

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
INNOCENT ULAHANNAN as an aggrieved party of
the HUDSON VALLEY MALAYALEE
ASSOCIATION INC., (HVMA),

Petitioner,

DECISION & ORDER

-against-

Index No.: 033704/2019
Motion Seq. Nos 1 & 2

ROY CHENGANNUR, BINU PAUL, TOM NINAN,
SAJI POTHEN, APPUKUTTAN NAIR, GIGI TOM and
Hudson Valley Malayelee Association, Inc., as those
declared elected at a June 1, 2019 election of the HVMA,

Respondents.

-----X
Sherri L. Eisenpress, A.J.S.C.

The following papers were considered: (1) Order to Show Cause for an Order, pursuant to Not-For-Profit Corporation Law §618, granting petitioner confirmation of elected Board members, Roy Chengannur, Binu Paul, and Tom Ninan to HVMA (Motion Sequence No. 1); and (2) respondents Appukutan Nair, Gigi Tom and Saji Pothen's Notice of Cross-Motion, for an Order pursuant to CPLR §3211(a)(2) to dismiss this action for lack of subject matter jurisdiction (Motion Sequence No. 2):

Order to Show Cause, Affirmation of Barry Traub, Esq. in Support, Affidavit of Innocent Ulahannan, Exhibits A-D

Notice of Cross-Motion, Affirmation of Susan M. Smith, Esq., in Support, Exhibits A-D, Affidavit of Saji Pothen, Exhibits A-D, Affidavit of Phillipose Philip, Exhibit A

Phillipose Philip Response Affidavit, Exhibits A-D, Saji Pothen Response Affidavit, Exhibits A-D

Response Letter of Barry Traub, Esq., Exhibits A-B

Affirmation in Opposition of Barry Traub, Esq., Affidavit of Joseph Kuriappuram, Affidavit of Tom Ninan, Affidavit of Innocent Ulahannan, Exhibits A-E

Affirmation of Susan M. Smith, Esq., in Reply, Exhibits A-B, Affidavit of Lyssy Alex, Affidavit of Phillipose Philip, Affidavit of Saji Pothen, Exhibits A-B

Upon the foregoing papers, the Court now rules as follows:

Briefly, by way of background, the parties have repeatedly engaged in litigation regarding the management of the Hudson Valley Malayalee Association, Inc. (HVMA) over the past four years. Petitioner is a member of HVMA and the acting co-president. Respondent Saji Pothen (Pothen) is the secretary and respondent Tom Ninan (Ninan) is the treasurer.

On June 1, 2019, HVMA held an election at which time three board members were elected. Petitioner challenges the results of the June 1, 2019 election. Petitioner alleges that 104 member proxies were collected which all voted to elect Roy Chengannur, Binu Paul, and Tom Ninan (Chengannur/Paul/Ninan). Respondent asserts that there were 43 members present for the election and they elected Appukuttan Nair, Gigi Tom and Saji Pothen (Nair/Tom/Pothen). Petitioner contends that the bylaws are silent regarding the use of proxies, therefore Not-for-Profit-Corporation Law §609 should apply. According to petitioner, the proxy votes were recognized for the adoption of the bylaws. Petitioner seeks confirmation of Chengannur/Paul/Ninan as the properly elected Board Members and commenced this special proceeding by Order to Show Cause on July 12, 2019 (NYSCEF Doc. 1).

Respondents Appukutan Nair, Gigi Tom and Saji Pothen (Nair/Tom/Pothen) move to dismiss the proceeding for lack of subject matter jurisdiction because the statutory authority petitioner relied upon, Not-for-Profit Corporation Law §618, supported by CPLR §402, requires the filing of a petition to start the action, and petitioner failed to file a petition. Respondents also argue that the matter should be dismissed because the elections were conducted in accordance with a stipulation the parties generated in another currently pending case. Respondents argue that nominations from the floor were not accepted, since it was not provided for within the stipulation. According to respondents, the elected Board members, Nair/Tom/Pothen, were the only individuals who submitted their applications timely, in accordance with the stipulation, while respondents Chengannur/Paul/Ninan, who petitioner alleges won the election, did not submit nomination forms, and therefore could not have been elected. Regarding proxies, respondents

argue this issue is irrelevant, in light of the foregoing. Additionally, respondents contend that petitioner submitted more proxies to the Court than were presented at the June 1, 2019 meeting. At the meeting there were 89 proxies, with only 36 being from actual HVMA members. In support of the instant application, however, petitioner submitted 104 proxies to the Court, with only 40 coming from actual HVMA members.

In opposition to the cross-motion, petitioner concedes that although the Order to Show Cause was not accompanied by a petition, there is no prejudice as respondents have been apprised of the facts upon which the claim is made, and the Court should disregard the irregularity. According to petitioner, new members did not receive the notice and nomination forms. Petitioner argues that respondent Pothen's allegation that there have been no new members since 2017, is not true since treasurer Ninan collected applications and fees from new members in 2018. Petitioner alleges it was the treasurer's job to collect the application and fees and maintain the records of new members. According to petitioner, secretary Pothen's act of requesting nominating forms to be returned to him, was done without communication to the board. The agreement that members submit their names if they wished to be considered for membership on the Board was followed by both sides, who submitted names to their respective leaders, and Chengannur/Paul/Ninan submitted their nomination forms to petitioner.

In reply, respondents argue that the proxies should not be counted as it would be an unfair election process because Chengannur/Paul/Ninan failed to submit their nominations to the Secretary, as directed in the meeting notice. Petitioner concedes that no notice was sent to the members advising them of who the candidates were. However, respondents argue it was unnecessary since there were three positions with only three applicants. Respondents request that should the Court deny the motion to dismiss for lack of subject matter jurisdiction, that the Court confirm Nair/Tom/Pothen's election to the Board or order a new election.

DISCUSSION

A. Cross-Motion to Dismiss

In accordance with CPLR §2001, “[a]t any stage of an action ... the court may permit a mistake, omission, defect or irregularity ... to be corrected, upon such terms as may be

just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded...” In consideration of the all the papers filed in this action, and the fact that the Order to Show Cause and Affirmation in Support apprise respondents of the issues presented, petitioner’s error of failing to file a document entitled Petition is excused, and respondents’ cross-motion to dismiss (motion sequence no. 2), for lack of subject matter jurisdiction is denied.

B. Election of Board Members

Pursuant to Not-for-Profit Corporation Law (N-PCL) §618, the Court shall “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.” Although the Court has broad equitable powers, the court “should not interfere in the internal affairs of a corporation, unless a clear showing is made to warrant such action”. Ugiri Progressive Community, Inc. v. Ukwuozo, 57 A.D.3d 656 (2d Dept 2008) citing Nyitray v. New York Athletic Club, of City of New York, Inc., 195 A.D.2d 291 (1st Dept 1993) and Scipioni v. Young Women's Christian Assoc., 105 A.D.2d 1113 (4th Dept 1984).

On March 29, 2019, the parties appeared before this Court and agreed on the record with respect to the following procedure: (i) at a meeting on June 1, 2019, the members of HVMA would elect three board members and (ii) by the end of April 2019, notice would go to all general members advising them of the meeting, bylaws to be voted on, and election of three board members. (Exhibit D, NYSCEF Doc. 20). It was also stipulated that the notice would ask members to submit their names should they want to be considered for the board. (Exhibit D, NYSCEF Doc. 20).

In accordance with the HVMA’s bylaws, the secretary maintains the register of members of the organization (Exhibit A, NYSCEF Doc. 5, Article 4 section 5, and Article 14). In accordance with his duties as established by HVMA’s bylaws (Exhibit A, NYSCEF Doc. 5, article

14), on or about April 30, 2019, secretary Pothen¹ sent the required notices to members of HVMA, along with the nomination form (Exhibit B, NYSCEF Doc. 23). The notice required that nominations be sent to the secretary of the organization (Exhibit B, NYSCEF Doc. 23). In his sworn affidavit, secretary Pothen attests that by the June 1, 2019 meeting, the only nomination forms he received were from Nair/Tom/Pothen. (NYSCEF Doc. 21). Petitioner fails to provide any argument or evidence to the contrary. Alternatively, petitioner attests that the nomination forms for Chengannur/Paul/Ninan were, upon his direction, sent to and received by himself. (NYSCEF Docs 2 and 48).

HVMA's Certificate of Incorporation (Exhibit B, NYSCEF Doc. 59) is silent regarding nominations for its Board positions, similarly HVMA's bylaws are silent regarding nominations (Exhibit A, NYSCEF Doc. 5), and the N-PCL is also silent regarding nomination procedures. The March 29, 2019 stipulation directed that the notice indicate that members were to submit their names to be considered for the election (Exhibit D, NYSCEF Doc. 20). While the stipulation was silent as to how nominations were to be received by HVMA, there is no evidence of an expressed alternative communicated to the members of HVMA, other than the April 30, 2019 notice, which expressly provided that nominations be sent to secretary Pothen.

Inasmuch as there is no indication that secretary Pothen violated the by-laws, the stipulation, or the law in sending out the notice to members of HVMA requesting that nominations be returned to him, and there is no indication that the election of Nair/Tom/Pothen was tainted with fraud or other wrongdoing, (See Scipioni v. Young Women's Christian Ass'n, *supra*), the Court finds that reasonable grounds exist for concluding that the election of Nair/Tom/Pothen was conducted in a fair manner. Conversely, there is indication that the election of Chengannur/Paul/Ninan violated the stipulation and the notice sent to HVMA members.

In light of the foregoing, the Court need not consider the remaining contentions of the parties.

Accordingly, it is hereby

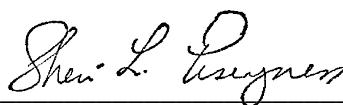
¹ Although petitioner also disputes whether Pothen was secretary of HVMA, at the March 28, 2018 conference before this Court, it was determined that Pothen would remain as the acting secretary until elections. See Exhibit D, NYSCEF Doc. 11.

ORDERED the Respondents' cross-motion to dismiss for lack of subject matter jurisdiction (motion sequence no. 2) is DENIED; and it is further

ORDERED that the Notice of Petition and Petition (motion sequence no. 1) is DENIED and the election of Chengannur/Paul/Ninan is deemed invalid.

The foregoing constitutes the Decision and Order of this Court.

Dated: New City, New York
May 8, 2020



HON. SHERRI L. EISENPRESS
Acting Justice of the Supreme Court

TO: All counsel via NYSCEF