that she intends to fire the entire staff in New Windsor and hire new staff of 25 of her own choosing in Crossville. She also intends to fire the Executive Director and appoint herself in his place. However, Beatriz Marinello is a volunteer president elected to a volunteer board. She has no legal right to do any of the things that she has done. The other three board members who voted in favor of her plan are her political allies.

For these reasons, this court should issue an injunction against the move and should remove Beatriz Marinello, Tim Hanke, Stephen Shutt, Elizabeth Shaughnessy from the Board and bar them from running for the USCF Executive Board in the future.

This matter is governed by Sections 510 and 511 of New York Not For Profit Law. It can readily be seen that NONE of the procedures required by that law were carried out.

Here is the text of the law:

S 510. Disposition of all or substantially all assets.

(a) A sale, lease, exchange or other disposition of all, or substantially all, the assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, real or personal, including shares, bonds or other securities of any other domestic or foreign corporation or corporations of any type or kind, as may be authorized in accordance with the following procedure:

(1) If there are members entitled to vote thereon, the board shall adopt a resolution recommending such sale, lease, exchange or other disposition. The resolution shall specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual disposition to be made of such consideration, together with a statement that the dissolution of the corporation is or is not contemplated thereafter. The resolution shall be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Notice of the meeting shall be given to each member and each holder of subvention certificates or bonds of the corporation, whether or not entitled to vote. At such meeting by two-thirds vote as provided in paragraph (c) of section 613 (Vote of members) the members may approve the proposed transaction according to the terms of the resolution of the board, or may approve such sale, lease, exchange or other disposition and may authorize the board to modify the terms and conditions thereof.

(2) If there are no members entitled to vote thereon, such sale, lease, exchange or other disposition shall be authorized by the vote of at least two-thirds of the entire board, provided that if there are twenty-one or more directors, the vote of a majority of the entire board shall be sufficient.

(3) If the corporation is, or would be if formed under this chapter, classified as a Type B or Type C corporation under section 201, (Purposes) such sale, lease, exchange or other disposition shall in addition require leave of the supreme court in the judicial district or of the county court of the county in which the corporation has its office or principal place of carrying out the purposes for which it was formed.

(b) After such authorization the board in its discretion may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contract relating thereto, without further action or approval.

S 511. Petition for leave of court.

(a) A corporation required by law to obtain leave of court to sell,

lease, exchange or otherwise dispose of all or substantially all its assets, shall present a verified petition to the supreme court of the judicial district, or the county court of the county, wherein the corporation has its office or principal place of carrying out the purposes for which it was formed. The petition shall set forth:

1. The name of the corporation, the law under or by which it was incorporated.

2. The names of its directors and principal officers, and their places of residence.

3. The activities of the corporation.

4. A description, with reasonable certainty, of the assets to be sold, leased, exchanged, or otherwise disposed of, or a statement that it is proposed to sell, lease, exchange or otherwise dispose of all or substantially all the corporate assets more fully described in a schedule attached to the petition; and a statement of the fair value of such assets, and the amount of the corporation's debts and liabilities and how secured.

5. The consideration to be received by the corporation and the disposition proposed to be made thereof, together with a statement that the dissolution of the corporation is or is not contemplated thereafter.

6. That the consideration and the terms of the sale, lease, exchange or other disposition of the assets of the corporation are fair and reasonable to the corporation, and that the purposes of the corporation, or the interests of its members will be promoted thereby, and a concise statement of the reasons therefor.

7. That such sale, lease, exchange or disposition of corporate assets, has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon.

8. Where the consent of members of the corporation is required by law, that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon.

9. A prayer for leave to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition.

(b) Upon presentation of the petition, the court shall direct that a minimum of fifteen days notice be given by mail or in person to the attorney general, and in its discretion may direct that notice of the application be given, personally or by mail, to any person interested therein, as member, officer or creditor of the corporation. The court shall have authority to shorten the time for service on the attorney general upon a showing of good cause. The notice shall specify the time

and place, fixed by the court, for a hearing upon the application. Any person interested, whether or not formally notified, may appear at the hearing and show cause why the application should not be granted.

(c) If the corporation be insolvent, or if its assets be insufficient to liquidate its debts and liabilities in full, the application shall not be granted unless all the creditors of the corporation shall have been served, personally or by mail, with a notice of the time and place of the hearing.

(d) If it shall appear, to the satisfaction of the court, that the consideration and the terms of the transaction are fair and reasonable to the corporation and that the purposes of the corporation or the interests of the members will be promoted, it may authorize the sale, lease, exchange or other disposition of all or substantially all the assets of the corporation, as described in the petition, for such consideration and upon such terms as the court may prescribe. The order of the court shall direct the disposition of the consideration to be received thereunder by the corporation.

Respectfully Submitted,

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