

ADROPTIONS

Patterson Vs. Shelton, Etal-ORDER

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PRO PROTHY

Final Adjudication and Decree

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APR 17 2007

RE: Anthonee Patterson vs. Kenneth Shelton

K. DALY

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)

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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 1263 (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 Com. PL 1951).

In addressing the report on the accounting the Arbitrator takes note that in *Poesnecker v. Ricchio*, 158 Pa Commw 459, 631 A2d 1097 (1993), Cert Denied – U.S – 115 S.C t 727, 130 L. Ed 632 (1995) 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.

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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 52.65% 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	82,856.99
Hotel Carlton	Cannes, France	78,135.46
US Air	Airfare	60,321.57
The Peabody Hotel	Memphis, TN	54,900.44
Ocean Club	Bahamas	50,981.74
The Ritz Carlton	Amelia Island & Chicago	47,542.54
Westin Hotels	Atlanta & Rio	47,505.02
Four Seasons Hotel	Chicago & Miami	88,954.51
Ramada Inn	Rosemont, IL	78,231.58
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 names with 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:

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2005 ADP Payroll	\$561,272	32.06%
ADP Gross Payroll	\$1,048,604	59.90%
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:

Kenneth N. Shelton	\$213,900	Gross Earnings
	\$75,000	Housing Allowance
Total	\$288,900	

John C. S. Thomas	\$99,199	Gross Earnings
	\$52,615	Housing Allowance
Total	\$151,814	

Johnny R. Brown	\$41,574	Gross Earnings
	\$13,000	Housing Allowance
	\$13,000	Stipends
Total	\$67,574	

Total Gross Earnings	\$354,673
Total Housing Allowance	\$140,615
Total Stipends	\$13,000
Total	\$508,288

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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	32,422.00
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 2006 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: \$1,976.

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

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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)

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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*, 659 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 nonprofit 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.

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In some instances, Defendants were so delinquent in making these payments that Church properties had been scheduled for Sheriff's 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, France. 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. 15 Pa C.S.A. 5551 (c), See Davis v. Giovanazzo Construction v. Heritage Village, 2005 Phila Ct. Com. Pleas Lexis 360 (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

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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

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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 the 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

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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, 631 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

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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 Int'l, 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 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 2006. 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. Naythons (Ret.)

ARBITRATOR

SIGNATURE

DATE

July 25, 2006