

APPENDIX

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APPENDIX A

2019 WL 1591859

OPINION NOT REPORTED

(This is an unreported panel decision of the Commonwealth Court. As such, it may be cited for its persuasive value, but not as binding precedent.

See section 414 of the Commonwealth Court's internal operating procedures.

COMMONWEALTH COURT OF PENNSYLVANIA.

No. 439 C.D. 2018

ANTHONEE PATTERSON,

v.

KENNETH SHELTON,

Appellant

Submitted: December 28, 2018

Filed: April 15, 2019

BEFORE: HONORABLE RENÉE COHN JUBELIRER,
Judge, HONORABLE PATRICIA A. McCULLOUGH,
Judge, HONORABLE CHRISTINE FIZZANO CANNON,
Judge

OPINION

MEMORANDUM OPINION BY JUDGE PATRICIA
A. McCULLOUGH

Kenneth Shelton (Shelton) appeals from the March 21, 2018 order of the Court of Common Pleas of Philadelphia County (trial court) denying his petition requesting that the trial court strike its prior orders confirming an April 26, 2006 arbitration award and refusing to vacate said award.

Facts and Procedural History

This case has a long and complicated history before this Court and the trial court, most recently summarized in *Patterson v. Shelton*, 175 A.3d 442 (Pa. Cmwlth. 2017). In our 2017 decision, we referred to a 2013 unpublished decision from this Court, *Patterson v. Shelton* (Pa. Cmwlth., No. 2396 C.D. 2011, filed March 6, 2013), *appeal denied*, 621 Pa. 705, 78 A.3d 1092 (Pa. 2013), wherein we provided the following procedural history:

The key players involved in the present offshoot of the controversy are: (1) the Church of the Lord Jesus Christ of the Apostolic Faith (the “Church”), an unincorporated association, founded in 1919; (2) the “Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.”, (the “Corporate Trustee”), a Pennsylvania non-profit corporation formed in 1947 to act as the trustee and hold property in trust for the Church; (3) Patterson, a lifelong member, elder, and minister of the Church; and (4) Shelton, the current “Bishop” and/or “Overseer” of the Church and “President” of the Corporate Trustee.

The dispute began in 1991 when then-Bishop S. McDowell Shelton, died, leaving vacancies in the offices of “Overseer” of the Church and “President” of the Corporate Trustee. Immediately upon Bishop S. McDowell Shelton’s death, Shelton and his “faction” took control of the accounts, trusts and properties of

the Church and Corporate Trustee. After extensive litigation initiated by two other dissident factions of the Church congregation over the leadership of the Church and Corporate Trustee, the trial court ultimately determined, and this Court later affirmed, that Shelton and his Board of Trustees were in control.

...

On July 24, 1995, Patterson, as life-long member, elder and minister of the Church, commenced an action in equity against Shelton, in Shelton's individual capacity and as the President of the Board of Trustees of the Corporate Trustee. Patterson alleged that since taking control of the Church and Corporate Trustee in 1991, Shelton and his Board of Trustees have misappropriated funds, "looted the Church's assets," paid themselves salaries in contravention of Church By-Laws, and funded private expenditures, lavish vacations, lingerie, cars, homes and other personal incidentals with assets which were donated and designated for Church religious and charitable missions.

Patterson requested, *inter alia*: (1) the appointment of a receiver to take control of the assets of the Church held by the Corporate Trustee; (2) an order requiring Shelton to issue annual financial reports for the years 1991, 1992, 1993, and 1994; and (3) an accounting.

The parties engaged in discovery. Patterson retained James A. Stavros, CPA (Stavros), a forensic financial investigator, to analyze the finances and expenditures of the Church and the Corporate Trustee. Stavros authored a report which detailed his findings that Shelton and his Board of Trustees withdrew hundreds of thousands of dollars from Church accounts with no accounting of where the funds went

and that they expended Church funds on a significant amount of “personal” items and expenditures that appeared to be outside the normal course of business and outside Church laws and customs. He concluded that Church accounts had declined by nearly \$ 1 million under Shelton’s control.¹

In January 2006, the parties agreed to submit to binding arbitration. The Arbitrator concluded that the credible evidence established that Shelton had engaged in various acts of fraud, mismanagement, conspiracy, breach of fiduciary responsibilities, violations of By-laws and the Articles of Incorporation in seizing corporate funds and assets and depleting bank accounts designated for Church-related purposes. The Arbitrator concluded that Shelton had diverted Church funds and assets to himself and others for his and their benefit. The Arbitrator appointed a receiver and directed Shelton to account for all Church funds removed by him or those acting with him.

Shelton filed a motion to vacate the award which the trial court denied.² On appeal, this Court overturned the arbitration award because the Arbitrator went

¹ Patterson’s original complaint was stricken by the trial court in 1996 for unknown reasons and reinstated upon Patterson’s motion in 2004. However, during the interim, the trial court determined that Shelton was the rightful General Overseer of the Church and President of the Corporation. By decision dated April 10, 2001, this Court affirmed the trial court’s determination and our Supreme Court denied separate petitions for allowance of appeal. *See Church of the Lord Jesus Christ of the Apostolic Faith v. Shelton* (Pa. Cmwlth., Nos. 376, 559 C.D. 2000, filed April 10, 2001), *appeals denied*, 567 Pa. 766, 790 A.2d 1019 (Pa. 2001), and 812 A.2d 1232 (Pa. 2001).

² By order dated July 10, 2006, the trial court confirmed the Arbitrator’s award in favor of Patterson and against Shelton and entered judgment in conformity therewith.

beyond the scope of his authority in fashioning relief. *See Shelton v. Patterson*, 942 A.2d 967 (Pa. Cmwlth. 2008). This Court remanded the matter to the trial court to determine whether Patterson was entitled to relief under the [Pennsylvania Nonprofit Corporation Law of 1988 (NCL), 15 Pa.C.S. §§ 5101-5998; 6101-6146].

On remand, Shelton moved for summary judgment on the ground that Patterson lacked “statutory standing” under Section 5782 of the NCL, 15 Pa.C.S. § 5782. Shelton argued that only an officer, director, or member of a nonprofit corporation has “statutory standing” to enforce a right of a nonprofit corporation through a derivative action.

...

Shelton pointed to the Corporate Trustee’s Articles of Incorporation which limited its membership in the nonprofit corporation to its Board of Trustees. Shelton asserted that because Patterson was never a member of the Board of Trustees he was never a “member” of the Corporate Trustee, and thus, he had no “statutory standing” to bring claims that are derivative of the Corporate Trustee’s rights.

The trial court agreed that under Section 5782 of the NCL, Patterson could only bring suit if he was a member of the Corporate Trustee at the time of the alleged events outlined in the Complaint. The trial court looked to Article IX of the Articles of Incorporation which states: “membership in the corporation [Corporate Trustee] shall consist of those persons serving as members of the Board of Trustees.” The trial court concluded that because Patterson had never been a member of the Board of Trustees he was not a member of the Corporate Trustee. The trial court

reasoned that because the NCL created the cause of action and designated who may sue; standing was a jurisdictional prerequisite to any action. *Grom v. Burgoon*, 448 Pa.Super. 616, 672 A.2d 823 (Pa. Super. 1996). The trial court “finding no possible way to affirm that [Patterson] has standing” granted the motion for summary judgment and dismissed the case. *Id.*, slip op. at 1-6 (emphasis in original).

Our 2017 decision further summarized as follows:

On appeal, this Court reversed the order of the trial court, concluding that Patterson, as a member of the Church congregation, was “part of the beneficiary class for which the Corporate Trustee held the Church’s assets in trust,” and, as such, had “standing to bring this action to enforce his own rights and the rights commonly held by all beneficiaries to obtain restoration to the Church of its full losses.” *Id.*, slip op. at 16-17. We remanded the matter to the trial court to conduct a trial on the remaining factual and legal issues raised by Patterson in his complaint.

On July 15, 2014, the trial court commenced a non-jury trial. During the course of the trial, an issue arose as to whether the trial court had subject matter jurisdiction over this dispute. Following argument, the trial court concluded that it lacked such jurisdiction because the matter requires interpretation of religious doctrine and the same was prohibited by the First Amendment. Hence, the trial court issued an order granting a motion to dismiss filed by Shelton. Patterson appealed to this Court, but we affirmed the trial court’s order, concluding that the trial court ably disposed of the subject matter jurisdiction issue in its opinion. Patterson thereafter sought allowance of appeal with the Pennsylvania Supreme Court, but the same was denied. Patterson subsequently filed a

petition for a writ of certiorari with the United States Supreme Court, but the same was similarly denied.

On May 27, 2016, Patterson filed a motion with the trial court to determine certain orders void based on the lack of subject matter jurisdiction. In his motion, Patterson sought an order from the trial court “declaring that the January 31, 2008 Commonwealth Court Order, and all other post-July 10, 2006 rulings/orders not consistent with the judgments on the binding common law arbitration award, are void” Patterson alleged that the trial court “finally determined what [he] has been arguing all along – that there was no subject matter jurisdiction as the parties had agreed to resolve all of their disputes through binding, common law arbitration.” In sum, Patterson alleged that only the 2006 binding arbitration award remained valid and asked the trial court to declare as void all post-July 10, 2006 rulings/orders that were inconsistent with that award because the courts lacked subject matter jurisdiction to alter the same.

By order dated July 14, 2016, the trial court denied Patterson’s motion.³ Patterson filed a notice of appeal with the trial court. The trial court thereafter issued an opinion in support of its order explaining that Patterson mischaracterizes its previous ruling regarding lack of subject matter jurisdiction. Contrary to Patterson’s allegations, the trial court did not rule that it lacked subject matter jurisdiction because of the

³ Shelton had filed a motion to strike Patterson’s motion as moot, alleging that Patterson’s motion “defies logic and violates bedrock principles of jurisdiction and substantive law.” In this motion, Shelton also sought sanctions for Patterson’s alleged bad-faith, frivolous motion. However, by separate order of the same date, the trial court dismissed Shelton’s motion to strike as moot in light of its order denying Patterson’s motion.

parties' agreement to litigate through binding arbitration; but rather, the trial court ruled that it lacked such jurisdiction due "to the Deference Rule, which prohibits courts from exercising jurisdiction over cases that would require them to decide ecclesiastical questions." In other words, the trial court explained that it had no ability "to decide religious questions" and that its prior opinion "never mentions the issue of jurisdiction as it relates to common law arbitration." Further, the trial court explained that it was "without jurisdiction to strike the Commonwealth Court's January 2008 order vacating the Arbitration Award" and lacked the authority to disturb an appellate court ruling. *Id.* For the same reasons, the trial court noted that it had no power to reinstate the arbitration award which had been vacated on appeal. *Patterson*, 175 A.3d at 446-47 (citations omitted).

Following an appeal by Patterson, this Court reversed the trial court's July 14, 2016 order, concluding as follows:

In this case, Patterson's original complaint filed with the trial court sought relief under the NCL. The parties ultimately agreed to proceed to binding arbitration in November 2005, with no right to appeal, as memorialized in an order from the trial court dated January 10, 2006. This order also dismissed the case from the trial court per agreement of the parties. Nevertheless, after the Arbitrator ruled in Patterson's favor, Shelton filed a petition to vacate the arbitration award with the trial court. While the trial court denied Shelton's petition, this Court reversed the trial court's decision, vacated the arbitration award, and remanded to the trial court for further proceedings relating to these NCL claims. However, because this Court affirmed the trial court's decision concluding

that it lacked subject matter jurisdiction over his remaining NCL claims on the basis that resolution of the same would require the trial court to interpret religious doctrine, something it was prohibited from doing under the First Amendment, any prior decisions relating to the same are null and void. As a result, the only valid, remaining determination in this case is the binding arbitration award, as agreed to by the parties in November 2005, and confirmed by the trial court. As noted above, the trial court, by order dated July 10, 2006, confirmed the Arbitrator's award and entered judgment in favor of Patterson and against Shelton in an order dated July 20, 2006.⁴ Thus, Patterson's remedy lies with enforcement of that judgment. *Patterson*, 175 A.3d at 449-50.⁵

Shelton's Most Recent Motion

On January 31, 2018, Shelton filed the present motion with the trial court seeking to strike all prior orders of the trial court as void for lack of subject matter jurisdiction. In this motion, Shelton alleged that "Pennsylvania courts do not have and never had subject matter jurisdiction over this religious dispute"

⁴ A similar order was issued by the trial court on October 12, 2006, entering judgment in favor of Patterson. Additionally, the final adjudication and decree of the Arbitrator was entered as an order of the trial court on April 17, 2017. These orders, dated July 10 and 20, 2006, October 12, 2006, and April 17, 2017, collectively represent the last valid judgments in this case.

⁵ Shelton subsequently filed a petition for allowance of appeal from this Court's 2017 decision with our Pennsylvania Supreme Court, but the same was denied by order dated July 31, 2018. *Patterson v. Shelton*, 190 A.3d 592 (Pa. 2018). Shelton filed a petition for writ of certiorari with the United States Supreme Court, but the same was recently denied by order dated February 19, 2019. *Shelton v. Patterson*, — U.S. —, 139 S.Ct. 1211, — L.Ed.2d — (2019).

and that “[t]herefore, [the trial court] must strike *all* of its prior orders as void *ab initio* and decline to take any further action in this matter.” (Reproduced Record (R.R.) at 90.)⁶ Shelton also simultaneously filed a brief in support of his motion.

Patterson filed a response asserting that Shelton’s motion constituted an impermissible attack on this Court’s prior orders dated November 29 and December 22, 2017. Patterson stated that said orders held that the 2006 binding arbitration award was the only valid, remaining determination in this case, referenced the trial court’s confirmation of the award and entry of judgment in his favor, and directed any attempts to enforce this judgment to the trial court. Patterson also contended that Shelton’s motion attempted to resurrect legal arguments that had been previously rejected by this Court and sought relief that wholly contradicted our prior opinions and orders. In an accompanying brief, Patterson noted that Shelton understood the impact of this Court’s November 29, 2017 order, as evidenced by his filing of an application for reargument providing that “[t]he apparent effect of the panel’s decision is the retroactive validation of an arbitration decision” (R.R. at 371.)

By order dated March 21, 2018, the trial court denied Shelton’s motion. Shelton thereafter filed a notice of appeal with this Court. The trial court subsequently issued an opinion in support of its order. The trial court noted that it had long ago denied a petition from Shelton to vacate the arbitration award, confirmed the award in favor of Patterson, and entered judgment in his favor. The trial court also noted that

⁶ Shelton’s reproduced record does not contain the lowercase “a” in the page number as required by Pa.R.A.P. 2173.

this Court had recently declared the arbitration award to be the last valid judgment in this matter. The trial court explained that it was bound by this Court's prior decisions and had no authority to grant Shelton's motion.

Discussion

On appeal, Shelton reiterates his arguments that the trial court was required to strike all of its prior orders as void for lack of subject matter jurisdiction and that no court can take any further action in this matter. For the following reasons, we disagree.

In our prior decision and order dated November 29, 2017, this Court specifically held that:

[T]he only valid, remaining determination in this case is the binding arbitration award, as agreed to by the parties in November 2005, and confirmed by the trial court. As noted above, the trial court . . . confirmed the Arbitrator's award and entered judgment in favor of Patterson and against Shelton in an order dated July 20, 2006. Thus, Patterson's remedy lies with enforcement of that judgment.

Patterson, 175 A.3d at 450. In a subsequent clarification order dated December 22, 2017, this Court identified the various dates on which the trial court confirmed the Arbitrator's award, entered judgment in favor of Patterson, and, most importantly, directed "[a]ny attempts to enforce these orders . . . to the trial court." (R.R. at 306.) In other words, this Court found the trial court's orders relating to the Arbitrator's award to be valid and enforceable against Shelton and the trial court was bound by this Court's prior orders.

Moreover, as Patterson notes in his brief, Shelton's most recent attempt to relitigate the validity of the trial court's orders confirming the Arbitrator's award and entering judgment in Patterson's favor is barred by the doctrine of the "law of the case." Our Supreme Court has declared that the "law of the case" doctrine prohibits an appellate court, upon a second appeal, from altering "the resolution of a legal question previously decided by the appellate court in the matter." *Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326, 1331 (Pa. 1995); *see also In re Pennsylvania Turnpike Commission*, 715 A.2d 1219, 1223 n.10 (Pa. Cmwlth. 1998) ("Issues decided by an appellate court on a prior appeal between the same parties become the law of the case and will not be considered on appeal.") Further, while Shelton is correct that our 2017 decision did not expressly overrule this Court's 2008 opinion (relating to the arbitrator exceeding the scope of his authority), the latter decision did in fact effectively overrule the 2008 opinion by holding that any prior decisions were null and void and that the only valid, remaining determination in this case was the binding arbitration award.

Conclusion

Because Shelton's current appeal challenges the trial court's prior orders in this case confirming the arbitration award and entering judgment in favor of Patterson, which we have previously ruled to be the only valid, remaining determinations herein, thereby precluding any further challenge under the "law of the case" doctrine, the trial court did not err in denying Shelton's petition seeking once again to strike these orders.

Accordingly, the order of the trial court is affirmed.

13a
ORDER

AND NOW, this 15th day of April, 2019, the order of the Court of Common Pleas of Philadelphia County, dated March 21, 2018, is hereby affirmed.

14a

APPENDIX B

IN THE COMMONWEALTH COURT OF
PENNSYLVANIA

No. 439 C.D. 2018

ANTHONEE PATTERSON

v.

KENNETH SHELTON,

Appellant.

ORDER

NOW, June 14, 2019, having considered appellant's application for reargument, the application is denied.

/s/ Mary Hannah Leavitt
MARY HANNAH LEAVITT
President Judge

APPENDIX C

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 362 EAL 2019

ANTHONEE PATTERSON,

Respondent,

v.

KENNETH SHELTON,

Petitioner.

Petition for Allowance of Appeal from the
Order of the Commonwealth Court

ORDER

PER CURIAM

AND NOW, this 26th day of November, 2019, the
Petition for Allowance of Appeal is DENIED.

A True Copy
As of 11/26/2019
Attest: /s/ John W. Person Jr.
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

APPENDIX D

RULES AND BY-LAWS

of

THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH

ARTICLE I

SECTION 1: Each annual session of this Body shall be designated and called The General Assembly of The Church of the Lord Jesus Christ of the Apostolic Faith. Any session called by the General Overseer shall also be designated as a general assembly, and shall have all the rights and powers and authority of the annual general assembly.

SECTION 2: The officers thereof shall consist of a General Overseer and a General Secretary.

ARTICLE II

SECTION I: The Bishop and Apostle as President of the Board of Trustees shall have the power to arrange for the registration of this Corporation in all the states of the United States in which there shall be a church home, or shall arrange to incorporate anew in any of the states or possessions of the United States, or any foreign country.

SECTION 2: On and after the first day of September, 1961, the General Overseer, His Holy Apostolic Blessedness, Bishop S. McDowell Shelton is given blanket authority to conduct all negotiations and closings in the purchasing, selling, leasing, renting, or mortgaging of any property real or personal for the General Assembly of The Church of the Lord Jesus Christ of the Apostolic Faith. The title to any real or personal property for the use and benefit of the

17a

General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith shall be acquired and held in the name of The Trustees of the General Assembly of the Church of the Lord Jesus Christ, a non-profit corporation incorporated under laws of the Commonwealth of Pennsylvania.

The Trustees, by a majority vote, may vary the method of acquiring property provided they first acknowledge that the property belongs to and is held for the use and benefit of the General Assembly of The Church of the Lord Jesus Christ of the Apostolic Faith.

No member of a local assembly of this Church shall have any right, title or interest in any property of the General Assembly or of the local assembly of the Church. If a member withdraws from this Church, they shall have no claim to the real or personal property of the General Assembly or of the local assembly of the Church.

ARTICLE III

All motions of importance and resolutions must be submitted in writing to the General Overseer or any Committee named and designated by him. The power of submitting or not submitting a motion or resolution to the General Assembly shall be left entirely to the discretion of the General Overseer.

ARTICLE IV

The quorum for the transaction of business before the General Assembly shall be fifty members voting before matters. of the General Assembly. The presiding officers shall call for the yeas and nays, which shall be recorded by the general secretary. A majority of those present and voting shall determine such matters of the General Assembly, except in the case of the

18a

election of officers, which is otherwise provided for here in these By-Laws.

ARTICLE V

SECTION I: Elders and ministers desiring to hold credentials with this Body must have the one baptism, as prescribed in Acts 2:4, 2:38; 10:44-48; and 19:1-5, and believe, teach and preach the same, and shall have prescribed to such baptism for at least one year.

SECTION 2: He must be able to read and write.

SECTION 3: He must be able to conduct a religious service when necessary.

SECTION 4: He must be able to officiate at a Marriage Ceremony, Baptismal Service and the Lord's Supper.

SECTION 5: Any person desiring to be a licensed worker in this Body, may obtain such license by complying with the following requirements:

- (a) Must have the one baptism as above set forth
- (b) Believe the same
- (c) Must have had some fruits of the Spirit in their lives.
- (d) Must have letter of recommendation from his (or her) home assembly, wherein he (or she) has been working showing fitness and ability
- (e) Shall present such letter, with application to the General Secretary, who shall thereupon issue licenses to such worker; General Secretary is to submit such letter to General Overseer.

SECTION 6: A written recommendation is required from the State Elder over the state in which a minister

19a

lives when applying for his first papers with this Body. Such a letter should be sent with the application.

SECTION 7: Any minister holding credentials with this Body, who may be charged with sin by two or three witnesses shall be tried by a Committee made up of the General Overseer or his nominee, State Elder or another man of good report among the saints designated by the General Overseer.

SECTION 8: No minister or missionary shall be allowed to hold credentials with this Body who teaches against any of the doctrine of The Church of the Lord Jesus Christ of the Apostolic Faith.

SECTION 9: After any member or officer has been duly accused of an offense punishable by The Church, his status in The Church shall be determined solely by the General Overseer, until trial. Nevertheless, this provision shall not be interpreted to, in any wise, deprived. The General Overseer has the right to remove any elder, minister, officer or member of The Church from office or membership without accusation or trial if he may deem it necessary for the good of the Church of the Lord Jesus Christ of the Apostolic Faith.

ARTICLE VI

Ordination may be had and given by the consent of the General Overseer or with the assistances of whoever he may appoint.

ARTICLE VII

The General Overseer, His Holy Apostolic Blessedness, Bishop S. McDowell Shelton shall continue to hold the office of General Overseer, Trustee and President of the Board of Trustees during his life time. The General Secretary shall be elected for the term of one year. The General Secretary is eligible to serve as many

20a

successive terms as he may be elected to by the General Assembly. He shall hold office until his successor is elected and qualified. The General Secretary shall be approved and nominated by the General Overseer and will be elected upon receiving a majority vote of those voting on the specific questions of his election at the General Assembly.

ARTICLE VIII

The person offering a resolution or motion may open and close the discussion thereon and such person may take not more than fifteen minutes of time on any motion, resolutions, or questions unless special permission for such purpose is given.

ARTICLE IX

The headquarters of The Church of the Lord Jesus Christ of the Apostolic Faith is located on Apostolic Square in Philadelphia, Pennsylvania. However, the session of the Body may be held in any other city of the United States or foreign country, should the General Assembly or General Overseer or General Overseer only so desires.

ARTICLE X

The General Overseer shall have full authority to determine any question concerning parliamentary procedures and there shall be no appeal from the decision of the General Overseer. The General Overseer in his discretion may adopt the rules of procedure set forth in Robert's Rules of Order. The General Overseer shall be the full arbitrator on all matters affecting the interpretation doctrine applicable to The Church of the Lord Jesus Christ.

ARTICLE XI

These rules, by-laws and regulations may be amended at any session of the General Assembly, provided that such proposed amendment is submitted in writing on the day prior to action thereon to the General Secretary. Any proposed amendment shall be first submitted to the General Overseer' who's approval of the proposed amendment shall be a condition presented to the submission of the amendment to the General Assembly. A majority vote of those voting on the specific proposed amendment shall be necessary before this approval. This paragraph does not apply to any change of By-Laws or regulations submitted by the General Overseer, who may, at any time, present any motions or resolutions.

ARTICLE XII

The elders and licensees shall be subject to the state elders and in cases of insubordination and grievance discord, shall be tried by a Committee. When an appeal is taken from the decision of the state elder, or when trial by Committee is proper, said Committee shall be composed of the General Overseer or his nominee, the state elder and another man of good report among the saints chosen by the General Overseer may at any time assume original jurisdiction, in any such matter and the decision of the General Overseer shall be final and binding on all persons. The General Overseer shall have full power to suspend or expell any person so tried from the General Assembly of The Church of the Lord Jesus Christ from the local assembly thereof.

ARTICLE XIII

In case of majority complaint against an elder or officer, or member, the General Overseer shall appoint an investigating committee to investigate the complaint.

The said Committee will report any violations of the doctrine, rules, regulations or moral laws and the General Overseer shall thereupon take such action as he may deem warranted. A final appeal may be taken to the General Overseer and the General Overseer may at anytime assume original jurisdiction, in any such matter and the decision of the General Overseer shall be binding on all persons.. The General Overseer shall have full power to suspend or expell any person so tried from the General Assembly of the Church or from any local assembly thereof.

ARTICLE XIV

The affairs of the General Assembly shall be managed by a Board of Trustees. The General Overseer, by virtue of his office, shall always be a Trustee and the President of the Board of Trustees. The other trustees shall be elected by the General Assembly annually and shall serve for a term of one year or until their successors are qualified and elected. Every trustee is eligible for re-election for as many terms as the General Assembly may elect him. The General Assembly may elect only to the office of trustee, a person first approved and nominated by the General Overseer.

ARTICLE XV

Any conflict existing in the rules, regulations and by-laws of the General Assembly of The Church of the Lord Jesus Christ of the Apostolic Faith, or any matters not covered by the rules and regulations shall be determined by the General Overseer and his ruling thereon shall be final.

ARTICLE XVI

SECTION 1: The General Secretary shall succeed temporarily to the office of the General Overseer, upon

23a

the death of the General Overseer or by the appointment by the General Overseer and shall hold office only until the next General Assembly elects him or a successor. A statement of the Divine Apostolic Authority of the General Overseer is to appoint his successor with vote of the General Assembly.

SECTION 2: However, an ordained elder shall be eligible regardless of the time of his ordination or the length of his service as elder.

ARTICLE IXVII

All officers local, state, national or international of The Church of the Lord Jesus Christ are appointed by the General Overseer and are holding office at his will and pleasure and can therefore be removed by him.

ARTICLE IXVIII

All money raised or collected by any individual member, local church, agency or auxiliary of The Church of the Lord Jesus Christ must be sent within one week of its receipt to the President of the Board of Trustees to Headquarters on Apostolic Square, Philadelphia, PA; 19146, as funds of the general assembly of The Church of the Lord Jesus Christ of the Apostolic Faith. The tithes and offering of whatever kind, nature or collection by any elder, local minister, any other officer or member, is the property of the General Elder. Although all tithes and love offerings are the personal property of the General Overseer, the present General Overseer does not, at this time assert his discretion to have these tithes, and love offerings set aside as his personal property.

24a

ARTICLE XX XIX

All churches established or affiliated with the General Assembly of The Church of the Lord Jesus Christ is under the control of the General Elder and is subject to the Doctrine expressed and initiated by him. The General Overseer, by his reason of office, has blanket authority in directing the mood of religious worship, all affiliations of The Church of the Lord Jesus Christ of The Apostolic Faith, as well as broadcasting and any phase of publication.

ARTICLE XXI XX

Qualifications and membership shall be judged by the following:

- (a) Tithe paying
- (b) Life being consistent with the doctrine of The Church of the Lord Jesus Christ of the Apostolic standard
- (c) Regular attendance except when this is for the reason of long sickness or physical impossibilities; at such time the member is required to remain in contact with the General Overseer at regular intervals to explain reason of absence; as well as to one in charge of local assembly.

BY-LAWS

BE IT RESOLVED THAT:

1. All doctrinal controversies shall come before the General Overseer for consideration and final settlement.
2. All payments of tithes by elders, licensees, ministers and members as commanded in Malachi 3:9 is basic to our doctrinal salvation and necessary for the growth and advancement of The Church.
3. All churches and auxiliary functions of this body are to report every convention. This includes all ministers, elders, licensees, missionary and any other officer.
4. The WHOLE TRUTH magazine which was established in May, 1948 shall be the official church organ and it has been decided that His Holy Apostolic Blessedness be Editor-in-Chief.
5. All churches in this body must report to their state or district overseer on their activities and he, in turn, must send his report along with the church report once a month to the General Overseer accompanied by the finance raised.

APPENDIX E

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Court of Common Pleas
March Term, 1947
No. 2175

ARTICLES OF INCORPORATION

To the Honorable, the judges of the said court:

WHEREAS it is the desire of the undersigned to have incorporated an organization known as THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, in accordance with the act of Assembly of May 5, 1933, P.L. 289, as amended, and known as the Non-profit Corporation Law.

NOW, THEREFORE, We, the subscribers and incorporators, being of full age, residents of the Commonwealth of Pennsylvania and citizens of the United States, do declare the following to be the purpose and conditions of the proposed corporation, for and upon which they desire to be incorporated.

I. The name of the proposed corporation shall be the Trustees of THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

II. The location and post office address of it's initial registered office in this commonwealth shall be 22nd and Montgomery Avenue, Philadelphia 21, Pennsylvania.

III. The purpose for which is to be formed are:

To take, receive, have, hold and manage real and personal property in trust for the uses and purposes

specified by the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith or by the will of deed of the donors, with power to convey the same free and discharged of all trusts. The said purposes do not contemplate Pecuniary gain or profit, incidental or otherwise, to it's members.

IV. The corporations shall exist perpetually.

V. The name, place of residence and post office address of each of the incorporators are as follows:

Bishop Sherrod C. Johnson
1748 N. Twenty Second St. Phila.

Carey S. Bolling
3939 Aspen Street, Philadelphia,

Matthew Roundtree
2121 Berks Street, Philadelphia,

Andrew Henry
2424 W. Turner Street, Phila.

James McDowell
1802 N. 26th Street, Phila.

VI. Legal title to all property and the temporal interest of the corporation shall be vested in and managed by six trustees constituting a board of trustees, subject to the right of the corporation from time to time, to increase or decrease their number, as permitted by law, in such manner as may be provided by the by-laws.

2. Trustees shall be elected by the ballot by members of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith at annual, regular or special meetings held for that purpose at the times, for the terms, in the manner and qualifications provided

by the by-laws and shall hold office until their successors are elected.

3. The following shall hold office as Trustees until their successors are elected:

Bishop Sherrod G. Johnson	Carey S. Bolling
Matthew Roundtree	Wallace E. Young
Andrew Henry	James McDowell

VII. The Corporation shall be organized upon a non-stock basis.

VIII. The Corporation shall begin business with assets in the amount of approximately Sixty-five thousand (\$65,000.00) Dollars which the corporation will have to start it's corporate function.

IX. Membership in the corporation shall consist of those persons serving as members of the Board of Trustees, Members shall be subject to such rules and regulations as may be provided in the by-laws.

X. By-laws shall be adopted and from time to time may be amended by a majority of members of the Board of Trustees present at any annual, regular or special meeting of the board of Trustees duly convened after notice to the members of such purpose.

XI. Any amendment or amendments to these Articles of Incorporation should be proposed at any annual, regular, or special meeting called for the purpose, which shall specify the proposed amendment or amendments and written notices thereof shall be mailed to each member at his known address at least Ten (10) days before such meeting, and if the proposed amendment or amendments be agreed upon by a majority of the members, such proposed amendment or amendments shall be considered approved.

APPENDIX F

**TELEPHONE (215) 735-8982
FAX (215) 735-4287**

**Church of the Lord Jesus Christ of the Apostolic Faith
BISHOP KENNETH N. SHELTON (BISHOP OMEGA) -
PASTOR AND GENERAL OVERSEER
HEADQUARTERS: 701 SOUTH 22ND STREET
(22ND & BAINBRIDGE STREETS)
POST OFFICE BOX 3880 -
PHILADELPHIA, PA 19146-0180, U.S.A.**

COUNCIL OF PRIESTS PROCLAMATION

We the members of the Council of Priests, an ecclesiastical body within the Church of the Lord Jesus Christ of the Apostolic Faith and a Religious Judicatory empowered to determine. matters of ecclesial nature take exception to the findings of an Arbitrator in regard to the Patterson vs. Shelton Arbitration and find his adjudication unreasonable, inequitable and an impermissible intrusion into the doctrinal realm of Church governance. Further, the stated intention to place non-members in positions of authority within the Church organization is not acceptable and contrary to our doctrine, by-laws, customs and practices.

We therefore Proclaim that we will not accept Anthonee Patterson or any of those who aid, abet or associate with him as members or officers of this Church, as they have demonstrated that they hold religious and doctrinal views contrary to our own.

8-31-06

APPENDIX G

**COURT OF COMMON PLEAS
CIVIL DIVISION**

No. 2945

Term: July 1995

ANTHONEE' PATTERSON,

Plaintiff(s),

vs.

KENNETH SHELTON and ERIK SHELTON

JOHN W. MORRIS, Esquire
Attorney I.D. No. 04125
One Penn Square West
Suite 1300
Philadelphia, Pa 19102
(215) 569-5154

LEK DOMNI, Esquire
Attorney I.D. No.
1429 Walnut Street
Suite 1001
Philadelphia, Pa 19102
(215) 665-9967

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages. you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in

writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Reference Service
One Reading Center
Philadelphia, Pennsylvania 19107
Telephone: 238-1701

JOHN W. MORRIS, Esquire
Attorney I.D. No. 04125
One Penn Square West
Suite 1300
Philadelphia, PA 19102
(215) 569-5154

LEK DOMNI, Esquire
Attorney I.D. No. 45751
1429 Walnut Street
Suite 1001 Philadelphia, PA 19102
(215) 665-9967

Attorneys for Plaintiff Anthonee' Patterson

THIS IS NOT AN ARBITRATION CASE AN ASSESSMENT OF DAMAGES HEARING IS NOT REQUIRED

32a

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

No. 2945

July 1995 Term,

ANTHONEE' PATTERSON
1544 W. 25th Street Jacksonville, FL 32209

v.

KENNETH SHELTON,
701 S. 22nd Street
Philadelphia, PA 19146

and

ERIK SHELTON
701 S. 22nd Street
Philadelphia, PA 19146

COMPLAINT

CODE 26070 MISCELLANEOUS: ACCOUNTING
(NON PROFIT CORPORATION)

1. Plaintiff, Anthonee' Patterson, resides at 1544 W. 25th Street, Jacksonville, Florida.
2. Plaintiff Patterson is a life-long member of the Church of the Lord Jesus Christ of the Apostolic Faith. He is an Elder, Minister and Bishop of the Church and the active leader of congregations in Florida and Pennsylvania and throughout the United States and foreign countries.
3. Defendants Kenneth Shelton and Erik Shelton are also members of the Church and, since on or about

October 17, 1991, have exercised de facto control over the Church, its related nonprofit Corporation, its property and accounts.

4. The Church of the Lord Jesus Christ of the Apostolic Faith is a religious society whose governance and property are controlled and held by a domestic nonprofit corporation entitled The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.

5. On or about December 10, 1947, The Trustees of the General Assembly of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc. was duly incorporated according to the laws governing Pennsylvania corporations in the Commonwealth of Pennsylvania. Its present corporate offices are located at 6 North 9th Street, Suite 200, Darby, Pennsylvania.

6. The chief officer of the corporation is known as the President and General Overseer, whose election according to the bylaws of the corporation, is confirmed by a vote of The General Assembly.

7. On or about October 13, 1991, the President and General Overseer of the Corporation, Bishop S. McDowell Shelton, died. Immediately thereafter Kenneth and Erik Shelton took physical control of various accounts, trusts and property of the Corporation.

8. On May 28, 1994, after due notice and upon a quorum of The General Assembly, Anthonee' J. Patterson was duly confirmed as General Overseer and President of the Corporation.

9. Despite the election of Anthonee' J. Patterson as General Overseer and President of the Corporation, defendants Kenneth and Erik Shelton have refused to relinquish control of the various accounts, trusts

and properties of the Corporation. On the contrary, Kenneth Shelton has assumed for himself the office of General Overseer and President.

10. Although defendants Kenneth and Erik Shelton have taken de facto control of the Corporation and its property and have thereafter attempted to install various corporate officers, they have operated the Corporation in total disregard of the interests of the members and requirements of law. Specifically, the defendants have failed for the past five years to present an annual report of financial affairs and activities as required by 15 Pa.C.S.A. §5553. Similarly, the defendants have failed to file tax returns as required by federal and state law. Nor have the defendants accounted to the Treasurer or General Assembly for the monies which they have controlled.

11. Throughout the period of de facto corporate control, defendants Kenneth and Erik Shelton have routinely and flagrantly violated the Bylaws of the Corporation as well as the Articles of Incorporation. These violations include, but are not limited to, the following:

- a) By calling an unauthorized meeting without due notice of The General Assembly on December 29, 1991 for the purpose of assuming illegal control of the Church corporation and all of its assets for their own personal wealth; (violates I, Sec. I.)
- b) By failing to call regular and scheduled meetings of The General Assembly;
- c) By passing improper resolutions at the December 29, 1991 meeting of The General Assembly and thereafter without submitting those resolutions in writing to the rightful President and

General Overseer of the corporation for approval as required; (violates Art. III.)

- d) By unilaterally ordaining Church officials without the consent of the President and General Overseer of the Church corporation;
- e) By improperly appointing their allies as Trustees and as other officials without regard to the legal procedures for nominating such officers and without submitting such nominations to The General Assembly for confirmation;
- f) By intentionally disregarding the President and General Overseer's sole authority to determine parliamentary procedure at corporate Trustee meetings;
- g) By creating and filling unauthorized offices and positions of power of the corporation;
- h) By ousting and ignoring proper Trustee members all contrary to due process and the Bylaws.

12. Throughout the period of corporate control, defendants Kenneth and Erik Shelton have systematically looted the corporation's accounts and trusts as well as the regular Church collections. Although the defendants have resisted discovery concerning these financial transactions and have made no regular reports, certain misappropriations have been discovered.

- a) In February and March of 1992, Kenneth Shelton personally drove to numerous churches throughout the eastern United States, took physical possession of cash offerings, deposited said offerings into the trunk of his car and converted them to his own use. On the following occasions, he

converted money offerings designated for the Church and failed to account therefore:

- 1) Tuesday, February 4, 1992, in Woodford, Virginia;
- 2) Thursday, February 6, 1992, in Richmond, Virginia;
- 3) Sunday, February 9, 1992, in Elizabeth City, North Carolina;
- 4) Friday, February 11, 1992, in Suffolk, Virginia;
- 5) Thursday, February 13, 1992, in Newport News, Virginia;
- 6) Sunday, February 16, 1992, in Norfolk, Virginia;
- 7) Friday, February 21, 1992, in Baltimore, Maryland;
- 8) Sunday, February 23, 1992, in Philadelphia, Pennsylvania;
- 9) Sunday, March 1, 1992, in Baltimore, Maryland;
- 10) Sunday, March 8, 1992, in Newark, New Jersey;
- 11) Sunday, March 15, 1992, in Ellendale, Delaware.

b) The defendants have depleted The Gresham Trust, a fund held for the benefit of Church members in need of social services. On February 28, 1994, the trust account totaled \$111,537.78. Thereafter, the defendants have made the following unexplained and unauthorized withdrawals:

- 1) March 24, 1994 - cash withdrawal of \$25,000.00;
- 2) March 29, 1994 - withdrawal of \$8,900.00;
- 3) April 12, 1994 - withdrawal of \$7,685.00;
- 4) April 15, 1994 - withdrawal of \$3,952.78;
- 5) April 20, 1994 - cash withdrawal of \$45,000.00;
- 6) May, 1994 - cash withdrawal of \$20,000.00.

As a result of these unauthorized withdrawals, the Trust has now been depleted without any accounting therefor.

c) The Church maintained a bank account at Fidelity Bank, account no. 1656222, which showed an average monthly balance between \$132,000.00 and \$160,000.00 from 1991 to Second Quarter 1992. This account was designated as the Church's "Trustees' General Account" which purpose was to pay bills incurred by the Church. Defendants, however, made the following withdrawals from this Church account contrary to the purpose for which these monies were intended:

- 1) July 8, 1992 - withdrawal of \$40,000.00;
- 2) January 15, 1993 - withdrawal of \$7,000.00;
- 3) January 20, 1993 - withdrawal of \$29,700.00;
- 4) January 22, 1993 - withdrawal of \$3,500.00;
- 5) February 3, 1993 - withdrawal of \$1,500.00;

6) February 11, 1993 - withdrawal of \$5,200.00;

7) February 16, 1993 - withdrawal of \$4,800.00;

8) February 24, 1993 - withdrawal of \$19,833.60.

d) In January 1991, the Church maintained a "Bus Rally Money Account" at Fidelity Bank, account no. 02984052, which at that time had a balance of \$10,585.05. The monies in this account were designated for the purpose of purchasing a Church bus. On February 22, 1993, this account was closed with a zero balance and no Church bus was purchased with this money.

e) The Church maintained two accounts at Midlantic Bank (formerly Continental Bank), account nos. 0192879583 and 0007964711. On or about December 31, 1992, account no. 0192879583 had a balance of \$1,608.75. On or about October 25, 1993, account no. 0007964711 had a balance of \$7,574.18. The monies in these accounts were derived from donations by Church members and designated for the purpose of financially assisting the Church's international missions. Defendants have failed to use these funds for their intended purpose.

f) The defendants have depleted approximately \$64,000.00 from an account at Commonwealth Federal Savings & Loan which funds were dedicated for youth studies. No accounting for these funds has ever been made.

13. As a result of the foregoing acts of the defendants, the corporation has become the personal

instrument of the defendants, its assets have been depleted, it has been disabled in its religious and charitable missions, and its members have become disenfranchised.

14. Only through full discovery and an accounting will it be possible to determine the full extent of these misappropriations.

WHEREFORE, plaintiff requests relief, including relief pursuant to 42 Pa.C.S.A. §5793(b), including:

- a) the appointment of a receiver to take control of the property, accounts and records of the corporation;
- b) an order requiring the defendants, or alternatively the receiver, to issue annual financial reports for the years 1991, 1992, 1993 and 1994;
- c) an accounting of all funds removed from corporate or Church accounts or trusts by Kenneth Shelton, Erik Shelton and any persons acting in combination with them;
- d) an order confirming Anthonee' Patterson as General Overseer;
- e) following the foregoing relief and dissemination of reports to The General Assembly, an order commanding that elections be held for such offices as the Court finds to be vacant;
- f) such other relief as may be deemed appropriate following full discovery of the facts. This matter exceeds \$50,000.00.

JOHN W. MORRIS, Esquire
LEK DOMNI, Esquire

Date: July 17, 1995

40a

By: /s/ John W. Morris
John W. Morris, Esquire
Attorney I.D. No. 04125
One Penn Square West
Suite 1300
Philadelphia, PA 19102
(215) 569-5154

VERIFICATION

I, Anthonee' Patterson, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I make these statements subject to the provisions of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.

/s/ Anthonee' Patterson
Anthonee' Patterson

APPENDIX H

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

[Docketed Complex Lit Center]
[Jan. 9, 2006, J. Stewart]

No. 2945

July Term, 1995

ANTHONEE PATTERSON

vs.

KENNETH SHELTON and ERIK SHELTON

ORDER

AND NOW this 10th day of January, 2006, this Order is a memorialization of the agreement of the parties contained in the court record on Wednesday, November 30, 2005 and Friday, December 2, 2005. Parties agree that Erik Shelton is dismissed as a party in the arbitration of this matter. Accordingly, this matter will be presented as Anthonee Patterson vs. Kenneth Shelton.

All evidentiary rulings will be made by the arbitrator as well as all issuing of subpoenas of persons and documents. By agreement of the parties, the parties will request Judge Nathons at ADR Options as the arbitrator in this matter. If for some reason Judge Nathons declines and the parties cannot agree to an arbitrator within ten (10) days thereafter, this court

will appoint an arbitrator. The parties have agreed that the following six (6) individuals will each participate in the arbitration, three (3) each representing the parties. The six (6) individuals are:

- 1) Elder Samuel Green, Sr.
- 2) Elder George Washington
- 3) Brother George Newsome
- 4) A. Woodward Reagan
- 5) Minister Otis Hunter
- 6) Minister James Brown

Both parties are going to share the costs and fees of the arbitrator and all costs and fees must be paid in a timely manner. This arbitration will be binding on both parties with no right to appeal. The request to have Judge Nathons serve shall be made by both parties within ten (10) days of the date of this Order.

Further by agreement of the parties, both parties are waiving procedural argument such as standing.

Accordingly this case is dismissed from the Court of Common Pleas by agreement of both parties.

BY THE COURT:

/s/ James Murray Lynn, J.
JAMES MURRAY LYNN, J.

APPENDIX I

ADR OPTIONS

Settling Cases Since 1993

Two Commerce Square, Suite 1100
2001 Market Street
Philadelphia, PA 19103-7044
(215) 564-1775 Main
(800) 364-6098 Toll Free
(215) 564-1822 Fax
adroptions.com

ADJUDICATION

No. 2945

ANTHONEE PATTERSON,

Plaintiff

v.

KENNETH SHELTON,

Defendant

July Term, 1995

ARBITRATION

The Arbitrator having been duly appointed on December 2, 2005 by the Honorable James Murray Lynn of the Court of Common Pleas following the dismissal of the above action, sets forth his adjudication of the matter.

Because Plaintiff seeks in his July 24, 1995, Complaint for an accounting of all funds removed from the corporate or church accounts by Kenneth Shelton and persons acting in combination with him and the appointment of a receiver to take control of the property, accounts and records of the corporation, the Arbitrator's jurisdiction is that of a Chancellor in Equity.

The powers of a chancellor are very broad and it is his duty to grant such relief if warranted, and any relief afforded by decree must conform to the case as made by the pleadings and consistent with the relief prayed for and proofs. *Christian v. Johnstown Police Pension Fund*, 421 Pa 240 218 A.2d 746 (1966).

The counterclaim filed by Defendant as pars of his answer to the Complaint seeks \$500,000 in damages as well as an undisclosed sum of punitive damages for alleged criminal acts by Plaintiff in his converting lawful property of the Church Corporation for his own use.

A. LIABILITY FINDINGS:

1. The application for Charter of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith was set forth in the Articles of Incorporation in accordance with the Act of Assembly of May 5, 1933, P. L. 289, as amended, and known as the Non-Profit Corporation Law.
2. The incorporators and subscribers attended a hearing before the Court appointed Master on May 2, 1947. The two most significant points established were: (1) that the real and personal property was to be held in trust for the uses and purposes specified by the General Assembly of the Church by the will or

deed of the donors with power to convey same free and discharged of all trusts, as well as the "purposes do not contemplate pecuniary gain or profit, incidental or otherwise to its members." (2) The application further stated that none of the officers were going to receive a salary and serve without pay - only tithes. When asked by Mr. Griffiths whether any pecuniary gain or profit incidental or otherwise would come to any of the members of the corporation, Bishop Johnson stated that no profit would come to any individual. (N.T. P. 6).

3. Bridget Black, who handled the payroll for the entire church for three years since 1992, prepared checks for signature and indicated without any opposing evidence that Kenneth Shelton was the Bishop and President of the Trustees and was paid a salary as both President and Bishop. (N.T. 46) Whereas Bishop Shelton testified that he was paid \$250,000 per year for minister income only. The receiving of this salary did not comport with the Articles of Incorporation as set forth by Bishop Johnson. When Bishop Shelton became a Trustee he had no knowledge of any salary being voted upon in any trustee meeting. Being a trustee since 1976 he never recalled anyone voting on a salary and had no knowledge of how his father supported him.
4. The Court of Common Pleas in an opinion by the Honorable John Milton Younge dated June 12, 2000, found that Kenneth Shelton was elected General Overseer and President

of the Trustees of the General Assembly. Prior to the September 1992 General Assembly, Kenneth Shelton and Erik Shelton elected themselves as Trustees at an invalid assembly and trustees meeting on December 28, 1991 and December 29, 1991 and again elected themselves as trustees at an invalid assembly and trustees meeting on May 23, 1992 and May 24, 1992 respectively.

5. Between October 13, 1991, and September 1992, Defendant Kenneth Shelton held de facto control over the corporation and its property.
6. Throughout the period of de facto control, Defendant violated the bylaws of the corporation as well as the Articles of Incorporation by accumulating pecuniary gain and profit by systematically reducing the corporation's accounts and trusts as well as the regular church collections, without making any regular reports regarding the misappropriation of the funds.
7. Defendant and his General Administrator, Elder Thomas, have depleted the Gresham Trust, a fund held for the benefit of church members in need of social services. On February 28, 1994, the trust account totaled \$111,537.38. Thereafter the Defendant, and his administration made unexplained and unauthorized withdrawals:

March 24, 1994.	Cash Withdrawal	\$25,000.00
March 29, 1994	Withdrawal	\$ 8,900.00
April 12, 1994	Withdrawal	\$ 7,685.00
April 18, 1994	Withdrawal	\$ 3,952.78
April 20, 1994	Cash Withdrawal	\$45,000.00
May 1994	Cash Withdrawal	\$20,000.00

As a result of these unauthorized withdrawals the trust has been depleted without any accounting therefor.

8. Pennsylvania law sanctions courts in equity to order an accounting of officers of church corporations as to church assets where diversion of church assets from uses to which property was initially dedicated *Archbishop Most Reverend Metropolitan Ambrose Sensyshn v. Karlak*, 462 Pa 348, 341 A.2d 114 (1975); *St. John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 436 Pa. 243, 259 A.2d 419 (1969) cert. Denied 399 U.S. 920 (1970); *Schnorr's* appeal, 67 Pa. 138 (1870)

The Arbitrator finds that no evidence has been offered at any hearing that Anthony Patterson stole any of the Gresham Funds, nor that counsel took any funds. All the withdrawals were signed by Bishop Shelton and John Thomas. Moreover, Bishop Shelton could not recall whether or not the board of Trustees enacted a resolution for the withdrawals. No records are available as to what he and Thomas did with the funds. Bishop Shelton acknowledged that one of his duties is to "protect the interest of the church," that he only places people in position, but as

President of the Board "he did nothing" pertaining to records, and used his judgment but relied on others as President of the Board.

The same explanations were given regarding the Beneficiary Fund with Bishop Shelton having no recollection of writing letters to all the churches- to send all of their money except \$100 to Philadelphia. No accounting was recalled, but he trusted others to be accurate. He never received a quarterly or annual report of finances.

Regarding the National Account, Bishop Shelton was unaware that the purpose of the account was to "pay bills," and was not aware that it was the primary duty of the trustees.

9. Between the years 1991 to 1998 no accounting has ever been given to the General Assembly. At the meeting of the Board of Trustees on September 1, 1992. no mention of any accounting is noted as well as on September 1, 1994, no accounting was provided to the General Assembly. The last public accounting shown in the exhibit was to the General Assembly Convention in 1973.
10. Unexplained checks have been given to various persons connected to the Church:
 1. Ernest Miller ~ June and July 1993 - \$1,800 signed by Defendant
 2. Robin Duckett \$4,500 ~ June 1993.
 3. John C. Thomas (General Administrator) \$5,000 - June 7, 1993 for PAR (Private Apostolic

Residence) who does not reside on church property.

4. Check to Mrs. Shelton ~ \$1,000.
5. Robin Duckett Carachi \$4,000 trip (not church related).
6. Porsche automobile, Judah Jamison ~ \$8,800 payable to Nathaniel Bailey.
7. Arthur Shelton ~ \$3,000 -rent (1995).
8. Ernest Miller ~ rent ~ \$1,832.
9. Patricia Russell ~ \$4,000 ~ (personal use).
10. Judah Jamison ~ 1994 Volvo ~ \$8,942.
11. October 20, 1995 payable to cash ~ endorsed by Judah Jamison \$1,500 and \$3,000 with no accounting to church members.
12. June 11. 1996 ~ Judah Jamison ~ \$2,000 for turkey.
13. Four checks to Judah Jamison between 1996 ~ 1998.
14. PAR checks (3) to Stephen Campbell for "myriad of things" (\$4,900).
15. PAR checks to Judah Jamison ~ \$4,500 ~ June 1994 and July 1994.
16. Judah Jamison ~ \$2,500 ~ Florida trip expense.
17. Rent for Bishop Shelton's Conshohocken Apartment - September 1, 1995 ~ check payable to cash out of church account in the sum of \$2,280 notwithstanding his salary of \$250,000.
18. John W. Young ~ \$1,500 and \$1,750 for PAR.
19. March 1, 1996 ~ Judah Jamison ~ \$2,000 PAR.

20. October 29, 1994 - cash \$3,300 to Judah Jamison.

The use of the code PAR on checks has not been fully explained by any of the witnesses for the defendant and the inference taken is that it was used as a "catchall for all unauthorized expenses."

11. John Thomas, Chief Administrator, oversees the church organization business operation including all financial transactions. The supervisor of employees handling checks and cash in 1994, Dale Courtney Brown, embezzled \$250,000. Elder Thomas made no investigation until informed by the bank. Elder Thomas stated that no trustee was designated to watch finances and bank accounts but he did at times, and was solely responsible for all accounts. He acknowledged that it was his duty to make certain that church finances were protected.

Elder Thomas whose signature and identification appeared on the withdrawal forms for the Gresham Fund had no idea of the purpose of the fund and could not state with any degree of certainty what was done with the money taken.

Two vehicles were purchased, and he did not know in whose name they were titled even though the bylaws require that any purchase be named in the name of the Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith. The \$8,800 for the Porsche auto payable to Nathaniel Bailey may or may not have been used for church business.

On June 20, 1994, Elder Thomas withdrew \$7,000 from the Church Account #2E846373760 which was not his personal account presenting church identification and employee identification. On

August 23, 1994, a withdrawal of \$30,000 was made as well as a \$4,000 withdrawal on September 7, 1998, and on April 19, 1994, \$5,000 with the identification of Church of *the Lord* and Thomas' operator's license.

May 10, 1995 withdrawal \$1,240.

May 25. 1997 13,800 with Elder Thomas' name printed on the form.

May 20, 1998 – \$550 withdrawal. July 19, 1995 ~ \$1,000 withdrawal.

12. The Arbitrator, sitting as Chancellor in Equity, finds that there have been violations of the Articles of Incorporation. The General Overseer, President and Bishop Sharod C. Johnson testified that he does not receive any salary but was maintained by Tythes, and none of the officers were to receive any salary, *were* to serve without pay with no fixed amount, "only tythes" and that no members were to acquire any pecuniary gain or profit incidental or otherwise to any members of the corporation. Because Bishop Shelton and Elder John Thomas have been receiving salaries not in accord with the Articles of Incorporation, they are in violation of the Charter unless and until the Articles of Incorporation are formally amended. Bishop Patterson is to be granted all rights and privileges in determining whether salaries should be included in the amended articles because as the Court stated in *Schnoor's Appeal* 67 Pa. 138, 148 (1870):

"a majority of a church congregation may direct and control. in church matters consistently with the particular and general laws of the organization or denomination to which it belongs, but not in violation of

them, and that in church organizations those who adhere and submit to the regular order of the church, local and general, though a minority are the true congregation and corporation, if incorporated".
(Emphasis added)

Any efforts by the Defendant or the majority to impede or raise any obstacles, legal or otherwise to Plaintiff and his counsel fully participating in this amendment process could result in the suspension of salaries being received. See, *Delta Star, Inc. v. Aschew W. Patten*, Civil Action 96-2183 (W. D. Pa. 1999).

THE DECLINE IN BANK BALANCES AND THE AMERICAN EXPRESS CHARGES

The report of CPA James Stavros on February 11, 1999, as a financial expert is treated as any other expert as defined by Pennsylvania Law. In determining the weight to be given to any opinion we consider the qualifications and reliability of the witness and the reasons given for the opinion. The Chancellor is not bound by the witness' opinion. It can be accepted or rejected as in the case of other witnesses. We give it the weight, if any, to which we deem it entitled.

Mr. Stavros did not have the typical and customary financial and business documents from the church, (i.e., tax returns, financial statements, accounting records, bank statements, etc. Any documents he examined were from subpoena and his opinion was based only on examination of 31 accounts and summary of American Express expenditures and payroll listing of 1990 employees and Gresham Fund disbursement analysis.

The Chancellor notes that the defense did not retain an accountant to counter Mr. Stavros on any area, so that his analysis stands uncontradicted. From September 1, 1991 through 1998, the balance in all 31 accounts declined from a high of \$1,047,662 in September 1992 when Bishop Shelton was declared the General Overseer, President and Lawful Bishop by the Court, to a low of \$78,585 in December 1998. There does not appear any persuasive evidence that this decline was related totally to Church activities and business commitments.

The total American Express charges from February 1992 when Plaintiff and his followers were forcibly removed from the headquarters at 20th & Bainbridge, amount to \$3,478,107. The expert attributed 77% to personal charges or \$2,663,542 and 23% to business or \$812,884 unclassified charges amounted to \$1,682. The Chancellor, when reviewing all the charges made by numerous members, employees and officers finds these allocations appropriate when the charges are specifically reviewed. Examples inspected:

August 26, 1997	Hotel Martinez Cannes France (one night)	\$52,203.27
May 16, 1995	Noga Hilton Intern Geneva, Switzerland (one night)	\$40,255.74
Dec. 26, 1992	Boca Raton Resort & Club Florida (one week)	\$31,784.02

Dec. 26, 1993 Ocean. Grand Palm \$9,536.39
Beach, FL (for N.
S. Bailey as well as
\$45,000 in cash
charges for 12/26
and 12/27)

Nine separate purchases at Victoria's Secret appear as well as a trip to Walt Disney World on January 26, 1994 for \$4,966.

In the related Court Action in Common Pleas, July Term 1994, No. 0914, Defendants sought a Temporary Restraining Order to restrain Plaintiff from interfering with assets, credit cards of the trustees for the church. Judge Gafni entered a Consent Order where the Plaintiff agreed to return control of the assets to Defendant, Bishop Shelton which was done

Paragraph 6 of the Order however, reads that all —credit cards — shall only be used in the ordinary course of business of the Church. The records cited above demonstrate that Defendant was not in compliance with the Consent Order when charges were thereafter made for non-business ventures.

It is contended that all of these listed charges cannot be considered by the Chancellor because they were determined by Judge Dembe on March 12, 1998 when a Motion for Civil Contempt and increase in bond was denied as there has been no significant change in the practices and customs and financial patterns of the corporation and church officials since the entry of the August 1994 Orders.

Res Judicata cannot be employed here. In this 1995 action, the parties are different from the 1994

and 1992 actions. The issues are totally distinct, because the evidence produced in this case is widely different from Judge Dembe's hearing. And the parties stipulated that all Pre-Trial Motions and procedural issues would be waived before the arbitration. (N.T. P.10, 15) Judge Lynn - December 2, 2005.

However, pursuant to the doctrine of res judicata, a final judgment on the merits will bar any future suit between the parties or their privies in connection with the same cause of action. This has not occurred prior to the hearings before this Chancellor Collateral estoppel applies when the issue decided in the prior adjudication was identical with the one presented in the later action, there was a final judgment on the merits and the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in the prior adjudication. That did not occur until the seven- (7) day hearing before this Chancellor. *In re Julio*, 564 Pa. 205, 210, 766 A.2d 33S (2001); *Safeguard Mut. Ins. Co. v. Williams*, 463 Pa. 567, 574, 345 A.2d 664, 668 (1975). In the instant matter the requirement of final, judgment on the merits is not met. The argument from the defense that an unfavorable inference should be drawn because the expert did not appear at the hearing to testify is not accepted. The rules of ADR Options expressly allow reports of experts to be submitted in lieu of their appearing to testify. In addition, the expert did testify before Judge Dembe and was fully examined by defense counsel. Finally, if Defendant felt it necessary to recall Mr. Stavros, subpoenas should have been prepared for the Arbitrator's signature and would have been allowed without any question.

Elder Brown has testified that records of reimbursement for the personal expenditures incurred on the American Express Credit Cards were kept, and some were made available to the Plaintiff or produced for the Arbitrator at the hearings. These records will be part of the accounting to be ordered in the Final Decree.

13. Pursuant to the Articles of Incorporation and Charter, all property purchased by the trustees was to be held in trust for the uses and purposes specified by the General Assembly, and placed in the name of the corporation. However, Bishop Shelton, while President of the Corporation, and with income of \$250,000 paid to him as President and Bishop purchased a home on September 6, 1996, for and in consideration of the sum of \$395,000 titled in his name and that of his wife. Thus the Articles of Incorporation and Charter may have been violated as it prohibits the President of the Corporation from receiving any pecuniary gain from the sale or purchase of property.
14. The Defendant has sold at least two pieces of real estate. The funds for these two and any additional properties have not been accounted for, or if they have, were not produced at the hearings conducted before the Arbitrator. The total cash holdings of 24 million dollars since 1991, according to Bishop Shelton may or may not have diminished. He relies on Elder Thomas who had no idea of whether there was a decline from this sum alleged.
15. On August 11, 1994, the First Fidelity Bank issued an official check #61-027189804-6 for balance to close the account of the Trustees of the General Assembly of the Church of the Lord Jesus Christ. The account number is 3015755048 and the check

amount was \$50,389.21. Minister John C. Shelton Thomas signed the authorization. No evidence has been offered as to how the funds were spent or whether they were properly deposited into the Trustees of Church accounts.

THE DEFENSE OF LACHES

It is settled law that a party asserting laches as a defensive bar must establish: (1) inexcusable delay in bringing the action and (2) prejudice. In *re Mushroom Traps. co.*, 382 F.3d 325 (3d Cir.)Pa. 2004). To establish prejudice of the kind required to support a laches claim. the party must demonstrate that delay caused it a disadvantage in asserting and establishing a claimed right or defense; mere loss of what one would have otherwise kept does not establish prejudice.

The action was commenced on July 24, 1995, and an answer and counterclaim filed on May 24, 1896. Mr. Morris, Plaintiff's prior counsel, advised the Court that the matter was essentially the same as the consolidated actions and was removed from the non-jury trial list. But on March 13, 1996 he advised the Court, "I believe the case should be relisted, but to await disposition of the related cases by the Commonwealth Court." This is not a waiver of the right to proceed with the case. It was merely a request to await the Commonwealth determination of the related actions.

The docket entries show the case being stricken by Judge Moss on February 22, 1996, but reinstated by the Court on February 11, 2005, as a result of the Court correcting removal of the notation of February 22, 1998, to wit: Stricken by Calendar Judge." (Hon. Sandra Mazer Moss) There was no

delay by Plaintiff or his counsel in pursuing this action. The delay was caused by misinterpreting Mr. Morris' statements and the Court's haste in striking the case in February 1996. Moreover, no prejudice has been suffered by Defendant since he has been given notice of the claims herein with the prior actions that are similar to the instant action, all of which have been continuously ongoing between 1995 and 2005.

**B. THE COUNTERCLAIM AGAINST
ANTHONEE' PATTERSON:**

To properly assess the merits of this claim, it becomes necessary to view the history of how Bishop Shelton ascended to General Overseer, and the subsequent actions by Plaintiff.

On December 28, 1991, the Board of Trustees meeting elected themselves as Trustees, an invalid action, under the by-laws as well as the election of Elder Omega Shelton and Elder A. Woodward Regan as co-Presidents, also an invalid action under the by-laws. Shortly thereafter, on February 23, 1992, Elder Nehemiah and his supporters were physically removed from the premises of the church at 20'h and Bainbridge Streets. Prior to this removal, and before the December 28 meeting, Elder Nehemiah filed suit in Common Pleas on November 20, 1991, seeking relief to become General Overseer following the death of Bishop McDowell Shelton on October 13, 1991. This was a meritorious suit because Article 16 of the by-laws as amended in 1962, the General Secretary becomes a General Overseer temporarily to hold office until the next General Assembly elects him or a successor. Elder Nehemiah was the undisputed General Secretary on October 13, 1991,

when the action came before Judge Gafni with Elder Nehemiah's counsel seeking Injunctive Relief. The Court never ruled on the merits of his claim that he was the Overseer until September 1992, but rather denied relief believing that the Court was without jurisdiction to involve itself in a "doctrinal matter." This ruling was in error as the decided case authorities allow the Courts to decide these exact issues. Archbishop Most Reverend Metropolitan Ambrose Senyshyn v. Karlak 462 Pa 348, 341 A2d 114 (1975); Gabster v. Mesaros, 422 Pa 116,220 A2d 639 (1966); Schnorr's Appeal 67 Pa 138 (1870).

The withdrawal of the action by counsel on November 25, 1991, was done without prejudice, which clearly indicated that Elder Nehemiah did not relinquish his claim as General Overseer. When he was physically removed with his followers on February 23, 1992, he had an equal claim to the title of General Overseer, as the election of Bishop Shelton upon a special meeting of the General Assembly on May 24, 1992, was invalid. Elder Nehemiah, rather than contest his removal from the church in a court proceeding assembled his supporters in Darby, Pennsylvania and in August or September 1992, with the General Assembly meeting was confirmed by those present as General Overseer. Bishop Shelton's election in September 1992 as Bishop and President of the Board of Trustees created two General Overseers with no Court at that time ruling that Elder Nehemiah was not validly elected pursuant to Article 16 of the By-Laws.

It was only on June 12,:2000, after all of the acts by Plaintiff in attempting to take control of assets

on behalf of the Trustees in July 1994 after he was elected General Overseer in May 1994, that Judge Younge entered the order that Elder Nehemiah "never was validly confirmed General Overseer by the General Assembly, that Anthonee Patterson was never validly elected Bishop and that Kenneth Shelton was in control of the corporation by way of election in September 1992."

The Chancellor cannot condone the actions of Fincourt Shelton, and Plaintiff in withdrawing funds from the account for the Church of the Lord Jesus Christ of the Apostolic Faith on July 28, 1994, the document to the post office to halt deliveries to the post office box of Bishop Shelton, the cancellation of the credit cards of Bishop Shelton and others while in Chicago and other accounts where monies were withdrawn. However, with no court order in effect at that time declaring that only Bishop Shelton was duly elected General Overseer and no injunction informing Plaintiffs counsel to cease all activities of this nature, they had very legitimate reasons to feel that Anthonee Patterson was duly appointed and elected General Overseer for the Church with full power to act on behalf of the church. Bishop Patterson was accurate in stating to the First Union Bank that his election was occasioned by the death of the former General Overseer Bishop Nehemiah, who succeeded Bishop S. McDowell Shelton after October 13, 1991. The claim by Bishop Shelton that Elder Nehemiah had been absent from the church for 12 years and therefore not entitled to be elevated to General Secretary in 1991, was shown to be not accurate, as Plaintiff produced a Resolution signed by Elder Nehemiah on February 18, 1988, and signed a Resolution at the National Convention of

the General Assembly in August 1991, as well as his being recognized as Secretary General at the October 14th meeting of the Trustees following Bishop McDowell Shelton's death on October 13, 1991.

The Chancellor finds Bishop Patterson to be credible when he testified that the charges in the counterclaim that he "stole money from the Church" are all false; that he came into possession of the money from the banks as "Trustee and deposited all money as Trustees because he didn't recognize Bishop Shelton's authority prior to 1999, and that he accounted for funds taken, gave and released all money to Bishop Shelton's control."

The Chancellor does not -find any unlawful criminal conduct by Plaintiff, his trustees, members or his counsel. His acts, while disturbing and causing inconvenience, embarrassment and undocumented expenses does not warrant an award of \$500,000 in damages. Under all the circumstances an award of \$15,000 is decreed payable to the Trustees of the General Assembly within 30 days of the date of the Final Decree. The damage to the real estate in Jacksonville, Florida as demonstrated by the photographs introduced by defense counsel discloses minor interior disorder of files, chairs and windows. But because no estimate or appraisal has been offered the Chancellor would be speculating on the damage done. Property damage must be proven with particularity which, of course, differs from personal injury matters.

C. CONCLUSIONS OF LAW:

1. The preponderance of the credible evidence both direct, and circumstantial, demonstrates various acts of fraud, mismanagement, conspiracy, breach of fiduciary responsibilities, violations of Bylaws and the Articles of incorporation in seizing Corporate funds and assets, depletion of corporate bank accounts, by Defendant.
2. Unlawful diversions of bank funds by Bishop Shelton to himself and to others named herein for his or their benefit were and are continuing breaches of Defendant's fiduciary responsibility to the Corporation.
3. Defendants have reduced the value of the corporation's equity interest to the collective detriment of all the members of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith.

A Court of Equity cannot decide ecclesiastical questions unless property rights are involved and then only insofar as is necessary to adjudicate the property rights. But, where there is a division in a congregation and the battle to its property comes into question, it is the duty of a Court of Equity to determine in which faction title to its property rests. Under the law of Pennsylvania it is clear that property rests in that faction whether majority or minority, which continues to act in harmony with the laws, usages and customs accepted by the body before the dispute and dissension arose. And THAT faction is the true congregation and THAT corporation, it incorporated: First

Church of Brethren of Lewistown, et al. v. Snider 367 Pa 78, 79 A2d 422 (1950).

The preponderance of evidence is in favor of Plaintiff who has been shown to have acted in harmony with the laws, usages and customs accepted by General Assembly before the dispute and dissension arose. Nevertheless, before any property can vest in Plaintiff's minority, an accounting of all funds removed from Corporate Church accounts or trusts by Bishop Shelton and any persons acting in combination with him, shall be undertaken with full discovery to determine the amounts of misappropriations, within 30 days.

It is further ordered that counsel for both parties shall undertake action to find a person or persons mutually satisfactory to act as receiver to take control of the property, accounts and records.

Any elections for the offices of General Overseer and President of the Board of the Trustees shall await the final results of the receiver's report and accounting.

Any award requiring payment of funds to be paid by Kenneth Shelton and the members of the Board of Trustees under his administration shall await the results of the accounting of all funds described.

A suit for an accounting is in practical effect not one, but two actions providing for two distinct judgments, where the factfinder in the first action is required to determine whether a defendant is liable to account, and if such liability is established, then a second factfinder

may settle the accounts. The subsequent proceeding on the accounting is to determine the amount due the injured party. Standard Pennsylvania Practice 2d sec 81:20, Damirgian v. Damirgian 262 Pa Super 463, 396 A2d 1263 (1978); Hudak v. Walter G. O'Connor Co., IPa D&C 3d 317, 1975 WL 98.

The equitable remedies fashioned by the Chancellor suit the circumstances of this 15-year old litigation in numerous courthouses and before 10-12 different jurists. The Chancellor has devised remedies to fit the circumstances and relations of the parties. See Pennsylvania Human Relations Commission v. School District of Pennsylvania 667 A2d 1173, appeal quashed 671 A2d 1223, Vacated 732 a2d 578 (1995) (Comwlth Pa)

ARBITRATOR NAME	Honorable Edwin E. Naythons, United States Magistrate Judge (Ret.)
SIGNATURE	<u>/s/ Edwin E. Naythons</u>
DATE	April 26, 2006

APPENDIX J

SUPPLEMENT ADJUDICATION

No. 2845

ANTHONEE PATTERSON

Plaintiff,

v.

KENNETH SHELTON

Defendant.

July Term, 1995

ARBITRATION

In the April 26, 2006 Adjudication, the Chancellor, sitting as Arbitrator with equitable powers, ordered that "before any property can vest in Plaintiff's minority, an accounting for ALL FUNDS removed from corporate church accounts or trusts by Bishop Shelton and any persons acting in corroboration with him shall be undertaken with full discovery to determine the amounts of misappropriations within 30 days." (Emphasis added)

Because counsel for Defendant has not recommended any person to act as Receiver, the Chancellor is accepting the Plaintiff's choice of "Glass Ratner" to act as Receiver commencing on the date of the issuance of the Order that follows.

It has been brought to the attention of the Chancellor that newly retained counsel for the Defendant and

the Church have sought to collaterally attack the final judgment on the merits of this fifteen (16) year old litigation by asserting an argument that the Church was not named as a party in the Complaint and hence there is a Fourteenth Amendment violation of taking property without due process.

The Chancellor finds that this collateral attack is without any lawful merit as it is in violation of the Arbitration Agreement entered into by the parties hereto and their counsel that reads in relevant part.

“The undersigned parties also agree that the arbitration will, be final, binding and conducted under the current ADR Options, Inc. Rules of Procedure.” This Agreement to arbitrate is an agreement for common law arbitration unless the parties* agree expressly in writing for arbitration pursuant to the Uniform Arbitration Act a similar statute or other contractual terms.”

More compelling was the statement of Judge Murray Lynn, in his January 10, 2008 Order:

The Arbitration will be binding on both parties with no right to appeal. Further by agreement of the parties, both parties are waiving procedural argument such as standing. Accordingly, this case is dismissed from the Court of Common Pleas by agreement of both parties.

Moreover, all procedural arguments including standing and failure to Join indispensable parties were expressly waived prior to the commencement of the hearings before the Chancellor. It was formally stipulated by counsel for the parties that only the merits of the long standing controversy were at issue,

and the procedure issues that were set forth in Defendant's new matter were to be considered waived.

In any event even were the corporation added as a party Defendant as counsel is asserting, the result would inevitably be the same as the "corporate veil" would be pierced, since the Chancellor has found that failure to adhere to corporate formalities is a factor to be considered in determining to pierce the corporate veil as well as evidence of intermingling of corporate and personal affairs.

Banks v. Hanoverian, 2008 WL 1022 012 at *1NI CCP, Philadelphia, 8/23/05; *Lomax Indus*, 669 Aid 898, Banks, 2008 WL 1522012 at MI.

ARBITRATOR NAME	Hnorable Edwin E. Naythons, United States Magistrate Judge (Ret.)
SIGNATURE	<u>/s/ Edwin E. Naythons</u>
DATE	May 8. 2008

APPENDIX K

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL SECTION

No.: 2945

Control No's. 052941; 060306

ANTHONEE PATTERSON,

Plaintiff,

v.

KENNETH SHELTON AND ERIK SHELTON,

Defendant.

July Term, 1995

MEMORANDUM AND ORDER

Dych, J.

July, 2006

Before me for adjudication, are petitions to Confirm Arbitration Award, Vacate Arbitration Award, and Vacate Supplemental Adjudication Award Orders of Arbitrator. This long and acrimonious litigation dates back to July 1995 and has produced a docket in the Court of Common Pleas running 36 pages.

It is uncontested that on January 10, 2006, the Honorable James Murray Lynn of this Court entered an Order dismissing the case from the Court of Common Pleas by agreement and submitting the matter to Arbitration before the Honorable Edwin E. Nythons,

United States Magistrate Judge (Ret.). All evidentiary rulings were to be made by the arbitrator and the arbitration was to be binding on both parties with no right of appeal. The parties also waived procedural arguments such as standing. (A copy of Judge Lynn's Order is attached hereto and made a part hereof by reference). On April 26, 2006, Judge Nythons issued a comprehensive and scholarly Adjudication followed by a Supplemental Adjudication dated May 8, 2006. (copies of both Adjudications are attached hereto and made a part hereof by reference).

It is clear that a common law arbitration award is binding and may not be set aside absent a clear showing that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused rendition of an unjust and equitable or unconscionable award. 42 P.A.C.S.A. § 7341. Furthermore, the parties explicitly waived any right to appeal (see Judge Lynn's Order and Judge Nythons' Supplementary Adjudication).

I find after a review of the Petitions and Responses as well as Judge Nythons' Adjudications that the Petitions to Vacate are nothing but disingenuous attempts to collaterally attack and evade the Award, since the arbitrator clearly did not misbehave nor render an unconscionable decision.

Accordingly, the following Order is entered:

70a

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL SECTION

No.: 2945

Control No's. 052941; 060306

ANTHONEE PATTERSON,

Plaintiff,

v.

KENNETH SHELTON AND ERIK SHELTON,

Defendant.

July Term, 1995

ORDER

AND NOW, this 10 day, of July, 2006, after consideration, defendants petition and supplemental petition to vacate are DENIED and the Arbitration Award is CONFIRMED.

BY THE COURT:

/s/ Dych, J.

DYCH, J.

71a

APPENDIX L

OFFICE OF THE PROTHONOTARY
COURT OF COMMON PLEAS
Room 284. City Hall
Philadelphia PA 19107

JOSEPH H. EVERES
Prothonotary

To: Kenneth Shelton
444 Darlington Road
Media, PA 19063

COURT OF COMMON PLEAS
(Philadelphia County)

No. 2945

ANTHONEE PATTERSON,

Plaintiff,
vs.
KENNETH SHELTON,
Defendant.

July Term, 1995

Notice

Pursuant to Rule 236 of the Supreme Court of Pennsylvania, you are hereby notified that a Judgment has been entered against you in the above proceeding as indicated below.

JOSEPH H. EVERES
Prothonotary

72a

- Judgment by Default
- Money Judgment
- Judgment in Replevin
- Judgment for Possession
- Judgment on Award of Arbitration
- Judgment on Verdict
- Judgment on Court Findings

If you have any questions concerning this notice,
please call:

Attorney Fincourt B. Shelton, Esquire
(*Insert Attorney's Name*)
at this telephone number: 610-532-5550.

73a

ATTORNEY FOR PLAINTIFF
FINCOURT B. SHELTON & ASSOC., P.C.
By: Fincourt B. Shelton, Esquire
Identification No.: 31598
504 Main Street, Suite 100
Darby, Pennsylvania 19023
(610) 532-5550

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

No. 2945

ANTHONEÉ PATTERSON

Plaintiff,
vs
KENNETH SHELTON
Defendant.

July Term, 1995

PRAECIPE TO ENTER JUDGMENT
ON ARBITRATION AWARD

TO THE PROTHONOTARY:

Please enter judgment on the attached binding arbitration award in favor of the Plaintiff, ANTHONEE PATTERSON, against Defendant, KENNETH SHELTON.

/s/ Fincourt B. Shelton
Fincourt B. Shelton, Esquire
Attorney for Plaintiff

74a

APPENDIX M

ADR OPTIONS

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Pages:16

Re: *Patterson v. Shelton*

Date: 10/03/08

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- For Review
- Plasm Comment
- Rene Reply
- Please Recycle

Comments:

Fincourt Shelton, Esq. – 610-832-8888

Andre Donnie, Esq. – 218-884-8120

Memorandum and Order

RE: Anthonee Patterson vs. Kenneth Shelton

By virtue of the Decree of the Honorable John W. Herron, dated September 20, 2006, the substance of which Ordered and Decreed that any and all pleadings on the Arbitrator's behalf by his retained counsel, be stricken thereby denying the Arbitrator to his guaranteed right to counsel in the above action, the following Order is hereby entered:

1. The agreement between Andre Dennis, Esquire and William Winning, Esquire delaying the Final Adjudication Decree on the motion for Recusal of the Arbitrator as a result of threats to do bodily harm posted over the internet on May 6, 2006, is now rendered moot and without validity. Having been declared by Judge Herron that the Arbitrator who served in a quasi-judicial capacity is not a party in the proceedings", the Arbitrator without any prior notice, or an opportunity to appear and be heard has been deprived of legal standing to contest or appeal any recusal order that could be forthcoming.
2. The August 23, 2006, letter from Attorney Dennis to Judge Herron objecting to the Arbitrator's right to counsel cites no authority for his position, but invites the Arbitrator to make a response in Memorandum and Opinion. The Arbitrator, in accepting this invitation is compelled to inform counsel that only in the most extreme cases of bias or prejudice is disqualification of a judge constitutionally required. *Aetna Life Insurance Company v. Lavoie*, 487 U.S.. 813, 821 (1988) and there is as much obligation upon a judge not to recuse himself when there is not occasion for him to do so when there is. *Wofson v. Palmieri*, 396 F2d 121, 124 (2d Cir 1888); *Smith v. Danyo*, 441 F

76a

Supp 171, 176 M.D. Pa 1977, AFFD 588 F2d 83 (3d Cir 1877).

3. At no stage of these proceedings has any party or counsel leveled a charge of bias, prejudice or partiality against the Arbitrator, until the Internet threat was learned on July 27, 2006, subsequent to the completion of the Final Adjudication and Decree. It follows that the motion for recusal that has been placed under seal is an abuse of discretion by the Court and the motion lacks any merit for further consideration by the Court.

BY: THE ARBITRATOR

/s/ Edwin E. Naythons

Edwin E. Naythons (USMJ) (Ret.)
October 3, 2006

Final Adjudication and Decree

RE: Anthonee Patterson vs. Kenneth Shelton

The Arbitrator is currently in possession of the report from the Receiver, Glass Ratner Management and Realty Advisors LLC (appointed on May 8, 2006) dated July 17, 2006.

Final action is thus required following the Order of July 10, 2006 entered by the Honorable Joseph Dych, denying Defendant's petition and supplemental petition to vacate the Arbitrator's Adjudication and Supplemental Adjudication and Orders, and confirming his Award.

The Order of Judge Dych in part reads:

"I find after a review of the Petitions and Responses as well as Judge Naythons' Adjudications that the Petitions to vacate are nothing but disingenuous attempts to collaterally attack and evade the Award, since the Arbitrator clearly did not misbehave nor render an unconscionable decision."

Counsel for the Church, who was retained following the Binding Arbitration Decision nevertheless continues to collaterally attack the Adjudication by submitting a memorandum in support of its Preliminary Objections that argues, "The First Amendment rights of a private organization like the Church are infringed where it is forced to accept members like Mr. Patterson, whose views are contrary to those of the organization." (P. 2)

The argument again is an attempt to attack collaterally an issue that was expressly determined in the Adjudication when the Arbitrator stated at 14 "The preponderance of evidence is in favor of the Plaintiff who has been shown to have acted in harmony with

the laws, usage and customs accepted by [the] General Assembly before the dispute and dissension arose."
(Emphasis added)

Where, as in the instant case, it is clearly evident from the trial on the right to an accounting that the Plaintiff, as the party awarded the accounting, is entitled to certain and appropriate equitable remedies, the Arbitrator need not hold a second hearing on the issue of the amount due that party. The Chancellor has the option of telescoping the entire procedure into one step. *Damirgian v. Damirgian*, 396 A 2d 1283 (Pa Super 1978)

In Plaintiff's complaint for an accounting the Arbitrator's interlocutory decree defined the subject matter of the accounting, but left open the precise liability, which is to now be determined by the Chancellor on the basis of its examination of the accounts. *Moyer v. Geyer*, 67 Montg 351 (Pa Corn. PL 1951).

In addressing the report on the accounting the Arbitrator takes note that in *Poesnecker v. Ricchio*, 168 Pa Commw 489, 831 A2d 1097 (1993), Cert Denied – U.S – 115 S.0 t 727, 130 L. Ed 632 (1998) the court recognized that a Civil Court may resolve disputes involving religious organizations that do not require a determination of Ecclesiastical issues, 158 Pa Commw At 573, 631 A2d 1104. These matters that the Arbitrator may address involve property, contracts and financial dealings. Therefore, the Arbitrator shall consistently apply the statutes governing Pennsylvania nonprofit corporations to the corporate arm of the Church.

The Arbitrator adopts the following results of the limited forensic Accounting investigation of the appointed Receiver.

1. Kenneth N. Shelton and his family members receive approximately \$637,152 per year in salaries, housing allowances and stipends (Based on 2005 and 2006 information). These salaries are in direct conflict with the Articles of Incorporation in accordance with the Non-Profit Corporation Law. The application for Charter of the Trustees of the General Assembly of the Church of Jesus Christ of the Apostolic Faith stated that none of the officers were going to receive a salary and serve without pay - only Tithes.
2. The Church does not devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.
3. The Church has real property in over 100 locations in the United States valued in excess of \$100,000,000.
4. The Church does not keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and disposition of assets of the Church.
5. Based on the analysis by the Receiver of American Express charges during the period of July 1999 to May 2006 there was approximately \$3,244,854 in expenditures during this period. Based on a sample of \$1,894,614 or 58% of the total charges considered that approximately \$1,708,409 or 52.68% of the total charges could be classified as questionable. No written policies or procedures as to the use of corporate credit cards are in place. As per John C. S. Thomas on 6/22/06 the use of corporate cards is based on an oral understanding

of the business nature of the expenses and based on a code of honor. On 6/22/06 Arnica Jamison, (Bookkeeper and Payroll Department) explained that Mr. John C. S. Thomas authorizes and approves the use of American Express cards. Ms. Jamison explained that original invoices and employee expense reports backing up the American Express bill ARE NOT kept by the Church, therefore no details of the charges are available (i.e. business lunch, airfare and hotel bills associated with business travel, etc.).

6. Church members have been traveling to places such as London, Switzerland, France, Toronto, Montreal, Amelia Island, Chicago, etc. and incurred large expenditures which may be categorized as questionable or not in the ordinary course of business as noted:

Table 7
Table of Largest Vendors and Locations

Vendor	Location	Amount
Hotel Martinez	Cannes, France	\$ 131,958.29
Peninsula Hotel	New York	108,626.45
Oak Brook	Brook, IL	82,858.99
Hotel Carlton	Cannes, France	78,135.46
US Air	Airfare	60,321.57
The Peabody Hotel	Memphis, TN	54,900A4
Ocean Club	Bahamas	50,981.74
The Ritz Carlton	Amelia Island & Chicago	47,542.84
Westin Hotels	Atlanta & Rio	47,505.02
Four Seasons Hotel	Chicago & Miami	88,954,51
Ramada Inn	Rosemont, IL	78,231.5B
British Airways	Airfare	35,138,20
US Airways	Airfare	34,525.99
Dorchester Hotel	London, England	34,460,69
St Regis Hotel	New York	34,293.97
Hotel Des Bergues	Geneva, Switzerland	32,381.75

As can be observed, some of the hotels can be classified as luxurious accommodations.

Please refer to Schedule 8.1 for a detailed listing of international airfare and lodging. Total overseas travel expenses amount to \$592,661 or 31.20% of the total expenditures analyzed.

For charges relating to airfare we have been able to extract passenger namesith a Shelton or Thomas last name. A total of \$125,721.41 appears to be related to Bishop Kenneth Shelton, John C. S. Thomas and their family members.

7. Expenditures:

The Church is paying stipends and no employment taxes are being reported to the Internal Revenue Service. As per the IRS, a stipend is defined as a fixed sum of money paid periodically for services to defray expenses. The fact that Renumeration is termed a "fee" or "stipend" rather than salary or wages is immaterial. Wages are generally subject to employment taxes and should be reported on Form W-2 Annual ADP Stipends as per:

2008 ADP Payroll	\$561,272	32.06%
ADP Gross Payroll	\$1,048,804	58.90%
ADP Housing Allowance	\$140,615	8.03%
Total	\$1,750,492	100%

8. There are approximately 29 employees in the ADP payroll (three receiving housing allowances). Additionally there are 49 persons receiving stipends of which eleven receive ADP payroll as well. The highest paid employees are as follows:

83a

Kenneth N. Shelton	\$213,900	Gross Earnings
	\$75,000	Housing Allowance
	<hr/>	
	Total	\$288,900
John C. S. Thomas	\$99,199	Gross Earnings
	\$82,615	Housing Allowance
	<hr/>	
Total	\$151,814	
Johnny R. Brown	\$41,574	Gross Earnings
	\$13,000	Housing Allowance
	<hr/>	
	\$13,000	Stipends
Total	<hr/>	\$67,574
<hr/>		
Total Gross Earnings	\$354,673	
Total Housing Allowance	\$140,618	
Total Stipends	\$13,000	
Total	<hr/>	\$508,288

Table 6
Table of Additional Payroll to Family Member

Last Name	First Name	Religious Title	Type	Biweekly Amount	Annualized
Shelton	Erick V.	Elder	Stipend Cash	1,108.00	\$ 28,808.00
Thomas	Eunice	Lady	ADP Salary	403.84	10,499.84
Thomas	Eunice	Lady	Stipend Cash	262.00	6,812.00
Thomas	John		Stipend Check	230.77	6,000.00
Thomas	Lawrence	Lord	ADP Salary	1,378.00	35,828.00
Thomas	Lawrence	Lord	Stipend Cash	300.00	7,800.00
Thomas	Lawrence	Lord	Stipend Cash	90.00	2,340.00
Jamison	Arnicia Y.		ADP Salary	1,031.68	26,823.68
Jamison	Judah O'Shea		ADP Salary	1,504.00	39,104.00
Russell			ADP Salary	1,247.00	<u>32,422.00</u>
Total					\$196,437.52

9. Bank Accounts:

The Church has provided a listing with 170 bank accounts. One of the accounts is a Swiss Bank account that Mr. Brown explained that when former Bishop McDowell Shelton died on 10/13/91 as Executor of the Estate was appointed (Day IMS. MAYIM) and the Estate retained an attorney. James Michael Cleary, Esquire who has kept the accounting of the funds for the alleged \$4 million Swiss account located at Banque Cantonale Vaudoise, Seige Regional Montreux, Grand Rue 50 Depot 648.405.59019.

10. Late fees and interest on 2008 delinquent property taxes: \$2,020. Late fees and interest on 2005 delinquent property taxes: \$1,662. Late fees and interest on seriously delinquent property taxes (4 properties, 2 in Florida and Rhode Island, and one in Suffolk Virginia, for years 2003, 2004 and 2005: \$1,978.

11. Use of Church funds in violation of Receiver's Order:

On July 13, 2006, the Receiver pursuant to his authority was successful in freezing four (4) bank accounts at Wilmington Trust Bank. At that time, he

received a signature card and bank records showing that 28 checks had been written on one of the accounts between June 15 and July 10, 2006 totaling \$92,819.42. Check amounts ranged from \$60.00 to \$9,866.19. The signature card bears the signatures of Bishop Kenneth N. Shelton, President and Treasurer, John C. S. Thomas, Vice President and Chief Administrator, Johnny Brown, Secretary and Leon Bligen, Trustee.

12. Late fees on special assessments, \$4,118.00. The Church owns two condominium units 21A4 and 21A5 at the Philadelphian located at 2401 Pennsylvania Avenue in Philadelphia, Pennsylvania. On December 5, 2005, the Owners' Association levied special assessments of \$47,673 and \$45,335 respectively. Late fees on this special assessment include: NSF charges, late fees and collection costs as of June 13, 2006.

13. Transfers in the amount of \$101,729 to Coyns LLC, a company made up of Church employees/members for the construction of a summer camp in New Jersey took place immediately after the binding arbitration April 26, 2006.

Check #1007	4/30/06	\$50,000.00
Check #1009	4/30/06	\$51,728.93
Total		\$101,728.93

1. Pennsylvania law is clear that Title to the properties rests in that faction, whether majority or minority which continues to act in harmony with laws, usage and customs accepted by the body before the dispute and dismissal arose.

2. That faction is the congregation of Bishop Anthonee Patterson, as a result of the failure of the Defendant and his officers and trustees to act within the purposes of the Church and the laws of the Commonwealth.

3. As General Overseer, Trustee and President of the Board of Trustees Bishop Omega Kenneth N. Shelton has not acted in good faith as it has been demonstrated by the findings of the Receiver that he has and had actual knowledge of the diversion of funds for uses other than for the benefit of the members of the General Assembly, (15 Pa C.S. sec 5712 b) (c)

4. Officers Thomas and Johnny Brown have failed to perform their duties as officers in good faith in a manner they reasonably believed to be in the best interest of the Church and with such care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances. (sec 5712 c)

5. In this Matter of the Church of the Lord Jesus Christ of the Apostolic Faith its corporate bylaws designating in Article Seven (VII) Omega Kenneth W. Shelton the spiritual leader of the religious organization as the predetermined temporal leader of the nonprofit corporation that manages the organization's business affairs lack constitutional status and therefore will not be enforced, *Beverly Hall Corp. v. Ricchio*, 689 A2d 600. Although under the Church's religious law Kenneth Shelton is the same individual to head its religious and corporate functions, the Appellate Courts conclude that Canon Law does not dictate corporate governance; 'religious leader maintains ecclesiastical supremacy', but Bishop Shelton is hereby removed from his corporate leadership.

6. Where, as here, the Church has formed a non-profit corporation to manage its business and secular affairs, the Canon Law of the Church cannot displace civil statutory authority on matters regarding director liability, fiduciary obligations, and proper fiscal oversight of the property and assets of the corporation.

7. The Officers, (and the Trustees) Kenneth Shelton, John C. S. Thomas and Johnny R. Brown, stand in a fiduciary relation to the corporation. 15 Pa C.S.A. sec 5712. In the instant matter there were no reports and no financial controls. They are personally liable for monetary damages where they have failed to perform their fiduciary duties and where the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. 15 Pa C.S.A sec 5713 (a). Here where the trustees and officers have paid themselves allowances, salaries, stipends, obtained financial benefits for themselves and families or used Church funds for non-clerical purposes, constitutes the kind of willful misconduct and self dealing that gives rise to personal liability.

8. The Receiver has found that a substantial percentage of the assets of the Church Corporation are received as Tithes and offerings in the form of donations and checks. The Church has no accounting methods or financial statements to identify these contributions. The Church has utilized approximately one-hundred and eighty bank accounts for VAST real estate holdings on which it owed delinquent taxes, fines, late fees, interest, loan repayments and other assessments.

In some instances, Defendants were so delinquent in making these payments that Church properties had been scheduled for Sheriffs sale. Other asset dissipation identified by the Receiver included American Express charges incurred on behalf of various individuals, none of whom were required to file expense reports or produce original invoices. By way of example, the Receiver identified over two hundred thousand dollars (\$200,000) that had been charged on American Express cards at two hotels in Cannes,

Prance. American Express charges averaged almost forty thousand dollars (\$40,000) per month. There were no written policies governing the use of corporate credit cards. Use of the Church's twenty-seven gas credit cards was similarly unmonitored with monthly gas card expenditures in excess of fifty-five hundred dollars (\$5,500).

It is, therefore, clearly demonstrated that property committed to charitable purposes has been diverted from the object to which it was donated contrary to the 1947 Article of Incorporation where it was stated "the purposes do not contemplate pecuniary gain or profit, incidental or otherwise to its members". 15 Pa C.S.A. sec 5547 (b), 20 Pa C.S.A. sec 6110. The Directors, here Trustees, of the nonprofit corporation are charged to apply assets received in trust to the purposes specified in the trust instrument. The Trustees and/or Directors also have the statutory obligation "to keep accurate accounts of all trust funds, separate and apart from the assets of the corporation". 15 Pa C.S.A. sec 5548 (b). Unexplained depletion of trust funds may be found in direct violation of the law governing the use and management of these funds.

Similarly the Church could not distribute any income or profit to its members, officers or directors. The Church may offer benefits except where the corporation is insolvent, would be made insolvent or rendered unable to carry on its corporate purpose. 16 Pa C.S.A. 5581 (c), See *Davis v. Giovanazzo Construction v. Heritage Village*, 2005 Phila Ct. Com. Pleas Lexis 380 (inability to pay debts as they come due is one kind of insolvency). Here, it is determined that the officers and trustees continued to pay themselves housing allowances and other benefits when the corporation could not pay its bills as they came due.

Any benefits so conferred is unlawful under the nonprofit corporation code.

9. A director may be removed from office upon petition of any member in the case of fraudulent or dishonest acts, gross abuse of authority or for any other proper cause. Any director so removed may be banned from office for a period of time prescribed by the Court. 15 Pa C.S.A. sec 5726 (c) See *Storox Focus on Renewal Neighborhood Association v. King*, 398 A2d 241 Pa. Commw 1978). (expulsion of Plaintiff from membership in defendant nonprofit corporation does not eliminate Plaintiff's right to review corporate records for financial mismanagement.).

AND NOW THIS 25TH DAY OF JULY IT IS
HEREBY DECREED

1. All present officers, and trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith located at 701 South 22nd Street Philadelphia, PA 19146 suspended from their offices following formal petition and on or before October 15, 2006.

2. Bishop (Omega) Kenneth N. Shelton shall not be dismissed as presiding Bishop unless and until a meeting of the Church corporation shall be called and notice of such meeting given and the qualifications of the voters determined only according to the bylaws, regulations, practice, discipline, rules and usage of the Church.

3. All property of the Church of the Lord Jesus Christ of the Apostolic Faith heretofore held by the trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. Overseen by Kenneth N. Shelton, President and those trustees serving with him be and is hereby DECREED

transferred to the Trustees and the General Assembly of the Lord Jesus Christ of the Apostolic Faith, Inc., under President Patterson's control and responsibility as receiver.

4. All salaries, stipends and housing allowances received by the officers, trustees or their agents acting on their behalf for the years 1991 through 1998 shall be repaid to the Trustees of the General Assembly of the Lord Jesus Christ of the Apostolic Faith under the supervision of Bishop Patterson's Designated Receiver.

5. The present officers and trustees of the Church shall be barred from holding office for a period of five (5) years.

6. Any interference, acts of violence, or threats of violence by any member of the General Assembly present trustee, or officer of the Church of the Lord Jesus Christ of the Apostolic Faith upon Plaintiff or his trustees, officers or members of his Assembly shall be deemed in CONTEMPT OF THE WITHIN DECREE WITH REMEDIES PROVIDED BY THE APPROPRIATE COMMON PLEAS COURT, AND/OR BE CONSIDERED FOR CRIMINAL PROSECUTION.

Defendant and General Administrator, Elder Thomas shall reimburse the depleted Gresham Trust, a fund held for the benefit of Church members in need of social services in the sum of \$111,537.38, as a result of six withdrawals between March 24 and May 1994.

The Defendant and all officers jointly and severally shall reimburse the Church for the \$52,203.27 stay for one night at the Hotel Martinez, Cannes, France, \$40,253.74 for one night at the No. 6A Hilton Intern, Geneva, Switzerland and \$45,000.00 for cash charges on December 26 and December 27, 1993 at the Ocean Grand, Palm Beach, Florida.

Elder Thomas shall reimburse the Church for funds withdrawn from account number 2E845373760 between April 19, 1994 and September 7, 1998 as set forth in the Adjudication of April 26, 2006 at 6 - 7.

All property real and personal presently titled in the names of individual officers and trustees shall within twenty (20) days be conveyed to the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. if it is determined that the properties were purchased from salaries received during the period 1991 to 1998.

Glass Ratner Management and Realty Advisors LLC has completed its duties and functions as Receiver between June 16 and July 11, 2006. The Receiver has collected, held and preserved monies generated from the Church, pay from the revenues of the Church the ordinary and necessary expenses of operating and maintaining the Philadelphia property, employed legal counsel to assist the Receiver in performance of his duties, taking possession of bank accounts containing funds associated with all property of the Church and taking possession of P. O. Box 3880 and all incoming mail and correspondence of any nature.

So as to continue to allow for the smooth transition of all property (real and personal) to Anthonee Patterson and his officers, the Arbitrator sees no alternative but to appoint an Interim Receiver Pennsylvania resident chosen by Anthonee Patterson, who shall be charged with the day to day operations of the Church, including but not limited to auditing the books of the Church, rendering an accounting of the same, arranging for services, safekeeping and overseeing the Church building, renovations thereto and programs conducted therein. The Receiver shall commence his/her duties on or before October 15, 2006 for a period of one (1) year.

Article Two (II) of the bylaws of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith reads in relevant part that “the officers of the corporation shall serve exclusively in a secular capacity, and shall have no ecclesiastical functions, duties, powers or authority.” Specifically, the President of the Church Corporation is not synonymous with, and is different office from that of the Overseer. (Amended July 2006).

This Article as well as Article One (I), three was amended, during the period that was two (2) months subsequent to the Arbitrator’s Adjudication wherein it was declared that the clear, precise and convincing evidence both direct and circumstantial demonstrates various acts of fraud, mismanagement, conspiracy, breach of fiduciary responsibilities, violations of bylaws and the Articles of Incorporation in seizing corporate funds and assets, depletion of corporate bank accounts by Defendant, and further that the unlawful diversions of bank funds by Bishop Shelton to himself and to others named herein for his or their benefit were and are continuing breaches of Defendant’s fiduciary responsibility to the corporation.

The July amendments having been made without affording Anthonee Patterson and his officers and trustees the opportunity to participate in their being promulgated constitutes an invalid and improper abuse of authority and is in direct conflict with the Chancellor’s Conclusions and Decree.

Assuming, however, that the amendments were appropriately enacted, the removal of Bishop Shelton from his corporate positions under the Nonprofit Corporation Law is well within the Chancellor’s authority, while deferring from removing him from his

position of General Overseer. *Poesnecker v. Ricchio*, 158 Pa Commw 459, 831 A2d 1097 (1993).

Since the issuance of the Arbitrator's Adjudication on April 26, 2006, there have been filed in both the Court of Common Pleas and United States District Court a plethora of motions, all of which have been denied. The motions seek to restrain the Arbitrator from issuing a FINAL DECREE following the Receiver's analysis and study. Constitutional issues have been raised along with jurisdictional questions that were never noted prior or during the hearing on the merits of the 16-year-old controversy. The parties agreed in open court and in ADR Options common law agreement that the decision of the Arbitrator was binding with no appeals from the AWARD, and only the merits of the controversy were to be considered.

The decision of the U.S. Court of Appeals for the Eleventh Circuit is worth noting. In *B.L. Harbert Intl. LLC v. Hercules Steel Co.*, 441 F3d 905 (11th Cir. 2006), the Court, weary of receiving groundless appeals from Arbitration Awards, declared that the appellant's position "did not come within shouting distance of any basis to vacate the award, and threatened to sanction future appellants who attempt to salvage arbitration losses through litigation that has no sound basis in law applicable to arbitration awards". The Eleventh Circuit made it very obvious, as has our Pennsylvania Appellate Tribunals, that when parties agree to a final and binding resolution of a dispute, that is what it is, final and binding, and that's with very few exceptions none of which are herein applicable.

The Arbitrator decrees that the report of the Receiver Adjudicating the facts found as a result of his lengthy investigation and accounting is binding and conclusive as no substantial objection has been

94a

offered, nor should it be set aside except for plain mistake established by the party excepting by affirmative evidence, where not apparent on the face of the report, APPEAL OF CHEW, 45 Pa 228 (1863).

Plaintiff together with his officers and assembly shall have immediate access to the church and its corporate facilities and conduct elections pursuant to the Bylaws existing prior to April 2008. Entrance to the Church, if needed, shall be secured by the Sheriff of Philadelphia, his Deputies and any other agency necessary to preserve peace, tranquility among the members of the General Assemblies for both majority and minority.

NAME Judge Edwin E. Navthons (Ret.)
ARBITRATOR

SIGNATURE /s/ Edwin E. Naythons

DATE July 25, 2006

APPENDIX N

FINCOURT B. SHELTON & ASSOC., P.C.
By: Fincourt B. Shelton, Esquire
Identification No.: 31598
504 Main Street, Suite 100
Darby, Pennsylvania 19023
(610) 532-5550
Attorney for Plaintiff

COURT OF COMMON PLEAS

No. 2945

ANTHONEE PATTERSON,

Plaintiff,

vs.

KENNETH SHELTON,

Defendant.

July Term, 1995

PRAECIPE TO ENTER THE FINAL
ADJUDICATION AND DECREE

TO THE PROTHONOTARY:

Please enter the text of the attached Final
Adjudication and Decree from binding common law
arbitration upon the record.

/s/ Fincourt B. Shelton

Fincourt B. Shelton, Esquire
Attorney for Plaintiff

FINCOURT B. SHELTON & ASSOC., P.C.
By: Fincourt B. Shelton, Esquire
Identification No.: 31598
504 Main Street, Suite 100
Darby, Pennsylvania 19023
(610) 532-5550

Attorney for Plaintiff

COURT OF COMMON PLEAS

No. 2945

ANTHONEE PATTERSON,

Plaintiff,

vs.

KENNETH SHELTON,

Defendant.

July Term, 1995

PRAECIPE TO ENTER THE ARBITRATION
AWARD UPON THE DOCKET

TO THE PROTHONOTARY:

Please enter the text of the attached adjudications and orders from binding common law arbitration upon the record as these have been confirmed by the Honorable Judge Dych on July 10th, 2006:

1. Adjudication dated April 26, 2006;

2. Order to appoint GlassRatner as Receiver, dated May 5, 2006;
3. Supplemental Adjudication dated May 8, 2006;
4. Order to Appoint A Receiver, dated May 8, 2006; and
5. Amendment to the Adjudication dated May 16, 2006.

/s/ Fincourt B. Shelton, Esquire
Fincourt B. Shelton, Esquire
Attorney for Plaintiff

APPENDIX O

2008 WL 9401359

Only the Westlaw citation is currently available.
THIS IS AN UNREPORTED PANEL DECISION
OF THE COMMONWEALTH COURT. AS SUCH,
IT MAY BE CITED FOR ITS PERSUASIVE
VALUE, BUT NOT AS BINDING PRECEDENT.
SEE SECTION 414 OF THE COMMONWEALTH
COURT'S INTERNAL OPERATING PROCEDURES.

COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 1967 C.D.2006, 1968 C.D.2006

ANTHONEÉ J. PATTERSON

v.

KENNETH SHELTON, Appellant.

ANTHONEE PATTERSON

v.

KENNETH SHELTON.

Appeal of Bishop Roddy J. Shelton, II.

Argued Dec. 10, 2007
Decided Jan. 31, 2008

BEFORE: McGINLEY, Judge, and PELLEGRINI, Judge, and KELLEY, Senior Judge.

MEMORANDUM OPINION

KELLEY, Senior Judge.

In these consolidated appeals, Kenneth Shelton appeals from the July 10, 2006 order of the Court of Common Pleas of Philadelphia County (trial court) denying his petitions to vacate arbitration award and a supplemental adjudication and confirming the arbitration award in the matter of *Anthoneé J. Patterson v. Kenneth Shelton*, July Term 1995, No. 2945. Bishop Roddy J. Shelton (Roddy Shelton) appeals from the July 19, 2006 order of the trial court denying his petition to intervene in the matter of *Anthoneé J. Patterson v. Kenneth Shelton*, July Term 1995, No. 2945.

In his appeal, Kenneth Shelton raises the issue of whether the trial court erred in confirming the April 26, 2006 arbitration award and denying Kenneth Shelton's petitions to vacate the arbitration award and the May 8, 2006 supplemental award. In his appeal, Roddy Shelton raises the issue of whether the trial court abused its discretion in denying his petition to intervene in light of the fact that the underlying litigation is ongoing and the determination of such may affect any legally enforceable interest of Roddy Shelton whether or not he may be bound by the judgment in the action.

The Church of the Lord Jesus Christ (Church) was founded in 1919 by Bishop S.C. Johnson and located at 22nd and Bainbridge Streets (also referred to as "Apostolic Square") in Philadelphia, Pennsylvania. The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.

(Corporation) is the secular arm of the Church and was established as a nonprofit corporation in 1947. The Corporation is governed by Pennsylvania's Nonprofit Corporation Law of 1988 (Nonprofit Corporation Law), 15 Pa .C.S. §§ 5101–5997, the articles of incorporation, and corporate bylaws. The Corporation is the legal owner of all property of the Church.

The affairs of the Church are managed by the General Overseer/Bishop. The Corporation and all assets are managed by the President and the Board of Trustees. Whoever serves as the General Overseer of the Church also serves as the President of the Board of Trustees of the Corporation. The office of General Overseer is a life term.

Bishop S. McDowell Shelton served as General Overseer of the Church and President of the Corporation from 1961 until his death on October 13, 1991. Upon Bishop S. McDowell Shelton's death, a bitter dispute arose over who was the rightful General Overseer and President with the legal right to control the Church and the Corporation and the assets thereof.

These appeals are round two in the continuous litigation between the parties in these cases over the control of the Church and the Corporation. Round one ended on April 10, 2001, when this Court affirmed the trial court's determination that as a result of the valid action taken at the annual session of the General Assembly¹ in September 1992, specifically, confirming Kenneth Shelton as General Overseer and President, Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation. *See*

¹ The General Assembly is the annual session of the Church congregation.

Church of the Lord Jesus Christ of the Apostolic Faith, Inc., (Pa.Cmwlth., Nos. 376 CD 2000, 559 CD 2000, filed April 10, 2001), *petition for allowance of appeal denied*, 567 Pa. 766, 790 A.2d 1019 (2001). Hence, Patterson v. Shelton, Not Reported in A.2d (2008) since September 1992, Kenneth Shelton has been lawfully in control of the Corporation.

The action at issue in these consolidated appeals began on or about July 24, 1995, when Anthoneé J. Patterson (Patterson), as a member of the Church, filed a complaint against Kenneth Shelton and Erik Shelton, as members of the Church and as *de facto* controllers of the Church and the Corporation and its assets. Therein, Patterson alleged that on May 28, 1994, after due notice and upon a quorum of the General Assembly, Patterson was duly confirmed as General Overseer and President of the Corporation. Patterson alleged further that despite the election of Patterson as General Overseer and President of the Corporation, Kenneth Shelton and Erik Shelton have refused to relinquish control of the various accounts, trusts and properties of the Corporation and that Kenneth Shelton has assumed for himself the office of General Overseer and President. Patterson alleged further that Kenneth Shelton and Erik Shelton have taken *de facto* control of the Corporation and its property and have operated the same in total disregard of the interests of the members and requirements of law.

Patterson alleged that Kenneth Shelton and Erik Shelton have failed to present an annual report of financial affairs and activities as required by Section 5553 of the Nonprofit Corporation Law,² for the years

² 15 Pa.C.S. § 5553. Section 5553 provides that the board of directors shall present annually to the members a report for the

1991 through 1994. Patterson alleged that Kenneth Shelton and Erik Shelton have systematically looted the Corporation's accounts and trusts as well as the regular Church collections.

Therefore, Patterson requested the following relief pursuant to Section 5793(b) of the Nonprofit Corporation Law:³ (1) the appointment of a receiver to take control of the property, accounts and records of the Corporation; (2) an order requiring Kenneth Shelton and Erik Shelton, or alternatively the receiver, to issue annual financial reports for the years 1991, 1992, 1993 and 1994; (3) an accounting of all funds

fiscal year immediately preceding the date of the report detailing: (1) the assets and liabilities of the corporation; (2) the principal changes in assets and liabilities of the corporation; (3) the revenue or receipts of the corporation; (4) the expenses or disbursements of the corporation; and (4) the number of the members of the corporation as of the date of the report.

³ 15 Pa.C.S. § 5793(b). Section 5793 governs review of contested corporate action and provides as follows:

(a) **GENERAL RULE.**—Upon petition of any person whose status as, or whose rights or duties as, a member, director, member of an other body, officer or otherwise of a nonprofit corporation are or may be affected by any corporate action, the court may hear and determine the validity of such corporate action.

(b) **POWERS AND PROCEDURES.**—The court may make such orders in any such case as may be just and proper, with power to enforce the production of any books, papers and records of the corporation and other relevant evidence which may relate to the issue. The court shall provide for notice of the pendency of the proceedings under this section to all persons affected thereby. If it is determined that no valid corporate action has been taken, the court may order a meeting to be held in accordance with section 5792 (relating to proceedings prior to corporate action).

removed from corporate or Church accounts or trusts by Kenneth Shelton, Erik Shelton, and any persons acting in combination with them; (4) an order confirming Patterson as General Overseer; and (5) an order commanding that elections be held for such offices as the court finds to be vacant.

After the filing of preliminary objections, answers, and new matters, the matter was stricken by the calendar judge on February 22, 1996.⁴ In the meantime, as set forth above, it was finally determined by this Court on April 10, 2001, that Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation.⁵

⁴ It is unclear from the record why the matter was stricken.

⁵ This Court's April 10, 2001 decision involved three separate equity actions which involved the fundamental question of who had the legal right to control the Corporation and the property. The three actions docketed in the trial court were: (1) *Fincourt B. Shelton, as Minister Asher Ben Judah, Treasurer of the General Assembly of the Church of the Apostolic Faith, Inc. and Fincourt B. Shelton, Individually and on behalf of All Members of the Church Aggrieved By the Actions of Kenneth Shelton and Erik Shelton v. Kenneth Shelton, Erik Shelton and Trustees of the General Assembly* (June Term 1992, No. 1887, Court of Common Pleas of Philadelphia County); (2) *Church of the Lord Jesus Christ of the Apostolic Faith, Inc., and the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Fincourt Shelton and Anthoneé J. Patterson and George E. Patterson, Sr. and A. Leah Gregory* (July Term 1994, No. 0914, Court of Common Pleas of Philadelphia County); and (3) *Church of the Lord Jesus Christ of the Apostolic Faith and Roddy J. Nelson Shelton, I, General Overseer, and Roddy J. Nelson Shelton, II, Trustee, and Frank Matthews, Trustee v. Kenneth Shelton and Erik Shelton and Alonzo Woodard Reagan and John Carlton Thomas and Daniel Bowens and George Brown, Individually and As Trustees of the Church of the Lord*

On December 7, 2004, Patterson filed a motion to reinstate his action with the trial court.⁶ On December 27, 2004, Kenneth Shelton filed an answer to the motion for reinstatement.⁷ Thereafter, an order was

Jesus Christ of Apostolic Faith, Inc. (August Term 1994, No. 3654, Court of Common Pleas of Philadelphia County).

In the actions docketed at numbers 1887 and 3654, Roddy Shelton, Anthoneé Patterson and Fincourt Shelton contested the validity of elections which were held in 1991 and 1992, and alleged, *inter alia*, that Kenneth Shelton and the Trustees violated the corporate bylaws, failed to provide proper notice of the meetings and elections, and illegally seized control by removing a trustee and forcibly expelling members of the congregation. In the action docketed at No. 0914, Kenneth Shelton and the Trustees sought to prevent Anthoneé Patterson and Fincourt Shelton from claiming control and interfering with the assets of the Church and the Corporation.

By order dated November 3, 2004, Judge Younge: (1) dismissed the action at number 3654 based on an agreement between all parties in that action to withdraw all claims and cross claims; (2) dismissed the action at number 1887 based on an agreement between the parties in that action to withdraw all claims and cross claims; and (3) dismissed the action at number 0914 because the plaintiff agreed to withdraw all claims if all other litigation was terminated.

⁶ Patterson requested reinstatement on the basis that he had not received notice from the trial court scheduling the matter for conference, that through some unknown clerical error, the docket was noted that the matter was stricken on February 22, 1996, and that no notice of said action was afforded any party to the action.

⁷ In his answer, Kenneth Shelton denied the material allegations of Patterson's motion to reinstate. In his new matter, Kenneth Shelton averred that Patterson's complaint in this action involved issues that were identical to the three consolidated actions at numbers 1887, 0914 and 3654 which had been disposed of by the trial court. Kenneth Shelton averred further that Patterson's counsel, by letter dated March 13, 1996 to the trial court, acknowledged: (1) that this action had been listed as

entered on February 12, 2005 reinstating the action and removing the notation from the docket that the matter had been stricken on February 22, 1996.⁸

On November 30, 2005, Erik Shelton was voluntarily dismissed by Patterson as a defendant and the matter proceeded solely against Kenneth Shelton. On that same date, Patterson and Kenneth Shelton agreed to proceed to binding arbitration with no right of appeal and the same was memorialized in a written order dated January 10, 2006. The January 10, 2006 order also stated that the case was dismissed from the trial court by agreement of both parties. As such, the matter proceeded to arbitration.

The arbitrator rendered his initial decision in this matter on April 26, 2006. Therein, the arbitrator determined that Kenneth Shelton held *de facto* control over the Corporation and its property between October 13, 1991 until September 1992 when he was elected General Overseer and President. The arbitrator determined that throughout the period of *de facto* control, Kenneth Shelton violated the bylaws and articles of

a non-jury matter; (2) that the matter had been removed from the trial list on the ground that it had been assigned to Judge Sabo along with the three other related Church cases but was never consolidated or any action taken thereon; and (3) that the matter should be relisted but that as a practical matter, it would be best to await disposition of the three related equity actions currently on appeal to this Court. Therefore, Kenneth Shelton requested that the trial court denying Patterson's motion to reinstate based upon: (1) the doctrine of waiver and *res judicata*; (2) the doctrine of unclean hands because Patterson was attempting to have the trial court re-list a case based upon a misrepresentation of the record; and (3) the doctrine of laches because Patterson waited a period of 8 years to request reinstatement to the prejudice of Kenneth Shelton.

⁸ This order was entered by Judge Mazer Moss.

the Corporation by accumulating pecuniary gain and profit by systematically reducing the Corporation's accounts and trusts as well as the regular Church collections, without making any regular reports regarding the misappropriation of funds. The arbitrator found further that no accounting has ever been given to the General Assembly since 1973.

Accordingly, the arbitrator determined that title to the Corporation's property rested with the faction who acted in harmony with the laws, usages and customs accepted by the body before the dispute and dissension arose. The arbitrator found that Patterson was the one who acted in harmony with the laws, usages and customs accepted by the General Assembly before the dispute and dissension arose but that before any property could vest in Patterson's faction, an accounting of all funds removed from the Corporate Church's accounts or trusts by Kenneth Shelton and any persons acting in combination with him had to be undertaken within thirty days with full discovery to determine the amounts of misappropriations. The arbitrator further ordered counsel for both parties to undertake action to find a person or persons mutually satisfactory to act as receiver to take control of the property, accounts and records. The arbitrator further ordered any elections for offices of General Overseer and President shall await the final results of the receiver's report and accounting. Finally, the arbitrator ordered that any award requiring payment of funds to be paid by Kenneth Shelton and the members of the Board of Trustees under his administration shall await the results of the accounting of all funds described.

On May 8, 2006, the arbitrator issued a supplemental adjudication wherein he accepted Patterson's

recommendation of GlassRatner Management and Realty Company (GlassRatner) to act as receiver commencing immediately. Therein, the arbitrator rejected Kenneth Shelton's attack on his April 26, 2006 decision on the basis that the Church was not named as a party in the initial complaint filed by Patterson and hence there is a 14th Amendment violation of taking property without due process. The arbitrator determined that the attack was collateral and in violation of the parties' arbitration agreement. The arbitrator stated that all procedural arguments including standing and failure to join an indispensable party were expressly waived prior to the commencement of the hearings before the arbitrator. The arbitrator stated further that in any event even if the Corporation were added as a party defendant, the result would inevitably be the same as the corporate veil would be pierced since the arbitrator has found that failure to adhere to corporate formalities is a factor to be considered in determining to pierce the corporate veil as well as evidence of intermingling of corporate and personal affairs. Thereafter, the arbitrator issued an order on May 8, 2006 appointing GlassRatner as receiver for the purpose of taking control of the assets of the Church which are held by the Trustees of the Corporation and setting forth the receiver's powers.

By order entered May 10, 2006, the trial court confirmed the arbitrator's April 26, 2006 decision in favor of Patterson and against Kenneth Shelton and entered judgment in conformity therewith. On May 12, 2006, judgment was entered on the binding arbitration in favor of Patterson and against Kenneth Shelton. On May 19, 2006, the trial court vacated the order entered May 10, 2006 and directed Patterson to file a motion to confirm the award no later than May

27, 2006. On May 26, 2006, Kenneth Shelton filed a petition to vacate the April 26, 2006 arbitration award. On June 5, 2006, Kenneth Shelton filed a supplemental petition to vacate the arbitrator's May 8, 2006 supplemental adjudication. On June 6, 2006, Patterson filed an emergency petition to confirm the arbitration award. Answers to the various petitions/motions were filed.

By order dated July 10, 2006, the trial court denied Kenneth Shelton's petitions to vacate and confirmed the arbitration award pursuant to Section 7341 of the Judicial Code, 42 Pa.C.S. § 7341, on the basis that the arbitration was binding with no right of appeal. On July 20, 2006, judgment was entered in favor of Patterson and against Kenneth Shelton.

On July 13, 2006, Roddy Shelton filed a petition to intervene on the basis that according to the Church's/Corporation's customs, practices, bylaws, etc., he is the rightful successor as leader of the Church/Corporation as he is the rightful successor to Bishop S. McDowell Shelton and is the only party with "clean hands." By order of July 19, 2006, the trial court dismissed Roddy Shelton's petition to intervene as moot in light of the trial court's July 10, 2006 order.

On July 26, 2006, Kenneth Shelton appealed the trial court's July 10, 2006 order to the Superior Court which transferred the matter to this Court on September 22, 2006.⁹ Roddy Shelton appealed the trial

⁹ On October 12, 2006, a praceipe to enter judgment in favor of Patterson and against the Trustees of the Corporation and the Church headed by Kenneth Shelton was filed with the trial court. On November 2, 2006, a motion to intervene was filed with the trial court by the Trustees. The motion to intervene was denied by order of November 17, 2006 and entered November 21, 2006. The trial court determined that the Trustees waited too long to

court's July 19, 2006 order to this Court and the two appeals were consolidated for disposition by this Court.¹⁰ We will first address Kenneth Shelton's appeal.

Kenneth Shelton contends that the trial court erred in confirming the arbitrator's award because the April 26, 2006 award was not final, the award is an irregularity that has led to an unconscionable result, and the arbitrator exceeded the scope of the arbitration by deciding doctrinal issues and by going beyond the 1991 to 1994 time period expressed in the complaint.

As recently stated by this Court in *Jefferson Woodlands Partners, L.P. v. Jefferson Hills Borough*, 881 A.2d 44, 48– 49 (Pa.Cmwlth.2005):

Pursuant to Section 7341 [of the Judicial Code], 42 Pa.C.S. § 7341, common law arbitrations are “binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.” An “irregularity refers to the process employed in reaching the result of the arbitration, not to the result itself.” *Gargano v. Terminix Internat'l Co., L.P.*, 784 A.2d 188, 193 (Pa. Super.2001). It is well-settled that a common law arbitration award is not reviewable on the basis of an error of law or fact. *Borgia /v. Prudential Ins. Co.*,

request intervention. The Trustees appealed to this Court from that order on December 15, 2006, which is docketed in this Court at 2338 C.D.2006.

¹⁰ This matter is appealable as of right to the Commonwealth Court pursuant to our not-for-profit corporation jurisdiction under Section 762(a)(5) of the Judicial Code, 42 Pa.C.S. § 762(a)(5).

561 Pa. [434,] 440, 750 A.2d [843,] 846 [(2000)]; *Hade v. Nationwide Ins. Co.*, 519 Pa. 227, 546 A.2d 615 (1988). Finally, an award may also be corrected if the arbitrator exceeds the scope of his authority. *Gargano; Ginther v. United States Fid. & Guar. Co.*, 632 A.2d 333 (Pa.Super.1993). See also *Sley Sys. Garages v. Transport Workers Union of America*, 406 Pa. 370, 178 A.2d 560 (1962).

With the foregoing in mind, our review of the arbitrator's April 26, 2006 decision in this matter leads us to the conclusion that the arbitrator clearly went beyond the scope of his authority. As stated previously herein, this action began in July 1995 when Patterson filed a complaint against Kenneth Shelton and Erik Shelton. Therein, Patterson challenged Kenneth Shelton's status as General Overseer and President of the Corporation and alleged, *inter alia*, that he was the rightful General Overseer and President of the Corporation and that despite this fact, Kenneth Shelton refused to relinquish control of the various accounts, trusts and properties of the Corporation. Patterson alleged further that Kenneth Shelton had taken *de facto* control of the Corporation and its property and had operated the same in total disregard of the interests of the members and requirements of law. Patterson also alleged that Kenneth Shelton failed to present an annual report of financial affairs and activities as required by Section 5553 of the Nonprofit Corporation Law, 15 Pa.C.S. § 5553, for the years 1991 through 1994.

Therefore, Patterson requested certain relief pursuant to Section 5793(b) of the Nonprofit Corporation Law including the appointment of a receiver to take control of the property, accounts and records of the corporation, an order requiring Kenneth Shelton, or

alternatively the receiver, to issue annual financial reports for the years 1991, 1992, 1993 and 1994, an accounting of all funds removed from Corporate or Church accounts or trusts by Kenneth Shelton or others acting with him, an order confirming Patterson as General Overseer, and an order commanding that elections be held for such offices as the court finds to be vacant.

Also, as stated previously herein, after the action brought by Patterson was stricken by the calendar judge on February 22, 1996, Patterson filed a motion to reinstate his action on December 7, 2004. An order was entered on February 12, 2005 reinstating the action and removing the notation from the docket that the matter had been stricken. As the record reflects, the motion to reinstate and the grant of the same occurred well after this Court's determination by opinion and order dated April 10, 2001, which determined that Kenneth Shelton is the rightful General Overseer of the Church and President of the Corporation, and shortly after the trial court dismissed, based upon agreement of the parties, the three equity actions underlying our decision.

Accordingly, the only relief remaining that was obtainable, if Patterson prevailed, when this matter was reinstated was the relief he sought pursuant to Sections 5553 and 5793(b) of the Nonprofit Corporation Law. Specifically, the only relief available is an accounting of the Corporation's financial dealings for the years 1991, 1992, 1993 and 1994, and a determination as to whether Kenneth Shelton had misappropriated assets during that time period and an order requiring Kenneth Shelton to issue annual financial

reports for the years 1991, 1992, 1993 and 1994.¹¹ Therefore, when the trial court ordered, by agreement of the parties, that this matter be submitted to arbitration, the foregoing were the only issues before the arbitrator. The remaining issues had already been settled between the initial filing of Patterson's action in July 1995 and the reinstatement of the same in February 2005.¹² However, in rendering a decision the arbitrator clearly went beyond this scope in more than one respect.

The arbitrator first exceeded the scope of the arbitration in his April 26, 2006 decision by going beyond the 1991 to 1994 time period. The arbitrator's decision clearly covers the time period 1991 to 1998. *See* Decision of Arbitrator dated April 26, 2006.

The arbitrator next exceeded the scope of the arbitration by deciding the issue of who should be in control of the Church's property. The arbitrator opined that because there was a division in the Church's congregation and a battle as to its property rights, it was his duty as a court of equity to determine in which faction title to the Church property rests. *Id.* at 15–16. The arbitrator found that the preponderance of the

¹¹ We note that Patterson's July 1, 2005 motion to file an amended complaint changing the scope of the relief sought to the time period 1991 to the present was denied by order entered July 8, 2005.

¹² It is clear from the record in this matter that the trial court should have been aware, before it granted Patterson's motion for reinstatement, of the three related equity actions decided by Judge Younge determining that Kenneth Shelton was in rightful control as the General Overseer and President of the Corporation as of September 1992. *See* Certified Record, Petition/Motion Cover Sheet Accompanying Kenneth Shelton's Answer to Patterson's Motion to Reinstate Case to Trial List.

evidence was in favor of Patterson and determined that the property owned by the Church and the Corporation should vest in Patterson's minority faction because Patterson was able to show that he acted in harmony with the laws, usage and customs accepted by the General Assembly before the dispute and dissension arose. *Id.* at 16. To effectuate this "vesting", the arbitrator ordered that an accounting of all funds removed from the "Corporate Church's" accounts or trust by Kenneth Shelton or any persons acting in combination with him should be undertaken with full discovery to determine the amounts of misappropriations within 30 days and that the parties undertake action to find a person or persons to act as a receiver to take control of the property, accounts and records. *Id.* The arbitrator further ordered that any elections for the offices of General Overseer and President of the Corporation await the final results of the receiver's report and accounting. *Id.*

By ordering the foregoing actions, the arbitrator clearly went beyond the scope of the arbitration, which was to determine whether Patterson was entitled to relief under the Nonprofit Corporation Law. In essence, the arbitrator ordered the removal of the control of the assets and property of the Corporation and the Church from the Trustees and Kenneth Shelton, as the rightful General Overseer and President of the Corporation, and placed the same into the hands of Patterson through the appointment of a receiver chosen by Patterson.

This not only violates the Corporation's bylaws¹³ but also does not comply with the Nonprofit Corporation Law.

Section 5764 of The Nonprofit Corporation Law permits a member of a corporation to make an application to the court for the appointment of a custodian of a corporation on deadlock or other cause including if any of the conditions specified in Section 5981, which

¹³ As pointed out by this Court in our April 10, 2001 decision, the Corporation's bylaws provide that the General Overseer, by virtue of the office, shall always be a Trustee and the President of the Board of Trustees and shall continue to hold these offices during his lifetime. The bylaws provide further that upon the death of the General Overseer, the General Assembly shall elect a successor. The "General Assembly" is the annual session of the Church congregation. Article I of the Bylaws. "Any session called by the General Overseer shall also be designated as a general assembly and shall have all the rights and powers and authority of the annual general assembly." *Id.* The bylaws further provide that the "quorum for the transaction of business before the General Assembly shall be fifty members voting before matters of the General Assembly." Article IV of the Bylaws. "A majority of those present and voting shall determine such matters of the General Assembly, except in the case of the election of officers, which is otherwise provided for here in these By-laws." *Id.*

In our April 10, 2001 decision we affirmed the trial court's finding that a valid meeting of the General Assembly was held in September 1992 at Apostolic Square. The testimony revealed that approximately 5,000 members were in attendance. We held that according to the bylaws, this constituted a quorum for the transaction of business. A majority of those present and voting unanimously elected Kenneth Shelton as the General Overseer. We held that the trial court properly found that Kenneth Shelton, having been confirmed as General Overseer, automatically became President of the Corporation according to the bylaws. Based upon our review of the record, we determined that the trial court's findings were supported by substantial evidence and were not in violation of the law or corporate bylaws.

115a

relates to proceedings upon petition of any member, exist with respect to the corporation.¹⁴ A review of

¹⁴ Section 5764 provides in pertinent part as follows:

(a) General Rule.—The court, upon application of any member, may appoint one or more persons to be custodians of and for any nonprofit corporation when it is made to appear:

- (1) That at any meeting for the election of directors the members are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon the qualification of their successors; or
- (2) that any of the conditions specified in section 5981 (relating to proceedings upon petition of any member, etc.) exists with respect to the corporation.

15 Pa.C.S. § 5764.

Section 5981 reads in pertinent part:

The court may, upon petition filed by a member or director of a nonprofit corporation, entertain proceedings for the involuntary winding up and dissolution of the corporation, when any of the following are made to appear:

- (1) That the objects of the corporation have wholly failed; or are entirely abandoned, or that their accomplishment is impracticable.
- (2) That the acts of the directors, or those in control of the corporation, are illegal, oppressive, or fraudulent, and that it is beneficial to the interests of the members that the corporation be wound up and dissolved.
- (3) That the corporate assets are being misappropriated or wasted, and that it is beneficial to the interest of the members that the corporation be wound up and dissolved.
- (4) That the directors or other body are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof.

15 Pa.C.S. § 5981.

Patterson's allegations contained in his complaint reveal that he is not requesting that a custodian/receiver be appointed for any of the reasons permitted in the Nonprofit Corporation Law. The allegations of the complaint clearly show that Patterson is not seeking dissolution of the Corporation due to the alleged misapplication or wasting of the Corporation's assets/property but is only in fact seeking to replace Kenneth Shelton as General Overseer and take control himself of the Church and the Corporation.

This is evidenced further by the arbitrator's May 8, 2006 "Order to Appoint a Receiver" wherein the arbitrator states that "the evidence adduced during arbitration that [Patterson] representing the minority faction is entitled to the appointment of a receiver for the purpose of taking control of the assets of the Church of the Lord Jesus Christ which are held by the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., currently headed by [Kenneth Shelton]." *See* May 8, 2006 Order. The arbitrator in the May 8, 2006 order appointed GlassRatner, an entity chosen by Patterson, to act as receiver and to take control of all of the Church's and the Corporation's assets and property. *Id.* The arbitrator also ordered that, during the receiver's period of control of the "church property" and prior to returning the same to "Bishop Patterson", Kenneth Shelton and the Trustees were enjoined from, *inter alia*, possessing or managing the property and from interfering in any way with possession or management of the property by the receiver. *Id.*

Accordingly, the arbitrator went well beyond the scope of his authority by deciding who was to be in control and possession of Church property and ordering that the assets of the Church/Corporation be

first turned over to a receiver for an accounting prior to being returned to Patterson. Again, the arbitrator was only authorized to determine if Kenneth Shelton had misappropriated the Corporation's assets/funds and if so, whether Patterson was entitled to an accounting of the Corporation's assets for the time period 1991 to 1994. As such, the trial court erred by confirming the arbitrator's April 26, 2006 and May 8, 2006 decisions and orders.

Therefore, the trial court's July 10, 2006 order denying Kenneth Shelton's petition and supplemental petition to vacate and confirming the arbitrator's award is reversed. In addition, this matter is remanded to the trial court with instructions to vacate the arbitrator's April 26, 2006 decision and any decisions rendered by the arbitrator after that date and for the trial court to conduct the proper proceedings consistent with this opinion to determine whether Patterson is entitled to relief pursuant to Sections 5553 and 5793(b) of the Pennsylvania Nonprofit Corporation Law as alleged in his complaint filed July 24, 1995.

We now turn to Roddy J. Shelton's appeal from the July 19, 2006 order of the trial court denying his petition to intervene as moot in light of the trial court's July 10, 2006 order confirming the arbitration award.¹⁵ The gist of Roddy Shelton's argument that

¹⁵ The Pennsylvania Rules of Civil Procedure which apply to interventions are set forth at Pa.R.C.P. Nos. 2326–2350. One wishing to intervene is required to file a petition to intervene, "setting forth the ground on which intervention is sought and a statement of relief or defense which the petitioner desires to demand or assert." Pa.R.C.P. No. 2328. Whether or not to grant a petition is within the discretion of the trial court. *Stanbro v.*

the trial court erroneously denied his petition to intervene is based on his position that he is the rightful General Overseer and President. Notwithstanding the fact that this issue was finally decided by this Court on April 10, 2001 as set forth above, the trial court did not abuse its discretion by denying the petition to intervene. Bishop Roddy J. Shelton did not seek to intervene in this matter until July 13, 2006, which was more than a year after Patterson's action was reinstated by the trial court and three days after the trial court issued its order confirming the arbitration award. Accordingly, the trial court's July 19, 2006 order is affirmed.

ORDER

AND NOW, this 31st day of January, 2008, it is hereby ordered as follows:

1. The order of the Court of Common Pleas of Philadelphia County, at No. 2945 July Term, 1995, dated July 19, 2006, denying the petition to intervene filed by Bishop Roddy J. Shelton, II, is affirmed.
2. The order of the Court of Common Pleas of Philadelphia County, at No. 2945 July Term, 1995, dated July 10, 2006, vacating Kenneth Shelton's petition and supplemental petition to vacate and confirming the arbitration award, is reversed.
3. This matter is remanded with instructions to vacate the arbitrator's April 26, 2006 award/decision and any decisions rendered by the arbitrator after that date and for the trial court to conduct the proper proceedings consistent with the foregoing opinion to

Zoning Hearing Board of Cranberry Township, 566 A.2d 1285 (Pa.Cmwlth.1989), *petition for allowance of appeal denied*, 526 Pa. 644, 584 A.2d 325 (1990).

119a

determine whether Anthoneé J. Patterson is entitled to relief pursuant to the Pennsylvania Nonprofit Corporation Law.

4. Jurisdiction relinquished.

APPENDIX P

2015 WL 9260536

Only the Westlaw citation is currently available.

THIS IS AN UNREPORTED PANEL DECISION
OF THE COMMONWEALTH COURT. AS SUCH,

IT MAY BE CITED FOR ITS PERSUASIVE
VALUE, BUT NOT AS BINDING PRECEDENT.

SEE SECTION 414 OF THE COMMONWEALTH
COURT'S INTERNAL OPERATING PROCEDURES.

COMMONWEALTH COURT OF PENNSYLVANIA

No. 2147 C.D.2014.

ANTHONEE PATTERSON,

Appellant

v.

KENNETH SHELTON, individually and in his capacity
as President of the Board Of Trustees, of the Church
of the Lord Jesus Christ of the Apostolic Faith, Inc.

Submitted July 2, 2015
Filed Dec. 18, 2015

MEMORANDUM OPINION

BEFORE: BERNARD L. McGINLEY, Judge, and
PATRICIA A. McCULLOUGH, Judge, and JAMES
GARDNER COLINS, Senior Judge.

McGINLEY, Judge.

Anthonee Patterson (Patterson) appeals from the order of the Court of Common Pleas of Philadelphia County (trial court) which granted Bishop Kenneth Shelton's (Shelton) motion to dismiss on the trial court's determination that it lacked subject matter jurisdiction.

I. Factual and Procedural Background

This procedural and factual history is recounted in this Court's memorandum opinion in the case of *Patterson v. Shelton*, (Pa.Cmwlth., No. 2396 C.D.2011, filed March 6, 2013), slip opinion, *appeal denied*, 78 A.3d 1092 (Pa.2013).

This marks the [fifth] time this Court has been called upon to review action by the [trial court] in the underlying tangle of controversies involving a religious schism which has spanned over two decades. In all, seven lawsuits were instituted by various parties against a church, its corporate trustee and various officials in the Court of Common Pleas of Philadelphia County, Court of Common Pleas of Delaware County, and United States District Court for the Eastern District of Pennsylvania.¹

¹ These lawsuits are recounted in more detail in this Court's previous opinion in *Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Shelton*, (Pa.Cmwlth. Nos. 376 C.D.2000 and 559 C.D.2000, filed April 10, 2001). See also *Church of the Lord Jesus Christ of the Apostolic Faith, Inc., et al, v. Roddy Shelton, II*, 740 A.2d 751 (Pa.Cmwlth.1999), for an insightful history of this complex and protracted dispute. See also *Joseph Askew v. Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 644 F.Supp.2d 584 (E.D.Pa.2009) ("Askew I") and *Joseph Askew v. Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.*, 776 F.Supp.2d 25 (E.D.Pa.2011) ("Askew II").

The key players involved in the present offshoot of the controversy are: (1) the Church of the Lord Jesus Christ of the Apostolic Faith (the “Church”), an unincorporated association, founded in 1919; (2) the “Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.”, (the “Corporate Trustee”), a Pennsylvania nonprofit corporation formed in 1947 *to act as the trustee and hold property in trust for the Church*²; (3) Patterson, a life-long member, elder, and minister of the Church; and (4) Shelton, the current “Bishop” and/or “Overseer” of the Church and “President” of the Corporate Trustee.

The dispute began in 1991 when then-Bishop S. McDowall Shelton, died, leaving vacancies in the offices of “Overseer” of the Church and “President” of the Corporate Trustee. Immediately upon Bishop S. McDowall Shelton’s death, Shelton and his “faction” took control of the accounts, trusts and properties of the Church and Corporate Trustee. After extensive litigation initiated by two other dissident factions of the Church congregation ^[3] over the leadership of the Church and Corporate Trustee, the trial court ultimately determined, and this Court later affirmed, that Shelton and his Board of Trustees were in control.⁴

² The Corporate Trustee’s Charter provided that the purpose for which it was formed was to “take, receive, have and hold and manage real and personal property in trust for the uses and purposes specified by the General Assembly of the Church” and that said purposes did “not contemplate pecuniary gain or profit incidental or otherwise to its members.” Charter, June 27, 1947, at 1; Reproduced Record (R.R.) at 266a.

³ Patterson was the leader of one such faction.

⁴ See *Church of the Lord Jesus Christ of the Apostolic Faith, Inc. v. Shelton*, (Pa.Cmwlth. Nos. 376 C.D.2000 and 559 C.D.2000, filed April 10, 2001).

[II. Patterson's Prior Appeal To This Court]

On July 24, 1995, Patterson, as life-long member, elder and minister of the Church, commenced an action in equity against Shelton, in Shelton's individual capacity and as the President of the Board of Trustees of the Corporate

Trustee.⁵ Patterson alleged that since taking control of the Church and Corporate Trustee in 1991, Shelton and his Board of Trustees have misappropriated funds, "looted the Church's assets," paid themselves salaries in contravention of Church By-Laws, and funded private expenditures, lavish vacations, lingerie, cars, homes and other personal incidentals with assets which were donated and designated for Church religious and charitable missions.⁶

Patterson requested, *inter alia*: (1) the appointment of a receiver to take control of the assets of the Church held by the Corporate Trustee; (2) an order requiring

⁵ Erik Shelton was also named as a Defendant but on November 30, 2005, he was voluntarily dismissed from the lawsuit.

⁶ Specifically, Patterson alleged that Shelton took physical possession of cash offerings designated for the Church from churches throughout the Eastern United States and converted them to his own use; converted \$111,537 from the Gresham Trust, a fund held for the benefit of Church members in need of social services; converted \$111,533 from a Church account held at Fidelity National Bank; converted \$10,585 from the Church's "Bus Rally Money Account;" converted \$64,000 from a Church account at Commonwealth Federal and Loan which was dedicated for youth studies; and converted \$8,000 from two accounts at Mid Atlantic Bank donated by Church members for the purpose of financially assisting the Church's international missions. Complaint, ¶¶ 12(a)-(f) at 5-7; R.R. at 127a-129a.

Shelton to issue annual financial reports for the years 1991, 1992, 1993, and 1994; and (3) an accounting.

The parties engaged in discovery. Patterson retained James A. Stavros, CPA (Stavros), a forensic financial investigator, to analyze the finances and expenditures of the Church and the Corporate Trustee. Stavros authored a report which detailed his findings that Shelton and his Board of Trustees withdrew hundreds of thousands of dollars from Church accounts with no accounting of where the funds went and that they expended Church funds on a significant amount of “personal” items and expenditures that appeared to be outside the normal course of business and outside Church laws and customs.⁷ He concluded that Church accounts had declined by nearly \$1 million under Shelton’s control.⁸

In January 2006, the parties agreed to submit to binding arbitration. The Arbitrator concluded that the credible evidence established that Shelton had engaged in various acts of fraud, mismanagement, conspiracy, breach of fiduciary responsibilities, [and] violations of By-laws and the Articles of Incorporation in seizing corporate funds and assets and depleting bank accounts designated for Church-related purposes. The Arbitrator concluded that Shelton had diverted Church funds and assets to himself and others for his and their benefit. The Arbitrator appointed a receiver and directed Shelton to account

⁷ This included vacations all over the world including, but not limited to: Cannes, France, Disney World, Switzerland, and purchases from stores such as Victoria’s Secret.

⁸ Shelton did not retain a financial expert to counter Patterson’s report.

for all Church funds removed by him or those acting with him.

Shelton filed a motion to vacate the award which the trial court denied. On appeal, this Court overturned the arbitration award because the arbitrator went beyond the scope of his authority in fashioning relief. *See Shelton v. Patterson*, 942 A.2d 967 (Pa.Cmwlth.2008). This Court remanded the matter to the trial court to determine whether Patterson was entitled to relief under the [Nonprofit Corporation Law of 1988, 15 Pa.C.S. §§ 5101–5997] NCL.

On remand, Shelton moved for summary judgment on the ground that Patterson lacked “statutory standing” under Section 5782 of the NCL, 15 Pa.C.S. § 5782. Shelton argued that only an officer, director, or member of a nonprofit corporation has “statutory standing” to enforce a right of a nonprofit corporation through a derivative action. Section 5782 of the NCL, 15 Pa.C.S. § 5782, which is contained in Subchapter F governing “derivative actions,” provides:

Actions against directors, members of an other body and officers

(a) General rule—Except as provided in subsection (b), *in any action or proceeding brought to enforce a secondary right on the part of one or more members of a nonprofit corporation against any present or former officer, director or member of an other body of the corporation because the corporation refuses to enforce rights that may properly be asserted by it, each plaintiff must aver and it must be made to appear that each plaintiff was a member of the corporation at the time of the transaction of which he complains.* (Emphasis added.)

15 Pa.C.S. § 5782.

Shelton pointed to the Corporate Trustee's Articles of Incorporation which limited its membership in the nonprofit corporation to its Board of Trustees. Shelton asserted that because Patterson was never a member of the Board of Trustees he was never a "member" of the Corporate Trustee, and thus, he had no "statutory standing" to bring claims that are derivative of the Corporate Trustee's rights.

The trial court agreed that under Section 5782 of the NCL, Patterson could only bring suit if he was a member of the Corporate Trustee at the time of the alleged events outlined in the Complaint. The trial court looked to Article IX of the Articles of Incorporation which states: "membership in the corporation [Corporate Trustee] shall consist of those persons serving as members of the Board of Trustees." The trial court concluded that because Patterson had never been a member of the Board of Trustees he was not a member of the Corporate Trustee. The trial court reasoned that because the NCL created the cause of action and designated who may sue; standing was a jurisdictional prerequisite to any action. *Grom v. Burgoon*, 672 A.2d 823 (Pa.Super.1996). The trial court "finding no possible way to affirm that [Patterson] has standing" granted the motion for summary judgment and dismissed the case. Trial Court Opinion, January 25, 2012, at 3.

Patterson, slip opinion at 1-6.

III. This Court's Analysis And Disposition Of Patterson's Prior Appeal

[This Court rationalized in *Patterson*]:

An example of derivative claims previously asserted against the Corporate Trustee and Shelton (and

others) is found in the related case commenced by Joseph Askew (Askew) in the United States District Court for the Eastern District of Pennsylvania in 2009. *See* footnote 1

In *Askew I*, Askew, who claimed to be a member of the Church, brought an eight-count complaint against Shelton, the Corporate Trustee and the other managers of the Corporate Trustee (collectively “Defendants”). In Count II, Askew alleged breach of fiduciary duty *owed to the Corporate Trustee*. In Count IV, Askew alleged that the Board of Trustees failed to present the members of the Corporate Trustee with an annual report containing specific financial information under Section 5553 of the NCL. In Count V, Askew sought the removal of Shelton as President of the Corporate Trustee.

Defendants moved to dismiss these counts because Askew lacked standing under the NCL to bring derivative claims.

The [United States] District Court agreed that these claims were derivative because any alleged failure to satisfy a supposed duty of loyalty and care owed *to the Corporate Trustee* would “injure [] only that corporation.” *Askew I*, 644 F.Supp.2d at 590. The United States District Court determined Count IV was also a derivative claim because that section guarantees a nonprofit corporation “the right to self-knowledge” and that “[a]ny right that Section 5553 may confer is a *right of the corporation*, and a claim to encore [sic] this section necessarily falls within the ambit of Section 5782.” *Askew I*, 644 F.Supp.2d at 590 (Emphasis added.) As for Count V, the [United States] District Court found that under Section 5726 of the NCL, a court is only empowered

to remove a director “upon petition of any member or director” of the nonprofit corporation. *Id.*

....

The [United States] District [C]ourt concluded that since Askew was not a member or director of the Corporate Trustee, he did not have “statutory standing” to seek these kinds of relief.

Even though the [United States] District Court found that Counts II, IV and V were derivative claims, the [United States] District Court explained that Askew’s claims in Counts I and VI for breach of fiduciary duty to the *Church* and unjust enrichment for misappropriation of *Church funds* were *not* derivative of the Corporate Trustee’s rights. Therefore, they were not claims “that only the Corporation’s [Corporate Trustee] members directors or officers can bring.” *Askew I*, 644 F.Supp. at 590.

....

Similarly, in *Askew I*, the [United States] District Court determined, and this Court concurs, that the members of a Church’s congregation suffer injury when the Church’s assets, which were held in trust, are misused. *Askew I*, 644 F.Supp.2d at 591. The [United States] District Court clarified that only through Askew’s membership in the Church was he qualified to bring an action on behalf of the Church under Fed.R.Civ.P. 23.1 (governing standing to bring derivative actions on behalf of unincorporated associations).^[9]

⁹ In *Askew II*, the District Court went on to find that Askew was not a “member” of the Church because he was expelled through the procedures in Article XIII of the Church’s By-Laws.

Here, there is no question that Patterson was a member of the Church when he instituted the action.^[10] As a member of the Church congregation, Patterson was part of the beneficiary class for which the Corporate Trustee held the Church's assets in trust. As such, he has standing to bring this action to enforce his own rights and the rights commonly held by all beneficiaries to obtain restoration to the Church of its full losses. Thus, the action should not have been dismissed due to lack of standing under the NCL.

As noted, the Church is an unincorporated association. This Court notes that its conclusion that Patterson has standing is also wholly consistent with principles governing standing to sue on behalf of an unincorporated association. *See Pa.R.C.P. No. 2152* (action by unincorporated association must be brought in name of member as trustee *ad litem*).^[11]

Patterson, slip opinion at 9–10 and 16–17.

This court reversed the order of the trial court and remanded to the trial court to conduct a trial on the remaining factual and legal issues raised in Patterson's complaint.

¹⁰ Shelton argues that Patterson was not a member of the Church congregation because he "abandoned" the Church. However, the record demonstrates that the Church never took any action to remove Patterson. Article XIII of the Church By-laws provided a method for the expulsion or suspension of members. The Church could have used those procedures to remove Patterson who Shelton alleges abandoned the Church, but it did not do so.

¹¹ To hold otherwise would, as a practical matter, insulate these most serious allegations from judicial review.

IV. Patterson's Present Appeal

On July 15, 2014, the trial court commenced a non-jury trial. Patterson offered the following proof regarding Rita Bolognese's (Bolognese) testimony, a senior paralegal and records custodian for BNY Mellon. "She will testify to bank records which we have in our possession, that they're authentic, and that from there, certain transactions we will be questioning with other witnesses once we've established that they are true and correct copies of those records." Trial Transcript, July 15, 2014, (T.T. 7/15/14) at 29; Reproduced Record (R.R.) at 694a. The trial court responded "[s]o your argument is that she is going to testify about these records ... [a]nd I assume it's the operative time of 91 to 94?" T.T. 7/15/14 at 30; R.R. at 695a. Patterson's attorney ¹² responded "[t]hat's correct." T.T. 7/15/14 at 30; R.R. at 695a.

Bolognese recounted that she was authorized to serve as records custodian for the bank. T.T. 7/15/14 at 34; R.R. at 699a. Bolognese was provided with an affidavit from Susan McGivern, her supervisor, as to the scope of what she could testify to as custodian of records for BNY Mellon. T.T. 7/15/14 at 35–36; R.R. at 700a–71a. Following a lunch break, the trial court stated that "[t]his case has a real problem in that plaintiff's attorney [Patterson] has not produced all of the records recently to the defendant [Shelton]. This is a 20– year–old case. This case is going slowly." T.T. 7/15/14 at 40–41; R.R. 705a–06a. The trial court adjourned for the day and ordered the parties "to

¹² In order to avoid confusion between Bishop Kenneth Shelton and Fincourt B. Shelton, this Court will refer to Fincourt B. Shelton as Patterson's attorney.

provide to the other side copies of every single document that party intends to introduce into evidence, as well as a list of every single witness that attorney intends to call in this case. Failure to provide copies of the document today to opposing counsel will result in my precluding the document from being introduced into evidence." T.T. 7/15/14 at 41; R.R. at 706a.

On July 16, 2014, before the commencement of Bolognese's testimony, the trial court issued the following order, "I'm denying the motion to deem the admissions admitted for a variety of reasons, including the fact that . . . [y]ou [Patterson's attorney] did not include in this motion even what the request for admissions of the third set were, you included the second set." Trial Transcript, July 16, 2014, (T.T. 7/16/14) at 12; R.R. at 720a. At that time, Bolognese again took the stand and stated that "[w]hen we [took] over the bank [Mellon PSFS], we took over the records of PSFS . . . [a]nd in course of . . . changing over the accounts, we had possession of the PSFS documents." T.T. 7/16/14 at 23; R.R. at 23a. In response to the trial court's query, Bolognese admitted that she was unable to testify that "this document was prepared in the course of business of PSFS." T.T. 7/16/14 at 24; R.R. at 732a.

On cross-examination, defense counsel, Danielle Banks (Banks) asked the following question:

Q: So with regard to this particular document—

A: Right.

Q: This particular document was not—you don't have knowledge yourself that it was kept in the normal course, correct?

A: No.

Q: And did someone else tell you that it was kept, in the normal course?

A: Well, it would be someone from legal support that would tell me. Someone did tell me, yes.

T.T. 7/16/14 at 41–42; R.R. at 749a–50a.

At the conclusion of Bolognese's testimony, the trial court ruled:

And everyone is in agreement that the testimony from Mrs. Bolognese would be that she does not have any direct knowledge regarding how these documents were made or whether the record was made at or near the time or from information transmitted by someone with knowledge. So based on her inability to provide that testimony, I'm sustaining the objection to any questions or the introduction into evidence of those documents. (Emphasis added.)

T.T. 7/16/14 at 76–77; R.R. at 784a–85a.

Joseph Sweeny (Sweeny), an employee of Firsttrust Bank, testified that he was familiar with financial transactions at Firsttrust Bank. Sweeny stated that the withdrawal process for removal of funds from an account “would be where an individual or individuals would sign a withdrawal order and it would be processed at the teller station and they would either get cash or a check.” T.T. at 86; R.R. at 794a.

On cross-examination, Sweeny testified that he had personal knowledge concerning Exhibit B “because my initials are on there.” T.T. 7/16/14 at 90; R.R. at 798a.

The trial court ruled that “I’m going to allow the document [Exhibit 9 was ‘copies of two withdrawals, two different account numbers’] to be introduced into evidence. It’s not relevant for him to read what’s in there. It’s already into evidence.” T.T. 7/16/14 at 93–

95; R.R. at 801a–03a. At the conclusion of Sweeny’s testimony, the trial court directed Patterson’s attorney to proceed with his next witness. Patterson’s attorney was unable to call his next witness because none of his witnesses responded to the subpoenas. The trial court adjourned for the day and stated that “[s]o what we’re going to do tomorrow, we’ll start court at 10:15 . . . [a]nd Mr. Shelton you’ll tell us who your next witnesses are .” T.T. 7/16/14 at 121–22; R.R. at 829a–30a.

On July 17, 2014, Patterson’s attorney called Bishop Kenneth Shelton to the stand. At that time, Banks stated to the trial court that “I have two objections . . . [o]ne a procedural argument, and one a Constitutional one.” Trial Transcript, July 17, 2014, (T.T. 7/17/14) at 3; R.R. at 832a. More specifically, Banks stated that Pa. R.C.P. No. 234.2 “says the notice shall be served reasonably in advance of the date upon which attendance is required.” T.T. 7/17/14 at 4; R.R. at 832a. “And here, Your Honor, when we have posed a subject matter jurisdiction challenge to the Bishop being here—this is not just any trial. This is about a church and the goings-on in the church.” T.T. 7/17/14 at 4–5; R.R. at 832a–33a. The trial court responded that “*[a]s an initial matter, I need to make a decision whether or not I have subject matter jurisdiction in this case . . .*” (Emphasis added.) T.T. 7/17/14 at 25; R.R. at 838a. Again, the trial court adjourned and reiterated “let me just say this one more time. *We’ll get an e-mail from [Patterson’s attorney] by 7:00 tonight whether or not he’ll be calling any factual witnesses to establish subject matter jurisdiction.*” (Emphasis added.) T.T. 7/17/14 at 33; R.R. at 840a.

On July 28, 2014, the trial court entertained arguments concerning two motions, the “first with the defendant’s [Shelton’s] motion to strike the portion of

the caption that identifies the plaintiff [Patterson] in the capacity as the corporate trustee...." Trial Transcript, July 28, 2014, (7/28/14) at 3, R.R. at 847a. After argument, the trial court ordered that "I will grant the motion to strike the caption. The plaintiff [Patterson] did not ask leave of court, and it could potentially make a difference. However, I will grant leave to amend the caption at this point." T.T. 7/28/14 at 21; R.R. at 852a. The trial court then addressed "the motion for subject matter jurisdiction." T.T. 7/28/14 at 22; R.R. at 852a. After argument, the trial court stated "I'm going to defer my decision on this issue . . . [a]t this point, I'm still struggling, and I think I'm struggling because I don't have that much evidence, at which point I'll let counsel know that I want to hear further argument on this issue." T.T. 7/28/14 at 55; R.R. at 860a.

On July 29, 2014, the trial court continued to hear argument on whether it had subject matter jurisdiction. Patterson argued:

I think there's more than enough here for you to find that there's a neutral principle, that you can look at the bank records, that you can look at what the title on the account is, and if it says bus rally and you find that three or four trustees personally went to the bank, took it out as cash, whatever and however they did it, and the records reflect that, then you would have to, I think, come to the decision that not only did Kenneth Shelton, but those trustees serving under him were all involved in misappropriation of church funds during those years.

Trial Transcript, July 29, 2014, (T.T. 7/29/14) at 20; R.R. at 891a.

Banks responded:

I want to make sure also that the record is clear It is Article 18, wherein the bylaws specifically say '[t]he tithes and offerings of whatever kind, nature or collection by any elder, local minister, or any officer or member is the property of the general elder, who is the general overseer, and that all tithes and love offerings are the personal property of the general overseer

Here, Your Honor, even without the bylaws, the Court wouldn't have jurisdiction. With the bylaws there can be no question, the Court has no jurisdiction. Under these bylaws, Bishop Shelton as the general overseer is the church's highest adjudicatory body. I submit to you that by denying the allegations, he has spoken to them and that is the end of this matter.

T.T. 7/29/14 at 27; R.R. at 893a. The trial court concluded:

Based upon the arguments, based upon the case, I am granting the motion to dismiss. I do not have subject matter jurisdiction. In order for me to make a determination in this case, I would have to interpret religious doctrine of [sic] this court and the First Amendment prohibits me from doing so.

T.T. 7/29/14 at 40; R.R. at 896a.

V. Issues

Before this Court, Patterson essentially argues¹³:

- 1) that the trial court failed to follow this Court's

¹³ This Court's review is limited to a determination of whether the trial court abused its discretion or erred as a matter of law. *Mid Valley Taxpayers v. Mid Valley School*, 416 A.2d 590

express directive and conduct a trial on the merits; 2) that the trial court erred as a matter of law when it determined it lacked subject matter jurisdiction to address Patterson's claim of mismanagement and diversion of Church assets and funds by Shelton; 3) that the trial court erred when it denied admission of various financial records and documents as business records under Pennsylvania Rules of Evidence 803 (Exception to the Rule against Hearsay); 4) that the trial court erred when it denied Patterson's motion in limine "to deem [Patterson's] request as admitted based upon [Shelton's] inadequate answers"; and 5) that the present matter should be remanded back to the trial court.¹⁴ Brief of Appellant, Statement of Questions Presented at 5–6.

(Pa.Cmwlth.1980). Furthermore, the decision of the trial court will stand "if there exists sufficient evidence to justify the findings and logically sound, reasonable inferences and conclusions derived therefrom." *Groff v. Borough of Sellersville*, 314 A.2d 328, 330 (Pa.Cmwlth.1984).

¹⁴ The trial court made the following rulings on the evidentiary motions presented by both parties:

Evidentiary Motions

1. The court denied the Plaintiff's [Patterson's] Motion in Limine to Deem as Admitted Plaintiff's Requests for Admissions.
2. The court granted the Defendant's [Shelton's] Motion in Limine to preclude any evidence regarding expenditures beyond the time period of 1991–1994.
3. The court granted Defendant's [Shelton's] Motion in Limine to Preclude any Evidence Regarding the Vacated Arbitration in this Matter.
4. The court deferred until trial its decision in the Defendant's [Shelton's] Motion in Limine to Preclude the Presentation of Testimony by Plaintiff's

The issue of subject matter jurisdiction was raised and argued before the trial court and ably disposed of

[Patterson's] Expert. The court now dismisses without prejudice the motion because it is moot.

5. The court deferred until trial its decision in Defendant's [Shelton's] Motion in Limine to Preclude Irrelevant Witness Testimony. The court now dismisses without prejudice the motion because it is moot.
6. The court deferred until trial its decision in the Plaintiff's [Patterson's] Motion in Limine Seeking an Adverse Inference against Defendant's [Shelton's] Due to Spoliation of Evidence. The court now dismisses without prejudice the motion because it is moot.
7. The court denies without prejudice the Plaintiff's [Patterson's] Motion for Reconsideration it [sic] ruling on the Records of Regularly Conducted Business Exception to the Hearsay Rule as moot.

Motions Regarding The Caption

8. The court granted Defendant's [Shelton's] Motion to Strike the Plaintiff's [Patterson's] Unilateral Caption Change and struck the portion of the Caption that refers to the Defendant [Shelton] as the President of the Board of trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic [sic] Faith, Inc.
9. The court granted Plaintiff's [Patterson's] Motion for Leave to Amend the Caption to include the Defendant [Shelton] in his capacity as the President of the Board of Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic [sic] Faith, Inc.

Motions Regarding Subpoenas

10. All subpoenas served for these proceedings and any findings of contempt are hereby vacated.
11. The court dismisses without prejudice the Motion to Quash the subpoena duces tecum of Nathaniel Shelton-Bailey as moot.

Order of the Trial Court, July 31, 2014, at 1-2.

in the opinion of the Honorable Alice Beck Dubow, Judge of the Court of Common Pleas of Philadelphia First District of Pennsylvania Civil Trial Division. Therefore, this Court shall affirm on the basis of Judge Dubow's opinion.¹⁵ *Patterson v. Shelton*, (July Term, 1995, No. 2945), filed November 10, 2014.

ORDER

AND NOW, this 18th day of December, 2015, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is affirmed.

¹⁵ Because the trial court properly determined that it lacked subject matter jurisdiction, Patterson's remaining arguments are moot.

COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

No. 2945

ANTHONEÉ PATTERSON

v.

KENNETH SHELTON

JULY TERM, 1995

CIVIL TRIAL DIVISION

OPINION

A. INTRODUCTION

On August 1, 2014 the trial court granted the Motion to Dismiss of Appellee Kenneth Shelton (“Appellee”) on the grounds that the trial court did not have subject matter jurisdiction. The crux of the allegations in the Complaint was that the Appellee, the head of the Church of the Lord Jesus Christ of the Apostolic Faith (“the Church”), misappropriated church funds during the time period of 1991–1994. This court, applying the Deference kule, determined that it could not adjudicate this dispute without interpreting church doctrine and concluded that the court lacked subject matter jurisdiction, On August 9, 2015 the Appellant Anthone6 Patterson (“Appellant”) appealed this dispositive decision. (*See Docket*).

In particular, the Appellant commenced the instant case nineteen years ago. on July 17, 1995, and this litigation has a long and complicated procedural history, including multiple reviews by the Commonwealth Court of Pennsylvania (“Commonwealth Court”). (*See Docket*). Likewise, during the nineteen year life of the case, various courts, both state and federal have decided a myriad of legal and factual issues.¹ This appeal. however. involves the singular issue of whether the trial court properly held that the trial court, under the Deference Rule, lacked subject matter jurisdiction. This court decided no other issues that are relevant to this appeal.

The parties presented few facts to trial court when presenting their positions. In fact. the attorney for the Appellant chose to present no facts to support his position that the trial court had subject matter jurisdiction. The attorney for the Appellee introduced into evidence the Bylaws of the Church. Based on this and the allegations in the Complaint, the trial court concluded that it did not have subject matter jurisdiction.

B. LEGAL DISCUSSION

1. The Appellant Failed to Present Any Evidence to Establish Subject Matter Jurisdiction.

It is well established that “a plaintiff bears the unquestioned burden of establishing jurisdiction where the question of the sufficiency of his jurisdictional

¹ The most recent Commonwealth Court Opinion dealt primarily with the issue of whether the Appellant had standing to proceed with this Complaint. The Commonwealth Court did not address whether the trial court had subject matter jurisdiction over this dispute.

allegations is before the court on a motion to dismiss". *Itri v. Eauibank*, N.A. 318 Pa.Super. 268. 278–79, 464 A.2d 1336, 1341 (1983) (internal citations omitted), Further, the court can decide questions of subject matter jurisdiction at any time during the judicial proceedings. *Encelewski v. Associated-E. Mortgage Co.*, 262 Pa.Super. 205, 210. 396 A.2d 717, 719 (1978).

In the instant case. the Appellee raised the issue of whether this court had subject matter jurisdiction in a pre-trial motion, which was denied.² and again during the trial. in light of judicial economy, the trial court decided that it should bifurcate this issue and hear the factual and legal basis for the issue before proceeding on the remaining issues in the trial.

The trial court gave the parties a full day to provide evidence to support each party's position regarding subject matter jurisdiction. (N.T. 7/17/14 p. 28–32). Despite being given this time to present evidence to support the Appellant's position. the Appellant chose to present no evidence whatsoever, (N.T. 7/28/14 p. 32–33). The Appellee introduced the church's Bylaws into evidence to support the Appellee's position that the trial court lacked subject matter jurisdiction.

Since the Appellant failed to introduce *any* evidence to meet his burden that the trial court had jurisdiction, the trial court determined that the Appellant failed to meet his burden of establishing that he had subject matter jurisdiction.

² The trial court did not find the denial of the Motion for Summary Judgment to be dispositive of the issue of subject matter jurisdiction because the trial court judge who denied the motion did not issue an Opinion.

2. Subject Matter Jurisdiction is Barred by the Deference Rule

The other basis for dismissing the Complaint in this matter is that the trial court could not adjudicate the issues in this case by applying neutral principles of law. Therefore, the Deference Rule precludes the trial court from retaining subject matter jurisdiction.

Pennsylvania courts recognize the “the long-standing common-law precept known as the Deference Rule which precludes civil courts from exercising jurisdiction over cases that would require them to decide ecclesiastical questions.” *Connor v. Archdiocese of Philadelphia*, 601 Pa. 577. 579. 975 A.2d 1084. 1085 (2009). However, there is one exception called the “neutral principles of law approach” which allows “civil courts to exercise jurisdiction over cases involving religious institutions that can be decided based on secular legal authority.” *Id.* at 585–586. In order to apply the “neutral principals of law approach” there must be an ability to resolve the legal issues without delving into church matters. *See Connor*.

The Pennsylvania Supreme Court has recently laid out a three prong approach to determining whether the Deference Rule should apply:

“Therefore, we conclude that in determining whether to apply the deference rule, the fact-finding court must: (1) examine the elements of each of the plaintiffs claims; (2) identify any defenses forwarded by the defendant; and (3) determine whether it is reasonably likely that at trial, the fact-finder would ultimately be able to consider whether the parties carried their respective burdens as to every element of each of the plaintiffs claims without

‘intruding into the sacred precincts.’” *Id.* at 607–608 (internal citations omitted).

Various decisions from other jurisdictions lend guidance and support the trial court’s decision in the instant matter. In *Bible Way Church of Our Lord Jesus Christ of Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419 (D.C.1996) the plaintiff brought an action against a church asserting claims including negligent accounting of church funds and reporting to church members. The District of Columbia Court of Appeals held that the trial court lacked subject matter jurisdiction and stated, “a church’s financial regime including any required reports to members, necessarily reflects an array of decisions about a member’s obligation to pledge funds and about the leaders’ corresponding responsibility to account for those funds, that a civil court cannot arbitrate without entangling itself in doctrinal interpretations . . . Accounting is an area riddled with major subjective decisions. When the entity in question is a religious society, those subjective decisions raise questions of internal church governance which are often themselves based on the application of church doctrine.” *Id.* at 429.

Similarly, in *Harris v. Matthews*, 361 N.C. 265, 273, 643 S.E .2d 566, 571 (2007), the plaintiff’s alleged conversion of funds, breach of fiduciary duty and civil conspiracy. The Supreme Court of North Carolina held that the trial court lacked jurisdiction and that the First Amendment of the United States Constitution mandates that when a church’s dispute “cannot be resolved using neutral principles of law the courts must intrude no further.” *Id.* at 570.

Further, the court held that “determining whether actions, including expenditures by a church’s pastor,

secretary, and chairman of the Board of Trustees were proper requires an examination of the church's view of the role of the pastor, staff, and church leaders. their authority and compensation, and church management. Because a church's religious doctrine and practice affect its understanding of each of these concepts, seeking a court's review of the matters presented here is no different than asking a court to determine whether a particular church's grounds for membership are spiritually or doctrinally correct or whether a church's charitable pursuits accord with the congregation's beliefs. None of these issues can be addressed using neutral principles of law." *Id.* at 571.

In the instant case the Complaint alleges breach of fiduciary duty and fraud in the form of misappropriation of church funds. (See Complaint). The duty owed by an officer or director is set forth in 15 Pa.Cons.Stat.Ann. § 512. This provides that directors and officers shall discharge the duties of their positions "in good faith and with the diligence, care and skill which ordinary prudent men would exercise under similar circumstances in like positions." Further. "the test of liability of breach of fiduciary duty is whether the director or officer was unjustly enriched." *Resolution Trust Corp. v. Lutz.* 914 F.Supp. 1163. 1166 (E.D.Pa.1996) (citing *In re Specialty Tape Corp.* 132 B.R. 297, 301 (W.D.Pa.1991) (internal citations omitted)). The measure of damages for breach of fiduciary duty is the profits lost as a consequence of the breach. *Id.*

To prove a civil fraud claim, the following elements must be proven by clear and convincing evidence: (1) a representation: (2) which is material to the transaction at hand: (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false:

(4) with the intent of misleading another into relying on it: (5) justifiable reliance on the misrepresentation: and (6) the resulting injury was proximately caused by the reliance. *Weissberger v. Myers*, 2014 PA Super 80.90 A.3d 730, 735 (2014) (citing *Milliken v. Jacono*, 60 A.3d 133, 140 (Pa.Super.2012)).

In the instant case, the Appellant alleges that the Appellee “routinely and flagrantly violat[ed] the Bylaws of the Corporation . . . [and] systematically loot[ed] the corporation’s accounts and trusts as well as the regular Church collections,” (Complaint ¶ 11). Additionally. “as a result of the . . . acts of the [Appellee], the corporation has become the personal instrument of the [Appellee], its assets have been depleted, it has been disabled in its religious and charitable missions, and its members have become disenfranchised.” (Complaint ¶ 13).

The Rules and By-Laws of The General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith (“Bylaws”)³ make it clear that the Appellee as the General Overseer of the Church, is the highest spiritual leader in the church and has absolute discretion to make decisions regarding the use of Church funds (See Bylaws),

In particular, the Bylaws provide. “the General Overseer . . . is given blanket authority to conduct all negotiations and closings in the purchasing, selling, leasing, renting, or mortgaging of any property real or personal for [the Church] . . . The tithes and offering of whatever kind, nature or collection by any elder, local minister, any other officer or member, is the property of the (Appellee).” (Bylaws. Article II: Article IXVII).

³ Both parties stipulated that the controlling Church Bylaws were from 1962.

Therefore, the Bylaws provide that all Church property is the personal property of the Appellee. Consequently, the Appellee cannot embezzle his own personal property.

In order to determine whether or not the Appellee was unjustly enriched, the trial court would have to examine the reasonableness of the church's customs as expressed in the Church's Bylaws.

Likewise, in order to decide whether the Appellee committed a fraud by misappropriating funds the trial court would have to determine whether the Bylaws, which state that all funds are the personal property of the Appellee, are equitable. Once again, a question that would require the trial court to interpret the Church's governance, custom and doctrines.

After examining the elements of the claims, considering the defenses put forth by the Appellee, and weighing whether or not the trial court could evaluate the evidence without 'intruding into the sacred precincts' of the Church the trial court properly determined that the trial court could not address any of the claims asserted in the Complaint using neutral principles of law and correctly found that the trial court lacked subject matter jurisdiction.

C. CONCLUSION

The Appellant failed to present *any* evidence on subject matter jurisdiction, and therefore failed to meet his burden of production. Additionally based on the evidence that the Appellee presented and the allegations in the Complaint, the trial court properly found that the trial court lacked subject matter jurisdiction.

147a

BY THE COURT:

November 10, 2014

DATE

APPENDIX Q

175 A.3d 442

COMMONWEALTH COURT OF PENNSYLVANIA

No. 1312 C.D. 2016

ANTHONEE PATTERSON,

Appellant

v.

KENNETH SHELTON, Individually, and President
of the Board of Trustees of the General Assembly
of the Church of the Lord Jesus Christ
of the Apostolic Faith, Inc.

Submitted on Briefs March 24, 2017

Decided November 29, 2017

Reargument Denied January 16, 2018

Attorneys and Law Firms

Anthonee Patterson, pro se.

Danielle Banks, Philadelphia, for Appellee.

BEFORE: HONORABLE MARY HANNAH LEAVITT,
President Judge, HONORABLE PATRICIA A.
McCULLOUGH, Judge, HONORABLE JAMES
GARDNER COLINS, Senior Judge

Opinion

OPINION BY JUDGE McCULLOUGH

Anthonee Patterson (Patterson) appeals, *pro se*, from the July 14, 2016 order of the Court of Common Pleas of Philadelphia County (trial court) denying his motion to declare certain orders void based upon the lack of subject matter jurisdiction.

Facts and Procedural History

The extensive procedural and factual history of this matter is recounted in this Court's unreported memorandum opinion in the case of *Patterson v. Shelton*, 2013 WL 3961047 (Pa. Cmwlth., No. 2396 C.D. 2011, filed March 6, 2013), *appeal denied*, 621 Pa. 705, 78 A.3d 1092 (2013), wherein we summarized the same as follows:

The key players involved in the present offshoot of the controversy are: (1) the Church of the Lord Jesus Christ of the Apostolic Faith (the "Church"), an unincorporated association, founded in 1919; (2) the "Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.", (the "Corporate Trustee"), a Pennsylvania nonprofit corporation formed in 1947 to act as the trustee and hold property in trust for the Church; (3) Patterson, a life-long member, elder, and minister of the Church; and (4) Shelton, the current "Bishop" and/or "Overseer" of the Church and "President" of the Corporate Trustee.

The dispute began in 1991 when then-Bishop S. McDowall Shelton, died, leaving vacancies in the offices of "Overseer" of the Church and "President" of the Corporate Trustee. Immediately upon Bishop S. McDowall Shelton's death, Shelton and his "faction" took control of the accounts, trusts and properties of the Church and Corporate Trustee. After extensive litigation initiated by two other

dissident factions of the Church congregation over the leadership of the Church and Corporate Trustee, the trial court ultimately determined, and this Court later affirmed, that Shelton and his Board of Trustees were in control.

...

On July 24, 1995, Patterson, as life-long member, elder and minister of the Church, commenced an action in equity against Shelton, in Shelton's individual capacity and as the President of the Board of Trustees of the Corporate Trustee. Patterson alleged that since taking control of the Church and Corporate Trustee in 1991, Shelton and his Board of Trustees have misappropriated funds, "looted the Church's assets," paid themselves salaries in contravention of Church By-Laws, and funded private expenditures, lavish vacations, lingerie, cars, homes and other personal incidentals with assets which were donated and designated for Church religious and charitable missions.

Patterson requested, *inter alia*: (1) the appointment of a receiver to take control of the assets of the Church held by the Corporate Trustee; (2) an order requiring Shelton to issue annual financial reports for the years 1991, 1992, 1993, and 1994; and (3) an accounting.

The parties engaged in discovery. Patterson retained James A. Stavros, CPA (Stavros), a forensic financial investigator, to analyze the finances and expenditures of the Church and the Corporate Trustee. Stavros authored a report which detailed his findings that Shelton and his Board of Trustees withdrew hundreds of thousands of dollars from Church accounts with no accounting of where the

funds went and that they expended Church funds on a significant amount of “personal” items and expenditures that appeared to be outside the normal course of business and outside Church laws and customs. He concluded that Church accounts had declined by nearly \$1 million under Shelton’s control.^[1]

In January 2006, the parties agreed to submit to binding arbitration. The Arbitrator concluded that the credible evidence established that Shelton had engaged in various acts of fraud, mismanagement, conspiracy, breach of fiduciary responsibilities, violations of By-laws and the Articles of Incorporation in seizing corporate funds and assets and depleting bank accounts designated for Church-related purposes. The Arbitrator concluded that Shelton had diverted Church funds and assets to himself and others for his and their benefit. The Arbitrator appointed a receiver and directed Shelton to account for all Church funds removed by him or those acting with him.

^[1] Patterson’s original complaint was stricken by the trial court in 1996 for unknown reasons and reinstated upon Patterson’s motion in 2004. However, during the interim, the trial court determined that Shelton was the rightful General Overseer of the Church and President of the Corporation. By decision dated April 10, 2001, this Court affirmed the trial court’s determination and our Supreme Court denied separate petitions for allowance of appeal. *See Church of the Lord Jesus Christ of the Apostolic Faith v. Shelton*, 773 A.2d 1290 (Pa. Cmwlth., Nos. 376, 559 C.D. 2000, filed April 10, 2001), *appeals denied*, 567 Pa. 766, 790 A.2d 1019 (2001) and 571 Pa. 709, 812 A.2d 1231 (2001).

Shelton filed a motion to vacate the award which the trial court denied. ^[2] On appeal, this Court overturned the arbitration award because the Arbitrator went beyond the scope of his authority in fashioning relief. *See Shelton v. Patterson*, 942 A.2d 967 (Pa. Cmwlth. 2008). This Court remanded the matter to the trial court to determine whether Patterson was entitled to relief under the [Pennsylvania Nonprofit Corporation Law (NCL), 15 Pa.C.S. §§ 5101–5997].

On remand, Shelton moved for summary judgment on the ground that Patterson lacked “statutory standing” under Section 5782 of the NCL, 15 Pa.C.S. § 5782. Shelton argued that only an officer, director, or member of a nonprofit corporation has “statutory standing” to enforce a right of a nonprofit corporation through a derivative action.

...

Shelton pointed to the Corporate Trustee’s Articles of Incorporation which limited its membership in the nonprofit corporation to its Board of Trustees. Shelton asserted that because Patterson was never a member of the Board of Trustees he was never a “member” of the Corporate Trustee, and thus, he had no “statutory standing” to bring claims that are derivative of the Corporate Trustee’s rights.

The trial court agreed that under Section 5782 of the NCL, Patterson could only bring suit if he was a member of the Corporate Trustee at the time of the alleged events outlined in the Complaint. The trial court looked to Article IX of the Articles of Incor-

^[2] By order dated July 10, 2006, the trial court confirmed the Arbitrator’s award in favor of Patterson and against Shelton and entered judgment in conformity therewith.

poration which states: “membership in the corporation [Corporate Trustee] shall consist of those persons serving as members of the Board of Trustees.” The trial court concluded that because Patterson had never been a member of the Board of Trustees he was not a member of the Corporate Trustee. The trial court reasoned that because the NCL created the cause of action and designated who may sue; standing was a jurisdictional prerequisite to any action. *Grom v. Burgoon*, 448 Pa.Super. 616, 672 A.2d 823 (Pa. Super. 1996). The trial court “finding no possible way to affirm that [Patterson] has standing” granted the motion for summary judgment and dismissed the case.

Id., slip op. at 1–6 (emphasis in original). On appeal, this Court reversed the order of the trial court, concluding that Patterson, as a member of the Church congregation, was “part of the beneficiary class for which the Corporate Trustee held the Church’s assets in trust,” and, as such, had “standing to bring this action to enforce his own rights and the rights commonly held by all beneficiaries to obtain restoration to the Church of its full losses.” *Id.*, slip op. at 16–17. We remanded the matter to the trial court to conduct a trial on the remaining factual and legal issues raised by Patterson in his complaint.

On July 15, 2014, the trial court commenced a non-jury trial. During the course of the trial, an issue arose as to whether the trial court had subject matter jurisdiction over this dispute. Following argument, the trial court concluded that it lacked such jurisdiction because the matter requires interpretation of religious doctrine and the same was prohibited by the First Amendment. Hence, the trial court issued an order granting a motion to dismiss filed by Shelton.

Patterson appealed to this Court, but we affirmed the trial court's order, concluding that the trial court ably disposed of the subject matter jurisdiction issue in its opinion. Patterson thereafter sought allowance of appeal with the Pennsylvania Supreme Court, but the same was denied. Patterson subsequently filed a petition for a writ of certiorari with the United States Supreme Court, but the same was similarly denied.

Patterson's Most Recent Motion

On May 27, 2016, Patterson filed a motion with the trial court to determine certain orders void based on the lack of subject matter jurisdiction. In his motion, Patterson sought an order from the trial court "declaring that the January 31, 2008 Commonwealth Court Order, and all other post-July 10, 2006 rulings/orders not consistent with the judgments on the binding common law arbitration award, are void . . ." (Reproduced Record (R.R.) at 1015a.) Patterson alleged that the trial court "finally determined what [he] has been arguing all along—that there was no subject matter jurisdiction as the parties had agreed to resolve all of their disputes through binding, common law arbitration." (R.R. at 1018a.) In sum, Patterson alleged that only the 2006 binding arbitration award remained valid and asked the trial court to declare as void all post-July 10, 2006 rulings/orders that were inconsistent with that award because the courts lacked subject matter jurisdiction to alter the same.

By order dated July 14, 2016, the trial court denied Patterson's motion.³ Patterson filed a notice of appeal

³ Shelton had filed a motion to strike Patterson's motion as moot, alleging that Patterson's motion "defies logic and violates bedrock principles of jurisdiction and substantive law." (R.R. at 1042a.) In this motion, Shelton also sought sanctions for Patterson's alleged bad-faith, frivolous motion. However, by

with the trial court. The trial court thereafter issued an opinion in support of its order explaining that Patterson mischaracterizes its previous ruling regarding lack of subject matter jurisdiction. Contrary to Patterson's allegations, the trial court did not rule that it lacked subject matter jurisdiction because of the parties' agreement to litigate through binding arbitration; but rather, the trial court ruled that it lacked such jurisdiction due "to the Deference Rule, which prohibits courts from exercising jurisdiction over cases that would require them to decide ecclesiastical questions." (R.R. at 1078a.) In other words, the trial court explained that it had no ability "to decide religious questions" and that its prior opinion "never mentions the issue of jurisdiction as it relates to common law arbitration." (R.R. at 1079a.) Further, the trial court explained that it was "without jurisdiction to strike the Commonwealth Court's January 2008 order vacating the Arbitration Award" and lacked the authority to disturb an appellate court ruling. *Id.* For the same reasons, the trial court noted that it had no power to reinstate the arbitration award which had been vacated on appeal.

On appeal to this Court,⁴ Patterson argues that the trial court erred as a matter of law in denying

separate order of the same date, the trial court dismissed Shelton's motion to strike as moot in light of its order denying Patterson's motion.

⁴ This Court's review is limited to a determination of whether the trial court abused its discretion or erred as a matter of law. *Mid Valley Taxpayers v. Mid Valley School*, 52 Pa.Cmwlth. 402, 416 A.2d 590, 592 (1980). Furthermore, the decision of the trial court will stand "if there exists sufficient evidence to justify the findings and logically sound, reasonable inferences and conclusions derived therefrom." *Groff v. Borough of Sellersville*, 12 Pa.Cmwlth. 315, 314 A.2d 328, 330 (1984).

his motion. More specifically, Patterson asserts that because the courts of this Commonwealth lacked subject matter jurisdiction over this dispute, all prior decisions in this case are void *ab initio* and the common law arbitration award that was improperly vacated remains valid. Patterson also argues that his due process rights have been violated by this Court vacating the binding arbitration award and then affirming the trial court's determination that the courts lacked subject matter jurisdiction over the dispute which purportedly implicates neutral principles of law. Alternatively, Patterson requests that this Court reinstate its previous order directing the trial court to conduct a trial on the merits.

Discussion

Shelton's Motion to Quash

Before we reach the merits of Patterson's arguments, we must address a motion to quash filed by Shelton.⁵ In this motion, Shelton alleges that Patterson's appeal is "not only improper, but is devoid of any good faith legal basis and untethered to any semblance of fact-based reality." (Shelton's Motion to Quash at 11.) More specifically, Shelton alleges that the matter is over as this Court invalidated the arbitration award and affirmed the trial court's order dismissing Patterson's complaint for lack of subject matter jurisdiction, with our Pennsylvania Supreme Court and United States Supreme Court rejecting any further appeal of the latter. In other words, Shelton describes our prior decisions as final and conclusive. Shelton also states that our decision invalidating the

⁵ Shelton relies on Pa.R.A.P. 1972(3) and (7), which allow a party to move to dismiss an appeal for want of jurisdiction or for any other reason appearing on the record, respectively.

arbitration award was based upon the well-established principle that an arbitrator cannot exceed the scope of his authority and that no court can act without subject matter jurisdiction. Additionally, Shelton alleges that the trial court has no authority to invalidate an order of this Court.

However, Shelton's allegations go directly to the underlying merits of Patterson's appeal, or, as Patterson states in his response in opposition to the motion to quash, constitute "an improper attempt to litigate the merits of the appeal in a pre-trial motion." (Patterson's Opposition to Appellee's Motion to Quash at 1.) Indeed, Shelton's brief on the merits essentially mirrors the arguments he raises in his motion to quash. Therefore, we will deny Shelton's motion to quash.

Merits of Appeal

Turning back to the merits, Patterson contends that this Court "rendered its own prior orders void, by illegally interfering with the binding common-law arbitration and by recently ruling that the Pennsylvania courts have no subject matter jurisdiction to address this matter." (Appellant brief at 19.) Patterson maintains that the last "valid judgment" is the "confirmation of the [arbitration] [a]ward by the [trial court]." *Id.* at 20. Alternatively, Patterson argues that this Court must order a trial on the merits because if the Pennsylvania courts had subject matter jurisdiction to "interfere" with the arbitration award, then the Pennsylvania courts are "obligated to resolve the theft of the Church assets and funds." *Id.* at 23 (emphasis in original). In the course of this argument, Patterson reiterates his allegation that this Court should never have reviewed the arbitration award because the parties agreed that the arbitration was

binding and non-appealable. Patterson suggests that our decision with respect to the arbitration award “altered the law of Pennsylvania concerning binding common-law arbitration by turning that law upside down in a non-precedential opinion applicable solely to Patterson” *Id.* at 29. Ultimately, Patterson states that the decision by the trial court that it lacked subject matter jurisdiction, and our affirmance of that decision, left him without a forum to resolve his claims.

In response, Shelton first contends that the trial court’s July 14, 2016 order was not a final order under Pa.R.A.P. 341. Next, Shelton avers that any matters relating to the arbitration award and any issue relating to subject matter jurisdiction have been finally resolved and cannot be relitigated. Third, Shelton states that the trial court has no authority to invalidate an order of this Court. Fourth, Shelton notes that Patterson deliberately mischaracterizes the legal basis for the trial court’s determination that it lacked subject matter jurisdiction, i.e., it was completely unrelated to the arbitration award. Shelton notes that this Court relied on well-settled principles of law in vacating said award. Finally, Shelton points to the fundamental illogic of Patterson’s motion to the trial court and subsequent appeal here, i.e., a court cannot act without jurisdiction, yet he asks the trial court to rule on his motion while implicitly asserting it was without jurisdiction. In sum, Shelton contends that Patterson’s current appeal to this Court is “not only improper, but is devoid of any good faith legal basis and unmoored to factual or legal reality.” (Shelton’s brief at 10.)

We begin with Shelton's contention that the trial court's July 14, 2016 order was not a final order under Pa.R.A.P. 341. Pa. R.A.P. 341 provides, in relevant part, as follows:

- (a) General Rule.—Except as prescribed in paragraphs (d) and (e) of this rule, an appeal may be taken as of right from any final order of a government unit or trial court.
- (b) Definition of Final Order.—A final order is any order that:
 - (1) disposes of all claims and of all parties; or
 - (2) RESCINDED
 - (3) is entered as a final order pursuant to paragraph (c) of this rule.

Shelton avers that the trial court's order does not satisfy any of the conditions above and that the final, appealable order in this case was entered on August 1, 2014, when the trial court granted his motion to dismiss for lack of subject matter jurisdiction and effectively put Patterson out of court. Shelton notes that Patterson had exhausted his appeals from that order. We do not agree with Shelton.

Following the trial court's dismissal of Patterson's complaint for lack of subject matter jurisdiction and the exhaustion of his appeals therefrom, Patterson filed the present motion with the trial court to determine certain orders void based on the lack of such jurisdiction. Patterson filed this motion under the original 1995 docket number assigned by the trial court. In essence, Patterson was seeking to follow-up on the trial court's holding that it lacked subject matter jurisdiction. Shelton responded by filing a

motion to strike Patterson's motion and an accompanying brief. Patterson filed a response in opposition to Shelton's motion to strike and also filed a brief in support of his motion. The trial court ultimately denied Patterson's motion in its July 14, 2016 order. This order disposed of Patterson's claim, effectively putting him out of court. Hence, we conclude that said order was a final, appealable order under Pa.R.A.P. 341.

Subject Matter Jurisdiction

Patterson argues that, because the trial court found that it lacked subject matter jurisdiction over his claims, a decision this Court affirmed, any orders entered by this Court are void, thereby rendering the Arbitrator's award, as confirmed by the trial court, the last valid judgment in this case. We agree.

In *Hughes v. Pennsylvania State Police*, 152 Pa.Cmwlth. 409, 619 A.2d 390, 393 (1992), *appeal denied*, 536 Pa. 633, 637 A.2d 293 (1993), this Court explained that “[i]t is hornbook law that subject matter jurisdiction gives a court the power to decide a controversy” and “whenever a court discovers that it lacks jurisdiction over the subject matter or the cause of action *it is compelled to dismiss the matter under all circumstances*, even where we erroneously decided the question in a prior ruling.” (Citations omitted) (emphasis in original). Additionally, our Supreme Court has held that a judgment by a court that lacks subject matter jurisdiction constitutes a “void judgment” which “cannot be made valid through the passage of time.” *M & P Management, L.P. v. Williams*, 594 Pa. 489, 937 A.2d 398, 398 (2007).

In this case, Patterson's original complaint filed with the trial court sought relief under the NCL.

The parties ultimately agreed to proceed to binding arbitration in November 2005, with no right to appeal, as memorialized in an order from the trial court dated January 10, 2006. This order also dismissed the case from the trial court per agreement of the parties. Nevertheless, after the Arbitrator ruled in Patterson's favor, Shelton filed a petition to vacate the arbitration award with the trial court. While the trial court denied Shelton's petition, this Court reversed the trial court's decision, vacated the arbitration award, and remanded to the trial court for further proceedings relating to these NCL claims. However, because this Court affirmed the trial court's decision concluding that it lacked subject matter jurisdiction over his remaining NCL claims on the basis that resolution of the same would require the trial court to interpret religious doctrine, something it was prohibited from doing under the First Amendment,⁶ any prior decisions relating to the same are null and void. As a result, the only valid, remaining determination in this case is the binding arbitration award, as agreed to by the parties in November 2005, and confirmed by the trial court. As noted above, the trial court, by order dated July 10, 2006, confirmed the Arbitrator's award and entered judgment in favor of Patterson and

⁶ Indeed, the law is well settled that "civil courts may not decide purely religious matters." *Peters Creek United Presbyterian Church v. Washington Presbytery*, 90 A.3d 95, 104 (Pa. Cmwlth.), *appeal denied*, 628 Pa. 624, 102 A.3d 987 (2014) (citing *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979)). In *Jones*, the United States Supreme Court explained that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602, 99 S.Ct. 3020.

against Shelton in an order dated July 20, 2006.⁷ Thus, Patterson's remedy lies with enforcement of that judgment.

Accordingly, the order of the trial court is reversed.

ORDER

AND NOW, this 29th day of November, 2017, the motion of Kenneth Shelton to quash the appeal of Anthonee Patterson is denied. The order of the Court of Common Pleas of Philadelphia County, dated July 14, 2016, is hereby reversed, consistent with this opinion.

⁷ A similar order was issued by the trial court on October 12, 2006, entering judgment in favor of Patterson. Additionally, the final adjudication and decree of the Arbitrator was entered as an order of the trial court on April 17, 2017. These orders, dated July 10 and 20, 2006, October 12, 2006, and April 17, 2017, collectively represent the last valid judgments in this case.

APPENDIX R

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

No. 16-CV-444

DR. MARCUS TURNER, SR., *et al.*,

Appellants,

v.

ALVA C. HINES, *et al.*,

Appellees.

Appeal from the Superior Court of the
District of Columbia
(CAB-1406-15)

(Hon. Robert D. Okun, Trial Judge)

(Argued May 10, 2017 Decided January 16, 2019)

Before GLICKMAN and EASTERLY, *Associate Judges*,
and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellees, professed members of Beulah Baptist Church of Deanwood Heights, sued appellants – Dr. Marcus Turner, Sr., the Church’s Pastor; Russell Moore, Jr., the former Chair of the Church’s Trustee Board; and Beulah Community

Improvement Corporation (BCIC), a non-profit secular entity affiliated with the Church – in Superior Court for breach of fiduciary duties, conversion, unjust enrichment, and civil conspiracy. This appeal is from the Superior Court’s denial of appellants’ motion to dismiss the complaint on standing and First Amendment grounds.¹ Appellants claim that (1) this court has jurisdiction to review that denial in this interlocutory appeal under the collateral order doctrine; (2) appellees lack standing to maintain their suit because they are not *bona fide* members of the Church; and (3) even taking all the factual allegations of the complaint as true, the suit must be dismissed at this juncture under the First Amendment ecclesiastical abstention doctrine as a matter of law. Appellees dispute each of those claims.

We conclude that we have jurisdiction at this time to review the Superior Court’s rejection of appellants’ First Amendment immunity claim, but not its rejection of their standing argument. We further conclude that, at this early stage of the proceedings, the ecclesiastical abstention doctrine does not require dismissal of the suit, because it appears that appellants’ liability may be adjudicated under neutral principles of tort law without infringing on appellants’ claimed First Amendment immunity.

I. The Allegations of the Amended Complaint

The amended complaint is brought by eighteen individuals who allege that they are *bona fide* members

¹ The court dismissed the claims against appellant Turner on other grounds, namely *res judicata*, but it did not enter a separate final judgment of dismissal for him and he remains a defendant in the case. The dismissal of the complaint against Turner is not the subject of the present appeal.

in good standing of Beulah Baptist Church and beneficiaries of the property held by the Church in trust for its members.² Their complaint charges that appellant Turner, with the assistance of appellants Moore and BCIC,³ abused that trust by engaging for over a decade in a series of unauthorized, wasteful, and improper transactions involving Church funds and real property. The complaint alleges the following as the main elements of this charge.

(1) Between 2003 and 2008, Turner and Moore, purporting to act on behalf of the Church, purchased at least seven properties in the Deanwood Heights neighborhood and entered into at least five loan agreements encumbering the Church's real property. The last of these loans enabled BCIC to borrow \$3.23 million in July 2008 (apparently to extinguish the remaining accumulated debt on the previous loans) with the Church as guarantor. This transaction also involved an unauthorized and secret conveyance of a valuable 3/4 -acre lot from the Church to BCIC for no consideration in return. In violation of the 1997 Church Constitution then in effect, Turner and Moore allegedly engineered these property and loan transac-

² With their opposition to appellants' motion to dismiss on standing grounds, each appellee submitted a declaration under penalty of perjury that he or she is on the Church's membership roll, has a membership number provided by the Church, and serves (or has served) on Church ministries open only to Church members.

³ The complaint describes BCIC as a nonprofit corporation "created to help raise funds and assist the Church in its work to improve the Deanwood Heights community" in various ways. Unlike the Church itself, BCIC can receive government funding because it is a secular organization. The complaint further alleges that (as shown in the allegations we summarize above) BCIC is controlled by Turner and is "Turner's alter ego even more than it is the Church's."

tions without the knowledge and approval of the Church's Trustee Board (or its membership in general).⁴ In fact, throughout the period, Turner falsely represented that the Church was debt-free and that the property transactions did not encumber the Church's property. The truth was revealed in 2014 when a notice appeared in *The Washington Post* that Church property was to be auctioned off in a foreclosure sale. To prevent this, Turner was forced to sell off certain Church properties, including the lot the Church had conveyed to BCIC for free.

(2) With the help of Moore and a few other confederates, Turner also secretly and repeatedly withdrew funds from the Church operating account for his own personal benefit. Turner allegedly

charged to the Church credit card meals, fuel for his personal car, dry cleaning, vacations, personal lawn care and exorbitant cell phone bills, which included home Internet and cable television services. He had the Church pay for his own continuing education, his wife's

⁴ The Church's 1997 Constitution is incorporated in the complaint by reference. Under that Constitution, the duty “[t]o review and/or sign all contracts and legal documents on behalf of the Church” and “[t]o have responsibility for the acquisition . . . of all church property” was assigned to the Trustee Board. The Constitution did not assign similar duties or powers to the Pastor. The Constitution also assigned financial oversight and similar responsibilities to other boards, committees, and officers of the Church. The Board of Deacons, for example, had the duty to “[k]now at all times” the financial condition of the Church, and a separate Budget-Finance Committee bore responsibility for preparing the Church's annual budget for submission to the entire membership. The Constitution required the Church's Pastor (Turner), among other things, to “seek the advice of the official boards regarding recommendations for policy and program changes.”

education and his son's tuition, including, for example, \$14,000 in tuition payments in 2008. He had the Church cover personal tax liabilities, including \$3,000 in 2008. Moreover, he had the Church establish and pay premiums on life insurance policies for both him and his wife, and had the Church pay his wife \$500 on at least two occasions for delivering speeches at the Church.

All of these expenditures were unauthorized; the Church Constitution vested responsibility for the Church's property and finances, including Turner's salary, in the Trustee Board and other Church bodies, and they allegedly did not know of or approve Turner's use of Church funds to pay his personal expenses.⁵

(3) When Turner was having personal financial difficulties in 2008, he arranged with Moore for two secret payments from the Church to him in the total amount of \$75,000 out of its general reserve fund. These payments were supposedly for services Turner had performed as a real estate "consultant" to the Church and BCIC and in securing government grants to acquire property for BCIC. There had been no contract or agreement to pay Turner for such services and the amount of the payments was arbitrary. Again, in violation of the Church Constitution, these payments were made without the knowledge and approval of the Trustee Board (or the Church membership).

⁵ Under the Constitution, the Board of Deacons was charged with "[i]nsur[ing] that the Pastor is paid a salary which is fair to him and the Church," and the Trustee Board with "pay[ing] all salaries and debts incurred by the Church and such other disbursements as the Church deems necessary."

(4) In 2011, Turner, aided by Moore, arranged for the Church to borrow \$900,000, secured by Church property, ostensibly to pay for renovations of Church facilities (though the renovation contracts, had they been fully performed, would have totaled only \$380,000). Much of that money is unaccounted for; the complaint alleges on information and belief that Turner drew down the funds and used them for “purposes unrelated to the mission of the Church.” The Church paid only \$162,500 in total for the (partial) renovation work that was performed, and Turner claimed to the contractor that the Church could not pay the rest of what it owed him, which amounted at the time to only \$57,500. Instead, Turner borrowed \$105,000 from the contractor, telling him that the Church and BCIC needed it to help pay off the July 2008 loan. Turner thereafter refused to repay the contractor and claimed that his loan had been a donation. The contractor sued the Church, BCIC, and Turner for the money he was owed; the Church incurred legal fees and expended funds to settle the lawsuit.

The complaint further alleges that as a result of Turner’s financial mismanagement, self-dealing, continuing concealment of financial arrangements, and refusal to disclose information about the Church’s financial condition to its membership, the Church is in financial distress and can no longer maintain its facilities, fully fund positions and scholarships, or carry on other basic activities as it had been doing.

Based primarily on the foregoing activities, the complaint charges Turner and Moore with breach of fiduciary duty, unlawful conversion of Church funds, and unjust enrichment from the diversion of those funds to pay Turner’s personal expenses. The complaint also charges Turner, Moore, and BCIC with civil

conspiracy to commit those torts. The relief sought includes an accounting to determine how much Turner owes the Church and an award of monetary damages.

II. Appellate Jurisdiction

The denial of a motion to dismiss a complaint usually is not immediately appealable because it does not finally dispose of the case.⁶ We have held, however, that where the motion to dismiss asserts a claim of absolute ecclesiastical immunity from suit under the First Amendment, the denial of that claim is appealable under the collateral order doctrine *if* the immunity turns on an issue of law rather than on a factual dispute.⁷ Therefore, we have jurisdiction to review the ruling on appeal to the limited extent of determining whether appellants “are entitled to the First Amendment immunity based on the allegations in the complaint,”⁸ or whether the litigation can proceed under the assumption that those allegations are true.

We reach a different conclusion as to our jurisdiction to review the Superior Court’s threshold ruling that appellees have standing to maintain their suit based on their declarations stating they are enrolled members of the Church in good standing.⁹ To be amenable

⁶ *Heard v. Johnson*, 810 A.2d 871, 876 (D.C. 2002).

⁷ *Id.* at 877; *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith of Washington, D.C. v. Beards*, 680 A.2d 419, 426 (D.C. 1996); *United Methodist Church v. White*, 571 A.2d 790, 792-93 (D.C. 1990).

⁸ Brief of Appellants at 16.

⁹ “[A]s a general principle, *bona fide* members of a church have standing to bring suits as trust beneficiaries when there is a dispute over the use or disposition of church property.” *Mount Jezreel Christians Without a Home v. Board of Trustees of Mt. Jezreel Baptist*

to immediate interlocutory review under the collateral order doctrine, a trial court ruling must satisfy three requirements: “(1) it must conclusively determine a disputed question of law, (2) it must resolve an important issue that is separate from the merits of the case, and (3) it must be effectively unreviewable on appeal from a final judgment.”¹⁰ The ruling on appellees’ standing did not satisfy either the first or the third of these requirements. It was not a “conclusive” determination because there remains a genuine factual dispute over appellees’ standing.¹¹ And unlike a ruling denying a claim of immunity as a matter of law, a ruling on standing is not “effectively unreviewable” on appeal from a final judgment.¹² Appellants argue that this particular ruling is effectively unreviewable after a final judgment has been rendered because litigating the issue will impermissibly involve the court in second-guessing the Church’s religious decisions con-

Church, 582 A.2d 237, 239 (D.C. 1990). *Bona fide* membership can be established based on the church’s membership roll and financial records. *Id.* at 240-41. *See also Williams v. Board of Trustees of Mt. Jezreel Baptist Church*, 589 A.2d 901, 908 (D.C. 1991).

¹⁰ *McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 1135 (D.C. 2010) (internal quotation marks omitted).

¹¹ While appellees filed declarations stating they were on the Church’s membership roll, had membership numbers, and were in the Church’s ministries, Turner countered with a declaration asserting the opposite. Ultimately, the Superior Court will need to resolve this factual dispute, presumably after discovery in which the membership roll and other pertinent documents are produced (if they are available). *See Grayson v. AT&T Corp.*, 15 A.3d 219, 245-46 (D.C. 2011) (en banc) (explaining that the standing inquiry may be different depending on the stage of the litigation).

¹² *See, e.g., Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1334-35 (11th Cir. 1999) (citing cases). *See also Freyre v. Chronister*, 2018 U.S. App. LEXIS 35141 *1, *5-6 (11th Cir. Dec. 14, 2018).

cerning its membership.¹³ We are not persuaded by this assertion. The court may need to determine *whether* and *when* the Church admitted or excluded appellees from membership, but not, so far as now appears, *why* the Church did so.¹⁴

III. Ecclesiastical Abstention

Appellants claim to be immune from suit because, generally speaking, the First Amendment requires civil courts to abstain from disputes over “matters of church government as well as those of faith and doctrine.”¹⁵ But this principle “does not mean . . . that churches [or their ecclesiastical personnel, e.g., ministers] are above the law or that there can never be a civil court review of a church action.”¹⁶ On the contrary,

¹³ Appellants note that the Church Constitution makes “faith in the Lord Jesus Christ” a qualification for membership.

¹⁴ See, e.g., *Jackson v. George*, 146 A.3d 405, 416-18 (D.C. 2016) (holding that dispute over purported termination of church memberships was justiciable where the issue turned on the authority of the decision makers without requiring resolution of any religious questions; “[c] ontrary to appellants’ assertions, Judge Nash was not required to determine whether appellees . . . or anyone else had ‘accepted Jesus Christ’”).

¹⁵ *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)). See also, e.g., *Meshel v. Ohev Shalom Talmud Torah*, 869 A.2d 343, 353-54 (D.C. 2005); *Heard*, 810 A.2d at 879. In *Hosanna-Tabor*, the Court clarified that this doctrine of abstention “operates as an affirmative defense to an otherwise cognizable claim, not [as] a jurisdictional bar.” 565 U.S. at 195 n.4.

¹⁶ *Heard*, 810 A.2d at 879 (brackets added). See also *Family Fed’n for World Peace v. Moon*, 129 A.3d 234, 249 (D.C. 2015) (“In sum, the mere fact that the issue before the court involves

civil courts may resolve disputes involving religious organizations as long as the courts employ neutral principles of law and their decisions are not premised upon their consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith. . . . Even where the civil courts must examine religious documents in reaching their decisions, the “neutral principles” approach avoids prohibited entanglement in questions of religious doctrine, polity, and practice by relying exclusively upon objective, well-established concepts of law that are familiar to lawyers and judges.¹⁷

Disputes over church property are “especially” amenable to resolution by civil courts employing neutral principles of law applicable in all property disputes.¹⁸

“[I]n determining whether the adjudication of an action would require a civil court to stray impermissibly into ecclesiastical matters, we look not at the label placed on the action but at the actual issues the court has been asked to decide.”¹⁹ As set forth in the complaint, the main issues here appear to be entirely secular and to be governed entirely by neutral principles of law. They are not issues of religious doctrine, church governance, or the like; unlike in some past cases this court has seen, they do not involve review of

a church or religious entity does not thereby bar access to our courts.”).

¹⁷ *Meshel*, 869 A.2d at 354 (quoting *Jones v. Wolf*, 443 U.S. 595, 602, 603 (1979) (quotation marks omitted)).

¹⁸ *Family Fed'n*, 129 A.3d at 248. *See also Heard*, 810 A.2d at 880.

¹⁹ *Meshel*, 869 A.2d at 356.

policy matters reserved to ecclesiastical judgment. They are simply issues of the permissible use or disposition of Church property; they primarily boil down to whether Turner, with Moore's and BCIC's assistance, misappropriated the Church's money for his own use and encumbered or disposed of the Church's real estate without the authorization required by the Church Constitution. The resultant causes of action – breach of fiduciary duty, conversion, unjust enrichment, and civil conspiracy to commit those torts – all “rely upon doctrines basic to our legal system” and are resolved by applying familiar, well-developed, neutral principles of law.²⁰

The causes of action in this case are justiciable notwithstanding that they rely on provisions of the Church's Constitution specifying the allocation of responsibility for and authority over Church property, contracts, and financial matters.²¹ As we explained in *Bible Way Church*, a civil court can enforce standards of behavior that a church has formally adopted.²²

²⁰ *Family Fed'n*, 129 A.3d at 249. In contrast, in *Bible Way Church*, *supra*, footnote 7, and *Kelsey v. Ray*, 719 A.2d 1248 (D.C. 1998), we held that the plaintiffs had failed to allege the applicability of neutral accounting and reporting criteria that were clear and objective enough to allow a court to examine a church's financial practices without involving itself in policy determinations committed to ecclesiastical judgment. *See Kelsey*, 719 A.2d at 1249, 1252-53; *Bible Way Church*, 680 A.2d at 428-29.

²¹ See footnotes 4 and 5, *supra*.

²² 680 A.2d at 428 (“If the church has, in fact, adopted clear, objective accounting and reporting standards that eliminate all doctrinal decision-making in their enforcement, then arguably a civil court can apply them – much as a court can resolve secular disputes over church property – because the church itself has obviated all First Amendment concerns.”).

And a church's constitution is a contractual agreement that a court may construe using neutral principles of law, such as "the 'objective law' of contracts, under which the written language embodying the terms of an agreement governs the rights and liabilities of the parties."²³ In this case, for instance, the court may have to construe and apply Article 5, Section 3 (c)(2) of the Constitution, which specified that it was the Trustee Board's duty "No review and/or sign all contracts and legal documents on behalf of the Church . . ." We see no reason why this task (or the construction and application of any other provision of the Constitution pertinent to this case) should entangle the court in any questions of religious doctrine, polity, or practice. That some provisions of the Constitution contain religious terminology should not give rise to such impermissible entanglement in the absence of a "material dispute between the parties" over the meaning of the religious language.²⁴ The

²³ *Meshel*, 869 A.2d at 361.

²⁴ *Id.* at 354. In *Meshel*, the court construed the corporate bylaws of an Orthodox Jewish congregation to determine that the parties had an enforceable agreement to arbitrate their dispute by presenting it to a "Beth Din." The court held that it could make this determination applying neutral principles of contract interpretation because there was no material dispute between the parties as to the meaning of that or other religious terms in the bylaws. *See also id.* at 357 ("It is undeniable that 'Beth Din,' 'Din Torah,' 'Orthodox rabbi,' and 'Halacha' are religious terms that lend the case a certain surface feel of ecclesiastical content. When we look beneath the surface, however, we see an action to compel arbitration that turns not on ecclesiastical matters but on questions of contract interpretation that can be answered exclusively through the objective application of well-established, neutral principles of law.").

existence of such a material dispute in this case has not been shown and is not apparent.²⁵

Thus, at this early stage of the case, “it would appear that this dispute is susceptible to resolution by ‘neutral principles of law’ not requiring any forbidden inquiry into matters barred by the First Amendment.”²⁶

We therefore hold that the litigation may proceed, with the understanding that “going forward, if it becomes apparent to the trial court that this dispute does in fact turn on matters of doctrinal interpretation or church governance, the trial court may grant summary judgment to avoid ‘excessive entanglement with religion.’”²⁷

Accordingly, we hereby affirm the Superior Court’s denial of appellants’ motion to dismiss the amended complaint on First Amendment and standing grounds and remand the case for further proceedings.

ENTERED BY DIRECTION OF THE COURT:

/s/Julio A. Castillo

²⁵ Appellants appear to rely on a provision of the 1997 Constitution, Article IV, Section 1, stating that the Pastor of the Church “shall serve as *overseer, leader, advisor, and teacher*” (emphasis added). Assuming *arguendo* that “overseer” is a religious term (as appellants contend it is), it is not clear that the parties disagree over its meaning or that, if they do, the dispute is either unresolvable by a court or material to the issues raised by the complaint. Appellants do not seem to claim, for example, that Turner’s status as “overseer” entitled him to misappropriate Church funds for his own use (in fact, they disavow any such claim in their appellate briefing) or override provisions of the Constitution committing contractual and other matters to the Trustee Board.

²⁶ *Family Fed’n*, 129 A.3d at 249.

²⁷ *Second Episcopal Dist. African Methodist Episcopal Church v. Prioleau*, 49 A.3d 812, 818 (D.C. 2012).

176a

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Clerk of the Court

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