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3 LOCAL FORUM OF SAN FRANCISCO LODGE NO. 3 OF THE BENEVOLENT AND  
4 PROTECTIVE ORDER OF ELKS OF THE UNITED STATES OF AMERICA  
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7 ARTHUR BRUNWASSER

8 Accuser,

9 v.

10 WILLIAM DARR,

11 Accused.

**ORDER GRANTING BROTHER  
BRUNWASSER'S MOTION FOR  
SUMMARY JUDGMENT**

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14 **Order Granting Brother Brunwasser's Motion For Summary Judgment**

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16 The Accuser has made three charges against the Accused in the above-captioned case:

17 Count 1: Refusal to permit the inspection of documents of the Building Association and  
18 contumacy;

19 Count 2: As a director and treasurer of the Building Association failed to submit proposed  
20 budgets and monthly written financial statements to the Lodge as required by GLS §  
21 16.030 and contumacy; and

22 Count 3: Failed to comport with GLS § 16.050 by permitting the Building Association to  
23 enter into AMENDMENT NO. 8 TO LEASE involved with a SETTLEMENT AGREEMENT  
24 between the parties to litigation.  
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26 In his Opposition to Motion for Summary Judgment Brother Darr attached a Declaration  
27 containing verified copies of emails concerning the scheduling of a mediation session for July 21<sup>st</sup>,  
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1 2014 and his failure to attend the session, and verified copies of two purely advisory memoranda.  
2 Although this evidence may be considered in mitigation of any sentence imposed by the Forum,  
3 none of the evidence offered has any relevance to whether or not Brother Darr did, in fact, commit  
4 any of the offenses alleged. They are therefore deemed admitted, and Brother Darr is hereby found  
5 guilty on all counts. There is substantial factual basis to support each charge as well

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7 Count 1:

8 As for the claim by Brother Darr that Brother Brunwasser had no right to inspect the  
9 financial records of the Building Association, the Forum finds the argument to be misleading and  
10 utterly without merit. Whether or not the Grand Lodge has a right to inspect Building Association  
11 records pursuant to GLS § 16.050 is irrelevant to the fact that under GLS § 12.050 Op. 8, GLS §  
12 16.110, Op. 01, and GLS § 16.030 Op. 02, members of the Lodge enjoy the same right. Brother Darr  
13 views these two propositions as mutually exclusive: they are not. Furthermore, the argument  
14 advanced by Brother Brunwasser is the one that actually comports with both the Constitution of the  
15 Order and California law. (Constitution of the Order, Article VII, § 3: “Neither the Grand Lodge nor  
16 any Local Lodge shall pass any retroactive law, nor any law in conflict with this Constitution or the  
17 laws of the United States, or of any State or Territory in which a Local Lodge is located, nor pass  
18 any law which will interfere with the religious or political convictions of Members of the Order.”  
19 This needs to be read in conjunction with California Corporations Code § 8333, which spells out the  
20 record inspection rights of members of California mutual benefit corporations.<sup>1</sup> “The accounting  
21 books and records and minutes of proceedings of the members and the board and committees of the  
22 board shall be open to inspection upon the written demand on the corporation of any member at any  
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24  
25 <sup>1</sup> The Forum hereby takes judicial notice of the records on file with the California Secretary of  
26 State’s Office for San Francisco Elks Number 3 Building Association, corporation number  
27 C0162888, filed May 31<sup>st</sup>, 1935; <http://oag.ca.gov/charities/content/cmaa> and  
28 [http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/AR\\_M550U\\_20120327\\_090318.pdf](http://oag.ca.gov/sites/all/files/agweb/pdfs/charities/pdf/AR_M550U_20120327_090318.pdf)?  
(accessed August 26<sup>th</sup>, 2014); and the records on file in San Francisco Superior Court case  
number CGC 09-492478.

1 reasonable time, for a purpose reasonably related to such person's interests as a member.” See also  
2 California Corporations Code § 8321, requiring provision of an annual financial report upon written  
3 request by a member of a mutual benefit corporation)

4 Brother Brunwasser provided written evidence from Brother Darr refusing to allow the  
5 Brother Brunwasser to inspect the financial records of the building association based on what  
6 appears to be the theory that to do so would be overly burdensome. (Brunwasser Decl., Exhibit A).  
7 Brother Darr referred Brother Brunwasser to previous comments from Brother Hachadourian  
8 denying Brother Brunwasser access to the records requested. By ratifying Brother Hachadourian’s  
9 refusal to provide access to the requested records and refusing to provide them himself, Brother  
10 Darr is as guilty of this charge as Brother Hachadourian.  
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12 Count 2:

13 Brother Darr has provided no evidence of the existence of the records in question. The  
14 “Best Evidence Rule” requires provision of the originals, or a copy if the originals are unavailable.  
15 He has not done so.  
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17 Count 3:

18 Brother Darr misleadingly states in his Declaration that he was not “directly” involved in  
19 the litigation or settlement agreement involving the lease. He should have been; his signature would  
20 have been required on the permit application for the lease that should have been submitted to the  
21 Grand Lodge before the signing of the lease, and was not. (Sweeney Decl. Exhibit E) Furthermore,  
22 the Forum notes that as the Treasurer of the Building Association he had a duty to understand the  
23 plain language of GLS §16.050, which governs the conveyance of Lodge property. His failure to  
24 provide a copy of a duly executed permit application for Grand Lodge approval constitutes an  
25 admission that no such application was ever signed by Brother Darr or filed with the Grand Lodge;  
26 presumably he did not provide it because it does not exist. The “Best Evidence Rule” requires  
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1 provision of the original documents, or a copy if the originals are unavailable. He has not done so.

2 This constitutes a violation of GLS §16.050 and GLS §9.070(g).

3 Brother Darr is hereby pronounced guilty on all counts, and a copy of this Order shall be  
4 read into the record no later than the next regularly scheduled Lodge meeting of San Francisco  
5 Lodge #3 of the Benevolent and Protective Order of Elks. A Statement of Decision in support of  
6 this Order will be provided to the parties by the Forum no later than September 4<sup>th</sup>, 2014.  
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9 IT IS SO ORDERED.

10 DATED: August 21, 2014

By: 

Burke Hansen,  
PRESIDING JUSTICE, BPOE Lodge #3