

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

Sam Sloan,

Petitioner,

INDEX No. 2004-7739

-against-

Affidavit in Support
of Order to Show Cause

Beatriz Marinello, Tim Hanke, Stephen Shutt,
Elizabeth Shaughnessy, Randy Bauer, Bill Goichberg,
Kenneth M. Chadwell and United States Chess Federation

Respondents

Sam Sloan, being duly sworn, deposes and says:

1. I am a voting member of the United States Chess Federation (“the USCF”). I am also an alternate delegate on the Board of Delegates, the governing body of the United States Chess Federation. I first joined the USCF in 1956. I am the author of books, magazine and newspaper articles pertaining to chess. I have been a rated chess expert for 40 years.
2. The USCF is a Not-for-Profit Corporation headquartered in New Windsor, New York. It is a 501(c)(4) corporation. The by-laws provide: “The purpose of the Federation shall be educational and instructional, to broaden and develop chess as art and recreation, as a significant element of culture in America.”
<http://www.uschess.org/org/govern/Bylaws.php>
3. In October, 2004, the USCF sold its principal asset, which was a building located at 3054 Route 9W, New Windsor New York for a total after closing costs of \$513,000 net. This sale occurred in violation of Sections 510 and 511 of New York Not for Profit Law.
4. This sale was a violation of New York Not-for-Profit Law Sections 510 and 511 because the sale was made without notice to the New York Attorney General and also without permission of the courts. Judicial approval is required for the sale of the principal asset of a Type B Not-For-Profit Corporation, and no such approval was requested or obtained. See Matter of Manhattan Eye, Ear & Throat Hospital v Spitzer, 186 Misc 2d 126 (Sup Ct, NY County 1999).
5. The proceeds of the sale were placed in a new bank account at Key Bank in New Windsor under the signing authority of Beatriz Marinello and Tim Hanke, both members of the USCF Executive Board. This was a violation of USCF by-laws, because Beatriz

Marinello and Tim Hanke are volunteer board members who are not supposed to handle the money of the organization. Beatriz Marinello and Tim Hanke are at present trying to move the money out of New York State and may already have succeeded in doing so.

6. The signing authority of the regular bank accounts of the USCF lies with the Executive Director, Bill Goichberg, the Chief Financial Officer, Ken Thomas, and the managing director, Judy Misner. Signatures of two of these three are required on any check. However, for this new bank account which contains the proceeds of the sale of the building, the signing authorities are Beatriz Marinello and Tim Hanke. The mailing address for this bank account is their address, not the address of the United States Chess Federation. As a result, the accountants and auditors for the USCF cannot track the money or know where the money is. This arrangement is a violation of the bylaws and the New York Not-For-Profit Law.

7. Almost immediately after the sale of the building, in a telephone conference call on October 17, 2004, the Executive Board of the USCF by a vote of 4-1-2 voted to move the headquarters of the USCF from New Windsor, New York to Crossville, Tennessee. Voting in favor of the move was USCF President Beatriz Marinello, USCF Vice-President of Finance Tim Hanke and two Board members, Steve Shutt and Elizabeth Shaughnessy. Board members Randy Bauer, Don Schultz and Frank Brady voted to delay the decision for two weeks until other bids could be received from other locals, principally from Liberty, New York, although Lindsborg Kansas, Louisville, Kentucky and several other locals had also expressed interest in hosting the USCF headquarters.

8. The vote taken to move the USCF headquarters to Tennessee was illegal and a violation of law for several reasons, including:

(a) The motion to move to Crossville did not pass by the 2/3rd majority required by not-for-profit law.

(b) The vote did not take place at a meeting but during a hastily called telephone conference call, without proper notice or a hearing.

© Under the USCF by-laws, the Executive Board is not the governing body of the USCF. The Board of Delegates is the governing body. There are 120 delegates from throughout the country. The delegates were not notified of this vote and were not allowed to participate. The delegates met on August 13-14, 2004 in Ft. Lauderdale Florida but no motion to move the USCF headquarters to Crossville was made or voted upon at that time.

(d) Prior to voting to move, the Executive Board did not seek the advice of New York counsel concerning the legality of their actions. Had they sought the advice of counsel, their counsel would have informed them that their vote to move was probably not legal. Several attorneys who are USCF members have offered them unsolicited advice about this, but they have been ignored and brushed aside by the Board.

(e) The Chief Financial Officer of the USCF, Ken Thomas, wrote a letter to the Board expressing opposition to the move on the ground that no analysis had been made of the costs of the move nor had a strategic plan been developed as to the purposes and benefits of the move. Ken Thomas pointed out that he had been involved with a major accounting firm that had moved and that move had taken far longer and at far greater cost than had been anticipated. The Executive Director wrote a cost comparison showing that establishing a headquarters in Crossville was a disadvantage to the USCF compared to moves to Liberty, New York or Lindsborg, Kansas, which were each worth \$400,000 more to the USCF. The Board majority refused even to read much less to consider the written recommendations of both the Executive Director and the Chief Financial Officer.

9. The live tape recording of the telephone conference call in which the vote to move to Crossville was taken is posted on the Internet. Listening to the tape reveals that the members of the board have no concept of the duties and obligations of members of a board of a Not-For-Profit Corporation. One can not even imagine that this is a discussion among adults of the fate and future of an organization of 90,000 members. The tape is online at:

<http://www.uschess.org/govern/Audio/9241417.wav>

10. Prior to the telephone conference call on October 17, 2004, the members of the Board had been provided with no written materials explaining the costs and the purposes of the move. They were provided with totally insufficient information upon which to make an informed decision to move. The Board members were given only three minutes each to present their views and debate the issue. Some of the information provided orally to the board has been proven to be wrong. For example, the Board was told that the City of Crossville would provide them with an abandoned building to serve as their headquarters until a new building could be constructed. It is since developed that only a small portion of that building will be available.

11. The USCF has 25 employees in the New Windsor office. They have worked there for an average of 7 years and some have worked there for as long as 18 years. The Executive Director is Bill Goichberg, who has expressed strong opposition to the move.

12. Beatriz Marinello, the USCF President, had made it clear that her intention is to fire Bill Goichberg and replace him with herself. She wants to move to Crossville, Tennessee for that reason, since the other bids were brought in by Bill Goichberg. Beatriz Marinello is guilty of self-dealing because she was elected to serve as president as an unpaid volunteer. The Executive Director has traditionally been paid a salary in excess of \$100,000 per year. However, one year ago, Bill Goichberg agreed to serve as Executive Director without pay because the USCF was broke, having no money in the bank, because of having lost money eight years in a row. The USCF lost nearly two million dollars between 1996 and 2003. By 2003, the USCF had no money left and the only significant asset was the building, which it just sold.

13. In moving to Crossville, the Board plans to fire or lay-off almost the entire staff of 25 presently working in the New Windsor office and to hire new people in Crossville. Only a four members of the present staff of 25 have expressed a willingness to move to Crossville, and the Board plans to fire one of those four. Beatriz Marinello has stated at a closed meeting of the Board that she would like to fire the entire office staff. The Board majority plans to build a new building on undeveloped farmland which the City of Crossville has provided subject to the condition that the USCF build a building on the land and hire local employees in Crossville.

14. The USCF plans to evade its obligation to pay unemployment insurance on the 22 employees to be fired or laid off by escaping from New York State, leaving the state to foot the entire unemployment bill.

15. The plan to build a new building in Crossville is seriously flawed and does not advance the purposes of the USCF for several obvious reasons, including the following.

(a) The funds received from the sale of the building in New Windsor, which was \$513,000, will be insufficient to build a new building in Crossville sufficient for the needs of the USCF. The building they are planning to build will be only one third of the size of the building just sold and will cost nearly as much. The USCF has no experience in building buildings. Cost overruns are likely and cannot be controlled. The USCF is in the business of chess, not in the business of the speculative construction of new buildings.

(b) After construction is completed, the new building will have little or no value. It is unlikely that any buyer will ever be found willing to pay any significant amount for a small office building located on farmland in the remote Appalachian Mountains of Tennessee, near the Cumberland Gap. If the building is ever to be sold, it will have to be sold at an almost total loss.

© The building just sold in New Windsor had 12,000 square feet of floor space. The USCF also occupied a rented building next door at 3068 Route 9W which had 4,000 square feet. Since the sale of the larger building last month, the USCF has moved almost everything into the 4,000 square feet building, although it still occupies part of the basement of the building just sold and contains the files and records there. The proposed building in Crossville will only have 4,000 square feet and will cost \$350,000. This is how they are justifying the move, as a cost savings. However, the USCF could never compress itself into 4,000 square feet. It will require at least 6,000 square feet, which will cost more to build than they received from the building they just sold.

(d) They claim that they can meet the shortfall by obtaining a No-Money-Down construction loan from a bank in Crossville. However, this will be worse, because it will leave much of the \$513,000 obtained from the sale of the building in New Windsor in the hands of Beatriz Marinello and Tim Hanke. The USCF lost nearly two million dollars over the last eight years of which nearly one million was lost in the 2002 and 2003 years

alone. Experience shows that the Executive Board clearly cannot be trusted with money. Although new elections to the board are held every two years and many of the current members were not on the boards that lost the money, that is worse too because all four of the members who voted in favor of the move are new Board members with no prior experience on the Board and are more likely to squander the money needlessly, such as with a plan to build a new building on undeveloped farmland.

16. A stay should be ordered by this court because otherwise irreparable harm will result. The following actions are now taking place.

(a) Beatriz Marinello has hired two new employees in Crossville, Tennessee, even though Beatriz does not have the authority to hire anybody. Only the Executive Director has that authority.

(b) Beatriz Marinello and Tim Hanke, who have signing authority over the bank account at Key Bank in New Windsor which has the money, have ordered the funds transferred to a bank in Crossville, Tennessee. However, the funds have not been transferred only because Beatriz Marinello and Tim Hanke have stupidly failed to complete the required paperwork. As soon as they figure out that the funds have not been transferred, they will move the money to a location beyond the jurisdiction of this court.

© Several key employees are leaving the USCF because they know that they are about to be fired or laid-off. Some of these employees have been working for the USCF for as long as 18 years and their knowledge is irreplaceable.

(d) Immediately following the vote on October 17, 2004, Beatriz Marinello traveled to Crossville and made contracts and commitments in Crossville for the purpose of locking in the move. Beatriz has made it clear in her postings on the Internet that she will not back down and will make sure that the move is completed immediately, especially in recognition of the fact that her term of office expires in August, 2005 and she will not be re-elected.

17. The USCF has at present 83,967 members. Of these, 30,683 are child and scholastic members. Dues range from \$49 for adults down to \$13 for some juniors. The primary purpose of the United States Chess Federation is to hold the US Championship and other national events and to send teams to the World Championships and the World Chess Olympiads. The USCF represents the United States of America in FIDE, which is the World Chess Federation. The USCF is the sole origin of chess in the United States. It publishes Chess Life magazine and provides ratings for all tournament chess players in the United States.

18. The USCF was founded in 1939 as a merger between the National Chess Federation and the Western Chess Association. It has been through several re-incorporations but has always been headquartered in New York State. From about 1945 to about 1967, the USCF was headquartered at 80 East 11th Street, New York NY. In about 1967, it moved to

Newburgh, New York because the Executive Director lived there. Subsequently, it purchased the building in New Windsor and moved there and has been there ever since.

19. The income of the USCF reached a high of \$6.5 million in 1999. Since then, as a result of a series of bad decisions and poor management, sales have dropped to about \$4 million. This explains the loss of two million dollars.

20. In 2003, with the USCF facing imminent bankruptcy, Bill Goichberg, who is the biggest chess organizer in America, agreed to serve as Executive Director without pay because otherwise the USCF would go out of business. During his one year of management, Bill Goichberg has turned the USCF around and the USCF recorded a surplus of \$278,558 in fiscal 2003-2004. In the previous year, the USCF had a loss of \$334,749. As a result, the USCF now has money. As a result of that, Beatriz Marinello has decided to fire Bill Goichberg and take the position of Executive Director for herself, to get control of the money.

<http://www.uschess.org/org/govern/finance/04AnnualAuditedReport.php#SFP>

21. Prior to 2003 when Bill Goichberg agreed to serve without pay, the USCF Executive Director received a salary in excess of \$100,000 plus health insurance. For more than a decade, the USCF has provided first class health insurance to the Executive Director. Beatriz Marinello wants the job of Executive Director so that she can get these benefits, especially the health insurance, because Beatriz Marinello has kidney disease. Beatriz has been diagnosed with glomerulonephritis. This is a disease without cure and Beatriz, who is a native of Chile, needs the health insurance to stay alive and has difficulty getting it otherwise, which may explain why she is so insistent on having the job of USCF Executive Director. <http://kidney.niddk.nih.gov/kudiseases/pubs/glomerular/index.htm>

22. Beatriz Marinello is not qualified for the job of USCF Executive Director. She has never held a comparable position. She has recently been involved in several failed business ventures. She announced on the Internet last year that she was starting a business selling pet food on the Internet. Apparently, that failed. She recently tried to open a store in Miami. Apparently, that failed as well. She had a job last year working for the World Chess Hall of Fame in Miami but lasted only two weeks in that job. She would never be hired as Executive Director of the USCF were it not for the fact that she is now the president of the organization. She is guilty of self-dealing.

23. Kenneth M. Chadwell of the law firm of Looney and Looney, named as a defendant herein, is City Attorney for the City of Crossville. On August 7, 2004, Kenneth M. Chadwell wrote a letter to the Board threatening a lawsuit against the Board if the Board did not carry out a verbal commitment made in 2003 by John McCrary, a former USCF President, to move to Crossville. McCrary had resigned from the board shortly after making this commitment. The threat to sue the board was without legal basis because a verbal agreement to move is not legally enforceable, especially where as here approval of the Delegates and the Attorney General of New York is required and neither of these approvals have been requested or obtained. The letter from Mr. Chadwell complained that

the plan to move to Crossville had been “dropped” and that bidding had been opened to other cities.

24. It is because of legal threats and harassment from Kenneth M. Chadwell that the Board suddenly reversed direction and made the hasty telephone conference call and voted 4-3 to move to Crossville. Petitioner requests an injunction against Kenneth M. Chadwell directing him to cease his harassment and legal threats to sue the Board and enjoining him from filing or threatening to file any such lawsuits.

25. The plan to move to Crossville and the vote to move was not revealed to the Delegates or to the general membership until the petitioner herein received a hot tip from a USCF employee concerned about losing her job and posted this news on the Internet. Since then, the issue has been hotly debated on the Google newsgroup rec.games.chess.politics and on the FIDE-chess Yahoo Group of which the petitioner herein is the moderator. There have been more than one thousand postings on this issue. The general membership has expressed almost universal opposition to the move to Crossville. Only Beatriz Marinello and Tim Hanke have argued in favor of the move.

26. Beatriz Marinello has arrogantly refused to reconsider. On 21 Oct 2004 03:41:11 GMT, chessforlife@aol.com (Beatriz Marinello) wrote: “The decision has been made. This is the end of it!” On 20 Oct 2004 15:30:23 GMT, in rec.games.chess.politics chessforlife@aol.com (Beatriz Marinello) wrote: “I can tell you two thing, I will finish my term as President and make sure that the move takes place.”

WHEREFORE, the petitioner requests that this court issue an order to show cause and a stay providing the following:

1. A freeze on the account at Key Bank which contains the \$513,000 realized as proceeds of the sale of the Building in New Windsor until a hearing can be had. Other bank accounts such as the account to pay employee salaries should not be affected by this freeze.
2. A temporary restraining order and a preliminary and permanent injunction restraining and enjoining Beatriz Marinello, Tim Hanke, Steven Shutt and Elizabeth Shaughnessy from taking any actions at all with respect to the USCF until a hearing can be had. Beatriz Marinello, Tim Hanke, Steven Shutt and Elizabeth Shaughnessy may not hire employees, fire employees, buy anything, sell anything, enter into contracts, write checks or pay or receive money or do anything at all with respect to the United States Chess Federation.
3. A temporary restraining order and a preliminary and permanent injunction restraining and enjoining the United States Chess Federation or its officers or employees from doing anything to effectuate a move to Crossville, Tennessee or to anywhere else absent the order of this court.
4. An order enjoining Beatriz Marinello and Tim Hanke from signing any check or

transferring any funds of the United States Chess Federation.

5. An order enjoining Kenneth M. Chadwell from filing or threatening to file any lawsuit to compel the USCF to move to Crossville.

6. Such other and further relief as may be deemed just and equitable.

Samuel H. Sloan

Sworn to Before me this 8th
Day of November 2004

NOTARY PUBLIC