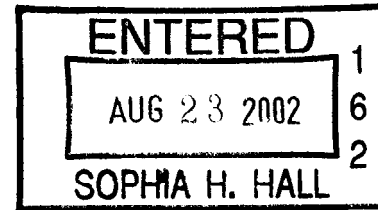


**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**E. Kwan Choi,** )  
*Individually and on behalf of* )  
**Urantia Foundation, et al.,** )  
) )  
**Plaintiff,** )  
**v.** )  
) )  
**K. Richard Keeler, et al.** )  
) )  
**Defendants.** )  
) )

**No. 02 CH 4053  
JUDGE SOPHIA H. HALL**



**DECISION**

This case comes on for hearing on defendants Richard Keeler ("Keeler"), Georges Michelson-Dupont ("Dupont"), Mo Siegel ("Siegel"), and Gard Jameson's ("Jameson") Motion for Summary Judgment on both counts of the Complaint. Plaintiff Kwan Choi's ("Choi") Motion for Partial Summary Judgment is on Count I of the Complaint. Choi brings his motion on his own behalf and on behalf of the Urantia Foundation and its corporations. In Count I of his Complaint, Choi seeks an injunction to order defendants to permit Choi to participate as a trustee. In Count II, Choi prays for a mandatory injunction to allow him access to books and records and requests an accounting.

The issue before this Court as to both motions for summary judgment is whether Choi has been removed as trustee pursuant to the Declaration of Trust and the By-Laws governing the Urantia Foundation. Defendants also filed a Motion to Strike Portions of plaintiff's Supplemental Affidavit, objecting to paragraphs 6, 11, 12, 13, 20, 21, and 22. The Court need not address this motion because these paragraphs deal with the finances and accounting

procedures of the Foundation, and the copyright licensing of the Urantia Book, all topics that are not relevant to this Decision. Based on the reasons below, this Court grants plaintiff's Motion for Partial Summary Judgment and denies defendants' Motion for Summary Judgment, and finds that Choi was not properly removed as a trustee in accordance with the procedures in the Bylaws of the Urantia Foundation.

There is no genuine issue as to the facts set forth below. On January 11, 1950, the Urantia Foundation ("Foundation") was established, the purpose of which was to disseminate and promote the concepts and teachings set forth in a publication known as The Urantia Book and to preserve the text of the Urantia Book. The Foundation was established by a Declaration of Trust ("Declaration") and By-Laws, which were adopted in 1950. In March 1997, Choi was elected a trustee of the Foundation, and was elected a director of various subsidiary Urantia non-profit corporations, which are controlled by the Foundation.

Section 7.5 of the Declaration grants authority to the trustees to remove one of its members:

**REMOVAL OF TRUSTEE:** Any Trustee may be removed for any reason by a unanimous vote of the remaining Trustees, and upon the casting of such a unanimous vote of remaining Trustees, they shall thereupon execute a certificate under the hands and seals of said remaining Trustees certifying to the casting of such a vote and to the removal of such Trustee, and the same shall be filed for record as provided in paragraph 9.1. Upon the execution and recordation of such certificate, a vacancy in the number of Trustees shall be deemed to exist.

This provision has been interpreted by the United States District Court for the Northern District of Illinois. In Myers v. Burns, 1995 WL 296938 (N.D. Illinois 1995), the court dealt with whether the removal of a trustee from the Urantia Foundation was proper. The Myers court found that section 7.5 was unambiguous regarding the removal of trustees, and that such removal could occur without "the person exercising the power to show cause for the removal." *Id.* at 4.

The court said that section 7.5 gave the trustees "broad, essentially unfettered removal powers." Id. at 5. This passage clearly states that a trustee can be removed "for any reason." In addition, the language of 7.5 provides that upon the recording of the Certificate of Removal, a vacancy in the number of Trustees exists.

The Court in Meyers also discussed the By-Laws. Myers establishes that the Declaration takes precedence, and the By-Laws set forth the procedures that must be followed in order to exercise the removal authority given by the Declaration. Section 2.4 of the By-Laws states as follows:

Removal of Trustees: When, in the opinion of the majority of the Trustees, any Trustee has failed or refused to assume and perform his duties and responsibilities, or has done or permitted any act or thing which is inconsistent with or in degradation of the teaching of THE URANTIA BOOK, or by his acts or omissions has brought disrepute upon himself or URANTIA FOUNDATION, then, the Trustees shall cast a ballot on the question of whether or not such Trustee should be removed. Such ballot shall be cast at the first regular quarterly meeting of the Board of Trustees next succeeding the meeting at which the determination aforesaid shall have been made. A ballot on the question of whether or not such Trustee shall be removed shall be cast again at each of the next two regular quarterly meetings at which all of the other Trustees shall be present. If all of the Trustees other than the Trustee whose removal is being considered shall cast a ballot at each successive meeting as aforesaid for the removal of such Trustee, then said other Trustees shall execute a Certificate of Removal certifying to the removal of such Trustee, ....

In summary, in order to remove Choi, the Declaration and By-Laws provide that the trustees must first hold a meeting to vote on whether a trustee "should be" removed. Second, at the next three successive regular quarterly meetings, the trustees must vote on "whether or not such Trustee shall be removed." Finally, once the three quarterly meeting votes have occurred, a Certificate of Removal must be recorded in the Recorder's Office of Cook County, Illinois, and when such recording occurs, a vacancy is deemed to exist in the position of trustee.

Defendant Trustees made a determination to begin the removal process of Choi as a trustee of the Foundation. Defendant Siegel, Secretary of the Foundation, sent an email to the trustees on July 24, 2001, with "Special Meeting Request" in the subject line. The email stated "Request for a Special Meeting phone meeting has been made by 4 trustees[.] Topic of Special Meeting: Removal of Kwan Choi as Trustee of Urantia Foundation[.] Action needed: What day and time works for you in the next 3 weeks for a special 30 minute phone meeting?" Defendant Siegel then sent another email on July 30, 2001, setting the telephonic Special Meeting for September 7 and requesting that the trustees keep that date available. The email also stated that the agenda would be sent at least 5 days before that date.

Another email was sent to the trustees by Defendant Keeler, President of the Foundation, on September 2, with no message but a subject line stating "Please remember the Trustee teleconference on 7 September 2001." Sherry Dickerson, personal assistant to Mo Siegel, also mailed a document to all the Trustees on August 31, 2001, which stated the date and time of the meeting and the agenda. The defendant Trustees then held the teleconference Special Meeting on September 7, 2001, in which they unanimously voted that Choi should be removed as a trustee.

The next three quarterly meetings in which the defendant Trustees could vote on Choi's removal were to be held at times provided for in the By-Laws, October 20, 2001, January 19, 2002, and April 20, 2002. The defendant Trustees voted to change the October 20, 2001 meeting to November 10, 2001, in order to accommodate the personal request of one of the trustees. At each of these meetings held on November 10, January 19, and April 20, the defendant Trustees unanimously voted to remove Choi as a trustee. On May 6, 2002, a Certificate of Removal of Trustee was recorded with the Cook County Recorder of Deeds.

Choi filed the instant action against the defendant Trustees, alleging first that the defendant Trustees did not follow the requirements of the By-Laws in giving Choi notice of the September 7, 2001 Special Meeting. Choi alleges next that the defendant Trustees did not abide by the procedures in the By-Laws for changing the regular quarterly meeting from October 20, 2001, to November 10, 2001. Therefore, Choi argues that he has not been properly removed as a trustee.

This Court finds that the September 7, 2001 Special Meeting complied with the Bylaws, Choi having received proper notice. The Court, however, finds that the regular quarterly meeting was improperly changed from October 20 to November 10, 2001, because the change must be made by the agreement of all of the trustees and Choi was still a trustee and did not agree to that date. Therefore, Choi has not been properly removed as a trustee.

### **The Law**

The law applicable to the Court's consideration of the issues herein is not in dispute. It is well established that a court's primary concern in construing a trust is to give effect to the settlor's intent. First Nat'l. Bank of Chicago v. Canton Council of Campfire Girls Inc., 85 Ill. 2d 507, 426 N.E.2d 1198, 1201 (1981). If the trust instrument is clear and unambiguous, as in this case, the court must apply the instrument as written and must not look beyond its "four corners." Matter of Estate of Steward, 134 Ill.App.3d 412, 414, 480 N.E.2d 201, 203-04 (2d Dist. 1985). Under Illinois law, the settlor's intent is to be ascertained, if possible, from the language of the instrument itself. *Id.* at 414, 480 N.E.2d 201 at 203; Ford v. Newman, 77 Ill. 2d 335, 338-39, 396 N.E.2d 539, 540 (1979). The Court will apply these standards to the motions for summary judgment in this case.

### **Notice of the September 7, 2001 Meeting**

Choi argues that he did not receive proper notice of the Special Meeting held on September 7, 2001, to initiate the removal process. The Court disagrees. The procedure for setting a Special Meeting is contained in section 3.3 of the By-Laws, which states:

Special Meetings: Special meetings of the Board of Trustees may be held at any time and place designated in the notice of such meeting. Notice of such meeting stating the purpose thereof shall be given not more than ten or less than five days prior to the date thereof. Special meetings may be called by the President or by any two Trustees who shall designate the time and place and purpose of such meeting and notice of such meeting shall be issued by the Secretary promptly upon receipt of such call.

On July 24, 2001, four Trustees called a Special Meeting. It is uncontested that Sherry Dickerson, the personal assistant to Secretary Mo Siegel, mailed a document to all trustees, including Choi, on August 31, 2001, eight days before the Special Meeting was to be held. At the top of the page was the language "Urantia Foundation, Trustees Meeting, Teleconference, Friday, September 7, 2001, 8:00 a.m., CDT (Chicago Time)." Below this language was the word "Agenda," which was followed by two agenda items, "1. To ask Kwan Choi to resign. 2. To initiate the Removal Procedure if Kwan Choi refuses to resign." Choi argues that this document was not a notice because it did not say "notice." This Court finds that this document in substance satisfies the By-Law requirement of "notice" for the Special Meeting held on September 7, 2001, and was mailed within the time frame required for such notice.

Choi's argument that he did not receive the notice is not evidence that the notice was not sent as Sherry Dickerson has testified. Furthermore, defendant Keeler submitted evidence that he received the mailed notice and agenda with a postal stamp showing that his notice was mailed on August 31, 2001. Choi also argues that a teleconference meeting did not satisfy the "place"

requirement of the Bylaws. However, section 3.10 of the Bylaws allows for meetings by telephone.

Finally, Choi raised an argument, for the first time in his Reply brief, that the notice should have gone out 20 days before the meeting, pursuant to the Illinois General Not For Profit Corporation Act of 1986 ("NFPCA"). 805 ILCS 105/108.25. First, the NFPCA does not apply in this case, because under section 103.05, Charitable Trusts are not listed therein as coming within the provisions of that Act. The Foundation is an Illinois Charitable Trust, created by a Declaration and within the jurisdiction of the Illinois Attorney General. 760 ILCS 55/1 et seq. Second, defendant Trustees concede that Choi has not been removed as a Director from the not-for-profit corporations that the Foundation controls. Therefore, the NFPCA's rules governing notice are not relevant to the decision on whether Choi was properly removed as a trustee of the Foundation.

Accordingly, the Court finds that the September 7, 2001 meeting was held pursuant to the By-Laws and the vote taken therein was valid.

#### **Validity of the November 10, 2001 Meeting**

Once the vote to initiate removal has been taken, the Bylaws require that the trustees must vote on the removal at the next three consecutive regular quarterly meetings. Choi argues that after the September 7, 2001 special meeting, the next regular quarterly meeting should have been held on October 20, 2001, the date set in the By-Laws. No such meeting was held on that day, therefore, Choi argues, the process to remove ended and the trustees would have to begin the process again in order to remove him. Defendants, however, argue that pursuant to the By-Law procedures, the October 20, 2001 regular quarterly meeting date was changed to November 10, 2001.

Section 3.1 of the By-Laws, amended on January 22, 1966, sets the times for the regular quarterly meetings. This section also describes the procedure for changing a meeting time and place.

Regular Quarterly Meetings: Regular meetings of the Board of Trustees shall be held on the third Saturday of January, April, July, and October ... at the hour of 10:00 o'clock in the morning at the regular office of the Foundation. Notice of such meeting shall be given at least three days prior to the date thereof. *The time and place of any regular meeting may be changed by agreement of all Trustees* (emphasis added).

The third Saturdays involved here were October 20, 2001, January 19, 2002, and April 20, 2002. The defendant Trustees agreed to reschedule the October 20 regular quarterly meeting to November 10, 2001. Choi argues that the trustees also needed to obtain his agreement because he was still a trustee and was entitled to vote on whether the October 20 meeting time should be changed. Thus, he argues, since his agreement was not given, the November meeting date was not in compliance with the Bylaws, and the vote to remove him was not valid.

The defendant Trustees argue that they did not need Choi's agreement to move the October 20, 2001 meeting because Choi was not a trustee since the defendant Trustees had already voted unanimously on September 7 to remove him. The Court disagrees and finds that Choi was a trustee and had the right to vote on whether the date of October 20 would be changed.

Section 7.5 of the Declaration and section 2.4 of the By-Laws are clear that, for a trustee to be removed, all three steps of the removal process must occur; initiation of the removal process, the quarterly meeting votes, and the filing of the Certificate of Removal, at which point the vacancy is deemed to exist. Thus, the process not having been completed before the October 20 regular quarterly meeting, Choi was still a trustee with a right to vote, unless his right to vote was limited by the Declaration or Bylaws.

The only language limiting a trustee's right to vote is in section 2.4, which prohibits Choi from voting on his own removal. Section 2.4 says "if all of the Trustees *other than the Trustee whose removal is being considered* shall cast a ballot at each successive meeting as aforesaid for the removal of such Trustee, then said other Trustees shall execute a Certificate of Removal...." There is no other language in the Declaration or Bylaws limiting a trustee's right to vote. The court must effectuate the intent of the settlor. The settlor could have included additional limiting language governing the rights of a trustee who is the subject of the removal process, but chose only to limit that trustee's right to vote on his own removal. Matter of Estate of Steward, *supra*. This Court cannot create limits on the rights of trustees.

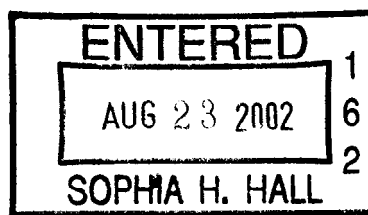
As to the action to change a regular quarterly meeting date, the By-Laws indicate that there are only two ways to do so, and both require unanimity of the trustees. One, the trustees might amend the By-Law provision setting the times. Section 7.1 states "[t]hese By-Laws may from time to time be amended by the unanimous vote of all the Trustees in favor of such amendment at any regular or special meeting." That was not done.

The second way, which the defendant Trustees attempted to use here, is provided for in section 3.1. It states that "[t]he time and place of any regular meeting may be changed by agreement of *all* Trustees" (emphasis supplied). Though the defendant Trustees have provided evidence that Choi was told that they wanted to change the date, and he even was present at the November 10 meeting, they presented no evidence that he agreed to the November 10 date. Therefore, the Court finds that the decision to move the regular quarterly meeting from October 20 to November 10, 2001 was not done in accordance with section 3.1 of the By-Laws. Thus, the vote for removal, which was cast on that date, was invalid. Accordingly, the removal process

was defective and not in compliance with the Bylaws. Choi is still a trustee of the Urantia Foundation with all the rights pertaining thereto.

**Conclusion**

For the foregoing reasons, the Court grants plaintiff's Motion for Partial Summary Judgment on Count I and denies defendants' Motion for Summary Judgment on all counts of the Complaint.



Entered: \_\_\_\_\_  
JUDGE

Date: \_\_\_\_\_