

**Salley v Boney**

2003 NY Slip Op 30077(U)

January 15, 2003

Supreme Court, Kings County

Docket Number: 0024647/2002

Judge: Melvin S. Barasch

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At an IAS Term, Part 26 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 15<sup>th</sup> day of January, 2003

P R E S E N T :

HON. MELVIN S. BARASCH,  
Justice.

-----X  
CHARLES SALLEY, BOBBY E. TOMPKINS, and  
IDA B. BEDFORD, individually and as Trustees and  
Deacons of the Inspirational Missionary Baptist Church  
and Inspirational Missionary Baptist Church, Inc.,

Index No. 24647/02

Plaintiffs,

- against -

REVEREND CHRISTOPHER L. BONEY, SR.,  
Defendant.

..... -X

The following papers numbered 1 to 7 read on this morion:

	<u>Papers Numbered</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed_____	1 - 3
Opposing Affidavits (Affirmations)_____	4 - 5
Reply Affidavits (Affirmations)_____	6 - 7
_____Affidavit (Affirmation) _____	_____
Other Papers_____	_____

Upon the foregoing papers, plaintiffs Charles Salley, Bobby E. Tompkins and Ida B. Beddard move, by way of an order to show cause, for an order declaring that the June 15, 2002 vote of the congregational Membership of the Inspiration Mission Baptist Church (“the Church”) that resulted in the removal of defendant the Reverend Christopher L. Boney, Sr.

(“Reverend Boney”) as Pastor of the Church was properly conducted, valid and enforceable.

### Background

The record reveals that Reverend Boney was elected to be pastor of the Church on or about March 17, 2000. Plaintiffs contend that the Church membership subsequently became dissatisfied with Reverend Boney because he was not preaching the gospel and had become belligerent and abusive toward some members. Plaintiffs state that members of the Church’s hierarchy attempted to meet with Reverend Boney to address these complaints but were rebuffed.

On May 6, 2002, a meeting of the Deacon Board of the Church was held to address the concerns about Reverend Boney at which it was decided to seek his removal. On May 21, 2002, the Ecclesiastical Charges against Reverend Boney were prepared and sent to Reverend Boney. A meeting of the Church trustees was held and a resolution was adopted calling for a meeting to be held on June 15, 2002 to allow for the Church membership to discuss the charges against Reverend Boney and to vote on his removal as pastor. At the June 15, 2002 meeting, the charges were read against Reverend Boney and he was invited to respond to the charges. He refused to respond and left the meeting. At this point a vote to remove him was held and of the 23 votes cast by the membership, 22 were in favor of removal. Reverend Boney was advised that the membership had voted for his removal as pastor.

Plaintiffs claim that the locks on the church were then changed but the following day,

Reverend Boney gained unauthorized access to the Church and conducted Sunday worship services. Plaintiffs further state that after the vote removing him as pastor, Reverend Boney altered the Church's bank account, resulting in all the assets being frozen; unilaterally replaced Church Trustees with his supporters; changed the passwords on the Church computers; and refused to allow meetings to be conducted without his permission.

Plaintiffs sought a preliminary injunction, which this court granted on or about June 27, 2002, enjoining Reverend Boney from exercising any dominion or control over the spiritual, social, and business affairs of the Church and from otherwise exercising any of the duties and responsibilities of Pastor set forth in the Church's constitution and by-laws; from removing from the Church any records or documents; from interfering with the control of the worship and spiritual jurisdiction of the Church.

#### Plaintiffs Motion

Plaintiffs seek an order declaring that the June 15, 2002 vote of the congregational membership of the Church was properly conducted, valid and enforceable. Plaintiffs contend that the removal of Reverend Boney as pastor of the Church complied in all respects with Article 7 of the Religious Corporations Law and the constitution and by-laws of the Church. In opposition, Reverend Boney contends that plaintiffs have acted in contravention to the Religious Corporations Law and the Church's by-laws and constitution in several respects.<sup>1</sup>

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<sup>1</sup> The court notes that Reverend Boney, in his affirmation in opposition, claims that the order to show cause was improperly served. However, pursuant to CPLR 320 (b), this objection was waived by his personal appearance at the June 27, 2002 hearing.

Initially, the court notes that the Church is incorporated under Article 7 of the Religious Corporations Law which governs Baptist Churches. Reverend Boney claims that June 15, 2002 meeting was contrary to the edicts of New York law and the Church's constitution and by-laws and was thus unlawful and the resulting vote is therefore unenforceable. Section 133 of the Religious Corporations Law states in relevant part:

A special corporate meeting of any such church may be called by the board of trustees thereof, on its own motion, and shall be called on the written request of at least ten qualified voters of such church . . . The trustees shall cause notice of the time and place of its annual meeting . . . And, if a special meeting, of the business to be transacted thereat, to be publicly read by the minister of such church or any trustee thereof at a regular meeting of the church for public worship, on the two successive Sundays immediately preceding such meeting.

The record reveals that a meeting of the Church trustees was held on May 31, 2002 at which a resolution signed by ten members and four trustees of the Church, calling for a special meeting to take place on June 15, 2002 for the purpose of discussing the ecclesiastical charges against Reverend Boney and to vote on his removal from the Church was adopted. It is undisputed that the notice of the special meeting and the purpose thereof, was read during both the June 2 and June 9, 2002 Sunday worship services. Accordingly, the court finds that the special meeting was called for in accordance with the applicable law.

Reverend Boney argues that the vote for his removal was invalid under Article V of the Church's constitution and by-laws which states that: "[i]n order to remove a Pastor, legal charges must be presented and proven, plus majority vote of the entire corporation."

Reverend Boney contends that since only 23 of the more than 70 members of the Church voted at the special meeting, the vote was invalid. In response, plaintiffs argue that interpreting the Church's by-law to require that every individual member of the Church take part in the vote is inconsistent with Religious Corporations Law § 134 which provides that "[a]t a corporate meeting of an incorporated Baptist Church . . . the presence of at least six persons qualified to vote thereat shall be necessary to constitute a quorum, and all matters or questions shall be decided by a majority of the qualified voters voting thereon." Moreover, plaintiffs maintain that requiring that every member attend and vote would thwart the purposes of both the Religious Corporations Law and the Church's own constitution and by-laws by making it virtually impossible to ever remove a pastor. The court agrees and finds that the record reveals that at least six qualified persons were present (23) and a majority thereof (22) voted for the removal of Reverend Boney as pastor. Thus, the requirement of Religious Corporations Law § 134 was complied with. To the extent that the Church's constitution and by-laws conflict with the aforesaid provisions of the Religious Corporations Law, the court finds that they are superseded by State law and are unenforceable.

Reverend Boney further claims that no attendance role was maintained to ensure that only members voted; a majority of those who voted for his removal were not members at the time of the vote and at least some were underage. In response, plaintiffs submit the affidavit of Damaris Banks, a member and Associate Minister of the Church who affirms that she was

one of the ballot inspectors at the June 15, 2002 meeting. Banks states that:

those present were instructed to line up in front of the ballot inspectors and to provide a photo identification before a ballot would be issued. Thereafter, each person came forward, presented identification, and I confirmed their identity and status as a Member eligible to vote by comparing the identification to the Church's membership list. Only members over the age of 18 were issued ballots.

Accordingly, the court finds that this argument advanced by Reverend Boney lacks merit.

Finally, Reverend Boney argues that his dismissal was in violation of Article VII, paragraph (g) of the constitution and by-laws which states that:

the Pastor shall not be dismissed without ninety (90) days notice, over which period of time he shall be paid his current salary and shall remain in possession of the Pastorate; if the Church should not wish to retain him for that period of time after his dismissal, he shall be given a financial settlement on the basis of his present salary for the ninety day period, and when the financial settlement is accepted by him, he shall be obligated to sever his connections with the Church, and turn over all property of the Church in his possession.

Reverend Boney claims that although he was offered a financial settlement, it was offered without the consent of a corporate meeting. However, there is nothing in the Religious Corporations Law, nor the Church's own constitution and by-laws, that requires a meeting be held **prior** to the offering of a financial settlement to a dismissed pastor. In addition, Reverend Boney maintains that even if the court were to find that the June 15, 2002 meeting and vote to dismiss him were valid, the earliest that his dismissal could have been effective

was Septcmter 15, 2002, which is 90 days from the date of the vote. As that date has long past, the court finds this argument is moot.

Based upon the record before this court, the court declares that the meeting and vote to remove Reverend Boney as pastor of the Church, held on June 15, 2002, was legally conducted, valid and enforceable. Reverend Boney is hereby permanently enjoined from acting as pastor of the Church; from exercising any dominion or control over the spiritual, social and business affairs of the Church and from exercising any of the duties or responsibilities of pastor as set forth in the Church's constitution and by-laws; from removing from the Church any records or documents; from interfering with the control of the worship and spiriual jurisdiction of the Church. In addition, Reverend Boney is ordered to immediately surrender possession of the church and to turn over to the deacons and trustees thereof all books, records, and documents of the Church he possesses and any and all password; to the computerized records and programs of the Church. This constitutes the decision and order of the court.

ENTER  
  
J. S. C.  
**MELVIN S. BARASCH**