

However, Section 3.3 pre-dates the 1989 amendment to the By-Laws that permits Meeting by Telecommunication. Hence, Article 3.3 adopted in 1950 clearly could not have been intended to imply anything about a procedure for meeting by telephone conference adopted nearly forty years later.

Furthermore, it is undisputed that Plaintiff was “present” on the telephone conference until he hung up. Having been “present” at the September 7, 2001 meeting, Plaintiff was necessarily informed of and knew the “place” of the meeting—he was present in his office awaiting the call and in fact answered his telephone on September 7, 2001 and briefly participated in the the meeting. (Plt’s June 12, 2002 Affidavit at ¶15.)

Plaintiff further asserts that he objected to the September 7, 2001 meeting “during the days prior to September 7 and during the call that day,” to no avail. (Plt.’s Mot. at 10). Plaintiff argues:

To compound their error, the defendant trustees commenced the September 7 meeting amongst themselves, to the exclusion of Dr. Choi, for a period of about 25 minutes before connecting him to the conference call. Their ability to do this demonstrates the unfairness resulting from the very use of a teleconference as opposed to an in-person meeting, and shows Dr. Choi was entirely justified when, on July 25, he demanded that the meeting be held in person

(Plt.’s Motion at 11).

First, Plaintiff’s argument is irreconcilable with his argument that he was “surprised” he was asked to resign on September 7, 2001. Second, and apparently forgotten by the Plaintiff, is his April 22, 2002 Affidavit, wherein he asserts that *he* participated in a telephonic meeting with only four Trustees on September 11, 1999 and voted for the removal of Trustee Siegel. (See Plt.’s April 22, 2002 Affidavit at ¶10(j)). Thus, the very procedure that Plaintiff participated in on September of 1999 has now somehow become “unfair” in September of 2002. Quite simply, Plaintiff’s arguments regarding telephonic special meeting to discuss removal of a trustees ring

hollow. Plaintiff's "demand" on July 25, 2001 that the special meeting regarding his removal be in person further belies Plaintiff's absurd assertion that he had no notice of the purpose of the September 7, 2002 meeting.

B. A Vote Affirming Plaintiff's Removal As Trustee Was Taken At The First Quarterly Meeting Following Plaintiff's Removal As Trustee

Plaintiff argues that because the next regularly scheduled quarterly meeting following his September 7, 2001 removal was changed from on October 20, 2001 to November 10, 2001, his removal is void. (Plt.'s Motion at 11-12). Defendants have previously addressed this argument in their Memorandum in Support at 8-10 and incorporate that argument by reference herein. In short, 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). The Remaining Trustees *did* agree to change the October 20, 2001 meeting to November 10, 2001. Plaintiff's argument is premised on the fact that *he*, a removed Trustee, did not agree to change the quarterly meeting date from October 20 to November 10. As we pointed out in our Memorandum in Support, Plaintiff's argument is untenable in that it would preclude the Foundation's Trustees from changing any of the three regular quarterly meeting dates following the removal of a Trustee because the removed Trustee could *always* invalidate the process by simply refusing to agree to re-schedule the meeting date and then claim because the meeting was not held on the originally scheduled date (in this case, October 20, 2001), the removal process is void. (Memo. in Support at 10). Plaintiff's spurious manipulation of the By-Laws should be rejected.

Moreover, it should be noted that it is undisputed that Plaintiff received notice of and attended the November 10, 2001 meeting, *with his attorney*. (SOF ¶23; *see also* Plaintiff's April 22, 2002 Affidavit at Ex. 12). Thus, Plaintiff complains of a rescheduled quarterly meeting that he not only attended in person in Chicago, he attended it with one of his attorneys.

Finally, Plaintiff cites to paragraph 20 of his June 13, 2002 Affidavit and claims that “[t]wice during the summer of 2001 [he] had objected in writing to an attempt to change the date of the October 20th regular quarterly meeting.” However, the July 10, 2001 and August 29, 2001 e-mails in support of paragraph 20, attached to Plaintiff’s June 12, 2002 Affidavit as Exhibit 10, belie this assertion. These e-mails make clear that Plaintiff *did not* object to changing the date of the October 20, 2001 quarterly meeting, he merely stated that he did not want the date to be changed to October 26, 2001 because of a prior commitment. The July 10, 2001 e-mail exchange between Tonia Baney, Executive Director of the Foundation, and Plaintiff is as follows:

From Tonia Baney

Sent July 5, 2001

Dear Trustees: Mo Siegel’s daughter is getting married the same weekend as the trustee and Matthew Project Meetings in October. He would like to change the meetings to the weekend of October 26 through October 29, 2001. Please let us know if you have any problems with the change.

Response from Plaintiff

Sent July 10, 2001

Dear Tonia: I had earlier accepted a special invitation to go to a conference in Rochester, N.Y. that weekend, and I cannot change that commitment. I apologize for this inconvenience. Kwan

(Plt.’s June 13, 2002 Affidavit at Exhibit 10).

Thus, and contrary to his opportunistic assertion, Plaintiff was perfectly willing, and did not object, to changing the date of the October 20, 2001 meeting. His “objection” was to changing the proposed date to the weekend of October 26. Indeed, he apologized for not being available on October 26, 2001. Plaintiff’s after-the-fact interpretation of these “objections” is an obvious attempt to bolster his failed argument regarding the re-scheduling of the October 20,

2001 meeting to November 10, 2001. Furthermore, because of *Plaintiff's* scheduling conflict on the proposed weekend of October 26-29, the meeting was rescheduled to the weekend of November 9-10, 2001 in order to accommodate *his* schedule. He was given notice of the November 10 date and never indicated any conflict with the proposed date of November 10. His objection lodged the day of the meeting was based on his opportunistic argument (given that one of the Trustees could not be present on the regular date due to the marriage of his daughter) that rescheduling a regular meeting required all Trustees to consent and that he refused to give his consent.

C. Plaintiff Was Properly Excluded From Foundation Business Following His Removal From The Foundation On September 7, 2001

Plaintiff asserts that because he was excluded from quarterly meetings on January 19, 2002 and April 20, 2002, and because he was excluded “from acting as a trustee from at least September 1, 2001,” all Trustee meetings and the votes taken at those meetings are void. (Plt.’s Mot. at 12-14). Plaintiff asserts that his exclusion was wrongful because he was still a Trustee.

Contrary to Plaintiff’s assertions, *nothing* in the Declaration or the By-Laws provides that, following a unanimous vote to remove a Trustee, the removed Trustee remains a Trustee and continues to participate in all Foundation business as a Trustee in good standing, pending the votes at the next three quarterly meetings to confirm the removal. On the contrary, a removed Trustee is not permitted to vote on removal or at any of the three votes to confirm removal. (See Declaration, Section 7.5; By-Laws, Section 2.4; SOF ¶¶4, 8). Moreover, the process followed by the current Board of Trustees in removing Plaintiff as a Trustee and excluding him from participating in Foundation business after the initial, unanimous vote for removal is the same process followed by the Board of Trustees in removing Martin W. Myers as a Trustee, a removal which was upheld by Judge Williams in *Myers v. Burns*, No. 94 C 927, 1995 WL 296938 (N.D.

Ill. May 12, 1995). See SOF at ¶29. Furthermore, to the extent that the By-Laws could be construed to permit a Trustee to continue to participate and vote on Foundation business after a unanimous vote for removal by the remaining Trustees, it would be an obvious conflict with the Declaration of Trust which wisely provides for a single, unanimous vote to effect the removal of a Trustee for the very purpose of protecting the Foundation from that Trustee's actions. It defies common sense that a Trustee who has been removed from the Foundation by a unanimous vote of the Remaining Trustees would still be permitted to participate as a Trustee in good standing. Plaintiff's erratic and inappropriate behavior described in paragraph 34 of Defendants' Verified Answer, his false assertions of financial wrongdoing by the Defendants, and his obviously false statements regarding notice of the September 7, 2001 meeting only serve to underscore the point that to permit Plaintiff to participate as a Trustee, after he has been removed, would be invite retaliation and is not in the best interest of the Foundation.⁷ Contrary to Plaintiff's self-serving claim that he was removed as Trustee in retaliation for being a "whistleblower," the only "retaliation" taking place in this case is that which Plaintiff is attempting via his false claims of financial wrongdoing by the Remaining Trustees.

Plaintiff's assertion that the Defendant Trustees have "frustrated the purpose of the Declaration of Trust in specifying that there be five trustees" is baseless. Nowhere in the Declaration does it specify that there be five Trustees.

Plaintiff's reliance on *Maton Brothers v. Central Illinois Public Service*, 356 Ill. 584, 592, 191 N.E. 321, 324 (1934) for the proposition that one of two trustees has no authority to act alone, *Larmer v. Price*, 350 Ill. 401, 406, 183 N.E. 230, 232 (1932), for the proposition that co-trustees together form one "collective trustee", and *Gorin v. McFarland*, 108 Ill. App. 2d 348,

⁷ Plaintiff, as he litigates this action, continues to release confidential information in violation of the Confidentiality and Conflict of Interest Agreement he executed on May 1, 1998. This is yet another

247 N.E.2d 620 (4th Dist. 1969) for the proposition that no individual trustee alone has authority to take action, are wholly inapposite. (Plt.'s Mot. at 13). None of the Defendant Trustees acted alone in the removal of Plaintiff. On the contrary, the Remaining Trustees voted unanimously to remove Plaintiff as a trustee and they voted unanimously three times to confirm that removal. In other words, they formed a "collective trustee" and, in the best interests of the Foundation, removed Plaintiff as a Trustee.

Plaintiff further asserts that he should have been permitted to remain an active Trustee following his September 7, 2001 removal as Trustee, pending the three confirmation votes on removal in order to "allow emotions to cool and reason to come to the fore" and to allow the Trustees to try to work out their differences. (Plt.'s Mot. at 14). However, it is undisputed that Plaintiff was at each of the three regular quarterly meetings following his removal, and that he "was permitted to appear and to briefly plead for reconciliation." (Plt.'s Mot. at 12). Of course, Plaintiff's pleas for reconciliation with the other Trustees were made in the company of Plaintiff's various lawyers.

Finally, the Declaration provides for only one vote on removal, followed by recording of the Certificate of Removal with the Cook County Recorder's Office. (Declaration, Section 7.5; SOF at ¶4). Plaintiff's assertion that he should be permitted to serve as a Trustee in good standing pending the three votes confirming the removal called for by Section 2.4 of the By-Laws would impermissibly contravene the removal provisions in Section 7.5 of the Declaration and is thus prohibited pursuant to Section 7.6 of the Declaration, which provides: "The Trustees shall adopt By-Laws, *not inconsistent* with the provisions of this Declaration of Trust, for the government of the Foundation. . ." (SOF ¶6); see also *Myers v. Burns*, No. 94 C 927, 1995 WL 296938 (N.D. Ill. May 12, 1995), *aff'd*, 82 F.3d 420 (7th Cir. 1995) (expressly recognizing that

example of the type of behavior that was the impetus for his removal as a Trustee of the Foundation.

pursuant to Section 7.6 of the Declaration, the Declaration is controlling in the event of a conflict with the By-Laws). In *Myers*, Judge Williams further noted that Section 2.4 of the By-Laws does not provide removed Trustees with *any* procedural safeguards other than the requirement that the Remaining Trustees vote for removal at three consecutive meetings. *Myers*, at *5. In particular, there are no requirements for formal written charges or for a special hearing allowing the Trustee the opportunity to plead his case. *Id.* Nor are there any requirements that a removed Trustee remain an active Trustee pending the votes for confirmation of removal at three consecutive meetings. Accordingly, Plaintiff's argument that all meetings after September 7, 2001 are void fails as a matter of law.

IV. CONCLUSION

WHEREFORE, the Defendants K. Richard Keeler, Georges Michelson-Dupont, Mo Siegel, and Gard Jameson respectfully request that this Honorable Court enter summary judgment in their favor as to all of Plaintiff's claims.

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

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

E. Kwan Choi, individually and on behalf)
of Urantia Foundation, Urantia Corporation,)
Urantia Brotherhood Association, Andite)
Corporation, and Amadon Corporation,)

Plaintiff,)

v.)

K. Richard Keeler, Georges)
Michelson-Dupont, Mo Siegel, Gard)
Jameson, and James Ryan, not individually)
but as Illinois Attorney General,)

Defendants.)

No. 02 CH 4053

Judge Sophia Hall

STATE OF WYOMING)

COUNTY OF Uinta)

ss

AFFIDAVIT

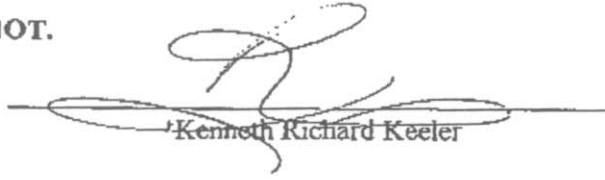
I, Kenneth Richard Keeler, being duly sworn upon oath deposes and states as follows:

1. I live in Evanston, Wyoming. I am an investment advisor specializing in commodity futures. I have a Bachelors Degrec in Philosophy from Kansas University and a Masters Degree in Business Administration from New York University.

2. I became a Trustee of Urantia Foundation ("Foundation") on July 15, 1989. I served as Treasurer of the Foundation from April of 1990 until April 18, 1998. I have served as President of the Foundation since December 7, 1997.

3. I have read the Defendants' Verified Answer and Affirmative Defense to Plaintiff's Complaint and the facts asserted in answer to Plaintiff's allegations are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.



Kenneth Richard Keeler

Subscribed and Sworn to Before Me
this ____ day of _____, 2002.

Notary Public

CH02:22195854.1

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **Defendants' Memorandum in Opposition to Plaintiff's Partial Motion for Summary Judgment** to be served on the following, this 10th day of July, 2002, as follows:

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