

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ORANGE

SAM SLOAN, X

Petitioner,

- against -

INDEX No. 2004-7635

DECISION & ORDER

BEATRIZ MARINELLO, TIN HANKE, STEPHEN SHUTT,
ELIZABETH SHAUGHNESSY, RANDY BAUER, BILL
GOICHBERG, KENNETH M. CHADWELL and UNITED
STATES CHESS FOUNDATION,

Respondents.

HOROWITZ, J.S.C., X

The above-captioned case has been assigned to this Court.

Petitioner, a resident of Far Rockaway, Queens County, has submitted an application for waiver of filing fees, service fees, and costs, as well as for the Court's permission to proceed as a "poor person." The Petitioner seeks, through a proposed Order to Show Cause, that this Court stop the United States Chess Foundation's move from New Windsor, Orange County, to Crossville, Tennessee.

Among the various defendants, the Petitioner seeks to sue two board members, the Executive Director, Chief Financial Officer, and the managing director of the USCF. The Petitioner alleges that the USCF is attempting to sell, or has sold, its New Windsor office without the approval of the Attorney General and the Courts (see, Not for Profit Law §§510 and 511).¹

The Petitioner seeks to freeze USCF's bank account, which allegedly contains \$513,000 from the proceeds of the sale of the New Windsor office. The Petitioner also wants the Court to issue a temporary restraining order, enjoining the Respondents from taking any actions,

¹ If the Petitioner's allegations are correct, the Court is concerned that the Petitioner did not include the Attorney General as a party to this action (see, *Matter of Manhattan Eye, Ear & Throat Hospital v. Spitzer*, 186 Misc.2d 126 [Sup Ct. NY 1999]).

concerning hiring or firing employees, buying or selling anything, entering into contracts, issuing checks, or conducting any USCF business. Further, the Petitioner seeks an injunction prohibiting the out-of-state move and an injunction preventing Respondent Kenneth M. Chadwell, a Tennessee government officer, from initiating any litigation to compel USCF to move to Crossville, Tennessee.

Petitioner submitted an "Affidavit in Support of Application for Waiver of Filing and Service Fees and Costs and to Proceed as a Poor Person." However, there is no indication that the Petitioner served any of the Respondents, the Orange County Attorney, or the Attorney General.

Naturally, neither the Orange County Attorney, nor the Attorney General, filed answering papers, and their offices' positions, on the granting of "poor person" status, to the instant Petitioner, are unknown.

While the determination of a motion to proceed as a "poor person" is within the sound discretion of the Court considering the application (see, *Smith v. Smith*, 2 NY2d 120 [1956]), in this case, the Court cannot now grant the Petitioner's requested relief.

CPLR §1101, in pertinent part, provides the procedure for granting poor person status. That section requires, among other things, that the moving party must file an affidavit, setting forth sufficient facts so that the merit of the contentions can be ascertained; and whether any other person is beneficially interested in any recovery sought and, if so, whether every such person is unable to pay such costs, fees and expenses. While the Petitioner has submitted an affidavit in this case, the Court is not certain that the Plaintiff has made his case that he is entitled to have the taxpayers pay for his litigation or that there are not other persons beneficially interested in this action.

Based on the complex nature of the issues involved, this Court requires, pursuant to CPLR §1101(b), that this movant submit a certificate of an attorney stating that the attorney has

examined the action and believes there is merit to the moving party's contentions. The attorney should address issues such as standing and the appropriateness of the remedies requested (including the issuance of an injunction against an official of another state).

While this Petitioner maybe financially eligible, in fact, for the reduced fee and other relief provided by CPLR §1101, the Court cannot now make that determination, without the views of the County Attorney. As stated above, the County Attorney's views are needed because of the commitment of taxpayers' monies needed to finance the litigation (see, *Matter of Smiley*, 36 NY2d 433 [1975]). Therefore, the Court is reluctant to grant relief on this Petitioner's submission.

Based on this record,² the Court, in its discretion, DENIES the Petitioner's "Application to Proceed as a Poor Person," but does so with leave to renew, only after the Petitioner obtains the attorney's certificate, required by CPLR 1101(b), and serves the County Attorney. Further, the Court declines to issue the Order to Show Cause the Petitioner submitted with his poor person application.

The foregoing constitutes the order of this Court.

Dated: Goshen, New York

November 10, 2004

HON. LAWRENCE IVAN HOROWITZ
SUPREME COURT JUSTICE

Sam Sloan
Petitioner Pro Se
331 Beach 32nd Street
Far Rockaway, New York 11691

The Orange County Attorney
Orange Count Government Center
255 Main Street
Goshen, New York 10924

² The following documents were read in deciding this motion: (1) Order to Show Cause, (2) Application for Waiver of Filing and Service Fees and Costs and to Proceed as a Poor Person; (3) Affidavit of Sam Sloan in Support of Order to Show Cause; (4) Affidavit in Support of Application for Waiver of Filing and Service Fees and Costs and to Proceed as a Poor Person; (5) Petition; (6) Memorandum of Law in Support of Petition; (7) unspecified affidavit, dated November 8, 2004, and (8) Request for Judicial Intervention, dated November 8, 2004.