

**Dames v 1199 Hous. Corp.**

2016 NY Slip Op 31425(U)

July 15, 2016

Supreme Court, New York County

Docket Number: 160173/2015

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

-----x

WILLIAM R. DAMES,

Index No. 160173/2015

Petitioner

- against -

DECISION AND ORDER

1199 HOUSING CORPORATION, ALMA  
BRIDGETT, PRINCETTA CLARK, FELABI  
PHILLIPS, DEBORAH JONES, ESTHER OTERO,  
CARMEN VASQUEZ, and EVA VALENSUELA, in  
their capacity as members of the Board  
of Directors of 1199 HOUSING  
CORPORATION,

Respondents

-----x

Petitioner seeks a declaratory judgment, voiding his removal from respondent 1199 Housing Corporation's Board of Directors because the removal violated the corporation's By-Laws, and his reinstatement on the Board for the remainder of his term from which he was removed. Petitioner claims the charges on which respondent Board members removed him related to his services for and alleged mismanagement of 1199 Plaza Services Corporation, an entity separate from 1199 Housing Corporation. Therefore the charged conduct did not violate 1199 Housing's By-Laws or Constitution, nor otherwise constitute the "cause" required by the By-Laws as grounds to remove a Board member. V. Pet. Ex. A art. IV § 9(A).

Respondents' Answer explains that 1199 Housing Corporation wholly owns its subsidiary 1199 Housing Plaza Services Corporation and that the subsidiary's Board of Directors

comprises the same Directors as 1199 Housing Corporation's Board of Directors. Even if a Board member's services for 1199 Plaza Services potentially qualified as grounds to remove the member from 1199 Housing's Board, however, petitioner emphasizes that no governmental or other independent investigation or audit found any mismanagement, violation of law, or other misconduct within 1199 Plaza Services.

I. GROUND'S FOR PETITIONER'S REMOVAL

Specifically, respondents concluded that petitioner had engaged in mismanagement due to "irregularities" in documentation of financial records and signing of checks that he was not "authorized . . . to sign." V. Answer ¶ 58. Yet respondents' Verified Answer admits reaching that conclusion without any investigation, by respondents or another body, and without reviewing any financial or legal records, reports, or other documents. V. Pet. ¶ 26; V. Answer ¶ 26. Absent any articulation of (1) a transaction or occurrence that petitioner failed to support with adequate documentation, (2) a check with an unauthorized or otherwise questionable endorsement, (3) missing or misused funds, or (4) lack of accountability, monitoring, or oversight by petitioner, respondents fail to present any "cause" for his removal from their Board. Nor have respondents presented any "fraudulent or illegal behavior detrimental to the corporation," referring to 1199 Housing, "which are proven," and which also would constitute grounds to remove a member from its Board. V. Pet. Ex. A art. IV § 9(B).

Respondents nowhere indicate any detriment to 1199 Housing due to petitioner's conduct.

Moreover, petitioner attests, without rebuttal, that he "did not keep PLAZA SERVICES records." Aff. of William Dames ¶ 13. He also points out that 1199 Plaza Services' By-Laws authorized any of respondents to call a meeting of its board to consider any irregularities or other concerns regarding its management, but none of respondents ever did so.

## II. PROCEDURES FOR PETITIONER'S REMOVAL

Respondents admit that the publicly disclosed agenda for their Board meeting July 21, 2015, did not include petitioner's removal and that his removal was added belatedly to the agenda. V. Pet. ¶¶ 25-26; V. Answer ¶¶ 25-26. Without that advance notice of an agenda item critical to petitioner, he did not attend the meeting July 21, 2015, nor address the Board concerning his removal before or during the Board's discussion and vote on the issue July 21, 2015.

While respondents deny that the Board voted on petitioner's removal at that meeting, its minutes, which respondents do not controvert, disclose that "on motion made by Esther Otero duly seconded by Princetta Clark the Board unanimously resolved to have Mr. William R. Dames removed as a Board Member." V. Pet. Ex. F at 3. Therefore respondents violated their By-Laws art. IV § 9(C), which requires both that the notice of a Board meeting at which a vote on a director's removal is to be taken include notice of the vote and that, at the Board meeting where the vote

is to be taken, the director whose removal is to be voted on be afforded an opportunity to be heard. Respondents also violated their By-Laws art. IV § 3, which requires that the President, Vice President, or two members of the Board give the notice of a Board meeting. The only notice of the Board meeting July 21, 2015, was the agenda that omitted any reference to petitioner's removal, signed by only the Secretary of the Board.

Respondents emphasize that they afforded petitioner an opportunity to be heard at a subsequent Board meeting September 9, 2015. Since both petitioner and respondents knew that the Board already had voted on and thus effected his removal, petitioner simply responded to the charges against him and attempted to defend himself at the meeting September 9, 2015, but did not attempt to garner votes against his already effected removal. Nor could his response and defense, however persuasive, influence respondents' votes after the fact.

### III. CONCLUSION

As set forth above, respondents' vote removing petitioner from 1199 Housing Corporation's Board of Directors violated 1199 Housing's By-Laws in several respects, both procedurally and substantively. Respondents failed to give notice by the President, Vice President, or two members of 1199 Housing's Board that a vote was to be taken on petitioner's removal at the Board meeting scheduled and held July 21, 2015. V. Pet. Ex. A art. IV §§ 3, 9(C). Respondents failed to afford petitioner an opportunity to be heard before or at that meeting, where

respondents voted to remove him. Id. § 9(C). Respondents voted to remove him without articulating a single specific fact or first hand evidence that would constitute "cause" for his removal, id. § 9(A); "proven" "fraudulent or illegal behavior"; or behavior detrimental to 1199 Housing Corporation. Id. § 9(B).

Consequently, the court grants the petition and declares that petitioner's removal is of no effect and thus is void. Since a basis for petitioner's removal is lacking, petitioner is reinstated to 1199 Housing Corporation's Board of Directors immediately upon service of this order with notice of entry on respondents. C.P.L.R. §§ 3001, 7803(3), 7806.

DATED: July 15, 2016



---

LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.