

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

Sam Sloan,

Petitioner,

-against-

Index No. 2004-7739

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. Since the initial petition was filed in this case on November, 2004, drastic and irreparable harm has occurred to the United States Chess Federation, much as I predicted. The top five officials of the USCF have all been pushed out of office, fired or forced to resign. Beatriz Marinello, the current President of the USCF, has taken over as Chief Operating Officer, in clear violation of the USCF By-Laws and New York Not-For-Profit Law.
2. Bill Goichberg left as Executive Director on December 31, 2004 and Ken Thomas left as Chief Financial Officer on the same day. Kalev Pehme has been fired as Editor of Chess Life magazine. Barbara VanDerMark is no longer Executive Assistant and has moved to Florida. Judy Misner, Managing Director, has been sent to Tennessee. Thus, the top five people are no longer there.
3. On January 3, 2005, Beatriz Marinello took over running the office on a day-to-day basis. She told the remaining staff members that their jobs were guaranteed only until the end of January.
4. A meeting of the USCF Executive Board was held on December 19, 2004 in Boca Raton, Florida. The original agenda of this meeting provided that Beatriz Marinello would resign as President as of January 1, 2005, at which point she would take over the day-to-day operations as Chief Operating Officer. However, prior to the meeting, Ms. Marinello realized that she might not have enough votes to hold the position of Chief Operating Officer unless she was also President, so she changed her mind and decided

to hold both positions. Her resignation was taken off the agenda. This violates at least three provisions of the USCF by-laws. Article VI Section 4 of the USCF By-laws states:

"No employee of the USCF is eligible to serve on the Executive Board"

See <http://www.uschess.org/org/govern/Bylaws.php>

5. Beatriz Marinello is now serving on the Executive Board as USCF President. She is also employed by the USCF as Chief Operating Officer. This is a clear and obvious violation of USCF By-laws. Therefore, Beatriz Marinello must immediately resign or be removed as USCF President.

6. The defendants respond to this in Internet postings by saying that Beatriz Marinello does not receive a regular salary, and therefore is not an employee. They claim that she is a "volunteer" who only receives expense money, they say. However, the expense money she receives is considerable, probably as much as a salaried employee would be paid. It is known that she receives a \$50 per day food allowance, or \$350 per week. She also receives \$300 per month to park her car in New York City, even though her duties as "Chief Operating Officer" do not involve travel to New York City. (Apparently, she travels to New York City for treatments for her kidney disease.) She also receives considerable travel expenses, including for frequent trips between Miami where she lives and New Windsor, New York, where the USCF office is still located.

7. A total of \$60,000 has been budgeted for "expenses" for Beatriz Marinello from now until July. This is considerably more than the prior executive directors received as salary.

8. Beatriz Marinello sits in the USCF office almost every day, at the desk in the chair normally occupied by the Executive Director, unless she is on one of her all-expenses-paid trips. She makes decisions, issues orders, hires and fires people and is the major working executive of the USCF. She writes her own checks, controlled only by her political allies. There is no way to know how much she is paying herself. For her to claim that she is a "volunteer" and not an employee is ridiculous and absurd. I am sure that there is a multitude of case law on this, including Workman's Compensation Law, showing that she is clearly an employee.

9. Another board member is the recipient of largess. Elizabeth Shaughnessy, who resides in Berkeley, California, is receiving considerable expense money to supervise the work of the Crossville architect who has been hired to design and supervise the construction of the new building in Crossville, Tennessee. The USCF has signed a contract to pay the architect \$60,000. This is for a building that was only supposed to cost \$300,000, not counting the fee for the architect. The Beatriz Group claims that this is justified because Elizabeth Shaughnessy is an architect. However, Shaughnessy has not worked as an architect for many years, if ever. Her professional job is teaching chess to children and running chess camps and schools.

10. This would be of little moment except that the by-laws of the USCF prohibit this. In Not-For-Profit Corporations such as hospitals and universities, the members of the Board of Directors are never employees. I have not been able to find any case law requiring this, however.

11. The sale of the USCF's building in New Windsor, New York was prohibited by the by-laws. The by-laws provide:

B. The building and land cannot be encumbered, liened, or mortgaged in any fashion without action by the Delegates at a regular meeting or special meeting called for that purpose, except as provided in Section 10 below.

Section 10. Life Member Assets Management.

Borrowing of an aggregate of more than \$200,000 is possible only when:

1. The Executive Director certifies that there is a need for such borrowing.
2. The Executive Board approves of the borrowing.
3. The Life Member Assets Management Committee approves of such borrowing.
4. A report shall be made to the Delegates in the Annual Report describing the funds borrowed and repaid during the past year

12. No such action was voted upon or taken by the Delegates at a regular or special meeting called for that purpose. The opponents are claiming that a vote that was taken at the August 2002 delegates meeting in Cherry Hill, New Jersey covers this. However, that was for a different amount of money at a different time under different circumstances. That proposed sale did not take place for reasons which are still not clear. No vote on this matter was taken at either the August 2003 or the August 2004 delegates meetings. Obviously, a new vote was required in view of the passage of time and the change in circumstances.

13. The Bylaws state:

"The Executive Board shall be subject to the authority of the Board of Delegates, and none of its acts shall conflict with actions taken by the Board of Delegates."

14. This means that if the Executive Board does contravene the acts of the Board of Delegates, it is a Bylaws violation. The "Standards of Conduct for the Executive Board", are to be found at:

<http://www.uschess.org/org/govern/conduct.html>

"The USCF Board of Delegates establishes the following standards of conduct for Executive Board members in the performance of their duties:

(2) (a) Except where noted below, no Executive Board member or a member of his immediate family may receive financial compensation from the USCF for any reason, except for standard reimbursement of expenses, during his tenure on the Board, or for two years after completing his tenure if such compensation results from bids accepted or agreements made by the Board during his tenure. In claiming expense reimbursement, a Board member must claim only that portion of expenses that were incurred in non-political activities that were a legitimate exercise of the Board member's duties. Any unusual expenses for which reimbursement is questionable must be referred to the full Board for consideration. Board members are expected to exercise all reasonable frugality in incurring expenses to be reimbursed."

15. This act of the Delegates does in fact flat-out prohibit Beatriz Marinello and Elizabeth Shaughnessy from receiving money from the USCF "for any reason", except to reimburse expenses incurred in the course of their duties as a member of the Board. Their duties as a member of the Board involve attending meetings of the Board held four times a year and air fare to and from those meetings. Three hundred dollars a month for parking a car in New York City is not a legitimate expense incurred as a member of the Board.

16. Traditionally, the expenses incurred by Board members have amounted to a few hundred dollars per year. For example, one year, Don Schultz, who was USCF President at the time and who lived in Miami, took a limo to the airport to attend a Board meeting and charged the limo expense of \$50 to the Board. This caused a tremendous flap and row which reverberated for months over the Internet. Some Board members argued that Mr. Schultz should have taken a public bus to the airport at a cost of less than two dollars. The harsh debate over this \$50 limo charge can be found in the Google archives of the newsgroup rec.games.chess.politics .

17. Now, in contrast, we have Beatriz Marinello and Elizabeth Shaughnessy spending tens of thousands of dollars of USCF membership dues with no board or membership oversight at all. Nobody knows how much they are spending or how much they are paying themselves.

18. Even if Beatriz Marinello had in fact resigned, and then was immediately given a contract as move coordinator or anything else, the Executive Board would have had to show some kind of "paper trail" to prove that the "agreement" was made only after she resigned. If Ms. Marinello had resigned in the expectation of being given a contract, and then immediately after getting it (the minute after, the day after, the week after), one would be hard put to it to say there was no "agreement".

19. What we have here is a bandit group acting completely illegally in total violation of New York Not-for-Profit Law and of USCF By-laws. They clearly have no care nor concern for legal niceties. They belong in jail (which might be the best thing for Beatriz Marinello, because then the government and not the USCF members will be required to pay for treatments for her kidney disease.)

20. Each of the illegal agreements to move to Tennessee and to appoint Beatriz Marinello as Chief Operating Officer have passed by a bare 4-3 vote. There is vocal opposition to all this, led by Dr. Frank Brady, the only qualified person with significant experience running a business who is on the Board. Dr. Brady is Chairman of the Department of Mass Communications, Journalism, Television and Film of St. John's University. By contrast, the most of the group pushing through this illegal scheme to loot the few remaining assets of the United States Chess Federation are a motly crew of nerdo well unemployeds or minimally employeds. Mostly, they teach chess to children professionally. Beatriz Marinello has never held a regular office job anywhere except as USCF Scholastic Director, which primarily involved directing or supervising chess tournaments for children. She has no background in business or finance. She has no background for working in a business office, much less running one. She has never submitted a resume or signed or submitted a job application or gone through the interview process normally required by any job applicant. She would never have been hired for this job of Chief Operating Officer were she not Chairman of the USCF Executive Board.

21. The motion papers submitted by Michael J. Matsler state that I never served the papers other than the signed Order to Show Cause. This is simply a lie. ALL OF THE PAPERS WERE SERVED ON ALL OF THE DEFENDANTS. However, the papers other than the signed order to show cause were all served previously. They were all served on the same day that this case was filed. They were also posted on the Internet and on my website on the same day, which was November 12, 2004. Since the underlying papers had all been previously served, there was no need to serve the same papers again. Please note the tricky wording in the affidavit of Bill Goichberg.

4. On Tuesday, November 23, 2004 at 4:45 in the afternoon a man came to our offices and delivered to me one copy of the same Order. Once again, there were no other papers attached to the Order.

22. Please note that this sentence does not state that the underlying papers were never served or received. Rather, it simply states that the papers were not attached to the order. The fact is that the full papers were served, but not on that day. They were served on November 12, 2004, which was 11 days previously. It is true that the previously served papers did not have this index number on them, because the index number had not yet been assigned. However, in New York State, unlike other states, it is customary and indeed recommended to serve the papers before the index number has been purchased, and that is what was done here.

23. Opposing counsel claims that this court has no jurisdiction over the defendants with the exception of Bill Goichberg because they do not do business in New York State nor do they reside in New York State. This is not true. They regularly attend meetings in New York State at the USCF offices in New Windsor. They also have telephone conference calls involving New York State. On September 29, 2003, the USCF Executive Board held a meeting at the USCF Offices in New Windsor. The minutes are posted at <http://www.uschess.org/org/govern/motions200309.html>

24. Included among those present were Beatriz Marinello, Tim Hanke and Steve Shutt, who are all defendants here. At that meeting, when the question and answer time came, I raised my hand and asked a question. This was a perfectly normal question which any normal board member would have been happy to answer. Tim Hanke refused to answer the question, which I had not even finished asking, and loudly stormed out of the meeting. The meeting immediately broke up and almost everybody left. Just a few minutes before all this had happened, Al Lawrence, who was a 15 year employee of the USCF including 8 years as Executive Director, abruptly resigned from all his positions with the USCF and abruptly left the meeting because of obscene language including the f-word and the a-word which had been used in closed sessions of the Board, especially by Stan Booz, Chairman of the Audit Committee and a political ally of Beatriz Marinello.

25. Most of the defendants evaded service of process. The papers sent by certified mail were in most cases returned marked "refused" or "unclaimed". Attached are copies of a returned envelope. I still have the unopened envelopes which I am prepared to present to the court. The defendants cannot be allowed to gain any benefit from evading service of process. Defendants Beatriz Marinello and Elizabeth Shaughnessy were in Spain attending the World Chess Olympiad which lasted from mid-October to mid-November, 2004. I believe that Beatriz Marinello went at USCF expense, which may be a violation of USCF by-laws because she had no official status at the FIDE Congress. Only the USA Delegate has official status. That is Robert Tanner. Elizabeth Shaughnessy usually attends as a member of the Irish Woman's Team. She plays chess (although very weakly). I assume that the USCF did not pay her expenses. Don Schultz was there as well, but he usually travels at his own expense.

26. There is also a requirement in the by-laws that candidates for election to the USCF Executive Board receive "BINFOS", which is short for "Board Information". Copies of all contracts and commitments are to be included in these BINFOS. These should include any contracts to move to Crossville, Tennessee. I am a certified candidate for election to the Board. My name will appear on the ballot for election in August. However, I have never received any BINFOS. In addition, Beatriz Marinello is trying to have my candidate's statement banned from publication in Chess Life.

27. The by-laws also require that tapes or typed transcripts of all meetings of the board be posted on the USCF website. Although tapes of some of the meetings have been posted, most have not. This is a further violation of the by-laws.

28. Regarding their claim that all of the papers were not served, there should be a traverse held on this. I have submitted affidavits of service showing that all of the papers were served. The defendants claim that only the signed order to show cause was served. The court cannot accept one version and reject another version without a fact hearing. Furthermore, I am willing to serve the papers again, to erase all doubt. In addition, I believe that service of the signed order to show cause is sufficient to provide notice to establish the jurisdiction of the court, regardless of whether or not the underlying papers were served at the same time.

29. It is unfortunate that the court has chosen to release the funds in the previously frozen bank account without first conducting a fact hearing on this matter. All of my sources of information have been cut off. When I first filed this case, I knew more about the internal situation of the USCF than probably anybody else, including even the members of the Board, because everybody was calling me and giving me information. This is how I was able accurately to predict what was about to happen. Since then, Beatriz Marinello has pulled her wagons into a circle. She has decreed that there be no conference telephone calls and no group emails. All conversations should be one-on-one, so that there will be no witnesses. This, plus the fact that the top five office officials of the USCF have been removed, creates a situation where nobody other than Beatriz Marinello and her small band of merry men know what is going on in this organization of nearly 90,000 dues paying members. I do not know whether the money is still in the Key Bank in Newburgh, or in Crossville, Tennessee or in Chile. I have tried in every way I can to find out, without success.

30. I believe that ultimately the only solution is a court injunction removing Beatriz Marinello and her allies from power. It is obvious that they will never obey the law or orders of this court. This court dismissed this case on a technicality. Nevertheless, the Board members were informed on the law. They have chosen not to obey the laws of New York State and it is apparent obviously nothing will convince them otherwise, except possibly some time in jail.

31. There is a new election campaign underway. The election will be held in August. The swing members of the board, Elizabeth Shaughnessy and Randy Bauer, were just elected to the Board for one year terms in a special election held August 2004 to fill vacancies created when two other board members resigned. This explains the sudden shift to move to Crossville right after that election was held. Now, they must run for full four-year terms. They are committing election fraud by making false statements in their campaign flyers. A copy of a campaign flyer handed out during the US Amateur Team Chess Championship held in Parsippany NJ on February 19-21, 2005 is annexed hereto. It is filled with false statements. They state about Elizabeth Shaughnessy:

“She is a current Executive Board member who has also played an important role in saving the USCF financially. As an architect, she is the liaison between the board and the architects to insure that the new USCF headquarters building stays on budget.”

32. None of this is true. Elizabeth Shaughnessy was first elected in August, 2004 and had nothing to do with saving the USCF financially, which had already occurred, so this statement about her is false. Elizabeth Shaughnessy is not a practicing architect. She makes her living teaching chess to children. It is possible that she has a degree or some qualifications in architecture, but she has not worked as an architect for many years, if ever.

33. This statement is noteworthy because it constitutes the only instance where there is any mention of the fact that the team running for election has sold the building in New Windsor and plans to move to Crossville, Tennessee and to build a new USCF building there. The membership has been kept in the dark about all these plans and the costs thereof. The instant litigation and the freeze on the bank account has not been disclosed to the voting membership either and I believe that this is required.

34. I demand the disqualification of Michael J. Matsler as opposing counsel, on the grounds of conflict of interest. Mr. Matsler has a personal interest in the outcome of this case because his law partner, Charles Frankel of the law firm of Rider, Weiner & Frankel, P.C. represented the USCF at the closing of the sale of the building. Thus, if the sale were found to be legally invalid because the Attorney General was not notified and the sale was not approved by the court, then the law firm of Rider, Weiner & Frankel, P.C. would need to repay the money.

35. If you look at the court papers filed by Michael J. Matsler, you will see that he does not state whom he represents. There are several different legal entities sued herein. This includes the USCF, the USCF Executive Board as a Body, the individual members of the Executive Board, the former Executive Director and a lawyer in Tennessee. Who among these does Michael J. Matsler represent? There are two members of the Board that I have not sued, because they are opposed to the move to Tennessee and the firings of the employees. Clearly, Michael J. Matsler cannot claim to represent all of these distinct and conflicting legal entities, and therefore he must be disqualified from representing them.

36. After eight consecutive years of huge losses followed by just one year with a small surplus, the USCF board majority has embarked on a ruinous plan to squander the few remaining resources of the corporation to build a new headquarters building in Crossville, Tennessee. They have hired two of themselves to oversee this absurd, ridiculous and illegal scheme. The USCF voting members and delegates have not even been informed of this plan, much less allowed to vote on it. All this constitutes clear violations of the USCF By-Laws and of New York Not-for-Profit Law.

37. In March, 2000, Beatriz Marinello had been fired as USCF Scholastic Coordinator (although she claims that she resigned in protest of the USCF's decision to settle the lawsuit she had instigated against Richard Peterson). In August, 2003, only a few days after she had been elected USCF President, Beatriz Marinello got some part of her revenge by firing 17 members of the USCF Staff. Now, she plans to make her revenge

complete by firing almost all of the remaining staff and gutting the remnants of the organization, while paying herself and her political allies substantial expense money.

38. For all of these reasons, this case should be reinstated on the calendar and an order to show cause should be signed.

39. No prior application has been made for the relief requested herein, except for the two previous motions for an order to show cause filed in this court.

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

1. A freeze on all the bank accounts of the USCF at Key Bank in Newburgh until a hearing can be had.
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 with respect to the USCF until a hearing can be had. Beatriz Marinello, Tim Hanke, Steven Shutt and Elizabeth Shaughnessy may not hire or 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 requiring Beatriz Marinello and Elizabeth Shaughnessy to return to the USCF all expense money they have received from the USCF, except for expenses incurred while attending regularly scheduled quarterly meetings of the Executive Board.
6. An order disqualifying Michael J. Matsler or the law firm of Rider, Weiner & Frankel PC from representing the defendants herein.
7. Such other and further relief as may be deemed just and equitable.

Samuel H. Sloan

Sworn to before me this 27th
Day of February, 2005

NOTARY PUBLIC

AFFIDAVIT OF SERVICE

No. 7739-2004

SAM SLOAN vs. BEATRIZ MARINELLO et al

STATE OF NEW YORK, COUNTY OF QUEENS SS:

Samuel H.Sloan, being duly sworn, deposes and says that he is over the age of eighteen years and that on the 2nd day of March, 2005, deponent served the within Affidavit in Support of an Order to Show Cause upon respondents in this proceeding, at the addresses designated by them for that purpose, by personal delivery to the following office address:

Michael J. Matsler
Rider, Weiner & Frankel
PO Box 2280
655 Little Britain Road
Newburgh NY 12550

Samuel H. Sloan

Subscribed and sworn to before me
this 2nd day of March, 2005

NOTARY PUBLIC

New Address for Sam Sloan

Please note the following new address for Sam Sloan

Sam Sloan
153-90 Rockaway Blvd., #155
Jamaica NY 11434

Tel. 718-949-2512

The above telephone number is a new number scheduled to be installed on Monday, March 7, 2005.

Cell Phone Number 347-869-7843