

Rock Church, Inc. v Per-Arne Bristulf
2017 NY Slip Op 31387(U)
June 28, 2017
Supreme Court, New York County
Docket Number: 151009/2015
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

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ROCK CHURCH, INC., LORRAINE BASS, ESLIE REECE,
ERIC RYBERG, NESTOR TORRES,

Plaintiffs,

DECISION/ORDER
Index No. 151009/2015

-against-

RAJENDRA VENIGALLA PER-ARNE BRISTULF, JOSEPH
MCGHEE, SUE CRUZ, MIRIAM LEE, EDUARDO ARVALAEZ

Defendants.

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HON. DAVID B. COHEN, J.:

For a recitation on the prior fact of the case, reference is made to the prior decisions by Justice Mills dated May 14, 2015, Justice Katz dated May 3, 2016, and this Court dated December 20, 2016. This decision incorporates by reference the facts and conclusions of law contained therein. Justice Mills' May 14, 2015 order dismissed the petition without prejudice, leaving the election of a Board of Trustees as the only outstanding issue in the case. Each of the above referenced orders required the parties to hold a special meeting to elect a full board. None of those efforts have had any success. In his May 3, 2016 order, Justice Katz ordered that the parties hold an election. During the election meeting, Per-Arne Bristulf was to nominate eight people for four seats on the Board of Trustees, but refused to do so absent an opportunity to speak. Upon that impasse, the meeting was adjourned by motion. By the time of this Court's December 20, 2016 order, all six Board Member's terms had expired and need to be filled. That Order required that all six positions on the Board of Trustees for Rock Church be filled at a meeting to be held on January 18, 2017. Per-Arne Bristulf, as Chairman, was to nominate up to 18 people to the Board of Trustees selected from the 42-person list attached as Exhibit C to Pastor Iampaglia's affidavit dated November 28, 2016 annexed to the prior motion (the "42-person list")(annexed to this order). Pastor Iampaglia, the pastor of Rock Church, was to preside at the January 18, 2017 meeting. Mr. Bristulf made the 18 nominations, Pastor Iampaglia presided over the meeting, none of the nominated person received the 50% of the vote required to win election, and the meeting was adjourned. With the list of nominees exhausted, and after proper motion,

Pastor Iampaglia adjourned the meeting and no members were elected to the Board of Trustees. To the extent that there may have been an effort hold another meeting with additional elections to the Board, any such meeting was improper, and any action arising out of such meeting was unlawful and is void. On January 28, 2017, Pastor Iampaglia submitted his resignation to Rock Church effective immediately and there is no current pastor of Rock Church. Thus, the Church has still been unable conduct a successful Board of Trustees election and now has no pastor.

Because of the protracted dispute between factions in the Church over the election, to the extent that the By-Laws vest the power of the Pastor in the two holdover Board of Trustee members, whose terms have expired, this Court must invoke Not-for-Profit Corporation Law § 618 and “take such other action as justice may require” to effectuate a proper election so that the Church may have proper governance and be able to function (*see* Not-for-Profit Corporation Law § 618 [Upon the petition of any member aggrieved by an election and upon notice to the persons declared elected thereat, the corporation and such other persons as the court may direct, the supreme court at a special term held within the judicial district where the office of the corporation is located shall forthwith hear the proofs and allegations of the parties, and confirm the election, order a new election, or take such other action as justice may require])). At this election, the Church membership will first have the opportunity to elect six new members to the Board of Trustees using the By-Laws existing voting requirements of election upon receiving 50% of the vote. If this effort fails to elect six members to the Board, all remaining unfilled seats will be filled by nominees receiving the most votes on a Contingent Ballot, containing Contingent Nominees composed of Church members from both factions, as further detailed below.

Pursuant to Section 4.1 of the By-laws, the Board of Trustees shall be comprised of six members nominated by the Chairman of the Board and elected by a majority of the active membership of Rock Church qualified to vote. At this time Per-Arne Bristulf is the Chairman. In her May 4, 2015 decision, Justice Mills ruled that pursuant to Section 2 of the By-laws, it is up to the pastor of Rock Church, and only the pastor, to determine who is to be a member of Rock Church. Attached as Exhibit B to the previous motion was the affidavit of Pastor Daniel Iampaglia dated November 28, 2016. Attached to his affidavit

was a 35-member list of Rock Church. However, defendants disputed Pastor Iampaglia's list and argued that there were seven additional people that are proper members. The list of the 35 members as designated by Pastor Iampaglia and the seven additional disputed members were attached as Exhibit C to Pastor Iampaglia's affidavit dated November 28, 2016. During oral argument on the prior motion, plaintiff's counsel agreed, in the interest of moving the election forward, that, without conferring the seven disputed people with membership at that time, that Chairman Bristulf may include in his nominees any of the seven disputed people and should they win, they would be seated on the Board and would be conferred with membership rights. As the 42-person list was the last confirmed list, it is appropriate to continue to use this list in connection with the election ordered herein. Accordingly, it is hereby

ORDERED that no members were elected to the Board of Trustees at the January 18, 2017 meeting; and it is further

ORDERED that any purported election of additional Trustees is null and void; and it is further

ORDERED that the Court hereby sets the following procedures that must be followed for the election of members of the Board of Trustees:

1. All six positions on the Board of Trustees for Rock Church shall be filled at a meeting to be held on July 26, 2017 at 8:00 pm.
2. The meeting shall not be the Annual Business Meeting but an additional business or corporate meeting as permitted in Section 5.4 of the By-laws and shall be for the sole purpose of electing the Board of Trustees. As the meeting is not the Annual Business Meeting, Section 5.7 of the By-laws (allowing all members the "right to express their opinion on any matter relating to the Church at the Annual Business Meeting") shall not apply. The only business to be conducted at the meeting shall be the voting to elect the Board of Trustees and such vote shall be conducted without prior discussion.
3. The meeting shall be properly noticed in accordance with Section 5.10 of the Church's By-Laws by issuing public announcements at the regular Church services on the two Sundays preceding the meeting.

4. All nominees and Contingent Nominees to the Board of Trustees shall be selected from the 42-person list and all such persons shall be eligible to be nominated and to vote.
5. Per-Arne Bristulf, as Chairman, shall nominate as many people as he wishes to the Board of Trustees from the 42-person list.
6. The nominees shall be numbered in sequential order, the first nominee being number 1. The same person's name shall not appear more than one time on the list of nominees.
7. In addition, Mr. Bristulf shall also prepare a list of six (6) Contingent Nominees. This list shall contain any six names from the 42-person list. The same person's name shall not appear more than one time on the list of Contingent Nominees.
8. Chairman Bristulf must present his list of nominees and Contingent Nominees, in writing, to Lorraine Bass by July 12, 2017.
9. If Chairman Bristulf fails to timely nominate, or if there remain any names still on the 42-person list that were not nominated by Mr. Bristulf, then Lorraine Bass is designated as the Member that may nominate additional persons not yet nominated. All nominees shall be selected from the 42-person list.
10. Ms. Bass shall numerically designate the nominees continuing from the last number designated by Chairman Bristulf.
11. In addition, Ms. Bass shall also prepare a list of six (6) Contingent Nominees. This list shall contain any six names from the 42-person list. The same person's name shall not appear more than one time on the list of Contingent Nominees.
12. Ms. Bass must present her list of nominees and Contingent Nominees, in writing, to Mr. Bristulf by July 15, 2017.
13. All nominees and Contingent Nominees may send a written or electronic communications in support of their candidacy to the 42-person list.

14. With no current Pastor in place, Chairman Bristulf, shall preside at the July 26, 2017 meeting.
15. The parties shall arrange for the entire meeting, as well as the public announcements of the meeting, to be videotaped. There shall be a sign in sheet at the meeting so that all voters can be properly identified as present.
16. Each of persons on the 42-person list shall be entitled to vote.
17. At the meeting, all persons entitled to vote shall be immediately presented with a ballot containing that names of the first six names on the nominating list(s).
18. When the first round of balloting is complete, Mr. Bristulf shall publicly conduct the tallying of the votes and shall video record every written ballot. Ms. Bass shall be permitted to view ballots as they are tallied.
19. Any person receiving a majority vote shall be elected to the Board of Trustees.
20. After the first ballot, should fewer than six members be elected to the Board of Trustees, a second round of balloting shall take place. The ballot shall contain as many names as there remain vacancies on the board (six minus the number elected on the first round) and shall contain the names of the next sequential persons from the nominating list(s).
21. The same procedures set forth in paragraphs 11 through 14 above shall be used on the second ballot and all subsequent ballots.
22. After the second ballot, should fewer than six members be elected to the Board of Trustees, a third round of balloting shall take place. The ballot shall contain as many names as there remain vacancies on the board (six minus the number elected on the first and second rounds) and shall contain the names of the next sequential persons from the nominating list(s).
23. Additional rounds of balloting shall take place as necessary until six members are elected to the Board of Trustees or the nominating list is exhausted.
24. If the nominating list should be exhausted with fewer than six members elected to the Board of Trustees, then all persons entitled to vote shall be immediately presented with a ballot containing that names of all of the Contingent Nominees ("the Contingent Ballot"). Each person entitled to

vote shall then be entitled to vote for as many of the Contingent Nominees that they choose, up to the number vacancies that have not been filled on the Board of Trustees. For example, if two nominees receive a majority of the vote and are elected using the above described procedure, then persons entitled to vote may vote for up to four people on the Contingent Ballot. If no nominees receive a majority of the vote and are elected using the above described procedure, then persons entitled to vote may vote for up to six people on the Contingent Ballot. The Contingent Nominees receiving the most votes on the Contingent Ballot shall be elected to the remaining vacancies on the Board of Trustees. For example, if there are three remaining vacancies to be filled on the Contingent Ballot, then the three Contingent Nominees receiving the most votes shall be elected to those vacancies.

25. Following, the election, the members of the Board of Trustees shall elect a Chair and officers. The Chairman's first order of business shall be to set the terms of each individual trustee's service as a trustee in order to effectuate the requirement of staggered terms. The chairman shall designate two trustees whose terms shall expire at the time of Rock Church's Annual Meeting in March 2018, two trustees whose terms shall expire at the time of Rock Church's Annual Meeting in March 2019 and two trustees whose terms shall expire at the time of Rock Church's Annual Meeting in March 2020.
26. Rock Church shall hold its Annual Meeting in September 2017 to conduct all necessary Church business, except that there shall be no need to elect members to the Board of Trustees at the September 2017 Annual meeting and no election for the Board of Trustees needs to take place. Elections shall resume at the March 2018 Annual Meeting, assuming no amendments are made to the By-laws prior to that time that would affect the Annual Meeting.

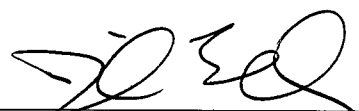
and it is further

ORDERED that the temporary restraining order originally issued by Justice Mills and currently in place will remain in effect; and it is further

ORDERED that this Court has considered all of petitioners' remaining requests for relief and find that they are beyond the scope of the issue remaining in this proceeding or this Court declines to so order.

This constitutes the decision and order of the Court.

DATE : 6/28/2017


COHEN, DAVID B., JSC