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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

E. Kwan Choi,)	
)	No. 02 CH 4053
Plaintiff,)	
v.)	Judge Sophia Hall
)	
K. Richard Keeler, et al.,)	
)	
Defendants.)	

NOTICE OF FILING

TO: Assistant Attorney General	Michael D. Poulos
Floyd D. Perkins	1724 Sherman Avenue
Charitable Trusts Bureau	Evanston, Illinois 60201
Office of the Illinois Attorney General	
100 W. Randolph Street, Third Floor	
Chicago, Illinois 60601	

PLEASE TAKE NOTICE that on Wednesday, July 10, 2002, we filed with the Clerk of the Circuit Court of Cook County, Illinois, County Department, Law Division, the attached **Defendants' Memorandum in Opposition to Plaintiff's Partial Motion for Summary Judgment**, copies of which are hereby served upon you.

**DEFENDANTS K. RICHARD KEELER,
GEORGES MICHELSON-DUPONT,
MO SIEGEL, AND GARD JAMESON**

By: Wallace C. Solberg
One of their Attorneys

Michael J. Hayes
S. Patrick McKey
Wallace C. Solberg
GARDNER, CARTON & DOUGLAS
321 North Clark Street - Suite 3400
Chicago, Illinois 60610
(312) 644-3000

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

E. KWAN CHOI,)	
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Plaintiff,)	Case No. 02 CH 4053
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v.)	Judge Sofia Hall
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K. RICHARD KEELER, et al.,)	
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Defendants.)	

**DEFENDANTS' MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**

Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON (collectively, the "Remaining Trustees" or "Defendants") submit this Memorandum in Opposition to Plaintiff's Partial Motion for Summary Judgment.

I. INTRODUCTION

The underlying proceeding involves Plaintiff E. Kwan Choi's request for a declaratory judgment (Count I) and injunctive relief (Count II) against Defendants, the Controlling Trustees of the Urantia Foundation ("Foundation"), an Illinois charitable trust. Plaintiff claims that his removal as Trustee of the Foundation was improper. On April 24, 2002, following this Court's denial of Plaintiff's Motion for Temporary Restraining Order, the Court suggested to the Parties, and the Parties agreed, that Plaintiff's procedural challenge to his removal as a Trustee could be disposed of via a Motion for Summary Judgment. Thereafter, on June 12, 2002, Defendants filed their Motion for Summary Judgment as to Counts I and II, Memorandum in Support, and Statement of Uncontested Facts.¹ Also on June 12, 2002, Plaintiff filed a Partial Motion for

¹ Citations to Defendants' Memorandum in Support shall be ("Memo. in Support at ___"); citations to Defendants' Statement of Uncontested Facts shall be as ("SOF at ¶___").

Summary Judgment as to Count I (declaratory relief).² Based on these papers, including the numerous admissions contained in Plaintiff's three affidavits filed in this matter, it is clear that there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law as to Counts I and II of Plaintiff's Complaint.

The *Declaration of Trust Creating Urantia Foundation* ("Declaration" or "DOT") expressly and unambiguously empowers the Trustees to remove an individual Trustee "for *any reason* by a unanimous vote of the remaining Trustees." (Declaration, Section 7.5; SOF at ¶4). On September 7, 2001, in accordance with the express terms of the Declaration, the Remaining Trustees (that is, the Trustees other than the Plaintiff whose removal was being considered) unanimously voted to remove Plaintiff as a Trustee. (SOF at ¶¶15-21). At the next three quarterly meetings of the Foundation, held on November 10, 2001, January 19, 2002, and April 20, 2002, Remaining Trustees unanimously voted to affirm the removal of Plaintiff as a Trustee, in accordance with the By-Laws of the Foundation. (SOF at ¶¶24, 26, 27). Thereafter, on May 6, 2002, the Certificate of Removal of Trustee as to Plaintiff's removal as a Trustee from the Foundation was recorded with the Cook County Recorder of Deeds, as required by the Declaration. (SOF at ¶28).

Plaintiff claims that his removal as a Trustee of the Foundation was improper based on the following assertions: (a) that he "had received no proper notice" of the September 7, 2001 Special Meeting; (b) that he did not agree to reschedule the October 20, 2001 quarterly meeting to November 10, 2001, thereby nullifying removal; and (c) that all meetings following the September 7, 2001 removal vote are "void and unlawful" because Plaintiff was excluded from those meetings.

² Citations to Plaintiff's Motion for Summary Judgment shall be as ("Plt.'s Mot. at ____").

Plaintiff's arguments are factually and legally unsupportable and cannot create a genuine issue of material fact. First, it is undisputed that Plaintiff was not only timely mailed the notice and an agenda of the September 7, 2001 meeting in accordance with the By-Laws of the Foundation (SOF ¶¶15, 16; Affidavit of E. Kwan Choi in Support of Summary Judgment, hereafter, "Plt.'s June 12, 2002 Affidavit", at ¶17), but the Plaintiff also had *actual notice* of the meeting and its agenda (SOF at ¶¶18, 19, Plaintiff's June 12 Affidavit at Exhibits 1, 2, 3, 4 and 5), and was *present* on the September 7, 2001 telephonic meeting (until he hung up) (SOF at ¶18, Plt.'s June 12, 2002 Affidavit at ¶15 and Exhibit 7.³ Second, it is undisputed that the Remaining Trustees agreed to reschedule the October 20, 2001 regular quarterly meeting to November 10, 2001, as permitted under Section 3.1 of the By-Laws.⁴ Plaintiff's manufactured argument is premised on his erroneous claim that he, as a removed trustee, can nonetheless control the rescheduling of a regular meeting. Plaintiff is wrong. Third, as a removed Trustee, Plaintiff was properly excluded from Foundation meetings (with the exception of Plaintiff's requests at these quarterly meetings for reinstatement, usually through his attorneys). Plaintiff has not and cannot identify any provision in the Declaration or By-Laws that permits a removed Trustee to act as a Trustee in good standing and participate in all Foundation business.

As demonstrated in detail below, and in Defendants' Motion for Summary Judgment, Memorandum in Support and Statement of Uncontested Facts, Defendants are entitled to summary judgment as a matter of law as to all of Plaintiff's claims.

³ A recurrent theme in this proceeding is the Plaintiff receiving actual notice of various meetings well before the meeting and then complaining (incorrectly) that technical requirements of the By-Laws regarding notice and scheduling were not met. Plaintiff has not and cannot identify *any* meeting wherein he did not have both proper notice and actual notice and, in fact, he attended every meeting of which he complains, most times with his attorneys.

⁴ Section 3.1 of the By-Laws provides that "[t]he time and place of any regular meeting may be changed by agreement of all Trustees." (SOF at ¶9).

II. RESPONSE TO PLAINTIFF'S STATEMENT OF FACTS

Defendants have filed a separate response to Plaintiff's Statement of Facts, which are incorporate by reference herein.⁵

III ARGUMENT

A. Plaintiff Had Proper Notice And Actual Notice of The September 7, 2001 Meeting

Plaintiff contends that he did not receive proper notice of the September 7, 2001 meeting. (Plt.'s Mot. at 3, 7). In our Memorandum in Support, we demonstrated that Plaintiff's argument that he did not receive proper notice of the September 7, 2001 meeting is factually and legally unsupportable. (See Memo. in Support at 8-12). Those arguments are incorporated by reference herein. The unsupportable nature of Plaintiff's claim that he had no proper notice of the September 7, 2002 meeting and that he was "surprised" when he was asked to resign at that meeting is readily apparent from the following:

<u>Date</u>	<u>Event</u>
July 24, 2001	All Trustees, including Plaintiff, receive an e-mail from Secretary Siegel which provides the following: To: Trustees Subject: Request for a Special meeting phone meeting has been made by 4 trustees[.] <i>Topic of Special Meeting: Removal of Kwan Choi as Trustee of the Urantia Foundation[.]</i> Action needed: What day and time works for you in the next three weeks for a special 30 minute phone meeting?" (See Exhibit 1 of June 12, 2002 Affidavit) (emphasis added).

⁵ Defendants submit the Affidavit of R. Richard Keeler, attached hereto as Exhibit 15. Mr. Keeler has stated under oath that all the statements of fact in the Defendants' Verified Answer to Plaintiff's Complaint are true and correct to the best of his knowledge and belief.

July 25, 2001	Plaintiff responds to the July 24, 2001 e-mail, erroneously stating both that the first vote on removal of a trustee must take place at a regular quarterly meeting, and that conducting the first removal vote at a special telephonic meeting was improper. (See Exhibit 2 of June 12, 2002 Affidavit)
July 26, 2001	Secretary Mo Siegel responds to Plaintiff's July 25, 2001 e-mail stating: <i>As the Secretary, I have notified you about a requested meeting and the subject matter of that meeting.</i> Any other procedures including a face to face conversation you wish to have needs to be cleared by Richard or added to proposed agendas. (See Exhibit 3 of June 12, 2002 Affidavit) (emphasis added)
July 30, 2001	Secretary Siegel sends an e-mail to all Trustees, including Plaintiff, stating that there will be a Telephonic Board Meeting on September 7 th , 2001 8:00 a.m. (cst). (See Exhibit 4 of Plt.'s June 12, 2002 Affidavit)
August 29, 2001	Secretary Siegel directs his personal assistant Sherry Dickerson to mail to all of the then serving Trustees, including Plaintiff, notice of a telephonic meeting set for September 7, 2001, the agenda of which was to ask Plaintiff to resign as Trustee and, if he refused, to remove Plaintiff as a Trustee. (SOF at ¶15).
August 31, 2001	Ms. Dickerson mails to all Trustees, including Plaintiff, the Notice of and the Agenda of the September 7, 2001 meeting. (SOF at ¶16).
September 1, 2001	Trustee Keeler receives by mail from Secretary Siegel the Notice and the Agenda for the September 7, 2001 meeting. (SOF at ¶17).
September 2, 2001	Trustee Keeler, President of the Foundation, sends an e-mail to all Trustees, including Plaintiff, reminding them of the September 7, 2001 meeting. (SOF at ¶18).
September 4, 2001	Plaintiff responds to Trustee Keeler's September 2, 2001 e-mail, stating, among other things, the following: <i>Besides, the supposed purpose of this meeting to remove a Trustee</i> requires that this be done in accordance with Article 7.5 of the Declaration of Trust and Section 2.4 (Removal of Trustee) of the By-Laws. Removal of Trustees requires a Regular Quarterly Meeting, and may not even be started in a special meeting. I will send you a follow up e-mail concerning this. (SOF at ¶19).

September 7, 2001	Plaintiff disconnects himself from telephone conference. (SOF at ¶20; June 12, 2002 Affidavit at ¶15).
September 7, 2001	Controlling Trustees vote unanimously to remove Plaintiff as a Trustee of the Foundation. (SOF at ¶21).
April 19, 2002	Plaintiff states in his April 19, 2002 Affidavit, at ¶14, the following: On September 7, 2001, Mo Siegel, a Trustee, called a special telephone meeting of the trustees regarding my removal as a trustee. <i>I had not received any advanced notice of the meeting, other than an e-mail message from Mr. Keeler with no text.</i> The subject line of the message said: “Remember the trustees teleconference on 7 September.” There had been no prior discussion including me of any telephone conference on that day. <i>When I was called on the 7th, Mr. Keeler said that the trustees were going to ask me to resign. When I heard this I was surprised, and I responded with an objection that I had received no notice of such an agenda, that I refused to participate, and I then hung up.</i> (Plaintiff’s Affidavit filed April 19, 2002, at ¶14)
June 12, 2002	Plaintiff states in his June 12, 2002 Affidavit the following: That he “never received any notice for a September 7 meeting prior to that date <i>other than those set forth above</i> ” (Plt.’s June 12, 2002 Affidavit at ¶17), and that he received in the mail the Notice and agenda for the September 7 meeting (although he claims he received it after the meeting). (Plt.’s June 12, 2002 Affidavit at ¶17)

Thus, it is uncontested that: Plaintiff was informed on July 24, 2001 that four Trustees wanted a special meeting to seek Plaintiff’s removal as Trustee; that Plaintiff was mailed notice and the Agenda for the September 7, 2001 meeting within the time parameters required for a special meeting (not more than 10 nor less than 5 days); that Plaintiff was ***repeatedly*** made aware of the purpose of the September 7 meeting (e-mails on July 24, 25, 26, September 2, 7); and that Plaintiff in fact attended the September 7, 2001 telephonic meeting.

Notwithstanding the aforestated uncontested facts, Plaintiff claims that he received only two notices prior to the September 7, 2001 meeting -- the July 30, 2001 e-mail from Secretary

Siegel and the September 2, 2001 e-mail from Trustee Keeler. (Pt.'s Mot. at 8-10). Plaintiff asserts that the July 30, 2001 e-mail is insufficient because: (a) it is greater than 10 days before the September 7 meeting; (b) does not identify the place the meeting is to occur; (c) is an improper form of notice (e-mail, as opposed to personal delivery, mail or telegram); and (d) fails to include an agenda. (Plt.'s Motion at 9). Plaintiff asserts that the September 2 e-mail is insufficient because it is an e-mail, it does not indicate the place of the meeting, and it does not indicate the purpose of the special meeting. (Plt.'s Motion at 9-10).

Plaintiff's arguments miss the point.

First, and dispositive of the issue, it is undisputed that the notice and the agenda for the September 7, 2001 meeting were mailed on August 31, 2001 to the Plaintiff at Secretary Siegel's direction. (SOF ¶¶15, 16). Section 3.1 of the By-Laws provides that notice may be "transmitted by mail or by telegraph addressed to each Trustee at his last known address." (SOF at ¶12). It was. (SOF ¶¶15, 16). Tellingly, Plaintiff does not dispute the fact that the notice and agenda were mailed to him properly addressed with sufficient postage less than 10 and more than 5 days before the September 7, 2001 meeting, in accordance with Section 3.3 ("Special Meetings") of the By-Laws (SOF ¶¶10, 15, 16). Nor does he deny that the mailed notice was *delivered* prior to the time of the meeting. Plaintiff has admitted that he received the notice and agenda that were mailed to him, but he claims to have "received" it after the September 7, 2001 meeting, on or about September 11, 2001. (Pl.'s June 13, 2002 Affidavit at ¶17).⁶ Plaintiff's claim that he received the mailed notice and agenda after September 7 meeting cannot vitiate the fact that

⁶ Because it is unlikely that a properly addressed, first-class letter placed in the mail August 31 would not be delivered until September 11, it begs the question of whether this is yet another carefully worded attempt to thwart the removal process by intentionally avoiding "receipt" of the mailed notice and agenda and then complaining that he "had not received proper notice." Plaintiff does not indicate whether he checked his mail during the time period preceding the scheduled meeting, and it is undisputed that the notice and agenda were mailed to each of the trustees on August 31, 2001, and that at least one trustee received the mailed notice on September 1.

there was compliance with Section 3.1 and Section 3.3 of the By-Laws. *Nothing* in the By-Laws requires proof of receipt of any notice -- and for good reason. If proof of "receipt" were required, then a Trustee, like the Plaintiff, who wanted to avoid removal could simply refuse to accept a notice of a meeting scheduled to vote on his removal. Furthermore, it would be impossible for the Secretary to predict with accuracy whether the notice would be "received" within the 5 to 10 day window prescribed by the By-Laws as the time for mailing the notice.

Second, Plaintiff's arguments regarding the July 30, 2001 and September 2, 2001 e-mails fail to recognize that those e-mails destroy Plaintiff's assertions in his Motions and Affidavits that he was unaware of the purpose of the September 7, 2001 meeting; that he was "surprised" he was asked to resign at the September 7, 2001 meeting; and that the September 7, 2001 removal of him as a Trustee of the Foundation was precipitated by his September 1, 2001 letter requesting financial information from the Foundation. (Plt.'s Mot. at 2, 13; Plt.'s April 22, 2002 Affidavit at ¶14). As the timeline above indicates, those assertions by the Plaintiff are false. It cannot be genuinely contended that Plaintiff was "surprised" that he was going to be asked to resign on September 7, 2001 in light of the July 24, 25, 26, 30, 2001 and the September 2 and 4, 2001 e-mails discussed above. Plaintiff was told on July 24, 2001 that the agenda of the September 7, 2001 telephonic meeting would be his removal. The stream of e-mails set forth above makes clear that the Plaintiff expressly understood that the agenda of the September 7, 2001 telephonic meeting would be his removal. In response to Trustee Keeler's reminder e-mail on September 2, 2001, Plaintiff again admits that he knows the purpose of the September 7 meeting. Furthermore, Plaintiff's e-mail of September 7, 2001 acknowledges that his resignation had been discussed at the previous quarterly meeting (Exhibit 7 to Plt.'s June 12, 2002 Affidavit).

Moreover, the July 24, 25, 26 and 30 e-mails also lay to rest Plaintiff's manufactured claim that he was removed on September 7, 2001 because of his request for financial information on September 1, 2001. These e-mails cannot be reconciled with Plaintiff's unsuccessful attempt to portray himself as a wronged whistleblower. On the contrary, Plaintiff has chosen to set forth false statements and unsupportable innuendo in his affidavits and in his Complaint regarding the financial status of the Foundation in a strained and desperate effort to stave off removal. However, Plaintiff's unseemly and unsupportable innuendo cannot change the fact that Plaintiff was provided both actual and constructive notice of the September 7, 2001 meeting and that he was removed as a Trustee of the Foundation in accordance with the Declaration.

Plaintiff next argues that the September 7, 2001 meeting failed to qualify as a special meeting under Section 3.3 of the By-Laws because the meeting occurred by telephone and not in person. According to Plaintiff, because a Section 3.3 notice is to indicate what "place" the meeting will be held, "[t]his implies a special meeting of trustees must occur in person, not over the telephone." (Plt.'s Mot. at 10). Plaintiff further argues that Section 3.10 of the By-Laws ("Meeting by Telecommunications") provides that Trustees "may" meet by telephone and therefore, according to Plaintiff, whether to participate by telephone is at the "discretion" of the trustee. (Plt.'s Mot. at 10).

Plaintiff's arguments fail. Article 3.10 of the By-Laws was adopted in 1989 to provide for Meeting by Telecommunication, and provides as follows:

3.10. Meeting by Telecommunication. Members of the Board of Trustees may participate in a meeting by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in such meeting in such manner shall constitute presence in person at such meeting.

Plaintiff asserts that the fact that Article 3.3 refers to designating a place for a special meeting implies that all special meetings must be in person rather than by telecommunication.