

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

Petition

Petitioner respectfully alleges:

1. 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.
2. Petitioner is a voting member of the United States Chess Federation (“the USCF”) and is an alternate delegate from New York to that federation.
3. 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.
4. 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.
5. 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.

6. Beatriz Marinello is president of the Executive Board of the USCF and 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.

7. 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. Had they read these materials, they would have known that their actions are illegal. 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

8. 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.

9. The building at 3054 Route 9W was the only remaining asset of the USCF because the USCF had lost nearly two million dollars in the proceeding eight years. These losses were due entirely to mismanagement and wasteful expenditures, since the USCF had \$6.5 million in annual sales.

10. 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 office staff of 25 in New Windsor and hire new staff of 25 persons 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 to move to Crossville are her political allies.

11. The net proceeds of the sale of the building at 3054 Route 9W New Windsor New York was \$513,000. Beatriz Marinello did not deposit these funds into the regular bank accounts of the USCF. Instead, she established a new bank account with herself and Tim Hanke, a fellow board member, as the signers and deposited the funds into that account. She is at present attempting to move these funds out of state and to put them beyond the reach of this court or of the Attorney General of New York State.

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

13. Beatriz Marinello and Tim Hanke have not sought the advice of counsel concerning these actions and have rejected and ignored any unsolicited advice proffered to them.

14. For these reasons, this court should issue an injunction against the sale of the building and the move to Crossville, Tennessee 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.

15. Kenneth M. Chadwell of the law firm of Looney and Looney, named as a defendant herein, is City Attorney for the City of Crossville. On August 7, 2004, Kenneth M. Chadwell wrote a letter to the Board threatening a lawsuit against the Board if the Board did not carry out a verbal commitment made in 2003 by John McCrary, a former USCF President, to move to Crossville. McCrary had resigned from the board shortly after making this commitment. The threat to sue the board was without legal basis because a verbal agreement to move is not legally enforceable, especially where as here approval of the Delegates and the Attorney General of New York is required and neither of these approvals have been requested or obtained. The letter from Mr. Chadwell complained that the plan to move to Crossville had been “dropped” and that bidding had been opened to other cities.

16. It is because of legal threats and harassment from Kenneth M. Chadwell that the Board suddenly reversed direction and made the hasty telephone conference call and voted 4-3 to move to Crossville. Petitioner requests an injunction against Kenneth M. Chadwell directing him to cease his harassment and legal threats to sue the Board and enjoining him from filing or threatening to file any such lawsuits.

17. The plan to move to Crossville and the vote to move was not revealed to the Delegates or to the general membership until the petitioner herein received a hot tip from a USCF employee concerned about losing her job and posted this news on the Internet. Since then, the issue has been hotly debated on the Google newsgroup rec.games.chess.politics and on the FIDE-chess Yahoo Group of which the petitioner herein is the moderator. There have been more than one thousand postings on this issue. The general membership has expressed almost universal opposition to the move to Crossville. Only Beatriz Marinello and Tim Hanke have argued in favor of the move.

WHEREFORE, the petitioner requests that this court issue an order to show cause, a stay, a temporary restraining order, a preliminary injunction and a permanent injunction providing the following:

1. A freeze on the account at Key Bank which contains the \$513,000 realized as proceeds of the sale of the Building in New Windsor until a hearing can be had. Other bank accounts such as the account to pay employee salaries should not be affected by this freeze.
2. A temporary restraining order and a preliminary and permanent injunction restraining and enjoining Beatriz Marinello, Tim Hanke, Steven Shutt and Elizabeth Shaughnessy from taking any actions at all with respect to the USCF until a hearing can be had. Beatriz Marinello, Tim Hanke, Steven Shutt and Elizabeth Shaughnessy may not hire employees, fire employees, buy anything, sell anything, enter into contracts, write checks or pay or receive money or do anything at all with respect to the United States Chess Federation.
3. A temporary restraining order and a preliminary and permanent injunction restraining and enjoining the United States Chess Federation or its officers or employees from doing anything to effectuate a move to Crossville, Tennessee or to anywhere else absent the order of this court.
4. An order enjoining Beatriz Marinello and Tim Hanke from signing any check or transferring any funds of the United States Chess Federation.
5. An order enjoining Kenneth M. Chadwell from harassing the Board, contacting the Board, or filing or threatening to file any lawsuit to compel the USCF to move to Crossville.
6. An order removing Beatriz Marinello, Tim Hanke, Stephen Shutt and Elizabeth Shaughnessy from the Board of the United States Chess Federation and barring them from running for the USCF Executive Board in the future.
7. Such other and further relief as may be deemed just and equitable.

Respectfully Submitted,

Samuel H. Sloan
331 Beach 32nd Street, Apt. 19K
Far Rockaway NY 11691

(718) 327-3669
samsloan@samsloan.com

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:

VERIFICATION

I, the undersigned, the petitioner named in the foregoing petition, being duly sworn, says:

I have read the foregoing petition subscribed by me and know the contents thereof and the same is true of my own knowledge, except as to those matters herein stated to be alleged upon information and belief and as to those matters I believe it to be true.

Signature of Petitioner

On the 8th Day of November, 2004 before me personally came Sam Sloan to me known to be the person described herein and who executed the foregoing instrument. Such person duly swore to such instrument before me and duly acknowledged that he executed the same.

NOTARY PUBLIC